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30 MAR 22 PM 4:33

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RECORDS AND
REPORTING

March 22, 1999

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

Re: Docket No. 990149-TP

Dear Ms. Bayó:

Enclosed are an original and 15 copies of BellSouth Telecommunications, Inc.'s Response to the Petition for Arbitration of MediaOne Florida Telecommunications, Inc. Please file this document 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.

Sincerely,

J. Phillip Carver (ck)

J. Phillip Carver

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Enclosures

- cc: All parties of record
- M. M. Criser, III
- N. B. White
- William J. Ellenberg II (w/o enclosures)

DOCUMENT NUMBER-DATE

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FPSC-RECORDS/REPORTING

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In the Matter of)	
)	
Petition by MEDIAONE FLORIDA)	Docket No. 990149-TP
TELECOMMUNICATIONS, INC. for)	
Arbitration of an Interconnection Agreement)	
With BELLSOUTH TELECOMMUNICATIONS,)	
INC. Pursuant to Section 252(b) of the)	
Telecommunications Act of 1996)	
_____)	

**BELLSOUTH TELECOMMUNICATIONS, INC.'S RESPONSE
TO THE PETITION FOR ARBITRATION OF
MEDIAONE FLORIDA TELECOMMUNICATIONS, INC.**

Pursuant to 47 U.S.C. § 252(b)(3), BellSouth Telecommunications, Inc. ("BellSouth") responds to the Petition of MediaOne Florida Telecommunications, Inc. ("MediaOne") for Arbitration under the Telecommunications Act of 1996 ("1996 Act") and says:

I. INTRODUCTION

Sections 251 and 252 of the 1996 Act encourage negotiations between parties to reach voluntary local interconnection agreements. Section 251(c)(1) requires incumbent local exchange companies to negotiate the particular terms and conditions of agreements to fulfill the duties described in §§ 251(b) and 251(c)(2-6).

Since passage of the 1996 Act on February 8, 1996, BellSouth has successfully conducted negotiations with numerous alternative local exchange carriers ("ALECs") in Florida. To date, the Florida Public Service Commission ("the Commission") has approved over 100 agreements between BellSouth and ALECs. The nature and extent of these agreements vary depending on

the individual needs of the companies, but the conclusion is inescapable. BellSouth has a record of embracing competition and reaching agreement to interconnect on fair and reasonable terms.

During the negotiation process, the 1996 Act allows a party to petition a state Commission for arbitration of unresolved issues.¹ The petition must identify the issues resulting from the negotiations that are resolved, as well as those that are unresolved.² The petitioning party must submit along with its petition “all relevant documentation concerning: (1) the unresolved issues; (2) the position of each of the parties with respect to those issues; and (3) any other issue discussed and resolved by the parties.”³ A non-petitioning party to a negotiation under this section may respond to the other party’s petition and provide such additional information as it wishes within 25 days after the state Commission receives the petition.⁴ The 1996 Act limits the Commission’s consideration of any petition (and any response thereto) to the unresolved issues set forth in the petition and in the response.⁵

BellSouth and MediaOne entered into a prior Interconnection Agreement (“Agreement”) on December 1, 1995. Through mutual consent, the parties undertook to negotiate an Interconnection Agreement to replace the above-identified previous Agreement. Although BellSouth and MediaOne negotiated in good faith, the parties were unable to reach agreement on some issues. As a result, MediaOne filed its Petition for Arbitration. Pursuant to the 1996 Act, when parties cannot successfully negotiate an interconnection agreement, either may petition a

¹ 47 U.S.C. § 252(b)(2).

² *See generally*, 47 U.S.C. §§ 252 (b)(2)(A) and 252 (b)(4).

³ 47 U.S.C. § 252(b)(2).

⁴ 47 U.S.C. § 252(b)(3).

⁵ 47 U.S.C. § 252(b)(4).

state Commission for arbitration of unresolved issues between the 135th and 160th day from the date a request for negotiation was received.⁶ It is clear from the 1996 Act that MediaOne's Petition must identify the issues resulting from the negotiations that are resolved, as well as those that are unresolved.⁷

Through the arbitration process, the state Commission must resolve the unresolved issues ensuring that the requirements of §§ 251 and 252 of the 1996 Act are met. The obligations contained in those sections of the 1996 Act are the obligations that form the basis for negotiation, and if negotiations are unsuccessful, they then form the basis for arbitration. Issues or topics not specifically related to these areas are outside the scope of an arbitration proceeding. Once the state Commission provides guidance on the unresolved issues, the parties must incorporate those resolutions into a final agreement to be submitted to the state Commission for approval.⁸

BellSouth will respond to each subheading identified in the Petition in a manner that will attempt to clearly reflect what unresolved issues remain to be arbitrated by the Commission:

II. SPECIFIC RESPONSES

In accordance with § 252(b)(3) of the 1996 Act, BellSouth responds to each specifically numbered allegation in MediaOne's Petition and says:

1. BellSouth is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 1 of the Petition.

⁶ 47 U.S.C. § 252(b)(1).

⁷ See generally, 47 U.S.C. §§ 252(b)(2)(A) and 252(b)(4).

