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January 7, 2004

Ms. Blanca Bayo, Director
Commission Clerk and Administrative Services
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

HAND DELIVERY
COMMISSION
CLERK

040018-TP

RECEIVED FPSC
04 JAN -7 PM 4:38

Re: Complaint of US LEC of Florida Inc. against BellSouth Telecommunications, Inc. for Unauthorized Discontinuance of Service and Petition for Emergency Order Restoring Service


Dear Ms. Bayo:

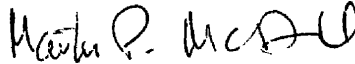
Please find enclosed for filing an original and fifteen copies of US LEC of Florida Inc.'s ("US LEC") Complaint against BellSouth Telecommunications, Inc. for Unauthorized Discontinuance of Service and Petition for Emergency Order Restoring Service.

Please acknowledge receipt of these items by stamping the extra copy of this letter "filed" and returning the copy to me. Thank you for your assistance with this filing.

RECEIVED & FILED

Sincerely,


FPSC-BUREAU OF RECORDS


Martin P. McDonnell

MPM/rl
Enclosures
cc: Nancy Sims
USLEC\bayo.jan7ltr

DOCUMENT NUMBER-DATE

00295 JAN-7 04

FPSC-COMMISSION CLERK

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

Complaint of US LEC of Florida)
Inc. against BellSouth Telecommunications,)
Inc. for unauthorized discontinuance of)
service and Petition for Emergency Order)
restoring service.)
_____)

Docket No. _____

Filed: January 7, 2004

**COMPLAINT OF US LEC OF FLORIDA INC.
AGAINST BELLSOUTH TELECOMMUNICATIONS, INC.
FOR UNAUTHORIZED DISCONTINUANCE OF SERVICE AND
PETITION FOR EMERGENCY ORDER RESTORING SERVICE**

Comes now US LEC of Florida Inc., (“US LEC”) pursuant to Sections 364.01(4)(g), 364.03(1) and 364.10(1), Florida Statutes, and Rule 28-106.201, Florida Administrative Code and hereby files this Complaint and Petition against BellSouth Telecommunications, Inc. (“BellSouth”) and seeks:

- A. An immediate order compelling BellSouth to restore caller identification (“caller ID”) service to calls originated by US LEC’s customers ; and
- B. An order precluding BellSouth from terminating the caller ID service that US LEC and its customers are legally entitled to.

In support hereof, US LEC states as follows:

1. The name and address of the Complainant and Petitioner are:

US LEC of Florida Inc.
Morrocroft III
6801 Morrison Boulevard
Charlotte, NC 28211
2. All pleadings, documents, correspondences, notices, staff recommendations and orders filed, served or issued in this docket should be served on the following on behalf of US LEC:

DOCUMENT NUMBER-DATE

00295 JAN-7 3

FPSC-COMMISSION CLERK

Kenneth A. Hoffman, Esq.
Martin P. McDonnell, Esq.
Rutledge, Ecenia, Purnell & Hoffman, P.A.
P. O. Box 551
Tallahassee, Florida 32302
(850) 681-6788 (Telephone)
(850) 681-6515 (Telecopier)

3. BellSouth is an incumbent local exchange carrier providing telecommunications services in a Florida. BellSouth's official business address is:

BellSouth Telecommunications, Inc.
150 North Monroe Street
Suite 400
Tallahassee, Florida 32301

FACTUAL BACKGROUND

4. US LEC has undertaken to allow its customers to provide electronic information identifying the name and number of persons or businesses originating a call to persons or businesses receiving the call who have caller ID service.

5. BellSouth has undertaken to route calls from US LEC customers to BellSouth customers in Florida and elsewhere and to provide caller ID services to BellSouth customers in Florida and elsewhere. Caller ID services include the provision of the name of the person or business initiating the call.

6. US LEC has contracted with TSI Telecommunications Services, Inc. ("TSI") to provide electronic information to other telecommunications carriers such as BellSouth who provide telephone service to persons called by US LEC customers. Specifically in order to provide these services to US LEC, TSI entered into a Calling Name (CNAM) agreement with BellSouth to provide electronic information to BellSouth customers on the identity of callers using other carriers such as

US LEC. On information and belief, BellSouth agreed in the CNAM agreement to obtain information on caller identity of calls from US LEC customers from the TSI database for use by BellSouth customers with caller ID in Florida and elsewhere.

