

Matilda Sanders

From: Barclay, Lynn [Lynn.Barclay@BELLSOUTH.COM]
Sent: Monday, August 30, 2004 2:54 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: RE: Docket No. 030829-TP BellSouth's Prehearing Statement

- 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. 030829-TP (Complaint of FDN Communications for Resolution of Certain Billing Disputes

 and Enforcement of UNE Orders and Interconnection Agreements with BellSouth Telecommunications, Inc.)
- c. BellSouth Telecommunications, Inc.
 on behalf of Meredith E. Mays
- d. 9 pages total (including attachment)
- e. BellSouth Telecommunications, Inc.'s Prehearing Statement

<<030829 BellSouth's prehearing statement.pdf>>

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

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Legal Department

Meredith Mays
Senior Regulatory Counsel

BellSouth Telecommunications, Inc.
150 South Monroe Street
Room 400
Tallahassee, Florida 32301
(404) 335-0750

August 30, 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

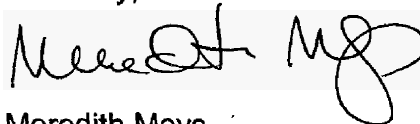
Re: Docket No. 030829-TP (FDN Complaint)

Dear Ms. Bayó:

Enclosed is BellSouth Telecommunications, Inc.'s Prehearing Statement, which we ask that you file 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,



Meredith Mays

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

548819

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**CERTIFICATE OF SERVICE
DOCKET NO. 030829-TP**

I HEREBY CERTIFY that a true and correct copy of the foregoing was served via
Electronic Mail and FedEx this 30th day of August, 2004 to the following:

Lee Fordham
Staff Counsel
Florida Public Service Commission
Gerald L. Gunter Building
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850
Tel. No.: 850 413-6199
cfordham@psc.state.fl.us
jschindl@psc.state.fl.us

Matthew Feil (+)
Scott Kassman(+)
FDN Communications
2301 Lucien Way
Suite 200
Maitland, FL 32751
Tel. No. 407 835-0460
Fax No. 407 835-0309
mfeil@mail.fdn.com
skassman@mail.fdn.com


Meredith E. Mays

(+) signed Protective Agreement

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Complaint of FDN Communications)	
For Resolution of Certain Billing Disputes)	Docket No. 030829-TP
And Enforcement of UNE Orders and)	
Interconnection Agreements with BellSouth)	Filed: August 30, 2004
Telecommunications, Inc.)	

**PREHEARING STATEMENT OF
BELLSOUTH TELECOMMUNICATIONS, INC.**

In compliance with the Order Establishing Procedure and the Order Modifying Order Establishing Procedure (Order Nos. PSC-04-0121-PCO-TP and PSC-04-0638-PCO-TP "Procedural Order"), BellSouth Telecommunications, Inc. ("BellSouth") respectfully submits its Prehearing Statement.

A. Witnesses

BellSouth will call the following witnesses to offer direct and rebuttal testimony on the issues in this matter:

<u>Witness</u>	<u>Testimony</u>	<u>Subject Matter of Testimony</u>
Cynthia A. Clark	Direct and Supplemental Direct	Issue 5
Carlos Morillo (Mr. Morillo is adopting the prefiled testimony and exhibit of Ms. Kathy Blake)	Direct and Rebuttal	All Issues

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BellSouth has made a good-faith attempt to identify the subject matter addressed by these witnesses; however, any given witness' testimony may also relate to other issues in this docket.

BellSouth reserves the right to call witnesses to respond to Florida Public Service Commission ("Commission") inquiries not addressed in direct or rebuttal testimony and witnesses to address issues not presently designated that may be designated by the Prehearing Officer at the Prehearing conference to be held on September 20, 2004.

B. Exhibits

BellSouth reserves the right to file exhibits to any testimony that may be filed under the circumstances identified above. BellSouth also reserves the right to introduce exhibits for cross-examination, impeachment, or any other purpose authorized by the applicable Florida Rules of Evidence and the Rules of the Commission.

<u>Witness</u>	<u>Document Indicator</u>	<u>Title of Exhibit</u>
Cynthia A. Clark	CAC-1	Confidential Billing Dispute Workpapers
Carlos Morillo	KKB-1	Carrier Notification Letter – Geographically Deaveraged UNE Rate Zones

C. Statement of Basic Position

This billing dispute arose because FDN seeks to avoid its contractual obligations concerning nonrecurring disconnection fees as well as charges relating from the implementation of deaveraged UNE rate zones. With respect to both disputes, FDN's positions are without basis.

