

ORIGINAL

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February 9, 2004

Mrs. Blanca S. Bayó
Division of the Commission Clerk and
Administrative Services
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

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Re: **Docket No. 030851-TP**

Dear Ms. Bayó:

Enclosed are an original and fifteen copies of BellSouth Telecommunications, Inc.'s Emergency Motion to Compel, in the above referenced 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.

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On
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Sincerely,

Nancy B. White

Nancy B. White (LCA)

cc: All Parties of Record
Marshall M. Criser III
R. Douglas Lackey

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CERTIFICATE OF SERVICE
Docket No. 030851-TP

I HEREBY CERTIFY that a true and correct copy of the foregoing was served via
Electronic Mail, Hand Delivery* and FedEx® this 9th day of February 2004 to the following:

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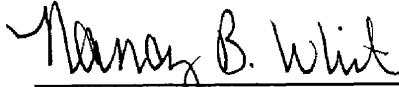
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Nancy B. White (vrt)

(+)signed Protective Agreement
(*) via Hand Delivery
(⊗) via FedEx

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Implementation of Requirements Arising)	
From Federal Communications Commission)	Docket No. 030851-TP
Triennial UNE review: Local Circuit Switching)	
For Mass Market Customers.)	Filed: February 9, 2004

BELLSOUTH TELECOMMUNICATIONS, INC.'S
EMERGENCY MOTION TO COMPEL

Pursuant to Rule 28.106-204 and 28-106.206, Florida Administrative Code, and Rule 1.380 of the Florida Rules of Civil Procedure, BellSouth Telecommunications, Inc. ("BellSouth"), hereby moves the Florida Public Service Commission ("Commission") to compel AT&T Communications of the Southern States, LLC ("AT&T") to answer fully and completely discovery BellSouth propounded in this docket.

On January 16, 2004, BellSouth served its First Requests for Admission, Revised Sixth Set of Interrogatories, and Sixth Requests for Production of Documents on AT&T. Although AT&T timely filed responses to these discovery requests, a number of its "responses" did not answer the question that was asked. In other instances, AT&T promised to provide the information that BellSouth had requested, although AT&T has not yet done so nor given any indication when it will do so. BellSouth has attempted to address these issues informally with AT&T but without success. Because the hearings in this docket start in fourteen (14) days and because the discovery that BellSouth seeks is important to the presentation of its case, the Commission should grant BellSouth's Motion and compel AT&T to provide full and complete responses to the following discovery requests: Requests for Admission and Interrogatories 191, 192, 193(c)-(e), 199, 200, 208, 209, 210, 213, 215, 216, 217, 218, 219, 228, 236, 237, 239(b)-(c), and 241; and Requests for Production of Documents 34, 35, 36 and 37. These requests and AT&T's "response" to each is discussed in greater detail below.

Interrogatory 191: Referring to page 6 of the Rebuttal Testimony of Jay M. Bradbury, explain in detail each and every way a self-provisioning trigger candidate that provides an “intermodal service” that is “comparable to the ILEC service in cost, quality, and maturity” (Criteria 4) would ever “be relying on ILEC analog loops to connect the customer to its switch” (Criteria 3).

In his Rebuttal Testimony, AT&T witness Jay Bradbury outlines six criteria that AT&T claims must be satisfied in order for a carrier to qualify as one of the three self-provisioning trigger candidates for purposes of the FCC’s self-provisioning trigger. Interrogatory 191 asked AT&T to explain in detail each and every way a self-provisioning trigger candidate could ever meet two of those criteria – Criteria 3 and Criteria 4 -- that appear to be mutually exclusive. In its response, AT&T did not answer this question, merely referring instead to Mr. Gillan’s direct testimony. Mr. Gillan’s testimony does not explain how both Criteria 3 and Criteria 4 could ever be met by the same carrier, and thus AT&T’s “response” is no response at all. AT&T should be compelled to answer this Interrogatory.

Interrogatory 192: Do you contend that a carrier providing an “intermodal service” must use an ILEC’s local loops to qualify as one of the three self-provisioning trigger candidates for purposes of the FCC’s self-provisioning trigger test? If the answer to this Interrogatory is in the affirmative, state all facts and identify all documents, including providing specific references to any and all language in the TRO, that support this contention. Include in your response an explanation of why the FCC only required that the service of “intermodal service” providers, as opposed to all other providers, be comparable to the ILEC service in cost, quality, and maturity.

