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July 15, 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. 020507-TL (FCCA Complaint)**

Dear Ms. Bayó:

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



Meredith E. Mays (KA)

Enclosure

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

DOCUMENT NUMBER-DATE

06261 JUL 15 8

FPSC-COMMISSION CLERK

**CERTIFICATE OF SERVICE  
DOCKET NO. 020507-TL**

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

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**(+) Signed Protective Agreement**

**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

In re: Complaint of the Florida )  
Competitive Carriers Association ) Docket No. 020507-TL  
Against BellSouth Telecommunications, Inc. )  
And Request for Expedited Relief ) Filed: July 15, 2003  
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**BELLSOUTH TELECOMMUNICATIONS, INC.'S**  
**EMERGENCY MOTION TO COMPEL AGAINST**  
**AT&T COMMUNICATIONS OF THE SOUTHERN STATES, INC.**

**I. INTRODUCTION**

BellSouth Telecommunications, Inc. ("BellSouth") files this emergency motion seeking an immediate order from the Florida Public Service Commission ("Commission") compelling AT&T Communications of the Southern States, Inc. ("AT&T") to respond fully and completely to BellSouth's Second Set of Interrogatories. BellSouth served interrogatories upon AT&T seeking certain line information. AT&T objected to BellSouth's discovery and directed BellSouth to its own records. While BellSouth can and has reviewed its records, such information does not provide either the historical data that BellSouth has requested nor does it ensure that BellSouth can introduce such information into the record or effectively utilize such information at the hearing. In order to avoid having to involve the Commission in discovery issues, BellSouth has requested that AT&T supplement its responses. To date, AT&T has not agreed to supplement its responses. To the extent AT&T supplements its responses after the filing of this motion, then BellSouth will withdraw this motion. In the meantime, however, in light of the current schedule BellSouth respectfully requests the Commission grant BellSouth's emergency motion to compel and order AT&T to provide complete responses to BellSouth's Interrogatory 4 in advance of the July 21, 2003 hearing.

## II. DISCUSSION

The Interrogatory request at issue asks:

4. As of December 31, 1999; June 30, 2000; December 31, 2000; June 30, 2001; December 31, 2001; June 30, 2002; December 31, 2002; and June 30, 2003 (or the most recent date for which data is available) please state:
  - a) The total number of lines that AT&T provides using UNE-P loops leased from BellSouth in Florida, designated by Florida deaveraged UNE rate zones 1, 2, and 3;
  - b) The total number of lines that AT&T provides using unbundled loops (without switching) leased from BellSouth in Florida, designated by Florida deaveraged UNE rate zones 1, 2, and 3;
  - c) The total number of lines that AT&T provides using resold BellSouth lines in Florida, designated by Florida deaveraged UNE rate zones 1, 2, and 3;
  - d) The total number of lines that AT&T provides in Florida using exclusively its own facilities, designated by Florida deaveraged UNE rate zones 1, 2, and 3.

AT&T objected to this Interrogatory claiming that the request was “not reasonably calculated to lead to the discovery of admissible evidence and is not relevant to the subject matter of this action.”

### Argument

Rule 1.280 of the Florida Rules of Civil Procedure applies to the use of discovery before this Commission and provides that “[p]arties may obtain discovery regarding *any matter*, not

privileged, that is relevant to the subject matter of the pending action, *whether it relates to the claim or defense of the party seeking discovery or the claim or defense of any other party*, including the existence, description, nature, custody, condition, and location of any books, documents, or other tangible things . . . . It is not ground for objection that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.” See F.S.A. § 366.093(2); also Rule 1.280, Florida Rules of Civil Procedure. Moreover, “[t]he discovery rules are to be liberally construed so as to permit any form of discovery within the scope of the rules.” *Weyant v. Rawlings*, 389 So.2d 710, 711 (Fla. Dist. Ct. App. 1980); see also *Jones v. Seaboard Coast Line Railroad Co.*, 297 So. 2d 861, 863 (Fla. Dist. Ct. App. 1974) (“discovery rules are to be liberally construed to accomplish their purpose. In other words, litigation should no longer proceed as a game of ‘blind man’s bluff.’”).

AT&T cannot realistically contend that BellSouth’s discovery is not relevant. First, BellSouth is fully entitled to request information relating to *defenses*. Second, BellSouth is entitled to discover information that *may lead to the discovery of admissible evidence*. The issues in this case include consideration of:

Issue 5: Should the Commission order BellSouth to provide its FastAccess Internet service, where feasible, to any ALEC end user that requests it?

Issue 4, 5, and 6 relate to the rates, terms, and conditions of BellSouth’s provision of FastAccess.

Issue 3 considers whether BellSouth’s practice violate state and federal law.

In considering these, it is clear that AT&T uses resold lines is relevant to whether AT&T currently has a means available to obtain FastAccess. Similarly, in considering why and how

BellSouth has implemented its practices, the extent to which AT&T has invested in its own facilities may impact such practices. Moreover, the nature of AT&T's investment relates to questions of federal law and the directive of commissions to encourage the deployment of advanced services and how any decision in this case may impact investment decisions of BellSouth.

The foregoing statements of AT&T's witness Gillan likewise unquestionably demonstrate the relevance of BellSouth's discovery request.

- AT&T Witness Gillan claims that BellSouth's strategy "results in a barrier to competition."
- AT&T Witness Gillan claims that "local competition is just beginning to take root via entry strategies such as UNE-P."
- AT&T Witness Gillan states that "resale is not viable."

As the testimony of AT&T's witness demonstrates, it is clear that AT&T's historical line data is directly relevant to whether in fact AT&T has experienced any alleged "barrier" to competition and to whether AT&T's line activity is reflective of a competitor just beginning to establish roots in the Florida market. AT&T's historical data relating to resold lines likewise is relevant to Witness Gillan's allegations concerning resale. As a final matter, both MCI and AIN have provided BellSouth with the requested information. AT&T should be required to do the same.

### **III. CONCLUSION**

BellSouth respectfully requests that the Commission grant its Emergency Motion To Compel and order AT&T to fully and completely respond to the Interrogatory No. 4 referenced herein. BellSouth further requests that the Commission require responses as soon as possible so that BellSouth may utilize the discovery responses in presenting its defense to the Commission.

This 15th day of July 2003.

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