

JAMES MEZA III
Attorney

BellSouth Telecommunications, Inc.
150 South Monroe Street
Room 400
Tallahassee, Florida 32301
(305) 347-5561

January 9, 2001

Mrs. Blanca S. Bayó
Director, Division of Records and Reporting
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850


Re: Docket No. 001810-TP (TCG/Teleport Arbitration)

Dear Ms. Bayó:

Enclosed is an original and fifteen copies of BellSouth Telecommunications, Inc.'s Answer to TCG South Florida and Teleport Communications Group's Complaint, which we ask that you file in the captioned docket.

A copy of this letter is enclosed. Please mark it to indicate that the original was filed and return the copy to me. Copies have been served to the parties shown on the attached Certificate of Service.

Sincerely,


James Meza III

cc: All Parties of Record
Marshall M. Criser III
R. Douglas Lackey

DOCUMENT NUMBER-DATE

00392 JAN-98

FPSC-RECORDS/REPORTING

CERTIFICATE OF SERVICE
Docket No. 001810-TP

I HEREBY CERTIFY that a true and correct copy of the foregoing was served via
U. S. Mail this 9th day of January, 2001 to the following:

Patricia Christensen
Staff Counsel
Florida Public Service
Commission
Division of Legal Services
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

Virginia Tate, Esq.
AT&T Communications of the Southern
States, Inc.
1200 Peachtree Street, N.W.
Suite 8100
Atlanta, Georgia 30309

Kenneth Hoffman
Martin P. McDonnell
Rutledge Law Firm
P.O. Box 551
Tallahassee, FL 32302
Tel. No. (850) 681-6788
Fax. No. (850) 681-6515
Represents TCG


James Meza III (Att)

Teleport Communications Group Inc.
Michael McRae, Esq.
2 Lafayette Centre
1133 Twenty-First Street, N.W.
#400
Washington, D.C. 20036
Tel. No. (202) 739-0030
Fax. No. (202) 739-0044
Represented by Rutledge Firm

Marsha Rule, Esq.
AT&T Communications of the Southern
States, Inc.
101 North Monroe Street
Suite 700
Tallahassee, FL 32301

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Complaint of TCG South Florida and) Docket No. 001810-TP
Teleport Communications Group for)
Enforcement of Interconnection Agreement)
with BellSouth Telecommunications, Inc.) Filed: January 9, 2001
_____)

**BELLSOUTH TELECOMMUNICATIONS, INC.'S
ANSWER TO TCG SOUTH FLORIDA AND TELEPORT
COMMUNICATIONS GROUP'S COMPLAINT**

BellSouth Telecommunications, Inc. ("BellSouth") files its Answer to TCG South Florida's and Teleport Communications Group's (collectively "TCG") Complaint, and says:

GENERAL RESPONSE

In its Complaint, TCG seeks a ruling that dial-up access to the Internet through an Internet Service Provider ("ISP") should qualify for reciprocal compensation under the terms of a second interconnection agreement between BellSouth and TCG. The instant dispute arises out of TCG's manipulation of the Telecommunications Act of 1996 (the "Act") and its utter disregard for BellSouth's long-standing position that ISP traffic is not subject to reciprocal compensation. TCG's Complaint is meritless for the following reasons.

Pursuant to the Act, on July 15, 1996, TCG and BellSouth entered into an interconnection agreement ("First Agreement"). This agreement was to terminate in three years or by July 14, 1999. In February 1998, TCG filed a complaint with this Commission to recover reciprocal compensation allegedly owed by BellSouth to TCG for ISP traffic under the terms of the First Agreement. In that proceeding, BellSouth argued that ISP traffic did not constitute "Local Traffic."

BellSouth's positions were the same as they are today: primarily, reciprocal compensation is not owed for ISP traffic because (1) the parties did not intend for ISP traffic to be considered "Local Traffic" under the terms of the First Agreement; and (2) calls to ISPs are not local because they do not terminate at the ISP.

