

ORIGINAL

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General Counsel-Florida

BellSouth Telecommunications, Inc.
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July 15, 2002

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Mrs. Blanca S. Bayó
Division of the Commission Clerk
and Administrative Services
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

Re: Docket No.: 020595-TL (Complaint of J. Christopher Robbins)

Dear Ms. Bayó:

Enclosed is an original and fifteen copies of BellSouth Telecommunications, Inc.'s Motion to Dismiss, which we ask that you file in the above-referenced docket.

A copy of this letter is enclosed. Please mark it to indicate that the original was filed and return the copy to me. Copies have been served to the parties shown on the attached Certificate of Service.

Sincerely,

Nancy B. White
Nancy B. White (KA)

cc: All Parties of Record
Marshall M. Criser III
R. Douglas Lackey

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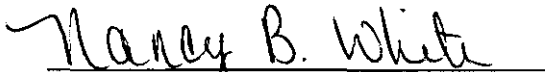
**CERTIFICATE OF SERVICE
DOCKET NO. 020595-TL**

I hereby certify that a true copy of the forgoing has been served via

U. S. Mail this 15th day of July, 2002 to the following parties of record:

Staff Counsel
Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, FL 32301

J. Christopher Robbins, J.D.
Post Office Box 248392
Coral Gables, FL 33134
Tel. No.: (305) 740-0385
Fax No.: (305) 603-484-1280
jc@jcrobbins.com



Nancy B. White (KA)

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Complaint of J. Christopher Robbins)
against BellSouth Telecommunications,) Docket No. 020595-TL
Inc., for violation of Rule 25-4.073(c),)
F.A.C., Answering Time.) Filed: July 15, 2002
_____)

**BELLSOUTH TELECOMMUNICATIONS, INC.'S
MOTION TO DISMISS**

BELLSOUTH TELECOMMUNICATIONS, INC. ("BellSouth"), pursuant to Rule 28-106.204, Florida Administrative Code, hereby files its Motion to Dismiss the Complaint of J. Christopher Robbins. In support thereof, BellSouth states the following:

1. On June 26, 2002, J. Christopher Robbins ("Mr. Robbins") filed a complaint against BellSouth claiming that BellSouth was in violation of Rule 25-4.073 1(c), Florida Administrative Code, and seeking administrative action as well as monetary damages. Mr. Robbins' complaint should be dismissed for lack of standing, lack of subject matter jurisdiction, and for failure to state a cause of action.

Mr. Robbins lacks standing to file a complaint on behalf of either himself or the residents of Florida. Under the standards enunciated in AgriCo Chemical Co. v. DER, 406 So.2d 478 (Fla. 2nd DCA 1981), to have standing, a person must demonstrate that (1) he will suffer injury in fact which is of

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sufficient immediacy to entitle him to a Section 120.57, Florida Statutes hearing' and (2) his substantial injury is of a type or nature which the proceeding is designed to protect. Id. at 482. To meet these standards, a person must show that he has suffered an injury in fact as a result of the action complained of, which entitles him to a hearing and the person must show that his injury is within the "zone of interest" that the rule is designed to protect. Ameristad Corp. v. Clark, 691 So. 2d 473 (Fla. 1977).

The only injuries specifically alleged by Mr. Robbins are pecuniary in nature. Complaint at p.2. The Florida Public Service Commission ("Commission") does not have the jurisdiction to award monetary damages in resolving utility related disputes. Southern Bell Telephone Co. v. Mobile America Corp., Inc., 291 So. 2d 199 (Fla. 1974). Therefore, Mr. Robbins lacks standing to prosecute a claim against BellSouth and this Commission lacks the jurisdiction to provide pecuniary relief.

Moreover, this Commission and the Office of Public Counsel on behalf of Florida's Citizens settled all claims with regard to BellSouth's alleged violation of the Answer Time rules for 2000 and 2001 in docket No. 010097-TL, by Order No. PSC-02-0197-PAA-TL, issued on February 13, 2002. Therefore, as to any alleged violation of Rule 25-4.073 that occurred in 2000 and 2001, Mr. Robbins' complaint is barred by settlement and compromise/accord and satisfaction and should be dismissed.

Mr. Robbins has failed to state a cause of action upon which relief can be granted. Mr. Robbins cites Rule 25-4.073 1(c), Florida Administrative Code, as the rule that is allegedly being violated by BellSouth and which affects his substantial interests. Mr. Robbins, however, is relying on a section of the rule that does not apply to BellSouth. Subsection 1(c) of Rule 25-4.073 states that 90% of all calls directed to intercept, directory assistance, and repair services and 80% of all calls to business offices be answered within 30 seconds after the last digit is dialed. Subsection 1(d) of Rule 25-.4.073 specifically states that:

Notwithstanding (c) above, when a company utilizes a menu driven, automated, interactive answering system (referred to as the system), at least (95%) percent of the calls offered shall be answered within 15 seconds after the last digit is dialed. The initial recorded message presented by the system to the customer shall only identify the company and the general options available to the customer. The option of transferring to a live attendant shall be included in the initial message. For subscribers electing the option of transferring to a live assistant, except for business office calls, at least ninety-five (95%) percent of all calls shall be transferred by the system to a live attendant prepared to give immediate assistance within fifty-five (55) seconds after the last digit of the telephone number listed in the directory for the company's service(s) was dialed. Eighty-five (85%) percent of all such calls directed to any business office shall be transferred by the system to a live attendant within fifty-five (55) seconds after the last digit is dialed. At any time during the call, the customer shall be transferred to live assistance if the customer fails to interact with the system for a time period of ten (10) seconds

following any prompt. For the purposes of this section, interaction means responding to a customer prompt offered by Dual-Tone Multiple-Frequency (DTMF) keypad associated with a telephone.

BellSouth utilizes a menu-driven automated, interactive -answering system. Therefore, Mr. Robbins' complaint fails because the grounds therefore are invalid.

The complaint also fails to state a cause of action due to the fact that BellSouth is currently meeting Rule 25-4.073 1(d) and met the rule in 2001. The Commission's 2001 Service Evaluation for BellSouth's answer times specifically recognized BellSouth's passing scores. Moreover, the Commission performed a service evaluation for 2002 from March to April, 2002 and Staff is currently working on their draft report. BellSouth has every expectation that it will be found to be in compliance with Rule 25-4.073 1(c).

Mr. Robbins, in his complaint, purports to represent all the citizens of Florida. He cites no authority for the proposition that he is authorized, entitled, or qualified to represent anyone. There is no procedure at the Commission for a class action type of case, nor does the Commission have jurisdiction to hear such a matter. Moreover, Mr. Robbins appears to be subverting the authority of this Commission and the Office of Public Counsel to represent the Citizens of Florida. Therefore, Mr. Robbins' complaint should be dismissed.

WHEREFORE, BellSouth respectfully requests that the Complaint of J. Christopher Robbins be dismissed.

Respectfully submitted this 15th day of July, 2002.

BELLSOUTH TELECOMMUNICATIONS, INC.



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c/o Nancy Sims

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