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RECORDS AND
REPORTING

March 17, 2000

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

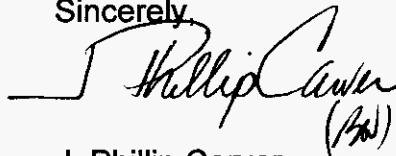
Re: Docket No. 980281-TP

Dear Ms. Bayó:

Enclosed please find the original and fifteen copies of BellSouth's Response In Opposition To MCImetro Access Transmission Services, LLC's Motion to Enforce Commission Orders, which we ask that you file in the above-referenced 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

- AFA _____
- APP _____
- CAE _____
- CMU Carver
- CTR _____
- EAG _____
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- MAS S
- OPC _____
- RRR _____
- SEC I
- WAW _____
- OTH _____

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

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FPSC-RECORDS AND REPORTING

CERTIFICATE OF SERVICE

Docket No. 980281-TP

I HEREBY CERTIFY that a true and correct copy of the foregoing was served

via Federal Express this 17th day of March, 2000 to the following:

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J. Phillip Carver (PW)

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Complaint of MCImetro Access)	
Transmission Services, LLC against)	Docket No. 980281-TP
BellSouth Telecommunications, Inc.)	
For Breach of Approved)	Filed: March 17, 2000
Interconnection Agreement)	

**BELLSOUTH'S RESPONSE IN OPPOSITION TO
MCIMETRO ACCESS TRANSMISSION SERVICES, LLC'S
MOTION TO ENFORCE COMMISSION ORDERS**

BellSouth Telecommunications, Inc. ("BellSouth") hereby files, pursuant to Rule 25-22.037, Florida Administrative Code, its Response in Opposition to MCImetro Access Transmission Services, LLC's ("MCI") Motion to Enforce Commission Orders, and states the following:

1. At the outset, it must be noted that MCI's Motion is misnamed since compliance with the Orders of the Florida Public Service Commission ("Commission") is not at issue. The Orders in question require BellSouth to provide MCI with a download of the Region Street Address Guide ("RSAG"). As MCI acknowledges in its Motion, BellSouth has agreed to provide the download (MCI Motion, p. 3). Thus, the instant dispute does not involve compliance with the Commission's Order per se. Instead, the issue is that BellSouth has requested that MCI execute a license agreement to ensure that MCI will, in fact, use the database only for address validation. Throughout this proceeding, MCI has consistently represented that it needs a download of the RSAG database to perform address validation. Having obtained a Commission Order under which it will receive the database, MCI now argues that it should be allowed to use the database in any way that it wishes. Specifically, MCI objects to restrictions that are

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designed to prevent it from using the database in the provision of long distance service, for marketing purposes, or to create derivative works for profit. BellSouth submits that none of these uses were identified by MCIIm during the hearing of the matter as intended (or even as potential) uses for the database, and that this Commission's Order cannot fairly be read to require BellSouth to provide the database to MCIIm for any of these purposes. Accordingly, it is entirely appropriate for MCIIm to be restricted in some fashion (either by way of a license agreement or otherwise) to using the RSAG database only to validate street addresses. MCIIm's contention to the contrary should be rejected, and its Motion should be denied.

2. It is important to remember that this entire dispute began with the execution of an Interconnection Agreement between BellSouth and MCIIm in June of 1997, the purpose of which was to provide MCIIm with the tools to enter the local market, pursuant to the provisions of the 1996 Telecommunications Act. There is nothing in the Telecommunications Act that even remotely suggests that it is proper for an ALEC to obtain a service, functionality, or database under the terms of an Interconnection Agreement for the purpose of using it for anything other than the provision of local service. It has been undisputed throughout this proceeding that the appropriate use of this database (whether accessed electronically or downloaded) is to perform address validations in the context of rendering local service. (See Order No. PSC-98-1484-FOF-TP, p. 9) ("Order Resolving Complaint" or "Final Order").

3. In the testimony that MCIIm filed in this proceeding, it stated repeatedly that its intended usage of this data is address validation. Mr. Martinez specifically testified that he "made it clear during the negotiations that MCIImetro's goal was to be

able to validate addresses in-house so that MCIIm would not be beholden to BellSouth for this critical function.” (Tr. 35). Likewise, MCIIm’s witness, Bryan Green, testified that “a download of the RSAG with periodic updates would allow MCIIm to electronically enter the information in its own system to be available to customer service representatives” (Tr. 164). This, according to Mr. Green , would allow MCIIm employees to “simply use the MCIImetro system to validate addresses and substantially reduce the risk of rejected orders.” (Id.). In the Final Order, the Commission noted specifically that “witness Martinez opined that Section 2.3.2.5 of the Agreement was negotiated so that MCIIm would have an additional way to obtain access to the RSAG data until its address validation capabilities were developed.” (Order, p. 11).