Interrogatory 192 is a contention interrogatory; it is a “yes” or a “no” question that may require additional information depending upon whether AT&T is contending that a carrier providing an “intermodal service” must use an ILEC’s local loops to qualify as one of the three self-provisioning trigger candidates for purposes of the FCC’s self-provisioning trigger test. Rather than answer this question, however, AT&T again referred to Mr. Gillan’s direct testimony, which does not answer the question that was asked. AT&T should be compelled to answer this Interrogatory rather than being allowed to avoid providing the requested information.

Interrogatory 193: Referring to pages 7 through 9 of the Rebuttal Testimony of Jay M. Bradbury wherein he claims that AT&T does not provide service to residential customers using the local switches identified on page 7 and that all service being provided to small business customers is “an artifact of the old business plan” which is no longer being pursued, please:

- (a) Define with specificity the “very small businesses” that AT&T originally planned on serving using DS0 UNE-L loops, collocations, and your own local switches, including specifying the number of access lines that each such business customer would need or require from AT&T;
- (b) State the date or dates when the decision was made by AT&T to abandon its business plan to serve “very small businesses” using DS0 UNE-L loops, collocations, and your own local switches;
- (c) Identify each and every document in your possession, custody or control that refers or relates to AT&T’s decision to abandon its business plan to serve “very small businesses” using DS0 UNE-L loops, collocations, and your own local switches;
- (d) Does AT&T contend that its decision to abandon its business plan to serve “very small businesses” using DS0 UNE-L loops, collocations, and your own local switches was made based on AT&T’s experiences in Florida or any other state in the BellSouth region?; and
- (e) If the answer to the foregoing Interrogatory is in the affirmative, state all facts and identify all documents that support this contention, including identifying each and every document that mentions Florida or any other state in the BellSouth region in connection with AT&T’s decision to abandon its business plan to serve “very small businesses” using DS0 UNE-L loops, collocations, and your own local switches.

One of the issues before the Commission is whether AT&T qualifies as a self-provisioning trigger candidate in several markets in Florida. Although AT&T owns its own switches that it uses to provide local exchange service to mass market customers in the State, AT&T insists that it is not a trigger candidate because, according to AT&T witness Bradbury, the mass market customers AT&T serves are “an artifact of the old business plan.” Interrogatory 193 seeks information concerning this “old business plan,” specifically whether AT&T abandoned this plan because of the availability of UNE-P and not because of an alleged inability to compete via UNE-L.

In response to BellSouth's request for documents concerning this "old business plan," (subparts (c) and (e)), AT&T did not identify or produce any responsive documents. Instead, AT&T indicated that was "attempting to locate documents responsive to this request and will provide as supplemental response." With hearings starting in two weeks, the time for providing supplemental responses is running short, and, despite requests from BellSouth, AT&T has not indicated when its search would be complete or when BellSouth could expect to receive any responsive documents.

Subpart (d) asked whether AT&T's is contending that its decision to abandon its business plan was based on its experiences in Florida or any other BellSouth state. AT&T did not answer this question, but referred to its responses to Interrogatories 125 and 134, which addressed operational difficulties allegedly experienced by AT&T and requested documents concerning customer complaints allegedly received by AT&T. Neither of these responses addressed AT&T's "old business plan" nor answers the question that was asked in Interrogatory 193(d). Accordingly, AT&T should be compelled to answer Interrogatory 193(d) and to produce promptly documents responsive to Interrogatories 193(c) and (e).

Interrogatory 199: When the business plan referenced on page 9 of the Rebuttal Testimony of Jay M. Bradbury was "active," did AT&T ever forecast the number of "very small businesses" that AT&T expected to serve using DS0 UNE-L loops, collocations, and its own local switches"? If the answer to this Interrogatory is in the affirmative, identify each and every document referring or relating to such forecasts.

