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**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

In re: Investigation into appropriate methods to compensate carriers for exchange of traffic subject to Section 251 of the Telecommunications Act of 1996.

Docket No. 000075-TP  
RECORDS AND REPORTING

Filed March 6, 2001.

**GLOBAL NAPs, INC.'s RESPONSE IN OPPOSITION TO BELL SOUTH TELECOMMUNICATIONS, INC.'S EMERGENCY GLOBAL MOTION TO COMPEL**

Global NAPs, Inc., by and through its undersigned counsel and pursuant to Rule 28-106.204(1), Florida Administrative Code, hereby files its Response in Opposition to BellSouth Telecommunication Inc.'s Emergency Global Motion to Compel filed in this proceeding, and states as follows:

**I. SUMMARY OF ARGUMENT**

Global NAPs contends that BellSouth created the "emergency" it seeks the Commission to remedy by waiting to commence its written discovery until approximately two weeks before the final hearing in this proceeding, even though this docket was opened over one year ago, and the Phase I issues for this proceeding were informally established in August 2000 and formally established by Commission Order in November 2000. BellSouth had more than ample opportunity

- APP \_\_\_\_\_
- CAF \_\_\_\_\_
- CMP \_\_\_\_\_
- COM 5 \_\_\_\_\_
- CTR \_\_\_\_\_
- ECR \_\_\_\_\_
- LEG 1 \_\_\_\_\_
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- SEC 1 \_\_\_\_\_
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\_\_\_\_\_ to serve written discovery requests well in advance of the hearing, yet purposely chose to delay serving such requests until almost immediately before the hearing. And when it finally did serve its "eleventh-hour" requests, the requests included a host of open-ended, overbroad, and irrelevant

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discovery requests that were objected to by Global NAPs and many other alternative local exchange carriers ("ALECs"). The Order Establishing Procedure in this docket plainly states that the discovery completion deadline is February 28, 2001. Discovery completion dates serve to end the discovery process precisely so that the parties may prepare for the final hearing. By disregarding the discovery completion date, BellSouth attempts to cause Global NAPs and the other ALECs and their counsel to expend significant time and resources addressing its last-minute discovery requests, rather than devoting their time, attention, and resources to final hearing preparation. Accordingly, BellSouth's "emergency" Motion to Compel should be denied and the hearing should proceed as scheduled.

## II. BACKGROUND AND ARGUMENT

On January 21, 2000, the Commission opened this docket. On July 13, 2000, an Issues Identification workshop was held and nine of the issues in this proceeding preliminarily were established. Those nine issues were included in the Order Establishing Procedure, Order No. PSC-00-2229-PCO-TP, issued on November 22, 2000.

Notwithstanding that BellSouth was fully apprised of all nine issues in this proceeding by at the very latest November 22, 2000, and also notwithstanding that BellSouth knew by November 22, 2000 that discovery was to be completed by February 28, 2001, it purposefully chose not to effect written discovery on Global NAPs until after 5:00 p.m. on February 2, 2001. Global NAPs timely served objections and also subsequently served responses to BellSouth's requests to which Global NAPs did not object. By waiting to effect written discovery until approximately thirteen months after the opening of this docket and over eight weeks after the discovery completion

deadline was formally established in this case, BellSouth assumed the risk that the only responses it would receive from Global NAPs would be those not subject to objections.

Global NAPs posits that BellSouth is attempting, through its last-minute discovery requests, to force Global NAPs to divert its attention from preparation for the final hearing and instead focus on responding to BellSouth's late, over-broad, and largely irrelevant requests. BellSouth's conduct in this regard should not be rewarded by requiring Global NAPs to respond to these requests.

Furthermore, due process requires that Global NAPs be afforded the opportunity to respond to BellSouth's "emergency" Motion, and, if the Motion were granted, a reasonable timeframe in which to respond to BellSouth's requests. Thus, the effect of granting BellSouth's Motion would be to make Global NAPs' additional responses due after the final hearing in this has been held. The discovery completion deadline in the Order Establishing Procedure in this case was established precisely to prevent the kind of scenario that BellSouth has created by its eleventh-hour, overbroad, and irrelevant discovery requests to Global NAPs.

