

**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: September 10, 2001

**RESPONSE TO BELLSOUTH'S MOTION TO DISMISS,  
MOTION FOR MORE DEFINITE STATEMENT,  
AND MOTION TO STRIKE CLARIFIED AND AMENDED PETITION**

AT&T Communications of the Southern States, Inc., TCG South Florida, Inc., and MediaOne Florida Telecommunications, Inc. (collectively, "AT&T"), submit this Response to BellSouth's Motion to Dismiss, Motion for More Definite Statement, and Motion to Strike Clarified and Amended Petition and state as follows.

**INTRODUCTION**

On August 28, 2001, BellSouth Telecommunications, Inc. ("BellSouth") filed its Motion to Dismiss, Motion for More Definite Statement and Motion to Strike Clarified and Amended Petition (the "Second Motion to Dismiss"). BellSouth's Second Motion to Dismiss is simply a rehashing of an issue previously ruled on by this Commission, and illustrates BellSouth's steadfast refusal to participate in a proceeding that will bring increased competition to Florida's consumers. BellSouth's arguments are easily disposed of and, accordingly, its Second Motion to Dismiss should be denied.

**ARGUMENT**

As a threshold matter, there is no need for the Commission to address the arguments raised in BellSouth's Second Motion to Dismiss because the Commission has previously ruled on whether AT&T's Clarified and Amended Petition for Structural Separation (the "Amended

DOCUMENT NUMBER DATE

11274 SEP 10 01

FPSC-COMMISSION CLERK

*[Handwritten signature]*

Petition”) is proper. On June 20, 2001, AT&T requested that this Commission permit it to amend its petition so that, in addition to its specific request for structural relief, it may request “all relief necessary or appropriate as the facts and circumstances warrant.” On July 2, 2001, BellSouth filed an opposition to AT&T’s request, contending that it was improper for AT&T to inject this new language, advancing, among others, the same arguments raised here. In particular, BellSouth argued that allowing AT&T to seek all appropriate relief that the facts warrant would severely prejudice BellSouth because BellSouth would not be able to prepare a defense to the “unlimited, unspecified claims for relief.” *See* Motion in Opposition to Motion to Clarify and Amend Petition at ¶ 5, dated July 2, 2001. The Commission rejected this argument, in Order No. PSC-01-1615-PCO-TP, dated August 8, 2001, and expressly found that “[I]t does not appear that BellSouth will be unduly prejudiced by the amendment.” *See* Order No. PSC-01-1615-PCO-TP, dated August 8, 2001. For this reason alone, BellSouth’s Motion to Dismiss should be denied.

Nonetheless, BellSouth again endeavors to dispose of AT&T's Amended Petition by advancing the untenable argument that AT&T's claim for relief is fatally ambiguous and fails to conform to the administrative rules for pleading. However, nothing in the cases or rules cited by BellSouth prohibits AT&T from requesting the Commission to order structural relief as well as any other "relief necessary or appropriate as the facts and circumstances require."

AT&T's claim for relief fully complies with Rule 25-22.036 of the Florida Administrative Code. Rule 25-22.036 sets forth the minimum pleading requirements for petitions filed with the Commission, and AT&T has satisfied each and every requirement in its Amended Petition. Rule 25-22.036 provides that each complaint **shall contain** the following:

- I. The rule, order, or statute that has been violated;
- II. The actions that constitute the violation;
- III. The name and address of the person against whom the complaint is lodged; and
- IV. The specific relief requested, including any penalty sought.

To this end, AT&T alleges that BellSouth violated Chapter 364 of the Florida Statutes. AT&T alleges with particularity the ultimate facts constituting BellSouth's anticompetitive conduct. AT&T identifies BellSouth's address and name (of course). AT&T identifies the specific relief requested, namely a request for the structural separation of BellSouth, as well as any other necessary and appropriate relief. Therefore, the Amended Petition fully satisfies Rule 25-22.036. Nothing in Rule 25-22.036 prohibits a petitioner from seeking general relief in addition to the specific relief requested. For BellSouth to take the position that a request for specific and general relief renders a petition fatally defective is wholly unsupported by the express language of Rule 25-22.036.

The Florida Rules of Civil Procedure, which BellSouth cites in the Second Motion to Dismiss, also contradict BellSouth's argument. Rule 1.110(b) of the Florida Rules of Civil Procedure provides:

Relief in the alternative or of several different types may be demanded.

**Every complaint shall be considered to demand general relief.**

(Emphasis added.)

Courts interpreting this rule have granted relief not specifically requested when the relief granted conformed to the facts alleged. *See, e.g., Circle Finance Co. v. Peacock*, 399 So. 2d 81, 84-85 (Fla. 1st DCA 1981) (affirming award of monetary damages in rescission action even though the trial court denied rescission, because the issues and proof supported a judgment for unjust enrichment).

