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Matilda Sanders

From: Fatool, Vicki [Vicki.Fatool@BellSouth.COM]
Sent: Monday, September 19, 2005 3:24 PM
To: Filings@psc.state.fl.us
Subject: 050570-TP BST's Answer
Importance: High
Attachments: 050570-T.pdf

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A. Vicki Fatool
 Legal Secretary to Manuel A. Gurdian
 BellSouth Telecommunications, Inc.
 150 South Monroe Street
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 Tallahassee, Florida 32301
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B. Docket No. 050570-TP

In re: Joint Petition of TDS Telecom d/b/a TDS Telecom/Quincy Telephone, Northeast Florida Telephone Company d/b/a NEFCOM, GTC, Inc. d/b/a GT Com, Smart City Telecommunications, LLC d/b/a Smart City Telecom, ITS Telecommunications Systems, Inc. and Frontier Communications of the South, LLC, Requesting a Generic Investigation of Third-Party Transit Traffic Arising from the Transit Traffic Service filed by BellSouth Telecommunications, Inc.

C. BellSouth Telecommunications, Inc.
 on behalf of Manuel A. Gurdian

D. 9 pages total (includes letter, certificate of service and pleading)

E. BellSouth Telecommunications, Inc.'s Answer

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Legal Department

MANUEL A. GURDIAN
Attorney

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

September 19, 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. 050570-TP

In re: Joint Petition of TDS Telecom d/b/a TDS Telecom/Quincy Telephone, Northeast Florida Telephone Company d/b/a NEFCOM, GTC, Inc. d/b/a GT Com, Smart City Telecommunications, LLC d/b/a Smart City Telecom, ITS Telecommunications Systems, Inc. and Frontier Communications of the South, LLC, Requesting a Generic Investigation of Third-Party Transit Traffic Arising from the Transit Traffic Service filed by BellSouth Telecommunications, Inc.

Dear Ms. Bayó:

Enclosed is the Answer of BellSouth Telecommunications, Inc., 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,


Manuel A. Gurdian

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

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CERTIFICATE OF SERVICE
Docket No. 050570-TP

I HEREBY CERTIFY that a true and correct copy of the foregoing was served via Electronic Mail and (*) Federal Express and First Class U.S. Mail this 19th day of September, 2005 to the following:

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Staff Counsel
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Manuel A. Gurdian

ORIGINAL

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Joint Petition of TDS Telecom d/b/a)	Docket No. 050570-TP
TDS Telecom/Quincy Telephone,)	
Northeast Florida Telephone Company)	
d/b/a NEFCOM, GTC, Inc. d/b/a GT Com,)	
Smart City Telecommunications, LLC)	
d/b/a Smart City Telecom, ITS Telecommu-)	
ications Systems, Inc. and Frontier)	
Communications of the South, LLC,)	
Requesting a Generic Investigation of)	
Third-Party Transit Traffic Arising from)	
the Transit Traffic Service filed by)	
BellSouth Telecommunications, Inc.)	
_____)	Filed: September 20, 2005

ANSWER OF BELLSOUTH TELECOMMUNICATIONS, INC.

INTRODUCTION

BellSouth Telecommunications, Inc. (“BellSouth”) responds to the Joint Petition (“Petition”) filed by TDS Telecom d/b/a TDS Telecom/Quincy Telephone, Northeast Florida Telephone Company d/b/a NEFCOM, GTC, Inc. d/b/a/ GT Com, Smart City Telecommunications LLC d/b/a Smart City Telecom, ITS Telecommunications Systems, Inc., and Frontier Communications of the South, LLC (collectively “Independent Telephone Companies” or “ITCs”) and states as follows:

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 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

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).

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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.

When BellSouth provides transit service, it operates as a conduit between other carriers that may not have direct interconnection agreements in place. In most instances, BellSouth has established contractual arrangements that address the terms and conditions for the provision of transit service, as well as the compensation that is owed to BellSouth from the originating carrier for transiting such traffic. BellSouth’s transit tariff does not apply to carriers who have negotiated such contracts. However, the ITCs, despite having no arrangement in place with BellSouth for the provision of transit service, send transit traffic to BellSouth for termination to other carriers with whom the ITCs have no direct interconnection. BellSouth is neither the originating nor terminating carrier of such transit traffic and is entitled to compensation for providing this service. The ITCs are free to enter into independent contractual arrangements with BellSouth and only in the absence of an existing contractual agreement does BellSouth’s transit tariff apply as a default. Accordingly, the ITCs’ Petition is devoid of any legal support and this Commission should reject it.

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.

SPECIFIC RESPONSES

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

1. The allegations contained in Paragraph 1 of the Petition require no response from BellSouth. To the extent a response would be appropriate, BellSouth lacks sufficient information to form a belief as to the truth of the matters asserted and would, therefore, deny the allegations in Paragraph 1 of the Petition.