4. BellSouth, of course, argued that the Agreement was only intended to give MCIIm access to the RSAG database, as opposed to a download. Nevertheless, the Commission ruled in favor of MCIIm and required BellSouth to provide the download. In doing so, however, the Commission specifically instructed the parties to “negotiate in good faith the appropriate subset of the database to be provided.” (Final Order, p. 13). Further, the Commission concluded that “this subset should exclude any BST proprietary information, but include at a minimum all of the Florida address validation and facility availability data.” (Id.).

5. Subsequent to the entry of this Order, BellSouth communicated to MCIIm in early 1999 that it wished to have a license agreement in place to ensure that MCIIm would utilize the database only for address validation. MCIIm did not object at this point to negotiating an agreement for this purpose. Over the course of the next year, sporadic negotiations of a licensing agreement took place. Now, after more than a year of

negotiations, MCIIm claims that BellSouth has no right to request a license agreement and that MCI should be allowed to do anything that it wishes with the database. Specifically, MCIIm objects to the provisions of the license agreement that state that, to use MCIIm's words, "(a) BellSouth will retain title to any works MCIIm derives from RSAG data; (b) MCIIm may not transfer RSAG data to any affiliate; (c) RSAG data only may be used for purposes of local telecommunications; and (d) MCIIm must return RSAG data upon termination of the Agreement." (MCIIm Motion, p. 3). Obviously, none of these restrictions would present an impediment to MCIIm's utilizing the database for address validation, and MCIIm does not contend otherwise in its Motion. Nevertheless, MCIIm now takes the position that it should be able to use the database in any way it chooses with no restrictions whatsoever.

6. To this end, MCIIm makes several arguments. First, MCIIm argues that because the issue of the license agreement only arose during the post-Order negotiation period prescribed by the Commission, MCIIm should not be required to sign a license agreement. MCIIm contends that because BellSouth did not request a license agreement at the time the Interconnection Agreement was originally negotiated, its right to do so later has, in effect, been waived. This argument ignores two crucial facts. One, BellSouth's interpretation of the Agreement was that it required BellSouth to provide MCIIm access to the database, not a download. Had BellSouth prevailed on this point, then the issue of what MCI could (or could not) do with the downloaded RSAG database would never have arisen. Thus, whether MCIIm's use of the database should be restricted to address validation did not become an issue until the Commission ruled that MCIIm was to be provided not just access to the database, but a download of the database. Given

BellSouth's understanding of the requirements of the Interconnection Agreement, there was simply no need to raise the license agreement issue during the initial negotiations.

7. Two, MCIIm ignores the fact that the restrictions that BellSouth wishes to place upon MCIIm's use of this information are entirely consistent with MCIIm's previous testimony as to how it intended to use the database. Since the Commission specifically noted this testimony in the Final Order, BellSouth makes the reasonable assumption that this Commission intended for the database to be provided to MCIIm to be used for address validation, not some other purpose unrelated to providing local service. Again, BellSouth has proposed no restriction that would be an impediment to utilizing this information for address validation. BellSouth respectfully submits that the Commission's decision requiring a download of RSAG data might well have been different had MCIIm testified that it intended to utilize the database to develop a derivative work, to sell (or give) it to other parties, or to provide it to its long distance affiliate to market long distance service. MCI did not state any such intentions at the hearing, but rather testified that it needed this information for address validation. The restrictions BellSouth seeks would do nothing more than hold MCI to its word.

8. Of course, MCIIm continues to be less than straightforward concerning its current intended use of the RSAG database. Specifically, MCIIm states that it "is still a new entrant in the Florida local market and cannot now identify all business uses to which the RSAG might be put." (Motion, p. 4). MCIIm's "newness" to the local market did not, of course, prevent it from engaging in negotiations three years ago to obtain the database for (according to the above-quoted testimony of Mr. Martinez) the express purpose of address validation. This "newness" also did not prevent Mr. Martinez and Mr.

