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COMMISSION
CLERK

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA
TALLAHASSEE DIVISION

AT&T Communications of the Southern
States, Inc., 1200 Peachtree St.,
N.E., Atlanta, Georgia 30309, and

TCG South Florida,
101 N. Monroe St., Suite 700,
Tallahassee, Florida 32301

Plaintiffs,

v.

BellSouth Telecommunications, Inc.,
150 South Monroe Street, Suite 400,
Tallahassee, FL 32301-1556;

Florida Public Service Commission;
E. Leon Jacobs, Jr., in his official
capacity as Chairman of the Florida
Public Service Commission; and
J. Terry Deason, Lila A. Jaber,
Braulio L. Baez and Michael A.
Palecki, in their official capacities
as Commissioners of the Florida
Public Service Commission, Florida
Public Service Commission, 2540
Shumard Oak Blvd., Tallahassee,
FL 32399-0850,

Defendants.

Civil Action
No. 4:02 CV 10RH/WCS

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FLORIDA PUBLIC SERVICE COMMISSION
DIVISION OF APPEALS

AMENDED COMPLAINT FOR DECLARATORY AND OTHER RELIEF
UNDER THE TELECOMMUNICATIONS ACT OF 1996

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SEC 1 _____
OTH _____

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Plaintiffs AT&T Communications of the Southern States, Inc. and TCG South Florida (collectively "AT&T"), allege:

JURISDICTION AND VENUE

1. This is a civil action arising under the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996), which amended Title 47 of the United States Code (as so amended, the "Act" or "1996 Act"). This Court has jurisdiction over this action pursuant to 47 U.S.C. § 252(e) and 28 U.S.C. §§ 1331, 1337.

2. Venue in this District is proper under 28 U.S.C. § 1391(b). Defendant Florida Public Service Commission ("Commission") is located in Tallahassee, Florida and operates under the laws of Florida. Defendants E. Leon Jacobs, Jr., in his official capacity as Chairman of the Florida Public Service Commission, and J. Terry Deason, Lila A. Jaber, Braulio L. Baez and Michael A. Palecki, in their official capacities as Commissioners of the Florida Public Service Commission, conducted their proceedings in this District. Defendant BellSouth Telecommunications, Inc. ("BellSouth") is subject to personal jurisdiction, and is therefore deemed to reside in this District. Because the

Commission conducted its proceedings in this District, a substantial part of the events or omissions giving rise to the dispute occurred in this District. This is an "appropriate Federal district court" within the meaning of 47 U.S.C. § 252(e)(6).

PARTIES

3. Plaintiff AT&T Communications of the Southern States, Inc. is a corporation organized under the laws of the State of New York with its principal place of business in Georgia, and is a wholly-owned subsidiary of AT&T Corp., which through its operating subsidiaries currently provides telephone services in the State of Florida and elsewhere. AT&T is a "telecommunications provider" and a "requesting telecommunications carrier" within the meaning of the Act.¹

4. Teleport Communication Group Inc., a wholly-owned subsidiary of AT&T Corporation, is the holding company parent of TCG South Florida. TCG South Florida is authorized to provide local exchange and exchange access

¹ Requesting telecommunications carriers are referred to as Alternative Local Exchange Carriers ("ALECs") within the State of Florida. Accordingly, requesting carriers are referred to as ALECs in this Complaint.

services as well as intrastate interLATA and intraLATA toll services in the State of Florida. TCG South Florida is a "local exchange carrier" under the terms of the Act.

5. Defendant BellSouth is a Georgia corporation with its principal place of business in Georgia. BellSouth provides local exchange, exchange access, and certain intrastate long-distance services within the State of Florida. BellSouth is an "incumbent local exchange carrier" within the meaning of the Act.

6. Defendant Florida Public Service Commission is a "State Commission" within the meaning of §§ 153(41), 251 and 252 of the Act. Defendants E. Leon Jacobs, Jr., J. Terry Deason, Lila A. Jaber, Braulio L. Baez and Michael A. Palecki serve as Commissioners. The Commission conducted proceedings and rendered its decisions in Tallahassee, Florida.

BACKGROUND

7. AT&T brings this action to secure full implementation of the process mandated by Congress in the Act for opening local telephone markets to competition. This case arises out of efforts by AT&T to compete with

BellSouth in providing local telephone services to Florida consumers.

