

**Matilda Sanders**

**ORIGINAL**

**From:** Barclay, Lynn [Lynn.Barclay@BellSouth.com]  
**Sent:** Thursday, March 23, 2006 3:43 PM  
**To:** Filings@psc.state.fl.us  
**Cc:** Fatool, Vicki; Linda Hobbs; Nancy Sims; Holland, Robyn P; Bixler, Micheale; Slaughter, Brenda ; Mays, Meredith  
**Subject:** 041269-TL BellSouth's Response in Opposition to Supra's Motion for Reconsideration, Appendix 1  
**Attachments:** 041269-TL App. 1.pdf

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 SEC 1  
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- A. Lynn Barclay  
 Legal Secretary to Meredith Mays  
 BellSouth Telecommunications, Inc.  
 150 South Monroe Street  
 Suite 400  
 Tallahassee, Florida 32301  
 (404) 335-0788  
[lynn.barclay@bellsouth.com](mailto:lynn.barclay@bellsouth.com)
- B. Docket No. 041269-TL: In re: 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. 10 pages total
- E. BellSouth Telecommunications, Inc.'s Response in Opposition to Supra's Motion for Reconsideration, Appendix 1.

<<041269-TL App. 1.pdf>>

***Lynn Barclay***  
 Legal Department  
 675 West Peachtree Street  
 Suite 4300  
 Atlanta, GA 30375  
 404 335-0788

\*\*\*\*\*

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**ORIGINAL**  
Legal Department

Meredith Mays  
Senior Regulatory Counsel

BellSouth Telecommunications, Inc.  
150 South Monroe Street  
Room 400  
Tallahassee, Florida 32301  
(404) 335-0750

March 23, 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. 041269-TP**

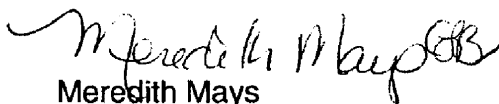
Dear Ms. Bayó:

(DN 02571-06)

On March 22, 2006, BellSouth Telecommunications, Inc.'s filed its Response in Opposition to Supra's Motion for Reconsideration referencing an Appendix 1. Attached is the appendix which was inadvertently omitted from that filing.

Copies have been served to the parties shown on the attached Certificate of Service.

Sincerely,

  
Meredith Mays

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

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**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 23<sup>rd</sup> day of March, 2006 to the following:

Adam Teitzman  
Michael Barrett  
Staff Counsels  
Florida Public Service  
Commission  
Division of Legal Services  
2540 Shumard Oak Boulevard  
Tallahassee, FL 32399-0850  
Tel. No. (850) 413-6199  
[ateitzma@psc.state.fl.us](mailto:ateitzma@psc.state.fl.us)  
[mbarrett@psc.state.fl.us](mailto:mbarrett@psc.state.fl.us)

Florida Cable Telecommunications  
Assoc., Inc.  
Michael A. Gross  
246 E. 6th Avenue  
Suite 100  
Tallahassee, FL 32303  
Tel. No. (850) 681-1990  
Fax No. (850) 681-9676  
[mgross@fcta.com](mailto:mgross@fcta.com)

Vicki Gordon Kaufman  
Moyle Flanigan Katz Raymond  
& Sheehan, PA  
118 North Gadsden Street  
Tallahassee, FL 32301  
Tel. No. (850) 681-3828  
Fax. No. (850) 681-8788  
[vkaufman@moylelaw.com](mailto:vkaufman@moylelaw.com)  
Atty. for FCCA/CompSouth

Norman H. Horton, Jr.  
Meser, Caparello & Self, P.A.  
215 South Monroe Street, Suite 701  
P.O. Box 1876  
Tallahassee, FL 32302-1876  
Tel. No. (850) 222-0720  
Fax No. (850) 224-4359  
[nhorton@lawfla.com](mailto:nhorton@lawfla.com)  
Represents NuVox/NewSouth/Xspedius

