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ORIGINAL
FILE COPY

August 9, 1996

Mrs. Blanca S. Bayo
Director, Division of Records and Reporting
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399

RE: Docket No. 960833-TP

Dear Mrs. Bayo:

Enclosed are an original and fifteen copies of BellSouth Telecommunications, Inc.'s Motion to Compel Compliance with the Telecommunications Act of 1996 and Florida Public Service Commission Order Number PSC-96-0933-PCO-TP and Brief in Support thereof. Please file these documents in the captioned docket.

A copy of this letter is enclosed. Please mark it to indicate that the original was filed and return the copy to me. Copies have been served on the parties shown on the attached Certificate of Service.

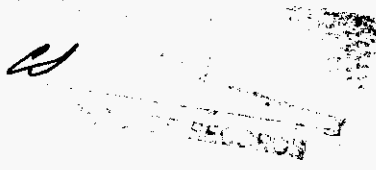
Sincerely,

William J. Ellenberg II

William J. Ellenberg II
(22)

Enclosures

cc: All Parties of Record
A. M. Lombardo
R. G. Beatty



DOCUMENT NUMBER-DATE
08369 AUG-9 96
FPSC-RECORDS/REPORTING

- ACK
- AFA _____
- APP _____
- CAF _____
- CKB *Keith*
- CTR _____
- EAG _____
- LFG 1
- LIN 5
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CERTIFICATE OF SERVICE
DOCKET NO. 960833-TP

I HEREBY CERTIFY that a true and correct copy of the foregoing was served by Federal Express this 9th day of August, 1996 to the following:

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Southern States, Inc.
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Donna Canzano
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Commission
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(904) 413-6204

William J. Ellenberg, II

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Matter of the)
Interconnection Agreement)
Negotiations Between AT&T)
Communications of The)
Southern States, Inc. and)
BellSouth Telecommunications,)
Inc. Pursuant to 47 U.S.C.)
§ 252)
_____)

Docket No. 960833-TP

Filed: August 9, 1996

BELLSOUTH TELECOMMUNICATIONS, INC.'S MOTION TO COMPEL
COMPLIANCE WITH THE TELECOMMUNICATIONS ACT OF 1996
AND FLORIDA PUBLIC SERVICE COMMISSION ORDER
NUMBER PSC-96-0933-PCO-TP AND BRIEF IN SUPPORT THEREOF

COMES NOW, BellSouth Telecommunications, Inc. ("BellSouth"), and files its motion requesting that the Florida Public Service Commission ("FPSC" or "Commission") direct and order AT&T of the Southern States, Inc. (AT&T) to (1) comply with specified provisions of the Telecommunications Act of 1996 (the "federal Act") and (2) comply with specific provisions of this Commission's procedural order entered in this proceeding.

Specifically, BellSouth seeks to have AT&T comply with those provisions of Section 252 (b), relating to the duties of a petitioner seeking arbitration under the federal Act. Further, BellSouth also seeks to have AT&T adhere to those provisions of FPSC Order Number PSC-96-0933-PCO-TP, detailing the obligation of AT&T to provide a list of unresolved issues about which arbitration is sought, and a list of issues discussed and resolved by the petitioner and respondent.

In support of this motion, BellSouth would show that Section 252 (b) (1) of the federal Act allows AT&T, which had requested negotiations with BellSouth, to request that this Commission arbitrate any open issues remaining at a point beginning 135 days

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after the initial request to negotiate is received. AT&T did so on July 17, 1996, the very first day such a request could have been made under the federal Act.

However, Section 252(4)(A) of the federal Act makes it clear that a party requesting arbitration must identify the issues which are in dispute. This issues list can be supplemented by additional issues identified in any responsive pleadings the other party chose to file. This requirement of the federal Act, which is contained in the plain words of the Act, is not subject to debate.

Even if it were, however, on July 17, 1996, this Commission issued its order, identified above, which contained the following language:

Petitioner shall file with the petition a clear description of the provisions that have been agreed upon and the issues that are unresolved. The petitioner shall also file a proposed list of issues for this proceeding and the position of each of the parties with respect to those issues. The petitioner shall also file any other issues discussed and resolved by the petitioner and respondent.

