

ANDREW D. SHORE
Senior Regulatory Counsel

BellSouth Telecommunications, Inc.
150 South Monroe Street
Room 400
Tallahassee, Florida 32301
(404) 335-0765

March 28, 2003

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.: 020919-TP
Complaint of AT&T Communications of the Southern
States, LLC, Teleport Communications Group, Inc., and
TCG South Florida for Enforcement of Interconnection
Agreements with BellSouth Telecommunications, Inc.**

Dear Ms. Bayó:

Enclosed are an original and fifteen copies of BellSouth Telecommunications, Inc.'s Response to AT&T's Unauthorized Reply Brief and AT&T's Second Motion to Strike, which we ask that you file in the captioned matter.

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,


Andrew D. Shore
(AK)

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

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**CERTIFICATE OF SERVICE
DOCKET NO. 020919-TP**

I HEREBY CERTIFY that a true and correct copy of the foregoing was served via electronic mail and First Class U.S. Mail this 28th day of March 2003 to the following:

Patricia Christensen
Staff Counsel
Florida Public Service
Commission
Division of Legal Services
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850
pchrste@psc.state.fl.us

Loretta A. Cecil, Esq.
Womble Carlyle Sandridge & Rice PLLC
1201 West Peachtree Street
Suite 3500
Atlanta, GA 30309
Tel. No. (404) 888-7437
Fax. No. (404) 870-4826
lcecil@wcsr.com
Represents AT&T

Virginia Tate, Esq.
AT&T Communications
1200 Peachtree Street, N.E.
Suite 8100
Atlanta, GA 30309
Tel. No. (404) 810-4196
Fax No. (404) 877-7648
vctate@att.com


Andrew D. Shore (KA)

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re:) Docket No. 020919-TP
AT&T Communications of the)
Southern States, LLC, Teleport) Filed: March 28, 2003
Telecommunications Group, Inc.,)
And TCG South Florida for)
Enforcement of Interconnection)
Agreements with BellSouth)
Telecommunications, Inc.)

**BELLSOUTH TELECOMMUNICATIONS, INC.'S
RESPONSE TO AT&T'S UNAUTHORIZED REPLY BRIEF AND TO AT&T'S SECOND
MOTION TO STRIKE**

BellSouth Telecommunications, Inc. ("BellSouth"), by and through its undersigned counsel, hereby files this Response to AT&T's Unauthorized Reply Brief and in Opposition to AT&T's Second Motion to Strike.

INTRODUCTION

AT&T devotes all but a page and one-half of its most recent filing to continuing to argue for its first motion to strike. AT&T's "Response to BellSouth's Opposition to AT&T's First Motion to Strike" is an unauthorized reply brief and, consequently, should not be considered by the Commission. The impermissible brief presents the same tired arguments that the North Carolina Utilities Commission rejected and which the Staff recommended that this Commission also reject. It is, moreover, predicated on acceptance of the interpretation of the interconnection agreement that AT&T advocates based on its inventive arguments and linguistic machinations, and is chock full of misinformation. BellSouth sets the record straight below in the event the Commission decides to consider AT&T's reply brief, notwithstanding the fact that AT&T did not even

seek permission to file it. The reply brief, to be certain, does not compel the Commission to do anything other than adopt the Staff's recommendation to deny AT&T's first motion to strike. AT&T's identical second motion to strike tagged on to the end of AT&T's unauthorized reply brief should be denied for the same reasons as the first motion.

I. The Commission Should Not Consider AT&T's Unauthorized Reply Brief.

It is well settled that reply memoranda are not recognized by Commission rules or by the Administrative Procedure Act and, therefore, cannot be considered by the Commission. See In re: Complaint of Supra Telecommunications and Information Systems, Inc. Against BellSouth Telecommunications, Inc., Docket No. 980119-TP, Order No. PSC-00-1777-PCO-TP; See also In re: ITC-DeltaCom, Docket No. 990750-TP, Order No. PSC-00-2233-FOF-TP (finding that "the Uniform Rules and Commission rules do not provide for a Reply to a Response to a Motion for Reconsideration"); In re: Petition by Florida Digital Network, Inc. for Arbitration, Docket No. 010098-TP, Order No. PSC-01-1168-PCO-TP (refusing to address arguments raised by FDN in reply memorandum because reply memorandums are "not contemplated by Commission rules.") AT&T did not even seek permission to file its unauthorized reply brief. It simply filed its brief, after Staff issued its Recommendation that the Commission deny AT&T's motion to strike, without regard to the applicable rules of procedure. The Commission should, therefore, refuse to consider AT&T's unauthorized brief. Failure to reject the unauthorized filing will set a dangerous precedent of allowing parties, rather than the Legislature and this Commission, to establish the rules of practice and procedure before the Commission.

II. AT&T's Unauthorized Reply Brief Contains the Same Tired Arguments that the North Carolina Commission Rejected and that the Staff Recommended that this Commission Also Reject.

Even if the Commission considered AT&T's unauthorized reply brief in deciding AT&T's motion to strike, which it should not do for the reasons set forth above, the Commission still should deny the motion. Despite the reams of paper, AT&T's unauthorized reply brief does nothing more than present the same arguments set forth in AT&T's original brief in support of its motion, cast aspersions at BellSouth, and attempt to argue the merits of its case with reckless disregard for the facts and the sworn testimony of its witnesses in the identical proceeding in North Carolina.