Based on the specific facts of that case, however, this Commission found that BellSouth and TCG intended for ISP traffic to be treated as "Local Traffic" for the purposes of reciprocal compensation under the First Agreement.¹

After the First Agreement's expiration, TCG notified BellSouth that, in accordance with section 252(i) of the Act, it wished to adopt the interconnection agreement ("Second Agreement") between BellSouth and AT&T Communications of the Southern States ("AT&T"), which AT&T and BellSouth executed on June 10, 1997. TCG wanted to adopt the AT&T/BellSouth Agreement in lieu of negotiating from BellSouth's standard agreement, which excluded ISP traffic from the definition of "Local Traffic." Thereafter, BellSouth and TCG signed an Adoption Agreement on July 14, 1999. By the terms of the Adoption Agreement, the Second Agreement between BellSouth and TCG expired on June 9, 2000.

TCG now claims that the Second Agreement, an agreement that was two years old at the time of adoption, entitles TCG to reciprocal compensation for ISP traffic. TCG asserts this claim notwithstanding the fact that at the time of the

¹ This Order, No. 98-1216-FOF-TP, is currently under appeal.

execution of the Adoption Agreement, BellSouth had stated publicly and repeatedly that ISP traffic was not subject to reciprocal compensation. Moreover, at the time of the Adoption Agreement, TCG and BellSouth had previously litigated this issue the prior year in reference to the First Agreement. Thus, there can be no question that at the time of the Adoption Agreement, TCG was aware of BellSouth's position regarding reciprocal compensation for ISP traffic.

Obviously aware of BellSouth's position, TCG manipulated the provisions of the Act for its own advantage. TCG adopted the June 10, 1997 BellSouth/AT&T Agreement simply to circumvent negotiating with BellSouth on the reciprocal compensation issue and to avoid its standard reciprocal compensation language. The Act is clear: "A local exchange carrier shall make available any interconnection [agreement] . . . to any other telecommunications carrier upon the same terms and conditions as those provided in the agreement." 47 U.S.C. § 252(i). As stated by the FCC, "negotiation is not required to implement a section 252(i) opt-in arrangement; indeed, neither party may alter the terms of the underlying agreement." Memorandum Opinion and Order, Global NAPs South, Inc.'s Petition for Preemption of Jurisdiction of the Virginia State Corp. Commission Regarding Interconnection Dispute with Bell Atlantic-Virginia, Inc., CC Docket No. 99-198, 1999 FCC LEXIS 3729 (released August 4, 1999), at ¶ 4.²

² While the parties agreed to alter some terms of the BellSouth/AT&T Agreement, as evidenced by TCG filing the instant Complaint, there is no question that TCG was not amenable to revising

Simply put, BellSouth's hands were tied as it was legally obligated to allow TCG to adopt the terms and conditions of the BellSouth/AT&T Agreement. However, BellSouth has never indicated any intent to include ISP traffic as local traffic under the AT&T agreement that TCG adopted, and TCG clearly understood that BellSouth was not agreeing to pay reciprocal compensation for traffic transiting an ISP location. For these reasons and because there is no legal, factual, or policy basis for finding that ISP traffic is subject to reciprocal compensation, TCG is not entitled to the relief it seeks and this Commission should dismiss its Complaint.

RESPONSE TO SPECIFIC ALLEGATIONS

BellSouth responds to the numbered paragraphs in TCG's Complaint as follows:

1. BellSouth denies the allegations of paragraph 1 for lack of knowledge.
2. To the extent a response is required, BellSouth admits the allegations of paragraph 2.
3. BellSouth admits that TCG is authorized to provide local exchange telecommunications in the State of Florida. BellSouth denies the remaining allegations of paragraph 3 for lack of knowledge.
4. BellSouth admits the allegations of paragraph 4.
5. BellSouth admits the allegations of paragraph 5.

that agreement to explicitly exclude ISP traffic from the definition of "Local Traffic" and no question that TCG knew BellSouth's position on this issue.

6. BellSouth denies that TCG is entitled to any of the relief sought in paragraph 6 or elsewhere in the Complaint.

7. BellSouth denies the allegations of paragraph 7 of the Complaint. The authorities and Second Agreement cited by TCG speak for themselves and are the best evidence of their terms and conditions.

8. BellSouth denies the allegations of paragraph 8 of the Complaint. The FCC's ruling speaks for itself and is the best evidence of its terms and conditions.

