

ORIGINAL

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January 6, 2004

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

Re: **Docket Nos. 981834-TP and 990321-TP (Generic Collocation)**

Dear Ms. Bayó:

Enclosed are an original and fifteen copies of BellSouth Telecommunications, Inc.'s Objections to AT&T's Notice of Taking Deposition Duces Tecum, 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,

J. Phillip Carver (JPC)

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

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**CERTIFICATE OF SERVICE**  
**Docket No. 981834-TP and 990321-TP**

I HEREBY CERTIFY that a true and correct copy of the foregoing was served via Hand Delivery (\*), First Class U.S. Mail and Electronic Mail this 6th day of January, 2004 to the following:

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**(+) Signed Protective Agreement**

**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

In re: Petition of Competitive	)	
Carriers for Commission Action	)	Docket No. 981834-TP
To Support Local Competition	)	
In BellSouth's Service Territory	)	
In re: Petition of ACI Corp. d/b/a	)	
Accelerated Connections, Inc. for	)	Docket No. 990321-TP
Generic Investigation into Terms and	)	
Conditions of Physical Collocation	)	
_____	)	Filed: January 6, 2004

**BELLSOUTH TELECOMMUNICATIONS, INC.'S OBJECTIONS  
TO AT&T'S NOTICE OF TAKING DEPOSITION DUCES TECUM**

BellSouth Telecommunications, Inc. ("BellSouth"), hereby files its Objections to AT&T's Notice of Taking Deposition Duces Tecum, and states the following:

1. On December 23, 2003, AT&T served upon BellSouth by mail a Notice of Taking Deposition Duces Tecum of one of its employees, Steve Martin. The deposition is scheduled for January 8, 2003 at 10:00 a.m. in Tallahassee. The notice was not received by BellSouth, however, until December 29, 2003.

2. AT&T's deposition Notice fundamentally violates the Florida Rules of Civil Procedure and the Rules of this Commission. The Florida Rules of Civil Procedure allow the deposition of a party (or party representative), and also allows for a request to produce documents at the deposition. This request, however, must comply with the rules that would normally apply to production requests. The rules also allow for the issuance of a Subpoena Duces Tecum when a party wishes to take the deposition of a person (or entity) that is not a party to the proceeding, and to obtain the production of documents in that person's possession. AT&T, however, has not followed either of these appropriate procedures. Instead, AT&T has noticed the deposition of an

individual employee of BellSouth who is not a party to this proceeding, but failed to obtain a subpoena for the appearance. AT&T has also directed the individual employee to bring with him to the deposition documents that belong to BellSouth.

3. Given the fact that Mr. Martin is not a party to this proceeding, and that AT&T has not obtained a subpoena, Mr. Martin is under no legal compunction whatsoever to appear in response to this Notice for Deposition<sup>1</sup>. Likewise, BellSouth has no legal duty to respond to this improper notice. Nevertheless, BellSouth will set forth herein the numerous improprieties in AT&T's Notice, and BellSouth's additional reasons for objection.

#### DOCUMENT REQUEST

4. Again, the Rules of Civil Procedure provide that, when a party requests an opposing party to produce documents at the time of a deposition, the production request must comply with the applicable requirements for such a request. Specifically, Rule 1.310(b)(5) states that the provisions of Rule 1.350 apply. One of the provisions of Rule 1.350 is that the party responding to the production request has 30 days to do so. In our case, of course, the time for responding to discovery has been shortened to 20 days by a Procedural Order entered by the Commission. However, through the subject Notice, AT&T has attempted, in effect, to force BellSouth to produce documents in even less time than the abbreviated response time allowed in this docket. Specifically, the production request was served by mail less than 20 days before the deposition. Moreover, by the time BellSouth actually received the mailed Notice, only ten days remained before the time of the deposition, i.e., half of the time allowed to

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<sup>1</sup> If AT&T had attempted the subject discovery by the use of a subpoena, BellSouth would have filed a Motion to Quash rather than the instant objections.

respond to discovery requests under the Procedural Order in this docket, and one third of the time that is typically allowed under the Rules of Civil Procedure.

