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**Matilda Sanders**

**From:** Fatool, Vicki [Vicki.Fatool@BellSouth.COM]  
**Sent:** Tuesday, January 17, 2006 10:58 AM  
**To:** Filings@psc.state.fl.us  
**Subject:** 050973-TP BellSouth Telecommunications, Inc.'s Answer  
**Importance:** High  
**Attachments:** 050973-T.pdf

- A. Vicki Fatool  
 Legal Secretary to Nancy B. White and 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. 050973-TP: Complaint and Petition for Arbitration by Telepak Networks, Inc. regarding a dispute under an existing interconnection agreement with BellSouth Telecommunications, Inc.
- C. BellSouth Telecommunications, Inc.  
 on behalf of Manuel A. Gurdian
- D. 9 pages total (includes Bayo Letter, certificate of service and pleading)
- E. BellSouth Telecommunications, Inc.'s Answer

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 <<050973-T.pdf>>

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Legal Department

**MANUEL A. GURDIAN**  
Attorney  
BellSouth Telecommunications, Inc.  
150 South Monroe Street  
Room 400  
Tallahassee, Florida 32301  
(305) 347-5561

January 17, 2006

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. 050973-TP: Complaint and Petition for Arbitration by  
Telepak Networks, Inc. regarding a dispute under an existing  
interconnection agreement with BellSouth Telecommunications, Inc.**

Dear Ms. Bayó:

Enclosed is BellSouth Telecommunications, Inc.'s Answer, 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

Enclosures

cc: All Parties of Record  
Jerry Hendrix  
R. Douglas Lackey  
Nancy B. White

DOCUMENT NUMBER-DATE

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**CERTIFICATE OF SERVICE**  
**Docket No. 050973-TP**

I HEREBY CERTIFY that a true and correct copy of the foregoing was served via  
Electronic Mail, <sup>(\*)</sup> Federal Express and First Class U. S. Mail this 17th day of January,  
2006 to the following:

Adam Teitzman  
Staff Counsel  
Florida Public Service  
Commission  
Division of Legal Services  
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Attys. for Telepak

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\_\_\_\_\_  
Manuel A. Gurdian

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FLORIDA PUBLIC SERVICE COMMISSION

Complaint and Petition for Arbitration by	)	Docket No. 050973-TP
Telepak Networks, Inc. regarding a dispute	)	
under an existing interconnection agreement	)	
with BellSouth Telecommunications, Inc.	)	
_____	)	Filed: January 17, 2006

**ANSWER OF BELL SOUTH TELECOMMUNICATIONS, INC.**

BellSouth Telecommunications, Inc. ("BellSouth") responds to the Complaint and Petition for Arbitration<sup>1</sup> filed by Telepak Networks, Inc. ("Telepak") asking the Florida Public Service Commission ("Commission") to resolve a dispute regarding the volume and term provisions contained in an amendment to the Interconnection Agreement between BellSouth and Telepak ("V&T Agreement").

**SUMMARY**

Telepak is not entitled to the relief sought in its Complaint. Telepak misinterprets the V&T Agreement. The V&T Agreement is clear that the volume and term discount is a percentage reduction applied to the resale rate, which is calculated by multiplying the Commission-approved resale discount by the applicable tariff rate. The V&T Agreement does not, as Telepak now contends, state that the volume and term discount will be added to the state-specific resale discount before it is multiplied by the retail rate. Telepak communicated to BellSouth in discussions leading up to the execution of the V&T Agreement that Telepak's understanding was that the volume and term discount would be applied in the manner that BellSouth is applying it, which is consistent with the

<sup>1</sup> Although styled as a Complaint and Petition for Arbitration, Telepak's pleading is properly only a Complaint and, thus, it is improperly labeled as a "Petition for Arbitration."

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unambiguous language of the contract. Telepak's after-the-fact interpretation to support its claim for money to which it is not entitled is inconsistent with both the plain language of the contract and the parties' expressed intent.

### **SPECIFIC RESPONSE**

Responding to the numbered paragraphs of Telepak's Complaint, BellSouth alleges and states as follows:

1. BellSouth admits the allegations in paragraph 1 of the Complaint, on information and belief.
2. BellSouth admits the allegations in paragraph 2 of the Complaint.
3. The allegations contained in Paragraph 3 of the Complaint require no response from BellSouth. BellSouth affirmatively states that communications regarding BellSouth's Answer to this Complaint should be directed to:

Nancy B. White  
Manuel A. Gurdian  
c/o Nancy H. Sims  
150 South Monroe Street  
Suite 400  
Tallahassee, Florida 32301  
(305) 347-5558  
[nancy.white@bellsouth.com](mailto:nancy.white@bellsouth.com)  
[manuel.gurdian@bellsouth.com](mailto:manuel.gurdian@bellsouth.com)

Andrew D. Shore  
BellSouth Center – Suite 4300  
675 West Peachtree Street, N.E.  
Atlanta, Georgia 30375  
(404) 335-0750  
[andrew.shore@bellsouth.com](mailto:andrew.shore@bellsouth.com)

4. Admitted for jurisdictional purposes only.
5. BellSouth admits the allegations in paragraph 5 of the Complaint.
6. BellSouth admits the allegations in paragraph 6 of the Complaint.
7. BellSouth admits that Appendix II to the V&T Agreement sets forth the Discount Level BellSouth is required, pursuant to the V&T Agreement, to apply to the resale rate, which resale rate is determined by multiplying the resale

discount by BellSouth's tariffed retail rate for the resold service and subtracting the product from the tariffed retail rate for the service. BellSouth further admits that for purposes of its Discount Level, Telepak committed to a Tier 3 revenue target for 2002, for which a Discount Level of 10.5% would be applicable. Except as specifically admitted, BellSouth denies the allegations contained in paragraph 7 of the Complaint.

