

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition by BellSouth
Telecommunications, Inc., pursuant to
Florida Statutes §364.051(4) to
Recover 2005 Tropical System
Related Costs and Expenses

Docket No. 060598-TL

Filed: September 22, 2006

**COMPETITIVE CARRIERS OF THE SOUTH, INC.'S
RESPONSE TO BELL SOUTH'S MOTION TO AMEND STORM PETITION**

The Competitive Carriers of the South, Inc. (CompSouth), pursuant to rule 28-106.204, Florida Administrative Code, file this Response to BellSouth Telecommunications, Inc.'s Motion for Leave to File Amended Petition. CompSouth has no objection to BellSouth's request *so long as* the procedural schedule set out in Order No. PSC-06-0783-PCO-TL (*Order Establishing Procedure*) is adjusted to reflect that the 120-day time period in section 364.051(4)(a), Florida Statutes, is restarted as a result of the requested amendment. In support thereof, CompSouth states:

Background

1. On September 1, 2006, BellSouth filed its original petition in this docket. On September 12th, CompSouth and NuVox filed Petitions to Intervene.
2. On September 15th, CompSouth served discovery on BellSouth based on the petition and testimony BellSouth filed on September 1st.¹ Included in CompSouth's discovery requests were questions related to BellSouth's count of the number of unbundled loops as set out in Ms. Blake's direct testimony filed on September 1st.²

¹ It is CompSouth understands that BellSouth has agreed to respond to this discovery within fifteen (15) days of the issuance of the *Order on Procedure*.

² The interrogatories ask: 1. At page 3, lines 12-14 of her direct testimony, BellSouth witness Kathy Blake states that based on BellSouth's most recent data (as of June 2006), BellSouth had "approximately 406,000 unbundled loops in service." What is the source of "BellSouth's most recent data"? 2. Of the "approximately 406,000 unbundled loops in service" in June 2006, how many were:

3. After the filing of the Petitions to Intervene and BellSouth's refusal to waive the 120-day time frame in section 364.051(4)(a), Florida Statutes, Staff consulted the parties regarding the scheduling of key events, including the filing of testimony. In discussions with Staff, CompSouth agreed to the October 9, 2006 filing date set out in the *Order Establishing Procedure* for its testimony based on the information contained in BellSouth's original petition and testimony, despite the fact that the time frame is very truncated.

4. On September 20, 2006, the *Order Establishing Procedure* was issued. It requires that rebuttal testimony be filed on October 9, 2006. Late in the day on September 20, 2006, after the *Order Establishing Procedure* was issued, BellSouth filed a Motion for Leave to File Amended Petition and its Amended Petition.

The Filing of the Amended Petition Restarts the 120-day Time Period

5. Section 364.051((4)(a) states that the Commission shall act upon the petition within 120 days of its filing. This places severe constraints on the parties and the Commission and BellSouth has refused to waive the time frame.³

6. BellSouth's filing of an amended petition restarts the 120-day time period. Trawick, *Fla. Practice and Proc.*, § 14-2 states:

An amended pleading is substituted for the former pleading and the former pleading ceases to have any effect.

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- a. stand-alone loops?
 - b. ISDN loops?
 - c. DS1 loops?
 - d. xDSL loops?
 - e. other?

³ Letter from James Meza III to Chairman Edgar, Sept. 15, 2006.

(See cases cited therein: *Shannon v. McBride*, 105 So. 2d 16 (Fl. 2nd DCA 1958); *Dee v. Southern Brewing Co.*, 1 So.2d 562 (Fl. 1941). In addition, there is ample Commission precedent to restart the statutory clock when a petitioner seeks to amend the original filing, particularly, as is the case here, where the amendment increases the amount of revenue sought. By seeking to amend its original petition, BellSouth has in effect replaced its September 1st filing and restarted the 120-day time period for action, which runs from the date of the amended filing. Thus, the 120-day period for Commission action begins to run on September 20th.

7. An additional 20 days has now been added to the very tight time schedule set out in the *Order Establishing Procedure*. CompSouth requests that if BellSouth is granted leave to amend, the *Order Establishing Procedure* be revised to reflect the additional time and to require the filing of rebuttal testimony on October 16, 2006 rather than on October 9, 2006.⁴ Such additional time is particularly necessary for CompSouth as it appears that the proposed amendment relates to BellSouth's calculation of the number of unbundled loops. BellSouth states in its Motion to Amend: "BellSouth requests leave to file an Amended Petition in order to correct errors that resulted in the understatement of the number of unbundled loops in service as of June 2006. . . ." ⁵ Thus, CompSouth must now explore not only how the original calculation was done, but also what warranted the change and how it was made.⁶ While this may reduce the time that

⁴ This revision has the additional benefit of permitting CompSouth to file its testimony *after* the issue identification meeting has occurred, rather than before as the current schedule contemplates.

⁵ Motion to Amend, ¶ 2.

⁶ CompSouth's 1st Set of Interrogatories regarding this issue (see footnote 2 above), related to Ms. Blake's original testimony. If the Commission permits the amendment, BellSouth should be required to respond to CompSouth's interrogatories based on BellSouth's amended petition and testimony within the original 15 day time frame and not require CompSouth to reserve the discovery. CompSouth has asked BellSouth to do this and BellSouth has agreed.

BellSouth has for rebuttal testimony, this situation has occurred due to BellSouth's requested amendment coupled with its refusal to waive the 120-day period.

8. In the Amended Petition, the amount of the surcharge BellSouth requests has increased from \$32.3 million in the original petition to \$34.6 million. No explanation of how the number was originally calculated or what accounts for the change has been provided. CompSouth needs additional time to deal with this discrepancy as well as to develop its testimony.

WHEREFORE, CompSouth requests that, if the Commission permits BellSouth to amend its Petition, it also revise the *Order Establishing Procedure* to require intervenor testimony to be filed on October 16, 2006.

s/ Vicki Gordon Kaufman
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Response to BellSouth's Motion to Amend Storm Petition furnished by (*) electronic mail and U.S. Mail this 22nd day of September, 2006 to:

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