

ORIGINAL

**Matilda Sanders**

**From:** Fatool, Vicki [Vicki.Fatool@BellSouth.COM]  
**Sent:** Wednesday, July 20, 2005 11:59 AM  
**To:** Filings@psc.state.fl.us  
**Subject:** 050257-TL BST's Motion to Strike Miami-Dade's Reply to BellSouth's Opposition  
**Importance:** High  
**Attachments:** 050257-T.pdf

A. Vicki Fatool  
 Legal Secretary to Nancy B. White & Manuel A. Gurdian  
 BellSouth Telecommunications, Inc.  
 150 South Monroe Street  
 Suite 400  
 Tallahassee, Florida 32301  
 (305) 347-5560  
[vicki.fatool@bellsouth.com](mailto:vicki.fatool@bellsouth.com)

B. Docket No. 050257-TL

Complaint by BellSouth Telecommunications, Inc., Regarding the Operation of a Telecommunications Company by Miami-Dade County in Violation of Florida Statutes and Commission Rules

C. BellSouth Telecommunications, Inc.  
 on behalf of Nancy B. White & Manuel A. Gurdian

D. 5 pages total (includes letter, certificate of service and pleading)

E. BellSouth Telecommunications, Inc.'s Motion to Strike Miami-Dade's Reply To BellSouth's Opposition

pdf

<<050257-T.pdf>>

MP \_\_\_\_\_  
 \*\*\*\*\*

OM \_\_\_\_\_

TR \_\_\_\_\_ The information transmitted is intended only for the person or entity to which it is addressed and may contain confidential, proprietary, and/or privileged material. Any review, retransmission, dissemination or other use of, or taking of any action in reliance upon this information by persons or entities other than the intended recipient is prohibited. If you received this in error, please contact the sender and delete the material from all computers.

DL \_\_\_\_\_  
 163

PC \_\_\_\_\_

MS \_\_\_\_\_

CA \_\_\_\_\_

CR \_\_\_\_\_

EC 1

JTH Kum P.

7/20/2005

DOCUMENT NUMBER-DATE

06933 JUL 20 03

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

July 20, 2005

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

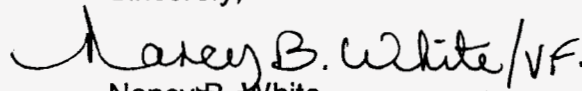
**Re: Docket No. 050257-TL: Complaint by BellSouth  
Telecommunications, Inc., Regarding the Operation of a  
Telecommunications Company by Miami-Dade County in Violation of  
Florida Statutes and Commission Rules**

Dear Ms. Bayó:

Enclosed is an original and fifteen copies of BellSouth  
Telecommunications, Inc.'s Motion to Strike Miami-Dade's Reply to BellSouth's  
Opposition, 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,

  
Nancy B. White

cc: All Parties of Record  
Jerry D. Hendrix  
R. Douglas Lackey

DOCUMENT NUMBER-DATE

06933 JUL 20 05

FPSC-COMMISSION CLERK

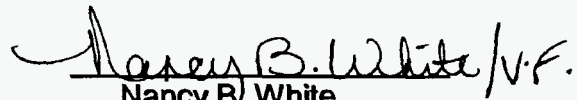
**CERTIFICATE OF SERVICE**  
**Docket No. 050257-TP**

I HEREBY CERTIFY that a true and correct copy of the foregoing was served via  
Electronic Mail and First Class U. S. Mail this 20<sup>th</sup> day of July, 2005 to the following:

Adam Teitzman  
Staff Counsel  
Florida Public Service  
Commission  
Division of Legal Services  
2540 Shumard Oak Boulevard  
Tallahassee, FL 32399-0850  
[ateitzma@psc.state.fl.us](mailto:ateitzma@psc.state.fl.us)

Robert A. Ginsburg  
Miami-Dade County Attorney  
David Stephen Hope, Esq.  
Assistant County Attorney  
Miami-Dade County Attorney's Office  
Aviation Division  
**U.S. Mail Address**  
**P.O. Box 592075 AMF**  
**Miami, Florida 33159-2075**  
Miami International Airport  
Terminal Building  
Concourse A, 4<sup>th</sup> Floor  
Miami, FL 33122  
Tel. No. (305) 876-7040  
Fax No. (305) 876-7294  
[dhope@miami-airport.com](mailto:dhope@miami-airport.com)

Jean L. Kiddoo  
Joshua M. Bobeck  
Danielle C. Burt  
Swidler Berlin LLP  
3000 K Street, N.W., Ste. 300  
Washington, D.C. 20007  
Tel. No. (202) 424-7500  
Fax No. (202) 424-7647  
[jkiddoo@swidlaw.com](mailto:jkiddoo@swidlaw.com)  
[jmbobeck@swidlaw.com](mailto:jmbobeck@swidlaw.com)  
[dcburt@swidlaw.com](mailto:dcburt@swidlaw.com)