9. BellSouth admits that TCG and BellSouth entered into an interconnection agreement on July 15, 1996 ("First Agreement") and that the Commission approved this agreement by Order No. PSC-96-1313-FOF-TP on October 29, 1996 in Docket No. 960862-TP. BellSouth also admits that on February 4, 1998, TCG filed a complaint against BellSouth and that on September 15, 1998, the Commission issued Order No. 98-1216-FOF-TP ("TCG Order"). TCG's Complaint and the TCG Order speak for themselves and are the best evidence of their terms and conditions. BellSouth denies the remaining allegations of paragraph 9.

10. BellSouth admits that, after the expiration of the First Agreement and at the request of TCG, the parties entered into an Adoption Agreement on June 14, 1999, wherein the parties adopted an existing interconnection agreement between AT&T and BellSouth (the Second Agreement). BellSouth denies that the agreement adopted by the parties was to expire on June 10, 2000. That agreement expired on June 9, 2000. BellSouth admits that this

Commission issued order No. PSC-99-1877-FOF-TP, which speaks for itself and is the best evidence of its terms and conditions. BellSouth denies the remaining allegations of paragraph 10.

11. BellSouth denies the allegations of paragraph 11, except to admit that the Act contains a provision relating to reciprocal compensation and that the Second Agreement contains a provision requiring reciprocal compensation in certain circumstances. The Act and the Second Agreement speak for themselves and are the best evidence of their terms and conditions.

12. BellSouth admits that TCG and BellSouth have provided local exchange services over their respective networks pursuant to the Second Agreement and that some of TCG's and BellSouth's customers are ISPs. BellSouth also admits that customers generally connect to an ISP through a toll free seven-digit telephone or ten-digit telephone call using local exchange service. BellSouth denies the remaining allegations of paragraph 12.

13. BellSouth denies the first sentence of paragraph 13, except to admit that this Commission issued the TCG Order. That Order speaks for itself and is the best evidence of its terms and conditions. BellSouth admits that it authored a letter dated September 8, 1999 and that the First Agreement contained a definition of "Local Traffic." The letter and the First Agreement speak for themselves and are the best evidence of their terms and conditions. BellSouth denies that it refuses to make reciprocal compensation payments in accordance with terms of the Second Agreement and that the TCG Order applies to the Second Agreement. BellSouth also denies that the Second Agreement

contains the same definition of "Local Traffic" as the First Agreement for lack of knowledge because TCG failed to include Attachment 11 to the Second Agreement, which contains the definition of "Local Traffic." BellSouth denies the remaining allegations of paragraph 13, including but not limited to any allegation that ISP traffic constitutes "Local Traffic" or that the parties intended for the definition of "Local Traffic" in the Second Agreement to include ISP traffic.

13. BellSouth admits that TCG has billed BellSouth for reciprocal compensation for ISP traffic. BellSouth denies that it breached the Second Agreement by failing to pay TCG reciprocal compensation for transport and termination of "Local Traffic." BellSouth also denies that ISP traffic constitutes "Local Traffic" or that BellSouth breached the Second Agreement by failing to pay reciprocal compensation for ISP traffic. BellSouth admits that it has not paid TCG any reciprocal compensation for ISP traffic for the term of the Second Agreement. BellSouth denies the remaining allegations of second paragraph 13.

14. BellSouth admits that TCG has rendered reciprocal compensation bills to BellSouth from July 14, 1999 through June 10, 2000. BellSouth denies that it has included ISP traffic in reciprocal compensation bills submitted to TCG. Prior to submitting a bill, BellSouth identifies all ISP traffic and removes it from the calculation for reciprocal compensation.

