

BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

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 In the Matter of : DOCKET NO. 980770-TI
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 Petition by AT&T Communications: :
 of the Southern States, Inc. :
 and d/b/a Connect 'N Save for :
 modification of BellSouth :
 Telecommunications, Inc.'s :
 policies regarding porting of :
 Direct-In-Dial (DID) numbers. :



PROCEEDINGS: ORAL ARGUMENT

BEFORE: COMMISSIONER J. TERRY DEASON
Prehearing Officer

DATE: Monday, February 1, 1999

TIME: Commenced at 2:30 p.m.
Concluded at 2:47 p.m.

PLACE: Florida Public Service Commission
Room 362, Gerald L. Gunter Building
2540 Shumard Oak Boulevard
Tallahassee, Florida

REPORTED BY: JOY KELLY, CSR, RPR
Chief, Bureau of Reporting
Florida Public Service Commission

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1 **APPEARANCES:**

2 **MARY KEYER**, BellSouth Telecommunications,
3 Inc., c/o Nancy Sims, 150 South Monroe Street, Suite
4 400, Tallahassee, Florida 32301, appearing on behalf
5 of BellSouth Telecommunications, Inc. teleconferencing
6 from Atlanta, Georgia.

7 **TRACY HATCH**, AT&T Communications of the
8 Southern States, Inc., 101 North Monroe Street, Suite
9 700, Tallahassee, Florida 32301-1509, appearing on
10 behalf of AT&T Communications of the Southern States,
11 Inc. teleconferencing from his office in Tallahassee,
12 Florida.

13 **BETH KEATING**, Florida Public Service
14 Commission, Division of Legal Services, 2540 Shumard
15 Oak Boulevard, Tallahassee, Florida 32399-0870,
16 appearing on behalf of the Commission Staff.

17
18 **ALSO PRESENT:**

19 **MICHAEL BARRETT** and **LEVENT ILERI**, FPSC Division of
20 Communications
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1 **COMMISSIONER DEASON:** We'll do that then.
2 If there are no preliminary matters, we'll get
3 straight into oral argument.

4 Tracy, this is your petition, so I suppose
5 you should go first.

6 **MR. HATCHE:** Yes, sir, Commissioner Deason.

7 We had proposed issues early on in this
8 process and in part the case itself has kind of
9 evolved because BellSouth filed a tariff that sort of
10 obviated a portion of the petition, but not all of the
11 petition.

12 I don't know whether you had a chance to
13 read the statement in support of the issues that I
14 filed last week, and I won't go all the way through
15 the specifics of that.

16 But just generally and quickly to reiterate,
17 basically, the complaint premised on BellSouth's
18 behavior in the context of a customer switching a
19 portion of his local service to AT&T but not all of
20 his service. And an outflow of the consequence of
21 that decision to switch some of his local service to
22 AT&T is if that customer has DID numbers, some of
23 those DID numbers must be transferred or ported to
24 AT&T. Some of the DID numbers, or a portion of his
25 DID block, would remain with BellSouth. And it is in

1 that context that our petition has been filed.

2 Essentially, portions of the original
3 complaint have been ameliorated, as reflected in the
4 statement that Ms. White had filed last week. The
5 special assembly charge is no longer applicable and
6 that is consistent with our complaint. In addition,
7 it has now been clarified as a result of the tariff,
8 and some explanations from Mr. Greer, it turns out the
9 application of the tariff, the nonrecurring and
10 recurring charges, are not assessed against every
11 number in the block whether ported or not, but only
12 those in the block that remain. But you have to step
13 back and look at this as the fundamental premise of
14 the transaction.

15 It's not a customer choosing to change his
16 DID service that causes the problem. It's the
17 customer's decision to select AT&T for a portion of
18 his local service. And essentially that's why --
19 because the nonrecurring charges and the recurring
20 charges remain as part of that transaction is why AT&T
21 continues to press with respect to the issues that it
22 proposes. Those two issues are very narrowly drawn
23 and drafted to the portion of our original complaint
24 so as not to be too overly broad.

25 **COMMISSIONER DEASON:** Let me interrupt for

1 just a second.

2 The charges, the recurring and the
3 nonrecurring charges, those charges are assessed
4 against the end use customer; is that correct?

5 MR. HATCH: That is my understanding of what
6 BellSouth says the tariff -- or how the tariff will
7 operate, that is correct.

