

ORIGINAL

Legal Department

Nancy B. White
General Counsel - Florida

BellSouth Telecommunications, Inc.
150 South Monroe Street
Room 400
Tallahassee, Florida 32301
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February 10, 2004

RECEIVED-FPSC
04 FEB 10 PM 4:46
COMMISSION
CLERK

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. 030851-TP

Dear Ms. Bayó:

Enclosed are an original and fifteen copies of BellSouth Telecommunications, Inc.'s Motion for Protective Order, in the above referenced 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,

Nancy B White
Nancy B. White (PH)

cc: All Parties of Record
Marshall M. Criser III
R. Douglas Lackey
526589

AUS _____
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DOCUMENT NUMBER-DATE

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FPSC-COMMISSION CLERK

CERTIFICATE OF SERVICE
Docket No. 030851-TP

I HEREBY CERTIFY that a true and correct copy of the foregoing was served via Electronic Mail, Hand Delivery* and FedEx® this 10th day of February 2004 to the following:

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Beck.Charles@leg.state.fl.us


Nancy B. White (RK)

(+)signed Protective Agreement
(*) via Hand Delivery
(⊗) via FedEx

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Implementation of requirements arising)
from Federal Communications Commission) Docket No. 030851-TP
triennial UNE review: Local Circuit Switching)
for Mass Market Customers)
_____) Filed: February 10, 2004

**BELLSOUTH TELECOMMUNICATIONS, INC.'S
MOTION FOR PROTECTIVE ORDER**

BellSouth Telecommunications, Inc. ("BellSouth") submits this Motion for Protective Order. In support of this Motion, BellSouth states as follows:

1. On Thursday, January 29, 2004, AT&T contacted BellSouth seeking set dates and times for conducting the deposition of witness Debra J. Aron. Because counsel for Commission staff had previously indicated that it also desired to depose Dr. Aron, BellSouth requested that AT&T conduct its deposition immediately following the staff deposition. (See Exhibit 1).

2. Counsel for BellSouth and AT&T communicated about this matter, eventually agreeing that AT&T would depose Dr. Aron following staff. In relevant part, on Monday, February 2, 2004, counsel for AT&T emailed counsel for BellSouth stating that "[l]ooks like we can tack onto staff's depositions of Ainsworth, Pate, Tipton Aron, and Stegeman." (emphasis supplied). On Wednesday, February 4, 2004, counsel for AT&T reiterated to counsel for BellSouth that "Feb. 10, we will depose Aron and Tipton after staff" (emphasis supplied). (See Exhibit 2).

3. On Tuesday, February 10, 2004, counsel for AT&T called and emailed counsel for BellSouth. Counsel for AT&T advised that it sent an email to the incorrect address on Monday, February 9, 2004, which email advised AT&T was not going to be able to tack on to the Aron deposition after staff. Counsel for BellSouth did not receive

this email until Tuesday, February 10, 2004, at 10:28 a.m., after Dr. Aron's deposition had already begun. BellSouth responded to AT&T, objecting to AT&T's position. (See Exhibit 3).

4. AT&T thereafter emailed BellSouth, attaching a Notice of Deposition to schedule Dr. Aron on Tuesday, February 17, 2004 at 9:30 a.m. (See Exhibit 4).

5. Rule 1.280(c) of the Florida Rules of Civil Procedure provides that a protective order can be issued to "protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense that justice requires" ¹ Requiring Dr. Aron to submit to a second deposition, the week before the hearing, after she was ready, willing, and able to answer any of AT&T's questions on Tuesday, February 10, 2004, would be unduly burdensome, annoying, and oppressive.