John Heitmann  
Garret R. Hargrave  
Kelley Drye & Warren, LLP  
Suite 500  
1200 19<sup>th</sup> Street, N.W.  
Washington, D.C. 20036  
[jheitmann@kelleydrye.com](mailto:jheitmann@kelleydrye.com)  
[ghargrave@kelleydrye.com](mailto:ghargrave@kelleydrye.com)  
Tel. No. (202) 887-1254  
Represents NuVox/NewSouth/Xspedius

Kenneth A. Hoffman, Esq.  
Martin P. McDonnell, Esq.  
Rutledge, Ecenis, Purnell & Hoffman  
P.O. Box 551  
Tallahassee, FL 32302  
Tel. No. (850) 681-6788  
Fax. No. (850) 681-6515  
Represents XO  
[ken@reuphlaw.com](mailto:ken@reuphlaw.com)  
[marty@reuphlaw.com](mailto:marty@reuphlaw.com)

Dana Shaffer  
XO Communications, Inc.  
105 Molloy Street, Suite 300  
Nashville, Tennessee 37201  
Tel. No. (615) 777-7700  
Fax. No. (615) 850-0343  
[dana.shaffer@xo.com](mailto:dana.shaffer@xo.com)

De O'Roark, Esq. (+)  
MCI  
6 Concourse Parkway  
Suite 600  
Atlanta, GA 30328  
[de.oroark@mci.com](mailto:de.oroark@mci.com)

Floyd Self, Esq.  
Messer, Caparello & Self, P.A.  
Hand: 215 South Monroe Street  
Suite 701  
Tallahassee, FL 32301  
Mail: P.O. Box 1876  
Tallahassee, FL 32302-1876  
[fself@lawfla.com](mailto:fself@lawfla.com)

Marva Brown Johnson  
General Counsel  
Supra Telecommunications and  
Info. Systems, Inc.  
2901 S.W. 149<sup>th</sup> Avenue  
Suite 300  
Miramar, FL 33027  
Tel. No. (786) 455-4209  
[Marva.Johnson@supratelecom.com](mailto:Marva.Johnson@supratelecom.com)

Matthew Feil (+)  
FDN Communications  
2301 Lucien Way  
Suite 200  
Maitland, FL 32751  
Tel. No. (407) 835-0460  
[mfeil@mail.fdn.com](mailto:mfeil@mail.fdn.com)

Tony Mastando, Esq. (+)  
Director - Regulatory  
ITC^DeltaCom  
4092 S. Memorial Parkway  
Huntsville, AL 35802  
Tel. No. (256) 382-3856  
Fax. No. (256) 382-3936  
[tony.mastando@itcdeltacom.com](mailto:tony.mastando@itcdeltacom.com)

Raymond O. Manasco, Jr.  
Gainesville Regional Utilities  
Hand: 301 S.E. 4<sup>th</sup> Avenue  
Gainesville, FL 32601  
Mail: P.O. Box 147117, Station A-138  
Gainesville, FL 32614-7117  
Tel. No. (352) 393-1010  
Fax No. (352) 334-2277  
[manascoro@gru.com](mailto:manascoro@gru.com)

Charles A. Guyton  
Steel Hector & Davis LLP  
215 South Monroe Street  
Suite 601  
Tallahassee, FL 32301-1804  
Tel. No. (850) 222-2300  
Fax. No. (850) 222-8410  
[cguyton@steelhector.com](mailto:cguyton@steelhector.com)  
Atty. for City of Gainesville

Adam Kupetsky  
Regulatory Counsel  
WilTel Communications, LLC  
One Technology Center (TC-15)  
100 South Cincinnati  
Tulsa, Oklahoma 74103  
Tel. No. (918) 547-2764  
Fax. No. (918) 547-9446  
[adam.kupetsky@wiltel.com](mailto:adam.kupetsky@wiltel.com)

Jonathan S. Marashlian, Esq.  
The Helein Law Group, LLLP  
8180 Greensboro Drive, Suite 700  
McLean, VA 22102  
Tel. No. (703) 714-1313  
Fax. No. (703) 714-1330  
[jsm@thlglaw.com](mailto:jsm@thlglaw.com)  
Atty. for Azul Tel.

