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May 6, 2003

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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

Re: Docket No. 030339-TP (Allegiance Arbitration)

Dear Ms. Bayó:

Enclosed are an original and fifteen copies of BellSouth Telecommunications, Inc.'s Response to Petition for Arbitration of Allegiance Telecom of Florida, Inc., which we ask that you file in the captioned 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,

Andrew D. Shore
Andrew D. Shore (KA)

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

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**CERTIFICATE OF SERVICE
DOCKET NO. 030339-TP**

I HEREBY CERTIFY that a true and correct copy of the foregoing was served via
Electronic Mail and U.S. Mail this 6th day of May 2003 to the following:

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Andrew D. Shore (CKA)

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Petition of Allegiance Telecom of Florida, Inc. for Arbitration of Certain Terms and Conditions of Proposed Interconnection and Resale Agreement with BellSouth Telecommunications, Inc. Under the Telecommunications Act of 1996)	
)	
)	Docket No. 030339-TP
)	
)	
)	Filed: May 6, 2003
)	

**BELLSOUTH TELECOMMUNICATIONS, INC.'S
RESPONSE TO ALLEGIANCE TELECOM OF FLORIDA, INC.'S
PETITION FOR ARBITRATION**

Pursuant to 47 U.S.C. § 252(b)(3), BellSouth Telecommunications, Inc. ("BellSouth"), responds to the Petition for Arbitration ("Petition") filed by Allegiance Telecom of Florida, Inc. ("Allegiance") and says that:

BACKGROUND

Sections 251 and 252 of the Telecommunications Act of 1996 ("1996 Act") encourage negotiations between parties to reach local interconnection agreements. Section 251(c)(1) of the 1996 Act requires incumbent local exchange companies to negotiate the particular terms and conditions of agreements to fulfill the duties described in Sections 251(b) and 251(c)(2)-(6).

As part of the negotiation process, the 1996 Act allows a party to petition a state commission for arbitration of unresolved issues.¹ The petition must identify the issues resulting from the negotiations that are resolved, as well as those that are unresolved.² The petitioning party must submit along with its petition "all relevant documentation concerning: (1) the unresolved issues; (2) the position of each of the parties with respect to those issues; and (3) any other issues discussed and resolved by the

¹ 47 U.S.C. § 252(b)(2).

² See generally, 47 U.S.C. §§ 252(b)(2)(A) and 252(b)(4).

parties.”³ A non-petitioning party to a negotiation under this section may respond to the other party’s petition and provide such additional information as it wishes within 25 days after a commission receives the petition.⁴ The 1996 Act limits a commission’s consideration of any petition (and any response thereto) to the unresolved issues set forth in the petition and in the response.⁵

Through the arbitration process, a commission must resolve the unresolved issues ensuring that the requirements of Sections 251 and 252 of the 1996 Act are met. The obligations contained in those sections of the 1996 Act are the obligations that form the basis for negotiation, and if negotiations are unsuccessful, then form the basis for arbitration. Issues or topics not specifically related to these areas are outside the scope of an arbitration proceeding. Once a commission has provided guidance on the unresolved issues, the parties must incorporate those resolutions into a final agreement to be submitted to a commission for approval.⁶

BellSouth and Allegiance previously entered into an Interconnection Agreement (“Agreement”) by virtue of Allegiance opting into another carrier’s agreement pursuant to 47 U.S.C. § 252(i). Although BellSouth and Allegiance negotiated in good faith as to the terms and conditions for a new Agreement, the parties have been unable to reach agreement on some issues. As a result, Allegiance filed this Petition. BellSouth responds below to each of the separately numbered paragraphs of Allegiance’s Petition:

PARTIES

³ 47 U.S.C. § 252(b)(2).

⁴ 47 U.S.C. § 252(b)(3).

⁵ 47 U.S.C. § 252(b)(4).

⁶ 47 U.S.C. § 252(a).

1. BellSouth admits that the documents listed in Paragraph 1 of the Petition are Attachments A, B, and C to the Petition.