6. On Monday, February 9, 2004, during the prehearing conference, counsel for AT&T were present when staff discussed the deposition schedule, including that Dr. Aron's deposition would begin at 9:30 a.m. No representative from AT&T voiced any problem, concern or objection to BellSouth about Dr. Aron's deposition at that time. Moreover, AT&T did not personally advise BellSouth of any concern with Dr. Aron's deposition. On Tuesday, February 10, 2004, counsel for AT&T attended Dr. Aron's deposition. Counsel for AT&T did not raise any problem, concern or objection during the deposition.

7. BellSouth anticipates that AT&T will respond to this motion by stating that the parties agreed that depositions could be noticed in the state triennial review matters and that any given witness could be deposed one time. AT&T will also likely state that

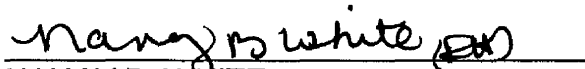
¹ Rule 28.106.206 of the Florida Administrative Code incorporates Rule 1.280 through 1.400 of the Florida Rules of Civil Procedure.

the parties communicated concerning advance notice of one week as reasonable notice in these proceedings. Neither argument negates the need for a protective order in the situation here. AT&T has chosen, for reasons of its own, not to ask questions of Dr. Aron following staff's deposition. AT&T now seeks to require Dr. Aron to participate in a second deposition, just one week after staff's deposition, which is also the week before the hearing in this matter. It would be fundamentally unfair to allow AT&T to do so. BellSouth notes also that the BellSouth attorney scheduled to defend Dr. Aron's deposition, Andrew D. Shore, has a conflict with February 17, 2004 and will be participating in other depositions on that date. Mr. Shore was present at Dr. Aron's deposition that took place today.

WHEREFORE, BellSouth respectfully requests that the Commission enter the necessary protective order that prevents Dr. Aron from submitting to an unnecessary, unduly burdensome, and harassing deposition.

Respectfully submitted this 10th day of February, 2004.

BELLSOUTH TELECOMMUNICATIONS, INC.



NANCY B. WHITE
JAMES MEZA III
c/o Nancy Sims
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Tallahassee, FL 32301
(305) 347-5558



R. DOUGLAS LACKEY
ANDREW D. SHORE
MEREDITH E. MAYS
Suite 4300
675 W. Peachtree St., NE
Atlanta, GA 30375
(404) 335-0750

030851-TP
Exhibit No. 1

Mays, Meredith

From: Mays, Meredith
Sent: Thursday, January 29, 2004 4:18 PM
To: 'Tate, Virginia C - LGCRP'
Cc: Henry, Michael J - LGCRP; Sapper, Lisa A - LGCRP
Subject: RE: Scheduling Depositions--FL

Virginia,

It would our preference to have AT&T depose the witnesses that are being deposed by FL staff immediately following. Is there some reason that AT&T cannot do so?

In the meantime, I will start checking schedules and get back to you.

m.

-----Original Message-----

From: Tate, Virginia C - LGCRP [mailto:vctate@att.com]
Sent: Thursday, January 29, 2004 3:29 PM
To: Mays, Meredith
Cc: Henry, Michael J - LGCRP; Sapper, Lisa A - LGCRP
Subject: Scheduling Depositions--FL

Meredith,

We would like to notice some depositions but wanted to work with you first to get agreeable dates and times. We need to depose Aron, Heartley, Stegeman, Tipton, Ruscilli and Gaynor (PWC). We cannot do any depos. on Feb. 6th, and cannot do Aron, Heartley, Gaynor or Stegeman on Feb. 9 or 10. We can do Tipton or Ruscilli on Feb. 9 or 10. We possibly may need to depose Pleatsikas, but I'll find out and get back to you.