BellSouth's arguments for a more definite statement find no support in the cases cited in the Second Motion to Dismiss. Certainly, a motion for more definite statement may be an

appropriate avenue for relief when a defendant is faced with a fatally vague complaint.<sup>1</sup> However, AT&T's allegations are not fatally vague. Indeed, the Amended Petition is quite specific and detailed, and it is ironic that BellSouth would suggest that it is vague in any sense. Moreover, the fact that BellSouth was able to present a thorough response at the workshop to the substantive issues concerning structural relief demonstrates conclusively that the Amended Petition is not so broad as to prevent BellSouth from responding. As demonstrated above, AT&T has alleged that structural relief is necessary to promote competition under Chapter 364 of the Florida Statutes and has alleged the ultimate facts supporting its request for this relief. Furthermore, BellSouth should not be surprised by anything in this proceeding. AT&T is clearly seeking relief for the inherent conflict of interest underlying BellSouth's position as both wholesale supplier to and principal competitor of the ALECs in Florida, and as AT&T demonstrated in its initial Memorandum in Opposition to BellSouth's Motion to Dismiss filed in May, 2001, the Commission has specific authority under Chapter 364 to enhance competition and provide remedies for anticompetitive conduct. In addition, BellSouth presented detailed arguments against such jurisdiction at the Commission's July 30 and 31, 2001 workshop, which arguments demonstrate that BellSouth understands the nature of AT&T's allegations. BellSouth cannot now complain that AT&T's allegations are fatally vague.

Moreover, AT&T established in its Memorandum in Opposition to BellSouth Telecommunications, Inc.'s Motion to Dismiss that Chapter 364 of the Florida Statutes vests the Commission with broad authority to conduct proceedings and regulate anticompetitive practices by incumbent Local Exchange Carriers like BellSouth. The case cited by BellSouth in support of the Commission's authority, *City of Cape Coral v. GAC Utilities, Inc.*, 281 So.2d 493 (Fla. 1973), is inapposite to the issues BellSouth raised in its motion. In *City of Cape Coral*, the

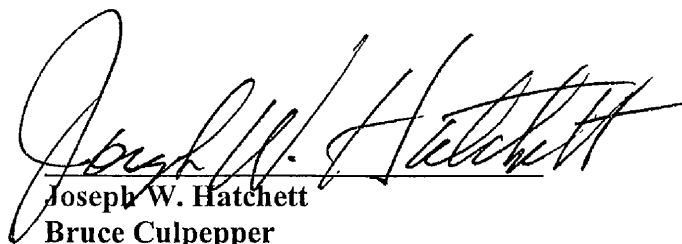
---

<sup>1</sup> The case cited by BellSouth in support of this principle, *Manka v. DeFranco's, Inc.*, 575 So.2d 1257 (Fla. 1st DCA 1991), does not support an argument that AT&T's request for additional relief is fatally ambiguous. In *Manka*, the court held that the trial court was without authority to order judgment on the pleadings for a tortious interference claim on the basis that the plaintiff failed to specifically identify the amount of damages it allegedly incurred. *See id.* at 1359.

Florida Supreme Court held that the Commission was divested of its jurisdiction over a water and sewer utility in the City of Cape Coral when the Florida legislature passed a special law giving the City of Cape Coral regulatory authority over the utility. *See id.* at 496. That has nothing to do with whether AT&T's request for relief is so vague that BellSouth is unable to respond.

Finally, AT&T stands by its earlier arguments that the facts developed through this proceeding will establish that BellSouth's current structure creates an inherent conflict of interest (and incentives to undermine competitors) which have caused BellSouth to violate the mandates of Chapter 364, Florida Statutes, and the federal Telecommunications Act of 1996. The best remedy for this inherent conflict is structural relief. To the extent that BellSouth is seeking to dismiss or strike the portion of AT&T's Amended Petition on the grounds advanced in its original Motion to Dismiss, AT&T incorporates by reference all of the arguments set forth in its Opposition to Motion to Dismiss that it filed in this docket on May 2, 2001, as well as the arguments presented at the Commission's July 30 and 31, 2001 workshop.

Respectfully submitted this 10<sup>th</sup> day of September, 2001.



