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Matilda Sanders

From: Smith, Debbie N. [Debbie.N.Smith@BellSouth.COM]
Sent: Thursday, March 03, 2005 2:20 PM
To: Filings@psc.state.fl.us
Cc: Mays, Meredith; Barclay, Lynn; Slaughter, Brenda; Fatool, Vicki; Nancy Sims; Holland, Robyn; P. Linda Hobbs; Bixler, Micheale
Subject: Florida Docket No. 050119-TL
Importance: High
Attachments: answer.pdf; answer.doc

- A. Debbie Smith
 Legal Secretary for Meredith E. Mays
 BellSouth Telecommunications, Inc.
 c/o Nancy Sims
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 Tallahassee, FL 32301-1558
 (404) 335-0772
 debbie.n.smith@bellsouth.com
- B. Docket No. 050119-TL: In Re: Petition of TDS Telecom d/b/a TDS Telecom Company, Telephone
 ALLTEL Florida, Inc., Northeast Florida Telephone Company d/b/a NEFCOM, GTC, Inc. d/b/a
 GT Com, Smart City Telecommunications, LLC d/b/a Smart City Telecom, ITS Telecommunications
 Systems, Inc. and Frontier Communications of the South, LLC concerning BellSouth
 Telecommunications, Inc.'s Transit Service Tariff
- C. BellSouth Telecommunications, Inc.
 on behalf of Meredith E. Mays
- D. 8 pages total in PDF format
 6 pages total (WORD) in text of disk
- E. Answer of BellSouth Telecommunications, Inc.

Debbie Smith (sent on behalf of Meredith E. Mays)

MP BellSouth Telecommunications, Inc.
 OM Suite 4300 - Legal Department
 TR 675 W. Peachtree Street
 CR Atlanta, GA 30375-0001
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PC

MS

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ORIGINAL

Legal Department

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March 3, 2005

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

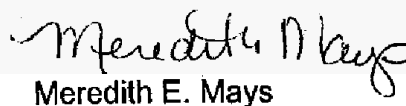
Re: Docket No. 050119-TL

Dear Ms. Bayó:

Enclosed is BellSouth Telecommunications, Inc.'s Answer to the Joint Petition, which we ask that you file in the captioned 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.

Sincerely,


Meredith E. Mays

Enclosures

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

575285

DOCUMENT NUMBER-DATE

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**CERTIFICATE OF SERVICE
DOCKET NO. 041422-TL**

I HEREBY CERTIFY that a true and correct copy of the foregoing was served via
Electronic Mail and U.S. Mail this 3rd day of March, 2005 to the following:

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Meredith E. Mays

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition of TDS Telecom d/b/a TDS)
Telecom/Quincy Telephone, ALLTEL Florida,)
Inc., Northeast Florida Telephone Company d/b/a) Docket No. 050119-TL
NEFCOM, GTC, Inc. d/b/a GT Com, Smart City)
Telecommunications, LLC d/b/a Smart City) Filed: March 3, 2005
Telecom, ITS Telecommunications Systems, Inc.)
and Frontier Communications of the South, LLC,)
concerning BellSouth Telecommunications, Inc.'s)
Transit Service Tariff)

ANSWER OF BELL SOUTH TELECOMMUNICATIONS, INC.

INTRODUCTION

BellSouth Telecommunications, Inc. ("BellSouth") responds to the Joint Petition ("Petition") filed by TDS Telecom d/b/a TDS Telecom/Quincy Telephone, ALLTEL Florida, Inc., Northeast Florida Telephone Company d/b/a NEFCOM, GTC, Inc. d/b/a GT Com, Smart City Telecommunications LLC d/b/a Smart City Telecom, ITS Telecommunications Systems, Inc., and Frontier Communications of the South, LLC (collectively "Independent Telephone Companies" or "ITCs") and states as follows:

This case involves a dispute over transit traffic, which is traffic that originates on the network of one carrier, transits over BellSouth's network, then terminates on the network of a third carrier.¹ BellSouth is neither the originating nor terminating carrier of transit traffic, and BellSouth has no duty under Section 251(c)(2) of the Act to provide transit traffic at TELRIC rates.² Nonetheless, BellSouth provides rates, terms and conditions for the provision of transit service to many carriers pursuant to agreement and

¹ See e.g., *Texcom, Inc. v. Bell Atlantic Corp.*, Memorandum Opinion and Order, ¶ 4, FCC File No. EB-00-MD-14 (rel. Nov. 28, 2001); also Order No. PSC-01-0824-FOF-TP, pp. 102-105.

² See *Virginia Arbitration Order*, ¶ 117, 17 F.C.C.R. 27039 (FCC Wireline Competition Bureau, July 17, 2002); and *In re: Arbitration Petition of Cavalier Telephone LLC*, ¶ 38 (FCC Wireline Competition Bureau, Dec. 12, 2003).

is entitled to compensation for providing this service.³ BellSouth has filed a new tariff, General Subscriber Services Tariff § A.16.1, Transit Traffic Service (“transit tariff”), which tariff sets forth certain rates, terms and conditions that apply when carriers receive transit service from BellSouth but have not entered into an agreement with BellSouth setting forth rates, terms and conditions for the provision of transit services.

