

ORIGINAL

Matilda Sanders

From: Barclay, Lynn [Lynn.Barclay@BellSouth.com]
Sent: Friday, March 04, 2005 10:38 AM
To: Filings@psc.state.fl.us
Cc: Mays, Meredith; Smith, Debbie N.; Slaughter, Brenda; Fatool, Vicki; Nancy Sims; Holland, Robyn P.; Linda Hobbs; Bixler, Michele; Lee, Juanita
Subject: Dkt. 050125-TP BellSouth's Answer and Motion to Consolidate
Attachments: 050125 answer to Petition and Complaint.pdf; 050125 Answer and Motion DCC

A. Lynn Barclay
 Legal Secretary for Meredith E. Mays
 BellSouth Telecommunications, Inc.
 c/o Nancy Sims
 150 South Monroe, Rm. 400
 Tallahassee, FL 32304-1508
 (404) 335-0788
 lynn.barclay@bellsouth.com

B. Docket No. 050125-TP, in Re: Petition and Complaint of AT&T Communications of the Southern States, LLC for suspension and cancellation of Trans Traffic Service Tariff No. FL2004-28 filed 3/3/05, BellSouth Telecommunications, Inc.

C. BellSouth Telecommunications, Inc.
 on behalf of Meredith E. Mays

D. 2 pages total for PDF format
 2 pages total for QED (in file folder)

E. Answer and Motion to Consolidate of BellSouth Telecommunications, Inc.
 050125 answer to Petition and Complaint.pdf 050125 Answer and Motion DCC

Lynn Barclay

CMP Legal Department
 COM 675 West Peachtree Street
 CTR Suite 4300
 ECR Atlanta, GA 30375
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GCL
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SEC
 OTH *KML*
 3/4/2005

SECURITY NUMBER DATE
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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

March 4, 2005

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. 050125-TP (AT&T Petition and Complaint)

Dear Ms. Bayó:

Enclosed is BellSouth Telecommunications, Inc.'s Answer and Motion to Consolidate, 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
575452

DOCUMENT NUMBER-DATE

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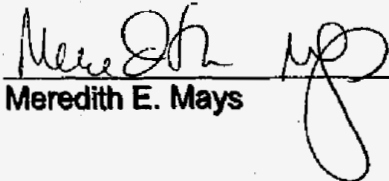
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**CERTIFICATE OF SERVICE
DOCKET NO. 050125-TP**

I HEREBY CERTIFY that a true and correct copy of the foregoing was served via
Electronic Mail and U.S. Mail this 4th day of March, 2005 to the following:

Jason Rojas
Staff Counsel
Florida Public Service
Commission
Division of Legal Services
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850
Phone : (850) 413-6179
irojas@dpsc.state.fl.us

Tracy Hatch Esq.
AT&T Communications of the Southern
States, LLC
101 North Monroe Street, #700
Tallahassee, FL 32301-1546
Phone: (850) 425-6309
Fax: (832) 213-0204
thatch@att.com


Meredith E. Mays

ORIGINAL

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition and Complaint of AT&T)
Communication of the Southern States, LLC) Docket No. 050125-TP
For suspension and cancellation of Transit Traffic)
Service Tariff No. FL2004-284 filed by) Filed March 4, 2005
BellSouth Telecommunications, Inc.)
_____)

**ANSWER AND MOTION TO CONSOLIDATE
OF BELL SOUTH TELECOMMUNICATIONS, INC.**

INTRODUCTION AND MOTION TO CONSOLIDATE

BellSouth Telecommunications, Inc. ("BellSouth") responds to the Petition and Complaint ("Petition") filed by AT&T Communications of the Southern States, LLC ("AT&T"). As an initial matter, BellSouth respectfully requests that the Commission consolidate this matter with an objection to the identical tariff in Docket No. 050119-TL. AT&T has requested that this Commission suspend the tariff at issue pending an expedited hearing, which is identical to the request made by several independent telephone companies filed just six days prior to AT&T's Petition. While BellSouth disagrees that either suspension or a hearing is needed, there is no value in duplicating the Commission's effort by addressing the same issue in different proceedings. Because both petitions have been recently filed, no party would be harmed or prejudiced by consolidating any objections to BellSouth's Tariff A16.1, Transit Traffic Service, into a single proceeding. For this reason, BellSouth requests that the Commission consolidate this matter with Docket No. 050119-TL.

This case involves a dispute over transit traffic, which is traffic that originates on the network of one carrier, transits over BellSouth's network, then terminates on the

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network of a third carrier.¹ BellSouth is neither the originating nor terminating carrier of transit traffic, and BellSouth has no duty under Section 251(c)(2) of the Act to provide transit traffic at TELRIC rates.² Nonetheless, BellSouth provides rates, terms and conditions for the provision of transit service to many carriers pursuant to agreement and is entitled to compensation for providing this service.³ BellSouth has filed a new tariff, General Subscriber Services Tariff § A.16.1, Transit Traffic Service (“transit tariff”), which tariff sets forth certain rates, terms and conditions that apply when carriers receive transit service from BellSouth but have not entered into an agreement with BellSouth setting forth rates, terms and conditions for the provision of transit services. BellSouth’s transit tariff does not apply to AT&T, a party with whom BellSouth has an existing contractual relationship because the tariff, by its terms, applies as a default, only in the absence of an existing contractual agreement. AT&T’s petition lacks legal support and this Commission should reject it.

SPECIFIC RESPONSES

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

1. The allegations in Paragraph 1 of the Petition require no response from BellSouth. To the extent a response would be appropriate, BellSouth lacks sufficient

¹ See e.g., *Texcom, Inc. v. Bell Atlantic Corp.*, Memorandum Opinion and Order, ¶ 4, FCC File No. EB-00-MD-14 (rel. Nov. 28, 2001); also Order No. PSC-01-0824-FOF-TP, pp. 102-105.

