

ORIGINAL

Matilda Sanders

From: Slaughter, Brenda [Brenda.Slaughter@bellsouth.com]
 Sent: Friday, July 23, 2004 1:28 PM
 To: Filings@psc.state.fl.us
 Cc: Shore, Andrew; Fatool, Vicki; Holland, Robyn P; Nancy Sims; Peters, Evelyn; Bixler, Micheale
 Subject: Docket 040514-TP
 Importance: High

- A. Brenda Slaughter
 Legal Secretary for Andrew D. Shore
 BellSouth Telecommunications, Inc.
 c/o Nancy Sims
 150 South Monroe, Rm. 400
 Tallahassee, Florida 32301-1558
 (404) 335-0714
brenda.slaughter@bellsouth.com
- B. Docket No. 040514-TP: Petition of Cbeyond Communications, LLC for Arbitration of Interconnection Agreements with BellSouth Telecommunications, Inc. Pursuant to Section 252(b) of the Communications Act of 1934, as Amended
- C. BellSouth Telecommunications, Inc.
 on behalf of Andrew D. Shore
- D. 5 pages total
- E. Joint Motion to Hold Proceeding in Abeyance

Brenda Slaughter (sent on behalf of Andrew D. Shore)
 BellSouth Telecommunications, Inc.
 Suite 4300 - Legal Department
 675 W. Peachtree Street
 Atlanta, GA 30375-0001
 Phone: (404) 335-0714

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ANDREW D. SHORE
Senior Regulatory Counsel

BellSouth Telecommunications, Inc.
150 South Monroe Street
Room 400
Tallahassee, Florida 32301
(404) 335-0765

ORIGINAL

July 23, 2004

Ms. Blanca S. Bayó
Director, Division of the Commission Clerk
and Administrative Services
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

**Re: Docket No.: 040514-TP
Petition of Cbeyond Communications, LLC for Arbitration of
Interconnection Agreements with BellSouth Telecommunications, Inc.
Pursuant to Section 252(b) of the Communications Act of 1934, as
Amended**

Dear Ms. Bayó:

Enclosed is a Joint Motion to Hold Proceeding in Abeyance, which we ask that you file in the captioned docket.

Copies have been served to the parties shown on the attached Certificate of Service.

Sincerely,



Andrew D. Shore

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

DOCUMENT NUMBER-DATE

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FPSC-COMMISSION CLERK

**CERTIFICATE OF SERVICE
DOCKET NO. 040514-TP**

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

Jason Rojas
Jeremy Susac
Staff Counsel
Florida Public Service
Commission
Division of Legal Services
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850
Tel. No. (850) 413-6179 (Rojas)
Tel. No. (850) 413-6239 (Susac)
jrojas@psc.state.fl.us
jsusac@psc.state.fl.us

Norman H. Horton, Jr.
Meser, Caparello & Self, P.A.
215 South Monroe Street, Suite 701
P.O. Box 1876
Tallahassee, FL 32302-1876
Tel. No. (850) 222-0720
Fax No. (850) 224-4359
nhorton@lawfla.com
Represents Cbeyond

Julia Strow
Tom Hyde
CBEYOND COMMUNICATIONS, LLC
320 Interstate North Parkway
Suite 300
Atlanta, Georgia 30339-2205
Tel. No. (678) 424-2429
Fax. No. (678) 424-2509
julia.strow@cbeyond.net


Andrew D. Shore

John J. Heitmann
Brett Heather Freedson
KELLEY DRYE & WARREN LLP
1200 19th Street, N.W.
Suite 500
Washington, D.C. 20036
Tel. No. (202) 955-9600
Fax. No. (202) 955-9792
jheitmann@kelleydrye.com
bfreedson@kelleydrye.com

Before the
FLORIDA PUBLIC SERVICE COMMISSION

In the Matter of)	
)	
Petition for Arbitration of)	Docket No. 040514-TP
)	
CBEYOND COMMUNICATIONS, LLC)	
)	
For an Interconnection Agreement with)	Filed: July 23, 2004
BellSouth Telecommunications, Inc. Pursuant to)	
Section 252(b) of the Communications Act of)	
1934, as Amended)	

JOINT MOTION TO HOLD PROCEEDING IN ABEYANCE

Cbeyond Communications, LLC ("Cbeyond") and BellSouth Telecommunications, Inc. ("BellSouth") (together, the "Parties"), through counsel, submit this Joint Motion to Hold Proceeding in Abeyance and hereby respectfully request that the Florida Public Service Commission (the "Commission") hold the above-captioned proceeding in abeyance for a period of ninety (90) days. By this Joint Motion, and contingent upon a grant by the Commission of the relief requested herein, the Parties waive until June 2005 the deadline, under section 252(b)(4)(C) of the Act, 47 U.S.C. § 252(b)(4)(C), for final resolution by the Commission of the issues set forth in Cbeyond's Petition and in BellSouth's Response. In support of this Joint Motion, the Parties submit the following.

