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December 7, 2004

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04 DEC -7 PM 4:25
COMMISSION
CLERK

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.: 041303-TP**
In re: Petition and Complaint of AT&T Communications of the Southern States, LLC for suspension and cancellation of CPN Tariff Floor Percentage Tariff No. FL2004-202 filed by BellSouth Telecommunications, Inc.

Dear Ms. Bayó:

Enclosed are an original and fifteen copies of BellSouth Telecommunications, Inc.'s Notice of Intent for its Response and Answer to the Complaint of AT&T, which we ask that you file in the captioned docket. *(See DN 12980-04 for Notice of Intent)*

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,

James Meza III/RN
James Meza III

- CMP _____
- COM _____
- CTR _____
- ECR _____
- GCL 1 Enclosures
- OPC _____
- MMS _____
- RCA _____
- SCR _____
- SEC 1
- OTH 1 conf records

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

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CERTIFICATE OF SERVICE
Docket No. 041303-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 7th day of December, 2004 to the
following:

Jason Rojas
Adam Teitzman
Staff Counsel
Florida Public Service
Commission
Division of Legal Services
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850
Telephone: (850) 413-6179 or 6199
jrojas@psc.state.fl.us
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Tracy Hatch, Esq.
AT&T Communications of the Southern
States, LLC
101 North Monroe Street
Suite 700
Tallahassee, FL 32301


James Meza, III

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition and Complaint by AT&T)	Docket No. 041303-TP
Communications of the Southern States, LLC)	
For suspension and cancellation of CPN)	
Tariff Floor Percentage Tariff No. FL2004-202)	
Filed by BellSouth Telecommunications, Inc.)	Filed: December 7, 2004

**RESPONSE AND ANSWER OF
BELLSOUTH TELECOMMUNICATIONS, INC.**

BellSouth Telecommunications, Inc. ("BellSouth") submits this Response and Answer to the Petition and Complaint ("Complaint") filed by AT&T Communications of the Southern States, LLC ("AT&T"). For the following reasons, the Florida Public Service Commission ("Commission") should reject AT&T's arguments and find in favor of BellSouth.

INTRODUCTION

BellSouth terminates long distance traffic for Interexchange Carriers ("IXCs"). When BellSouth terminates an interstate call for an IXC, it charges the IXC a tariffed interstate access charge. When BellSouth terminates an intrastate call for an IXC, it charges the IXC a tariffed intrastate access charge. Due to the volume of traffic terminated by BellSouth, BellSouth imposes these charges on a monthly basis by using a terminating percent interstate usage ("TPIU") factor to determine how many minutes terminated by BellSouth are subject to interstate and intrastate access charges. The TPIU takes into account all traffic that BellSouth terminates for a particular carrier. Thus, if the IXC has a TPIU of 70 percent, then BellSouth will charge the IXC interstate access rates for 70 percent of the total minutes terminated and intrastate access rates for the remaining 30 percent.

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When BellSouth terminates a call for an IXC, the IXC is required by federal law (47 CFR § 64.1601) to pass along calling information or Calling Party Number (“CPN”) data. This data allows BellSouth to determine whether the call is interstate or intrastate in nature. Due to certain technical limitations, however, certain calls sent to BellSouth by IXCs legitimately lack sufficient CPN data to enable BellSouth to determine whether the call is interstate or intrastate in nature. These types of calls include operator services calls, international calls, and calls that use in-band signaling methodology. In the summer of 2004, BellSouth determined through a study performed by Agilent Technologies (“Agilent Study”) that approximately 7 percent of IXC traffic is legitimately unidentifiable as a result of the above-identified technical limitations. This conclusion is buttressed by the fact that only ■■■ percent of AT&T’s traffic in BellSouth’s region for September 2004 lacked CPN data.¹

In practice, however, much more than 7 percent of the terminating traffic sent by many IXCs to BellSouth in Florida is missing CPN. For instance, in September 2004, 11 IXCs submitted approximately 90,000,000 minutes to BellSouth that lacked CPN. These minutes represented anywhere from 10 to 28 percent of the subject IXCs’ total traffic.

The lack of CPN adversely affects BellSouth by skewing the TPIU factor for each of these IXCs, because it removes the “unknown” minutes from the TPIU determination. Thus, if a carrier has 50 known minutes of which 70 percent were interstate and 30 percent were intrastate and 50 unknown minutes, the TPIU would be based on the 50 known minutes. As a result, without the Tariff, a 70 percent TPIU would be applied to 100 percent of the traffic even though half of the total minutes were unidentifiable. This

¹ AT&T’s percentage for Florida in September 2004 was ■■■ percent.

scenario prevents BellSouth from rightfully recovering the actual charges it is owed for terminating the IXCs' traffic and thus results in BellSouth being economically disadvantaged.

Consequently, on or about September 20, 2004, BellSouth filed a revision to its Access Service Tariff ("Tariff") in Florida to reflect a 7 percent CPN floor.² The effect of this revision is that for each IXC, any unidentifiable minutes exceeding 7 percent of the total minutes terminated by BellSouth will be treated as intrastate access minutes and will be charged at intrastate access rates. See Tariff at E2.3.14(A)(1)(a). Thus, as stated in the Tariff, "[f]or example, if 30 percent (%) of a customer's minutes sent to BellSouth do not contain sufficient originating information to allow BellSouth to determine the originating location, then BellSouth would apply the provisions of this tariff to those minutes exceeding the "floor", or 23 percent (%) in this example." Id.