The very reason for establishing discovery deadlines is so that at an appropriate point, discovery is terminated and the parties can turn their attention to final hearing preparation, presumably aided by the information gleaned in the course of discovery. BellSouth's purposeful choice to conduct its written discovery at the "eleventh hour" and then file an "emergency" Motion to Compel -- the response to which is due only one day before the hearing starts -- calls into question the extent to which BellSouth really needs or intends to use in its case preparation the materials it has requested Global NAPs to provide through discovery. Given these circumstances, it is entirely reasonable to infer that BellSouth does not intend to rely on the requested information

for its hearing preparation, but that instead, BellSouth interposed the discovery requests specifically to distract Global NAPs from its hearing preparation. In any event, BellSouth has waited too late to conduct written discovery in this case. Whether BellSouth's conduct in this proceeding is spurred by ill motive or is due to poor judgment in waiting to conduct its written discovery, its conduct should not be rewarded by forcing Global NAPs to provide additional responses. BellSouth's Motion to Compel should be denied.

### III. INTERROGATORIES

Global NAPs incorporates its arguments for denial of BellSouth's Motion to Compel set forth in Section II above, and further states:

A. Interrogatory 4:

BellSouth seeks "all documents which refer or relate to any issues raised in Phase I of the Generic ISP Proceeding." As noted in Global NAPs' objections filed on February 12, 2001, this request is overbroad in that it is not tied to any specific issue in this proceeding, is not limited to any specific timeframe, and includes literally dozens of thousands of documents, including public records documents. The Motion to Compel on this Interrogatory should be denied.

B. Interrogatory Nos. 6 and 21:

This interrogatory requests Global NAPs to undertake research and analysis of filings before state commissions across the nation concerning positions taken or filings on ISP/reciprocal compensation issues. This information is public record and is equally available to BellSouth, and accordingly, BellSouth's Motion to Compel should be denied.

C. Interrogatory Nos. 7, 8, 9, 10, 11, 12, and 13:

These interrogatories seek information that is irrelevant to this proceeding. BellSouth argues that company-specific answers to the above-numbered interrogatories are relevant to the issue of whether Global NAPs and other ALECs are using reciprocal compensation revenue for ISP-bound traffic to "generate an unearned financial windfall." This is a predominant theme throughout BellSouth's Motion to Compel, although BellSouth never explains what it means by a potential "windfall" or how the concept of "windfall" fits within a supposedly competitive telecommunications environment. BellSouth attempts to support its position that the requested information is relevant by pointing to the prefiled direct testimony of staff witness Gregory Fogelman, at page 4. If one turns to Mr. Fogelman's prefiled direct testimony, at page 4, there is no use of the word "windfall" -- only that CLECs have capitalized on the market opportunity of serving ISPs and generated substantial reciprocal compensation in doing so.

BellSouth's Motion to Compel fails to demonstrate how any specific information on the number of access lines in Florida for which an ALEC provides local telephone service, total number of end user customers served in Florida, or total number of "on-net" end user customers served within Florida, total number of on-net ISP customers served in Florida, total company revenues projected for the years 2001 and 2002 have any relevance whatsoever to the policy considerations which should inform the Commission in this proceeding. Company-specific profits and losses should not drive the Commission's policy decisions in this proceeding. Instead, an appropriate compensation mechanism consistent with the requirements of federal law is at the heart of this proceeding.

BellSouth has already filed its Prefiled Direct and Rebuttal Testimony in this proceeding.

BellSouth certainly may not attempt to supplement its prefiled testimony by virtue of any of the information which might be gained through the above-numbered discovery requests.

Moreover, the information BellSouth requests to address the so-called "windfall" issue is business and proprietary information that is confidential to Global NAPs. Although BellSouth argues that it would keep such information confidential, Global NAPs and the other ALECs must be able to review the bases for any assertions of "windfall" BellSouth may attempt to make through such business and proprietary information. Furthermore, the procedural rules governing discovery require that all parties be served with a party's responses to discovery requests. Thus, all parties in this proceeding would have to be provided all such business and proprietary information, thereby destroying the confidential nature of that information, and significantly prolonging this proceeding far beyond the established timeframes. For these reasons, BellSouth's Motion to Compel answers to the above-numbered discovery requests should be denied.