5. Moreover, AT&T's document request is also objectionable because it is an attempt to circumvent the rules of discovery in order to obtain BellSouth's documents from a BellSouth employee. Obviously, mechanisms exist for AT&T and other parties to obtain discovery from BellSouth. In fact, AT&T has made full use of these mechanisms, in that it has propounded upon BellSouth in this proceeding 15 different sets of discovery (eight production requests and seven sets of interrogatories). If, for some reason, AT&T found a need, for example, to depose a BellSouth records custodian, there are procedures in the Rules of Civil Procedure to do so. Instead, AT&T has noticed a deposition of a BellSouth employee, and directed him to appear at the deposition with BellSouth documents, in other words, documents that belong to BellSouth, not to the employee. To the extent that this employee has access to or possession of these documents, he has this access strictly under the terms of his employment with BellSouth, and these documents remain the property of BellSouth. Therefore, even if AT&T had some legitimate reason to demand the production of these documents, its request should be made to BellSouth. It is improper for AT&T to attempt an "end run" around the rules that apply to production requests by directing a BellSouth employee to, in effect, misappropriate documents belonging to his employer in order to turn them over to AT&T at a deposition.

6. Finally, even if AT&T had made this document request in proper form, it is still objectionable, and should not be allowed because it is overbroad, burdensome and

repetitive. Specifically, AT&T's Notice demands that Mr. Martin appear at the deposition with the following:

All documents considered or used in the calculation of unit cost investments for the BellSouth collocation cost model.

(Notice, p. 2).

In a few words, AT&T has managed to encompass many, if not most, of the documents that support BellSouth's cost study, many of which have already been produced in this proceeding.

7. When BellSouth filed its cost study as an attachment to the testimony of its witness, Bernard Shell. BellSouth also provided (on compact disc) many of the supporting calculations and back-up information that went into developing the cost study. Thus, much of the information that is encompassed within AT&T's document request has already been provided along with the testimony of Mr. Shell. Further, as stated above, AT&T has also propounded upon BellSouth a massive amount of discovery. The responses to much of this discovery are also encompassed by AT&T's latest request. AT&T's request for documents would require the production of a potentially massive amount of information, most or all of which has already been produced. Thus, even if AT&T had made its request in a procedurally proper way, the request remains objectionable.

#### NOTICE OF DEPOSITION

8. Prior to scheduling the subject deposition, AT&T made no effort to contact BellSouth, to give BellSouth any indication of what information it hopes to obtain through this deposition, to inquire as to the availability of the deponent (or counsel) at the time the deposition is scheduled, or to make any effort to conduct discovery in a



cooperative manner. Instead, AT&T simply set the deposition of a BellSouth employee who is not a witness in the proceeding, and who had not been listed as the person providing BellSouth's response to any of the voluminous discovery propounded by AT&T. Thus, BellSouth really has no idea why AT&T wishes to depose this witness. BellSouth can only assume that AT&T's intentions are to ask questions that relate to the subject of the document request. In other words, that AT&T wishes to inquire as to how unit cost investments in the BellSouth collocation cost model were calculated. If this is the case, then the most knowledgeable BellSouth employee, i.e., the one best able to supply this information, is Bernard Shell.

9. Mr. Shell is a witness in this proceeding, he has filed testimony, and the Staff has stated an intention to take the deposition of Mr. Shell. To the extent AT&T has questions about this particular cost calculation issue, Mr. Shell should be able to answer these questions. If Mr. Shell is not able to answer these questions, then AT&T could certainly use appropriate discovery (including depositions) to otherwise obtain the information from BellSouth. BellSouth objects, however, to AT&T's simply ignoring the deposition that has been scheduled, and randomly selecting a BellSouth employee to depose for no apparent reason.

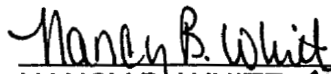
10. Moreover, even if AT&T had a basis to depose Mr. Martin, it has again violated the procedural requirements that apply by attempting to force Mr. Martin to appear in Tallahassee. As stated above, since Mr. Martin is not a party to this case, the appropriate vehicle to obtain his deposition would be by subpoena. Rule 1.410(e)(2) clearly provides that, pursuant to such a subpoena, "a person may be required to attend an examination only in the county wherein the person resides or is employed or


transacts business in person or at such other convenient place as may be fixed by an order of court." AT&T has simply ignored this requirement, and noticed Mr. Martin's deposition to take place in Tallahassee, even though Mr. Martin lives and works in the greater Atlanta area.

11. To summarize, AT&T has issued a document request that is procedurally improper, objectionably burdensome, and untimely, and has demanded the apparently pointless deposition of a BellSouth employee at a location that is not allowable under the Rules of Civil Procedure. For all of these reasons, BellSouth objects to AT&T's Notice of Deposition Duces Tecum.

Respectfully submitted this 6th day of January, 2004.

BELLSOUTH TELECOMMUNICATIONS, INC.

  
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