AT&T devotes several pages of its illicit brief to arguing that the contract "clearly" means what AT&T wants it to mean so that AT&T can get a multi-million dollar refund of switched access payments made to BellSouth over the last year and one-half and reduce substantially going forward the payments it is required to make to BellSouth for terminating intraLATA traffic that AT&T sends BellSouth over switched access arrangements that AT&T purchases out of BellSouth's Florida Switched Access Tariff. The ultimate issue the Commission must decide in this case is whether the parties agreed to treat that traffic as local for purposes of inter-carrier compensation. The fact is that this should not even be an issue, because the interconnection agreement expressly and specifically states that intraLATA calls that are carried over switched access arrangements are not local traffic.

AT&T is attempting to side-step that provision by arguing that the meaning of the term at issue --"switched access arrangements" -- is limited by the specific definition of

a different term -- "Switched Access Traffic" -- in a separate provision of the contract. Unlike AT&T, BellSouth does not feel that it must argue the merits of the ultimate issue in this case at this time in the hopes that the more times the argument is repeated the better the chance the Commission will believe it, no matter that it is contrary to the facts, including the sworn testimony of AT&T's witnesses in the identical North Carolina case, and violates a fundamental rule of contract construction. BellSouth simply points out here that AT&T is dead wrong in asserting that the parties agreed that the exclusion in a provision addressing solely intraLATA traffic excludes only interLATA traffic from the definition of local traffic, which is the nonsensical interpretation AT&T is asking the Commission to adopt. BellSouth looks forward with confidence to arguing the merits of the case at the appropriate time.

The issue before the Commission on AT&T's present motion to strike extrinsic testimony is not whether either party's competing claim that the contract is clear and unambiguous, albeit in very different respects, should be adopted. The issue is whether, if the Commission determines that the pertinent contract language is ambiguous, the Commission should consider extrinsic evidence of its meaning. AT&T agrees that extrinsic evidence is appropriate in that situation. Indeed, it filed more than 50 pages of rebuttal testimony of three different witnesses that consists mostly of extrinsic evidence. It argues incorrectly, however, that BellSouth is attempting with its evidence to vary the definition of "Switched Access Traffic" in the Interconnection Agreement. BellSouth is doing no such thing. The term at issue is not that specifically defined term, but the term "switched access arrangements" in the definition of local traffic. To the extent extrinsic evidence is appropriate, it is to explain the meaning of

“switched access arrangements.” In the North Carolina case, AT&T’s counsel declared that “the terminology ‘switched access arrangements’ is really the lynchpin in the exclusion language.” (Tr. Vol. III at 9) That remains true, no matter how badly AT&T would like to substitute that phrase from the contract term at issue with a different term defined in a separate provision in the agreement.

III. AT&T Mischaracterizes What Transpired in the North Carolina Case.

AT&T claims in its unauthorized reply brief that BellSouth unfairly represented that the North Carolina Commission’s ruling on the same motion to strike in an identical case in North Carolina was to deny AT&T’s motion to strike in its entirety. It most certainly is fair, because the North Carolina Commission did deny AT&T’s motion in its entirety. It also ruled that portions of the testimony which AT&T claimed was extrinsic evidence was not in fact extrinsic, a fact AT&T fails to mention in its illicit filing. See Tr. Vol. I at 13 (“I don’t believe that all of the testimony that’s the subject of the motion to strike is properly characterized as extrinsic evidence under the Parol Evidence Rule as I understand it.”) AT&T sought, nevertheless, to strike these portions of testimony in this case as well on the basis that it was extrinsic evidence.

Moreover, AT&T leads this Commission to believe that the North Carolina Commission requested further oral argument on AT&T’s motion to strike following discovery. That is not accurate. The North Carolina Commission denied by written Order AT&T’s motion after considering only the motion and the response BellSouth filed in opposition. AT&T subsequently filed a “renewed” motion, and specifically asked the Presiding Commissioner to rule on that motion at the hearing to ensure that AT&T

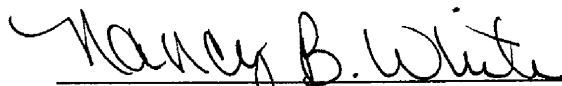
would preserve its appellate rights with respect to the motion, and the Presiding Commissioner obliged. He then again denied AT&T's motion to strike in its entirety.

IV. The Commission Should Also Deny AT&T's Second Motion to Strike.

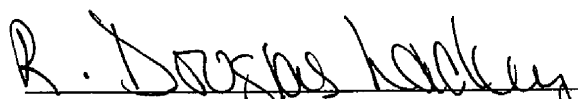
AT&T's second motion to strike is based on the same arguments as its first motion. For reasons set forth in BellSouth's opposition to AT&T's first motion and in the Staff's Recommendation that the Commission deny that motion, the Commission should deny AT&T's second motion.

Respectfully submitted this 28th day of March 2003.

BELLSOUTH TELECOMMUNICATIONS, INC.



NANCY B. WHITE (RM)
JAMES MEZA III
c/o Nancy H. Sims
150 South Monroe Street
Suite 400
Tallahassee, FL 32301
(305) 347-5558



R. DOUGLAS LACKEY (RM)
ANDREW D. SHORE
Suite 4300, BellSouth Center
675 West Peachtree Street, N.E.
Atlanta, GA 30375
(404) 335-0765