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RECORDS AND
REPORTING

September 4, 1998

Mrs. Blanca S. Bayó
Director, Division of Records and Reporting
Florida Public Service Commission
2540 Shunard Oak Boulevard
Tallahassee, FL 32399-0850

Re: Docket No. 980698-TP

Dear Ms. Bayó:

Enclosed are an original and fifteen copies of BellSouth Telecommunications, Inc.'s Motion to Compel, which we served today. Please file them in the captioned matter.

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,

J. Phillip Carver (kk)

J. Phillip Carver

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FPSC-BUREAU OF RECORDS

Enclosures

cc: All parties of record
A. M. Lombardo
R. G. Beatty
William J. Ellenberg II (w/o enclosures)

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Determination of the Cost)
of Basic Local Telecommunications) Docket No.: 980696-TP
Service, pursuant to Section 364.025,)
Florida Statutes)
_____) Dated: September 4, 1998

BELLSOUTH TELECOMMUNICATIONS, INC.'S
MOTION TO COMPEL

BellSouth Telecommunications, Inc. ("BellSouth") hereby moves, pursuant to Rule 1.380, Fla. R.C.v. Pro for the entry of an Order compelling the production of documents by AT&T, and granting BellSouth leave to supplement its rebuttal testimony, and states as grounds in support thereof the following:

1. AT&T is advocating that this Commission adopt the Hatfield Model for the purpose of determining the cost of universal service in Florida. To this end, AT&T's witness, Don Wood, asserts in his Direct Testimony that the Hatfield Model more accurately locates customers than does the BCPM Model proposed by BellSouth. (p. 8). Mr. Wood also contends that the Hatfield Model contains "the most accurate and verifiable costs for universal service cost calculation." (p. 7). Finally, Mr. Wood contends that the HAI Model complies with the FCC requirement that "all underlying data, formulae, computations and software associated with the Model must be available to all interested parties for review and comment" (Direct, pp. 17-18). However, when BellSouth requested the production of the "underlying data" involving the customer location process of HAI, AT&T refused to produce the information. Thus, in reality the HAI Model is

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completely unverifiable because its proponents, including AT&T, continue to refuse to release the underlying data that is necessary to test the performance of the Model.

2. On July 29, 1998, BellSouth propounded upon AT&T its First Request for Production of Documents. BellSouth requested therein the production of the DBF file of customer points, i.e., the customer locations for the State of Florida used in the Hatfield Model. Obviously, this request is directly relevant to the contention of the Hatfield developers, and more specifically of AT&T, that the Model accurately locates customers, and that these locations are utilized to develop a network that adequately serves customers.

3. On August 4, 1998, AT&T responded to this discovery request by objecting on the basis that the information is "the intellectual property of third party vendors and is only available from PNR" AT&T further stated that the information was not, nor had it ever been, in the possession of AT&T. To place this contention in context, one must consider that the Hatfield Model, while claiming to be open, actually incorporates a tremendous amount of information in the "preprocessing" that is done by PNR. In other words, a third party, PNR, obtains customer location data, uses it to locate customers (they claim), and then uses the customer locations to form clusters that correspond to serving areas. All of this is accomplished outside of the Model. It is nevertheless utilized in the Model to arrive at the cost that is output by the Model, and it is these outputs that AT&T is advocating for adoption by this Commission. Thus, amazingly, AT&T

has taken the position that it will not divulge the information because it is in the possession of a third party, even though the input of the third party is an integral and crucial part of the Model that AT&T claims is open, and has submitted to this Commission.

4. This objection notwithstanding, AT&T further stated in its response that AT&T would "arrange a visit to PNR to enable BellSouth to view this information."

5. On August 4, 1998, Sprint propounded Interrogatories upon AT&T that requested the same information that BellSouth had previously requested. Sprint also requested that AT&T utilize software provided to it by Stopwatch Maps to run one of the analyses of the Model that utilizes the requested customer location data. AT&T filed an objection to Sprint's discovery request that was substantially the same as to the one previously filed in response to BellSouth's request.

6. Subsequently, counsel for AT&T stated to the undersigned counsel for BellSouth that, despite the representations in AT&T's filed response, BellSouth can not have the customer location information requested, even if BellSouth goes to the premises of PNR to obtain this information. Instead, AT&T offered to use the Stopwatch Program to run the MST analysis described in Sprint's discovery request. In other words, AT&T agreed to perform one type of analysis with the data requested by BellSouth, but refused to produce the data to BellSouth. The result of this analysis was, in fact, provided by AT&T to

BellSouth as promised within the twenty day response time for discovery set by the Procedural Order in this case. AT&T, however, refused, and continues to refuse, to provide the underlying data requested by BellSouth for the stated reason that PNR considers this data to be proprietary and will not release it.