7. On or about September 18, 2003, BellSouth sent TSI a letter (attached hereto as Exhibit "A") in which it requested TSI to amend the terms of its contract with BellSouth. BellSouth threatened to stop performing caller ID queries from the TSI database unless TSI agreed to the amendment. On information and belief, TSI did not agree to the contract amendment and BellSouth thereafter stopped performing caller ID queries on the TSI database identifying the source of calls originating on the US LEC network.

8. Following BellSouth's refusal to perform caller ID queries on the TSI database on calls originating on the US LEC network, US LEC's customers in Florida report that their name is not being delivered to BellSouth customers. As a result, they report that they have been unable to complete calls to BellSouth customers in Florida with Privacy Director features in their phone service without first answering a recording asking for their name. They also report that BellSouth customers with caller ID service that does not include Privacy Director occasionally decline to answer the phone when the name is not given on their caller ID display. This has, on information and belief, resulted in the potential loss of business and in damage to the customers' and US LEC's reputation.

9. On information and belief, calls originating from other telecommunications networks such as BellSouth's are having all their caller ID information successfully delivered to BellSouth customers in Florida.

10. The inability of US LEC to deliver the name of its customers to customers using BellSouth phone service and the inability of US LEC to deliver calls to BellSouth customers in Florida with Privacy Director has, on information and belief, resulted in the loss of customers for US LEC and the failure to attract prospective customers. More importantly, it is damaging US LEC's reputation as a reliable telecommunications carrier in ways that can never fully be quantified and that are irreparable.

11. While BellSouth's refusal to retrieve and deliver information identifying the name of calls originating on the US LEC network is hurting Florida customers of US LEC and BellSouth, it is also a regional problem affecting telecommunications customers throughout the Southeast. The North Carolina Utilities Commission (the "North Carolina Commission"), as further discussed herein, recently issued a Preliminary Injunction ordering BellSouth to deliver the complete and accurate caller ID information of US LEC customers. When this issue was brought to the attention of the Georgia Public Service Commission (the "Georgia Commission"), the Georgia Commission's representative contacted BellSouth in an attempt to avert filing of a complaint by US LEC against BellSouth. On information and belief, BellSouth has refused to change its position.

12. US LEC has repeatedly requested BellSouth to retrieve and deliver all caller ID information from calls originating in the US LEC network in Florida, but BellSouth has continued in its refusal to do so.

COUNT I

13. Paragraphs 4-12 above are realleged and incorporated herein.

14. Pursuant to Section 364.03(1), Florida Statutes, "[a]ll rates, tolls, contracts and charges of, and all rules and regulations of, telecommunications companies for messages,

conversations, services rendered, and equipment and facilities supplied, whether such message, conversation, or service is to be performed over one company or line or over or by two or more companies or lines, shall be fair, just, reasonable, and sufficient, and the service rendered to any person by any telecommunications company shall be rendered and performed in a prompt, expeditious, and efficient manner.”

15. The failure of BellSouth to deliver caller names to Florida customers it has undertaken to provide with caller ID services is unreasonable in light of the fact that the information on customer names and telephone numbers has been made available to it pursuant to a contract it signed and which is still in force. BellSouth’s actions also violate Section 364.03(1), Florida Statutes as BellSouth is refusing to perform the required services to its customers who purchase and pay for a caller ID service.

16. The failure to provide reasonable service to its Florida customers of the kind BellSouth has undertaken to furnish has and is causing irreparable harm to US LEC.

COUNT II

17. Paragraphs 1-13 above are realleged and incorporated herein.

18. Pursuant to Section 364.10(1), Florida Statutes, “[a] telecommunications company may not make or give any undue or unreasonable preference or advantage to any person or locality or subject any particular person or locality to any undue or unreasonable prejudice or disadvantage in any respect whatsoever.”

19. The failure of BellSouth to deliver the names of callers originating on the US LEC network to customers it has undertaken to provide with caller ID services violates Section 364.10(1),

Florida Statutes, is unreasonably discriminatory and puts US LEC at an unfair competitive disadvantage because BellSouth does deliver the names of callers originating from other telecommunications networks, including its own.