Concerning disconnection fees, neither the relevant interconnection agreements between the parties nor prior Commission orders allow FDN to avoid paying rates. The parties' current contract states that FDN shall pay the rates – which include disconnect rates – contained in the

Agreement. These disconnect charges resulted from the rate structure this Commission established in Order No. PSC-98-0604-FOF-TP, which structure continued in Order No. PSC-01-1181-FOF-TP. To the extent that FDN had any concerns about when disconnection fees apply, FDN could and should have raised any such concerns in connection with Docket No. 990649-TP. Likewise, FDN had a second opportunity to address disconnection fees in its dispute over BellSouth's promotional tariffs in Docket No. 020119-TP. FDN's failure to resolve this matter in either docket should preclude its claims now.

FDN's allegations about BellSouth's implementation of the Commission ordered geographically deaveraged UNE rate zones are likewise without merit. BellSouth is contractually authorized to provide FDN notice via internet postings of certain contract changes. The agreement also refers to BellSouth's interconnection website for the central office designations associated with state commission ordered geographically deaveraged zones resulting from Order No. PSC-02-1311-FOF-TP ("120 Day Order"). BellSouth provided FDN with notice of its implementation of this Commission's geographically deaveraged zones consistent with its contractual obligations. Because zone designations are subject to change by order of the state commission, which orders BellSouth must comply with, BellSouth does not contractually agree that certain UNE rate zones will always contain specified central offices until agreements are amended. BellSouth has at all times charged FDN the rates applicable to the geographically ordered zones established by the Commission. FDN's claim that the *zones* can only be changed by amendment to interconnection agreements is not only wrong, it is also illogical. Applying FDN's logic, when a Commission changes rate zones BellSouth would only implement the rate zones on a rolling basis as agreements are amended, which would be

administratively burdensome and completely impractical. Instead, BellSouth has at all times charged FDN the agreed upon contractual rate applicable to the UNE products FDN orders.

BellSouth has rendered service to FDN, pursuant to the rates, terms and conditions of the applicable interconnection agreements between the parties, however FDN has unjustifiably refused to pay the full amounts due for such services. FDN should be required to compensate BellSouth, including late payment charges. The final amount due to BellSouth should be established after the parties have jointly participated in a collaborative billing reconciliation effort following a Commission decision on the parties' dispute.

D, E, F. Factual, Legal, and Policy Issues

Issue 1: In consideration of cost-causer, economic, and competitive principles, under what circumstances should BellSouth be allowed to assess a disconnect charge to FDN?

POSITION: BellSouth is authorized, pursuant to the parties' interconnection agreements and Commission orders, to assess a nonrecurring disconnect charge each time it disconnects UNE-loops and cross connects. FDN contractually agreed to pay disconnect charges without limitation.

Issue 2: In light of Order Nos. PSC-01-1181-FOF-TP and PSC 02-1311-FOF-TP and the parties interconnection agreements, does BellSouth appropriately assess disconnect charges when BellSouth issues an order for an FDN customer to port out?

POSITION: Yes. BellSouth properly assesses disconnection charges to FDN. If FDN desired to limit the application of disconnect charges, it should have negotiated such terms before entering into agreements that do not make any such distinction.

Issue 3: In order to implement changes in rate zone designations, is it necessary for the parties to negotiate an amendment to their interconnection agreement?

POSITION: No. The agreements between BellSouth and FDN never required a contract amendment to implement UNE rate zone changes. Instead, the agreements allow internet

notifications of certain changes and also contain a reference to a BellSouth website that lists the wire center designation ordered by state commissions. When a state commission order requires changes to the zone designation for a wire center, BellSouth updates its billing systems to implement the commission's order and issues a carrier notification letter informing CLECs of the change in wire center designation. On October 10, 2002, BellSouth sent a Carrier Notification letter advising CLECs of the implementation of the rate zone changes resulting from the Commission's *120-day UNE Order*. BellSouth's website was updated accordingly. Pursuant to the parties' agreements, once the website modification occurred BellSouth was contractually authorized to bill FDN the rates applicable to the particular UNE zone.

Issue 4: In light of policy considerations, the parties' interconnection agreements Order Nos. PSC-01-1181-FOF-TP and PSC 02-1311-FOF-TP, and any other applicable regulatory requirements, can BellSouth implement changes in rate zone designations without implementing any associated changed rates?