⁸ 47 U.S.C. § 252(a).

2. BellSouth denies the allegation of Paragraph 2 that it has been at all relevant times a monopoly provider of telephone exclusive service. BellSouth admits the remaining allegations in paragraph 2 of the Petition.

3. BellSouth admits the allegations in paragraph 3 of the Petition.

4. BellSouth admits the allegations in paragraph 4 of the Petition.

5. BellSouth admits to the allegations of paragraph 5, except the allegation that the arbitration must be concluded no later than May 9, 1999. Subsequent to the filing of the Petition, the parties agreed to waive the requirements of Section 252(b)(4)(c). Accordingly, this allegation is denied.

6. In response to the allegations of paragraph 6, BellSouth admits that the draft Interconnection Agreement sets forth the sections enumerated by MediaOne.

7. In response to the allegations of Paragraph 7, BellSouth admits that the Interconnection Agreement attached to the Petition is generally formatted in the manner alleged, and that it identifies the disputed issues. BellSouth denies that the draft Interconnection Agreement sets forth BellSouth's position in an accurate matter.

8. In response to paragraph 8 of the Petition, BellSouth admits that the issues identified are set forth in a generally accurate manner and that they reflect the issues upon which the parties have been unable to reach agreement. BellSouth admits that the appropriate arbitration standards are set forth in the 1996 Act. Those provisions of the 1996 Act speak for themselves. The remaining allegations in paragraph 8 of the Petition are denied.

9. In response to paragraph 9, BellSouth states that paragraph 9 sets forth a recitation of legal authority rather than factual allegations to which a response is required. Accordingly, paragraph 9 is deemed to be denied.

10. In response to paragraph 10, BellSouth states that in the main, paragraph 10 sets forth a recitation of legal authority rather than factual allegations to which a response is required. Accordingly, these allegations are deemed to be denied. BellSouth admits that an implementation schedule is unnecessary.

11. In response to paragraph 11, BellSouth states that paragraph 11 sets forth a recitation of legal authority rather than factual allegations to which a response is required. Accordingly, paragraph 11 is deemed to be denied.

12. In response to paragraph 12, BellSouth states that paragraph 12 sets forth a recitation of legal authority rather than factual allegations to which a response is required. Accordingly, paragraph 12 is deemed to be denied.

13. In response to paragraph 13, BellSouth states that paragraph 13 sets forth a recitation of legal authority rather than factual allegations to which a response is required. Accordingly, paragraph 13 is deemed to be denied.

14. BellSouth admits that paragraph 14 purports to set forth MediaOne's position on the issues. BellSouth denies that paragraph 14 sets forth BellSouth's positions accurately, and will clarify its positions below.

15. In response to paragraph 15, BellSouth denies that a decision must be rendered by May 9, 1999 because the parties have waived that deadline. MediaOne's request for the issuance of a procedural Order is not a factual allegation to which a response is required. Nevertheless, BellSouth has no objection to this request.

BELLSOUTH'S POSITION ON UNRESOLVED ISSUES

ISSUE GTC-1:

BellSouth believes that its proposed language is sufficient to meet MediaOne's audit needs, and that the provisions proposed by MediaOne are overly broad. BellSouth's proposed audit provision allows MediaOne to audit all billable services, by reviewing BellSouth's books, records, and other documents each contract year. Under the BellSouth proposed Interconnection Agreement, MediaOne has adequate means to assure itself that it is receiving the same level of service that BellSouth is delivering to itself through the receipt of raw data and performance measurement reports that BellSouth will provide to MediaOne.

ISSUE GTC-2:

Internet traffic cannot be properly defined as "local traffic." The vast majority of this traffic is interstate in nature, as was recently upheld by the FCC in its Declaratory Ruling in CC Docket No. 96-98 and Notice of Proposed Rulemaking in CC Docket No. 99-68 ("the FCC ISP Ruling").

ISSUES: ATT 2 & 11-1:

CNAM database service is a competitive offering. There are numerous companies that provide ALECs with access to calling name database services. Because CNAM is not an unbundled network element ("UNE"), it is not subject to the pricing standards of Section 252(d) of the Telecommunications Act of 1996 ("Act"). The rate BellSouth proposes to charge MediaOne is the same rate charged to any non-data base company that contracts with BellSouth for CNAM service. The terms and conditions of MediaOne's agreement in Georgia (and other CNAM agreements) contain a provision for the recurring flat rate (\$50/1000 lines/month) to convert to a per query usage rate once query usage measurement capability becomes available.

ISSUE ATT 2 & 6-1

Neither the 1996 Act nor the FCC requires that access to UNEs by ALECs be “identical” to BellSouth’s use of its own facilities. Instead, the FCC specified six (6) technically feasible interconnection points. At a minimum, a technically feasible form of access must be identified. BellSouth believes the form of access to NTW proposed by MediaOne cannot be found to be technically feasible as that term is defined by the FCC. At MediaOne’s request, BellSouth will pre-wire NTW pairs, which would obviate the need to have a BellSouth technician dispatched each time MediaOne wants access to a given end user customer. BellSouth also has offered the option to have BellSouth install a NID for MediaOne’s use with their requested NTW pairs instead of MediaOne dispatching a technician to do the work. To date, MediaOne refuses to pay BellSouth for such pre-wired connections or to install the NID.