20. The provision of service by BellSouth that is unreasonably discriminatory to US LEC's Florida customers has and continues to irreparably harm US LEC.

COUNT III

21. Paragraphs 1 through 20 above are realleged and incorporated herein.

22. In accordance with applicable law, US LEC has adopted the Interconnection Agreement between BellSouth and Intermedia Communications, Inc. The adoption of that Agreement by US LEC was approved by this Commission on March 31, 2001 in Order No. PSC-01-0612-FOF-TP.

23. Section 3.5 of Attachment 3 to the Interconnection Agreement (attached hereto as Exhibit "B") states that:

"[b]oth parties will provide LEC-to-LEC Common Channel Signaling ("CCS") to each other, where available, in conjunction with all traffic in order to enable full interoperability of CLASS features and functions except for call return. All CCS signalling parameters will be provided, including automatic number identification ("ANI"), originating line information ("OLI"), calling company category, charged number, etc. All privacy indicators will be honored and each party will cooperate with each other on the exchange of transactional capabilities application part ("TCAP") messages to facilitate full interoperability of CCS-based features between the respective networks.

Name identification is a CLASS feature and function that BellSouth offers to its end users. Electronic information with US LEC customer names is made available to BellSouth through TCAP messages from US LEC's third party service provider TSI. Before October 2003, BellSouth had sent

a query to TSI via a TCAP message for the name of the US LEC customer each time its customers received a call from a US LEC customer, and TSI provided this information in a TCAP message.

24. By refusing to continue its practice, pursuant to contract, of asking for US LEC's customer names from TSI, BellSouth has breached and continues to breach its Interconnection Agreement with US LEC. This breach of contract has and continues to irreparably harm US LEC.

25. US LEC filed a complaint similar to the instant complaint against BellSouth in North Carolina. On December 23, 2003, the North Carolina Commission, in Docket No. P-55, sub. 1480, issued a Preliminary Injunction ordering BellSouth to deliver complete and accurate caller ID information of US LEC customers who call BellSouth customers in North Carolina that subscribe to BellSouth caller ID service, as it did prior to its unilateral decision not to perform caller ID queries. The North Carolina Preliminary Injunction Order is attached hereto as Exhibit "C." The North Carolina Commission held:

US LEC has established a likelihood of success on the merits of its claim that BellSouth has breached its obligations under the parties' interconnection agreement. (Order, p. 7). Based on the language of Section 5.5 [of Attachment 3], it is likely that the Commission will find that BellSouth and US LEC are obligated by the terms of their interconnection agreement to receive and deliver as part of their caller ID with name service offerings, the names of each other's customers when one party's customers call the other party's customers. *Id.*, 7-8.¹

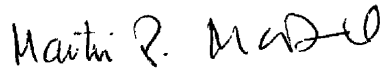
PRAYER FOR RELIEF

WHEREFORE, US LEC prays that the Commission:

¹Section 5.5 of Attachment 3 of the Interconnection Agreement relied upon by the North Carolina Commission is cited on pages 1-2 of the attached Order. Section 3.5 of Attachment 3 of the Florida Agreement is, for all intents and purposes, virtually identical to Section 5.5 of Attachment 3 to the North Carolina Interconnection Agreement.

1. Issue an immediate Order compelling BellSouth to restore caller ID to calls originated by US LEC's customers;
2. Issue a final decision requiring BellSouth to provide US LEC's customers' caller ID information to BellSouth's customers in Florida; and
3. Grant such further relief as the Commission deems just and proper.

Respectfully submitted,

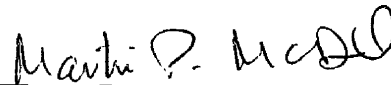


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Tallahassee, Florida 32302
(850) 681-6788 (Telephone)
(850) 681-6515 (Telecopier)

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing was served on the following this 7 day of January, 2004:

Nancy Sims
BellSouth Telecommunications, Inc.
150 South Monroe Street
Suite 400
Tallahassee, Florida 32301



Martin P. McDonnell, Esq.



