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May 23, 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
Tallahassee, Florida 32399-0850

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RECORDS AND REPORTING

Re: Docket No. 001810-TP

Dear Ms. Bayo:

Enclosed herewith for filing in the above-referenced docket on behalf of TCG South Florida and Teleport Communications Group ("TCG") are the following documents:

1. Original and fifteen copies of TCG's Prehearing Statement; 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,

Martin P. McDonnell

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cc: All Parties of Record

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06499 MAY 23 01

FPSC-RECORDS/REPORTING

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Complaint of TCG South Florida and)
Teleport Communications Group for) Docket No. 001810-TP
Enforcement of Interconnection Agreement)
with BellSouth Telecommunications, Inc.) Filed: May 23, 2001
_____ /

**PREHEARING STATEMENT OF
TCG SOUTH FLORIDA AND
TELEPORT COMMUNICATIONS GROUP**

Pursuant to Order No. PSC-01-0883-PCO-TP, TCG South Florida and Teleport Communications Group (hereinafter referred to collectively as "TCG") files its Prehearing Statement.

A. WITNESSES:

DIRECT

ISSUES

Richard A. Guepe

All

Fran Mirando

4(b) and 5(b)

REBUTTAL

Richard A. Guepe

All

B. EXHIBITS:

Witness

Exhibit

Title

Direct

Richard A. Guepe

RTG-1 (composite)

BellSouth/AT&T Interconnection Agreement

RTG-2 (composite)

Citations to Florida PSC Orders

RTG-3 (composite)

BellSouth/TCG Adoption Agreement

DOCUMENT NUMBER-DATE

06499 MAY 23 2001

FPSC-RECORDS/REPORTING

Fran Miranda FM-1 TCG billings to BellSouth and BellSouth's payments, unpaid balances, and late charges

Rebuttal

Richard A. Guepe RTG-4 (composite) AT&T and BellSouth LATA maps

C. STATEMENT OF BASIC POSITION:

TCG seeks enforcement of its Interconnection Agreement with BellSouth. TCG and BellSouth entered into the Interconnection Agreement on July 14, 1999 and it was approved by the Commission on September 21, 1999, in Order No. PSC-99-1877-FOF-TP. In the Agreement, BellSouth agreed to pay TCG reciprocal compensation for the transport and termination of "Local Traffic" as defined therein. BellSouth has breached the Agreement by failing to pay TCG reciprocal compensation for the transport and termination of telephone calls originated by BellSouth's end user customers and transported and terminated by TCG to ISPs. Further, BellSouth has breached the Agreement by failing to pay the full amount due for switched access charges for telephone exchange service provided by TCG to BellSouth. The following facts clearly establish TCG's entitlement to its requested relief.

TCG and BellSouth originally entered into an Interconnection Agreement on July 15, 1996 (the "First BellSouth/TCG Agreement"). The First BellSouth/TCG Agreement was approved by the Commission on October 29, 1996, in Order No. PSC-96-1313-FOF-TP. On February 4, 1998, TCG filed a complaint for enforcement of Section 1.D of the First BellSouth/TCG Agreement, alleging that BellSouth failed to pay reciprocal compensation for telephone exchange service traffic transported and terminated by TCG to ISPs. On September 15, 1998, the Commission issued Order

No. PSC-98-1216-FOF-TP (“TCG Order”) requiring BellSouth to pay TCG reciprocal compensation for transport and termination of calls to ISPs.

After the expiration of the First BellSouth/TCG Agreement, TCG adopted an existing interconnection agreement between AT&T and BellSouth (the “Second BellSouth/TCG Agreement”). The Commission approved the Second BellSouth/TCG Agreement on September 21, 1999 in Order No. PSC-99-1877-FOF-TP. The Second BellSouth/TCG Agreement is identical to the First BellSouth/TCG Agreement in terms of defining “Local Traffic.” Despite the fact that the Commission has already interpreted this definition of “Local Traffic” to include ISP-bound traffic, BellSouth refuses to compensate TCG for terminating its ISP-bound traffic. Based on the TCG Order, the Commission’s prior interpretation of the definition of “Local Traffic” in the earlier litigation between TCG and BellSouth governs the disposition of this case and BellSouth is precluded from relitigating that issue in this proceeding under the doctrine of collateral estoppel. The pertinent facts and the applicable law have not changed since the Commission ordered BellSouth to compensate TCG for terminating ISP-bound traffic under the “Local Traffic” provision of the First BellSouth/TCG Agreement. The Commission should follow its own precedent and order BellSouth to compensate TCG for the termination of BellSouth’s ISP-bound traffic, in accordance with the plain language of the “Local Traffic” provisions of the Second BellSouth/TCG Agreement.