Please let me know some available dates and times. If there are any of our witnesses you want to depose, let me know and we can work on scheduling. Thanks. Virginia

<<030851 Aron Depo Notice.doc>> <<030851 Heartley Depo Notice.doc>> <<030851 Stegeman Depo Notice.doc>> <<030851 Tipton Depo Notice.doc>> <<030851 Gaynor Depo Notice.doc>> <<030851 Ruscilli Depo Notice.doc>>

Virginia Tate
Senior Attorney
AT&T Southern Region
Law and Government Affairs
Phone - (404) 810-4922
Fax - (404) 810-5901

030851-TP
Exhibit No. 2

Mays, Meredith

From: Mays, Meredith
Sent: Monday, February 02, 2004 2:56 PM
To: 'Tate, Virginia C - LGCRP'
Cc: Sapper, Lisa A - LGCRP; Henry, Michael J - LGCRP
Subject: RE: Depositions

Virginia,

I spoke to staff, and they anticipate rolling start times. In other words, if you have questions for Pate, they will delay everyone after Pate until you are done. With that understanding, it would seem that could address McElroy.

As to Stegeman, we are willing to start your deposition prior to staff's and then end with staff's so that we can accomplish that deposition in one day.

We are looking at times for Gaynor, Ruscilli, and Heartley. We may be able to fit Ruscilli or Heartley in on the 9th or 10th. I'm not sure about Gaynor. How are the 9th and 10th for you? If those dates aren't good, what are your proposed dates?

I understand your witnesses are being deposed on the 14th (a Saturday). We anticipate having questions for your witnesses and we would like to make sure we start early (8:30 instead of 9 or 9:30). Since that is a Saturday, it would be better if we could have established start times instead of rolling start times if staff is ok with that, and so we can manage everyone's schedule. How does that sound?

I will also check with Shelley for some times. What dates are you proposing?

Meredith

-----Original Message-----

From: Tate, Virginia C - LGCRP [mailto:vctate@att.com]
Sent: Monday, February 02, 2004 2:44 PM
To: Mays, Meredith
Cc: Sapper, Lisa A - LGCRP; Henry, Michael J - LGCRP
Subject: Depositions

Meredith,

Looks like we can tack onto staff's depositions of Ainsworth, Pate, Tipton, Aron and Stegeman. We may run into a time problem with Stegeman since Staff plans on needing four hours though.

We can't tack onto staff for McElroy (also needed now) because his follows too closely behind Pate's. Also need to separately schedule PWC-Gaynor, Ruscilli, and Heartley as previously discussed.

Also need to schedule Padgett for the loop and transport docket. Many thanks. Virginia

Virginia Tate
Senior Attorney
AT&T Southern Region
Law and Government Affairs
Phone - (404) 810-4922
Fax - (404) 810-5901

Mays, Meredith

From: Mays, Meredith
Sent: Wednesday, February 04, 2004 11:24 AM
To: 'Tate, Virginia C - LGCRP'
Cc: 'Sapper, Lisa A - LGCRP'; 'Henry, Michael J - LGCRP'
Subject: RE: Depositions

Also, we still need times for the four AT&T witnesses staff wants to depose as we want to depose them also.

-----Original Message-----

From: Mays, Meredith
Sent: Wednesday, February 04, 2004 11:12 AM
To: 'Tate, Virginia C - LGCRP'
Cc: Sapper, Lisa A - LGCRP; Henry, Michael J - LGCRP
Subject: RE: Depositions

Let's the timing for Aron, Tipton, Stegeman on today's call with staff at 3 p.m. and finalize then. We do need to finalize travel with Stegeman, I am thinking though that we may be able to tag on with their court reporter. We need to depose Bursh also - please give us a time for her. All Atlanta depositions to take place at our offices here at W. Peachtree -- you will need to check in with security and we'll get you. You will need to arrange for the court reporter for those depositions.

-----Original Message-----

From: Tate, Virginia C - LGCRP [mailto:vtate@att.com]
Sent: Wednesday, February 04, 2004 11:07 AM
To: Mays, Meredith
Cc: Sapper, Lisa A - LGCRP; Henry, Michael J - LGCRP
Subject: RE: Depositions

Meredith,

Looks like we're on to depose Ainsworth, Pate, and McElroy after staff on Feb. 5 & 6.