Charles (Gene) E. Watkins (+)  
Senior Counsel  
Government & External Affairs  
Covad Communications Company  
1230 Peachtree Street NE  
Suite 1900  
Atlanta, GA 30309  
Tel. No. (678) 528.6816  
Fax No. (678) 528.6806  
Cell No. (404) 915.0018  
[gwatkins@covad.com](mailto:gwatkins@covad.com)

Bill Magness  
[bmagness@phonelaw.com](mailto:bmagness@phonelaw.com)

William R. Atkinson  
Sprint Nextel  
3065 Cumberland Circle  
Atlanta, GA 30339  
Tel. No. (404) 649-4882  
Fax. No. (404) 649-1652  
[bill.atkinson@sprint.com](mailto:bill.atkinson@sprint.com)

Marsha E. Rule  
Rutledge, Ecenia, Purnell & Hoffman, P.A.  
Post Office Box 551  
Tallahassee, FL 32301-0551  
Tel. No. (850) 681-6788  
Fax. No. (850) 681-6515  
[marsha@reuphlaw.com](mailto:marsha@reuphlaw.com)  
Counsel for Sprint Nextel

  
Meredith Mays

**(+ )signed Protective Agreement  
(\* ) via FedEx**

## APPENDIX 1

### Decisions Finding No State Jurisdiction over Section 271 Elements

STATE	Date Ordered	271 Ruling on Commercial Agreements
Alabama	05/25/2005	<p>“[T]he ultimate enforcement authority with respect to a regional Bell operating company's alleged failure to meet the continuing requirements of § 271 of the Telecommunications Act of 1996 rests with the FCC and not this Commission.” <i>Order Dissolving Temporary Standstill And Granting In Part And Denying In Part Petitions For Emergency Relief</i>, Alabama Public Service Commission Docket No. 29393 (May 25, 2005).</p>
Arkansas	10/31/2005	<p>“[T]his Opinion will not attempt to resolve Section 271 issues because they are not subject to arbitration under Section 252 of the Act.” The Commission recognized that “ICA arbitrations are limited to establishing the rates, terms and conditions to implement the obligations of 47 U.S.C. 251.” It explained that “[t]his Commission’s obligations under Section 271 of the Act are merely advisory to the FCC.” <i>Memorandum Opinion and Order</i>, October 31, 2005, <i>In re: Petition of Southwestern Bell Telephone L.P. d/b/a SBC Arkansas for Compulsory Arbitration of Unresolved Issues for Successor Interconnection Agreement to the Arkansas 271 Agreement</i>, Docket No. 05-081-U.</p>
District of Columbia	12/15/2005	<p>“[T]here is no requirement that section 271 network elements be addressed in interconnection agreements negotiated and arbitrated pursuant to section 252.” The Commission made clear that its authority does not extend to requiring “inclusion of section 271 network elements in interconnection agreements.” <i>Order</i>, December 15, 2005, <i>Petition of Verizon Washington, D.C., Inc. for Arbitration Pursuant to Section 252(b) of the Telecommunications Act of 1996</i>, TAC 19, Order No. 13836, 2005 D.C. PUC LEXIS 257.</p>
Florida	03/02/2006	<p>“We find that we do not have authority to require BellSouth to include in § 252 interconnection agreements § 271 elements. We find that the inclusion of § 271 elements in a §252 agreement would be contrary to both the plain language of §§ 251 and 252 and the regulatory regime set forth by the FCC in the <u>TRO</u> and the <u>TRRO</u>.” Docket No. 041269-TP, Order No. PSC-06-0172-FOF-TP.</p>
Idaho	07/18/2005	<p>“[T]he Commission does not have the authority under Section 251 or Section 271 of the Act to order the Section 271 unbundling obligations as part of an interconnection agreement.” Order No. 29825; 2005 <i>Ida. PUC LEXIS</i> 139.</p>

