

Matilda Sanders

ORIGINAL

From: Sheffield, Glenda [Glenda.Sheffield@BellSouth.COM]
Sent: Friday, March 03, 2006 3:08 PM
To: Filings@psc.state.fl.us
Cc: Mays, Meredith; Fatool, Vicki; Linda Hobbs; Bixler, Micheale; Nancy Sims; Holland, Robyn P; Slaughter, Brenda
Subject: FW: Florida Docket No. 041269-TL
Importance: High

Cover sheet only to correct explanation in Item E for the attachment on previous filing.

CCA note: Transmittal e-mail was re-sent by BellSouth to correct description language under E. below.

-----Original Message-----

From: Sheffield, Glenda
Sent: Friday, March 03, 2006 2:57 PM
To: 'filings@psc.state.fl.us'
Cc: Mays, Meredith; Slaughter, Brenda ; Hobbs, Linda; Bixler, Micheale; Sims, Nancy H; Holland, Robyn P; Fatool, Vicki
Subject: Florida Docket No. 041269-TL
Importance: High

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 Legal Secretary to Meredith Mays
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B. Docket No. 041269-TP
 Petition to Establish Generic Docket to Consider Amendments to Interconnection
 Agreements Resulting from Changes of Law

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

D. 6 pages total (includes letter and certificate of service)

E. BellSouth Telecommunications, Inc.'s Response to Letters from NuVox and Xspedius.

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 3/3/06

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March 3, 2006

VIA ELECTRONIC AND US MAIL

Ms. 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. 041269-TL

Dear Ms. Bayó:

BellSouth Telecommunications, Inc. ("BellSouth") submits this letter in response to two recent letters, filed on February 23, 2006 and February 24, 2006 by NuVox and Xspedius ("Joint Petitioners").

With respect to the Joint Petitioners' February 23, 2006 letter the Commission has already addressed the request for *sua sponte* review and BellSouth will not belabor that point here. BellSouth notes, however, that the Joint Petitioners' contention that this Commission's line conditioning ruling is "at odds" with a rulings from the Georgia Public Service Commission is inaccurate. Exhibit A, attached to Joint Petitioners' February 23, 2006 letter included an excerpt of the Georgia Commission's Motion addressing certain issues. At page 49, the Georgia Commission made clear "BellSouth is obligated to condition lines to enable a requesting CLEC to provide advanced services to the CLEC's customers to the same extent that BellSouth would condition lines to provide advanced services to its own customers." (emphasis supplied). Contrary to the Joint Petitioners' contention, this aspect of the Georgia Commission is fully consistent with this Commission's decision to require line conditioning at parity.

Concerning the Joint Petitioners' February 24, 2006 letter, the Joint Petitioners requested this Commission take notice of decisions from Georgia, North Carolina,¹ and the FCC. To the extent the Commission takes official

¹ BellSouth acknowledges that the North Carolina Commission has not adopted its position on commingling. BellSouth is evaluating its options concerning this

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recognition of these cases, BellSouth requests also that the Commission take official notice of recent decisions from South Carolina, Louisiana, and Vermont pursuant to Florida Statutes, Section 120.569(2)(i).

The South Carolina decision can be publicly accessed using the following link, which reflects the February 28, 2006 vote in the Change of Law proceeding in South Carolina (Docket No. 2004-316-C):

<http://dms.psc.sc.gov/matters/matters.cfc?Method=MatterDetail&MatterID=17820>

5. The Public Service Commission of South Carolina adopted BellSouth's reasoning and position on all 271-related issues, including commingling and line sharing.

On February 22, 2006, the Public Service Commission of Louisiana ruled on specific issues related to Section 271 and line sharing. Although a written order is not yet available, a brief summary of the Louisiana Commission's Rulings follows. With respect to Section 271, the Louisiana Commission declined to order BellSouth to include 271 elements in 252 agreements, and it likewise declined to set rates for these elements. Concerning line sharing, the Louisiana Commission rejected a December 2005 finding by an Administrative Law Judge that the commission has jurisdiction to set rates for line sharing under Section 271. The official Minutes of the Louisiana Commission's February 22, 2006 Open Session are not yet available. When they become available, BellSouth will file them in this docket.

