

MCWHIRTER REEVES
ATTORNEYS AT LAW

PLEASE REPLY TO:

TAMPA OFFICE:
400 NORTH TAMPA STREET, SUITE 2450
TAMPA, FLORIDA 33602
(813) 224-0866
(813) 221-1854 FAX

TALLAHASSEE OFFICE:
117 SOUTH GADSDEN STREET
TALLAHASSEE, FLORIDA 32301
(850) 222-2525
(850) 222-5606 FAX

June 24, 2004

VIA ELECTRONIC FILING

Blanca S. Bayo, Director
Division of Records and Reporting
Betty Easley Conference Center
4075 Esplanade Way
Tallahassee, Florida 32399-0870

Re: Docket No.: 040520-TP

Dear Ms. Bayo:

The Florida Competitive Carriers Association (FCCA), AT&T Communications of the Southern States, L.L.C., MCI Metro Access Transmission Services, L.L.C. and MCI Worldcom Communications, Inc., hereby submit, for electronic filing, their response to BellSouth Telecommunications, Inc.'s Motion to Dismiss in the above docket.

Thank you for your assistance.

Yours truly,
s/ Joseph A. McGlothlin

Enclosures

MCWHIRTER, REEVES, MCGLOTHLIN, DAVIDSON, KAUFMAN & ARNOLD, P.A.

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Emergency Petition of FCCA,
AT&T, and MCI To Require ILECs To
Continue to Honor Existing
Interconnection Obligations

DOCKET No. 040520-TP

Filed: June 24, 2004

**RESPONSE OF AT&T, MCI AND FCCA TO
BELLSOUTH'S MOTION TO DISMISS**

The Florida Competitive Carriers Association (FCCA)¹, AT&T Communications of the Southern States, LLC, (AT&T), and MCImetro Access Transmission Services, LLC and MCI WORLDCOM Communications, Inc. (collectively "MCI"), pursuant to Rule 25-22.106.204, Florida Administrative Code, hereby respond to the "Motion to Dismiss the Petition of FCCA, AT&T and MCI for Emergency Declaratory Ruling"² filed by BellSouth Telecommunications, Inc. (BellSouth) June 17, 2004. For the reasons set forth below, BellSouth's Motion should be denied. However, FCCA, AT&T and MCI agree that the CLECs' Petition should be held in abeyance pending further proceedings.

1. In its Motion, BellSouth makes essentially two arguments. First, BellSouth argues that there is no emergency requiring the Commission to act because BellSouth has "clearly, consistently, and without exception stated that it will honor its

¹ The members of FCCA include (in addition to AT&T and MCI) Access Integrated Networks, Inc., ICG Communications, Inc., IDS Telecom LLC, ITC DeltaCom, Inc., KMC Telecom, Network Telephone Corporation, NewSouth Communications, Inc., Supra Telecommunications and Information Systems, Inc., and Z-Tel Communications, Inc. With the exceptions of Supra and ICG, each of these members, is also a member of the Competitive Carriers of the South, Inc. (CompSouth).

² It should be noted that AT&T, MCI and the FCCA filed an "Emergency Petition to Require BellSouth and Verizon to Continue to Honor Existing Interconnection Obligations." Petitioners did not file a Petition for Declaratory Ruling.

existing interconnection agreements.”³ Second, BellSouth asserts the CLECs' request for an order requiring BellSouth to abide by the “change of laws” provisions in its interconnection agreements with CLECs is moot because BellSouth has committed to utilize these provisions.⁴ Neither argument supports the Motion to Dismiss.

2. In an effort to downplay the concerns expressed by CLECs, BellSouth points to statements in its May 7th and May 24th Carrier Notification Letters. However, *BellSouth created* these concerns by playing coy as to the course it intends to follow regarding its interconnection obligations after June 15, 2004. In the Carrier Notification Letters cited in BellSouth’s Motion, BellSouth spoke loudest by - - not what it said - - but what it did *not* say. For example, as BellSouth noted in its Motion, in the May 24th letter BellSouth did say that “BellSouth will not . . . unilaterally disconnect services being provided to any CLEC under the CLEC’s Interconnection Agreement.”⁵ In this letter BellSouth did *not* commit to continue charging existing prices. The assurance that service would not be “disconnected” is small comfort to a CLEC if BellSouth unilaterally converts the price of its services to resale or to tariffed services, thereby economically forcing the CLEC from the market. BellSouth’s subsequent statements to the effect that it will abide by the change of laws provisions and will not act unilaterally as to anything in its existing interconnection agreements have, to a certain extent, reassured CLECs that there may be no near term emergency.

3. As to BellSouth’s mootness argument, the CLECs' fears of unilateral action on the part of BellSouth are not rendered “moot” simply by BellSouth’s

³ BellSouth Motion at p.4.

⁴ *Id.* at p.5.

⁵ *Id.* at p. 2.

statements, which over time (contrary to BellSouth's contention) have been neither clear nor consistent. The CLECs' concerns will become moot only when BellSouth actually follows through with its commitments to honor its existing interconnection agreements.

4. BellSouth's claims of "trust me" do not obviate the allegations in the CLECs' Petition. As a result, BellSouth's motion should be denied. BellSouth's commitments to honor its interconnection agreements do ameliorate the nature of the emergency. Accordingly, the FCCA, AT&T and MCI agree that the CLECs' Emergency Petition should be held in abeyance and the docket should be held open pending further proceedings.

WHEREFORE, based on the foregoing, the FCCA, AT&T, and MCI submit that BellSouth's Motion to Dismiss should be denied. The Emergency Petition of FCCA, AT&T and MCI should be held in abeyance and the instant docket should be held open pending any further proceedings.

s/ Joseph A. McGlothlin
Joseph A. McGlothlin
Vicki Gordon Kaufman

McWhirter Reeves McGlothlin
Davidson Kaufman & Arnold, PA
117 South Gadsden Street
Tallahassee, FL 32301
850-222-2525
jmcglothlin@mac-law.com
vkaufman@mac-law.com

Attorneys for FCCA

s/ Tracy Hatch

Tracy Hatch
101 N. Monroe Street
Suite 700
Tallahassee, FL 32301
(850) 425-6360
thatch@att.com

Attorney for AT&T
Communications of the Southern
States, LLC

s/ Donna Canzano McNulty

Donna Canzano McNulty
1203 Governors Square Blvd.
Suite 201
Tallahassee, FL 32301
(850) 219-1008
donna.mcnulty@mci.com

s/ Dulaney O'Roark, III

Dulaney O'Roark, III
6 Concourse Parkway
Suite 600
Atlanta, GA 30328
(770) 284-5498
de.oroark@mci.com

Attorneys for MCImetro Access
Transmission Services LLC and MCI
WORLDCOM Communications,
Inc.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Response of AT&T, MCI and FCCA to BellSouth's Motion to Dismiss has been furnished by U.S.

Mail on this 24th day of June, 2004, to:

Beth Keating
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

Nancy B. White
c/o Nancy H. Sims
BellSouth Telecommunications, Inc.
150 South Monroe Street
Suite 400
Tallahassee, FL 32301-1556

Richard Chapkis
Verizon Florida Inc.
201 N. Franklin Street
FLTC717
Tampa, FL 33602

Matthew Feil
FDN Communications
2301 Lucien Way
Suite 200
Maitland, FL 32751

Susan Masterton
Sprint Communications Company L.P.
P.O. Box 2214
Tallahassee, FL 32316-2214

s/ Joseph A. McGlothlin
Joseph A. McGlothlin