15. BellSouth denies the allegations of paragraph 15.

16. To the extent paragraph 16 requires a response, BellSouth denies the allegations of paragraph 16.

17. BellSouth denies the allegations of paragraph 17.

18. BellSouth denies that traffic from BellSouth's end-user customers to TCG's ISP customers constitute "Local Traffic" under the Second Agreement. BellSouth also denies that ISP traffic is traffic that originates and terminates in the same LATA or that BellSouth owes TCG reciprocal compensation for ISP traffic. BellSouth admits that the Second Agreement contains a definition of "Mutual Compensation." This definition speaks for itself and is the best evidence of its terms and conditions. BellSouth denies for lack of knowledge that the second Agreement contains a definition of "Local Traffic" because TCG failed to include with its Attachment 11 to the second Agreement with its Complaint, which contains the definition of "Local Traffic." BellSouth admits that, in compliance with FCC regulations and orders, which require BellSouth to treat ISPs through local exchange tariffs, it bills its customers local rates when they dial any ISP. BellSouth denies any allegation that this fact evidences or establishes that ISP traffic originates and terminates in the same LATA or that ISP traffic constitutes "Local Traffic" under the Second Agreement. BellSouth denies any remaining allegations contained in paragraph 18.

19. BellSouth denies paragraph 19.

20. BellSouth denies the first sentence of paragraph 20 for lack of knowledge because TCG failed to include Attachment 11 to the Second Agreement with its Complaint, which contains the definition of "Local Traffic." BellSouth denies the remaining allegations of paragraph 20, except to admit that in the TCG Order, this Commission reviewed the definition of "Local Traffic" contained in the First Agreement. The Commission's TCG Order and the First

Agreement speak for themselves and are the best evidence of their terms and conditions.

21. BellSouth denies paragraph 21, except to admit that Commission issued the TCG Order. That Order speaks for itself and is the best evidence of its terms and conditions.

22. BellSouth denies the allegations in paragraph 22.

23. To the extent paragraph 23 requires a response, BellSouth denies the allegations of paragraph 23.

24. BellSouth admits that the Second Agreement requires the parties to pay reciprocal compensation for "Local Traffic" but denies that ISP traffic constitutes "Local Traffic." BellSouth also denies that it has refused to pay reciprocal compensation for "Local Traffic." The provisions of the Second Agreement relating to reciprocal compensation speak for themselves and are the best evidence of their terms and conditions. BellSouth admits that the parties have provided bills to each other. BellSouth also admits that (1) the PLU factor determines the amount of local minutes to be billed vs. long-distance and toll access charges; (2) PLUs are sent at a mutually agreed upon time period between the parties; and (3) each party has a right to audit the reported traffic as provided for in Section 11.2 of the General Terms and Conditions. BellSouth denies any remaining allegations in paragraph 24.

25. BellSouth admits that the PLU factor determines the amount of local minutes to be billed to the terminating party. BellSouth also admits that the Second Agreement does not contain a factor similar to the PLU factor for ISP-

bound traffic. To the extent TCG alleges that this fact establishes or evidences that the parties intended for ISP traffic to be considered "Local Traffic" for the purposes of reciprocal compensation, it is denied. Prior to the execution of the Second Agreement, BellSouth developed and utilized a process that identifies ISP-bound traffic separately from interstate and intrastate toll traffic and separately from local traffic. BellSouth used this process with TCG. This fact establishes that BellSouth did not intend for ISP traffic to be treated as "Local Traffic." BellSouth denies the remaining allegations of paragraph 25.

26. BellSouth denies that TCG has billed BellSouth according to BellSouth's PLU factors for lack of knowledge. BellSouth admits that it has refused to remit payment for ISP traffic. BellSouth denies any allegation that the Second Agreement, applicable laws, orders and regulations do not make a distinction between calls terminated to end-users that happen to be ISPs. BellSouth also denies that calls to TCG's ISP customers terminate at the ISP or are local calls within the same LATA or that reciprocal compensation is due for ISP traffic. BellSouth denies the remaining allegations in paragraph 26.

27. BellSouth denies that it has refused to remit payments for switched access charges. BellSouth denies the allegations of paragraph 27 for lack of knowledge.

28. BellSouth denies the allegations of paragraph 28.

29. BellSouth denies the allegations of paragraph 29.

30. BellSouth denies the allegations of paragraph 30, except to admit that this Commission issued Order No. 21815 in Docket No. 89-0423-TP on

September 5, 1989. That Order speaks for itself and is the best evidence of its terms and conditions. Furthermore, that Order was pre-empted by the FCC.

