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ORIGINAL
FILE COPY

September 9, 1996

Ms. Blanca S. Bayó
Director, Division of Records and Reporting
Florida Public Service Commission
2540 Shumard Oak Boulevard
Betty Easley Conference Center, Rm. 110
Tallahassee, Florida 32399-0850

RE: Docket No. 960916-TP
ACSI's Arbitration with BellSouth

Dear Mrs. Bayó:

Enclosed please find an original and fifteen copies of BellSouth Telecommunications, Inc.'s Answer and Response to the Petition for Arbitration of American Communications Services, Inc., which we ask that you file 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 to the parties shown on the attached Certificate of Service.

Sincerely yours,

J. Phillip Carver (BR)

J. Phillip Carver

Enclosures

- ACK _____
- AFA _____
- APP _____
- CAF _____
- CMU _____
- CTR _____
- EAG _____
- LEG Carzano _____
- LIN 5 _____
- OPC _____
- RCH _____
- SEC 1 _____
- WAS _____
- OTH _____

cc: All Parties of Record
R. G. Beatty
A. M. Lombardo
William J. Ellenberg II

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CERTIFICATE OF SERVICE
DOCKET NO. 960916-TP

I HEREBY CERTIFY that a true and correct copy of the foregoing was served by Federal Express or (*) Hand-delivery this 9th day of September, 1996 to the following:

Donna Canzano *
Staff Counsel
Florida Public Service
Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399

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J. Phillip Carver (B2)
J. Phillip Carver

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In the Matter of)
)
 Petition by American Communication)
 Services, Inc. and American Communication) Docket No. 960916-TP
 Services of Jacksonville, Inc. for)
 Arbitration with BellSouth)
 Telecommunications, Inc. pursuant to the)
 Telecommunications Act of 1996) Filed: September 9, 1996

**BELLSOUTH TELECOMMUNICATIONS, INC.'S ANSWER AND RESPONSE TO
 THE PETITION FOR ARBITRATION OF AMERICAN
 COMMUNICATIONS SERVICES, INC.**

BellSouth Telecommunications, Inc., ("BellSouth" or the "Company"), hereby files its Answer (pursuant to Rule 1.110, Florida Rules of Civil Procedure and Rules 25-22.037 and 25-22.0375, Florida Administrative Code) and Response (pursuant to Section 252(b)(3) of the Telecommunications Act of 1996 (the "Act" or the "Federal Act")) to the Petition for Arbitration filed by American Communications Services, Inc. and American Communications Services of Jacksonville, Inc. (collectively "ACSI") and states the following:

INTRODUCTION

BellSouth is specifically required by the Federal Act to negotiate in good faith with any person seeking to interconnect to its local network. The framework set forth in the Act clearly favors this approach, that is, negotiated resolution of interconnection issues. Companies began contacting BellSouth as early as February 8, 1996, the day the Act was signed into law, and since that time BellSouth has been involved in negotiations with more than forty (40) different companies. Some of these

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negotiations have been quite extensive while others have been more limited, depending upon the individual needs of the companies. To date, BellSouth has successfully reached agreements with twenty (20) companies, including an extensive, yet partial, agreement with ACSI.

While the three (3) issues presented by ACSI as unresolved are significant, they should be viewed from the perspective of the overall number of companies involved in negotiations and the complexity of the total issues surrounding those negotiations. Although BellSouth and ACSI have agreed to numerous issues, as evidenced in the July 25, 1996 Interconnection Agreement, the three issues raised by ACSI in their Petition remain unresolved.

In response to the specific allegations of the Petition, BellSouth states the following:

1. As to the allegations contained in the section of the Petition captioned "INTRODUCTION", BellSouth admits that ACSI has filed a Petition to Arbitrate pursuant to Section 252(b) of the Act. To the extent that the remainder of this section states a request rather than factual allegations, it does not require a response. BellSouth, however, does admit that the Federal Communications Commission ("FCC") issued a *Report and Order* in CC Docket No. 96-98, FCC 96-325 on August 8, 1996, ("Interconnection Order" or "Order") in which it set forth certain guidelines pursuant to Sections 251 and 252 of the Act. BellSouth is without sufficient information or knowledge as to the allegations concerning ACSI having provided "all of the relevant documentation

as required by Section 252(b) of the Act" in support of this Petition and, therefore, denies them.

2. As to the allegations contained in Paragraph 1 of the Petition, BellSouth is without sufficient information or knowledge of the allegations concerning ACSI and, therefore, these allegations are deemed to be denied.

3. As to the allegations contained in Paragraph 2 of the Petition, BellSouth admits that it is a certificated local exchange carrier within the State of Florida, and an incumbent local exchange carrier as defined in Section 251(h) of the Act. BellSouth denies that it is a "monopoly provider of such services".

4. As to the allegations contained in Paragraph 3 of the Petition, these allegations are essentially legal in nature and, therefore, no response is required.