7. AT&T has absolutely no justification for its refusal to comply with proper discovery, and it should be compelled to do so immediately. AT&T knows full well that simply stating that information is proprietary is no basis to refuse to provide it. In point of fact, Section 364.183, Florida Statutes, specifically sets forth information which can be protected from public disclosure in a regulatory proceeding. Nothing in the statute, the rules of this Commission, or Florida law generally suggests that a claim of confidentiality, standing alone, can justify a refusal to comply with a proper discovery request. Further, the undersigned counsel for BellSouth has made a blanket offer to counsel for AT&T to execute a proprietary agreement to ensure the protection of the information from public disclosure.

8. AT&T also attempts to couple the claim that the information is proprietary with the apparent contention that it has no control or possession over the information. This contention is simply baffling. AT&T supports the Hatfield Model, and is sponsoring witnesses to advocate that it be accepted by this Commission. The Hatfield Model developers, along with sponsors such as AT&T, have made the decision to subcontract certain of the functions of the operation of the model, such as customer location, to a third party vendor,

specifically PNR. PNR conducts the entire customer location process that is the ostensible basis for the claim of AT&T that the Hatfield Model is superior in locating customers. Without this process and the resulting input, the Model simply would not function. Nevertheless, when an appropriate inquiry is made as to the underlying data utilized by PNR, AT&T retreats to the implausible position that since this work is performed by a third party, AT&T can use this as a means to refuse to provide discovery. AT&T should not be allowed to submit a model that is based upon the efforts of third party vendors and, at the same time, refuse to allow discovery of the work performed by these very same vendors. If AT&T's position were well taken, then any party would be free to utilize "outside" experts to advocate a position, then to refuse to disclose any properly discoverable information about the work product of these experts, based on the contention that they are "third parties".

9. Moreover, recent events belie the notion that AT&T is, for some reason, unable to produce the customer location data of PNR. First, AT&T was able to obtain from PNR the degree of cooperation necessary to conduct the MST analysis it provided. Second, it appears from the information available to BellSouth that AT&T did provide the requested PNR customer location data for the state of Washington after the Washington Commission entered an Order granting a Motion to Compel by GTE and requiring that the information be produced.

10. AT&T is advocating a model based on its claims of superiority, while denying to BellSouth discovery to conduct a study of the model that, BellSouth believes, would demonstrate that the HAI Model is fatally flawed. This stratagem should not succeed. The rebuttal testimony of BellSouth witness, Kevin Duffy-Deno, contains several examples of model validity tests (beyond the MST test) that have been conducted on the BCPM Model. Conducting these same tests on the HAI Model is impossible, however, without the requested data that AT&T refuses to provide. Thus, AT&T touts the HAI Model's ostensible openness and makes claims of superiority in locating customers while refusing to provide the very information necessary to test the HAI customer location process. This refusal belies the contention of openness; it also demonstrates not only the utter lack of support for the claim of HAI superiority in locating customers, but also the efforts of AT&T to prevent any check upon the validity of these claims. Put simply, AT&T should not have it both ways. AT&T should not be allowed to contend that its model is open and verifiable while resisting attempts to obtain the information necessary to conduct verification tests. Likewise, AT&T can not plausibly claim that the HAI Model is open when its actions so palpably demonstrate precisely the opposite.

11. The appropriate remedy for AT&T's refusal to comply with discovery is the entry of an Order compelling AT&T to immediately produce this information. Moreover, although the time for filing rebuttal testimony has passed, a month remains before the discovery deadline of October 5, 1998, and five

weeks remain before the beginning of the hearing. Once provided the requested information, BellSouth can perform the additional validity tests described in the testimony of Dr. Duffy-Deno in approximately one week. Thus, if AT&T is compelled to produce the requested information now, ample time remains for BellSouth to analyze the information, supplement its rebuttal testimony as needed and still allow adequate time for any party to conduct any necessary deposition regarding this testimony. Allowing BellSouth to supplement its testimony in this fashion would, thus, not prejudice any party to this proceeding. Accordingly, BellSouth requests the entry of an Order Compelling AT&T to produce this information, and granting BellSouth leave to supplement its rebuttal testimony within ten days after receiving this information from AT&T.

WHEREFORE, BellSouth respectfully requests the entry of an order compelling AT&T to comply with BellSouth's First Request to Produce, and granting BellSouth leave to supplement its rebuttal testimony.

Respectfully submitted this 4th day of September, 1998.

BELLSOUTH TELECOMMUNICATIONS, INC.

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**CERTIFICATE OF SERVICE
DOCKET NO. 980696-TP (HB4785)**

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