

**BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION**

Petition of AT&T Communications
of the Southern States, Inc., TCG South
Florida, and MediaOne Florida
Telecommunications, Inc. For Structural
Separation of BellSouth
Telecommunications, Inc.

Docket No. 010345-TP
Filed: April 24, 2001

**REPLY OF PETITIONERS TO BELLSOUTH'S OPPOSITION TO
AT&T'S MOTION FOR EXTENSION OF TIME**

Petitioner AT&T Communications of the Southern States, Inc., TCG South Florida, and MediaOne Florida Telecommunications, Inc. ("AT&T"), by and through undersigned counsel, hereby replies to BellSouth's Opposition to AT&T's Motion for Extension of Time and states:

1. This firm was engaged to represent AT&T in these proceedings on April 18, 2001. At the time this firm was engaged, we understood that (1) BellSouth had already been contacted by AT&T about AT&T's request for an extension of time to respond to BellSouth's Motion to Dismiss and (2) the response was otherwise due to be filed on April 23, 2001.
2. On April 19, 2001, this firm, on behalf of AT&T, filed its motion for extension of time. The motion recited the fact that counsel for BellSouth had informed counsel for AT&T that BellSouth consented to a fourteen (14) day extension but would not consent to a thirty (30) day extension. For the reasons set forth in the motion, AT&T asserted that a thirty (30) day extension was reasonable and appropriate under the circumstances of this case.
3. On April 23, 2001, BellSouth filed its Opposition to AT&T's Motion for Extension of Time. BellSouth acknowledges in its filing that it agreed to grant AT&T a fourteen (14) day

extension. However, BellSouth opposes AT&T's motion for a thirty (30) day extension, relying principally on the argument that AT&T's motion for an extension of time was untimely filed.

4. Rule 28-106.103 of the Florida Administrative Code allows a party seven days to file a response to a motion made by other parties. The Rule provides for five additional days if the motion is served by mail. Counting twelve (12) days from BellSouth's April 10, 2001 Motion to Dismiss, AT&T determined that its response was due on April 23, 2001. This is unquestionably the proper due date if BellSouth's motion was served by mail, which it was, according to the certificate of service. However, as BellSouth points out in its Opposition to AT&T's Motion for Extension of Time, the BellSouth Motion to Dismiss was also sent by Federal Express. Under Rule 28-106.103, service by overnight carrier adds only one day to a party's time to respond (instead of the five days applicable to service by mail).

5. AT&T filed its Motion for Extension of Time within the time it was permitted to respond to a motion served upon it by U.S. Mail. Even if BellSouth's decision to serve by both Federal Express and U.S. Mail might support an argument for an earlier deadline, no useful purpose is served by BellSouth's effort to litigate the point. BellSouth had notice of AT&T's intention to seek an extension on April 18, 2001, the date BellSouth says a motion seeking the extension was due, and BellSouth agreed to a fourteen (14) day extension the next day. If the purpose of BellSouth's untimeliness argument is to suggest that the Commission cannot even consider the merits of whether an extension of thirty (30) days as opposed to fourteen (14) days is most appropriate, BellSouth is wrong both as a matter of law and fairness. *See In re Complaint by Allied Universal Corp.*, 2000 WL 33151629, PSC Docket No. 000061-EI (Order No. PSC-00-2430-PCO-EI) (Dec. 20, 2000)

(where party erroneously calculated response date from date of receipt instead of date of service, four-day delay resulted in no prejudice and leave to file response granted).

6. The magnitude and complexity of the issues presented in this proceeding warrant a modest extension of thirty (30) days in order to facilitate a more complete presentation to the Commission, and BellSouth's hyper-technical untimeliness argument is not a reasonable basis for refusing to enter an otherwise appropriate order to that effect.

WHEREFORE, AT&T respectfully requests that the Prehearing Officer issue an order allowing AT&T until May 23, 2001 to respond to BellSouth's Motion to Dismiss.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that true and correct copies of the *Motion of AT&T Communications of the Southern States, Inc., TCG South Florida, and MediaOne Florida Telecommunications, Inc. for Extension of Time to Respond to Motion to Dismiss or in the Alternative Motion to Strike filed by BellSouth Telecommunications, Inc.* were sent via U.S. mail this 24th day of April, 2001 to:

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