

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Complaint by AT&T
Communications of the Southern
States, Inc. d/b/a Connect 'N
Save and d/b/a Lucky Dog and
d/b/a ACC Business against
BellSouth Telecommunications,
Inc. regarding improper
application of switched access
charges.

DOCKET NO. 991237-TP
ORDER NO. PSC-00-0591-PHO-TP
ISSUED: March 24, 2000

Pursuant to Notice and in accordance with Rule 28-106.209, Florida Administrative Code, a Prehearing Conference was held on March 23, 2000, in Tallahassee, Florida, before Commissioner Susan F. Clark, as Prehearing Officer.

APPEARANCES:

TRACY HATCH, Esquire, AT&T Communications of the Southern States, Inc., 101 North Monroe Street, Suite 700, Tallahassee, Florida 32301
On behalf of AT&T Communications of the Southern States

LISA FOSHEE, Esquire, and MICHAEL GOGGIN, Esquire, c/o Ms. Nancy H. Sims, BellSouth Telecommunications, Inc., Suite 400, 150 South Monroe Street, Tallahassee, Florida 32301-1556
On behalf of BellSouth Telecommunications, Inc.

DIANA W. CALDWELL, Esquire, Florida Public Service Commission, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850
On behalf of the Commission Staff.

PREHEARING ORDER

I. CONDUCT OF PROCEEDINGS

Pursuant to Rule 28-106.211, Florida Administrative Code, this Order is issued to prevent delay and to promote the just, speedy, and inexpensive determination of all aspects of this case.

DOCUMENT NUMBER-DATE

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FPSC-RECORDS/REPORTING

II. CASE BACKGROUND

On August 27, 1999, AT&T Communications of the Southern States (AT&T) d/b/a Connect 'N Save and d/b/a Lucky Dog and d/b/a ACC Business filed a complaint against BellSouth Telecommunications, Inc. regarding improper application of switched access charges. On September 16, 1999, BellSouth filed its response. The matter has been set for hearing.

III. PROCEDURE FOR HANDLING CONFIDENTIAL INFORMATION

A. Any information provided pursuant to a discovery request for which proprietary confidential business information status is requested shall be treated by the Commission and the parties as confidential. The information shall be exempt from Section 119.07(1), Florida Statutes, pending a formal ruling on such request by the Commission, or upon the return of the information to the person providing the information. If no determination of confidentiality has been made and the information has not been used in the proceeding, it shall be returned expeditiously to the person providing the information. If a determination of confidentiality has been made and the information was not entered into the record of the proceeding, it shall be returned to the person providing the information within the time periods set forth in Section 364.183, Florida Statutes.

B. It is the policy of the Florida Public Service Commission that all Commission hearings be open to the public at all times. The Commission also recognizes its obligation pursuant to Section 364.183, Florida Statutes, to protect proprietary confidential business information from disclosure outside the proceeding.

1. Any party intending to utilize confidential documents at hearing for which no ruling has been made, must be prepared to present their justifications at hearing, so that a ruling can be made at hearing.

2. In the event it becomes necessary to use confidential information during the hearing, the following procedures will be observed:

- a) Any party wishing to use any proprietary confidential business information, as that term is defined in Section 364.183, Florida Statutes, shall notify the Prehearing Officer and all parties of record by the time of the

Prehearing Conference, or if not known at that time, no later than seven (7) days prior to the beginning of the hearing. The notice shall include a procedure to assure that the confidential nature of the information is preserved as required by statute.

- b) Failure of any party to comply with 1) above shall be grounds to deny the party the opportunity to present evidence which is proprietary confidential business information.
- c) When confidential information is used in the hearing, parties must have copies for the Commissioners, necessary staff, and the Court Reporter, in envelopes clearly marked with the nature of the contents. Any party wishing to examine the confidential material that is not subject to an order granting confidentiality shall be provided a copy in the same fashion as provided to the Commissioners, subject to execution of any appropriate protective agreement with the owner of the material.
- d) Counsel and witnesses are cautioned to avoid verbalizing confidential information in such a way that would compromise the confidential information. Therefore, confidential information should be presented by written exhibit when reasonably possible to do so.
- e) At the conclusion of that portion of the hearing that involves confidential information, all copies of confidential exhibits shall be returned to the proffering party. If a confidential exhibit has been admitted into evidence, the copy provided to the Court Reporter shall be retained in the Division of Records and Reporting's confidential files.

IV. POST-HEARING PROCEDURES

Each party shall file a post-hearing statement of issues and positions. A summary of each position of no more than 50 words, set off with asterisks, shall be included in that statement. For Issue 1, however, the 50 word limit may be exceeded. If a party's position has not changed since the issuance of the prehearing order, the post-hearing statement may simply restate the prehearing

position; however, if the prehearing position is longer than 50 words, it must be reduced to no more than 50 words. If a party fails to file a post-hearing statement, that party shall have waived all issues and may be dismissed from the proceeding.