8. BellSouth is currently the incumbent monopoly provider of both local exchange and exchange access services in most of the State of Florida. BellSouth's local telephone network generally reaches all residences and businesses in its service area. Although Florida consumers have a number of choices regarding which telecommunications carrier they want to handle their long-distance calls, those long-distance calls must still originate or terminate on BellSouth's local network in its service area. It is impractical and uneconomical for any new entrant to duplicate BellSouth's network in the near term, and use of BellSouth's network is therefore essential to placing both local and long-distance telephone calls.

9. The 1996 Act adopts a comprehensive scheme designed to introduce competition rapidly into the historically monopolized local telephone markets. Congress recognized the practical reality that competition would take years to develop (and in some areas might not develop at all) if local entry required each new entrant to replicate the local services infrastructure network. Accordingly,

Section 251 of the Act includes specific duties requiring incumbent local exchange carriers ("incumbent LECs" or "incumbents") to allow competitors to interconnect with and use incumbents' existing networks, and, in conjunction with Section 252, sets federal standards for rates for such interconnection and use.

10. Among other things, the Act imposes a duty on incumbents to provide new entrants access to "unbundled elements" of the incumbents' network and facilities and requires incumbents to provide such unbundled network elements in a manner that allows entrants "to combine such elements" to offer "telecommunications service." 47 U.S.C. § 251 (c) (3). Section 251 requires that the rates, terms and conditions for these network elements be just, reasonable and nondiscriminatory. Section 252(d) (1) requires that the rates for such network elements be based on the cost of providing the elements -- including combinations of elements -- without reference to the rate of return or the rate-based proceedings that prevailed in the monopoly era and allows for the inclusion of a reasonable profit.

11. In addition to imposing substantive duties on incumbent LECs to foster competition in the local exchange market, the Act establishes different procedures by which new entrants can obtain the equipment and services they need to compete in the local exchange market. One method is to negotiate or arbitrate an interconnection agreement under § 252(a)-(c) of the Act.

12. Section 252(e)(6) of the 1996 Act provides that any party aggrieved by a determination made by a state commission in any such arbitration may bring an action in federal district court to determine whether the interconnection agreement approved by a state commission meets the requirements of §§ 251 and 252.

PROCEEDINGS BEFORE THE COMMISSION

13. On June 16, 2000, AT&T filed with the Commission a Petition for Arbitration pursuant to 47 U.S.C. Section 252(b) of the 1996 Act, seeking arbitration of unresolved issues in the interconnection negotiations between AT&T and BellSouth.

14. On February 14-15, 2001, an administrative hearing was held before the Commission on the remaining disputed issues.

15. On June 28, 2001, the Commission issued its findings in Order No. PSC-01-1402-FOF-TP.

16. On July 13, 2001, AT&T and BellSouth filed separate motions for reconsideration. On July 25, 2001, BellSouth filed a Memorandum in Opposition to AT&T's Motion for Reconsideration and Cross-Motion for Clarification. On July 30, 2001, BellSouth filed a Motion for Extension of Time for filing the final agreement.

17. The Commission issued its Order Denying Reconsideration, Correcting Final Order, and Granting Motion for Extension of Time on September 28, 2001, Order No. PSC-01-1951-FOF-TP.

18. On October 29, 2001, BellSouth submitted its petition for approval of its arbitrated interconnection, unbundling and resale agreements with AT&T. BellSouth filed two separate but identical agreements, one for AT&T Communications of the Southern States, Inc. and the other for TCG South Florida. These agreements implemented the Commission's Orders.

19. On December 7, 2001, the Commission issued its Order Approving Interconnection Agreement, Order No. PSC-01-2357-FOF-TP, approving the interconnection agreements submitted by BellSouth.

20. In this action pursuant to § 252(e)(6), AT&T seeks review of the Commission's December 7, 2001 Order Approving Interconnection Agreement that, as described below, violates the Act and the FCC's implementing regulations. The approved interconnection agreements incorporate the Commission's decision in Order No. PSC-01-1402-FOF-TP, as clarified by Order No. PSC-01-1951-FOF-TP. As an aggrieved party within the meaning of § 252(e)(6) of the Act, AT&T seeks appropriate declaratory and injunctive relief from this Court.

