

ORIGINAL

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COMMISSION  
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January 23, 2004

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.: 040026-TP**  
**Complaint and Petition by CAT Communications International, Inc. against  
BellSouth Telecommunications, Inc. for alleged unlawful emergency  
telephone service charge and telecommunications relay service charges**

Dear Ms. Bayó:

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

RECEIVED & FILED

*Jh*  
FPSC-BUREAU OF RECORDS

Sincerely,

*Nancy B. White*  
Nancy B. White (CB)

Enclosures

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SEC \_\_\_\_\_  
OTH \_\_\_\_\_  
cc: All Parties of Record  
Marshall M. Criser III  
R. Douglas Lackey

DOCUMENT NUMBER - DATE

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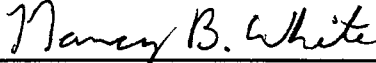
FPSC-COMMISSION CLERK

**CERTIFICATE OF SERVICE  
Docket No. 040026-TP**

I HEREBY CERTIFY that a true and correct copy of the foregoing was served via  
Federal Express this 23rd day of January, 2004 to the following:

Beth Keating  
Staff Counsel  
Florida Public Service  
Commission  
Division of Legal Services  
2540 Shumard Oak Boulevard  
Tallahassee, FL 32399-0850

Stephen Athanson  
General Counsel  
CAT Communications Int'l, Inc.  
P.O. Box 11845  
Roanoke, VA 24022-1845

  
\_\_\_\_\_  
Nancy B. White c3

**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

In re: Complaint and Petition by CAT Communications) Docket No. 040026-TP  
International, Inc. against BellSouth )  
Telecommunications, Inc. for alleged unlawful )  
emergency telephone service charge and )  
telecommunications relay service charges ) Filed: January 23, 2004  
\_\_\_\_\_)

**BellSouth Telecommunications, Inc.'s Motion to Dismiss Complaint**

BellSouth Telecommunications, Inc. ("BellSouth") respectfully submits this Motion to Dismiss the Complaint filed by CAT Communications International, Inc. ("CAT") on the grounds that the Complaint fails to state a claim for which the Florida Public Service Commission ("Commission") may grant relief.

As acknowledged in CAT's Complaint, CAT currently purchases and resells BellSouth services pursuant to a resale agreement entered into between CAT and BellSouth on November 6, 2002. The agreement was approved by the Commission by operation of Section 252(e)(4) of the Telecommunications Act of 1996 on March 10, 2003.

CAT complains that BellSouth is inappropriately collecting "911" fees and telecommunications access system surcharges from CAT. Specifically, CAT states that it collects these charges from its end users, and therefore, should be allowed to maintain the associated administrative fees allowed by Section 365.171, Florida Statutes and Section 427.704, Florida Statutes. CAT requests that the Commission direct BellSouth to cease and desist from charging or collecting "911" and other surcharges from CAT.

CAT's Complaint should be dismissed for failure to state a claim for which relief can be granted. CAT neglected to point out to the Commission Section 1.1.5 of

Attachment 7 of the interconnection agreement between BellSouth and CAT which states in part that:

BellSouth will also bill CCI and CCI will be responsible for and remit to BellSouth, all charges applicable to resold services including but not limited to 911 and E911 charges, End Users common line charges, federal subscriber line charges, telecommunications relay charges (TRS), and franchise fees.

The BellSouth activity complained of by CAT is, therefore, exactly what CAT and BellSouth agreed to do in the Commission approved interconnection agreement.

Moreover, CAT's apparent contention that BellSouth's actions somehow violate Florida Statutes also has no foundation. Pursuant to the interconnection agreement, BellSouth collects the "911" fee from CAT, deducts the costs of administration, and remits the funds to the counties pursuant to Section 365.171, Florida Statutes. It is apparent that CAT passes the "911" fee on to its end users. Nothing in Section 365.171, Florida Statutes prohibits this process and pursuant to the interconnection agreement between BellSouth and CAT, the process works the way it was intended.

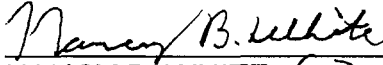
Likewise, Section 427.704, Florida Statutes requires the collection of a monthly surcharge from local subscribers in order to fund the statewide telecommunications access system. Pursuant to Section 1.1.5. of Attachment 7 of the interconnection agreement between BellSouth and CAT, BellSouth collects the surcharge from CAT, deducts the costs of administration and remits the funds to the appropriate party. Once again, CAT passes the surcharge on to its end users and the process works the way it was intended.


A motion to dismiss raises as a question of law whether the petition alleges sufficient facts to state a cause of action. Varnes v. Dawkins, 624 So. 2d 349, 350 (Fla. 1<sup>st</sup> DCA 1993). In disposing of a motion to dismiss, the Commission must assume all of the allegations of the petition to be true and determine whether the petition states a cause of action upon which relief may be granted. Heekin v. Florida Power & Light Co., Order No. PSC-99-10544-FOF-EI, 1999 WL 521480 \*2 (citing to Varnes, 624 So. 2d at 350). In determining the sufficiency of a complaint, the Commission should confine its consideration to the complaint and the grounds asserted in the motion to dismiss. See Flye v. Jeffords, 106 So. 2d 229 (Fla. 1<sup>st</sup> DCA 1958). Applying this standard to the case at hand mandates the dismissal of CAT's Complaint.

WHEREFORE, BellSouth respectfully requests that the Commission grant BellSouth's Motion to Dismiss.

Respectfully submitted this 23rd day of January, 2004.

BELLSOUTH TELECOMMUNICATIONS, INC.

  
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