Joseph W. Hatchett

**Bruce Culpepper**  
**Fred R. Dudley**  
**AKERMAN, SENTERFITT & EIDSON, P.A.**  
301 South Bronough Street, Suite 200  
Post Office Box 10555  
Tallahassee, Florida 32302-2555  
Telephone: (850) 222-3471  
Telecopier: (850) 222-8628

George N. Meros, Jr.  
**GRAY, HARRIS & ROBINSON**  
301 South Bronough Street, Suite 600  
Post Office Box 11189  
Tallahassee, Florida 32302  
Telephone: (850) 577-9090  
Telecopier: (850) 577-3311

**John F. O'Sullivan**

Florida Bar No.: 143154

**AKERMAN, SENTERFITT & EIDSON, P.A.**

SunTrust International Center, 28th Floor

One S.E. Third Avenue

Miami, Florida 33131-1704

Telephone: (305) 374-5600

Telecopier: (305) 374-5095

**Mr. William B. Graham**

Florida Bar No.: 359068

**MCFARLAIN & CASSEDY, P.A.**

215 South Monroe Street, Suite 600

Tallahassee, Florida 32301

Telephone: (850) 222-2107

Telecopier: (850) 222-8475

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that true and correct copies of the foregoing were served U.S.

mail/hand delivery\* this 10th day of September, 2001 to:

Jim Lamoureux  
AT&T Communications of the Southern  
States, Inc.  
1200 Peachtree Street, NE  
8th Floor  
Atlanta, GA 30309

George N. Meros, Jr.  
Lori S. Rowe  
Gray, Harris & Robinson  
301 S. Bronough, Ste. 600  
P.O. Box 11189  
Tallahassee, FL 32302

William B. Graham  
McFarlain & Cassedy, P.A.  
215 S. Monroe Street  
Suite 600  
Tallahassee, FL 32301

Nancy B. White, Esq.  
James Meza, III, Esq.  
BellSouth Telecommunications, Inc.  
c/o Nancy H. Sims  
150 So. Monroe Street, Suite 400  
Tallahassee, FL 32301

R. Douglas Lackey, Esq.  
E. Earl Edenfield, Jr.  
Patrick W. Turner, Esq.  
BellSouth Telecommunications, Inc.  
Suite 4300, 675 W. Peachtree Street, N.E.  
Atlanta, GA 30375

\*Jason Fudge, Esq.  
Beth Keating, Esq.  
Florida Public Service Commission  
2540 Shumard Oak Blvd.  
Tallahassee, FL 32399-0850

Time Warner Telecom of Florida, L.P.  
c/o Carolyn Marek  
233 Bramerton Court  
Franklin, TN 37069

Peter M. Dunbar, Esq.  
Karen M. Camechis, Esq.  
Pennington, Moore, Wilkinson, Bell &  
Dunbar, P.A.  
P.O. Box 10095  
Tallahassee, FL 32302

Joseph A. McGlothlin  
Vicki Gordon Kaufman  
McWhirter, Reeves  
117 S. Gadsden St.  
Tallahassee, FL 32301

Richard D. Melson  
Hopping Green Sams & Smith  
P.O. Box 6526  
Tallahassee, FL 32314

Donna McNulty  
MCI WorldCom  
325 John Knox Road  
Suite 105  
Tallahassee, FL 32303

Matthew Feil  
Florida Digital Network, Inc.  
390 North Orange Avenue  
Suite 2000  
Orlando, FL 32801

Michael Sloan  
Swidler Berlin Shereff Friedman, LLP  
3000 K Street, NW  
Suite 300  
Washington, DC 20007

Michael A. Gross  
Florida Cable Telecomm. Assoc.  
246 E. 6th Avenue, Suite 100  
Tallahassee, FL 32303

Suzanne F. Summerlin  
IDS Telecom, LLC  
1311-B Paul Russell Rd.  
Suite 201  
Tallahassee, FL 32301

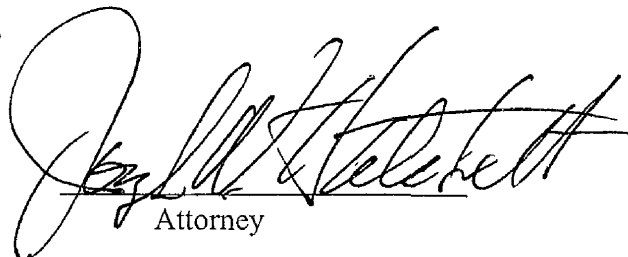
Thomas A. Cloud  
Gray, Harris & Robinson  
P.O. Box 3068  
Orlando, FL 32802-3068

Catherine F. Boone  
Covad Communications Company  
10 Glenlake Parkway, Suite 650  
Atlanta, GA 30328-3495

IDS Telcom LLC  
1525 N.W. 167th Street, 2nd Floor  
Miami, FL 33169-5143

D. Mark Baxter  
Stone & Baxter, LLP  
557 Mulberry Street  
Suite 1111  
Macon, Georgia 31201-8256

Ms. Maureen Flood  
CompTel  
Director of Regulatory and State Affairs  
1900 M Street, NW, Suite 800  
Washington, DC 20036



Attorney