Pursuant to Rule 28-106.215, Florida Administrative Code, a party's proposed findings of fact and conclusions of law, if any, statement of issues and positions, and brief, shall together total no more than 40 pages, and shall be filed at the same time.

V. PREFILED TESTIMONY AND EXHIBITS; WITNESSES

Testimony of all witnesses to be sponsored by the parties has been prefiled. All testimony which has been prefiled in this case will be inserted into the record as though read after the witness has taken the stand and affirmed the correctness of the testimony and associated exhibits. All testimony remains subject to appropriate objections. Each witness will have the opportunity to orally summarize his or her testimony at the time he or she takes the stand. Upon insertion of a witness' testimony, exhibits appended thereto may be marked for identification. After all parties and Staff have had the opportunity to object and cross-examine, the exhibit may be moved into the record. All other exhibits may be similarly identified and entered into the record at the appropriate time during the hearing.

Witnesses are reminded that, on cross-examination, responses to questions calling for a simple yes or no answer shall be so answered first, after which the witness may explain his or her answer.

The Commission frequently administers the testimonial oath to more than one witness at a time. Therefore, when a witness takes the stand to testify, the attorney calling the witness is directed to ask the witness to affirm whether he or she has been sworn.

VI. ORDER OF WITNESSES

Direct and Rebuttal

<u>Witness</u>	<u>Proffered By</u>	<u>Issues #</u>
Richard Guepe	AT&T	2, 3
Jerry J. Langin-Hooper	AT&T	1, 2, 3
Jerry Hendrix	BellSouth	1, 2, 3

<u>Witness</u>	<u>Proffered By</u>	<u>Issues #</u>
Keith Milner	BellSouth	1, 2, 3
Isaac Byrd (Rebuttal only)	BellSouth	2 (b), 3 (b)
David Scollard (Rebuttal only)	BellSouth	2 (b), 3 (b)

VII. BASIC POSITIONS

AT&T:

The Carrier Common Line (CCL) charge is a usage based rate element of the Switched Access Charge rate structure. The CCL charge was designed to recover the portion of the cost of end user loops that was allocated for recovery to toll usage. Since the advent of switched access charges, BellSouth has systematically been billing CCL charges in conjunction with AT&T toll calls in instances where a common line was not used or multiple CCL charges where only one common line was used. The particular instances are when AT&T toll calls interact with the following services: call forwarding, call waiting, three-way calling, foreign exchange, voice messaging that utilize call forwarding, fax processing that utilize call forwarding, and routing to paging. Where an AT&T toll call interacts with these services, BellSouth charges originating CCL charges, terminating CCL charges or both even though no use is made of a common line (customer's loop). In some instances AT&T is charged multiple CCL charges for use of only a single common line. As a result, BellSouth has overcharged AT&T for CCL charges in the provision of switched access service. BellSouth's application of CCL charges is inappropriate, is in contravention of its access tariff, is in violation of Section 364.08, Florida Statutes, and is unfair and anticompetitive in violation of Section 364.01(4)(g), Florida Statutes. Accordingly, the Florida Public Service Commission should order BellSouth to refund all overcharged amounts attributable to the misapplication of the CCL charges and to order BellSouth to correct its

application of the CCL charge and refrain from misapplying the CCL charge in the future switched access billings.

BellSouth: BellSouth is assessing the Carrier Common Line Charge ("CCLC") appropriately in Florida. Specifically, BellSouth assesses the CCLC in accordance with Commission Orders and in accordance with BellSouth's Commission-approved tariffs. Thus, AT&T is not entitled to the relief it is seeking in this proceeding. If the Commission concludes that it desires BellSouth to assess CCLC in a manner different from that set forth in the Commission Orders and BellSouth's Commission-approved tariff, the Commission should conduct a proceeding to establish such procedures on a going-forward basis.

STAFF: Staff's positions are preliminary and based on materials filed by the parties and on discovery. The preliminary positions are offered to assist the parties in preparing for the hearing. Staff's final positions will be based upon all the evidence in the record and may differ from the preliminary positions.

VIII. ISSUES AND POSITIONS

ISSUE 1: How does BellSouth apply the Carrier Common Line Charges (CCLC) to an AT&T transported toll call which involves interaction with any of the following BellSouth services:

- (a) call forwarding;
- (b) call waiting;
- (c) three-way calling;
- (d) foreign exchange;
- (e) voice messaging that utilize call forwarding;
- (f) fax processing that utilize call forwarding;
and
- (g) routing to paging?

