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March 12, 2004

Ms. Blanca Bayo
Clerk
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

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COMMISSION
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Re: Docket No. 031038-TL

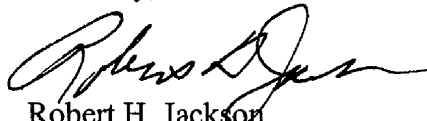
Dear Ms. Bayo:

Enclosed for filing with the Commission are an original and 15 copies of Americatel Corporation's Reply to BellSouth's Response in the above docket.

Acknowledgement and receipt of this letter are requested. A duplicate copy of this letter is being provided for this purpose.

If you have any questions about this contract, please contact the undersigned.

Sincerely,



Robert H. Jackson
Counsel for Americatel Corporation

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BEFORE THE PUBLIC SERVICE COMMISSION

In re: Petition for approval to revise
customer contact protocol by BellSouth
Telecommunications, Inc.

DOCKET NO. 031038-TL
ORDER NO. PSC-04-0115-PAA-TL
ISSUED: January 30, 2004

AMERICATEL CORPORATION'S REPLY TO BELLSOUTH

Americatel Corporation ("Americatel"), through counsel, respectfully submits its Reply to BellSouth Telecommunications, Inc.'s ("BellSouth") Response to Americatel's Petition for the Initiation of Proceedings on March 8, 2004.

1. In its Petition, Americatel noted that several of the factors upon which the Commission made its initial determination to grant further marketing freedom to BellSouth were not necessarily correct or were inconsistent with other information that BellSouth had previously filed with government regulators.¹ Americatel also established that BellSouth's regulatory and legal status was different from that of Verizon Florida, such that the Commission should maintain marketing restrictions on BellSouth, even though the Commission previously granted relief to Verizon Florida.² Finally, Americatel argued that certain irregularities in BellSouth's compliance with the requirements of Section 272 of the Communications Act of 1934, as amended ("34 Act"),³ that have been identified by the Federal Communications Commission ("FCC") in its audit of BellSouth's provision of interLATA services justified the PSC's

¹ Americatel's Petition, at 3-5.

² *Id.*, at 6.

³ 47 U.S.C. §272.

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withholding relief for BellSouth in this proceeding, pending completion of the FCC's audit investigation.⁴

2. BellSouth, in its Response, makes several arguments: 1) Americatele's objection was untimely because the PSC already gave tentative approval to BellSouth's request for marketing relief before Americatele filed its Petition; 2) the factual arguments raised by Americatele to contradict or demonstrate the inconsistencies among the facts cited by BellSouth and replied upon by the Commission in its decision to grant tentative relief were immaterial to that conclusion; 3) Verizon Florida and BellSouth are similarly situated; and 4) the FCC's audit of BellSouth's compliance with the requirements of Section 272 of the '34 Act relates to interLATA services, rather than to intraLATA services, and is, therefore, immaterial to the instant proceeding.⁵

3. Americatele replies herein to those arguments.

Timeliness

4. Under Florida law, Americatele's Petition was timely filed. The Commission's *Order* that granted provisional relief to BellSouth specifically stated that:

[T]he provisions of this Order, issued as proposed agency action, shall become final and effective upon the issuance of a Consummating Order unless an appropriate petition, in the form provided by Rule 28-106.201, Florida Administrative Code, is received by the Director, Division of the Commission Clerk and Administrative Services, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on the

⁴ Americatele's Petition, at 7-8.

⁵ BellSouth's Response, at 2-4.

date set forth in the “Notice of Further Proceedings” attached hereto.⁶

The deadline for any person to challenge the *Order* and to request a hearing was February 20, 2004.⁷ Americatel filed its Petition on February 18, 2004, two days before the PSC’s tentative decision would have become final. Accordingly, Americatel’s’ Petition was timely filed, and BellSouth’s argument to the contrary should be dismissed.

The Real Issue is the Growing Domination of BellSouth and the Risk that All Markets Will be Re-Monopolized

5. BellSouth suggests that Americatel is confused because it argued that BellSouth’s sale of bundled services and its refusal to sell DSL service to customers who elect to obtain voice services from a competitor is irrelevant to its desire to recommend its own intraLATA toll services to consumers.⁸ Similarly, BellSouth argues that the FCC’s Section 272 Compliance Audit Report that raises questions, *inter alia*, about BellSouth’s marketing practices are immaterial since those questions concern interLATA services, rather than intraLATA services, which are at issue in this proceeding before the PSC.⁹

6. Americatel strongly disagrees. The real issue is whether BellSouth should be given another tool (recommending its own intraLATA services), which when combined with its vast size and local market power and apparent propensity to violate the FCC’s marketing restrictions imposed on BellSouth, could be used to further BellSouth’s domination of the

⁶ *Id.*, at 4. Emphasis added.

