

ORIGINAL

Matilda Sanders

From: Fatool, Vicki [Vicki.Fatool@BellSouth.com]
 Sent: Thursday, October 14, 2004 12:26 PM
 To: Filings@psc.state.fl.us
 Subject: 040554-TP BellSouth Telecommunications, Inc.'s Motion to Reopen Docket
 Importance: High

- A. Vicki Fatool
 Legal Secretary to Nancy B. White
 BellSouth Telecommunications, Inc.
 150 South Monroe Street
 Suite 400
 Tallahassee, Florida 32301
 (305) 347-5560
vicki.fatool@bellsouth.com
- B. Docket No.: 040554-TP - Request for approval of adoption of existing interconnection, unbundling, resale, and collocation agreement between BellSouth Telecommunications, Inc. and AT&T Communications of the Southern States, LLC by Nigerian- American Investment Corporation d/b/a NAIC Telecommunications
- C. BellSouth Telecommunications, Inc.
 on behalf of Nancy B. White
- D. 17 pages total (including letter, certificate of service, pleading and exhibits 1 thru 5)
- E. BellSouth Telecommunications, Inc.'s Motion to Reopen Docket

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Word version

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SEC 1

OTH 10/14/2004

ok 10/15/04
10/14/2004

DOCUMENT NUMBER-DATE

11079 OCT 14 04

FPSC-COMMISSION CLERK

ORIGINAL

Legal Department

Nancy B. White
General Counsel - Florida

BellSouth Telecommunications, Inc.
150 South Monroe Street
Room 400
Tallahassee, Florida 32301
(305) 347-5558

October 14, 2004

Mrs. 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.: 040554-TP
Request for approval of adoption of existing interconnection,
unbundling, resale, and collocation agreement between
BellSouth Telecommunications, Inc. and AT&T
Communications of the Southern States, LLC by Nigerian-
American Investment Corporation d/b/a NAIC
Telecommunications**

Dear Ms. Bayó:

Enclosed is BellSouth Telecommunications, Inc.'s Motion to Reopen Docket, 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,


Nancy B. White

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

DOCUMENT NUMBER-DATE

11079 OCT 14 3

FPSC-COMMISSION CLERK


**CERTIFICATE OF SERVICE
DOCKET NO. 040554-TP**

I HEREBY CERTIFY that a true and correct copy of the foregoing was served via Electronic Mail and First Class U. S. Mail this 14th day of October, 2004 to the following:

Jason Rojas
Staff Counsel
Florida Public Service
Commission
Division of Legal Services
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850
Tel. No. (850) 413-6175
irojas@psc.state.fl.us

Andrew Osolase
President
NAIC Telecommunications
20401 N.W. 2nd Avenue
Suite 205
Miami, Florida 33169-2545
Tel. No. (305) 651-1500
andrewosolase@aol.com

Mark Long
NAIC Telecommunications
P.O. Box 181023
Tallahassee, Florida 32318-1023
Tel. No. (850) 562-9451
longtelecom@comcast.net


Nancy B. White

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Request for approval of adoption of) Docket No.: 040554-TP
existing interconnection, unbundling, resale,)
and collocation agreement between BellSouth)
Telecommunications, Inc. and AT&T)
Communications of the Southern States, LLC)
by Nigerian-American Investment Corporation)
d/b/a NAIC Telecommunications)
_____) Filed: October 14, 2004

BELLSOUTH TELECOMMUNICATIONS, INC.'S
MOTION TO REOPEN DOCKET

Pursuant to Rule 28.106.204, Florida Administrative Code and Section 364.01(4)(g), Florida Statutes, BellSouth hereby moves the Florida Public Service Commission ("Commission") to reopen Docket No. 040554-TP for the purpose of investigating (1) whether the Nigerian-American Investment Corporation d/b/a NAIC Communications ("NAIC") acted improperly in filing the Notice of the Adoption of Interconnection Agreement between BellSouth Telecommunications, Inc. and AT&T Communications of the Southern States, LLC ("AT&T") on June 15, 2004 and (2) whether the adoption is appropriate.

1. In May, 2004, NAIC requested BellSouth to commence negotiations pursuant to Section 251(c)(1) of the Telecommunications Act of 1996 ("Act") for the purpose of establishing a new interconnection agreement between BellSouth and NAIC (Exhibit 1). BellSouth forwarded to NAIC a copy of BellSouth's then Standard Interconnection Agreement and Market Based Rate Agreement for its review.