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POSITIONS

- AT&T:**
- (a) call forwarding - When an inbound AT&T toll call is intercepted at the terminating central office by the call forwarding feature, the call is not terminated to the dialed customer's loop or common line. Instead, the call is forwarded to another entity designated by the called party. AT&T is billed terminating CCL charges even though the call is transported to another entity and called party's common line is not used. If the call is forwarded to an interLATA AT&T customer, AT&T is billed originating CCL charges even though the forwarded call did not at any time use the called party's common line.
 - (b) call waiting - When an AT&T toll call is placed on hold in conjunction with the call waiting feature, the AT&T call is not using the called end user's common line (loop). BellSouth continues to bill CCL charges for the time even while the AT&T toll call is not using the common line.
 - (c) three-way calling - When a three-way call is made in conjunction with an AT&T toll call or calls, only one common line is being used. BellSouth bills CCL charges to each toll carrier even though only one common line is used.
 - (d) foreign exchange - When an AT&T toll call is made to an FX customer, the call is terminated to the central office at the open end and carried via a dedicated line to FX customer's premises. BellSouth bills terminating CCL charges to AT&T even though no common line is used to carry the call to the FX customer's premises. The dedicated FX line already recovers the full cost of that loop facility.
 - (e) voice messaging that utilize call forwarding - When an AT&T toll call is forwarded to a voice messaging service, the called parties common line is not used. BellSouth bills CCL charges to AT&T even though the called party's common line is not used.

- (f) fax processing that utilize call forwarding - When an AT&T toll call is forwarded to a fax processing service that utilizes call forwarding, the called parties common line is not used. BellSouth bills CCL charges to AT&T even though the called party's common line is not used.
- (g) routing to paging - When an AT&T call is routed to a paging service, the call is transported to the wireless switch and sent to the pager through wireless technology. BellSouth, in some instances, still bills AT&T CCL charges even though no common line is used.

BELLSOUTH:

BellSouth applies the CCLC to AT&T transported toll calls which involve interaction with the identified BellSouth services per switched access minute of use. This application is in accordance with Commission Orders and BellSouth's Commission-approved tariff. BellSouth's Commission-approved tariff unambiguously provides for the assessment of CCLC on the relevant calls per access minute. See Section E3 of BellSouth's Access Tariff. Section E6, upon which AT&T relies, is not applicable to the CCLC. Rather, the CCLC is covered in Section E3 which is the tariff section that should be considered in this case. Thus, BellSouth's assessment of CCLC on AT&T is appropriate, and AT&T's claim should be dismissed under the filed tariff doctrine. Moreover, the Commission's access charge plan (Docket No. 820537-TP, Order Nos. 12765 and 14452) supports the application of the CCLC for each and every intrastate originating and terminating switched access minute of use, without regard to the identifiable use of a specific common line facility. Thus, BellSouth application of the CCLC is appropriate and consistent with Commission directives.

STAFF:

Staff takes no position at this time.

ISSUE 2: (a) Is BellSouth's application of the CCLC to an AT&T transported toll call which involves interaction with any of the services provided by BellSouth identified in Issue 1 consistent with its access tariff and Section 364.08, Florida Statutes?

(b) If not, what action should the Commission take?

POSITIONS:

AT&T: (a) No. BellSouth's application of CCL charges to AT&T toll calls which involve interaction with the services set forth in issue 1 is in contravention of its access tariff and in violation of Section 364.08, Florida Statutes.

(b) The Commission should order BellSouth to refund all amounts of CCL charges inappropriately collected and order BellSouth to cease inappropriately applying the CCL charge in the manner described in Issue 1.

BELLSOUTH: (a) BellSouth's application of the CCLC to an AT&T transported toll call which involves interaction with any of the services provided by BellSouth identified in Issue 1 is on a per switched access minute of use, and therefore, is consistent with its access tariff and Section 364.08, Florida Statutes. BellSouth's tariff section E3, Carrier Common Line Access Service, provides that the CCLC will be assessed for every originating and terminating minute of use. Because BellSouth's assessment of the CCLC complies with the terms of BellSouth's tariff, AT&T's claim should be dismissed under the filed tariff doctrine.

(b) As set forth above, BellSouth's assessment of the CCLC is consistent with its access tariff and Section 364.08, Florida Statutes. If the Commission concludes otherwise, the Commission, rather than granting AT&T the relief it seeks, should initiate a proceeding in order to (1) provide proper notice and an opportunity for all concerned parties to comment; (2) weigh the

tremendous burden such a change in the application of CCLC would have on the industry; and (3) solicit and consider alternative common line recovery mechanisms that could accomplish the Commission's purposes (such as flat charge) without creating the upheaval which AT&T's position would involve and which would be better aligned with the new local exchange and access environment.

