

ORIGINAL

Matilda Sanders

From: Barclay, Lynn [Lynn.Barclay@bellsouth.com]
Sent: Thursday, July 29, 2004 1:56 PM
To: Filings@psc.state.fl.us
Cc: Fatool, Vicki; Peters, Evelyn; Linda Hobbs; Nancy Sims; Holland, Robyn P; Bixler, Micheale; Slaughter, Brenda ; Mays, Meredith
Subject: 040732-TP BellSouth's Answer and Counterclaim (nonproprietary)

- a. Lynn Barclay
 Legal Secretary to Meredith E. Mays
 BellSouth Telecommunications, Inc.
 c/o Nancy Sims
 150 South Monroe Street
 Room 400
 Tallahassee, Florida 32301
 (404) 335-0788
lynn.barclay@bellsouth.com

- b. Docket No. 040732-TP (In re: Interconnection Agreement between Saturn Telecommunication Services, Inc.

 d/b/a STS Telecom and BellSouth Telecommunications, Inc.)

- c. BellSouth Telecommunications, Inc.
 on behalf of Meredith E. Mays

- d. 11 pages total (including attachment)

- e. BellSouth Telecommunications, Inc.'s Answer and Counterclaim (nonproprietary)

<<answer.pdf>>

Lynn Barclay

Legal Department
 675 West Peachtree Street
 Suite 4300
 Atlanta, GA 30375
 404 335-0788

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Legal Department

MEREDITH E. MAYS
Senior Regulatory Counsel
BellSouth Telecommunications, Inc.
150 South Monroe Street
Room 400
Tallahassee, Florida 32301
(404) 335-0750

July 29, 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

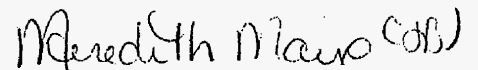
Re: Docket No. 040732-TP

Dear Ms. Bayó:

Enclosed is BellSouth Telecommunications, Inc.'s Answer and Counterclaim, 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.

Sincerely,


Meredith E. Mays

Enclosures

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

545621

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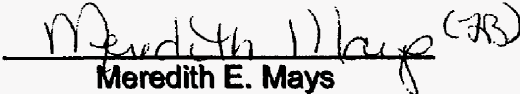
**CERTIFICATE OF SERVICE
DOCKET NO. 040732-TP**

I HEREBY CERTIFY that a true and correct copy of the foregoing was served via
Electronic Mail and Federal Express this 29TH day of July, 2004 to the following:

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

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Alan Gold, Esq.
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ikrutchik@ststelecom.com


Meredith E. Mays

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Interconnection Agreement between)
 Saturn Telecommunication Services, Inc.) Docket No.: 040732-TP
 d/b/a STS Telecom and)
 BellSouth Telecommunications, Inc.) Filed: July 29, 2004

BELLSOUTH TELECOMMUNICATIONS, INC.'S
ANSWER AND COUNTERCLAIM

INTRODUCTION

BellSouth Telecommunications, Inc. ("BellSouth"), responds to the Complaint for Over Billing and to Stay and Discontinuance of Service ("Complaint") filed by Saturn Telecommunications Services, Inc. d/b/a STS Telecom, LLC ("STS") and states as follows:

STS adopted in its entirety the IDS Telcom, LLC ("IDS") Interconnection Agreement dated February 5, 2003, which adoption was approved by the Commission on September 5, 2003 in Docket No. 030487-TP *see also* Docket No. 030158-TP, approving the interconnection agreement between BellSouth and IDS Telcom, LLC. "Agreement" refers collectively to both the terms of the three page adoption agreement as well as the underlying interconnection agreement between BellSouth and IDS. The Agreement, which is available as a matter of public record, became effective May 30, 2003 and expires on February 4, 2006.

The Agreement provides at Section 4.2.2 that "[n]otwithstanding BellSouth's general duty to unbundled local circuit switching, BellSouth shall not be required to unbundled local circuit switching for [STS] when [STS] serves an end-user with four (4) or more voice-grade (DS-0) equivalent lines or lines served by BellSouth in one of the following MSAs . . . Miami, FL; Orland, FL; Ft. Lauderdale, FL". The Agreement also states that "[i]n the event that [STS] orders local circuit switching for an end user with four (4) or more DS0 equivalent lines within

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Density Zone 1 in an MSA listed above, BellSouth shall charge [STS] the market based rates in Exhibit B for use of the local circuit switching functionality for the affected facilities.”

STS’ Complaint is a blatant attempt to circumvent agreed upon rates, terms and conditions contained within the Agreement. STS’ requested relief essentially seeks an order from this Commission that negates the contractually agreed upon rates, “determines” a new rate, and, in the interim, insulates STS from the need to pay the rates it has agreed to. STS apparently believes that, notwithstanding the fact that parties’ Agreement clearly and explicitly sets forth the market based rates for local circuit switching, it can avoid its contractual obligations through litigation. The Commission should reject such tactics and require STS to live up to the terms of the Agreement. Specifically, the Commission should require STS to fully compensate BellSouth for all disputed amounts relating to market based switching.

