

ORIGINAL

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April 15, 2003

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

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03 APR 15 PM 4:32
COMMISSION
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Re: Docket No. 030300-TP
In re: Petition of Florida Public Telecommunications Association for Expedited Review of BellSouth Telecommunications, Inc.'s Tariffs with Respect to Rates for Payphone Line Access, Usage and Features

Dear Ms. Bayó:

Enclosed is an original and fifteen copies of BellSouth Telecommunications, Inc.'s Answer and Motion to Dismiss, 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,

Meredith E. Mays
Meredith E. Mays (KA)

cc: All Parties of Record
Marshall M. Criser III
R. Douglas Lackey
487591

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Motion
RECEIVED & FILED
DOCUMENT NUMBER 0315
03491 APR 15 8
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FPSC-COMMISSION CLERK

Answer
DOCUMENT NUMBER-DATE
03487 APR 15 8
FPSC-COMMISSION CLERK

**CERTIFICATE OF SERVICE
DOCKET NO. 030300-TP**

I HEREBY CERTIFY that a true and correct copy of the foregoing was served via
Electronic Mail and U.S. Mail this 15th day of April, 2003 to the following:

Staff Counsel
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Commission
Division of Legal Services
2540 Shumard Oak Boulevard
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Meredith E. Mays (KA)

**BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION**

In Re:)	
)	
Petition of Florida Public Telecommunications Association for Expedited Review of BellSouth Telecommunications, Inc.'s Tariffs)	Docket No. 030300-TP
With respect to Rates for Payphone Line Access, Usage, and Features)	Filed: April 15, 2003
)	
)	

**ANSWER OF
BELLSOUTH TELECOMMUNICATIONS, INC.**

BellSouth Telecommunications, Inc. ("BellSouth") answers the Petition filed by the Florida Public Telecommunications Association ("FPTA") seeking prospective rate reductions in the existing tariffed pay telephone access service ("PTAS") rates approved by this Commission and refunds based on past payments made by FPTA members pursuant to such tariffs as follows. Concerning refunds, FPTA is not entitled to any refunds because BellSouth at all times has and is charging PTAS rates in Florida that comply with binding, effective, and unchallenged orders of this Commission.¹ As to prospective rate reductions in existing PTAS rates, BellSouth has and is willing to negotiate with the FPTA an appropriate consent order allowing BellSouth to reduce prospectively its intrastate payphone access line rates based upon the requirements imposed by the Federal Communications Commission ("FCC") in its *Wisconsin Order*² obviously reserving all rights BellSouth has as a result of the pending appeal of that order.³

BellSouth responds to the specific allegations in the Petition as follows:

¹ BellSouth is also filing today a Motion to Dismiss the portion of the FPTA's Petition seeking refunds, which motion sets forth in detail the reasons this Commission should summarily reject the FPTA's claim for any refund.

² Memorandum Opinion and Order, *In the Matter of Wisconsin Public Service Commission*, 17 FCC Rcd 2051 (rel Jan. 31, 2002).

³ BellSouth is in active negotiations with the FPTA seeking to mutually agree on the appropriate prospective intrastate payphone access line rate. The portion of the FPTA's Petition seeking new rates should be dismissed or held in abeyance pending the outcome of such negotiations.

1. BellSouth admits the Commission has jurisdiction under the statutory provisions and rules referenced in Paragraph 1 to review pay telephone access services (“PTAS”) tariffs, but denies that the FPTA has stated a claim under these provisions and rules upon which relief can be granted by the Commission. BellSouth also denies that expedited review is appropriate. BellSouth denies any remaining allegations in Paragraph 1 of the Petition.
2. BellSouth admits that the Telecommunications Act of 1996 (“Act”) was enacted and that the FCC has entered various orders implementing the provisions of the Act. The provisions of the Act and various FCC orders speak for themselves and do not require a response.
3. BellSouth admits that the FCC has entered various orders addressing PTAS rates, which orders speak for themselves and do not require a response.
4. BellSouth admits that this Commission entered the orders referenced in Paragraph 4 of the Petition. BellSouth affirmatively states that in Order No. PSC-98-1088-FOF-TL this Commission specifically reviewed cost information for wholesale payphone offerings provided by BellSouth, finding that BellSouth’s rates were “cost-based and thus meet the ‘new services’ test.” The orders of this Commission speak for themselves and do not require a further response.
5. BellSouth admits that this Commission and the FCC have entered orders relating to PTAS rates, which orders speak for themselves and do not require a response.
6. BellSouth denies the allegations contained in Paragraph 6 of the Petition.
7. BellSouth denies the allegations contained in Paragraph 7 of the Petition.

8. BellSouth is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 8 of the Petition as drafted. To the extent that the FPTA seeks standing in this docket on behalf of its individual members, BellSouth denies that the FPTA has stated sufficient information from which standing can be granted. BellSouth affirmatively states that if this Commission grants the FPTA standing in this docket, it reserves any and all rights it may have to obtain relevant discovery from any and all FPTA member companies.
9. BellSouth is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 9 of the Petition as drafted, which is due, in part to the fact that the FPTA has not provided the names of its members. To the extent that the FPTA seeks standing in this docket on behalf of its individual members, BellSouth denies that the FPTA has stated sufficient information from which standing can be granted. BellSouth affirmatively states that if this Commission grants the FPTA standing in this docket, it reserves any and all rights it may have to obtain relevant discovery from any and all FPTA member companies. BellSouth admits that its PTAS rates are set forth in approved tariffs. BellSouth denies any remaining allegations in Paragraph 9 of the Petition.
10. BellSouth is without knowledge or information sufficient to form a belief as to the matters contained in Paragraph 10, which, in any event, do not require a response.