2. In a telephone conversation between the parties conducted on June 11, 2004, NAIC expressed an interest in adopting the Florida

Interconnection Agreement between BellSouth and AT&T which expires on October 25, 2004. BellSouth advised NAIC that the AT&T – BellSouth Florida agreement was not available for adoption because it had less than six (6) months remaining on its term and was not in compliance with the current law.

3. On June 15, 2004, NAIC filed a unilateral notice with the Commission purporting to adopt the AT&T – BellSouth Florida agreement. BellSouth received no notice of this filing from either NAIC or the Commission. (Exhibit 2). Although the letter indicated it had been copied to BellSouth, BellSouth never received same.

4. Docket No. 040554-TP was opened to review the notice. Staff reviewed the agreement on September 14, 2004, administratively approved it and closed the docket on September 17, 2004. (Exhibit 3).

5. NAIC acted improperly in filing the adoption notice without the execution of any adoption agreement and without the consent of BellSouth. It is especially troubling that NAIC filed the notice when it knew BellSouth had not agreed to the adoption and, indeed, opposed the adoption. Moreover, although the notice was purportedly copied to BellSouth, BellSouth never received same and, therefore, was denied its due process rights to challenge the adoption.

6. Moreover, the adoption was not appropriate. First, the D.C. Circuit Court issued an opinion effective on June 16, 2004, that vacated the Federal Communications Commission's (FCC) national findings of impairment with respect to mass market switching (DS0 level), enterprise market loops and enterprise market dedicated transport, including DS1, DS3, and Dark Fiber. As

of June 16, 2004, these elements are no longer required to be provided as Unbundle Network Elements (UNE) at Total Element Long-Run Incremental Cost (TELRIC) rates pursuant to the Telecommunications Act of 1996. Because the D.C. Circuit Court vacated these elements, there is no obligation to unbundled these elements pursuant to Section 251 of the Act.

7. The FCC subsequently issued an Order and Notice of Proposed Rulemaking on August 20, 2004 in WC Docket No. 04-313 ("Interim Rules Order"), which, in pertinent part, stated that an adoption of another party's interconnection agreement that contains rates terms and conditions for mass market switching, enterprise market loops and dedicated transport is not an option at this time. Paragraph 22 of the order states:

"We also hold that competition LECs may not opt into the contract provisions "frozen" in place by this interim approach. The fundamental thrust of the interim relief provided here is to maintain the *status quo* in certain respects without expanding unbundling beyond that which was in place on June 15, 2004. This aim would not be served by a requirement permitting new carriers to enter during the interim period."

8. In addition to the Interim Rules Order, 47 C.F.R. § 51.809(c) states that agreements are to be made available for adoption only for a reasonable period of time after such agreements are approved by the applicable state commission. The AT&T Interconnection Agreement was filed and approved over two years ago, and it expires on October 25, 2004, a mere four months from the date of NAIC's adoption request. AT&T and BellSouth have been in negotiations for a new agreement for months, and to permit NAIC to adopt the agreement now would not allow the parties sufficient time to negotiate a new agreement prior to

expiration of the AT&T Interconnection Agreement. Thus, NAIC has not requested adoption within a reasonable period of time, as required by FCC rules.

9. Further, since the AT&T Interconnection Agreement was filed and approved by the Commission, there have been substantial changes in law, as stated above, which include but are not limited to the FCC's Triennial Review Order (TRO), the D.C. Circuit Court of Appeals vacatur of certain portions of the TRO, and the Interim Rules Order. Given the significant changes in law that have occurred rendering the AT&T Interconnection Agreement noncompliant with current law, NAIC's request to adopt that Agreement was not made within a reasonable period of time as required by the FCC's rules and Orders.

10. BellSouth was not made aware of the actions by NAIC until October 6, 2004, when, in response to an October 6, 2004 email from BellSouth to NAIC reminding NAIC of the imminent end of the negotiation period, BellSouth was informed by NAIC that it had made the June 15, 2004, notice filing. (Exhibits 4 and 5).

11. The Commission has authority to reopen this docket for the purposes of determining whether NAIC acted improperly and whether the adoption was appropriate pursuant to Section 364.01(4)(g), Florida Statutes which requires the Commission to ensure that all providers of telecommunications services are treated fairly. Moreover, under Section 252 of the Act, the Commission has the authority to determine whether an adoption should be allowed.

12. The Commission has reopened dockets before. See In Re: Request by City of Tallahassee for Modification of Emergency Conversation Plan, 86 FPSC 98 (1986) and In Re: Cancellation by Florida Public Service Commission of Interexchange Telecommunications Certificate No. 4809 issued to Global Telephone Corporation, 99 FPSC 6:168 (1999).