Cbeyond and BellSouth have engaged in the above-captioned arbitration proceeding since May 28, 2004. On March 2, 2004, the United States Court of Appeals for the District of Columbia Circuit, in *United States Telecom Ass'n v. FCC*, 359 F.3d 554 (D.C. Cir.2004) ("*USTA II*"), affirmed in part, and vacated and remanded in part, certain rules of the Federal Communications Commission ("FCC") applicable to the incumbent LECs' obligation to provide access to network elements on an unbundled basis. The D.C. Circuit initially stayed its *USTA II*

mandate for a period of sixty (60) days. The stay of the *USTA II* mandate later was extended by the D.C. Circuit for a period of forty-five (45) days, until June 15, 2004 on which date the D.C. Circuit's *USTA II* mandate issued. At this time, certain of the FCC's rules applicable to BellSouth's obligation to provide to Cbeyond network elements on an unbundled basis are subject to review and revision by the FCC and the FCC is expected to issue new rules.

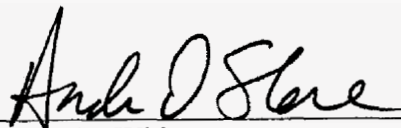
In light of these events, Cbeyond and BellSouth have agreed to the proposed ninety (90) day abatement so that they can consider how the post-*USTA II* regulatory framework should be incorporated into the new agreements currently being arbitrated and to identify what arbitration issues may be impacted and what additional issues, if any, need to be identified for arbitration. The Parties have agreed that no new issues may be raised in this arbitration proceeding other than those that result from the Parties' negotiations regarding the post-*USTA II* regulatory framework.

With this framework, Cbeyond and BellSouth have agreed to avoid a separate/second process of negotiating/arbitrating change-of-law amendments to the current Interconnection Agreement to address *USTA II* and its progeny. Accordingly, Cbeyond and BellSouth have agreed that they will continue operating under their current Interconnection Agreement until they are able to move into the new arbitrated/negotiated agreement that ensues from this proceeding.

Cbeyond and BellSouth also have agreed to continue their efforts to reduce the number of issues already identified during this ninety (90) day period.

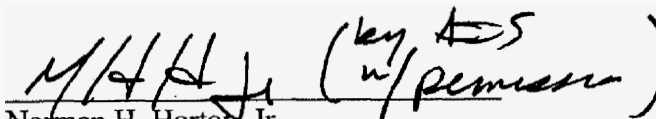
Consistent with the foregoing, the Cbeyond and BellSouth hereby respectfully request that the Commission hold the above-captioned proceeding in abeyance for a period of ninety (90) days. Cbeyond and BellSouth will file amended issues matrices on October 15, 2004.

Respectfully submitted,



Nancy B. White
c/o Nancy H. Sims
BellSouth Telecommunications, Inc.
150 South Monroe Street
Suite 400
Tallahassee, Florida 32301-1556
(305) 347-5558 (telephone)

R. Douglas Lackey
Andrew D. Shore
BellSouth Telecommunications, Inc.
675 W. Peachtree Street, N.E.
Suite 4300
Atlanta, Georgia 30375-0001
(404) 335-0765 (telephone)
(404) 614-4054 (facsimile)



Norman H. Horton, Jr.
MESSER CAPARELLO & SELF
215 South Monroe Street
Suite 701
Tallahassee, Florida 32302
(850) 222-0720 (telephone)
(850) 224-4351 (facsimile)

John J. Heitmann
Brett Heather Freedson
KELLEY DRYE & WARREN LLP
1200 Nineteenth Street, N.W.
Suite 500
Washington, D.C. 20036
(202) 955-9600 (telephone)
(202) 955-9792 (facsimile)

Dated: July 23, 2004