Interrogatory 200: When the business plan referenced on page 9 of the Rebuttal Testimony of Jay M. Bradbury was "active," did AT&T ever forecast the number of DS0s that AT&T expected to provide using DS0 UNE-L loops, collocations, and its own local switches"? If the answer to this Interrogatory is in the affirmative, identify each and every document referring or relating to such forecasts.

Interrogatories 199 and 200 seek information concerning the “old business plan” referenced in Mr. Bradbury’s testimony, specifically forecasts by AT&T about the number of “very small businesses” that AT&T expected to serve and the number of DS0 UNE-L loops, collocations, and its own local switches it expected to use as part of this plan. AT&T objected to providing this information on relevancy grounds, claiming that plans AT&T may have had several years ago are irrelevant to the issues before the Commission.

AT&T objection is without merit. The relevancy of BellSouth’s discovery requests seeking details about AT&T’s “old business plan” is evident by the fact that this plan was mentioned prominently in the rebuttal testimony of Mr. Bradbury. Mr. Bradbury seeks to use AT&T’s “old business plan” as the explanation for the fact that AT&T is using its own switches to serve mass market customers in Florida and as the reason AT&T claims it should not be considered a trigger candidate. AT&T should not be permitted to rely upon this “old business plan,” while at the same time preventing BellSouth from discovering the details underlying this plan. For example, if AT&T at one time believed that it could economically serve the mass market using UNE-L, which is what the forecast information requested by BellSouth seeks to do, but abandoned that plan because it could make more money with UNE-P, AT&T’s claims of impairment would be severely undermined. This may explain why AT&T is refusing to provide the requested information. That the information BellSouth is seeking may be harmful to AT&T, however, is not grounds for an objection, and AT&T should be compelled to respond fully and completely to Interrogatories 199 and 200.

Request 208: Admit that in Docket 000731-TP before the Florida Public Service Commission, AT&T’s witness(es) testified under oath that AT&T could serve customers in every “nook and cranny” of Florida using its existing local switches and long loops.

Interrogatory 209: If the foregoing Request for Admission is denied, state all facts and identify all documents, including providing specific references to the hearing transcript from Docket 000731-TP that support such denial.

Interrogatory 210: Is it your contention that in Docket 000731-TP before the Florida Public Service Commission AT&T was merely testifying that it “could” or “was capable” of providing local service to every BellSouth customer in Florida using its existing switches, but that there was no implication or suggestion that it would be economic for AT&T to do so? If the answer to this Interrogatory is in the affirmative, state all facts and identify all documents, including providing specific references to the hearing transcript from Docket 000731-TP, that support this contention.

These discovery requests seek information concerning AT&T’s position in Docket 000731 that it was entitled to reciprocal compensation at the tandem rate because its switches could serve any customer in the same geographic area served by BellSouth’s tandem switches, which is contrary to AT&T’s position in this proceeding that it is impaired without unbundled switching from BellSouth. AT&T is understandably not anxious to try to reconcile these irreconcilable positions.

Requests 208 and 209 asked AT&T about the testimony of its witnesses in Docket 000731-TP that AT&T could serve customers in every “nook and cranny” of Florida using its existing local switches and long loops. AT&T did not answer this request, claiming it was “not applicable.” The Commission should compel AT&T to either admit or deny Request 208 and, if denied, to provide the information in Request 209.

Interrogatory 210 asked whether it was AT&T’s contention that in Docket 000731-TP it was merely testifying that it “could” or “was capable” of providing local service to every BellSouth customer in Florida using its existing switches, but that there was no implication or suggestion that it would be economic for AT&T to do so. Although this is a contention interrogatory that should be answered with a “yes” or “no,” AT&T did not do so. AT&T should be compelled to answer the question that was asked.

Request 213: Please admit that Don J. Wood is not an economist.

Interrogatory 215: Does Mr. Wood claim to be qualified to give an opinion as an expert witness on economic matters? If so, please state all education, training, or experience that qualifies Mr. Wood to render such an expert opinion. In answering this Interrogatory, identify each and every proceeding since January 1, 2000 in which Mr. Wood has been expressly qualified by a court, administrative agency, or hearing tribunal as an expert witness qualified to render an opinion on economic matters.