AT&T did, in its petition seeking arbitration, identify a number of unresolved issues in compliance with the federal Act and this Commission's procedural order. BellSouth agrees that in that section of the petition labeled "UNRESOLVED ISSUES TO BE ARBITRATED", AT&T has captured major issues that divide AT&T and BellSouth.

However, AT&T has also, in violation of the federal Act and

in direct contravention of this Commission's order, attempted to impermissibly shift the burden of identifying further issues about which there is disagreement, to BellSouth. Specifically, at page 11 of its petition AT&T says:

AT&T is filing with its Petition all relevant documentation concerning issues that are unresolved, the position of each party regarding such issues, and the terms and conditions AT&T believes BellSouth has accepted. The latter (items agreed to by BellSouth) are represented by each of the issues in the Interconnection Agreement that are not identified as unresolved issues in this Petition. To the extent BellSouth disputes any of the issues AT&T believes BellSouth has accepted, AT&T includes those issues for resolution in this arbitration and will supplement this Petition and provide additional relevant documents as necessary. (emphasis added)

That is, AT&T represents through its pleading that the so-called Interconnection Agreement (Agreement), consisting of several hundred pages of boiler plate, as well as language addressing substantive matters, has been wholly agreed to by BellSouth except for those issues that are identified as "unresolved issues in this Petition." Petition at page 11.

Of course this is not the case. In fact, one page earlier, when speaking of this same Agreement, AT&T represented that the agreement covered terms and conditions (1) that AT&T understood BellSouth had accepted and (2) terms and conditions, that, "while not yet accepted by BellSouth" are consistent with the Act.

(Emphasis added) Petition, page 10. Indeed, AT&T knows that on the very day its petition was filed, members of the negotiating teams from AT&T and BellSouth were meeting to determine a

schedule to be used to go over and analyze the various sections of the document AT&T provided, a process that is not yet complete.

Therefore, at the time of the filing of its petition for arbitration, AT&T knew that there were numerous other issues contained in its proposed agreement, some large and some small, which BellSouth had not accepted. Since AT&T knew that the items included in its so-called Interconnection agreement were issues, resolved or not, AT&T was obligated to identify those issues. It has not done so.

AT&T has chosen an easy course. It has offered up a document probably identical or very similar to one offered up in 50 other states. Through the device it has adopted, it has identified the major issues it wants to focus on, and has handed BellSouth an anvil to carry during these proceedings. By this simple stroke, it has taken a document it has had months to prepare, and has sought to require BellSouth to use its resources to sort out areas of disagreement.¹

Even if this weren't patently unfair, and an attempt on AT&T's part to gain an advantage it shouldn't have, there are two other compelling reasons to reject AT&T's attempt to avoid

¹ BellSouth has attached to its response to AT&T's petition (which will be filed today), a "red-lined" version of AT&T's Agreement which was provided to AT&T and which highlighted the areas where BellSouth disagrees with AT&T's language, substituting its own language where appropriate, and indicating those areas which are still under consideration pursuant to the schedule which AT&T had agreed to follow.

identifying the issues in this proceeding. Those reasons: (1) the language of the federal Act requiring AT&T to identify these issues and (2) the language of this Commission's order requiring AT&T to identify these issues.

AT&T has already gained an advantage by failing to file its testimony with its Petition, as required by an earlier order of this Commission. As a result, instead of having AT&T's testimony for 25 days and therefore having a fuller explanation of the matters it has raised in its Petition at the time of BellSouth's response, BellSouth has only had it 9 days. Now AT&T wants a further advantage by somehow requiring BellSouth to do its work for it in identifying issues in dispute. The Commission should not acquiesce in such conduct.

As a consequence thereof, and for the foregoing reasons, BellSouth requests the Commission to direct AT&T to prepare a complete list of the issues in this proceeding identifying with specificity those which it claims are resolved and those which are unresolved, so that BellSouth will have a proper opportunity to respond to specific issues, rather than the tome within which AT&T has hidden its issues. BellSouth is more than willing to work with AT&T, the Commission Staff and/or the Prehearing Officer to achieve this result, but it cannot be required, under the federal Act or under this Commission's own order, to undertake to complete AT&T's obligations.

Respectfully submitted this 9th day of August, 1996.

BELLSOUTH TELECOMMUNICATIONS, INC.

Robert G. Beatty

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