5. As to the allegations contained in Paragraphs 4 through 7 of the Petition, these allegations are admitted, except insofar as ACSI alleges in Paragraph 6 that it has negotiated in good faith. BellSouth can neither admit nor deny allegations that relate to ACSI's state of mind or intent in its negotiations.

6. As to the allegations contained in Paragraph 8 of the Petition, these allegations are essentially legal in nature and, therefore, no response is required. The language contained in the Act speaks for itself. Nonetheless, BellSouth will admit that it received the ACSI Request for Negotiations on March 7, 1996, and that the ACSI Petition has been filed within the time period established by the Act.

7. As to the allegations contained in Paragraph 9 of the Petition, BellSouth admits that ACSI and BellSouth were unable to reach agreement as to the rates for (1) Unbundled Loops, (2) Loop Cross-Connects, and (3) Loop Channelization.

8. Paragraph 10 of the Petition, for the most part, does not contain factual allegations, but rather a statement of what is contained in later paragraphs of the Petition. Accordingly, no response is required. To the extent ACSI sets forth its expectations with regard to BellSouth's Response to the Petition under the Act, no response is required. To the extent that any of the allegations of this paragraph are factual in nature, they are denied.

9. As to the allegations contained in Paragraph 11 of the Petition, BellSouth admits that this appears to be an accurate statement of ACSI's current position. To the extent legal interpretations of the Act are stated in this Paragraph, no response is required and, thus, none is given. BellSouth admits that this issue is disputed between ACSI and BellSouth.

10. As to the allegations contained in Paragraph 12 of the Petition, BellSouth can neither admit nor deny ACSI's opinions (legal interpretations or otherwise) as to the FCC's Interconnection Order. The FCC's Order speaks for itself. Clearly, any arbitration proceeding must now consider the impact, if any, of the FCC's Order regarding the implementation of local competition provisions of the Act, released August 8, 1996. It is BellSouth's position, as well as the position of others, including

various state regulatory commissions, that the FCC Order is overreaching and improperly extends the jurisdiction of the FCC and, in many respects, is an incorrect interpretation of the Act. It is also BellSouth's position, evidently also shared by others, that the FCC's Order represents micromanagement of the telecommunications industry. BellSouth will provide further comment on the FCC Order in the testimony or other submissions as this matter proceeds as well as its view of the proper treatment of the issues raised by that Order.

11. As to the allegations contained in Paragraph 13 of the Petition, BellSouth admits that Exhibit "H" to the Petition sets forth ACSI's proposed interim rates. BellSouth affirmatively states that the description of Total Element Long Run Incremental Cost ("TELRIC") studies was not even in existence during the negotiations between BellSouth and ACSI. TELRIC was first used by the Federal Communications Commission ("FCC") in its August 8, 1996 First Report and Order. Although BellSouth admits that it has "not provided ACSI with any TELRIC (or TSLRIC) studies", BellSouth affirmatively states that it provided ACSI with a Non-Disclosure Agreement intended to protect the confidentiality of proprietary information contained in BellSouth's incremental cost studies. ACSI never signed and returned the Non-Disclosure Agreement to BellSouth. If ACSI had done so, BellSouth would have furnished copies of any relevant long run incremental cost studies available to ACSI. BellSouth is without sufficient information or knowledge about the allegations concerning how ACSI developed the rates

listed in Exhibit "H" to the Petition and, therefore, denies them. As to the allegations regarding ACSI's expectations as to obtaining "cost and comparative rate information from BellSouth", such statements do not constitute factual allegations and, therefore, do not require a response. As to the allegations setting forth ACSI's requests regarding interim rates, BellSouth would urge the Commission to adopt BellSouth's position as put forth in this response and its testimony to be filed in this matter until such time as appropriate cost studies can be performed.

12. As to the allegations contained in Paragraph 14 of the Petition, this Paragraph states a request rather than factual allegations and, therefore, does not require a response.

13. As to the allegations contained in Paragraph 15 of the Petition, BellSouth admits that Exhibit "I" attached to ACSI's Petition sets forth the prices proposed by BellSouth during its negotiations with ACSI. BellSouth denies the remaining allegations of this Paragraph and specifically denies the allegation that it took the position during the negotiations that "negotiated rates need not be cost-based." To the extent these allegations relate to ACSI's understanding, or lack thereof, of what BellSouth "believes" regarding rates, no response is required since BellSouth cannot know ACSI's state of mind.

As to unbundled loops, BellSouth affirmatively states that the prices proposed by ACSI are all the same regardless of the type of unbundled loop being requested. See Exhibit "H" to ACSI Petition. BellSouth has proposed prices for two-wire and four-wire analog

voice grade loops at the rates contained in BellSouth's Special Access tariff. BellSouth has not proposed a rate for the BRI ISDN, ADSL, and HDSL compatible loops requested by ACSI because it has not fully analyzed these requests. Additionally, BellSouth is currently preparing cost studies on several of the loop types requested by ACSI.

