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March 6, 2001

Ms. Blanca S. Bayo, Director
Division of Records and Reporting
Florida Public Service Commission
2540 Shumard Oak Boulevard
Betty Easley Conference Center, Room 110
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RECORDS AND REPORTING

Re: Docket No. 000075-TP

Dear Ms. Bayo:

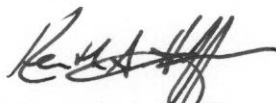
Enclosed herewith for filing in the above-referenced docket on behalf of AT&T Communications of the Southern States, Inc., TCG of South Florida, MediaOne Florida Telecommunications, Inc. and Allegiance Telecom of Florida, Inc. are the following documents:

1. Original and fifteen copies of the Response to BellSouth Telecommunications, Inc.'s Emergency Global Motion to Compel; and
2. A disk in Word Perfect 6.0 containing a copy of the document.

Please acknowledge receipt of these documents by stamping the extra copy of this letter "filed" and returning the copy to me.

Thank you for your assistance with this filing.

Sincerely,


Kenneth A. Hoffman

KAH/rl
Enclosures
cc: All Parties of Record

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DOCUMENT NUMBER-DATE
02941 MAR-60
FPSC-RECORDS/REPORTING

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Investigation into appropriate)
methods to compensate carriers for)
exchange of traffic subject to Section 251)
of the Telecommunications Act of 1996.)
_____)

Docket No. 000075-TP

Filed: March 6, 2001

**RESPONSE OF AT&T COMMUNICATIONS OF THE
SOUTHERN STATES, INC., TCG OF SOUTH FLORIDA,
MEDIAONE FLORIDA TELECOMMUNICATIONS, INC.,
AND ALLEGIANCE TELECOM OF FLORIDA, INC.
TO BELLSOUTH TELECOMMUNICATIONS, INC.'S
EMERGENCY GLOBAL MOTION TO COMPEL**

AT&T of the Southern States, Inc., TCG of South Florida, MediaOne Florida Telecommunications, Inc. and Allegiance Telecom of Florida, Inc. (hereinafter referred to collectively as the "ALECs"), by and through their undersigned counsel, and pursuant to Rule 28-106.204(1), Florida Administrative Code, hereby file their Response in Opposition to the Emergency Global Motion to Compel filed by BellSouth Telecommunications, Inc. ("BellSouth), and state as follows:

I. SUMMARY OF ALECS' POSITION

BellSouth's "Emergency" Motion to Compel was served approximately one week before the beginning of the final hearing in this docket. The "emergency" was created by BellSouth who waited over one year following the opening of this docket to serve written discovery. BellSouth did not even serve their written discovery requests until after 5:00 p.m. on February 2, 2001, even though this docket was opened on January 21, 2000 and the Phase I issues for this proceeding were established informally in August, 2000 and formally by Order issued in November 2000. The "eleventh-hour" discovery included a host of open-ended, broad and irrelevant discovery requests which were met by the objections of the ALECs. BellSouth created its own supposed "emergency"

DOCUMENT NUMBER-DATE

02941 MAR-6 2001

FPSC-RECORDS/REPORTING

and it should not be rewarded for doing so. The Order Establishing Procedure in this docket very clearly states that the discovery completion date is February 28, 2001. Discovery completion dates have always been intended to bring a termination point to the discovery process so that parties may prepare for final hearing. By blatantly ignoring the discovery completion date, BellSouth has "succeeded" in diverting the ALECs and their counsel from devoting their time and resources to the matter at hand - - preparation for the final hearing. Instead, ALECs and their counsel have had to expend significant time and resources formulating this response which addresses a host of discovery matters which were required to be completed by February 28. BellSouth's "Emergency" Motion to Compel should be denied.

II. BACKGROUND FACTS AND ARGUMENT

On January 21, 2000, the Commission opened this docket. On July 13, 2000, the staff held an Issues Identification Workshop wherein the first nine ISP-related issues in this proceeding were preliminary established. Those nine issues were formally included in the Order Establishing Procedure, Order No. PSC-00-2229-PCO-TP, issued November 22, 2000.

Despite the fact that the nine ISP related issues were preliminarily identified in July 2000 and were formally included in the Order Establishing Procedure in November, 2000, BellSouth chose to wait until after 5:00 p.m. on February 2, 2001 to fax its written discovery requests. The November 22, 2000 Order Establishing Procedure provides that "all discovery shall be completed by February 28, 2001." Clearly, by choosing to wait some thirteen months after the opening of this docket to serve written discovery requests, and having actual or constructive knowledge that all discovery was required to be completed by February 28, 2001, BellSouth assumed the risk that the

only responses it would receive prior to February 28 would be those responses not subject to objections.