**THE INTERCONNECTION AGREEMENTS FAIL
TO MEET THE REQUIREMENTS OF
SECTIONS 251 AND 252 AND THE FCC RULES**

21. In three separate respects, the interconnection agreements incorporating the Commission's decision in Order No. PSC-01-1402-FOF-TP, as clarified by Order No. PSC-01-1951-FOF-TP, fail to meet the requirements of §§ 251 and 252 of the Act and applicable FCC rules.

COMBINATIONS OF NETWORK ELEMENTS

22. On January 25, 1999, the U.S. Supreme Court upheld FCC Rule 51.315(b), which states: "[e]xcept upon request, an incumbent LEC shall not separate requested network elements that the incumbent LEC currently combines." AT&T Corp. v. Iowa Utils. Bd., 525 U.S. 366 (1999). Since this decision, BellSouth agrees that it is required to provide combinations of UNEs in certain circumstances, but refuses to provide combinations in others.

23. The Commission decided to accept BellSouth's restrictive definition of the phrase "currently combines," requiring BellSouth to make available at cost-based rates only "those combinations requested by an ALEC that are, in fact, already combined and physically connected in its network" at the time the ALEC places the order. Order No. PSC-01-1402-FOF-TP at 23. In its Order, the Commission acknowledged that the FCC originally concluded that "currently combines" in rule 51.315(b) means ordinarily or typically combined. Nonetheless, the interconnection agreement approved by the Commission allows BellSouth to refuse to provide combinations of UNEs unless the exact

combinations the ALEC wants to use to service the customer is presently used to service that particular customer.

24. By allowing BellSouth to continue providing UNE combinations only in the limited circumstances in which the elements are actually combined for the particular customer the ALEC seeks to serve, the Commission is allowing BellSouth to continue a practice that is discriminatory and designed to prevent ALECs from using UNE combinations to compete for customers. This result lacks valid legal authority.

25. By approving interconnection agreements that violate the FCC's requirements, the Commission approved interconnection agreements that violate the Act and the FCC's binding regulations as approved by the Supreme Court.

GLUE CHARGES

26. BellSouth imposes a "glue charge" on certain combinations of network elements, in an attempt to obtain an additional profit over and above the reasonable profit it recovers in the cost-based rates for network element combinations.

27. The Commission approved BellSouth's imposition of "glue charges" to certain combinations of unbundled network elements.

28. The rates AT&T pays BellSouth for combinations of network elements already include the cost of providing combinations, plus a reasonable profit. Accordingly, BellSouth's glue charge is contrary to § 252(d) of the Act because (a) it is not based on cost; and (b) it is discriminatory, significantly increasing ALECs' costs to serve customers, harming competition.

MTU/MDU ACCESS TERMINALS

29. BellSouth requires ALECs, like AT&T, to provision telephone service to customers in multi-unit installations² through an intermediate "access" terminal and refuses to pull all pairs in a multi-unit installation to the access terminal when the terminal is first installed. This process increases the cost and decreases the efficiency of adding incremental customers in a multi-unit installation.

² Multi-unit installations is a collective phrase encompassing multi-tenant units ("MTUs") and multi-dwelling units ("MDUs").

30. The interconnection agreement the Commission approved requires AT&T to access BellSouth's facilities to serve multi-unit installations through an intermediate ALEC-access terminal.

31. Further, the Commission determined BellSouth was not obligated to pull all pairs in a multi-tenant building to the access terminal when the terminal is first installed.

32. In its *UNE Remand Order*,³ the FCC adopted rules requiring incumbents to "provide nondiscriminatory access, in accordance with § 51.311 and section 251(c)(3) of the Act, to the local loop and subloop, including inside wiring owned by the incumbent LEC, on an unbundled basis to any requesting telecommunications carrier for the provision of a telecommunications service." 47 C.F.R. § 319(a).⁴

³ In the *Matter of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, Third Report and Order, Fourth Further Notice of Proposed Rulemaking, CC Docket No. 96-98, FCC No. 99-238, Rel. November 5, 1999) ("*UNE Remand Order*")

⁴ The FCC defines subloops as "portions of the loop that can be accessed at terminals in the incumbent's outside plant." *UNE Remand Order* ¶ 206. An "access terminal" is "a point on the loop where technicians can access the wire or fiber within the cable without removing a splice case to reach the wire or fiber within. These would include a technically feasible point near the customer premises, such as the pole or pedestal, the NID, or the minimum point of entry to the customer premises." *UNE Remand Order* ¶ 206.

