

JAMES E. "JIM" KING, JR.

PRESIDENT



Charles J. Beck
Interim
Public Counsel

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SPEAKER



STATE OF FLORIDA
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September 24, 2003

Blanca S. Bayo, Director
Division of Records and Reporting
Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, FL 32399-0850

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Re: Docket No. 030869-TL

Dear Ms. Bayo:

Enclosed for filing in the above-referenced docket are the original and 15 copies of Citizens' Third Motion to Compel Answers to Interrogatories from BellSouth Telecommunications, Inc.

Please indicate the time and date of receipt on the enclosed duplicate of this letter and return it to our office.

Sincerely,

H F. Mann
Associate Public Counsel

HFM:bsr

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CAF _____
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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition by BellSouth)
Telecommunications, Inc.,) Docket No. 030869-TL
To Reduce Its Network Access Charges)
Applicable To Intrastate Long Distance) Filed: September 24, 2003
In A Revenue-Neutral Manner)

**CITIZENS' THIRD MOTION TO COMPEL ANSWERS TO INTERROGATORIES
FROM BELL SOUTH TELECOMMUNICATIONS, INC**

The Citizens of Florida (Citizens), through the Office of Public Counsel, pursuant to Rule 28-106.204, Florida Administrative Code, and Rules 1.280, 1.340, 1.350, and 1.380, Florida Rules of Civil Procedure, request the Prehearing Officer issue an order compelling BellSouth Telecommunications, Inc. ("BellSouth" or "Company") to immediately answer the interrogatories identified in the paragraphs below.

1. On September 15, 2003, BellSouth served its General and Specific Objections to Citizens' Third Set of Interrogatories, dated September 8, 2003.

2. BellSouth lists eleven "General Objections" to Citizens' discovery, none of which identifies a single interrogatory or request for production of documents to which any or all of them may apply. As such, the Company has presented to Citizens a wonderful game of "Read the Company's Mind."

3. Citizens assert emphatically that these "General Objections" of BellSouth are wholly inapplicable to Citizens' discovery requests. The following are what the Company suggests are appropriate discovery objections made pursuant to the Florida Rules of Civil Procedure:

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a) "BellSouth objects to the interrogatories and requests for production to the extent they seek to impose an obligation on BellSouth to respond on behalf of subsidiaries, affiliates, or other persons that are not parties to this case on the grounds that such interrogatories and requests for production are overly broad, unduly burdensome, oppressive, and not permitted by applicable discovery rules."

b) "BellSouth objects to the interrogatories and requests for production to the extent they are intended to apply to matters other than Florida intrastate operations subject to the jurisdiction of the Commission. BellSouth objects to such interrogatories and requests for production as being irrelevant, overly broad, unduly burdensome, and oppressive."

c) "BellSouth objects to each and every interrogatory and request for production and instruction to the extent that such request or instruction calls for information that is exempt from discovery by virtue of the attorney-client privilege, work product privilege, or other applicable privilege."

d) "BellSouth objects to each and every interrogatory and request for production insofar as the interrogatories and requests are vague, ambiguous, overly broad, imprecise, or utilizes terms that are subject to multiple interpretations but are not properly defined or explained for purposes of these interrogatories and requests for production. Any answers provided by BellSouth in response to the interrogatories and requests for production will be provided subject to, and without waiver of, the foregoing objection."

e) "BellSouth objects to each and every interrogatory and request for production insofar as it is not reasonably calculated to lead to the discovery of admissible evidence and is not relevant to the subject matter of this action. BellSouth will attempt to note in its responses each instance where this objections applies."

f) "BellSouth objects to providing information to the extent that such information is already in the public record before the Commission."

g) "BellSouth objects to OPC's discovery requests, instructions and definitions, insofar as they seek to impose obligations on BellSouth that exceed the requirements of the Florida Rules of Civil Procedure of Florida Law."

h) "BellSouth objects to each and every interrogatory and request for production, insofar as any of them are unduly burdensome, expensive, oppressive, or excessively time consuming as written."

i) "BellSouth is a large corporation with employees located in many different locations in Florida and in other states. In the course of its business, BellSouth creates countless documents that are not subject to Commission or FCC retention of records requirements. These documents are kept in numerous locations that are frequently moved from site to site as employees change jobs or as the business is reorganized. Therefore, it is possible that not every document has been identified in response to these requests. BellSouth will conduct a search of those files that are reasonably expected to contain the required information. To the extent that the requests

purport to require more, BellSouth objects on the grounds that compliance would impose an undue burden or expense.”

j) “BellSouth objects to each and every interrogatory and request for production to the extent that the information requested constitutes “trade secrets” pursuant to Section 90.506, Florida Statutes. To the extent that OPC request proprietary confidential business information, BellSouth will make such information available in accordance with a protective Order, subject to any other general or specific objections contained herein.”

k) “BellSouth objects to each and every interrogatory and request for production to the extent that the information requested is beyond the scope of discovery permitted in this proceeding as set forth in Section 364.164, subsections (3) and (4), Florida Statutes, or seeks documents that are beyond the scope of those issues the Legislature has determined are to be considered by the Commission in this proceeding, or seeks documents that are beyond the matters contained in BellSouth's testimony and exhibits addressing these same issues.”