Feb. 6 is good for Ruscilli's deposition here in Atlanta. I think you said at about 3:30. Let us know where.

Feb. 9 at 9:00 is good for Heartley's depo. here in Atlanta. Let us know where.

Feb. 10, we will depose Aron and Tipton after staff, but now there is no time assigned for either depo. in staff's latest schedule.

Feb. 16, we will depose Stegeman before or after staff. Again there is no time assigned in staff's latest schedule.

Feb. 19 at 9:00, we will depose PWC-Gaynor. Need to know where.

For Padgett in the L/T docket, we'll wait to see what staff schedules.

I don't see a need to notice the depositions where we are tacking onto staff as long as we have the agreement that if staff cancels, we still get to depose. Let me know if you disagree. For those that staff is not deposing, we will file a notice. I think that covers it, right? Thanks for your help. Virginia

> -----Original Message-----

> **From:** Tate, Virginia C - LGCRP
> **Sent:** Monday, February 02, 2004 2:44 PM
> **To:** 'Meredith.Mays@BellSouth.com'

> Cc: Sapper, Lisa A - LGCRP; Henry, Michael J - LGCRP
> Subject: Depositions
>
> Meredith,
>
> Looks like we can tack onto staff's depositions of Ainsworth, Pate, Tipton, Aron and
> Stegeman. We may run into a time problem with Stegeman since Staff plans on needing four
> hours though.
>
> We can't tack onto staff for McElroy (also needed now) because his follows too closely
> behind Pate's. Also need to separately schedule PWC-Gaynor, Ruscilli, and Heartley as
> previously discussed.
>
> Also need to schedule Padgett for the loop and transport docket. Many thanks. Virginia
>
> Virginia Tate
> Senior Attorney
> AT&T Southern Region
> Law and Government Affairs
> Phone - (404) 810-4922
> Fax - (404) 810-5901
>
>

030851-TP
Exhibit No. 3

Mays, Meredith

From: Mays, Meredith
Sent: Tuesday, February 10, 2004 10:36 AM
To: 'Tate, Virginia C - LGCRP'
Cc: Sapper, Lisa A - LGCRP; Henry, Michael J - LGCRP
Subject: RE: Aron Depo.

Virginia,

This is a problem. Aron is going on now, and started early. There should be ample time for you to tack on at the end.

-----Original Message-----

From: Tate, Virginia C - LGCRP [mailto:vctate@att.com]
Sent: Tuesday, February 10, 2004 10:28 AM
To: Mays, Meredith
Cc: Sapper, Lisa A - LGCRP; Henry, Michael J - LGCRP
Subject: FW: Aron Depo.

Meredith,

I sent this to the wrong address yesterday by accident. Need to set up Aron separately. Thanks. Virginia

> -----Original Message-----

> **From:** Tate, Virginia C - LGCRP
> **Sent:** Monday, February 09, 2004 12:22 PM
> **To:** 'meredith.mayes@bellsouth.com'
> **Cc:** Sapper, Lisa A - LGCRP; Henry, Michael J - LGCRP
> **Subject:** Aron Depo.

>

> Meredith,

>

> We aren't going to be able to tack onto the Aron deposition taken by staff. We need to separately notice that one, but don't need to do in person--can do it telephonically. How is Friday at 10 a.m.? Virginia

>

> Virginia Tate
> Senior Attorney
> AT&T Southern Region
> Law and Government Affairs
> Phone - (404) 810-4922
> Fax - (404) 810-5901

>

>

Mays, Meredith

From: Mays, Meredith
Sent: Tuesday, February 10, 2004 12:28 PM
To: 'Tate, Virginia C - LGCRP'
Cc: Sapper, Lisa A - LGCRP; Henry, Michael J - LGCRP
Subject: RE: Aron Depo.

This remains a problem and we are not in agreement.