APPENDIX 1

Illinois	11/02/2005	“The Commission rejects CLECs’ proposal to update underlying agreements requiring SBC to provide new rates, terms, and conditions for Section 271 elements, apart from any terms agreed to in the underlying agreement.” Illinois Commerce Commission Docket No. 05-0442, <i>Arbitration Decision</i> , November 2, 2005,
Indiana	01/11/2006	Joined “the many courts and commissions that have already held that Section 271 obligations have no place in Section 251/252 interconnection agreement[s] and that state commissions have no jurisdiction to enforce or determine the requirements of Section 271.” Order, January 11, 2006, <i>In Re: Indiana Utility Regulatory Commission’s Investigation of Issues Related to the Implementation of the Federal Communications Commissions’ Triennial Review Remand Order and the Remaining Portions of the Triennial Review Order</i> , Cause No. 42857.
Iowa	05/24/2005	Concluded it lacked “jurisdiction or authority to require that Qwest include [Section 271] elements in an interconnection agreement arbitration brought pursuant to § 252.” <i>In re: Petition for Arbitration of Covad with Qwest</i> , Iowa Utilities Board, Docket No. ARB-05-1 (May 24, 2005), 2005 Iowa PUC LEXIS 186.
Kansas	07/18/2005	“The FCC has preemptive jurisdiction over 271 matters.” <i>Order No. 15: Commission Order on Phase II UNE Issues</i> , Docket Nos. 05-BTKT-365-ARB et al., 2005 Kan. PUC LEXIS 867 (July 18, 2005).
Kentucky – U. S. District Court	04/22/2005	“While the defendants also argue that the Act places independent obligations for ILECs to provide unbundling services pursuant to § 271, this Court is not the proper forum to address this issue in the first instance. The enforcement authority for § 271 unbundling duties lies with the FCC and must be challenged there first.” <i>BellSouth Telecommunications, Inc. v. Cinergy Communications Co., et al.</i> , Civil Action No. 3:05-CV-16-JMH, <i>Memorandum Opinion and Order</i> , (E.D. Ky. Apr. 22, 2005). <i>But see BellSouth Telecommunications, Inc. v. Cinergy Communications Co., et al.</i> , Civil Action No. 3:05-CV-16-JMH, <i>Memorandum Opinion and Order</i> , (E.D. Ky. Mar. 20, 2006) (statement about 271 in April 2005 order was <i>dictum</i> and was only addressed because the defendants argued that § 271 prevented the Court’s entry of a preliminary injunction; the Court makes no finding as to § 271 requirements).
Louisiana	03/07/2006	The Louisiana Commission “declines to order BellSouth to include 271 elements in Section 252 agreements and further declines to set rates for Section 271 elements.” <i>Order Nos. U-28131 Consolidated With U-28356</i> , Docket Numbers U-28141 and U-28356.