Interrogatory 216: Does Mr. Wood claim to be qualified to give an opinion as an expert witness on the estimation of the cost of capital? If so, please state all education, training, or experience that qualifies Mr. Wood to render such an expert opinion. In answering this Interrogatory, identify each and every proceeding since January 1, 2000 in which Mr. Wood has been expressly qualified by a court, administrative agency, or hearing tribunal as an expert witness qualified to render an opinion on matters involving the estimation of the cost of capital.

Interrogatory 217: Does Mr. Wood claim to be qualified to give an opinion as an expert witness on matters involving the depreciation of fixed assets? If so, please state all education, training, or experience that qualifies Mr. Wood to render such an expert opinion. In answering this Interrogatory, identify each and every proceeding since January 1, 2000 in which Mr. Wood has been expressly qualified by a court, administrative agency, or hearing tribunal as an expert witness qualified to render an opinion on matters involving the estimation of the cost of capital.

AT&T has presented the testimony of Don J. Wood who renders opinions on such matters as economic theory, cost of capital, and depreciation. These discovery requests seek information concerning Mr. Wood's qualifications to render such opinions. At the very least, such information is relevant to the weight that the Commission should afford Mr. Wood's testimony if not its admissibility.

Although Mr. Wood seeks to testify to various economic matters, Request 213 asked AT&T to admit that Mr. Wood is not an economist. AT&T claimed that it could neither admit nor deny this request because BellSouth had not defined the term "economist." However, AT&T went on to say that "Mr. Wood usually does not refer to himself as an 'economist.'" If Mr. Wood does not refer to himself as an economist, he must have some understanding of what the term means. Accordingly, AT&T should be compelled to explain how Mr. Wood defines an economist and why he does not consider himself to fall within that definition.

Interrogatories 215, 216, and 217 seek information concerning prior proceedings in which Mr. Wood has been qualified to render an opinion as an expert witness on economic matters, cost of capital, and depreciation. Specifically, Mr. Wood was asked to “identify each and every proceeding since January 1, 2000 in which Mr. Wood has been expressly qualified by a court, administrative agency, or hearing tribunal as an expert witness qualified to render an opinion” on economic matters, cost of capital, and depreciation. AT&T did not answer this question, referring instead to the exhibit accompanying Mr. Wood’s testimony that purports to identify each and every proceeding in which Mr. Wood has testified.

BellSouth does not dispute that Mr. Wood is a prolific witness and has testified in numerous proceedings. However, regardless of the number of proceedings in which Mr. Wood has appeared, BellSouth is entitled to know in which of those proceedings, if any, he was “expressly qualified” to render an expert opinion on economic matters, cost of capital, and depreciation. If the answer is none, AT&T should say so. Regardless, AT&T should be compelled to answer to the question that was asked, instead of being permitted to answer a question that was not.

Interrogatory 218: For planning purposes, does AT&T have an expected useful life for its 4ESS or 5ESS switches? If so, what is that useful life?

AT&T did not answer this question, indicating instead that it would “supplement its response to this Interrogatory.” However, AT&T has not done so nor has it given any indication when it will. Accordingly, AT&T should be compelled to provide information concerning the expected useful life AT&T uses for its 4ESS or 5ESS switches.

Interrogatory 219: Referring to page 4 of the Rebuttal Testimony of Don J. Wood, please identify the BellSouth witness who argued “that a CLEC utilizing UNEs incurs less risk that (sic) a CLEC investing in its own network...” In answering this Interrogatory, provide specific references to the witness’s testimony where this argument purportedly is made.

This interrogatory 219 asked AT&T to provide a “specific reference” to the testimony of the BellSouth witness who Mr. Wood claims argued “that a CLEC utilizing UNEs incurs less risk that (sic) a CLEC investing in its own network...” AT&T did not answer the question, referring instead to pages 50 through 56 of Mr. Wood’s rebuttal testimony where he addresses the direct testimony of BellSouth witness Dr. Randy Billingsley. However, assuming Dr. Billingsley was the BellSouth witness whom Mr. Wood claims made the statement in question, it should be simple enough for AT&T to point to the specific place in Dr. Billingsley’s testimony where he allegedly made this statement. Referring to Mr. Wood’s rebuttal testimony will not suffice because it does not contain the “specific reference” for which BellSouth asked. AT&T should be compelled to answer this Interrogatory.