Specifically, the FCC requires a "single point of interconnection." *UNE Remand Order* ¶ 226. In the event carriers are unable to negotiate a reconfigured single point of interconnection, the FCC required "the incumbent to construct a single point of interconnection that will be fully accessible and suitable for use by multiple carriers." *UNE Remand Order* ¶ 226; see also 47 C.F.R. § 51.319(a)(2)(E).

33. The interconnection agreement and associated Commission Orders requiring AT&T to interconnect through an intermediary access terminal violate the FCC's prohibition against an "intermediate interconnection arrangement in lieu of a direct connection to [BellSouth's] network if technically feasible." *Deployment of Wireline Service Offering Advanced Telecommunications Capability*, CC Docket No. 98-147, First Report and Order and Further Notice of Proposed Rulemaking, FCC 99-48 (March 31, 1999) ¶ 42.⁵

⁵ The FCC has made clear that this and all its collocation rules apply not only to central offices, but also to all technical technically feasible points in the BellSouth network, including subloop terminals. *UNE Remand Order* ¶ 221.

BellSouth did not meet its burden to demonstrate why direct access to its subloop terminals is not technically feasible.

34. The intermediary "access" terminals ordered by the Commission are discriminatory. As the Commission indicated, an "access" terminal does not provide a direct connection to BellSouth's facilities. PSC-01-1402-FOF-TP at 33. Rather than having direct access to all pairs in a multi-tenant building at the access terminal like BellSouth, the Commission requires AT&T and other ALECs to interconnect through an intermediary device that is substantially inferior to the access BellSouth enjoys. Moreover, each time an ALEC adds a new customer in that dwelling unit, the ALEC must coordinate with BellSouth to pull the additional pair to the intermediary device. BellSouth on the other hand has easy access to every cable pair in the building. The interconnection agreement, therefore, violates the nondiscriminatory provisions of section 251.

35. Accordingly, the Commission's determination to require AT&T to access BellSouth's network through intermediary terminals is unlawful.

COUNT ONE

(Failure to Require BellSouth to Provide Combinations
it Typically Combines)

36. AT&T repeats and realleges paragraphs 1 through 35 above as if fully set forth herein.

37. The interconnection agreements, incorporating the Commission's decision in Order No. PSC-01-1402-FOF-TP, as clarified by Order No. PSC-01-1951-FOF-TP, approved by the Commission, and the determinations of the Commission and its Commissioners improperly deny AT&T the right to obtain combinations of network elements without restrictions, in violation of 47 U.S.C. §§ 251 and 252 and the regulations promulgated thereunder, and are not supported by the record.

38. The failure to require BellSouth to provide all network element combinations it typically combines at cost-based rates violates 47 U.S.C. §§ 251 and 252 and the regulations promulgated thereunder.

39. AT&T has been aggrieved within the meaning of § 252(e)(6) of the Act, as set forth herein.

40. AT&T is therefore entitled to declaratory and injunctive relief pursuant to 28 U.S.C. §§ 2201, 2202 and 47 U.S.C. § 252(e)(6).

COUNT TWO

(Failure to Require BellSouth to Cease Imposition of
"Glue Charges")

41. AT&T repeats and realleges paragraphs 1 through 40 above as if fully set forth herein.

42. The interconnection agreements, incorporating the Commission's decision in Order No. PSC-01-1402-FOF-TP, as clarified by Order No. PSC-01-1951-FOF-TP, approved by the Commission, and the determinations of the Commission and its Commissioners improperly deny AT&T the right to obtain combinations of unbundled network elements at cost-based rates, in violation of 47 U.S.C. §§ 251 and 252 and the regulations promulgated thereunder, and are not supported by the record.

43. The failure to require BellSouth to cease imposition of "glue charges" violates 47 U.S.C. §§ 251 and 252 and the regulations promulgated thereunder.

44. AT&T has been aggrieved within the meaning of § 252(e)(6) of the Act, as set forth herein.

45. AT&T is therefore entitled to declaratory and injunctive relief pursuant to 28 U.S.C. §§ 2201, 2202 and 47 U.S.C. § 252(e)(6).