ISSUE ATT 2 & 6-2:

MediaOne mischaracterizes BellSouth’s demarcation policy as it relates to Multi-Dwelling Units (“MDUs”). The rules of this Commission specify that in some cases the first telephone jack inside the customer’s premises creates the point of demarcation. BellSouth’s position is totally compliant with the rules of this Commission (See Rule 25-4.0345, F.A.C.). Clearly, NTW is part of BellSouth’s facilities as it is on the network side of the demarcation point. MediaOne’s request that the Commission redefine the demarcation point would create a morass of issues including jurisdiction, confiscation of property, and customer confusion.

ISSUE ATT 2 & 6-3:

As set forth above, Network Terminating Wire is a part of BellSouth's facilities, and BellSouth is entitled to charge for the use of these facilities. The appropriate charge should be based upon a cost study, and BellSouth will submit a cost study to support the rate that it will advocate.

ISSUE ATT 3-1:

Reciprocal compensation should not be paid on Internet traffic as traffic bound for ISPs is jurisdictionally interstate. The FCC, in its recent Declaratory Ruling on ISP traffic, unequivocally ruled that based on end-to-end analysis of Internet calls, ISP traffic does not terminate at the ISP's point of presence. Thus, traffic bound for the Internet does not terminate in the local calling area, which is a prerequisite for payment of reciprocal compensation.

ISSUE ATT 5-1:

BellSouth should not be required to provide, at no cost to MediaOne, interim number portability-remote call forward (INP-RCF), with three call paths for residential customers and six call paths for business customers. Under the existing BellSouth/MediaOne's Interconnection Agreement for interim number portability (INP), MediaOne is obligated to pay for each line, residential and business, for which BellSouth will provide one call path. MediaOne is further obligated under their existing agreement to pay for each additional call path, residential and business. BellSouth should not be obligated to provide additional call paths for free in the proposed BellSouth/MediaOne Interconnection Agreement.

ISSUE ATT 5-2:

The local number portability (“LNP”) provisioning flows that BellSouth uses are those adopted by the North American Numbering Council (“NANC”), which was appointed by the FCC. The provisioning flow is such that when a BellSouth end-user changes service to MediaOne, MediaOne notifies BellSouth of the change using a Local Service Request (“LSR”). BellSouth then provides a Firm Order Confirmation (“FOC”) to MediaOne, at which time both BellSouth and MediaOne will create and process service orders. At this time, MediaOne sends a create message to the Number Portability Administration Center (“NPAC”), which in turn notifies BellSouth of the proposed porting activity. BellSouth will then send a concurrence message to NPAC and provisioning subsequently proceeds under the control of MediaOne until completion. Since BellSouth allows MediaOne to send the create message to NPAC – as opposed to BellSouth -- MediaOne is in control of when provisioning will begin and thus an 18 hour window is not an issue.

ISSUE ATT 5-3:

It is BellSouth’s position that a point of contact is not necessary because MediaOne, as the new service provider, is in control of when end-user calls are routed to MediaOne’s switch. MediaOne, as a facilities-based carrier, does not purchase unbundled loops. Therefore, if MediaOne does not send the NPAC activate message, then the end-user calls will continue to route through BellSouth’s switch. Should changes or supplements become necessary for customer-related reasons, MediaOne is required to send a supplemental LSR to BellSouth.

ISSUE ATT 10-1:

The appropriate measurements for inclusion in the MediaOne agreement should be BellSouth’s Service Quality Measurements (SQM). However, based on the desire of MediaOne and other ALECs to have performance reports that measure the ordering, provisioning and

maintenance of LNP as a standalone service separate from the loop, BellSouth has begun the process of investigating the requirements to develop an LNP report to be added to the BellSouth SQM. Once the final operational and software requirements for this report are identified, BellSouth will notify the ALECs of a target completion date for implementing this report.

ISSUE ATT 10-2:

The only performance incentive payments that should be included in any interconnection agreement are those mutually agreed upon by the parties. Performance incentive payments are not required by the 1996 Act and represent a supplemental enforcement scheme that is wholly unnecessary. MediaOne contends that without performance incentive payment provisions, BellSouth will have no incentive to provide nondiscriminatory access. However, if MediaOne believes that BellSouth is not achieving the performance standards specified in the interconnection agreement, MediaOne has adequate recourse before this Commission, through the resolution of disputes provision of the interconnection agreement, or in a court of law.

WHEREFORE, BellSouth requests that the Commission arbitrate the disputed issues and adopt the positions of BellSouth for inclusion in an Interconnection Order to be executed by BellSouth and MediaOne.

Respectfully submitted this 22nd day of March, 1999.

BELLSOUTH TELECOMMUNICATIONS, INC.

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156127

**CERTIFICATE OF SERVICE
DOCKET NO. 990149-TP**

I HEREBY CERTIFY that a true and correct copy of the foregoing was served by
U. S. Mail this 22nd day of March, 1999 to the following:

Martha Carter Brown
Florida Public Service
Commission
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