13. In addition, in McCaw Communications of Florida, Inc. vs. Clark, 679 So. 2d 1177 (Fla. 1996), the Florida Supreme Court , while acknowledging the principle of administrative finality, cautioned against “too doctrinaire” an application of this rule:

We understand the differences between the functions and orders of courts and those of administrative agencies, particularly those regulatory agencies which exercise a continuing supervisory jurisdiction over the persons and activities regulated. For one thing, although courts seldom, if ever, initiate proceedings on their own motion, [**5] regulatory agencies such as the commission often do so. Further, whereas courts usually decide cases on relatively fixed principles of law for the principal purpose of settling the rights of the parties litigant, the actions of administrative agencies are usually concerned with deciding issues according to a public interest that often changes with shifting circumstances and passage of time. Such considerations should warn us against a too doctrinaire analogy between courts and administrative agencies and also against inadvertently precluding agency-initiated action concerning the subject matter dealt with in an earlier order.

679 So. 2d at 1179.

The facts and circumstances of this case justify BellSouth’s request for the Commission to revisit this docket and reconsider the earlier administrative decision.

WHEREFORE, BellSouth requests that the Commission reopen this docket for the purposes of determining whether NAIC acted improperly in filing the notice of adoption and whether the adoption is appropriate.

Respectfully submitted this 14th day of October, 2004.

BELLSOUTH TELECOMMUNICATIONS, INC.

/V.F.

NANCY B. WHITE

c/o Nancy Sims

150 South Monroe Street, Suite 400

Tallahassee, Florida 32301

(305) 347-5558

/V.F.

R. DOUGLAS LACKEY

675 W. Peachtree Street

Suite 4300

Atlanta, Georgia 30375

(404) 335-0747

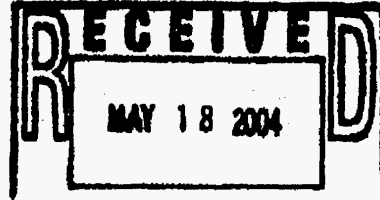
553393

*Carwright
2060*



May 17, 2004

Ms. Kristen Rowe
Director - CLEC Negotiations
BellSouth Telecommunications, Inc.
Suite 34S91
675 W. Peachtree Street, N.E.
Atlanta, Georgia 30375



Dear Ms. Rowe:

Pursuant to Sections 251 and 252 of the Telecommunications Act of 1996, NAIC Telecommunications hereby requests to begin the negotiations process to reach a mutually acceptable Local Interconnection and Resale Agreement with BellSouth Telecommunications, Inc. in the state of Florida.

Please contact Mark Long at your earliest convenience via e-mail at longtelecom@comcast.net or by phone at 850-562-9451 to establish the appropriate company contacts and procedural schedule necessary to implement this process.

Sincerely,

Mark Long
Andrew Osolase
NAIC Telecommunications

Need Address
*P.O. Box 181023
Tallahassee, FL
32318-1023*

*5/18/04 - Mark Long to call back with address. ed.
5/20/04 -
5/21/04 - Message - Email*



By Hand Delivery

June 15, 2004

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

040554-TP

Re: Notice of the Adoption of Interconnection Agreement between BellSouth Telecommunications, Inc. ("BellSouth") and AT&T Communications of the Southern States, LLC by Nigerian-American Investment Corporation d/b/a NAIC Telecommunications

Dear Ms. Bayó:

Nigerian-American Investment Corporation d/b/a NAIC Telecommunications (NAIC) hereby provides notice to the Florida Public Service Commission of its adoption of the Interconnection, Unbundling, Resale, and Collocation Agreement in its entirety for the State of Florida entered into between BellSouth Telecommunications, Inc. and AT&T Communications of the Southern States, LLC (BellSouth and AT&T, respectively), which was filed with this Commission on October 26, 2001 in Docket No. 000731-TP (the AT&T Agreement).

NAIC Telecommunications is adopting the AT&T Agreement and all amendments (if applicable), as provided by Section 252(j) of the federal Telecommunications Act of 1996. This adopted agreement as it applies to NAIC and BellSouth should be read so as to replace any reference to AT&T or AT&T Communications of the Southern States, Inc. with NAIC, Nigerian-American Investment Corporation, or NAIC Telecommunications. NAIC's adoption of the AT&T Agreement is effective immediately.