8. BellSouth admits that a dispute exists between the parties because Telepak is attempting to ascribe an interpretation to the V&T Agreement which is inconsistent with both the plain meaning of the contract and with Telepak's prior expressed understanding of the V&T Agreement.

9. BellSouth denies all of the allegations in paragraph 9 of the Complaint. BellSouth expressly denies that it has miscalculated the total discount applicable to BellSouth services that Telepak resells or that it has overcharged Telepak for services as a result of the alleged miscalculation. BellSouth further denies that the total discount should be calculated by adding the resale discount to the 10.5% volume and term discount ("V&T Discount Level") and then multiplying the sum by the tariffed rate for the resold services. Rather, the V&T Discount Level should be applied to the resale rate, which is the product of multiplying the resale discount by the tariff rate subtracted from the tariffed retail rate.

10. BellSouth admits that Telepak correctly quotes one of the provisions contained in the V&T Agreement. BellSouth expressly denies that the

V&T Discount Level applies to the tariff price of the resold service. The V&T Discount Level clearly applies to the resale rate.

11. BellSouth admits that its position is that the unambiguous provisions of the V&T Agreement require that the V&T Discount Level must be applied to the resale rates for resold services. BellSouth also admits that in order to compute the appropriate price Telepak is required to pay for resold services pursuant to the parties' contract, BellSouth multiplies the V&T Discount Level by the resale rate and subtracts the result from the resale rate. BellSouth denies that this is "a more complicated calculation" than adding the resale discount and V&T Discount Level and multiplying the sum by the tariff rate. The alleged "complexity" (which BellSouth denies is the case) of the calculation is irrelevant in any event. BellSouth's methodology is clearly consistent with the express terms of the parties' V&T Agreement. BellSouth admits that the prices charged to Telepak are higher than they would be if BellSouth added the resale discount to the V&T Discount Level and multiplied the sum by the tariff rate.

12. BellSouth denies the allegations contained in paragraph 12 of the Complaint.

13. BellSouth denies the allegations in paragraph 13 of the Complaint. In fact, BellSouth affirmatively alleges that the express provisions of the V&T Agreement support the application of the V&T Discount Level in the manner in which BellSouth has applied it.

14. BellSouth denies the allegations in paragraph 14 of the Complaint. The contractual provisions speak for themselves.

15. BellSouth again denies that the V&T Discount Level applies in the manner alleged by Telepak. The contractual provisions speak for themselves. BellSouth expressly denies that Telepak's after the fact "interpretation of Sections 1.3.3, 3.1, and 12.2" of the parties' contract "makes the terms harmonious" as alleged in paragraph 15 of the Complaint. The remaining allegations in paragraph 15 of the Complaint contain conclusions of law and, accordingly, no response is required.

16. BellSouth denies the allegations in paragraph 16 of the Complaint.

17. BellSouth admits that on or about January 8, 2003, Telepak filed a pleading denominated incorrectly as a "Petition for Arbitration" with the Mississippi Public Service Commission ("MPSC") to resolve its dispute in Mississippi.

18. BellSouth admits that the MPSC conducted a hearing on Telepak's Petition in Mississippi. BellSouth admits that the MPSC issued its Final Order on January 7, 2004, and that the Final Order speaks for itself. Except as specifically admitted, BellSouth denies the allegations contained in paragraph 18 of the Complaint.

19. BellSouth admits that it appealed the MPSC's Order to the United States District Court for the Southern District of Mississippi. BellSouth admits that the United States District Court for the Southern District of Mississippi issued its Memorandum and Order attached as Exhibit C to the Complaint on July 12, 2005, and that the Memorandum and Order speaks for itself. BellSouth admits that the United States District Court for the Southern District of Mississippi issued



a Final Judgment attached as Exhibit D to the Complaint on July 28, 2005, and that the Judgment speaks for itself. BellSouth expressly denies that the federal court "ruled upon" or interpreted the V&T Agreement. Except as specifically admitted, BellSouth denies the allegations contained in paragraph 19 of the Complaint.

20. BellSouth incorporates, realleges and reavers all of its responses to paragraphs 1-19 of the Complaint as if fully set forth herein.

21. BellSouth admits that the V&T Agreement is clear on its face. The unambiguous language of the V&T Agreement fully supports BellSouth's position in this matter, and the Commission should issue a ruling to that effect. If the Commission determines that the V&T Agreement is ambiguous, however, it should, consistent with applicable law, examine extrinsic evidence as to the meaning of the V&T Agreement. Except as specifically admitted, BellSouth denies the allegations contained in paragraph 21 of the Complaint.

22. BellSouth denies the allegations in paragraph 22 of the Complaint.

23. BellSouth affirmatively asserts that it has not overcharged Telepak for services purchased. Except as specifically admitted, BellSouth denies the allegations contained in paragraph 23 of the Complaint.

24. BellSouth affirmatively asserts that it has correctly applied the V&T Discount from January 1, 2002, to the present. Except as specifically admitted, BellSouth denies the allegations contained in paragraph 24 of the Complaint.

25. BellSouth expressly denies the allegations contained in the unnumbered paragraph styled "Prayer for Relief" and affirmatively states that Telepak is not entitled to any relief whatsoever.


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


WHEREFORE, BellSouth respectfully requests that the Commission enter an Order:

1. Declaring that the V&T Discount Level applies to the resale rate in the manner BellSouth has applied it;
2. Denying all of the relief sought in Telepak's Complaint; and
3. Granting such further relief as the Commission deems fair and equitable.

Respectfully submitted this 17th day of January 2006.

BELLSOUTH TELECOMMUNICATIONS, INC.

  
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