² See *Virginia Arbitration Order*, ¶ 117, 17 F.C.C.R. 27039 (FCC Wireline Competition Bureau, July 17, 2002); and *In re: Arbitration Petition of Cavalier Telephone LLC*, ¶ 38 (FCC Wireline Competition Bureau, Dec. 12, 2003).

³ See *Virginia Arbitration Order*, ¶ 177 (“any duty Verizon may have under section 251(a)(1) of the Act to provide transit service would not require that service to be priced at TELRIC”). Consistent with the *Virginia Arbitration Order*, even if a Commission believes that ILECs have a duty to provide transit service (which BellSouth does not), any such obligation would arise under section 251(a) and would apply equally to all carriers.

information to form a belief as to the truth of the matter asserted and would, therefore, deny the allegations in Paragraph 1 of the Petition.

2. The allegations in Paragraph 2 of the Petition require no response from BellSouth. BellSouth further states that communications regarding BellSouth's Answer to this Petition should be directed to:

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Meredith E. Mays
BellSouth Center – Suite 4300
675 West Peachtree Street, N.E.
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3. BellSouth admits the allegations in Paragraph 3 of the Petition.
4. On information and belief, BellSouth admits that AT&T has obtained certain certificates to provide various telecommunications services in Florida. BellSouth denies that AT&T's interests are significantly affected by BellSouth's transit tariff and denies that its transit tariff is anticompetitive. BellSouth admits that it filed the transit tariff attached to AT&T's Petition, which tariff became effective on February 11, 2005. BellSouth denies any remaining allegations in Paragraph 4.
5. BellSouth admits the allegations in Paragraph 5 of the Petition.
6. BellSouth states that the relevant sections of the Act speak for themselves and require no response from BellSouth. BellSouth denies that it has any obligation under Section 251(c)(2) of the Act to provide transit service, and specifically denies that it has any obligation to provide transit services at TELRIC rates. *See Virginia Arbitration Order*, ¶ 117, 17 F.C.C.R. 27039 (FCC Wireline Competition Bureau, July 17, 2002) (“[w]e reject AT&T's proposal because it would require Verizon to provide

transit service at TELRIC rates without limitation . . . we decline, on delegated authority, to determine for the first time that Verizon has a section 251(c)(2) duty to provide transit service at TELRIC rates. Furthermore, any duty Verizon may have under section 251(a)(1) of the Act to provide transit service would not require that service to be priced at TELRIC.”). BellSouth denies any remaining allegations in Paragraph 6.

7. BellSouth admits that it filed its transit tariff on January 27, 2005, which tariff became effective February 11, 2005. The relevant provisions of BellSouth’s transit tariff speak for themselves and require no response from BellSouth. BellSouth denies that its filing “dramatically increase[s]” the rates charged for transit service. BellSouth’s transit tariff is a new tariff, and is not an increase in existing tariffed rates – nor does the transit tariff have any impact on rates charged for transit service pursuant to any agreement between AT&T (or any other carrier) and BellSouth. BellSouth denies any remaining allegations in Paragraph 7.

8. BellSouth denies that AT&T “must use BellSouth’s transit services to interconnect with other local carriers.” AT&T may elect to interconnect directly with any other carriers, and is not required to use BellSouth’s services for interconnection. BellSouth denies any remaining allegations in Paragraph 8.

9. The relevant provisions of the BellSouth/AT&T interconnection agreement speak for themselves and require no response from BellSouth. By way of further response, BellSouth states that the parties’ current agreement does not contain the additional Tandem Intermediary Charge (TIC). BellSouth’s standard interconnection agreements for CLECs and CMRS providers currently contains a TIC charge of \$0.0025, which is charged in addition to tandem switching and common transport. BellSouth’s

standard agreements with CMRS providers contain a transit rate of \$0.003, which is a composite rate. BellSouth denies that it has any obligation to provide transit services at TELRIC rates, and denies that its transit rate is unfair or anticompetitive. BellSouth denies any remaining allegations in Paragraph 9.

10. The relevant Florida statutes cited speak for themselves and require no response from BellSouth.

11. BellSouth denies that it is a monopoly provider of transit traffic service. Any carrier may elect to provide transiting services, and any carrier is free to establish independent, direct interconnection agreements. In Order No. PSC-01-0824-FOF-TP, this Commission found that “the Telecommunications Act of 1996 requires WorldCom to negotiate interconnection agreements with ALECs with whom it intends to exchange traffic.” Similar reasoning applies to AT&T. BellSouth denies that its transit tariff and its transit tariff rate violates Florida law. BellSouth denies any remaining allegations in Paragraph 11.

12. BellSouth denies that this Commission should suspend the effective date of its transit tariff and further denies that a formal administrative hearing is necessary. BellSouth denies any remaining allegations in Paragraph 12.

FIRST AFFIRMATIVE DEFENSE

The Petition fails to state a claim for which relief can be granted.

WHEREFORE, BellSouth respectfully requests the Commission:

Consolidate this docket with docket No. 050119-TP;

Enter an Order in BellSouth’s favor;

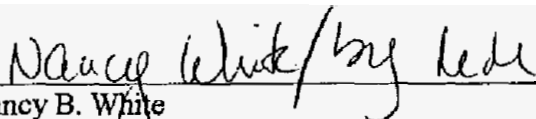
Deny AT&T the relief sought; and

Grant BellSouth such other relief as the Commission deems just and proper.


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

Respectfully submitted, this 4th day of March 2005.

BELLSOUTH TELECOMMUNICATIONS, INC.



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