-----Original Message-----

From: Tate, Virginia C - LGCRP [mailto:vctate@att.com]
Sent: Tuesday, February 10, 2004 10:44 AM
To: Mays, Meredith
Cc: Sapper, Lisa A - LGCRP; Henry, Michael J - LGCRP
Subject: RE: Aron Depo.

Can't do it. Need to separately notice. We can file a notice setting a time or we can agree on one. Virginia

-----Original Message-----

From: Mays, Meredith [mailto:Meredith.Mays@BellSouth.COM]
Sent: Tuesday, February 10, 2004 10:36 AM
To: Tate, Virginia C - LGCRP
Cc: Sapper, Lisa A - LGCRP; Henry, Michael J - LGCRP
Subject: RE: Aron Depo.

Virginia,

This is a problem. Aron is going on now, and started early. There should be ample time for you to tack on at the end.

-----Original Message-----

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Sent: Tuesday, February 10, 2004 10:28 AM
To: Mays, Meredith
Cc: Sapper, Lisa A - LGCRP; Henry, Michael J - LGCRP
Subject: FW: Aron Depo.

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> Sent: Monday, February 09, 2004 12:22 PM
> To: 'meredith.mayes@bellsouth.com'
> Cc: Sapper, Lisa A - LGCRP; Henry, Michael J - LGCRP
> Subject: Aron Depo.

>

> Meredith,

>

> We aren't going to be able to tack onto the Aron deposition taken by staff. We need to separately notice that one, but don't need to do in person--can do it telephonically. How is Friday at 10 a.m.? Virginia

>

> Virginia Tate
> Senior Attorney
> AT&T Southern Region
> Law and Government Affairs

> Phone - (404) 810-4922
> Fax - (404) 810-5901
>
>

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030851-TP
Exhibit No. 4

Mays, Meredith

From: Tate, Virginia C - LGCRP [vtate@att.com]
Sent: Tuesday, February 10, 2004 2:23 PM
To: Mays, Meredith
Cc: Sapper, Lisa A - LGCRP; Henry, Michael J - LGCRP
Subject: Aron Depo.



030851 Aron
Depo Notice.doc

Meredith,

We're filing this notice today. We're flexible though on dates and times as long as it doesn't interfere with the Gaynor depo. Thanks. Virginia

<<030851 Aron Depo Notice.doc>>

Virginia Tate
Senior Attorney
AT&T Southern Region
Law and Government Affairs
Phone - (404) 810-4922
Fax - (404) 810-5901

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Implementation of requirements arising from Federal) Docket No. 030851-TP
Communications Commission triennial UNE Review: Local)
Circuit Switching for Mass Market Customers) Filed: February 10, 2004
_____)

NOTICE OF DEPOSITION

TO: Mr. Douglas Lackey
BellSouth
675 West Peachtree Street
Suite 4300
Atlanta, GA 30375

Ms. Meredith Mays
BellSouth
675 West Peachtree Street
Atlanta, GA 30375

NOTICE IS HEREBY GIVEN that AT&T Communications of the Southern States, LLC
("AT&T") will take the deposition of Dr. Debra Aron at the location and time indicated below:

9:30 a.m.,
Tuesday, February 17, 2004
BellSouth offices
675 West Peachtree Street
Atlanta, GA 30309

Please have available all work papers or other materials used by Dr. Aron in the preparation of any testimony filed in this docket or used by Dr. Aron in the preparation of responses to BellSouth's discovery responses in this docket.

This deposition is being taken for purposes of discovery, for use at trial, or for any other purposes allowed under the Florida Rules of Civil Procedure and the Rules of the Florida Public Service Commission.

The following call-in number is provided for those parties who will be participating by telephone -- TBA.

Please govern yourselves accordingly.

Tracy W. Hatch
AT&T
101 N. Monroe Street, Suite 700
Tallahassee, FL 32301
(850) 425-6360

Attorney for AT&T Communications of
the Southern States, LLC