COUNT THREE

(Failure to Require BellSouth To Provide A Single Point of Interconnection at Multi-unit Premises that is suitable for use by Multiple Carriers)

46. AT&T repeats and realleges paragraphs 1 through 45 above as if fully set forth herein.

47. The interconnection agreements, incorporating the Commission's decision in Order No. PSC-01-1402-FOF-TP, as clarified by Order No. PSC-01-1951-FOF-TP, approved by the Commission, and the determinations of the Commission and its Commissioners improperly impose on AT&T the burden of an intermediary "access" terminal and do not require BellSouth to pull all pairs in a multi-tenant building to the access terminal when it is first installed.

48. The interconnection agreements, incorporating the Commission's decision in Order No. PSC-01-1402-FOF-TP, as clarified by Order No. PSC-01-1951-FOF-TP, approved by the Commission, and the determinations of the Commission and its Commissioners violate 47 U.S.C. §§ 251 and 252 of the Act and the FCC's implementing regulations and guidance that require BellSouth to provide a fully accessible single point of interconnection at multi-unit premises for use by multiple carriers.

49. The Commission's determination to require AT&T to use an intermediary access terminal violates the FCC collocation rules that prohibit use of an intermediate interconnection arrangement where a direct connection to BellSouth's network is technically feasible.

50. The failure to require BellSouth to provide a single point of interconnection that is fully accessible by AT&T and other ALECs and that permits AT&T and other ALECs direct access to the end user customer is contrary to law and not supported by the record.

51. AT&T has been aggrieved within the meaning of § 252(e)(6) of the Act, as set forth herein.

52. AT&T is therefore entitled to declaratory and injunctive relief pursuant to 28 U.S.C. §§ 2201, 2202 and 47 U.S.C. §252(e)(6).

PRAYER FOR RELIEF

WHEREFORE, AT&T prays that this Court grant it the following relief:

(a) Declare that the Commission's restrictive definition of "currently combines" violates Sections 251 and 252 of the 1996 Act and the FCC's implementing regulations;

(b) Declare that the Commission's failure to require cost-based pricing for combinations of unbundled network elements ordinarily or typically combined by BellSouth violates Sections 251 and 252 of the 1996 Act and the FCC's implementing regulations;

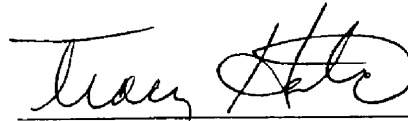
(c) Declare that the Commission's failure to require a fully accessible single point of interconnection in multiple dwelling units, that is suitable for use by multiple carriers is contrary to law;

(d) Enjoin BellSouth, the Commission, and its members from enforcing any provisions of the Order Approving Interconnection Agreement that are inconsistent with the declaratory relief sought herein;

(e) Award AT&T such other and further relief as the Court deems just and proper.

Respectfully submitted,

By:



Tracy Haych
Florida Bar No. 449441
Messer, Caparello & Self
Suite 701
215 South Monroe Street
Tallahassee, FL
32302-1876
(850)222-0720

Tami Lyn Azorsky, Esq.
McKenna & Cuneo L.L.P.
1900 K Street, NW
Washington, DC 20006

Virginia Tate
AT&T Communications of
the Southern States
1200 Peachtree St., N.E.
Suite 8100
Atlanta, Georgia 30309

Attorneys for Plaintiff

Dated: January 23, 2002

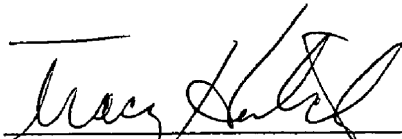
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that true and correct copies of foregoing have been served upon the following parties by Hand Delivery (*), Overnight Delivery (**) and/or U. S. Mail this 23rd day of January, 2002.

David Smith, Esq.*
Division of Appeals
Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, FL 32399-0850

Ms. Nancy B. White*
c/o Nancy H. Sims
BellSouth Telecommunications, Inc.
150 South Monroe Street, Suite 400
Tallahassee, FL 32301-1556

Raul Cantero, Esq.**
Adorno and Zeder
2601 S. Bayshore Drive, Suite 1600
Miami, FL 33133


Tracy W. Hatch