APPENDIX 1

Maryland	04/08/2005	“With respect to whether Section 271 provides an independent basis for continued provisioning of switching . . . at TELRIC rates, the Commission notes that Verizon’s fulfillment of its Section 271 obligations do not necessitate the provision of Section 251 elements at Section 251 rates.” <i>In re: Petition of AT&amp;T Comm. of Maryland, Inc. and TCG Maryland for an Order Preserving Local Exchange Market Stability</i> , Order No. 79893, Case No. 9026, 2005 Md. PSC LEXIS 11 (Apr. 8, 2005).
Massachusetts	07/14/2005	“[O]ur authority to review and approve interconnection agreements under § 252 does not include the authority to mandate that Verizon include § 271 network elements in any of its § 252 interconnection agreements.” <i>In re: Petition of Verizon New England, Inc. d/b/a Verizon Massachusetts for Arbitration of Interconnection Agreements with Competitive Local Exchange Carriers and Commercial Mobile Radio Service Providers in Massachusetts Pursuant to Section 252 of the Communications Act of 1934, as amended, and the Triennial Review Order</i> , D.T.E. 04-33, Arbitration Order (July 14, 2005).
Minnesota	03/14/2005	“There is no legal authority in the Act, the <i>TRO</i> , or in state law that would require the inclusion of section 271 terms in the interconnection agreement over Qwest’s objection . . . both the Act and the <i>TRO</i> make it clear that state commissions are charged with the arbitration of section 251 obligations, whereas the FCC has retained authority to determine the scope of access obligations pursuant to section 271.” <i>Order Resolving Arbitration Issues</i> , Docket No. P-5692, 421/IC-04-549 (March 14, 2005) ( <i>adopting December 16, 2004 Arbitrator’s Report</i> ).
Mississippi - U. S. District Court	04/13/2005	“Even if § 271 imposed an obligation to provide unbundled switching independent of § 251 with which BellSouth had failed to comply, § 271 explicitly places enforcement authority with the FCC. . . .” <i>BellSouth Telecommunications, Inc. v. Mississippi Public Serv. Com’n. et al.</i> , Civil Action No. 3:05CV173LN, <i>Memorandum Opinion and Order</i> (S.D. Miss. Apr. 13, 2005) 2005 U.S. Dist. LEXIS 8498.
Montana – U.S. District Court	06/09/2006	Section 252 did not authorize a state commission to approve an agreement containing elements or services that are not mandated by Section 251. <i>Qwest Corp. v. Schneider, et al.</i> , 2005 U.S. Dist. LEXIS 17110, CV-04-053-H-CSO, at 14 (D. Mont. June 9, 2005).
Montana	01/08/2006	“The Commission does not have the jurisdiction or authority to arbitrate a Section 271 dispute under Section 47 U.S.C. 252.” <i>In re: Petition for Arbitration of Covad with Qwest</i> , Montana Public Service Commission Docket No. D2005.4.51; Order No. 6647a (Jan. 8, 2006), 2006 Mont. PUC LEXIS 11.



APPENDIX 1

North Carolina	03/01/2006	“The Commission after careful consideration concludes that the Commission lacks the authority to compel BellSouth to include Section 271 UNEs in its Section 251/252 ICAs, nor does the Commission believe it has the authority to establish rates for such elements. . . .” <i>Order Concerning Changes of Law</i> , Docket No. P-55, Sub 1549 (N.C.U.C. Mar. 1, 2006).
North Dakota	02/08/2006	“We find that we do not have the authority under the Act to impose unbundling obligations under Section 271. The FCC has the exclusive authority to determine whether Qwest has complied with the substantive provisions of Section 271 including the checklist provisions. Enforcement of Section 271 requirements is also clearly under the exclusive jurisdiction fo the FCC. State commissions have only a consulting role under the Act.” <i>In re: Petition for Arbitration of Covad with Qwest</i> , North Dakota Public Service Commission Case No. PU-05-165 (Feb. 8, 2006), 2006 N.D. PUC LEXIS 3.
Ohio	11/09/2005	“Although SBC’s obligations under Section 271 are not necessarily relieved based on the FCC’s § 251 unbundling analysis, these obligations should be addressed in the context of carrier-to-carrier agreements, and not § 252 interconnection agreements, inasmuch as the components will not be purchased as network elements.” <i>Arbitration Order</i> , Case No. 05-0887-TP-UNC.
Oregon	09/06/2005	“Every state within the Qwest operating region that has examined [the Section 271] issue has done so in a thoughtful, thorough and well-reasoned manner. In each case, the agency with the authority to review the Covad/Qwest ICA dispute has found that there is no legal authority requiring the inclusion of Section 271 UNEs in an interconnection agreement subject to arbitration under Section 251 of the Act, and [the Oregon Commission] adopt[s] the legal conclusions that they all hold in common ....” <i>In re: Petition for Arbitration of Covad with Qwest</i> , Oregon Public Utility Commission, Order No. 05-980, ARB 584 (Sept. 6, 2005), 2005 Ore. PUC LEXIS 445.
Pennsylvania	06/10/2005	“[T]he enforcement responsibilities of Section 271 compliance lies with the FCC. Therefore, the Commission will not oblige Verizon PA to produce tariff amendments that reflect its Section 271 obligations . . . .” <i>Pennsylvania Public Utility Commission v. Verizon Pennsylvania Inc., et al</i> ; R-00049524; R-00049525; R-00050319; R-00050319C0001; Docket No. P-00042092, 2005 Pa. PUC LEXIS 9 (June 10, 2005).