POSITION: Yes. There are no policy considerations or Commission orders that preclude the implementation of UNE rate zone changes that override the applicable language in the parties' agreements. The agreements authorize BellSouth to implement rate zone redesignations without the need for a contract amendment. Moreover, BellSouth's billing systems are not capable of having a single wire center assigned to multiple rate zones. To implement the *120-day UNE Order*, the necessary changes to the wire center designation became effective on the specific day the redesignation information was entered into the billing system. Rate zone designations are established pursuant to Commission order and are applicable to all CLECs for the billing of their individually negotiated deaveraged rate elements.

Issue 5: Given the resolution of Issues 1, 2, and 3 above, what remedies are appropriate?

POSITION: The appropriate remedy in this proceeding is to require FDN to promptly submit payment to BellSouth for all outstanding disconnect and UNE rate zone charges, along with late

payment fees. This amount will need to be established through a cooperative billing reconciliation effort between the parties.

Issue 6: Should all or any portion of the parties' claims or counterclaims be barred by the doctrines of res judicata or collateral estoppel?

POSITION: Yes. FDN was a party to the UNE cost proceedings and had ample opportunity to address its position regarding nonrecurring disconnect charges in that docket, as well as in Docket No. 020119. FDN's failure to pursue such options given the parties' unambiguous contract language should bar its claims now.

G. Stipulations

The parties have entered into no stipulations at this time. BellSouth is willing to stipulate into the record the deposition transcripts and exhibits of all witnesses as well as previously filed discovery responses. BellSouth is also willing to discuss resolving this matter without a full hearing; instead, both parties could stipulate to the entire record and file briefs addressing the evidence.

H. Pending Motions or Other Matters

In the event that the parties cannot stipulate to a resolution through the submission of briefs, BellSouth may file a Motion for Summary Final Disposition. This billing dispute can and should be resolved without the need for a hearing. BellSouth also requests that this Commission officially include or recognize that the record in this matter includes rates, terms, and conditions of the parties' interconnection agreements, together with all amendments previously filed and approved. The parties' agreements are as follows:

July 1, 1998	FDN's 1 st Interconnection Agreement becomes effective ("1998 Agreement"). FDN adopted MCI's ICA dated June 3, 1997. The adoption was approved by the Commission on October 12, 1998.
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October 20, 2000	FDN enters into an Interim Agreement ("Interim Agreement") which extended the 1998 Agreement until the parties' executed a new agreement. The Commission approved the Interim Agreement on January 22, 2001.
September 5, 2001	FDN enters into Stand Alone Agreement ("Stand Alone Agreement") which incorporates rates ordered by the Commission in the <i>UNE Cost Order</i> .
February 5, 2003	FDN enters into the parties' current Interconnection Agreement ("Agreement") which incorporated rate changes from the Commission's <i>120-day Order</i> . The Commission approved the Agreement on June 9, 2003.

I. Claims for Confidentiality

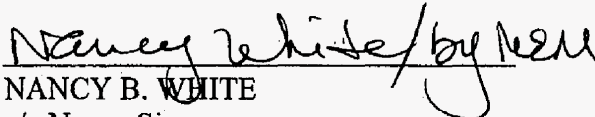
This Commission granted BellSouth's previously filed Requests for Confidential Classification through Order Nos. PSC-04-0632-CFO-TP and PSC-04-039-CFO-TP. However, an Order has not yet been issued on BellSouth's Request for Confidential Classification, PSC Document No. 13239-03.

J. Other Requirements

BellSouth knows of no requirements set forth in any Prehearing Order with which it cannot comply.

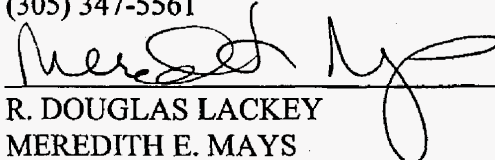
Respectfully submitted this 30th day of August, 2004.

BELLSOUTH TELECOMMUNICATIONS, INC.



 NANCY B. WHITE

c/o Nancy Sims
 150 South Monroe Street, Suite 400
 Tallahassee, FL 32301
 (305) 347-5561



 R. DOUGLAS LACKEY
 MEREDITH E. MAYS

Suite 4300
 675 W. Peachtree St., NE
 Atlanta, GA 30375
 (404) 335-0750