This Tariff revision encourages all carriers to pass along all CPN data that is technically capable of being passed, which will result in a more accurate depiction of the jurisdictionally of the calls that BellSouth terminates for each IXC. Regardless of the reason for the lack of the CPN data, BellSouth terminated the minutes in question and has the right to be properly compensated at the appropriate rate.

BellSouth recognizes that, for some carriers, there may be legitimate reasons why a percentage of its calls exceed 7 percent of its total minutes. And, the Tariff provides recourse for a carrier that disputes the application of the intrastate rate for those minutes in excess of the 7 percent floor. First, the IXC can dispute charges it

² Prior to this time period, the CPN floor was 19.22 percent and was based on the composite percentage of traffic from all carriers in BellSouth's region that lacked CPN data. As a result and as confirmed by the Agilent Study, the 19.22 percent was artificially inflated because it took into account all calls that lacked CPN, whether legitimate or not.

feels are not appropriate. Second, under the Tariff, the IXC can (1) ask BellSouth for documentation to support the application of the intrastate rate based on the 7 percent floor; and (2) request that BellSouth change the application of the intrastate rate “upon a showing that the intrastate rate should not be applied.” Id. Thus, if an IXC proves that calls lacking CPN in excess of the 7 percent floor were interstate and not intrastate in nature, then BellSouth will apply the appropriate interstate charges to the minutes in question.

Of course, the only carrier to complain about this tariff – AT&T – likely has no need for such recourse. As noted above, AT&T historically has been at or below the 7 percent floor, and if this continues in the future, AT&T simply will not be impacted by this tariff.³ Therefore, BellSouth is at a loss as to why AT&T has filed the instant Complaint. Further, the Agilent Study supports a conclusion that approximately 7 percent of an IXC’s traffic should lack CPN data. Thus, higher percentages are not warranted and carriers should, consistent with federal law, do everything in their power to provide BellSouth with sufficient data to allow it to accurately charge IXCs for the actual services provided. This Tariff encourages IXCs to do just that, while at the same time giving them the right to dispute the application of the Tariff and prove that the 7 percent floor should not apply. The Commission should, therefore, reject AT&T challenges.

RESPONSE TO SPECIFIC ALLEGATIONS

1. Paragraph 1 of the Complaint does not require a response from BellSouth.
2. Paragraph 2 of the Complaint does not require a response from BellSouth.

³ Indeed, in the two other states where AT&T filed an identical Complaint, Tennessee and South Carolina, the percentage of traffic submitted by AT&T to BellSouth in those states for September 2004 did not exceed this 7 percent floor.

3. BellSouth admits Paragraph 3 of the Complaint. BellSouth also states that all correspondence should be sent to the undersigned in addition to the address identified in Paragraph 3 of the Complaint.

4. BellSouth denies the allegations of Paragraph 4 of the Complaint, except to admit that AT&T is certified by the Commission as an IXC and as a CLEC, that AT&T provides long distance service, and that AT&T purchases switched access services from BellSouth.

5. BellSouth denies the allegations of Paragraph 5 of the Complaint, except to admit that (1) BellSouth is an incumbent local exchange company ("ILEC") and is certificated by the Commission to provide local exchange services; (2) pursuant to Commission rules, Florida statutes, and the Tariff, BellSouth charges IXCs intrastate access charges; (3) that the Commission has approved an intrastate switched access rate that BellSouth charges to IXCs; and (4) BellSouth's approved intrastate switched access rate in Florida is higher than its interstate access rate.

6. BellSouth denies the allegations contained in Paragraph 6 of the Complaint, except to admit that, on or about September 20, 2004, BellSouth filed a revision to its Florida Access Service Tariff (previously defined as "Tariff") and that this revision was effective on or about October 20, 2004.

7. BellSouth denies the allegations contained in Paragraph 7 of the Complaint.

8. BellSouth denies the allegations contained in Paragraph 8 of the Complaint, except to admit that the 7 percent floor established in the Tariff was based upon the Agilent Study and that this Study supports a finding that approximately 7

percent of an IXC's traffic is legitimately unidentifiable due to technical limitations. BellSouth further admits that prior to the September 20, 2004 revision, the Tariff contained a 19.22 percent floor, which was based on the total minutes received by BellSouth on a region-wide basis that lacked CPN, whether legitimate or not.

9. BellSouth denies the allegations contained in Paragraph 9 of the Complaint.

10. BellSouth denies the allegations contained in Paragraph 10 of the Complaint, except to state that Section 364.01(4)(c) and 364.01(4)(g), Florida Statutes speak for themselves and are the best evidence of their terms and conditions.

11. BellSouth denies the allegations contained in Paragraph 11 of the Complaint.

12. Regarding the second paragraph identified as Paragraph 11 of the Complaint, BellSouth admits that it disagrees with most if not all of AT&T's contentions in the Complaint.

13. BellSouth denies that AT&T is entitled to any relief requested in the WHEREFORE clause.

14. Any allegation not expressly admitted herein is denied.

AFFIRMATIVE DEFENSES

1. AT&T's Complaint fails to state a claim upon which relief can be granted.

Respectfully submitted this 7th day of December, 2004.

BELLSOUTH TELECOMMUNICATIONS, INC.

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