4. The Prehearing Officer, Commissioner Bradley, in his Order Establishing Procedure, No. PSC-03—0994-PCO-TL, instructed the parties regarding discovery, that “Any objection to . . . discovery requests shall be made within five business day of service of the discovery request.”

5. Citizens do not believe that that instruction envisioned a listing of any and all objections available to a party in the event that some specific

discovery request was made of that party to which one or more of those available objections might be claimed and argued.

6. Not one of the eleven General Objections made by BellSouth identifies a single interrogatory or request for production of a document to which it might apply. If these objections were somehow allowed to be applied to Citizens' discovery, Citizens would be faced with the impossibly absurd task of responding directly to eleven "general" objections, all of which address nothing in particular. Accordingly, these objections are wholly inappropriate and totally irrelevant to Citizens' discovery requests and should accordingly be dispatched from any consideration by this Commission.

7. After listing the above eleven "General Objections" to any and all of Citizens' discovery as each of the objections may or may not apply, BellSouth identifies some "specific" objections to both discovery requests. Unfortunately, however, these still fail to qualify as specific objections, in that the Company has qualified them to the extent that they are not really claimed to apply to the specific discovery request.

8. On September 23, 2003, BellSouth served its responses to Citizens' Third Set of Interrogatories, incorporating its earlier "general" and "specific" objections, and reiterating the same "specific" objections to both interrogatories.

9. These discovery requests, the Company's objections, and Citizens' response to those objections follow below.

10. Interrogatory No. 49:

For the calendar year ending December 31, 2001, and December 31, 2002, as well as the study period associated with Caldwell Exhibit DDC-1, Attachment J, provide the total regulated revenue subject to separations and the total state jurisdictional revenue.

BELLSOUTH OBJECTION:

BellSouth objects to Interrogatory No. 49 to the extent that it is not relevant to the subject matter of this docket, is not reasonably calculated to the discovery of admissible evidence, and beyond the scope of Section 364.164(3) and (4), Florida Statutes.

CITIZENS' RESPONSE:

Although the Company has entitled its response to this interrogatory as an "objection," Citizens are left to speculate whether or not the Company's intent is to actually state an objection. The Company has now not only presented its meaningless "general" objections; it now asserts meaningless "specific" objections, prefaced as they are with its qualifier, "to the extent that." While no "extent" is identified by the Company here, Citizens must assume that the Company may return to this interrogatory at some point and wish to argue that there is some hidden "extent" to which this interrogatory is "not relevant" to the subject matter, "not reasonably calculated" to lead to admissible evidence, and/or "beyond the scope" of the statute. Consequently, the Citizens feel compelled to provide the following justification for its discovery. This interrogatory request is for information relating to BellSouth's total regulated revenue that is subject to

separations, and the total state jurisdictional revenue, all of which is information readily available to the Company. This discovery request relates directly to the testimony submitted by BellSouth witness Bigelow, who references the revenues of the company in Exhibit SB1, pages 1-13. The request by Citizens relates directly to his testimony and it is intended to be used by the Citizens to test the data submitted in support of the BellSouth proposals in this case.

11. Interrogatory No. 50:

For each billing cycle in the calendar year ending December 31, 2001, and December 31, 2002, as well as the study period associated with Caldwell Exhibit DDC-1, provide the number of bills sent to carriers.

BELLSOUTH OBJECTION:

BellSouth objects to Interrogatory No. 50 to the extent that it is not relevant to the subject matter of this docket, is not reasonably calculated to the discovery of admissible evidence, and beyond the scope of Section 364.164(3) and (4). Florida Statutes.

CITIZENS' RESPONSE:

Although the Company has entitled its response to this interrogatory as an "objection," Citizens are left to speculate whether or not the Company's intent is to actually state an objection. The Company has now not only presented its meaningless "general" objections; it now asserts meaningless "specific" objections, prefaced as they are with its qualifier, "to the extent that." While no "extent" is asserted here identified by the Company, Citizens must assume that

the Company may return to this interrogatory at some point and wish to argue that there is some hidden "extent" to which this interrogatory is "not relevant" to the subject matter, "not reasonably calculated" to lead to admissible evidence, and/or "beyond the scope" of the statute. Consequently, the Citizens feel compelled to provide the following justification for its discovery. BellSouth proposes to reduce its billing to its interexchange access carriers that connect to BellSouth by \$125 million dollars, and the exhibit of its witness Caldwell specifically demonstrates BellSouth's proposal as to how that reduction will be accomplished. BellSouth's proposal may or may not have merit and the Citizens seek to test the validity of those conclusions. BellSouth's transactions with connecting carriers are relevant to this issue as is the instant discovery request.

Respectfully submitted,

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Florida Bar No. 217281



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Florida Bar No. 763225

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Attorneys for Florida's Citizens

**CERTIFICATE OF SERVICE
DOCKET NO.: 030869-TL**

I HEREBY CERTIFY that a copy of the foregoing has been furnished by U.S.
Mail or hand-delivery to the following parties on this 24th day of September, 2003.

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