⁷ *Id.*, at 5.

⁸ BellSouth’s Response, at 3.

⁹ *Id.*, at 4.

Florida telecommunications market in a manner that will quite likely result in that market's re-monopolization.

7. The plain and simple facts are that the local service market is insufficiently competitive to restrain BellSouth's pricing power and that it is using its considerable customer base to shut out other service providers that cannot compete with BellSouth's bundled service packages.

8. The data clearly demonstrate that the local service market, despite any number of alternative suppliers, simply is not sufficiently competitive for consumer prices to fall. For example, the federal Bureau of Labor Statistics determined that, from 1997-2002, the consumer price index ("CPI") for local service rose by 18.5%, while the CPIs for long distance service and cellular service fell by 15.1% and 32.6% respectively.¹⁰

9. While some of those local service price increases stem from the shift of costs from long distance and exchange access services to local service, the Bell Operating Companies ("BOCs"), including BellSouth, have regularly been increasing their prices for local service features and functions, such as Custom Calling services, e.g., Call Waiting, Speed Dialing and Call Forwarding, which have little or no incremental cost to provide. For example, Americatele previously demonstrated to the FCC that, since 2001, BellSouth raised its rates for Custom Calling features at least 11 times in its operating territory.¹¹ Moreover, BellSouth raised prices

¹⁰ *Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993 and Annual Report and Analysis of Competitive Market Conditions With Respect to Commercial Mobile Services*, Eighth Report, 18 FCC Rcd 14783, 14899, at Table 8 (2003).

¹¹ Letter on behalf of Americatele, from Robert H. Jackson, Reed Smith LLP, to Steve Morris, FCC, dated February 27, 2004, filed as an *ex parte* statement in FCC Docket No. WC 03-251, copy attached hereto as Exhibit "A."

for a variety of other local service features and ancillary services in Florida.¹² These price increases are inconsistent with a competitive market and are strong indicia that BellSouth retains considerable pricing power in the local market.¹³ The impact of that economic power should be examined by the Commission before its grants BellSouth more marketing freedom.

10. With the BOCs' reentry into the interLATA market and their subsequent bundling of local, long distance, wireless and information services, the regulatory distinctions (such as intraLATA and interLATA services) emphasized by BellSouth in its Response are quickly becoming irrelevant in the market. Consumers and carriers alike are not distinguishing between state and interstate calls or between local and long distance calls to the extent that they have previously. Rather, both carriers and consumers more and more simply view a call as a call as a call, regardless of its regulatory jurisdiction. Hence, concerns raised by FCC auditors with respect to BellSouth's compliance with federal rules related to the marketing of interLATA services are relevant to BellSouth's marketing of intrastate services. To the extent that BellSouth's Customer Services Representatives ("CSRs") may have improperly steered customers and potential customers to BellSouth's interLATA affiliate as suggested by the FCC's auditors, it is reasonable for competitors to fear that BellSouth's CSRs may likewise improperly

¹² *Id.*

¹³ Likewise, BellSouth's persistent refusal to provide DSL service to any customer who obtains voice services from another provider also demonstrates that BellSouth has not faced any strong competitive pressures. On the other hand, Qwest Communications, which has struggled financially from the fraudulent actions of its prior management, apparently feels less secure against the threat of competition. Qwest is now providing DSL to those customers who purchase voice services from other carriers. Qwest Communications Press Release, "Qwest First Major Telecom Company To Offer Stand-Alone DSL Service – Customers Can Now Purchase DSL without Accompanying Local Voice Phone Service," February 25, 2003 (available at

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recommend BellSouth's interLATA services in Florida or fail to remind customers that they can chose other carriers for their intraLATA calling needs. Therefore, FCC's Section 272 Compliance Audit for BellSouth is relevant to this proceeding.

11. Moreover, BellSouth's advantages over smaller competitors have greatly increased since Americatel filed its Petition in this proceeding. On March 2, 2004, the Court of Appeals for the District of Columbia Circuit vacated a significant portion of the FCC's unbundling rules, such that it is possible that competing carriers will no longer have access to unbundled network elements ("UNEs") at discounted rates.¹⁴ Indeed, the very next day, SBC Communications ("SBC") announced that it was ready to negotiate market rate prices (*i.e.*, substantially higher) for UNEs.¹⁵ BellSouth, an extremely well managed company, is not likely to be far behind in raising UNE rates, especially as it now has a need to raise cash to pay for its 40% share of the \$41 billion for Cingular Wireless' purchase of AT&T Wireless.¹⁶

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http://www.qwest.com/about/media/pressroom/1,1720,1454_archive,00.html (visited March 9, 2004)).

¹⁴ *United States Telecom Ass'n v. FCC*, No. 00-1012 slip op. (D.C. Cir. March 2, 2004).