11. The allegations of Paragraph 11 of the Petition do not require a response. BellSouth requests that all notices, pleadings and other communications regarding this Docket be served upon the following BellSouth representatives:

Nancy B. White
General Counsel-Florida
c/o Nancy H. Sims
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(404) 335-0750

12. BellSouth admits the allegations of Paragraph 12 of the Petition except for the allegations set forth in subpart (iii). With respect to subpart (iii), BellSouth affirmatively states that it has stated its intentions and is actively exiting the payphone market in all states in its jurisdiction, including Florida, and as such is not in direct competition with PSPs. BellSouth is without knowledge or information sufficient to form a belief as to the names of the PSPs that are FPTA members because the FPTA has not provided the names of its members.
13. BellSouth admits that it provides PTAS. BellSouth denies all remaining allegations in Paragraph 13 of the Petition. BellSouth affirmatively states that the FPTA has not stated sufficient facts from which standing can be granted.
14. BellSouth admits that the Commission has jurisdiction to consider BellSouth's PTAS rates; however, BellSouth denies that FPTA has stated a claim under those provisions upon which relief can be granted.

15. The FCC's orders referenced in Paragraph 15 of the Petition speak for themselves and no further response from BellSouth is required.
16. BellSouth admits that there are disputed issues between it and Petitioner.
17. BellSouth admits that Congress enacted the Act, which provisions referenced in Paragraph 17 of the Petition speak for themselves, thus no further response from BellSouth is required.
18. BellSouth admits that the FCC issued orders addressing PTAS rates, which orders speak for themselves, thus no further response from BellSouth is required.
19. BellSouth admits that the FCC issued orders addressing PTAS rates, which orders speak for themselves, thus no further response from BellSouth is required.
20. BellSouth admits that the FCC issued an order on January 31, 2002, which order speaks for itself, thus no further response from BellSouth is required.
21. BellSouth admits that the FCC issued an order on January 31, 2002, which order speaks for itself. BellSouth affirmatively denies that the FPTA has stated correctly the findings of the FCC; the FCC has established "a flexible approach to calculating BOCs' overhead allocation." In relevant part, the FCC stated "we do not agree, however, with the Bureau that UNE overhead loadings must serve as a default ceiling. There are other approaches that are also consistent with our precedent regarding overhead assignments to new services provided by competitors."⁴ Thus, the overhead allocation ceiling does not have to be related to UNEs and can instead be determined based on the FCC's Physical Collocation Tariff Order or the ONA Tariff Order.
22. BellSouth denies the allegations of Paragraph 22 of the Petition.

⁴ *Wisconsin Order*, ¶ 52.

23. BellSouth denies the allegations of Paragraph 23 of the Petition.
24. BellSouth denies the allegations of Paragraph 24 of the Petition.
25. BellSouth admits the FCC issued an order on January 31, 2002, which order speaks for itself. BellSouth denies that any refund is appropriate and denies any remaining allegations of Paragraph 25 of the Petition.
27. [sic] BellSouth admits that it sought a waiver, which waiver was addressed by the FCC. *See Order, In the Matter of Implementation of the Pay Telephone Reclassification and Compensations Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-129, FCC 97-805 (rel. April 15, 1997) (*Second Waiver Order*). BellSouth affirmatively states that it agreed to provide a credit only to the extent that new PTAS tariff rates implemented after the Commission's review and approval were lower than existing rates. BellSouth further states that this Commission addressed BellSouth's Florida PTAS rates finding same to be in compliance with the new services test, thus no further refund or credit is due. No party sought judicial review or rehearing of this Commission's orders that closed docket No. 970281-TL and BellSouth has and is charging Commission approved PTAS rates.
22. [sic] BellSouth admits the FCC issued the *Second Waiver Order*, which order speaks for itself. BellSouth also admits the FCC issued the *Wisconsin Order*, five years after the FCC first addressed PTAS rates, which order also speaks for itself. BellSouth denies that the *Wisconsin Order* gives rise to a legitimate claim for a refund. BellSouth denies any remaining allegations of Paragraph 22 [sic] of the Petition.

26. Any allegations not expressly admitted are hereby denied; BellSouth affirmatively states that consistent with the *Wisconsin Order*, TSLRIC (plus a reasonable allocation of overhead costs) studies for PTAS are appropriate and BellSouth has no obligation to conduct and/or justify deviations from UNE cost studies adopted by this Commission.

27. BellSouth sets forth the following affirmative defenses:

FIRST AFFIRMATIVE DEFENSE

BellSouth provided various discounts associated with PTAS in the form of the BellSouth PSP Reward Plan to which the FPTA would not be entitled if the Commission grants the relief requested by the FPTA. BellSouth is entitled to set off the entire sum of these discounts against any relief the FPTA may receive.

SECOND AFFIRMATIVE DEFENSE

BellSouth provided other incentives and/or rewards associated with PTAS; for example, Operator Station and Calling Card rates were modified and enhanced commissions under BellSouth's Traffic Aggregator Premium Plan and Inmate Traffic Aggregator Premium Plan to which the FPTA would not be entitled if the Commission grants the relief requested by the FPTA. BellSouth is entitled to set off the entire sum of these discounts against any relief the FPTA may receive.

THIRD AFFIRMATIVE DEFENSE

Some or all of the FPTA's claims may be barred by the applicable statute of limitations, and/or the doctrines of waiver, laches, and/or estoppel.

WHEREFORE, BellSouth prays that this Commission enter judgment in its favor and against FPTA as follows:

- (1) Denying the relief requested by FPTA in the Petition; and
- (2) For all other relief deemed appropriate under the law.

Respectfully submitted, this 15 day of April, 2003.

BELLSOUTH TELECOMMUNICATIONS, INC.

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