31. BellSouth denies the allegations of paragraph 31, except to admit that this Commission in the TCG Order also reviewed a claim by WorldCom Technologies, Inc. ("WorldCom") against BellSouth. The TCG Order speaks for itself and is the best evidence of its terms and conditions

32. BellSouth denies the allegations of paragraph 32, except to admit that this Commission issued Order No. PSC-99-0658-FOF-TP. That Order speaks for itself and is the best evidence of its terms and conditions.

33. BellSouth denies the allegations of paragraph 33, except to admit that this Commission issued Order No. PSC-99-0658-FOF-TP and the orders referenced in footnote 5. These orders speak for themselves and are the best evidence of their terms and conditions.

34. BellSouth denies the allegations of paragraph 34, except to admit that this Commission has rendered decisions that have interpreted reciprocal compensation provisions of interconnection agreements. BellSouth specifically denies that ISP traffic constitutes "Local Traffic" under the Second Agreement or that ISP traffic terminates at the ISP.

35. BellSouth denies the allegations of paragraph 35, except to admit that the FCC issued the ISP Declaratory Ruling and that the D.C. Circuit Court of Appeals issued the decision in Bell Atlantic Telephone Co. v. FCC, 206 F.3d 1 (D.C. Cir. 2000). The FCC's ruling and the D.C. Circuit's decision in Bell Atlantic

Telephone Co. v. FCC speak for themselves and are the best evidence of their terms and conditions.

36. BellSouth denies the allegations of paragraph 36, except to admit that the D.C. Circuit issued the in Bell Atlantic Telephone Co. v. FCC decision. That decision speaks for itself and is the best evidence of its terms and conditions.

37. BellSouth denies the allegations of paragraph 37, except to admit that the Kentucky Public Service Commission issued Order No. 98-212 on May 16, 2000. That Order speaks for itself and is the best evidence of its terms and conditions.

38. BellSouth denies the allegations of paragraph 38, except to admit that the Georgia Public Service Commission issued an Order on June 29, 2000 in Docket No. 11644-U. That Order speaks for itself and is the best evidence of its terms and conditions.

39. BellSouth denies that TCG is entitled to any of the relief sought in the prayer or elsewhere in the Complaint.

40. Any allegation not specifically admitted herein is denied.

AFFIRMATIVE DEFENSES

1. TCG's Complaint fails to state a claim for which relief can be granted.

2. Some or all of TCG's claims are barred under the doctrine of laches because TCG was aware at least by September 1999 (and probably earlier) that

BellSouth was not going to pay reciprocal compensation for ISP traffic and TCG did not file the instant Complaint until December 2000. See TCG's Exhibit "C."

3. Some or all of TCG's claims are barred under the doctrine of waiver because TCG was aware at least by September 1999 (and probably earlier) that BellSouth was not going to pay reciprocal compensation for ISP traffic and TCG did not file the instant Complaint until December 2000. See TCG's Exhibit "C."

4. To the extent TCG is requesting specific performance, some of TCG's claims are barred under § 95.11(5)(a) because TCG was aware at least by September 1999 (and probably earlier) that BellSouth was not going to pay reciprocal compensation for ISP traffic and TCG did not file the instant Complaint until December 2000. See Fla. St. Ann. § 95.11(5)(a); TCG's Exhibit "C."

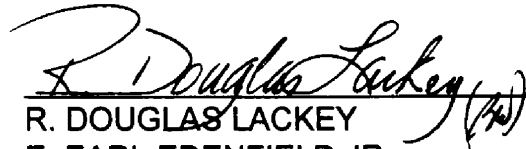
Wherefore, BellSouth respectfully requests that the Commission deny the relief sought by TCG, enter judgment in favor of BellSouth, dismiss the Complaint, and grant any other relief deemed appropriate by the Commission.

Respectfully submitted this 9th day of January, 2001.

BELLSOUTH TELECOMMUNICATIONS, INC.



NANCY B. WHITE
JAMES MEZA III
c/o Nancy H. Sims
150 So. Monroe Street, Suite 400
Tallahassee, FL 32301
(305) 347-5555



R. DOUGLAS LACKEY
E. EARL EDENFIELD JR
Suite 4300
675 W. Peachtree St., NE
Atlanta, GA 30375
(404) 335-0747

241160