Green from testifying to this Commission almost two years ago that it wanted the database for this same purpose. MCIIm now states that it does not know what it wishes to do with this information, but that it should not be subject to any restrictions. In other words, MCIIm wishes to reserve the right to use the database in some way other than what it told the Commission almost two years ago was its intended usage. MCIIm, however, should have no such right, but rather should be limited to using the database as its witnesses said it would.

9. MCIIm also makes an implausible argument to the effect that the data is essentially worthless and, therefore, there should be no restrictions on its use. MCIIm appears to hold the view that information is either proprietary (i.e., valuable), or non-proprietary, in which case it is so little worth that it does not deserve protection. MCIIm argues in its Motion that since the Commission “limited the RSAG download and updates to nonproprietary portions of the database,” the database is of little value. To begin by stating the obvious, if this database had little intrinsic value, then MCIIm would have given up long ago its attempts to obtain the database without restriction.

10. Further, MCIIm’s claim that the database has little intrinsic value (and therefore is not deserving of protection) is based upon a fundamental misreading of the Final Order. As stated previously, the Commission ordered that “BST proprietary information” should be excluded. The Commission also stated, however, that the information to be downloaded should include “all of the Florida address validation and facility availability data.” (Final Order, p. 13). This information allows anyone having access to the database to know precisely what facilities are available at any given address listed in the database. To BellSouth’s knowledge, there is no other database from which

MCI could obtain this information for BellSouth's service territory, and there is no means for MCIIm to obtain this information except from BellSouth. Thus, to the extent that MCIIm implies (but does not quite say) that this information is publicly available, this assertion is simply not true.

11. Moreover, if MCIIm truly believed the contention that the database had little value, then this belief would render its position nonsensical. For example, MCIIm contends that the data has no intrinsic value, but it refuses to agree to the restriction that BellSouth would retain title to the database, or that its database should be returned to BellSouth at the expiration of the contract. MCIIm makes the unsupported assertion that the database has little or no use as a marketing tool, but wishes to reserve the ability to provide this information to its long distance affiliate to be utilized for marketing. MCI implies that the information in the database is publicly available, but ignores the fact that it contains information concerning placement of facilities that is not available from any other source. Obviously, MCIIm's argument that the database has little or no intrinsic value (or potential for use) beyond address validation cannot be squared with MCIIm's steadfast refusal to limit its use of the database to address validation.

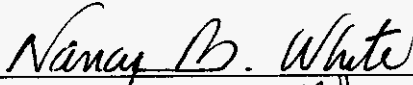
12. It is noteworthy that MCIIm has only raised four particular aspects of the licensing agreement with which it takes issue. However, MCIIm requests this Commission to order that it may obtain the database without signing an agreement that contains any restrictions. BellSouth believes that each of the four restrictions to which MCIIm objects are well-founded. However, BellSouth also submits that if this Commission determines that one or more of these restrictions should not be contained in

the license agreement, it should still not reject out of hand the approach of requiring MCIIm to sign an agreement with the appropriate restrictions.

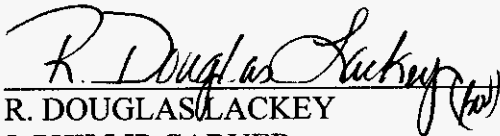
13. Finally, MCIIm premises its argument primarily on the fact that it has not previously been ordered by the Commission to sign a license agreement. BellSouth submits that if the Commission is disinclined to allow BellSouth to require MCIIm to sign a licensing agreement for this reason, then the Commission should still take the steps necessary to ensure that MCIIm's use of the database is consistent with its representations earlier in this proceeding, i.e., the Commission should modify its Order to state that MCIIm is prohibited from using the RSAG database in any way other than address validation in the context of providing local service. Again, MCIIm argues that now that it has secured the right to obtain the database, it should be free to use the database in ways that are markedly different than the intended use that it described to the Commission earlier in this proceeding. BellSouth believes that this argument must be rejected, and that requiring MCIIm to enter into a license agreement is an appropriate way to ensure that MCIIm's use of this data is appropriate. If, however, the Commission would prefer, BellSouth is amenable to the approach of simply modifying the Commission's prior Orders to prevent MCIIm from using the RSAG database for anything other than address validation.

WHEREFORE, BellSouth respectfully requests the entry of an Order denying
MCI's Motion in full for the reasons set forth above.

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