If the Commission concludes that AT&T is entitled to monetary relief (which it should not), the Commission should determine such relief based on the studies submitted by BellSouth as opposed to the studies submitted by AT&T. AT&T's studies are unsubstantiated, and, in some cases, plainly incorrect. Thus, the Commission should not award AT&T relief based on such studies.

STAFF: Staff takes no position at this time.

ISSUE 3: (a) Are BellSouth's practices regarding the imposition of CCLC on an AT&T transported toll call which involves interaction with any of the services identified in Issue 1 unfair and anticompetitive in violation of Section 364.01(4)(g), Florida Statutes?

(b) If so, what action should the Commission take?

POSITIONS:

AT&T: (a) Yes. BellSouth's practices regarding the application of CCL charges on an AT&T transported toll call which involves interaction with any of the services identified in Issue 1 are unfair and anticompetitive in violation of Section 364.01(4)(g), Florida Statutes.

(b) BellSouth should be required to cease application of the CCL charges on an AT&T transported toll call which involves interaction with any of the services identified in Issue 1.

BELLSOUTH: (a) BellSouth's application of the CCLC to an AT&T transported toll call which involves interaction with any of the services provided by BellSouth identified in Issue 1 is on a per switched access minute of use and, therefore, is consistent with its access tariff and Commission Orders. Because BellSouth's practices are in compliance both with its tariff and with Commission Orders. BellSouth's practices are not unfair and/or anticompetitive.

(b) As set forth above, BellSouth's assessment of the CCLC is consistent with its access tariff and Commission Orders. If the Commission concludes otherwise, the Commission, rather than granting AT&T the relief it seeks, should initiate a proceeding in order to (1) provide proper notice and an opportunity for all concerned parties to comment; (2) weigh the tremendous burden such a change in the application of CCLC would have on the industry; and (3) solicit and consider alternative common line recovery mechanisms that could accomplish the Commission's purposes (such as flat charge) without creating the upheaval which AT&T's position would involve and which would be better aligned with the new local exchange and access environment.

If the Commission concludes that AT&T is entitled to monetary relief (which it should not), the Commission should determine such relief based on the studies submitted by BellSouth as opposed to the studies submitted by AT&T. AT&T's studies are unsubstantiated, and, in some cases, plainly incorrect. Thus, the Commission should not award AT&T relief based on such studies.

STAFF: Staff takes no position at this time.

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IX. EXHIBIT LIST

<u>Witness</u>	<u>Proffered By</u>	<u>I.D. No.</u>	<u>Description</u>
Richard Guepe	AT&T	RTG-1	BellSouth Access Services Tariff
Jerry J. Langin- Hooper	AT&T	JLH-1	Professional Qualifications
		JLH-2	Estimated Over-charges of Intrastate Carrier Common Line Charges to AT&T by BellSouth in Florida.
		JLH-3	Charts Demonstrating the Interaction of AT&T Calls with BellSouth's VIS Services.
Jerry Hendrix	BellSouth	JDH-1	E6. BellSouth SWA Service.
		JDH-2	E3. Carrier Common Line Access
Isaac Byrd	BellSouth	INB-1	BellSouth Call-Forwarding Study (CF1-CF6); (CF-A - CF-F).
		INB-2	BellSouth FX Study (FX-A - FX- B).

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Parties and Staff reserve the right to identify additional exhibits for the purpose of cross-examination.

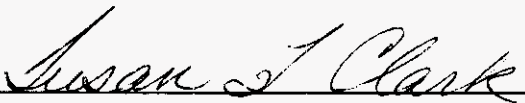
X. OPENING STATEMENTS

The parties requested and are hereby granted no more than ten minutes to present opening statements.

It is therefore,

ORDERED by Commissioner Susan F. Clark, as Prehearing Officer, that this Prehearing Order shall govern the conduct of these proceedings as set forth above unless modified by the Commission.

By ORDER of Commissioner Susan F. Clark, as Prehearing Officer, this 24th day of March, 2000.



SUSAN F. CLARK
Commissioner and Prehearing Officer

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NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

Any party adversely affected by this order, which is preliminary, procedural or intermediate in nature, may request: (1) reconsideration within 10 days pursuant to Rule 25-22.0376, Florida Administrative Code, if issued by a Prehearing Officer; (2) reconsideration within 15 days pursuant to Rule 25-22.060, Florida Administrative Code, if issued by the Commission; or (3) judicial review by the Florida Supreme Court, in the case of an electric, gas or telephone utility, or the First District Court of Appeal, in the case of a water or wastewater utility. A motion for reconsideration shall be filed with the Director, Division of Records and Reporting, in the form prescribed by Rule 25-22.060, Florida Administrative Code. Judicial review of a preliminary, procedural or intermediate ruling or order is available if review of the final action will not provide an adequate remedy. Such review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.