D. Interrogatories Nos. 14, 15, 16, 22, 24 and 25:

BellSouth again maintains that an ALEC's total dollar investment in Florida, including its total dollar investment in switches, outside plant, and support assets, is somehow relevant to Issue 4, which focuses on the policy considerations which should inform the Commission's decisions in this docket. The information sought under the above-numbered interrogatories is not only irrelevant, but reflects BellSouth's true intention to divert Global NAPs from preparation for final hearing and somehow attempt to transform this proceeding from a generic docket to a super-detailed cost case for the ALECs. BellSouth alleges that these interrogatories are relevant to Global NAPs' cost of doing business in Florida. The cost to Global NAPs of doing business in Florida is irrelevant. The only potentially relevant Global NAPs cost is the cost of transporting

and terminating local traffic where an ALEC seeks to establish its right to a symmetrical reciprocal compensation rate. Such costs must be reflected in a cost study which, in this case, has not been performed by Global NAPs.

For these reasons, BellSouth's Motion to Compel responses to the above-numbered interrogatories should be denied.

E. Interrogatory No. 23:

This interrogatory was directed to e.Spire. Global NAPs has no knowledge of e.Spire's relationship with ISPs.

#### IV. REQUESTS FOR PRODUCTION

Global NAPs incorporates by reference its arguments supporting the denial of BellSouth's Motion to Compel set forth in Section II of this Response, and further states:

A. Request for Production Nos. 6,7,8,9,10,11,12,13,16 and 17:

Global NAPs adopts and incorporates by reference its arguments set forth under Section III above concerning the lack of relevance of determining whether an ALEC is receiving an "unearned windfall." As previously stated, the issue of whether BellSouth is receiving a "windfall" or an "unearned windfall" (whatever those terms mean) is not a relevant consideration in establishing an appropriate and lawful reciprocal compensation mechanism for ISP traffic. BellSouth's Motion to Compel responses to the above-numbered requests for production should be denied.

B. Request for Production Nos. 2, 14, 15, 17 and 22:

Global NAPs adopts and incorporates by reference its arguments set forth under Section

III above regarding the “unearned windfall” contention, and requests that BellSouth’s Motion to Compel responses to the above-numbered requests for production be denied.

C. Requests for Production Nos. 18, 19 and 20:

These interrogatories seek information relating to Global NAPs’s ownership, affiliation or interest, if any, with an ISP. Again, BellSouth says that it needs this information so it can determine if Global NAPs is receiving an “unearned windfall.” Global NAPs adopts and incorporates by reference its argument set forth under Section III above regarding the “unearned windfall” contention. BellSouth’s Motion to Compel responses to the above-numbered requests for production should be denied.

D. Request for Production No. 23:

Here, BellSouth wants copies of any agreement to which Global NAPs is a party that involves the sharing of any reciprocal compensation received by Global NAPs from BellSouth. BellSouth did not limit this request to ISP traffic. The request is overbroad and irrelevant to the establishment of an appropriate, lawful, reciprocal compensation mechanism for the transport and termination of ISP traffic. BellSouth raises the “financial windfall” again as a basis for relevancy. That issue has been addressed herein, and the arguments concerning that contention are incorporated herein by reference. BellSouth’s Motion to Compel a response to Request for Production No. 23 should be denied.

E. Request for Production No. 4:

Global NAPs adopts and incorporates by reference its arguments under Section III above concerning the “unearned windfall” contention. BellSouth’s Motion to Compel a response to Request for Production No. 4 should be denied.

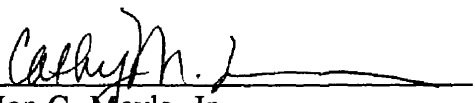


## V. CONCLUSIONS AND REQUEST FOR RELIEF

BellSouth waited until thirteen months elapsed following the opening of this docket, and until less than one month before the discovery deadline, to serve written discovery. BellSouth served the written discovery when it was aware that the discovery completion date was February 28, 2001 and that the final hearing is scheduled to begin on March 7, 2001. BellSouth then filed an extensive motion to compel on February 27, 2001 in disregard of the discovery completion date and the purpose of that date as previously discussed. BellSouth has created its own "emergency," and seeks to divert Global NAPs and its counsel during the period following the discovery completion date from focusing on preparation for the final hearing.

For the reasons stated in this Response, Global NAPs respectfully requests that the Prehearing Officer deny in full BellSouth's Emergency Global Motion to Compel.

Respectfully submitted this 6<sup>th</sup> day of March, 2001.

  
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## CERTIFICATE OF SERVICE

I **HEREBY CERTIFY** that a true and correct copy of the foregoing was furnished this 13th day of February, 2001 to the following:

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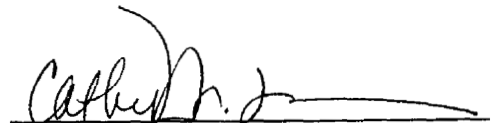
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