8 COMMISSIONER DEASON: And you have standing
9 to question charges between a different telephone
10 company and its end use customer?

11 MR. HATCH: I think so in this case,
12 Commissioner Deason. You have to distinguish what
13 we're complaining about from the normal course of
14 events where a customer says, "I want DID service" or
15 "I want to change my DID service." And that's a
16 different context than what we're talking about here.

17 The customer in this case, the case we're
18 complaining about, doesn't call up BellSouth and say,
19 "I want to change my DID service." What the customer
20 does is he goes to AT&T and says, "AT&T, I want some
21 of your service." Or more than likely, AT&T has gone
22 to the customer and has said, "We would like to sell
23 you some of our service." And the customer says,
24 "Well, okay. I'll let you provide some of my service
25 but not all." And that is a specific context.

1 Now, a natural outflow of that in part is
2 that certain numbers have to be ported. But as a
3 result of the porting BellSouth now claims they must
4 reconfigure the DID block. That's a question that has
5 not yet been answered. They say it's true. It begs
6 the question. Certainly that is something that we
7 will investigate in the course of this complaint if it
8 goes forward.

9 But the premise is that AT&T is getting a
10 local customer. The customer is not calling BellSouth
11 to reconfigure his DID service. It's part of the
12 porting process.

13 **COMMISSIONER DEASON:** Okay. You may
14 proceed.

15 **MR. HATCH:** I think that pretty much sums it
16 up.

17 **COMMISSIONER DEASON:** Okay. All right.
18 Thank you.

19 **MS. KEYER:** Are you ready for me?

20 **COMMISSIONER DEASON:** Yes. Please proceed.

21 **MS. KEYER:** Okay. Basically BellSouth
22 believes several things. That this complaint has
23 basically been satisfied when BellSouth filed its
24 tariff revision. Tariff revisions addressed all of
25 the issues in the complaint.

1 There were two issues that AT&T raised.
2 One, that BellSouth should allow the porting of less
3 than a block of 20 consecutive DID numbers, which the
4 tariff, the new tariff provides for. And secondly,
5 that the special assembly charges that were originally
6 associated with porting less than a full block of 20
7 DID numbers were inappropriate, et cetera. Those also
8 have been taken care of by the filing of our tariff
9 revision.

10 Therefore, there really is nothing left in
11 this complaint to be addressed. So the complaint
12 really ought to be either withdrawn or dismissed as
13 the issues no longer being in existence.

14 Secondly, to touch on the question --

15 **COMMISSIONER DEASON:** Let me interrupt for
16 just a moment.

17 **MS. KEYER:** Pardon?

18 **COMMISSIONER DEASON:** Let me interrupt for
19 just a moment.

20 If this complaint were to be dismissed,
21 obviously AT&T would be free to file a complaint and
22 address the specific issues which they are trying to
23 raise at this point?

24 **MS. KEYER:** Well, I guess they could, which
25 would bring up the second argument as to standing,

1 whether or not they would even have standing to do
2 that. And that would be my second argument. That
3 whether they file a new complaint or whether it's part
4 of this complaint, AT&T does not have standing to
5 raise issues on charges between BellSouth and its end
6 users customers. End users in this instance are
7 buying the DID numbers at tariffed rates from
8 BellSouth. They can now purchase the nonconsecutive
9 numbers pursuant to the tariff. These are numbers
10 being purchased by the end user and not AT&T, and they
11 are BellSouth's rates for BellSouth customers, and
12 they are not assessed against AT&T. And, frankly,
13 they don't have anything to do with AT&T.

14 The issues furthermore --

15 COMMISSIONER DEASON: Let me interrupt for
16 just a second.

17 I understand that this is a charge between
18 BellSouth and its end use customer. What recourse
19 does AT&T have if they feel there's some, perhaps,
20 some anticompetitive motivation for the charges?

21 MS. KEYSER: Well, these are costs that
22 BellSouth incurs in providing these nonconsecutive
23 numbers to its customers.

24 COMMISSIONER DEASON: These are cost-based
25 rates? I'm sorry. These are cost-based rates that

1 are being proposed to the end use customer?

2 MS. KEYER: That's what I understand. That
3 the charges that -- nonconsecutive charges reflect our
4 cost of providing these numbers. Because we have to
5 do separate transactions for each nonconsecutive DID
6 numbers.