Interrogatory 228: With regard to AT&T’s marketing offers directed to potential customers of qualifying service, such as its recent offer of \$75 to residential end users to change their local telephone service from their current carrier to AT&T, how does AT&T make the determination about the specific end users to whom such offers will be made? Specifically:

- (a) Does every resident in a subdivision, for instance, get the same offer? If not, how are the subscribers differentiated?
- (b) Does AT&T or its marketing agency use any sort of lists, mechanisms or methods to differentiate between or to actually select the potential customers to whom such offers are made, and if so, explain those in detail.
- (c) Does AT&T extend such offers to every existing telephone service subscriber in a wire center, if it makes the offer to any such subscribers in the wire center? If the answer is no, explain how, if not already provided, AT&T differentiates between such customers in the same wire center.

This interrogatory asked for detailed information concerning AT&T's marketing offers, which is relevant to assessing whether it is economical for an efficient CLEC to serve mass-market customers. AT&T responded by providing a web site to its tariffs.

As a preliminary matter, BellSouth could not access this website so either the link provided by AT&T is incorrect or BellSouth does not have access. More to the point, however, a link to a website containing AT&T's tariffs is unresponsive. The fact that a tariff may authorize AT&T, for example, to offer \$75 to residential end users to change their local telephone service from their current carrier to AT&T, does not say to which customers AT&T will actually offer \$75, which is what this question is asking. AT&T should be compelled to provide the information requested in Interrogatory 228.

Interrogatory 236: To the extent Mr. Wood claims to be qualified to render an opinion as an expert witness on the estimation of cost of capital, what does Mr. Wood contend should be the correct cost of capital for use in any business case modeling the "efficient" CLEC? In answering this Interrogatory, state all facts and identify all documents supporting Mr. Wood's contention.

Interrogatory 236 requested the "correct cost of capital" that Mr. Wood contends should be used in any business case modeling the "efficient" CLEC and to state all facts and identify all documents supporting Mr. Wood's contention. AT&T did not provide a specific cost of capital, nor did AT&T provide any facts or identify any documents supporting the response that it did give. AT&T should be compelled to respond fully and completely to this Interrogatory.

Interrogatory 237: Referring to page 54 of the Rebuttal Testimony of Don J. Wood, Mr. Wood claims that Dr. Billingsley states that "future CLEC operations, when those CLECs will be incurring the risk to make large fixed investments in network infrastructure, will be less risky than (sic) the current operation of CLECs who rely on UNE switching and UNE-P." Please identify the page and line in Dr. Billingsley's pre-filed testimony where this statement is made. Alternatively, if Mr. Wood has inferred this conclusion from Dr. Billingsley's testimony, please provide a detailed explanation of the basis for Mr. Wood's inference.

Interrogatory 237 asked AT&T to provide the “page and line” in Dr. Billingsley’s direct testimony where Mr. Wood claims that Dr. Billingsley allegedly stated that “future CLEC operations, when those CLECs will be incurring the risk to make large fixed investments in network infrastructure, will be less risky than (sic) the current operation of CLECs who rely on UNE switching and UNE-P.” AT&T did not answer the question. Instead, AT&T merely referred to pages 50 through 56 of Mr. Wood’s rebuttal testimony, even though the question did not ask AT&T to provide a reference to Mr. Wood’s testimony. Furthermore, Mr. Wood’s rebuttal testimony does not contain the “page and line” number that BellSouth requested. If, as Mr. Wood claims, Dr. Billingsley made the statement in question in his direct testimony, it should be easy enough for AT&T to provide the specific page and line in Dr. Billingsley’s testimony where that statement allegedly appears. Accordingly, AT&T should be compelled to respond fully and completely to this Interrogatory.

Interrogatory 239: Has AT&T or anyone acting at the direction of or on behalf of AT&T made runs of the BACE model? If the answer to this Interrogatory is in the affirmative, please:

- (a) Identify each person involved in making such runs of the BACE model, and, for each such person, state the number of runs of the BACE model he or she performed, and the number of hours spent in connection with performing such runs;
- (b) Provide in electronic format the BACE Scenario Input files (these are the "ScenarioName"_Inputs.MDB files in the Scenario directory) used to make such runs of the BACE model;
- (c) For each scenario, provide all changes from the Filed BellSouth BACE scenario "BellSouth_FL" used in such runs of the BACE model;
- (d) Provide all report files from the BACE model which AT&T claims supports its position in this proceeding that CLECs are impaired without access to unbundled switching from BellSouth, including, for each such file, identifying the scenario used to prepare the file; and

- (e) Provide a description of the steps used to verify or evaluate the BACE model, if any were performed, and identify all documents referring or relating to such verification or evaluation process.