SPECIFIC RESPONSES

BellSouth responds below to each of the separately numbered paragraphs of the Complaint:

1. The allegations in Paragraph 1 of the Complaint require no response from BellSouth. To the extent a response would be appropriate, BellSouth lacks sufficient information to form a belief as to the truth of the matter asserted and would, therefore, deny the allegations in Paragraph 1 of the Complaint. BellSouth further states that Communications regarding BellSouth’s Response to this Complaint should be directed to:

Nancy B. White
c/o Nancy H. Sims
150 South Monroe Street
Suite 400
Tallahassee, FL 32301
(305) 347-5558
Nancy.White@bellsouth.com

R. Douglas Lackey
Meredith E. Mays
BellSouth Center – Suite 4300
675 West Peachtree Street, N.E.
Atlanta, Georgia 30375
(404) 335-0750
Meredith.Mays@bellsouth.com

2. BellSouth admits the allegations in Paragraph 2 of the Complaint.

3. BellSouth states that the relevant provisions of Florida law speak for themselves and require no response from BellSouth. BellSouth admits that this Commission has jurisdiction to resolve billing disputes between the parties pursuant to Section 10 of the Agreement and further states that STS agreed to be bound by the language in the Agreement, including the market based rates and that STS never arbitrated this matter before the Commission. BellSouth requests that this Commission exercise its jurisdiction to resolve the parties' billing dispute, find that STS is in violation of the Agreement for not paying the market based rates associated with its Complaint, reject the basis for STS' dispute of market based rates and order STS to pay BellSouth the amount of \$353,428.08, together with late payment charges and interest.

4. BellSouth admits that in December 2003 STS' Billing Account Number ("BAN") [REDACTED] was billed \$87,867.41 pursuant to the parties' Agreement. BellSouth denies any remaining allegations in Paragraph 4.

5. BellSouth admits that in December 2003 STS' BAN [REDACTED] was billed \$59,883.97 pursuant to the parties' Agreement. BellSouth denies any remaining allegations in Paragraph 5.

6. BellSouth admits that in December 2003 STS' BAN [REDACTED] was billed \$836.16 pursuant to the parties' Agreement. BellSouth denies any remaining allegations in Paragraph 6.

7. BellSouth admits that in June 2004 STS' BAN [REDACTED] was billed \$131,432.27 pursuant to the parties' Agreement. BellSouth denies any remaining allegations in Paragraph 7.

8. BellSouth admits that in June 2004 STS' BAN [REDACTED] was billed \$480.47 pursuant to the parties' Agreement. BellSouth denies any remaining allegations in Paragraph 8.

9. BellSouth admits that in June 2004 STS' BAN [REDACTED] was billed \$74,927.80 pursuant to the parties' Agreement. BellSouth denies any remaining allegations in Paragraph 9.

10. BellSouth admits that STS has properly been billed \$353,428.08, which amount consists of application of the market based rates contained in the Agreement. BellSouth denies any remaining allegations in Paragraph 10.

11. BellSouth admits that STS disputed the amounts set forth in its Complaint at paragraphs 4 – 6 of the Complaint. BellSouth denies that, until it received STS' Complaint, it had received any notice or dispute relating to the amounts set forth at paragraphs 7 – 9 of the Complaint, which amounts were billed in 2004 and not 2003. BellSouth also states the Agreement requires that STS "report all billing disputes to BellSouth using the Billing Adjustment Request Form (RF 1461) provided by BellSouth" (Agreement, Attachment 7, subsection 2.1) which STS has not done. BellSouth denies any remaining allegations in Paragraph 11.

12. BellSouth admits that it denied the disputes associated with the amounts at paragraphs 4 – 6 of the Complaint on or about March 17, 2004. BellSouth further states that STS resubmitted identical disputes on May 18, 2004, which were denied on or about July 1, 2004. BellSouth denies any remaining allegations in Paragraph 12.

13. The Agreement, including the applicable rates, speaks for itself and requires no response from BellSouth. BellSouth states further that STS entered into a contract that contains

the rates it now apparently contests. Any rulings of the FCC speak for themselves and require no response from BellSouth. BellSouth denies any remaining allegations in Paragraph 13.

14. The Agreement, including the applicable rates, speaks for itself and requires no response from BellSouth. BellSouth states further that STS entered into a contract that contains the rates it now apparently contests. BellSouth denies any remaining allegations in Paragraph 14.

15. The Agreement, including the applicable rates, speaks for itself and requires no response from BellSouth. BellSouth states further that STS entered into a contract that contains the rates it now apparently contests. BellSouth denies any remaining allegations in Paragraph 15, and expressly denies that it has set rates as an economic barrier or in violation of applicable law.

16. 47 U.S.C. § 251, the Agreement, and BellSouth's General Subscriber Services Tariff all speak for themselves and require no response from BellSouth. BellSouth states further that STS entered into a contract that contains the rates it now apparently contests. BellSouth denies any remaining allegations in Paragraph 16.