In the Second BellSouth/TCG Agreement, the parties agreed to the rates applicable to reciprocal compensation for the exchange of local traffic. Pursuant to the terms of that Agreement, TCG is entitled to compensation for its termination of BellSouth’s ISP-bound traffic at the tandem interconnection rate of \$.00325. TCG is entitled to be compensated at the tandem interconnection rate because TCG’s switches serve a “comparable geographic area” to BellSouth’s switches.

Pursuant to FCC rules, because TCG meets the “comparable geographic area” test, it is entitled to reciprocal compensation at the tandem interconnection rate for the termination of BellSouth’s ISP-bound traffic.

BellSouth has also breached the Second BellSouth/TCG Agreement by failing to pay TCG the full switched access charges due for telephone exchange service provided by TCG to BellSouth. Pursuant to BellSouth’s filed tariffs, TCG is entitled to switched access charges for telephone exchange service provided by TCG to BellSouth at the rate of \$.02733 per minute of use. Despite TCG’s entitlement to switched access charges at that rate, BellSouth has remitted its payments at a lower rate in violation of the Commission approved tariffs.

D. STATEMENT OF ISSUES AND POSITIONS:

Issue 1: What is the Commission’s jurisdiction in this matter?

TCG: This Commission has jurisdiction to enforce the terms of the Second BellSouth/TCG Agreement that BellSouth has breached. The United States Court of Appeals for the Eighth Circuit confirmed that, pursuant to Section 252 of the Act, State Commissions like this one, “are vested with the power to enforce the provisions of the agreements.... (they) have approved.” Iowa Utilities Board v. FCC, 120 F.3rd 753, 804 (8th Cir. 1997). The Commission also has jurisdiction to consider and resolve this complaint pursuant to Section 364.01, Florida Statutes, and Order No. PSC-99-1877-FOF-TP. Moreover, Section 16 of the Second BellSouth/TCG Agreement requires the parties to petition this Commission for a resolution of any disputes that arise as to the interpretation of the Agreement.

Issue 2: Under the second BellSouth/TCG agreement, are the parties required to compensate each other for delivery of traffic to ISPs?

TCG: Yes. Attachment 11 of the Second BellSouth/TCG Agreement defines “Local Traffic” as:

Any telephone call that originates and terminates in the same LATA and is **billed by the originating party as a local call**, including any call terminating in an exchange outside of BellSouth’s service area with respect to which BellSouth has a local interconnection arrangement with an independent LEC with which [TCG] is not directly interconnected. [emphasis added].

The traffic at issue fits the definition of “Local Traffic”. BellSouth’s end users customers place calls to TCG’s end user ISP customers; the traffic originates and terminates in the same LATA; and BellSouth, the originating party, treats these calls as local when billing its end users. In fact, BellSouth bills its originating end user customers local rates when they dial any ISP, whether the ISP is served by BellSouth, TCG or another provider. Clearly, calls to ISPs fall within the agreed upon definition of “Local Traffic” and because the traffic at issue is “Local Traffic” as defined in the Second BellSouth/TCG Agreement, reciprocal compensation is due from BellSouth to TCG.

Issue 3: What is the effect, if any, of Order No. PSC-98-1216-FOF-TP, issued September 15, 1998 in Docket No. 980184-TP, (TCG Order) interpreting the First BellSouth/TCG Agreement requiring BellSouth to pay TCG for transport and termination of calls to ISPs, on the interpretation and application of the second BellSouth/TCG Agreement?

TCG: BellSouth and TCG crafted a contractual definition of “Local Traffic” in the First BellSouth/TCG Agreement and agreed upon the exact same language in the Second BellSouth/TCG agreement. The parties expressly delineated what is and what is not “Local Traffic” in order to eliminate uncertainty over what type of traffic might be encompassed by the definition. If BellSouth had intended **at the time of the agreement** to exclude calls terminated to ISP customers of TCG

from the definition of “Local Traffic,” it could have, and should have, sought to modify the contractual definitions. BellSouth did not.

The definition of “Local Traffic” in the Second BellSouth/TCG Agreement is **exactly the same** as the definition of “Local Traffic” in the First BellSouth/TCG Agreement. The definition of “Local Traffic” in the First BellSouth/TCG agreement was interpreted and applied by this Commission in the TCG Order to require BellSouth to pay reciprocal compensation to TCG for the transportation and termination of calls to ISPs.

