

Matilda Sanders

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**From:** Sapper,Lisa A - LGCRP [lisariley@att.com]  
**Sent:** Tuesday, April 06, 2004 4:46 PM  
**To:** Filings@psc.state.fl.us  
**Cc:** Tracy Hatch; Sapper,Lisa A - LGCRP; Nancy Sims; mary.dennis@bellsouth.com; Nancy White; jrajas@psc.state.fl.us; Patty Christensen; Jones, Carol A; Harris.Anthony@bellsouth.com  
**Subject:** RE: 031046 -- AT&T's Informal Response to Staff's Request for Additional Information  
**Importance:** High



031046 ATT  
mal-Respons

Docket 031046 -- Petition and complaint of AT&T Communications of the Southern States, LLC against BellSouth Telecommunications, Inc. and BellSouth Long Distance, Inc. for alleged anticompetitive pricing of long distance service.

Attached please find for electronic filing AT&T's Informal Response to Staff's Request for Additional Information in the above-referenced docket. The cover letter, certificate of service and AT&T's Response are a total of five pages. The attached document should be considered the official version for purposes of the docket file.

As indicated in the cover letter, copies of AT&T's Response are being distributed to parties via electronic (cc'd to this e-mail message) and U.S. Mail. Thank you for your assistance in this matter.

<<031046 ATT Informal Response to Staff 4-6-04.doc>>

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FPSC-COMMISSION CLERK



Tracy Hatch  
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Law and Government Affairs  
Southern Region

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850-425-6360

April 6, 2004

**BY ELECTRONIC FILING**

Ms. Blanca Bayó, Director  
The Commission Clerk and Administrative Services  
Room 110, Easley Building  
Florida Public Service Commission  
2540 Shumard Oak Blvd.  
Tallahassee, Florida 32399-0850

Re: Docket No. 031046-TP

Dear Ms. Bayó:

Attached please find AT&T's Informal Response to Staff's Request for Additional Information in the above-referenced docket. Pursuant to the Commission's Electronic Filing Requirements, this version should be considered the official copy for purposes of the docket file. Copies of this document will be served on all parties via electronic and U.S. Mail.

Thank you for your assistance with this filing.

Sincerely yours,

*s/ Tracy W. Hatch*

Tracy W. Hatch

TWH/las  
Attachment  
cc: Parties of Record

DOCUMENT NUMBER-DATE

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of AT&T's Informal Response to Staff's Request for Additional Information was served electronically and by U.S. Mail this 6th day of April 2004 to the following:

Patricia Christensen, Staff Counsel  
Jason Rojas, Staff Counsel  
Florida Public Service Commission  
Division of Legal Services  
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Tallahassee, Florida 32301

*s/ Tracy W. Hatch*

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**ORIGINAL**

**AT&T'S INFORMAL RESPONSE  
TO STAFF'S REQUEST FOR ADDITIONAL INFORMATION  
DOCKET NO. 031046**

April 6, 2004

**Issue:**

1. Whether Section 364.051(5)(c), Florida Statutes can be applied to prohibit BellSouth Long Distance from conduct that BellSouth Telecommunications is otherwise prohibited from engaging in pursuant to that statutory provision.
2. Section 364.052(5)(c) provides:

The price charged to a consumer for a nonbasic service shall cover the direct costs of providing the service and shall, to the extent a cost is not included in the direct cost, include as an imputed cost the price charged by the company to competitors for any monopoly component used by a competitor in the provision of its same or functionally equivalent service.

**Facts:**

3. The factual circumstances of this case are simple and clear. BellSouth Long Distance ("BSLD") and BellSouth Telecommunications ("BellSouth") are wholly-owned subsidiaries of a common parent, BellSouth Corp. BSLD and BellSouth act in concert with each other in the context of the tariff at issue.
4. BSLD, pursuant to its tariff Section 4.2.32, offers its long distance customers a promotional rate of \$0.01 per minute. To obtain this rate, the subscriber must also subscribe to BellSouth's local service "Complete Choice" plan or flat-rate service with two features. As noted in the BSLD tariff, the local service that qualifies for the one-cent toll rate is offered by BSLD's affiliated ILEC, BellSouth.

5. As shown by the tariff, BellSouth and BSLD are indistinguishable to a subscriber to the service. The one-cent per minute rate, if offered by BellSouth, would indisputably violate Section 364.051(5)(c) because the penny per minute rate is clearly below the rates that BellSouth charges toll competitors for switched access. BSLD, through the use of a corporate fiction, provides a toll service priced substantially below its own access cost and the direct access cost of its toll competitors and accomplishes indirectly for the BellSouth corporate family that which BellSouth could not because of the prohibition in Section 364.051(5)(c).

6. Under the facts in this case, BSLD is the inseparable alter ego of BellSouth and must be prohibited from doing that which its affiliate, BellSouth can not do. From the research, it appears that this is a case of first impression in the context of Section 364.051(5)(c). There is case law in other contexts that suggests that the BSLD and BellSouth should not be allowed to hide behind the corporate fiction of BSLD to evade regulation.

**Supporting Case Law and Commission Orders:**

7. In the context of discovery, a party's corporate affiliates have been directed to produce information even though the corporate affiliate is neither a party nor otherwise under scrutiny for the conduct of the principal party affiliate. See Medivision of East Broward County, Inc. v. Department of Health and Rehabilitative Services, 488 So.2d 866, (Fla. 1<sup>st</sup> DCA 1986) [Where corporate affiliates act "as one", the nonparty affiliate may be subject to discovery, 488 So.2d 888.] BellSouth itself has historically been held to this standard. See Order No. PSC-93-0071,

issued January 15, 1993 in Docket No. 920260.

8. While there does not yet appear to be a case directly on point construing Section 364.051(5)(c), the Commission has previously succinctly stated the rationale for applying 364.051(5)(c) in the manner suggested by AT&T. In an order regarding BellSouth and its affiliates, the Commission stated:

There are transactions between these affiliates as well as between and among regulated and unregulated activities. At the center stands BellSouth Corporation (Bell), the parent company. Given the high level inter-corporate activity, it is difficult to believe that there is not an equally high degree of horizontal and vertical integration between Bell and its various subsidiaries, including SBT, or that Bell does not or cannot exert control over its subsidiaries. Moreover, as the parent company, it is Bells choice how to arrange its corporate structure, including what activities to spin off into separate corporate identities. The separate corporate identities were presumably created as a matter of convenience. Although it may be proper to use the separate corporate identities to limit the liability of the parent and/or its shareholders, we do not believe that evading lawful, effective regulation is a legitimate use of the corporate fiction. (emphasis added)

Order No. PSC-93-0812-FOF-TL, issued May 26, 1993, in Dockets Nos. 920260-TL, 910163-TL, 910727-TL and 900960-TL.

**Conclusion:**

9. There is no question of the direct integral involvement of both BellSouth and BSLD in the one-cent per minute toll offering. There is no question that BSLD and BellSouth “act as one” in the provision of the one-cent per minute toll offering. The corporate fiction that is BSLD cannot be allowed to enable the evasion of compliance with 364.051(5)(c). To do otherwise is to enable the evisceration of all regulation applicable to ILECs simply by virtue of moving to provide all of its competitive services through corporate affiliates.