

Meredith E. Mays
Senior Regulatory Counsel

BellSouth Telecommunications, Inc.
150 South Monroe Street
Room 400
Tallahassee, Florida 32301
(404) 335-0750

September 30, 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. 030869-TL

Dear Ms. Bayó:

Enclosed is an original and fifteen copies of BellSouth Telecommunications, Inc.'s Response in Opposition to Citizens' Second and Third Motions 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 (KM)

Enclosure

cc: All Parties of Record
Marshall M. Criser III
R. Douglas Lackey
Nancy B. White
506995

DOCUMENT NUMBER DATE

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FPSC-COMMISSION CLERK

CERTIFICATE OF SERVICE
Docket No. 030869-TL

I HEREBY CERTIFY that a true and correct copy of the foregoing was served via
Electronic Mail, Hand Delivery* and Federal Express this 30th day of September, 2003
to the following:

Beth Keating, Staff Counsel
Felicia Banks, Staff Counsel
Patricia Christensen, Staff Counsel
Florida Public Service Commission
Division of Legal Services
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850
Phone: (850) 413-6212
Fax: (850) 413-6250
bkeating@psc.state.fl.us
fbanks@psc.state.fl.us
pchriste@psc.state.fl.us

Charlie Beck *
Deputy Public Counsel
Office of Public Counsel
111 West Madison Street, Room 812
Tallahassee, FL 32399-1400
Phone: (850) 488-9330
Fax No. (850) 488-4491
Beck.Charles@leg.state.fl.us

Michael A. Gross
VP Reg. Affairs & Reg. Counsel
Florida Cable Telecomm. Assoc.
246 East 6th Avenue
Tallahassee, FL 32303
Tel. No. (850) 681-1990
Fax. No. (850) 681-9676
mgross@fcta.com

Richard A. Chapkis (+)
Verizon Florida, Inc.
One Tampa City Center
201 North Franklin Street (33602)
Post Office Box 110, FLTC0007
Tampa, Florida 33601-0110
Tel. No. (813) 483-2606
Fax. No. (813) 204-8870
Richard.chapkis@verizon.com

Verizon Florida, Inc.
Ms. Michelle A. Robinson
106 East College Avenue, Suite 810
Tallahassee, FL 32301-7704
Tel. No. (813) 483-2526
Fax. No. (813) 223-4888
Michelle.Robinson@verizon.com

Susan S. Masterton
Charles J. Rehwinkel
Sprint Comm. Co. LLP
1313 Blair Stone Road (32301)
P.O. Box 2214
MC: FLTLHO0107
Tallahassee, FL 32316-2214
Tel. No. (850) 847-0244
Fax. No. (850) 878-0777
Susan.masterton@mail.sprint.com
charles.j.rehwinkel@mail.sprint.com

John P. Fons (+)
Ausley & McMullen
227 South Calhoun Street

Tallahassee, FL 32301
Tel. No. (850) 224-9115
Fax. No. (850) 222-7560
ifons@ausley.com

Michael B. Twomey (+)
8903 Crawfordville Road
Tallahassee, FL 32305
Tel. No. (850) 421-9530
Fax No. (850) 421-8543
Email: miketwomey@talstar.com
Represents AARP

Mark Cooper (+)
504 Highgate Terrace
Silver Spring, MD 20904
Tel. No. (301) 384-2204
Fax. No. (301) 236-0519
markcooper@aol.com
AARP Witness



Meredith E. Mays (VA)

(+) Protective Agreement
(*) Hand Delivery

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition by BellSouth Telecommunications,)
Inc., To Reduce Its Network Access Charges)
Applicable To Intrastate Long Distance in A)
Revenue-Neutral Manner)
_____)

Docket No. 030869-TL

Filed: September 30, 2003

**BELLSOUTH TELECOMMUNICATION, INC.'S RESPONSE IN OPPOSITION TO
CITIZENS' SECOND AND THIRD MOTIONS TO COMPEL**

I. INTRODUCTION

BellSouth Telecommunications, Inc. ("BellSouth") respectfully submits this response in opposition to: (1) the Office of Public Counsel's ("OPC") Second Motion to Compel Responses to its First Request for Production and Interrogatories; and (2) OPC's Third Motion to Compel Responses to Interrogatories. The parties have a fundamental disagreement on the proper relevancy standard that applies to this proceeding. In BellSouth's view, application of the fundamental rules of statutory construction results in a limitation upon the discoverable information in this docket. OPC apparently disagrees. BellSouth respectfully requests that the Commission interpret and clarify the relevant statutory provision; and, in doing so, deny OPC's Second and Third Motions to Compel in their entirety. Even if this Commission did not uphold the discovery limitation contained in Section 364.164 (which it should), OPC's discovery requests do not directly relate to the petition, the criteria applicable to the petition, or to witness testimony as BellSouth will explain more fully below. For these additional reasons the Commission should deny OPC's Second and Third Motions to Compel.