When BellSouth provides transit service, it operates as a conduit between other carriers that may not have direct interconnection agreements in place. In most instances, BellSouth has established contractual arrangements that address the terms and conditions for the provision of transit service, as well as the compensation that is owed to BellSouth – generally from the originating carrier – for transiting such traffic. BellSouth’s transit tariff does not apply to carriers who have negotiated such contracts. However, ITCs, despite having no arrangement in place with BellSouth for the provision of transit service, send transit traffic to BellSouth for termination to other carriers with whom the ITCs have no direct interconnection. In the absence of an existing contractual agreement, BellSouth’s transit tariff applies as a default. The ITCs remain free to enter into independent contractual arrangements with BellSouth, and there is no need for this Commission to entertain suspending BellSouth’s transit tariff “pending discussion.” To the contrary, despite the ITCs’ objections to BellSouth’s transit tariff, their petition is devoid of any legal support that justifies the requested relief.

³ See *Virginia Arbitration Order*, ¶ 177 (“any duty Verizon may have under section 251(a)(1) of the Act to provide transit service would not require that service to be priced at TELRIC”). Consistent with the *Virginia Arbitration Order*, even if a Commission believes that ILECs have a duty to provide transit service (which BellSouth does not), any such obligation would arise under section 251(a) and would apply equally to all carriers.

SPECIFIC RESPONSES

BellSouth responds below to each of the separately numbered paragraphs of the Petition:

1. The allegations in Paragraph 1 of the Petition require no response from BellSouth. To the extent a response would be appropriate, BellSouth lacks sufficient information to form a belief as to the truth of the matter asserted and would, therefore, deny the allegations in Paragraph 1 of the Petition.

2. The allegations in Paragraph 2 of the Petition require no response from BellSouth. BellSouth further states that communications regarding BellSouth's Answer to this Petition should be directed to:

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(305) 347-5558
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Meredith E. Mays
BellSouth Center – Suite 4300
675 West Peachtree Street, N.E.
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3. BellSouth admits the ITCs have filed a Petition and that BellSouth filed the transit tariff attached to the Petition. BellSouth denies that this Commission should suspend the tariff, denies that a formal hearing is needed, and denies that the ITCs have actually raised any justiciable legal issues in their Petition. As a company that has elected price regulation under Section 364.051, Florida Statutes, BellSouth's transit tariff is presumptively valid and should not be suspended. BellSouth denies any remaining allegations in Paragraph 3.

4. BellSouth states that the relevant provisions of Florida law speak for themselves and require no response from BellSouth. BellSouth is without knowledge or

information sufficient to admit or deny whether the ITCs fall within the definitions cited in Paragraph 4. BellSouth denies any remaining allegations in Paragraph 4.

5. BellSouth states that the relevant provisions of its transit tariff speak for themselves and require no response from BellSouth. BellSouth admits that no written agreements exist between it and the ITCs that specifically address the manner in which BellSouth provides transit service. BellSouth denies that it either agreed to, or engaged in, any course of conduct whereby it would provide transit service “without charge” and expressly denies that any “implied agreements” exist that would require negotiation and arbitration prior filing tariffs. BellSouth further states that, pursuant to Section 364.08(2), Florida Statutes it cannot provide service “without charge.” BellSouth denies any remaining allegations in Paragraph 5.

6. BellSouth denies that its transit tariff violates any “Commission practice.” To the extent that the ITCs suggest otherwise, the ITCs must identify with specificity any such practice. By failing to do so, the ITCs have violated Rules 25-22.036 and 28-106.201, which require a petitioning party to identify a specific rule or statute that is in dispute. BellSouth further denies that it is required to address any and all intercarrier compensation issues through generic proceedings, although BellSouth admits that the Commission has elected to institute a number of generic proceedings in the past.

7. BellSouth denies that its transit tariff violates any Commission orders. To the extent that the ITCs suggest otherwise, the ITCs must identify with specificity any such orders. By failing to do so, the ITCs have violated Rules 25-22.036 and 28-106.201, which require a petitioning party to identify a specific rule or statute that is in dispute. BellSouth denies any remaining allegations in Paragraph 7.

8. BellSouth denies that any justiciable, disputed issues exist. By failing to identify with specificity any alleged issues the ITCs have violated Rules 25-22.036 and 28-106.201, which require a petitioning party to identify a specific rule or statute that is in dispute, rather than filing petitions with the expectation that “specific disputed issues . . . are expected to develop.” BellSouth denies any remaining allegations in Paragraph 8.

9. BellSouth states that the relevant provisions of Florida law speak for themselves and require no response from BellSouth. BellSouth denies that this Commission should suspend the effective date of its transit tariff and further denies that a formal administrative hearing is necessary. BellSouth denies any remaining allegations in Paragraph 9.

FIRST AFFIRMATIVE DEFENSE

The Petition fails to state a claim for which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

The Petition fails to comply with Rules 25-22.036 and 28-106.201, which require a petitioning party to identify a specific rule or statute that is in dispute.

THIRD AFFIRMATIVE DEFENSE

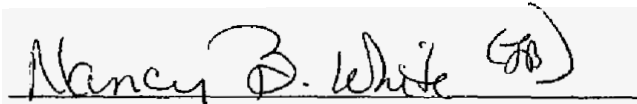
To the extent that the ITCs have not paid BellSouth for services provided, BellSouth claims unjust enrichment. The ITCs have received transit services from BellSouth and have accepted such services under circumstances that would make it inequitable for them to retain such services without payment. If the Commission grants any relief to the ITCs (which it should not), BellSouth is entitled to compensation in the amount the ITCs have been unjustly enriched.

WHEREFORE, BellSouth respectfully requests the Commission to enter an Order in BellSouth's favor, deny the ITCs the relief sought, and grant BellSouth such other relief as the Commission deems just and proper.

BellSouth denies each and every allegation in the Petition not expressly admitted herein, and demands strict proof thereof.

Respectfully submitted, this 3rd day of March 2005.

BELLSOUTH TELECOMMUNICATIONS, INC.



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