In this case, the ALECs timely filed objections and subsequently filed responses to the BellSouth discovery requests that were not subject to specific objections. Due solely and exclusively to BellSouth's delay in serving written discovery, BellSouth now attempts to put the ALECs in the posture of being diverted from final hearing preparation and supposedly having to produce documents in response to the discovery requests that are subject of the "emergency" motion to compel. BellSouth's conduct is deserving of sanctions and certainly, at minimum, the denial of the "emergency" motion to compel.

The Commission is surely mindful that the discovery completion date in the Order Establishing Procedure cannot be complied with when a motion to compel is filed one day before the cutoff date. Obviously, due process requires additional tasks to be performed, including the filing of a response to a motion to compel and, to the extent the motion to compel is granted, a reasonable period of time for the provision of answers to the discovery requests. Here, the required exercise of due process and any order requiring additional answers to BellSouth's productions of documents would place the ALECs well beyond the conclusion of the final hearing. **That is why Orders Establishing Procedure issued by Prehearing Officers in Commission proceedings require that discovery be completed on a date certain, typically at least one week before the commencement of a final hearing.** The ALECs must emphasize again that the very purpose underlying a discovery completion date is to allow for a terminating point for discovery and a reasonable number of days for parties to focus on and prepare for final hearing. BellSouth's unexplained delay in serving discovery and its last minute "emergency" motion to compel

successfully defeats the purpose of the discovery completion date set forth in the Order Establishing Procedure by requiring the ALECs and their counsel to focus their attention, resources and limited time before final hearing on matters which could have been dealt with many months ago (such as these discovery requests) rather than preparing for final hearing. For this reason alone - - BellSouth's unilateral decision to blatantly disregard the discovery completion date in the November 22, 2000 Order Establishing Procedure - - BellSouth's Motion to Compel should be denied.

III. INTERROGATORIES

The ALECs incorporate by reference their arguments supporting the denial of BellSouth's Motion to Compel set forth in Section II of this Response, and further state:

A. INTERROGATORIES NOS. 7, 8, 9, 10, 11, 12 AND 13

BellSouth argues that company-specific answers to the above-numbered interrogatories are relevant to the issue of whether the ALECs are using reciprocal compensation revenue for ISP-bound traffic "to generate an unearned financial windfall."¹ This is a predominant theme throughout BellSouth's Motion although BellSouth never bothers to explain what it means by a potential "windfall" and how the concept of a "windfall" fits within a supposedly competitive telecommunications environment. There is no issue in this proceeding concerning ILEC or ALEC profits or supposed "unearned windfalls." BellSouth attempts to support its position that the requested information is relevant by pointing to the prefiled direct testimony of staff witness Gregory Fogelman, at page 4. If one turns to Mr. Fogelman's prefiled direct testimony, at page 4, there is no

¹BellSouth's Motion to Compel, at 3.

use of the word "windfall" - - only that CLECs have capitalized on the market opportunity of serving ISPs and generated substantial reciprocal compensation in doing so.

BellSouth's Motion to Compel fails to demonstrate how any specific information on the number of access lines in Florida for which an ALEC provides local telephone service, total number of end user customers served in Florida, or total number of "on-net" end user customers served within Florida, total number of on-net ISP customers served in Florida, total company revenues projected for the years 2001 and 2002,² have any relevance whatsoever to the policy considerations which should inform the Commission in this proceeding.³ Company-specific profits⁴ and losses should not drive the Commission's policy decisions in this proceeding. Instead, an appropriate compensation mechanism consistent with the requirements of federal law is at the heart of this proceeding.

BellSouth has already filed its Prefiled Direct and Rebuttal Testimony in this proceeding. BellSouth certainly may not attempt to supplement its prefiled testimony by virtue of any of the information which might be gained through the above-numbered discovery requests. BellSouth's Motion to Compel answers to the above-numbered discovery requests should be denied.

B. INTERROGATORIES NOS. 14, 15, 16, 22, 24 AND 25

²See BellSouth Interrogatory Nos. 7-12.

³See Issue 4 in November 22, 2000 Order Establishing Procedure.

⁴In Docket No. 001503-TP, the Office of Public Counsel filed comments reporting that in 1997, BellSouth refunded in excess of \$195 million plus interest to Florida customers, yet still earned a rate of return on equity of 15.11% in Florida. Is that what BellSouth means by its use of the term "unearned windfall"? Does BellSouth believe that its excessive profits warrant increased reciprocal compensation rates?

Here again, BellSouth maintains, for example, that an ALEC's total dollar investment in Florida, including its total dollar investment in switches, outside plant, and support assets, is somehow relevant to Issue 4 which focuses on the policy considerations which should inform the Commission's decisions in this docket. The information sought under the above--numbered interrogatories is not only irrelevant, but reflects BellSouth's true intention to divert the ALECs from preparation for final hearing and somehow attempt to transform this proceeding from a generic docket to a super-detailed cost case for the ALECs. BellSouth alleges that these interrogatories are relevant to each ALEC's cost of doing business in Florida. The cost of each ALEC of doing business in Florida is irrelevant; the only potentially relevant ALEC cost is the cost of transporting and terminating local traffic where an ALEC seeks to establish its right to a symmetrical reciprocal compensation rate.⁵ Such costs must be reflected in a cost study which, in this case, has not been performed by the ALECs.