7 COMMISSIONER DEASON: But there's been no
8 filing of any cost studies? In fact, cost studies
9 aren't even required when tariffs are filed anymore;
10 isn't that correct?

11 MS. KEYER: I believe that's right.

12 COMMISSIONER DEASON: Please proceed.

13 MS. KEYER: And basically that is our
14 argument. That these are rates -- these rates for the
15 nonconsecutive charges do reflect our cost of having
16 to do a separate transaction for each of the
17 nonconsecutive DID numbers required. Whereas, with
18 just a consecutive block, there's only one transaction
19 required.

20 COMMISSIONER DEASON: Are you finished?

21 MS. KEYER: Yes, I am.

22 COMMISSIONER DEASON: Very well. Thank you.

23 At this point I'm going to allow Staff to
24 ask any questions that they may have. I don't know if
25 they do or not, but I'll open it up for Staff.

1 **MS. KEATING:** I do have one question,
2 actually, and this is for Mr. Hatch. Your Issue 1
3 that you've proposed only questions what are the
4 appropriate nonrecurring charges for the DID numbers.

5 **MR. HATCH:** That's right.

6 **MS. KEATING:** You're not questioning them
7 recurring 20 cents a month?

8 **MR. HATCH:** At this point no, and the reason
9 for that is that the 20 cents is the current per
10 number reg for DID numbers. Historically, it was done
11 in a block so they just aggregated the number and gave
12 you a number for 20. When they filed the tariff, they
13 disaggregated that number, and just prorated it across
14 all 20 numbers. And so the 20 cents per month
15 recurring charge remains the same pre-tariff and after
16 tariff. We no longer contest the nonrecurring charge
17 per se because it goes for the ongoing DID service
18 that the customer gets from BellSouth after the
19 numbers are ported. That doesn't change. And we're
20 not trying to interfere with their ongoing relations
21 with respect to their recurring charges. We contest
22 the nonrecurring charges because they are premised on
23 porting of numbers and we view that as an
24 anticompetitive effect of this tariff. Essentially
25 it's a competitive penalty on a customer for choosing

1 to go to AT&T for some of its service, if not all of
2 it, as compared to all of it.

3 MS. KEATING: If I could, I've got one other
4 question then.

5 So AT&T is not contesting that there is at
6 least some cost, you're mainly contesting the exact
7 specific costs and to whom it should be billed.

8 MR. HATCH: Correct.

9 MS. KEATING: Okay.

10 MR. HATCH: There would be some cost
11 incurred in reconfiguring the DID numbers. I mean
12 that's just intuitive obvious it seems to me. We
13 would question how much that is and the mechanics of
14 actually having to accomplish that, more importantly,
15 in the process through which those costs are
16 recovered.

17 COMMISSIONER DEASON: Any further questions
18 from Staff?

19 MS. KEATING: I think those were our only
20 questions.

21 MS. KEYER: May I make one response? Mary
22 Keyer.

23 COMMISSIONER DEASON: Yes.

24 MS. KEYER: I guess I could go one step
25 further and charge that if a customer were to pull out

1 a DID number out of his block, they could pull it out
2 for purposes of other services. And if they did that,
3 the charges would still apply whether they went to
4 AT&T or not. So I don't think there's an
5 anticompetitive issue from that sampling. Because if
6 they pull it out to use it for something else, other
7 than the DID service, the charge would still apply. I
8 just wanted to point that out.

9 MR. HATCH: Commissioner Deason, this is
10 Tracy. I would agree with that. And that's the
11 distinction I tried to create earlier. That is, if a
12 customer has other reasons that he calls BellSouth and
13 says, "I want to change my DID service," that's not
14 what we're contesting here. We're not arguing a
15 one-size-fits-all. We're arguing that simply in the
16 context of porting numbers and transfer of service,
17 that's when that piece of the tariff kicks in, and we
18 think that has some anticompetitive effects, vis-a-vis
19 AT&T and competition.

20 COMMISSIONER DEASON: Mr. Hatch, let me ask
21 you another question. By filing your statement
22 concerning the proposed issues, does that constitute
23 an amendment to your original complaint?

24 MR. HATCH: Interesting question. The
25 answer in truth is no. I have not expanded my

1 complaint beyond the bounds of what originally was
2 filed. What in fact -- if you want to call that an
3 amendment to the complaint, then all it would do is
4 withdrawing certain of the counts of the complaint, I
5 guess if you want to get technical about it.