Interrogatory 241: Do you contend that any inputs used by BellSouth to the BACE model are erroneous, flawed, or are otherwise inappropriate? If the answer to this Interrogatory is in the affirmative, please:

- (a) Identify each input value that you contend is erroneous, flawed, or inappropriate;
- (b) For each input to the BACE model you contend is erroneous, flawed or inappropriate, state all facts and identify all documents that support this contention;
- (c) Identify each input value that you contend should be used in the BACE model; and
- (d) For each input value that you contend should be used in the BACE model, state all facts and identify all documents that support this contention.

Both Interrogatories 239 and 241 seek information about AT&T's analysis of the BACE model, which BellSouth has asked the Commission to use in assessing economic impairment in those geographic markets where the self-provisioning triggers have not been met. Although AT&T apparently has made runs of the BACE model, AT&T has been either unwilling or unable to provide the scenario input files used to make those runs (Interrogatory 239(b)) or to identify the changes made to the model in connection with such runs (Interrogatory 239(c)). Instead, AT&T indicated that an attempt was "being made to collect this information," which AT&T represented would "be provided as a supplemental response." However, no supplemental response has been received to date, nor has AT&T given BellSouth any indication when it would provide the requested information.

The same is true for Interrogatory 241, which requested detailed information about any errors or flaws that AT&T contends exist in the inputs to the BACE model. Even though the hearings start in two weeks, AT&T did not provide this information, indicating instead that it

would supplement its response at some later date. The time for providing supplemental responses is running short, and AT&T should be compelled to answer these Interrogatories.

Request for Production 34: Produce all documents created since January 1, 2000 referring or relating to the financial benefits to AT&T of providing local service using UNE-P instead of using UNE-L loops, collocation arrangements, and its own local switches.

Request for Production 35: Produce all documents created since January 1, 2000 referring or relating to the financial disadvantages to AT&T of providing local service using UNE-L loops, collocation arrangements, and its own local switches rather than UNE-P.

Request for Production 36: Produce all documents governing the arrangement by which AT&T's switches serve Comcast customers as a result of the merger of AT&T Broadband and Comcast, as discussed on pages 4-5 of the Rebuttal Testimony of Jay M. Bradbury.

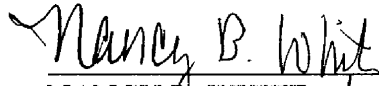
Request for Production 37: Produce all documents referring or relating to whether customers migrating qualifying service from an ILEC to AT&T tend to take the same services from AT&T, more services, or less services.

With respect to these discovery requests, AT&T did not produce any documents in response to Requests 34, 35, and 37. Instead, AT&T indicated that it was looking for responsive documents and would supplement its response at some later date. To date AT&T has not supplemented its discovery responses to provide the requested documents, nor has AT&T given BellSouth any indication when it will do so.

With respect to Request for Production 36, which asked AT&T to produce a copy of its contract governing the switching services AT&T provides to Comcast, AT&T responded by referring to its response to "BellSouth's First Set of Interrogatories and First Request for Production of Documents." It is unclear what this reference means, since AT&T has not produced a copy of the contract with Comcast in response to earlier discovery requests. The contract is obviously relevant, as it is referenced in both Mr. Bradbury's and Mr. Gillan's testimony, and BellSouth is entitled to review it. Accordingly, AT&T should be compelled to provide the documents responsive to this request for production.

Respectfully submitted this 9th day of February, 2004.

BELLSOUTH TELECOMMUNICATIONS, INC.



NANCY B. WHITE (KA)

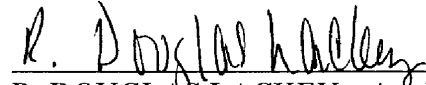
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