For the purpose of the relationship between BellSouth and NAIC, notices under the adopted AT&T Agreement should be sent to NAIC at the following two locations:

Mark Long
NAIC Telecommunications
P.O. Box 181023
Tallahassee, Florida 32318-1023

and

20401 NW 2nd Avenue, Miami, FL 33169

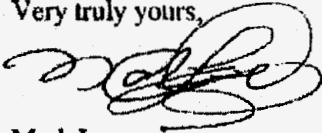
DOCUMENT NUMBER-DATE
(305)681-6500 06828 JUN 15 8
FPSC-COMMISSION CLERK

Exhibit 2

Andrew Osolase
President
NAIC Telecommunications
20401 N.W. 2nd Avenue, Suite 205
Miami FL 33169-2545

Enclosed are the original and two (2) copies of this notice for your records. If you have any questions, please call Mark Long at (850) 562-9451.

Very truly yours,



Mark Long
Nigerian-American Investment Corporation
d/b/a NAIC Telecommunications

cc: Marshall Criser, BellSouth Telecommunications, Inc.

State of Florida



Public Service Commission

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD
TALLAHASSEE, FLORIDA 32399-0850

RECEIVED - FPSC
SEP 17 AM 9:47

-M-E-M-O-R-A-N-D-U-M- COMMISSION
CLERK

DATE: September 17, 2004
TO: Docket File
FROM: Jeff Bates (Division of Competitive Markets and Enforcement) JB SAS
Jason Rojas (Office of the General Counsel) JR
RE: Docket No. 040554-TP – Request for approval of adoption of existing interconnection, unbundling, resale, and collocation agreement between BellSouth Telecommunications, Inc. and AT&T Communications of the Southern States, LLC d/b/a AT&T by Nigerian-American Investment Corporation d/b/a NAIC Telecommunications.

By letter dated June 15, 2004, Nigerian-American Investment Corporation d/b/a NAIC Telecommunications filed a request for approval of adoption of existing interconnection, unbundling, resale, and collocation agreement between BellSouth and AT&T Communications of the Southern States, LLC d/b/a AT&T which was approved by the Commission in Docket No. 000731-TP. Nigerian-American Investment Corporation d/b/a NAIC Telecommunications is adopting the interconnection, unbundling, resale, and collocation agreement approved by the Commission pursuant to Section 252(i) of the Telecommunications Act of 1996.

Under the requirements of 47 U.S.C. § 252(e), negotiated agreements must be submitted to the state commission for approval. Section 252(i) requires that a local exchange carrier shall make available any interconnection, service, or network element provided under an agreement approved by the state commission to any other requesting telecommunications carrier upon the same terms and conditions as those provided in the agreement in its entirety.

Staff reviewed the agreement in this Docket on September 14, 2004. The filing met the criteria outlined in Section 2.07.C.5.b of the Administrative Procedures Manual in that it complies with Section 252(i) of the Act. Accordingly, with this Memorandum, the docket is hereby closed.

ok to close 9/17/04

CC: Division of the Commission Clerk and Administrative Services (H. Wang)

Exhibit 3

DOCUMENT NUMBER-DATE
10051 SEP 17 04
FPSC-COMMISSION CLERK

White, Nancy

From: Cartwright, Trish
Sent: Tuesday, October 12, 2004 1:54 PM
To: White, Nancy
Subject: FW: NAIC Communications ICA and MBR
Importance: High

-----Original Message-----

From: Cartwright, Trish
Sent: Wednesday, October 06, 2004 4:46 PM
To: Mark Long
Cc: Cartwright, Trish
Subject: RE: NAIC Communications ICA and MBR
Importance: High

Please review the attached 135 day reminder letter.

Thank you.

Trish Cartwright
Contract Negotiator
404-927-2060

"Confidential and proprietary. May not be used or disclosed outside of BellSouth.
Subject to Nondisclosure Agreement"

If you have received this message in error or do not wish to receive future commercial electronic mail messages from BellSouth Interconnection Services visit

<<http://contactmanage.bellsouth.com/interconnection/optout/index.asp>> or write to us at:
Attn: BellSouth Interconnection Services Marketing Communications
Rm 34H71
675 West Peachtree
Atlanta, GA 30375

-----Original Message-----

From: Mark Long [mailto:longtelecom@comcast.net]
Sent: Wednesday, July 14, 2004 10:30 PM
To: Cartwright, Trish
Subject: RE: NAIC Communications ICA and MBR

Hi Trish; I'll assemble some documents and e-mail them to you shortly. ml

-----Original Message-----

From: Cartwright, Trish [mailto:Trish.Cartwright@BELLSOUTH.COM]
Sent: Wednesday, July 14, 2004 1:22 PM
To: longtelecom@comcast.net

Cc: Cartwright, Trish
Subject: NAIC Communications ICA and MBR
Importance: High

Please find attached the ICA and MBR we will be using for ongoing negotiations.