2. BellSouth admits the allegations in Paragraph 2 of the Petition on information and belief.

3. BellSouth admits that Allegiance previously opted into an AT&T interconnection agreement pursuant to Section 252(i) of the 1996 Act and that Allegiance currently serves customers in Florida. BellSouth admits the remaining allegations in Paragraph 3 of the Petition on information and belief.

4. The allegations in Paragraph 4 of the Petition do not require a response.

5. BellSouth admits the allegations of Paragraph 5 of the Petition.

JURISDICTION AND TIMELINESS

6. BellSouth admits that the Florida Public Service Commission has jurisdiction over Allegiance's arbitration Petition pursuant to 47 U.S.C. § 252(b)(1). BellSouth also admits that Allegiance requested negotiations with BellSouth for a new interconnection agreement by letter dated November 1, 2002, a copy of which is Attachment A to the Petition. BellSouth further admits that the parties resolved numerous issues through their negotiations and that a few remain outstanding. Pursuant to 47 U.S.C. § 252(b)(1), a party may petition a state commission to arbitrate any open issues during the period from the 135th to the 160th day after the date on which an incumbent local exchange carrier receives a request for negotiation under Section 252, and April 11, 2003, was the 160th day following Allegiance's request for negotiation with BellSouth. BellSouth specifically denies that Allegiance "had no choice"

but to file its Petition. Except as specifically admitted, BellSouth denies the allegations in Paragraph 6 of the Petition.

STATEMENT OF THE CASE

7. BellSouth admits that during their negotiations the parties addressed and resolved a myriad of issues covering a wide array of subjects, and that nine issues remain outstanding and unresolved as of the time Allegiance filed its Petition. BellSouth admits the remaining allegation in Paragraph 7 of the Petition.

8. BellSouth admits that a redlined interconnection agreement showing the areas of agreement and disagreement between the parties is Attachment C to Allegiance's Petition. BellSouth also admits that Allegiance purported to state BellSouth's position with respect to the unresolved issues on Attachment B to the Petition.

9. Paragraph 9 does not contain any allegations and does not require a response.

STANDARD OF REVIEW

10. BellSouth admits that the arbitration issues must be resolved in accordance with the 1996 Act and Rules adopted pursuant to the Act to the extent that any apply to the issues raised in this arbitration.

THE NEGOTIATIONS

11. BellSouth admits the allegations in paragraph 11 of the Petition.

ISSUES

The unresolved issues, the section in the agreement where they arise, and BellSouth's position on each issue are set forth below. In some instances where

Allegiance has failed to state the issue accurately in a fair, neutral manner, BellSouth has restated the issue.

1. Resolution of Disputes - Section 12 of the General Terms and Conditions: Should the Agreement limit the parties' initial recourse for unresolved disputes arising out of or relating to a provision of the interconnection agreement by pursuing resolution through the Florida Public Service Commission and the FCC?

Yes. The state commission has jurisdiction to interpret and enforce the parties' interconnection agreement. The state commission is best suited to address issues that arise out of the agreement the state commission is charged with approving, and the Commission and the FCC have the substantive expertise to deal with matters that are the subject of the interconnection agreement. Additionally, Allegiance is not precluded from taking these initial orders and appealing to a district court of competent jurisdiction.

2. Conversions from Special Access Service to EELs (UNEs) - Section 5.3.1 of Attachment 2 – Network Elements and Other Services: Following a request by Allegiance to convert a special access arrangement to a combined loop and transport network element (EEL), when should BellSouth cease billing the special access rate and begin to bill the lower UNE rate for the EEL?

BellSouth's published Guidelines set forth the time intervals pursuant to which BellSouth will perform the work necessary to convert special access arrangements to UNE EELs. BellSouth will cease billing special access rates and begin billing UNE rates once BellSouth performs the work necessary to effectuate the conversion to a UNE. Allegiance's position that UNE billing should commence on the date Allegiance *requests* the conversion is unreasonable and completely disregards the process BellSouth has in place to perform the requested conversion.