17. BellSouth denies the allegations in Paragraph 17 of the Complaint, and specifically denies that it creates economic barriers to competition. BellSouth states further that in a series of Carrier Notification Letters, which are available as a matter of public record at www.interconnection.bellsouth.com, it provided notification to all Competitive Local Exchange Carriers ("CLECs") that it would reconcile under-billed UNE-P Market Rates every six months.¹

¹ The following Carrier Notification Letters ("CNL") detail BellSouth's notice to CLECs of its reconciliation of UNE-P Market Rates: CNL SN91083301 (August 30, 2002); CNL 91083665 (April 9, 2003); CNL SN 91083713 (May 23, 2003); CNL SN91083885 (November 6, 2003) ; CNL SN 91083906 (December 3, 2003); CNL SN91084077 (May 4, 2004).

BellSouth also provided CLECs with details concerning the timing of such reconciliation as well as the data available to support the reconciliation.

18. BellSouth admits that it reconciles under-billed UNE-P Market Rates every six months. BellSouth admits that it bills for other services monthly. BellSouth denies that this creates any unjustifiable burden on STS and further states that it makes available all data to support its reconciliation efforts. BellSouth denies that STS either does not know or cannot predict its future billing since STS entered into a contract that contains the rates it now contests and presumably interacts with its customers such that it knows or should know the rates that apply to its end user customers. BellSouth denies any remaining allegations in Paragraph 18.

19. BellSouth denies the allegations in Paragraph 19. BellSouth further states that STS entered into a contract that contains the rates it now apparently contests.

20. Any recent announcements of the FCC speak for themselves and require no response from BellSouth. BellSouth further states that STS entered into a contract that contains the rates it now apparently contests, which Agreement became effective on May 30, 2003. BellSouth denies any remaining allegations in Paragraph 20 and denies that this Commission has any jurisdiction to regulate the terms of commercial agreements.

21. BellSouth denies the allegations in Paragraph 21 of the Complaint.

22. BellSouth admits that this Commission has jurisdiction to resolve billing disputes between the parties pursuant to Section 10 of the Agreement and further states that STS agreed to be bound by the language in the Agreement, including the market based rates and that STS never arbitrated this matter before the Commission. BellSouth requests that this Commission exercise its jurisdiction to resolve the parties' billing dispute, find that STS is in violation of the Agreement for not paying the market based rates associated with its Complaint, reject the basis

for STS' dispute of market based rates and order STS to pay BellSouth \$355,428.08, plus late payment charges and interest.

23. Section 251 of the 1996 Act speaks for itself and requires no response from BellSouth. BellSouth further states that the Agreement between the parties was previously approved by this Commission on September 5, 2003 in Docket No. 030487-TP; *see also* Docket No. 030158-TP, approving the interconnection agreement between BellSouth and IDS. BellSouth denies that, following approval of an agreement, that STS can seek to circumvent such approval. BellSouth denies any remaining allegations in Paragraph 23.

24. BellSouth states that STS agreed to be bound by the language in the Agreement, including the market based rates. BellSouth denies that the agreed upon rates are a barrier to entry. The rates BellSouth charges to its end users are a matter of public record, and speak for themselves. BellSouth denies any remaining allegations in Paragraph 24.

25. Section 251 of the 1996 Act speaks for itself and requires no response from BellSouth. BellSouth further states that STS agreed to be bound by the language in the Agreement, including the market based rates. BellSouth denies that the agreed upon rates are unfair and that STS cannot compete against BellSouth. BellSouth denies any remaining allegations in Paragraph 25.

26. BellSouth denies the allegations in Paragraph 26. BellSouth also states that STS agreed to be bound by the language in the Agreement, including the market based rates. BellSouth denies any remaining allegations in Paragraph 26.

27. BellSouth denies the allegations in Paragraph 27.

28. BellSouth denies the allegations in Paragraph 28.

AFFIRMATIVE DEFENSES

29. Some or all of STS' claims are barred by the doctrines of res judicata and collateral estoppel.

30. STS has failed to state a claim for which this Commission can grant relief.

COUNTERCLAIM

31. BellSouth hereby incorporates by reference the previous paragraphs numbered 1 through 30.

32. This Complaint is an attempt to circumvent contractually agreed upon charges. BellSouth has rendered service to STS, pursuant to the rates, terms and conditions of the Agreement between the parties. As a result, STS has been appropriately billed approximately \$353,428.08, which STS has unjustifiably refused to pay. STS, however, is legally liable to pay this money to BellSouth, and its contentions to the contrary are without merit. By failing to pay BellSouth, STS has breached its contractual obligations.

WHEREFORE, BellSouth respectfully requests the Commission to enter an Order in BellSouth's favor, deny STS the relief sought, establish the amount of STS's contractual obligation to BellSouth, order STS to immediately pay this amount in full, plus interest and late payment charges, and grant BellSouth such other relief as the Commission deems just and proper.

BellSouth denies each and every allegation in the Complaint not expressly admitted herein, and demands strict proof thereof.

Respectfully submitted, this 29th day of July 2004.

BELLSOUTH TELECOMMUNICATIONS, INC.

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Meredith E. Mays (JB)

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