II. DISCUSSION

General Objections

At the outset, the parties remain in disagreement concerning the use of general objections. As BellSouth explained in its Response in Opposition to OPC's First Motion to Compel, the use of general objections is permitted in this docket. BellSouth will continue asserting both its general objections and specific objections consistent with the expedited discovery schedule in this docket. By asserting specific objections, BellSouth is alerting OPC to the discovery questions that it considers objectionable and to which it does not intend to respond. BellSouth will also assert general objections, and only to the extent a discovery response is later determined to be objectionable to which a specific objection was not lodged, will BellSouth rely upon its general objections by fully explaining and disclosing any later-discovered objection in its responses. This practice is necessary to protect BellSouth's rights while still complying with the discovery timeframes in this docket.

Moreover, as BellSouth has previously explained, nothing contained within Order No. PSC-03-0994-POC-TL precludes the use of general objections, and in light of the expedited discovery timeframes in this proceeding, BellSouth's use of general objections -- in which it lists standard discovery objections and reserves its rights -- is entirely appropriate. *See e.g.* Order No. PSC-03-0223-PCO-TP and Order No. PSC-02-1613-PCO-GU; (prior proceedings in which parties availed themselves of general objections without any FPSC preclusion or prohibition concerning such use). OPC's exception to BellSouth's use of general objections is without merit.

Scope of Discovery in this Proceeding

The crux of the discovery disagreement that has resulted in OPC's Second and Third Motions to Compel surrounds the statutory language that gave rise to BellSouth's Petition. Specifically, newly created Section 364.164 sets forth a process for rebalancing intrastate switched access revenue and basic local telecommunications services in a revenue neutral manner. Significantly, Section 364.164 requires this Commission to issue its final order "within 90 days." Thus, the Florida legislature unmistakably envisioned a streamlined process. This intention is plainly expressed in Section 364.164 (3), which provides, in relevant part, that "any discovery or information requests under this section must be limited to a verification of historical pricing units necessary to fulfill the Commission's specific responsibilities under this Section of ensuring that the company's rate adjustments make the revenue category revenue neutral for each annual filing." The statute demonstrates clearly that a discovery limitation is fully consistent with the requirement to render a decision within 90 days. If OPC is permitted to engage in broad discovery, then the focus of the proceeding shifts from a narrowly focused proceeding into an endless free for all, which is completely at odds with the statutory intent. For these reasons, the Commission should deny OPC's motions and send a clear message limiting the discovery in this proceeding.

SPECIFIC DISCOVERY REQUESTS

Turning to the specific discovery requests at issue, OPC's attempts to demonstrate relevance cannot stand. OPC engages in a tortured reading of BellSouth's witnesses' testimony to justify its Motions, which should be rejected by this Commission.

OPC'S SECOND MOTION TO COMPEL

Interrogatories 23-29, 31; Requests for Production 26 -29

OPC's Motion to Compel contends that it requires the information requested in these requests because this Commission "needs to know what impacts" BellSouth's proposal will have on "all Florida long distance customers." These questions are simply off base. To the extent the Commission "needs to know" anything, Staff (rather than OPC) is perfectly capable of propounding discovery requests of its own. Moreover, to the extent that end-user long distance service prices will be impacted by BellSouth's petition, the resulting long distance prices are required to be flowed through pursuant to Section 3654.163 (2). Presumably, the affected carriers will comply with the law and will flow through the access rate reductions. Moreover, as a matter of logic, neither BellSouth nor OPC has the ability to predict with absolute accuracy future events. The parties must apply common sense, experience, and theory to plan for expected future impacts.

OPC now seeks to force BellSouth to conduct its investigation for it, which BellSouth is not required to do. BellSouth is not required to poll interexchange carriers, including its own long distance affiliate, gather information that is not within its possession, custody, and control and determine precisely how such carriers intend to apply access charge reductions to customers. In relevant part, Section 364.163 (2)(6) provides that intrastate interexchange companies "may" determine the specific intrastate rates to be decreased, and BellSouth is not obligated to determine precisely how each intrastate interexchange company intends to exercise the discretion provided to implement the statutory scheme. The Commission should reject OPC's Motions.

Interrogatory 34

BellSouth will file a supplemental response simultaneously with this opposition, which obviates the need for further Commission action on this request. BellSouth also states that if OPC maintains its motion after receiving BellSouth's supplemental request, any such request is without merit.

Interrogatory 35

In relevant part, this request seeks information concerning "all increases in residential long distance rates." BellSouth objected to this request, but also noted that responsive information is available to OPC as a matter of public record. In OPC's Motion, the justification for this discovery is that "the Commission . . . needs to know what impacts the proposals in this docket will have on all Florida long distance customers" OPC then suggests, "the starting point for that analysis is the level of current prices and price changes that BellSouth customers are paying for long distance services in Florida." Setting aside the parties' fundamental disagreement on relevance, OPC completely fails to address the fact that the information requested is a matter of public record. BellSouth's tariffs are accessible at the following website: <http://cpr.bellsouth.com/index2.html>, and to the extent that OPC actually believes price information will be of assistance in this case, OPC is perfectly capable of pursuing this information on its own.