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

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c/o Nancy H. Sims
150 South Monroe Street
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Tallahassee, Florida 32301
(305) 347-5558
Nancy.White@bellsouth.com

R. Douglas Lackey
John T. Tyler
BellSouth Center – Suite 4300
675 West Peachtree Street, N.E.
Atlanta, Georgia 30375
(404) 335-0750
John.Tyler@bellsouth.com

3. BellSouth admits that the ITCs have filed a Petition requesting the Commission initiate a generic investigation of BellSouth's Transit Traffic Tariff and requesting that the Commission schedule a formal administrative hearing to address the issues raised in the Petition and any and all issues arising through the discovery process timely raised by other parties. BellSouth affirmatively asserts that this Commission need not initiate a generic investigation. BellSouth further affirmatively asserts that the initiation of a generic docket would cause untimely delay in resolution of Docket Nos. 050119-TP and 050125-TP and prejudice BellSouth's right to utilize compensation derived from transiting traffic on behalf of third parties. BellSouth denies that a formal

hearing is needed and that the ITCs have actually raised any justifiable legal issues in their Petition. BellSouth further affirmatively asserts that as a company that has elected price regulation under Section 364.051, Florida Statutes, BellSouth's transit tariff is presumptively valid and no investigation is necessary. BellSouth denies any remaining allegations contained in Paragraph 3.

4. The relevant provisions of Florida law contained in Paragraph 4 speak for themselves and require no response from BellSouth. BellSouth is without knowledge or information sufficient to admit or deny whether the ITCs fall within the definitions cited in Paragraph 4. BellSouth denies any remaining allegations contained in Paragraph 4.

5. BellSouth admits that it filed Exhibit "A" to the Petition with the Commission on January 27, 2005. BellSouth states that Exhibit "A" and the relevant portions of the transit tariff speak for themselves and require no response from BellSouth.. BellSouth denies any remaining allegations in Paragraph 5.

6. BellSouth admits the allegations contained in Paragraph 6.

7. BellSouth admits the allegations contained in Paragraph 7.

8. The transit tariff speaks for itself and requires no response from BellSouth. BellSouth affirmatively states that the ITCs are not required to use BellSouth's transit services to interconnect with other carriers. The ITCs may elect to interconnect directly with any other carriers and are not required to use BellSouth's services for interconnection. BellSouth denies that it either agreed to, or engaged in, any course of conduct and dealing whereby it would provide transit service free of charge. BellSouth further affirmatively states that, pursuant to Section 364.08(2), Florida Statutes it cannot provide service free of charge. BellSouth denies any remaining allegations contained in Paragraph 8.

9. The allegations contained in Paragraph 9 of the Petition require no response from BellSouth.⁴ BellSouth further affirmatively states that its current Proposed Issues List is as follows:⁵

1. Should parties that originate transit traffic to BellSouth pay for the transit service BellSouth provides?
2. Should parties that originate ISP-bound transit traffic pay for the transit service that BellSouth provides?
3. What is the appropriate amount of compensation that BellSouth should receive for the transit service it provides?
4. Consistent with Order Nos. PSC-05-0517-PAA-TP and PSC-05-0623-CO-TP, have the parties to this docket (“parties”) paid BellSouth for transit service provided on or after February 11, 2005? If not, what amounts, if any, are owed to BellSouth for transit service provided since February 11, 2005?
5. Have parties paid BellSouth for transit service provided before February 11, 2005? If not, should the parties pay BellSouth for transit service provided before February 11, 2005, and, if so, what amounts, if any, are owed to BellSouth for transit service provided before February 11, 2005?

10. BellSouth denies that the ITCs’ Petition will impact third party providers such as Competitive Local Exchange Companies and Commercial Mobile Radio Service Providers. BellSouth affirmatively states that the ITCs and any third party providers are not required to utilize BellSouth’s transit services to interconnect with other carriers and that the transit tariff affects only those telecommunications providers that do not have an interconnection agreement that provides for payment of transit service. The ITCs and third party providers may elect to interconnect directly with any other carriers and are not required to use BellSouth’s services for interconnection. BellSouth further affirmatively asserts that this Commission need not initiate a generic investigation to resolve the ITCs’

⁴ BellSouth affirmatively asserts that it does not necessarily agree that the issues raised in the ITCs’ Petition are issues properly before the Commission and hereby does not waive the right to disagree with and contest same in the future.

⁵ BellSouth further affirmatively asserts that, although this is BellSouth’s current Issues List, it may be modified in the future.

Petition. BellSouth further affirmatively asserts that initiation of a generic docket would cause untimely delay in resolution of Docket Nos. 050119-TP and 050125-TP and prejudice BellSouth's right to utilize compensation derived from transiting traffic on behalf of third parties. BellSouth denies any remaining allegations contained in Paragraph 10.

11. The relevant provisions of Florida law speak for themselves and require no response from BellSouth. BellSouth denies that this Commission should cancel the transit tariff and refund any monies collected under the transit tariff and further denies that a formal administrative hearing is necessary. BellSouth denies any remaining allegations contained in Paragraph 11.

12. BellSouth denies the allegations contained in Paragraph 12.

FIRST AFFIRMATIVE DEFENSE

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

SECOND AFFIRMATIVE DEFENSE

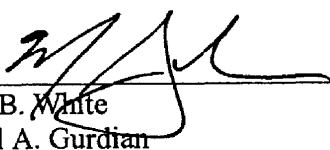
To the extent that the ITCs have not paid BellSouth for services provided, BellSouth claims unjust enrichment. The ITCs have received transit services from BellSouth and have accepted such services under circumstances that would make it inequitable for them to retain such services without payment. If the Commission grants any relief to the ITCs (which it should not), BellSouth is entitled to compensation in the amount the ITCs have been unjustly enriched.

WHEREFORE, BellSouth respectfully requests the Commission to enter an Order in BellSouth's favor, deny the ITCs 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 20th day of September 2005.

BELLSOUTH TELECOMMUNICATIONS, INC.



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