6 **COMMISSIONER DEASON:** But you feel then that
7 the two issues that you wish to raise at this point
8 fall squarely within your original complaint.

9 **MR. HATCH:** Yes, sir.

10 **COMMISSIONER DEASON:** Ms. Keyer, would you
11 want to respond to that?

12 **MS. KEYER:** Yes. I think we would clearly
13 say it's beyond the scope of the complaint. Because
14 now what AT&T is doing is not addressing what they
15 addressed in their complaint in terms of making
16 available less than a block of 20 consecutive DID
17 numbers or the special assembly charges. But they are
18 requesting that the Commission determine what the
19 nonrecurring charge is for an end user should be, and
20 that's not germane to this complaint.

21 **COMMISSIONER DEASON:** And what is your
22 position concerning Mr. Hatch's position that this
23 complaint only pertains to when there is a change in
24 the local service provider for a portion of the
25 numbers, and that's why he has standing?

1 **MS. KEYER:** Well, I guess I would say that I
2 don't agree with that. That the tariff, as I
3 indicated, applies regardless. If a customer takes
4 out a DID number, it's not -- those nonrecurring
5 charges will apply to those remaining nonconsecutive
6 numbers in that block, regardless of whether the
7 customer takes a number to someone else or not.

8 **COMMISSIONER DEASON:** So you're saying this
9 charge would apply -- if there's a change for whatever
10 reason, of course -- of course, I can't imagine why
11 there would be a change unless there's going to be a
12 changing of local provider. But in any event, you're
13 saying it's triggered by the end use customer and
14 that's what we should be concerned with.

15 **MS. KEYER:** Exactly. End user is the one
16 who decides what to do with the number.

17 **COMMISSIONER DEASON:** Let me ask you another
18 question. I may have asked you this earlier, and if I
19 did I apologize. But from a practical standpoint
20 what's to be gained by dismissing this complaint as
21 already basically being resolved, and then having AT&T
22 go to the trouble of filing another complaint, and
23 let's go to the trouble of setting another procedure
24 order and getting hearing dates and all of the
25 procedural requirements involved. Wouldn't it be more

1 expeditious to just go ahead and address it now while
2 we have a process and procedure already in place?

3 MS. KEYER: I guess my response would be it
4 probably would be more expeditious, but I guess my
5 response would be that we could say that about all
6 existing complaints. And we do have rules and
7 procedures set forth so that the parties know what's
8 at issue. And, you know, we've already resolved
9 what's at issue in this complaint. It's going to be a
10 whole new ball game on a different complaint --
11 different issues under a different complaint. Because
12 we would -- you know, I mean there is an initial
13 standing issue that would have to be resolved.

14 So I think we have rules and procedures set
15 forth and they ought to be followed. These issues are
16 clearly outside the scope of this complaint.

17 COMMISSIONER DEASON: Okay. I'm going to
18 open up to Staff one more time for any last questions.
19 I think there are no last questions. Is there
20 anything that, Mr. Hatch or Ms. Keyer, that you need
21 to say in a final closing remark? (No response.)

22 I guess not. All right.

23 Thank you all for participating. We're
24 going to close the oral argument and my decision will
25 be forthcoming shortly. And Ms. Keating will have an

1 STATE OF FLORIDA)
2 COUNTY OF LEON)

CERTIFICATE OF REPORTER

3 I, JOY KELLY, CSR, RPR, Chief, Bureau of
4 Reporting, Official Commission Reporter,

5 DO HEREBY CERTIFY that the Oral Argument in
6 Docket No. 980770-TI was heard by the Prehearing
7 Officer at the time and place herein stated; it is
8 further

9 CERTIFIED that I stenographically reported
10 the said proceedings; that the same has been
11 transcribed under my direct supervision; and that this
12 transcript, consisting of 17 pages, constitutes a true
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14 DATED this 2nd day of February, 1999.

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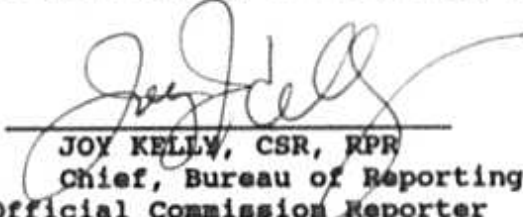
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JOY KELLY, CSR, RPR
Chief, Bureau of Reporting
Official Commission Reporter
(850) 413-6732