## APPENDIX 1

Rhode Island	07/28/2005	<p>“At this time, it is apparent to the Commission that at the bistro serving up the BOCs’ wholesale obligations, the kitchen door numbered 271 is for ‘federal employees only.’” Docket No. 3662, <i>In re: Verizon-Rhode Island’s Filing of February 18, 2005 to Amend Tariff No. 18</i> (July 28, 2005). See also <i>In re: Petition of Verizon-Rhode Island for Arbitration of an Amendment</i>, Rhode Island Public Service Commission Docket No. 3588 (Feb. 1, 2006), 2006 <i>R.I. PUC LEXIS 8</i>.</p>
South Carolina	03/10/2006	<p>“The Commission . . . notes that several State commission have concluded, in some form or fashion, that the FCC, rather than State commissions, is charged with Section 271 oversight . . . [W]e have concluded that jurisdiction over Section 271 disputes lies with the FCC . . .” <i>Order Addressing Changes of Law</i>, No. 2006-136, Docket No. 2004-316-C.</p>
South Dakota	07/26/2005	<p>The Commission “does not have the authority to enforce Section 271 requirements within this section 252 arbitration. Section 252(a) provides that interconnection negotiations are limited to requests for interconnection, services, or network elements pursuant to section 251 . . . . In addition, . . . section 252(c)(1) requires the Commission to ensure that [its] resolution of open issues ‘meet the requirements of section 251 of this title, including the regulations prescribed by the FCC pursuant to section 251 of this title . . . .’ The language in these sections clearly anticipates that section 252 arbitrations will concern section 251 requirements, not section 271 requirements.” <i>In re: Petition for Arbitration of Covad with Qwest</i>, South Dakota Public Service Commission Docket No. TC05-056 (July 26, 2005), 2005 <i>S.D. PUC LEXIS 137</i>.</p>
Texas	06/17/2005	<p>“decline[d] to include terms and conditions for provisioning of UNEs under FTA § 271 in this ICA. The Commission finds that the FTA provides no specific authorization for the Commission to arbitrate Section 271 issues; Section 271 only gives states a consulting role in the 271 application/approval process.” <i>Arbitration Order, Arbitration of Non-Costing Issues for Successor Interconnection Agreements to the Texas 271 Agreement</i>, Texas P.U.C. Docket No. 28821 (June 17, 2005).</p>

## APPENDIX 1

Utah	02/08/2005	<p>“Section 252 was clearly intended to provide mechanisms for parties to arrive at interconnection agreements governing access to the network elements required under Section 251. Neither Section 251 nor 252 refers in any way to Section 271 or state law requirements, and certainly neither section anticipates the addition of new Section 251 obligations via incorporation by reference to access obligations under Section 271 or state law.” <i>In re: Petition for Arbitration of Covad with Qwest</i>, Utah Public Service Commission Docket No. 04-2277-02 (Feb. 8, 2005), 2005 Utah PUC LEXIS 16.</p>
Vermont	02/27/2006	<p>The Vermont Board rejected the recommendation of the hearing officer that would have required Verizon to continue offering delisted UNEs under Section 271 or state law. Specifically, the Vermont Board required that “the amended interconnection agreements reflect the reduction in the unbundling obligations set out in the TRRO.” The Vermont Board also made clear that “enforcement of Section 271 obligations rests with the FCC, not the state.” Order, Docket No. 6932.</p>
Washington	02/09/2005	<p>Holding that, because “[t]he FCC has the exclusive authority to act under Section 271,” state commissions “ha[ve] no authority under Section 252 or Section 271 of the Act to require inclusion of Section 271 unbundling obligations in the parties’ interconnection agreements,” and “[a]n order requiring [such] inclusion . . . would conflict with the federal regulatory scheme.” <i>Washington Covad/Qwest Decision</i>, 2005 Wash. UTC LEXIS *38</p>