3. Conversion from Special Access Service to EELs (UNEs) – Section 5.3.3 of Attachment 2 – Network Elements and Other Services: The FCC permits BellSouth to conduct audits to determine whether Allegiances' use of EELs satisfies the FCC's local exchange service requirement and requires Allegiance to pay for the audit if non-compliance is found. Should this Agreement address what percentage of EELs must be non-compliant before Allegiance must bear the full expense of such audit?

No. As stated in the FCC's Supplemental Order, in the event that Allegiance does not comply with the FCC's local service requirements, Allegiance should bear the costs of the audit. Non-compliance is non-compliance. Allegiance's position that it should be given a "free pass" for up to 25% non-compliance is not only arbitrary, it is contrary to the legal requirement that Allegiance's certification that its circuits comply fully with the minimum local service requirements for those circuits converted to EELs.

4. Conversion from Special Access Service to EELs – Section 5.3.3 of Attachment 2 – Network Elements and Other Services: If an audit finds an EEL non-compliant, how far back should BellSouth be allowed to bill at the special access services rate?

The appropriate time to properly bill Allegiance for applicable rates will depend on the circumstances in each case. It should not be arbitrarily limited to one year so as to give Allegiance immunity for improper use of EELs if such improper use is not discovered promptly.

5. Insurance – Section 9.3 of Attachment 4 – Physical Collocation: Is it appropriate to cap the amount by which BellSouth may increase required insurance limits during the term of the Agreement?

No. The agreement already limits any increase to an amount that is then customary and consistent with other comparable BellSouth structures. The amount of any increase over the term of the agreement should not be limited to a certain arbitrary amount.

6. Access to Operations Support Systems – Section 2.1.2 of Attachment 6 – Pre-Ordering, Ordering and Provisioning, Maintenance and Repair: Is it appropriate to specify the minimum level of customer detail to be contained on a CSR and available for Allegiance review with customer permission?

No. BellSouth agrees to provide Allegiance all information BellSouth maintains relating to BellSouth's relationship with the end-user. There is no reason to list specific information that must be provided in addition to what BellSouth currently provides all ALECs. BellSouth will provide all information that its retail operation has access to in accordance with the parity requirement of the Act. If there are any additional details Allegiance feels necessary for the CSR, Allegiance may address that issue in the ALEC Change Control Process forum.

7. Payment and Billing Agreements – Section 1.3 of Attachment 7 – Billing: When should payment for services be due?

Payment should be due on the specified bill date. There is no legitimate reason to allow Allegiance a full thirty (30) days after receiving its bill to make payment. The bill date is the same each month and Allegiance knows the date its bill will be due each month. Moreover, it can elect to receive its bills electronically (as well as pay electronically) so as to minimize any delay in bill printing and receipt.

8. Payment and Billing Arrangements – Sections 1.8, 1.8.2a – 1.8.4 of Attachment 7 – Billing: When is it appropriate to demand a security deposit, in what amount, and under what conditions should the security deposit be released?

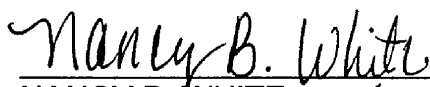
BellSouth is entitled to demand a security deposit based on the results of BellSouth's analysis of Allegiance's credit worthiness. The amount of the deposit will be equal to or less than two (2) months of Allegiance's estimated billings. It generally takes at least that amount of time to disconnect a non-paying carrier, and BellSouth should not be required to provide free service to Allegiance for that period of non-payment. The deposit should not be released unless Allegiance timely pays its bills for twelve (12) months and Allegiance no longer poses a credit risk based on performance of a credit analysis. Timely payment alone is not enough to protect BellSouth in the event Allegiance ceases making timely payments.

9. Payment of Billing Agreements – Section 1.11 of Attachment 7 – Billing: How far may BellSouth back bill for all services?

Both parties agree that a general one (1) year limitation in Florida is appropriate for back billing on any service. An exception for situations where billing is dependent upon information provided by a third party or where BellSouth's billing is dependent upon information provided by Allegiance is appropriate because due to no fault of its own, BellSouth may not receive the information needed to correct billing errors on a timely basis.

Respectfully submitted this 6th day of May 2003.

BELLSOUTH TELECOMMUNICATIONS, INC.



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