For these reasons, BellSouth's Motion to Compel responses to the above-numbers interrogatories should be denied.

C. INTERROGATORY NO. 23

This interrogatory was directed to e.Spire which is not one of the ALECs filing this response. The ALECs filing this response have no knowledge of e.Spire's relationship with ISPs.

D. INTERROGATORIES NOS. 6 AND 21

These interrogatories request the ALECs to undertake research and analysis of filings before state commissions across the nation concerning positions taken or filings on ISP/reciprocal

⁵See FCC Rule 47 CFR §51.711(b).

compensation issues. This information is public record and equally available to BellSouth. AT&T Communications of the Southern States, Inc. has provided the requested information to the extent it was already available in-house for the BellSouth nine state region.

E. INTERROGATORY NO. 4

BellSouth seeks "all documents that refer to relate to any issue raised in Phase I of the Generic ISP Proceeding." As is noted in the ALECs' original objections, this request is overbroad. It is not tied to any specific issue. It is not tied to any specific period of time. The Motion to Compel on this interrogatory should be denied.

IV. REQUESTS FOR PRODUCTION

The ALECs incorporate by reference their arguments supporting the denial of BellSouth's Motion to Compel set forth in Section II of this Response, and further state:

A. REQUEST FOR PRODUCTION NOS. 6, 7, 8, 9, 10, 11, 12, 13, 16 AND 17

The ALECs adopt and incorporate by reference their arguments set forth under Section III(A) above concerning the supposed relevancy of determining whether an ALEC is receiving an "unearned windfall." As previously stated, the issue of whether BellSouth is receiving a "windfall" - - whatever that means - - or an "unearned windfall" - - whatever that means - - is not a relevant consideration in establishing an appropriate and lawful reciprocal compensation mechanism for ISP traffic. BellSouth's Motion to Compel responses to the above numbered requests for production be denied.

B. REQUEST FOR PRODUCTION NOS. 2, 14, 15, 17 AND 22

The ALECs adopt and incorporate by reference their arguments set forth under Section III(A) above regarding the "unearned windfall" contention and request that BellSouth's Motion to Compel responses to the above numbered requests for production be denied.

C. REQUESTS FOR PRODUCTION NOS. 18, 19 AND 20

These interrogatories seek information relating to each ALECs' ownership, affiliation or interest, if any, with an ISP. Again, BellSouth says that it needs this information so it can determine if an ALEC is receiving an "unearned financial windfall". The ALECs adopt and incorporate by reference their arguments set forth under Section III(A) above regarding the "unearned windfall" contention. BellSouth's Motion to Compel responses to the above numbered requests for production should be denied.

D. REQUEST FOR PRODUCTION NO. 23

Here, BellSouth wants copies of any agreements to which the ALEC is a party that involves the sharing of any reciprocal compensation received by the ALEC from BellSouth. BellSouth did not even bother to limit this request to ISP traffic. The request is overbroad and irrelevant to the establishment of an appropriate, lawful, reciprocal compensation mechanism for the transport and termination of ISP traffic. BellSouth raises the "financial windfall" again as a basis for relevancy. That issue has been discussed and the arguments concerning that contention are incorporated herein by reference. BellSouth's Motion to Compel a response to Request for Production No. 23 should be denied.

E. REQUEST FOR PRODUCTION NO. 4

The ALECs adopt and incorporate by reference their arguments under Section III(A) above concerning the "unearned windfall" contention. BellSouth's Motion to Compel a response to Request for Production No. 4 should be denied.

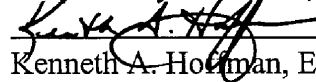
V. CONCLUSIONS AND PRAYER FOR RELIEF

BellSouth waits until thirteen months have passed following the opening of this docket to serve written discovery. BellSouth serves the written discovery when it is aware or should be aware that the previously established discovery completion date is February 28, 2001 and that the final hearing is scheduled to begin on March 7, 2001. BellSouth then files an extensive motion to compel on February 27, 2001 in complete and utter disregard of the discovery completion date and the purpose of the discovery completion date (as previously discussed). BellSouth has created this so-called "emergency" and has now successfully diverted ALECs and their counsel during the grace period following the discovery completion date from focusing on the task at hand which is preparing for the final hearing.

For the reasons stated in this Response, the ALECs respectfully request that the Prehearing Officer deny in full BellSouth's Emergency Global Motion to Compel.

Respectfully submitted this 6th day of March, 2001.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing was furnished by U. S. Mail, telecopier (*) and/or hand delivery(**) to the following this 6th day of March, 2001:

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AT&T/emer.response