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December 21, 2004

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

RECEIVED FPSC  
DEC 21 PM 4:36  
COMMISSION  
CLERK

Re: Docket No. 000121a-TP --- Impact of Hurricane Activity on BellSouth's Wholesale Operations and Response to Express Phone Service, Inc.

Dear Ms. Bayo:

This letter is written in response to the letter from Express Phone Service, Inc. ("Express"), dated November 16, 2004, wherein Express voiced certain concerns regarding the wholesale operations of BellSouth Telecommunications, Inc. ("BellSouth"), in particular BellSouth's obligations under its Self-Effectuating Enforcement Mechanism Administrative Plan, Version 2.7, updated June 16, 2003, and approved by the Commission in Docket No. 000121-TP ("SEEM plan"). As you are aware, Tropical Storm Bonnie, followed by Hurricanes Charley, Frances, Ivan, and Jeanne ravaged Florida in August and September 2004, endangering life, destroying property, and creating a general state of emergency. In response thereto, BellSouth dedicated substantial additional resources, worked extensive additional hours, and spent tens of millions of dollars in service restoration related activities.

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- COM \_\_\_\_\_
- CTR \_\_\_\_\_
- ECR \_\_\_\_\_
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- OTH \_\_\_\_\_

Given the state of natural disaster created by such an incredible succession of hurricanes,<sup>1</sup> and in accordance with Section 4.5.4 of the SEEM plan, BellSouth advised the Commission that the hurricanes had created a force majeure event that was impacting BellSouth's performance as measured under its Service Quality Measurement Plan, Version 3.00, issued July 1, 2003 ("SQM Plan"). Further, BellSouth advised that until the force majeure event subsided, BellSouth would not be obligated to pay SEEM fees associated with performance data affected by the force majeure event. As requested by the Commission, BellSouth has filed weekly status reports with the Commission regarding its restoration efforts, and has recently advised the Commission that BellSouth had returned to normal operations as of December 1, 2004.

<sup>1</sup> Four hurricanes touched ground in Florida in September 2004. It was widely reported that the last time four hurricanes touched ground in a single state in one month was in Texas in 1876.

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In sum, and as explained below, BellSouth has: (i) continually advised the Commission of its restoration efforts; (ii) correctly and conservatively applied the SEEM plan's force majeure provision; and (iii) sustained damages that greatly exceed the amount of SEEM fees allegedly "saved" by virtue of the SEEM plan's force majeure provision.

### **Hurricane Activity and BellSouth Restoration Efforts**

BellSouth has estimated that it will spend at least \$128 million in hurricane-related restoration costs in 2004.<sup>2</sup> Most of the hurricane damage occurred in Florida and Alabama and these were the only two states where the force majeure provision of SEEM was invoked. While some damage did occur in other states, it did not require the extraordinary efforts required in Florida and Alabama due to the extent of the damage. Recently, the Alabama commission agreed with application of this provision for the month of September. This astronomical figure is perhaps not surprising given the fact that BellSouth's service territory covers approximately sixty percent of the landmass in Florida and includes approximately 5.9 million access lines. Again, there were five events, four major hurricanes and a tropical storm that hit Florida in August and September 2004.

From Key West to Jacksonville to Pensacola, all of BellSouth's service territory was impacted. Just prior to the onslaught of the Hurricanes, Tropical Storm Bonnie made landfall between Apalachicola and Perry Florida traveling northeast, providing anywhere from 3" to 8" of rain all the way to Jacksonville, Florida.

As BellSouth was recovering from the Category I Hurricane Charley, which made landfall the day after Tropical Storm Bonnie exited the state, Hurricane Frances, Category II, made landfall at Port St. Lucie, Florida on September 4th. At this time, BellSouth was approximately 1,500 trouble reports from operating at a normal trouble report load. BellSouth was able to handle the trouble reports and damages from Bonnie and Charley by declaring a service emergency and requiring its network forces to work seven days a week, twelve-hour days.

Hurricane Frances required BellSouth to declare a statewide service emergency and import outside plant technicians from other BellSouth states. BellSouth moved, within the state, technicians from the Southern part of the state as they restored service to reasonable levels and technicians from the Panhandle that had not yet been impacted by any of the events. Frances caused major structural damage to roads, power, telephone, water and sewer facilities, and customer/business premises.

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<sup>2</sup> This estimate is for all of BellSouth. However, most of BellSouth's restoration activities (and expenses) have occurred (and will continue to occur) in Florida.

On September 16<sup>th</sup>-18<sup>th</sup> Hurricane Ivan, Category III approaching Category IV, made landfall just west of Pensacola Bay. This Hurricane dropped portions of the main transportation medium, I10, into Escambia Bay and destroyed seventy percent of the structures and infrastructure on the barrier island in Santa Rosa County, Pensacola Beach. To bring supplies and equipment, a full day of travel to Montgomery, Alabama and back down to Pensacola on Highway 29 was required. The I10 Bridge was partially repaired and one lane opened in mid October.

To assist with restoration efforts, BellSouth technicians were borrowed from Alabama, Mississippi, and Louisiana. Additionally, BellSouth's Florida technicians were deployed/relocated to assist with restoration efforts in other parts of the State.

On September 26<sup>th</sup> Hurricane Jeanne, Category III, made landfall four and one half miles from the point that Hurricane Frances, Category II, entered the State. This Hurricane caused even more significant damage to BellSouth's infrastructure than Frances. For example, the tidal action in the inter-coastal waterway pulled apart four submarine cables and cables in conduit. Under normal conditions, repair of such cables would take approximately six months. However, given BellSouth's commitment to an expeditious full recovery, the planning, design, order, placement, and splicing of the cables in question should be completed in less than forty-five days.