Thank you.

Trish Cartwright
Contract Negotiator
404-927-2060

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675 West Peachtree
Atlanta, GA 30375

<<NAIC_July 2004 ICA Draft.pdf>> <<NAIC_July 2004 MBR Draft.pdf>>

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BellSouth Interconnection Services

675 West Peachtree Street, NE
Room 34891
Atlanta, Georgia 30375

Trish Cartwright
Phone: 404-927-2060
FAX: 404 529-7839

Sent Via E-Mail

October 6, 2004

Mark Long
NAIC Telecommunications
P. O. Box 181023
Tallahassee, FL 32318-1023

Re: Follow-up to Request that BellSouth Telecommunications, Inc. engage in negotiations with NAIC Telecommunications

Dear Mr. Long:

On May 17, 2004, NAIC Telecommunications sent BellSouth Telecommunications, Inc. ("BellSouth") a letter requesting BellSouth to commence negotiations pursuant to Section 251(c)(1) of the Telecommunications Act of 1996 for the purpose of establishing a new Interconnection Agreement between BellSouth and NAIC Telecommunications. On <date>, I contacted you concerning this request and on July 14, 2004 forwarded to you BellSouth's Standard Interconnection Agreement. I sent a certified letter on August 2, 2004 to you indicating that 60 days of the 160 day negotiation period had passed.

The Telecommunications Act clearly states that both CLECs and ILECs have a duty to negotiate the terms and conditions of interconnection agreements in good faith. As of October 3, 2004, 135-days of the 160 day negotiation period have elapsed, leaving little time to negotiate new terms and conditions prior to the close of the negotiation window.

Please contact me at your earliest convenience at the above phone number to discuss possible options including the termination of these negotiations. BellSouth will continue to make itself available to work with NAIC Telecommunications in reaching a mutually agreeable Interconnection Agreement.

Sincerely,

Trish Cartwright

Trish Cartwright
Manager, Interconnection Services

White, Nancy

From: Cartwright, Trish
Sent: Tuesday, October 12, 2004 1:53 PM
To: White, Nancy
Subject: FW: NAIC Communications ICA and MBR
Importance: High

-----Original Message-----

From: Mark Long [mailto:longtelecom@comcast.net]
Sent: Wednesday, October 06, 2004 5:55 PM
To: Cartwright, Trish
Subject: RE: NAIC Communications ICA and MBR

Thanks, Trish. During our last telephone conversation, I advised you that NAIC was going to opt-in to AT&T's Florida agreement. NAIC has done so and filed the appropriate notice with the FPSC. NAIC is non-operational at this point in time, and will probably provide service via resale at some point in the future. The AT&T agreement will serve as a place-holder until then. Please call me with any questions at 850-562-9451. -Mark

-----Original Message-----

From: Cartwright, Trish [mailto:Trish.Cartwright@BELLSOUTH.COM]
Sent: Wednesday, October 06, 2004 4:46 PM
To: Mark Long
Cc: Cartwright, Trish
Subject: RE: NAIC Communications ICA and MBR
Importance: High

Please review the attached 135 day reminder letter.

Thank you.

Trish Cartwright
Contract Negotiator
404-927-2060

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Attn: BellSouth Interconnection Services Marketing Communications
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675 West Peachtree
Atlanta, GA 30375

-----Original Message-----

Exhibit 5

10/12/2004

From: Mark Long [mailto:longtelecom@comcast.net]
Sent: Wednesday, July 14, 2004 10:30 PM
To: Cartwright, Trish
Subject: RE: NAIC Communications ICA and MBR

Hi Trish: I'll assemble some documents and e-mail them to you shortly. ml

-----Original Message-----

From: Cartwright, Trish [mailto:Trish.Cartwright@BELLSOUTH.COM]
Sent: Wednesday, July 14, 2004 1:22 PM
To: longtelecom@comcast.net
Cc: Cartwright, Trish
Subject: NAIC Communications ICA and MBR
Importance: High

Please find attached the ICA and MBR we will be using for ongoing negotiations.

Thank you.

Trish Cartwright
Contract Negotiator
404-927-2060

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Attn: BellSouth Interconnection Services Marketing Communications
Rm 34H71
675 West Peachtree
Atlanta, GA 30375

<<NAIC_July 2004 ICA Draft.pdf>> <<NAIC_July 2004 MBR Draft.pdf>>

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