On February 27, 2006, the State of Vermont Public Service Board ("Vermont Board") entered its decision in Docket No. 6932, a proceeding involving Verizon's request to modify its interconnection agreements to effectuate FCC orders including the *TRO* and the *TRRO*. The Vermont decision is publicly available at: <http://www.state.vt.us/psb/orders/2006/files/6932fnl.pdf>.

The Vermont Board adopted in part, and rejected in part, a recommended decision of the hearing officer. With respect to line sharing, the Vermont Board adopted the recommendation of the hearing officer and ordered the inclusion of the FCC's transitional plan. See Vermont decision, pp. 156-157. With respect to fiber to the home loops, the Vermont modified the recommended decision of the hearing officer, and found that the fiber unbundling rules apply to all customer classes, and were not limited to mass market customers. See Vermont decision, p. 257.

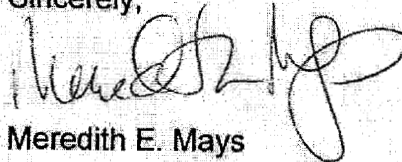
aspect of the North Carolina decision. BellSouth notes also that on March 1, 2006 the North Carolina Commission released its decision in Docket No. P-55, Sub 1549, its generic change of law docket. The North Carolina Commission properly concluded that it had no authority to compel BellSouth to include Section 271 checklist items in Section 251/252 interconnection agreements and also ruled that CLECs must delete interconnection agreement provisions requiring BellSouth to offer delisted UNEs, which includes line sharing.

Finally, the Joint Petitioners cited to the FCC's *Qwest Forbearance Decision*, WC Docket No. 04-223 (rel. Dec. 2, 2005). BellSouth does not agree with Joint Petitioners' characterization that the *Qwest Forbearance Decision* confirmed its view on commingling. The FCC did not refer to the federal commingling rule in its *Qwest Forbearance Decision* nor did the FCC indicate in any way that it had reversed its decision in the *TRO* in which the FCC was very clear that BellSouth and other RBOCs have no obligation to combine 271 elements or to combine elements that are no longer required to be unbundled pursuant to Section 251(c)(3) of the Act.² Indeed, the FCC has no reason to disturb its ruling considering it was affirmed by the D.C. Circuit Court, which made clear that the FCC had "decided that, in contrast to ILEC obligations under § 251, the independent § 271 unbundling obligations didn't include a duty to combine network elements."³

To the extent the *Qwest Forbearance Order* provides any guidance relevant to the current posture of this docket, the Commission should take particular note of paragraphs 9 and 101, which describe the extent of the FCC's fiber relief and does not limit that relief to mass market customers. The Commission should also review paragraphs 7, 96, and 100 of the *Qwest Forbearance Order*, which describe the Section 271 checklist item 4 requirement as an obligation to provide local *loops* (not line sharing, as certain CLECs claim). The *Qwest Forbearance Order* is available in its entirety at http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC-05-170A1.pdf.

BellSouth has served copies of this letter to the parties shown on the attached Certificate of Service.

Sincerely,



Meredith E. Mays

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

² See *TRO* at ¶ 655, n. 1989. The *TRO*, as originally issued, had this language at note 1990. After the *TRO Errata* the footnotes were renumbered.

³ *USTA II*, 359 F.3d at 589. Significantly, the Section 271 checklist obligates BellSouth to provide local loop transmission "unbundled from local switching and other services", local transport "unbundled from switching or other services", and switching "unbundled from transport, local loop transmission or other services." BellSouth's Section 271 obligation was referred to by the FCC and the D.C. Circuit Court of Appeals as an "independent" obligation. See *USTA II* at 590; *TRO* at ¶ 653.

CERTIFICATE OF SERVICE
Docket No. 041269-TP

I HEREBY CERTIFY that a true and correct copy of the foregoing was served via

Electronic Mail and U. S. Mail this 3rd day of March, 2006 to the

following:

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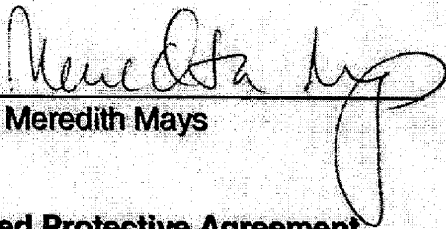
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(+) signed Protective Agreement
(*) via FedEx