Even though BellSouth has ended application of the force majeure provision, all work associated with the hurricanes is not yet completed. Some 5,000 of the troubles reported in Pensacola and 4,000 trouble reported in the Southeast portion of the state will either never be restored or will not be repaired for six-months to a year because of the loss or condemnation of the structures. However, we are not longer engaged in the extraordinary measures that had to be undertaken in various locations and at times across the entire state for the last few months in order to manage this remaining workload.

Damage caused by the Hurricanes includes:

- over 4,600 down poles;
- over 12,500 damaged cable spans;
- almost 58,000 drops;
- over 350 Digital Loop Carrier sights; and
- over 450 DSL sights.

During September 2004, BellSouth received over 542,000 retail and wholesale customer trouble reports, and over 820,000 for the entire period. In contrast, during a normal day, BellSouth averages between 8,000 to 10,000 trouble reports for the entire state of Florida during the heaviest trouble reporting period of the year. As such, during September 2004, BellSouth experienced a trouble report load that was approximately

double that of a normal peak trouble load. This extreme trouble load was in addition to the almost 50,000 service orders scheduled to be worked during the period. Also, as already explained, BellSouth had the added work load of replacing cables, Digital Loop Carrier equipment along with DSL and other high bandwidth services. This additional work load was under the extreme conditions of lack of commercial power, flooding, land cleanup and lack of access due to closed roads and destroyed homes and buildings.

**Additional Resources Devoted to Restoration Efforts:**

BellSouth Technicians from other BellSouth states-502  
(Georgia, Tennessee, Alabama, Mississippi, North Carolina, South Carolina, Louisiana)  
Contracted Southwestern Bell Technicians-110  
Contract Pole Crews; Cable Technicians.-225  
BellSouth/Florida Technicians working in Districts normally not assigned-300  
Schedule Hours of Work-13 days on/12 hour days

**Express's Concerns**

In its November 16<sup>th</sup> correspondence, Express asserts that BellSouth "would have fallen short of meeting the established performance standard, even in the absence of the force majeure events. . . . [and therefore] BellSouth should not be allowed to completely avoid penalties they would normally be faced with." Express's concerns appear to be based on a misunderstanding of the facts. As an initial matter, because of the force majeure events, and the abnormal and emergency situation created by the force majeure events, the SQM and SEEM data associated with provisioning and maintenance and repair areas (or domains) were rendered useless and unreliable. As such, and in accordance with the SEEM plan, BellSouth excluded from SEEM, fees associated with the provisioning and maintenance and repairs domains for part of the month of August (portions of the state) the months of September (entire state), October (entire state), and November (portions of the state) 2004. Importantly, BellSouth did not exclude from SEEM, fees associated with all other measurements (such as ordering/pre-ordering and billing). In short, there has been no avoidance of all SEEM penalties.

Further, the SEEM plan assumes normal working conditions. Normal circumstances allow BellSouth to control who, what, where, when and how the wholesale and retail customer troubles and service orders are worked. With no ability to control when technicians can work or even if they can work, BellSouth's best effort is to restore service where and when it can. With almost all services affected by these abnormal conditions, the performance data is not reliable enough to be used for determining any

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parity calculations. By definition a force majeure situation is an abnormal situation. As such, any comparison between performance during a "normal" month (however that may be determined) and a "force majeure" month is difficult, if not impossible.

Express also states that "BellSouth also cannot be allowed to arbitrarily decide that the entire state was affected by Hurricane Frances for the purpose of seeking exemption from obligations for penalties . . ." Again, Express seems to be missing all the relevant facts. In addition to Hurricane Frances, three other hurricanes and a tropical storm ravaged Florida. In response thereto, BellSouth has responded with vigor and compassion to restore service, and has properly and conservatively invoked the SEEM plan's force majeure provision from both a geographic and timing perspective. Again, BellSouth recently advised that it had returned to normal operations in Florida as of December 1, 2004.

In sum, BellSouth has gone to extraordinary lengths and has spent tens of millions of dollars to respond to the havoc created by the Hurricanes and to restore service. Additionally, BellSouth has exercised the SEEM plan's force majeure provisions in a timely, limited, and conservative manner. If Express has disagreement or concerns over the provisions of the SEEM plan, then Express should participate in the ongoing SQM and SEEM workshops where suggested modifications to the plans are currently being discussed and debated. Moreover, it appears that Express may be more concerned with a shortfall in SEEM revenue rather than whether BellSouth acted appropriately during a time of natural disaster.

Finally, Express's assertion that "BellSouth actually stand to gain financially by not ending the [force majeure] designation" is preposterous. Again, BellSouth has estimated the cost of hurricane-related restoration efforts to be at least \$128 million. Although this estimate is a company-wide number, a substantial portion of BellSouth's restoration efforts have taken place in Florida. In all likelihood, the hurricane related costs BellSouth will incur will exceed the total amount BellSouth paid in SEEM fees in Florida and Alabama in 2003 by over \$100 million. Without question, the burdens and costs associated with responding to an emergency situation clearly outweigh the perceived advantages associated with invoking the force majeure provision of the SEEM plan.

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In closing, I trust that you will find the information contained in this correspondence to be responsive to any questions or concerns (if any) you may have. However, if you have any questions or comments, please do not hesitate to contact me.

Sincerely,

Marshall M. Criser III

cc: Braulio L. Baez, Chairman  
J. Terry Deason  
Rudolph Bradley  
Charles M. Davidson  
Beth Salak  
Lisa Harvey  
Rhonda Hicks  
Harold McLean  
Charles Beck  
Scott Mulcahy  
Thomas M. Armstrong (President, Express Phone Service, Inc.)