The Commission has determined that the definition of “Local Traffic” in the First BellSouth/TCG Agreement includes ISP-bound traffic. The Commission’s prior determination of this issue governs the disposition of the same issue in this case and BellSouth is precluded from relitigating this issue. BellSouth is obligated to pay reciprocal compensation for ISP-bound traffic pursuant to the same definition of “Local Traffic” in the Second BellSouth/TCG agreement.

Issue 4(a): Has BellSouth breached the Second BellSouth/TCG agreement by failing to pay TCG reciprocal compensation for transport and termination of local traffic as defined in the second BellSouth/TCG agreement for calls originated by BellSouth’s end users customers and transported and terminated by TCG to ISPs?

TCG: Yes.

Issue 4(b): If so, what rates under the Second BellSouth/TCG Agreement should apply for the purposes of reciprocal compensation?

TCG: Pursuant to the terms of the Second BellSouth/TCG Agreement, TCG is entitled to reciprocal compensation at the tandem interconnection rate of \$.00325 for the termination of all BellSouth’s local traffic, including ISP bound traffic. Under FCC Rule 57.711(a)(3) and the FCC’s

recent confirmation of the application of that rule,¹ TCG is entitled to the above reciprocal compensation rate because TCG's switches serve a "comparable geographic area" to BellSouth's switches.

TCG is able to connect virtually any customer in a LATA to the TCG switch serving that LATA either through TCG's own facilities built to the customer premises, UNE loops provisioned through collocation in BellSouth end offices, or using dedicated high-capacity facilities (in special access services or combinations of UNEs purchased from BellSouth).

Issue 5(a): Has BellSouth breached the Second BellSouth/TCG Agreement by failing to pay TCG switched access charges for telephone exchange service provided by TCG to BellSouth?

TCG: Yes.

Issue 5(b): If so, what rates under the Second BellSouth/TCG Agreement should apply for purposes of originating and terminating switched access charges for intraLATA toll traffic?

TCG: Based on the rate elements in BellSouth's intrastate switched access tariffs, TCG has billed BellSouth \$.02733 per minute of use for terminating switched access charges for intraLATA toll traffic. BellSouth remits payments at a lower rate in violation of the Commission-approved tariffs.

E. STIPULATED ISSUES:

None.

¹In the Matter of Developing a Unified Intercarrier Compensation Regime, FCC Docket No. 01-92, FCC Order No. 01-132.

F. PENDING MOTIONS:

None, although TCG intends to file a Motion for Partial Summary Final Order on the issue of TCG's entitlement to reciprocal compensation for the termination of BellSouth's ISP-bound traffic. TCG anticipates filing that Motion on or about May 24, 2001.

G. PENDING REQUESTS FOR CONFIDENTIALITY:

None.

H. ANY REQUIREMENT SET FORTH IN ORDER THAT CANNOT BE COMPLIED WITH:

None.

I. ANY DECISION OR PENDING DECISION OF THE FCC OR ANY OTHER COURT THAT HAS OR MAY EITHER PREEMPT OR OTHERWISE IMPACT THE COMMISSION'S ABILITY TO RESOLVE ANY OF THE ISSUES PRESENTED FOR THE RELIEF REQUESTED IN THIS MATTER.

TCG is unaware of any decision or pending decision of the FCC or any other court that has or may preempt the Commission's ability to resolve any of the issues presented for the relief requested in this matter.

On April 27, 2001, the FCC issued its order regarding jurisdiction over intercarrier compensation for ISP bound traffic.² Although released, this Order is not yet effective. The FCC's Order expressly states that it does not preempt any state commission decision regarding compensation for ISP bound traffic for the time period prior to the effective date of its Order. The FCC specifically held in the Order:

²In the matter of Intercarrier Compensation for ISP-bound traffic, Docket No. 99-68, Order on Remand and Report and Order, FCC 01-131.

the interim compensation regime we established here applies as carriers renegotiate expired or expiring interconnection agreements. It does not alter existing contractual obligations, except to the extent that the parties are entitled to invoke contractual change-of-law provisions. **This order does not preempt any state commission decision regarding compensation for ISP bound traffic for ISP bound traffic for the purposes prior to the effective date of the interim regime we adopt here.**" (emphasis added).³

Respectfully submitted,



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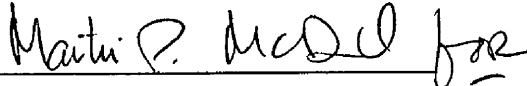
³Id. at ¶82.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing was furnished by U. S. Mail this 23rd day of May, 2001 to the following:

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James Meza, III, Esq.
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AT&T/1810.prehearing