Interrogatory 36

This interrogatory is similar to other requests, in that it seeks information concerning long distances rates. As set forth throughout this opposition, and repeated here, BellSouth does not believe the information requested is relevant to this proceeding. Even if the Commission desired

this information, OPC is trying to make BellSouth conduct its investigation for it, which BellSouth is neither willing nor required to do.

Interrogatory 38

BellSouth will file a supplemental response simultaneously with this opposition, which obviates the need for further Commission action on this request. BellSouth also states that if OPC maintains its motion after receiving BellSouth's supplemental request, any such request is without merit.

Interrogatories 39, 41 – 44, 47-48

These interrogatories seek information concerning revenue from certain listed accounts; the number of accounts and billable lines; and the number of bills sent to customers. BellSouth objected to these questions on the grounds of relevance. OPC appears to be confused about the scope of BellSouth's objection as well as the information requested. BellSouth is not suggesting that revenue and line information has no bearing on this petition – to the contrary, BellSouth has provided all relevant data as exhibits to the testimony of its witnesses or in response to prior discovery requests. The specific information OPC has requested exceeds the scope of this proceeding and relates to revenue accounts (OPC has sought “total state jurisdictional revenue.”) and line information that is not limited to the basic local exchange service revenues and lines that are at issue here. This aspect of OPC's request is irrelevant – the unlimited nature of the information requested surpasses the focus of BellSouth's petition and this proceeding.

Moreover, OPC's request as framed refers to Caldwell Exhibit DDC-1, Appendix J. Appendix J does not refer to revenue accounts; rather, that exhibit lists 6000 accounts, which are expense accounts, 1000 accounts, which are asset accounts, and 2000 account, which are investment accounts. The request also seeks “total state jurisdictional revenue for “the study

period associated with Caldwell Exhibit DDC-1” and “the number of residential accounts and billable access lines” for the same timeframe. Exhibit DDC-1 is dated 2002-2004; thus, even if the broad revenue and line information sought by OPC was relevant (which it is not), there is no such information for a portion of 2003 and all of 2004.

To the extent that OPC seeks the number of bills sent to business and residential customers, it is a mystery to BellSouth how such information has any bearing whatsoever on the matters at issue in this proceeding. OPC has not even attempted to explain how such bills are relevant, and BellSouth maintains that there is no justification for such requests.

Interrogatories 45 and 46

Interrogatories 45 and 46 seek information concerning marketing costs and expenses relating to BellSouth’s Complete Choice plan and other deregulated services, which has no bearing on this proceeding. OPC claims that it requires this information because it needs to know “how the Company applies its economic theories to the recovery of its marketing costs among the various regulated and unregulated services it provides.” BellSouth believes that OPC’s concern will be fully addressed in its response to Staff’s Interrogatory No. 29 which will be served upon OPC; therefore, no further Commission action is necessary.

OPC’S THIRD MOTION TO COMPEL

Interrogatory 49

This interrogatory seeks “total regulated revenue subject to separations.” The issues in this proceeding do not include “total regulated revenue”; rather, the relevant revenue information relates to intrastate access and basic local service revenue. OPC’s request far exceeds the issues in this proceeding and should be rejected by this Commission.

Interrogatory 50

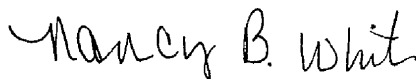
This interrogatory seeks "the number of bills sent to carriers." OPC rationalizes this request by claiming, "Bellsouth's transactions with connecting carriers are relevant"; BellSouth disagrees that providing the number of bills sent to carriers will provide any useful information in this proceeding. While BellSouth understands that OPC may disagree, OPC's purported justification for its request utterly fails to demonstrate any link between the information requested and the issues in this proceeding, and therefore, this request should be denied.

III. CONCLUSION

OPC has sought to compel responses to specific discovery questions that are limited by the scope of discoverable information within Section 364.164 (3) and that are completely irrelevant to the issues in this proceeding. BellSouth requests that the Commission deny OPC's Second and Third Motions to Compel.

Respectfully submitted this 30th day of September, 2003.

BELLSOUTH TELECOMMUNICATIONS, INC.



NANCY B. WHITE (KA)
JAMES MEZA III
c/o Nancy Sims
150 South Monroe Street, #400
Tallahassee, Florida 32301
(305) 347-5558



R. DOUGLAS LACKEY (KA)
MEREDITH E. MAYS
675 West Peachtree Street, #4300
Atlanta, Georgia 30375
(404) 335-0747
(404) 335-0750