¹⁵ SBC Press Release, "SBC Opens Dialog with Competitors to Negotiate UNE-P Wholesale Rates," March 3, 2004 (available at <http://www.sbc.com/gen/press-room?pid=4800&cdvn=news&newsarticleid=21001> (visited March 9, 2004)).

¹⁶ BellSouth's 40% share of the \$41 billion purchase price for AT&T Wireless amounts to \$16.4 billion or approximately 33% of BellSouth's total assets as of December 31, 2004. See <http://bellsouth.com/investor/pdf/4q03p.pdf> (visited March 9, 2004). While BellSouth is apparently selling its Latin American operations in order to fund some its new capital needs for Cingular's latest acquisition, BellSouth's managers will likely be under incredible pressure to minimize revenue losses to competitors in order to pay BellSouth's portion of the premium price offered by Cingular for AT&T Wireless. It is not apt to give up any potential new sale easily.

12. The likely lack of access to UNEs at discounted rates will place an enormous damper on the ability of smaller competitive carriers, such as Americatel, to enter the local service market and, hence, the bundled service market, successfully. Even larger carriers, such as AT&T and MCI, are still highly dependent on UNE access at reasonable prices to compete.

13. Accordingly, it is appropriate for the PSC to consider the impact of these factors set forth by Americatel on BellSouth's request for additional marketing freedom.

Verizon Florida Does Not Have the Same Economic Power as BellSouth and, Therefore, Should not Necessarily be Subjected to the Same Level of Regulation as BellSouth

14. Americatel is not confusing interLATA and intraLATA services in its argument that the PSC need not regulate Verizon Florida in the same manner as it does BellSouth. Rather, Americatel's point is simply that, within the state of Florida, Verizon's operations are significantly smaller than those of BellSouth, such that Verizon Florida does not possess the same level of economic power as BellSouth. BellSouth served more than 5.9 million switched access lines in Florida at the end of 2002 while Verizon served only 2.3 million, according to the FCC's ARMIS data.¹⁷ Further, BellSouth serves most of the largest metropolitan areas in Florida, while Verizon Florida's service territory, with the exception of the Tampa-St. Petersburg market, is more rural and small-town in nature.

15. Moreover, as discussed above, the regulatory distinctions between services are largely becoming extinct in the marketplace as consumers purchase calling packages that do not readily distinguish between calls on a jurisdictional basis. While the PSC does not and cannot

¹⁷ The FCC makes ARMIS data available online at <http://svartifoss2.fcc.gov/eafs/MainMenu.cfm> (visited March 10, 2004).

regulate interstate services, it should still consider BellSouth's problems with compliance with federal regulatory requirements that relate to the marketing of services as it determines how to regulate BellSouth's intrastate operations. In addition to the FCC's auditors' concerns noted above, in July 2003, BellSouth signed a consent decree with the FCC to settle an investigation about BellSouth's unlawful marketing of interLATA services in states where BellSouth lacked authority to provide those services.¹⁸ Indeed, BellSouth instructed its sales agent to market interLATA services to Floridians in both October and December 2002 and actually provisioned service to Floridians in October 2002.¹⁹ BellSouth agreed to take various remedial steps and to pay \$1.4 million to the federal government in lieu of possible forfeiture proceedings.²⁰

16. While the number of customers involved in BellSouth's marketing violations was small, especially when one considers BellSouth's millions of Florida customers, the impact of any BellSouth marketing rule violations on its competitors that do not have the same millions of customers in Florida can be enormous. The loss of any customer at all can have serious negative consequences for smaller carriers.

17. To the best of Americatel's knowledge, there are no consent decrees between Verizon Florida and the FCC.

18. Accordingly, for these reasons and those set forth in Americatel's Petition, the PSC should continue to regulate BellSouth differently than it does Verizon Florida.

¹⁸ *BellSouth Corp.*, Order, 18 FCC Rcd 15135 (2003).

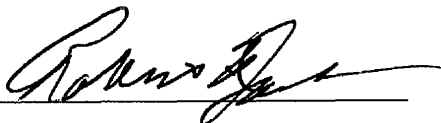
¹⁹ *Id.*, at 15140-41.

²⁰ *Id.*, at 15143-46.

Conclusion

19. For the reasons set forth above, the Commission should set this matter for hearing, pursuant to Chapter 25-22 of the Commission's Rules.

Respectfully submitted,
AMERICATEL CORPORATION

By 

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Dated: March 12, 2004

CERTIFICATE OF SERVICE

I, Lila A. Myers, do hereby certify that the foregoing **AMERICATEL CORPORATION'S REPLY TO BELLSOUTH** was served on this 12th day of March, 2004, upon the following by U.S. First Class and electronic mail (*):

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