As to Loop Cross-Connect, ACSI has simply proposed that this element be priced "at TELRIC." See Exhibit "H" to ACSI's Petition. BellSouth is currently preparing a cost study for a two-wire cross-connect and will propose a rate upon completion of the study.

As to Loop Channelization, ACSI appears to be requesting that the price it has proposed for unbundled loops includes channelization. See Exhibit "H" to ACSI's Petition. BellSouth's price proposal is reflected in Exhibit "I" to ACSI's Petition. It is unclear whether ACSI proposes that the loop channelization which occurs in the Remote Terminal is to be included in the loop rate or if ACSI wants the loop channelization which is performed inside BellSouth's central office in handing off unbundled loops to ACSI. If ACSI is proposing the former, BellSouth agrees. If, however, ACSI is requesting a unique channelization capability such as multiplexing or concentration of ACSI's unbundled loops, within the BellSouth central office, then BellSouth would propose the tariffed rates currently available and correctly identified in Exhibit "I" to ACSI's Petition. These rates have been offered to and accepted by other carriers during interconnection negotiations.

14. As to the allegations contained in Paragraphs 16-18 of the Petition, these allegations are essentially legal in nature and, therefore, no response is required. The provisions of the Act speak for themselves.

15. As to the allegations contained in Paragraph 19 of the Petition, BellSouth admits that the FCC adopted Rules on August 1, 1996 which were not released until August 8, 1996, regarding implementation of Sections 251 and 252 of the Act. The remaining allegations of this Paragraph are essentially legal in nature and, therefore, no response is required.

16. As to the allegations contained in Paragraph 20 of the Petition, to the extent that this Paragraph states legal arguments rather than factual allegations, no response is required and, thus, none is given. To the extent this paragraph references the opinion of a witness for ACSI (Dr. Marvin H. Kahn), these allegations are not factual in nature and are, accordingly deemed to be denied. As to the any of the allegations of this paragraph that are factual in nature, these allegations are denied. Portions of this Paragraph also state a request rather than factual allegations, and, therefore, does not require a response.

17. As to the allegations contained in Paragraph 21 of the Petition, BellSouth specifically denies that it has "refused to provide ACSI with TELRIC studies" and BellSouth further denies that it "insisted during the negotiations that it need not propose TELRIC-based rates." BellSouth affirmatively states that ACSI never asked for "TELRIC studies" during the negotiations.

Additionally, the description of TELRIC studies was not even in existence during the time of the negotiations between BellSouth and ACSI. TELRIC was first used by the FCC in its August 8, 1996 First Report and Order. BellSouth is without sufficient information or knowledge of the allegations concerning the information ACSI alleges to have used to develop its proposed rates nor as to statements referencing the purported role of an ACSI witness, Dr. Kahn, in regard to developing ACSI's proposed rate; and, therefore, denies them.

18. As to the allegations contained in Paragraph 22 of the Petition, BellSouth accepts these allegations as an accurate statement of ACSI's position. If the statement in this Paragraph, "[t]he mark-up that the LEC itself finds acceptable in a competitive market" is in reference to BellSouth, BellSouth denies this allegation. Further, BellSouth specifically denies that the mark-up for CENTREX is an appropriate standard to apply to the LEC's network elements. BellSouth also denies the statement in this Paragraph that use of a surrogate captures a competitive outcome in the pricing of ILEC network elements.

19. As to the allegations contained in Paragraph 23 of the Petition, BellSouth adopts here its response contained in Paragraph 10. Moreover, BellSouth affirmatively states that although at present it does not have TELRIC studies available for the three unbundled elements at issue in this proceeding, and even though BellSouth does not agree with the FCC Order, BellSouth is in the process of performing TELRIC studies. BellSouth would urge the

Commission to adopt BellSouth's position as set forth in this response and in its testimony to be filed in this matter until such time as appropriate cost studies can be performed.

20. As to the allegations contained in Paragraph 24 of the Petition, these allegations are essentially legal in nature and, therefore, no response is required. BellSouth does not oppose ACSI's request for the PSC to convene a status conference in order to establish a procedural schedule for discovery and the hearing in this matter.

21. As to the allegations contained in Paragraph 25 of the Petition, this Paragraph states a request rather than factual allegations, and, therefore, it does not require a response.

22. All allegations, and any inferences therein, contained in the numbered paragraphs and elsewhere in the Petition not specifically admitted in this Response are denied.

23. As to the allegations contained under the heading "VII CONCLUSION", BellSouth admits that the parties have been unable to reach agreement as to the rates for Unbundled Loops, Loop Cross-Connects, and Loop Channelization (BellSouth would note that uncertainty remains as to the exact nature of the dispute on this item) and that these issues are, therefore, ripe for arbitration before the Commission. BellSouth denies that the Florida Public Service Commission ("FPSC") should require BellSouth to offer the identified unbundled elements at the rates set forth in Appendix H attached to ACSI's Petition.

Respectfully Submitted this 9th day of September, 1996.

FELLSOUTH TELECOMMUNICATIONS, INC.

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