  
Nancy B. White

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Complaint by BellSouth Tele-	)	Docket No. 050257-TL
Communications, Inc., Regarding	)	
The Operation of a Telecommunications	)	
Company by Miami-Dade County in	)	
Violation of Florida Statutes and	)	
Commission Rules	)	
<hr/>		Dated: July 20, 2005

**MOTION TO STRIKE MIAMI-DADE COUNTY'S REPLY TO BELL SOUTH'S OPPOSITION**

Miami-Dade County ("Miami-Dade") is quickly establishing a pattern of violating the procedural Rules of the Florida Public Service Commission ("Commission"), in much the same fashion as Miami-Dade has violated the substantive Rules which led to this proceeding. Specifically, after Miami-Dade filed its Answer and Affirmative Defenses in this matter on May 24, 2005, it filed on June 1 – in violation of Rule 28-106.204, Florida Administrative Code – an untimely Motion to Dismiss BellSouth Telecommunications, Inc.'s ("BellSouth's") Complaint. On June 17, 2005, BellSouth filed its Opposition to this Motion.

For the second time in six weeks, Miami-Dade has scorned the Rules by filing an unauthorized reply to BellSouth's Opposition on July 11, 2005.<sup>1</sup> The Commission should strike Miami-Dade's reply because replies are not permitted under the Uniform Rules of the Administrative Procedure Act except under limited circumstances wherein a motion allowing leave to reply is granted. Miami-Dade has not moved the Commission for permission to file a reply.

<sup>1</sup> Rule 28-106.204(2), Florida Administrative Code requires a motion to dismiss to be filed no later than twenty (20) days after service of the petition on a party. Miami-Dade's untimely filing of the motion to dismiss was its first violation of the procedural Rules of this Commission.

The rules provide that once a motion is filed, a party can file an opposition within seven days of service. Rule 28-106.204, Florida Administrative Code. The rule does not expressly authorize reply memorandums. See *In re: Complaint of Supra Telecommunications and Information Systems, Inc. against BellSouth Telecommunications, Inc. for violations of the Telecommunications Act of 1996*, Order No. PSC-00-1777-PCO-TP, Docket No. 980119-TP (Sept. 28, 2000) at 3 (“neither the Uniform Rules nor [the Commission’s] rules contemplate a reply to a response to a Motion.”); *In re: Petition for approval to revise customer contact protocol by BellSouth Telecommunications, Inc.*, Order No. PSC-04-0636-FOF-TL, Docket No. 031038-TL (July 1, 2004) at 4 (“the Uniform Rules of the Administrative Procedure Act do not expressly authorize replies.”); *In re: Investigation into the establishment of operations support systems permanent performance measures for incumbent local exchange telecommunications companies*, Order No. PSC-04-0511-PAA-TP, Docket No. 000121A-TP (May 19, 2004) at 2 (“we do not have rules which allow for a Reply to a Response”); and *In re: Implementation of requirements arising from Federal Communications Commission’s triennial UNE review: Local Circuit Switching for Mass Market Customers*, PSC-04-0343-FOF-TP, Docket No. 030851-TP (April 2, 2004) at 2 (“our rules do not contemplate any pleadings filed in reply to a response to a motion”). Because reply memoranda are not expressly authorized, a party must seek leave before filing a reply. However, the Commission generally refuses to allow parties to file reply memoranda, even when leave is sought. See *id.*; see also, *In re: ITC—DeltaCom Communications, Inc.*, Order No. PSC-00-2233-FOF-TP, Docket No. 990750-TP, (Nov.

22. 2000) at 2; *In re: Okeechobee Generating Co., L.L.C.*, Order No. PSC-99-2438-PAA-EU, Docket No. 991462-EU, (Dec. 13, 1999) at 4-5.

Miami-Dade has neither sought nor received permission to file a reply in this docket (a footnote in its reply requesting leave is not sufficient).<sup>2</sup> Miami-Dade has provided no reasons whatsoever for this Commission to deviate from its general rule that reply memoranda are not permissible and no such justification exists, BellSouth respectfully requests that the Commission strike Miami-Dade's reply.

Respectfully submitted this 20<sup>th</sup> day of July, 2005.

BELLSOUTH TELECOMMUNICATIONS, INC.



NANCY B. WHITE  
SHARON R. LIEBMAN  
MANUEL A. GURDIAN  
c/o Nancy H. Sims  
150 So. Monroe Street, Suite 400  
Tallahassee, FL 32301  
(305) 347-5558



R. DOUGLAS LACKEY  
Suite 4300  
675 W. Peachtree St., NE  
Atlanta, GA 30375  
(404) 335-0747

592987

---

<sup>2</sup> Rule 28-106.204(1), Florida Administrative Code provides that all "requests for relief shall be made by motion. All motions shall be in writing. . .and shall fully state the action requested and the grounds relied upon." Miami-Dade's footnote is clearly not a written motion per the Rules. Moreover, Miami-Dade's footnote fails to comply with Rule 28-106.204(3), which requires the movant to include "a statement that the movant has conferred with all other parties of record and shall state as to each party whether the party has any objection to the motion."