BellSouth Interconnection Services

675 West Peachtree Street
BellSouth Center, Suite 34A51
Atlanta, GA 30375
E-mail: jerry_hendrix@bellsouth.com

Jerry Hendrix
Office: (404) 927-7503
Fax: (404) 529-7838

September 18, 2003

Mr. Wayne Nelson
Vice President
TSI Telecommunications Services, Inc.
One Tampa City Center
Suite 800
Tampa, FL 33602

Dear Mr. Nelson:

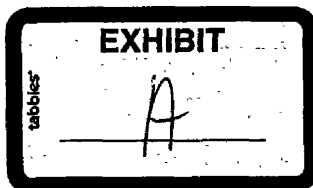
Substantial changes have occurred in BellSouth's business environment that makes it necessary for a move to a "Bill and Keep" arrangement for all Calling Name (CNAM) database queries. BellSouth would like to have this in place effective October 17, 2003. For your consideration, I have enclosed the proposed Amendment for a "Bill and Keep" arrangement for our CNAM Agreement.

Should you find this Amendment acceptable, please execute and return one copy of the Amendment no later than October 17, 2003. Otherwise please contact me within seven calendar days to schedule a time for the parties to discuss BellSouth's proposal. In the unlikely event the parties cannot agree to the terms within BellSouth's proposal, BellSouth will likely be forced to take steps necessary to stop launching queries to your database.

BellSouth values our relationship with TSI and would like to continue accessing information from TSI's CNAM database. I look forward to your response by Friday, October 17, 2003.

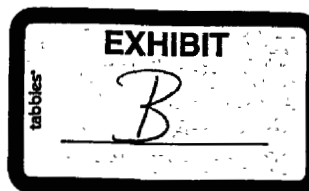
Sincerely,

Jerry Hendrix
Assistant Vice President,
Interconnection Service Marketing



TSV-000905. Facilities of each Party shall provide the necessary on-hook, off-hook answer and disconnect supervision and shall hand off calling number ID (Calling Party Number) when technically feasible.

- 3.3. Quality of Interconnection. The local interconnection for the transmission and routing of telephone exchange service and exchange access that each Party provides to each other will be at least equal in quality to what it provides to itself and any subsidiary or affiliate, where technically feasible, or to any other Party to which each Party provides local interconnection.
- 3.4. Network Management Controls. Both Parties will work cooperatively and in good faith to exchange applicable information and to apply sound network management principles by invoking appropriate network management controls, e.g., call gapping, to alleviate or prevent call blocking and network congestion.
- 3.5. Common Channel Signaling. Both Parties will provide LEC-to-LEC Common Channel Signaling ("CCS") to each other, where available, in conjunction with all traffic in order to enable full interoperability of CLASS features and functions except for call return. All CCS signaling parameters will be provided, including automatic number identification ("ANI"), originating line information ("OLI") calling company category, charge number, etc. All privacy indicators will be honored, and each Party will cooperate with each other on the exchange of Transactional Capabilities Application Part ("TCAP") messages to facilitate full interoperability of CCS-based features between the respective networks.
- 3.6. Forecasting Requirements.
- 3.6.1. The Parties shall exchange technical descriptions and forecasts of their interconnection and traffic requirements in sufficient detail necessary to establish the interconnections required to assure traffic completion to and from all customers in their respective designated service areas. In order for BellSouth to provide as accurate reciprocal trunking forecasts as possible to Intermedia, Intermedia must timely inform BellSouth of any known or anticipated events that may affect BellSouth reciprocal trunking requirements. If Intermedia refuses to provide such information, BellSouth shall provide reciprocal trunking forecasts based only on existing trunk group growth and BellSouth's annual estimated percentage of BellSouth subscriber line growth.
- 3.6.2. Both Parties shall meet every six months or at otherwise mutually agreeable intervals for the purpose of exchanging non-binding forecast of its traffic and volume requirements for the interconnection and network elements provided under this Agreement, in the form and in such detail as agreed by the Parties. The Parties agree that each forecast provided under this Section shall be deemed "Confidential Information" in the General Terms and Conditions - Part A of this Agreement.



STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH

DOCKET NO. P-55, SUB 1480

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

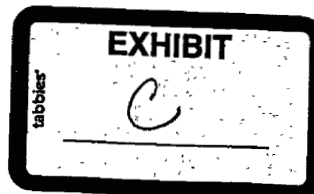
In the Matter of)	
US LEC of North Carolina, Inc.,)	
Complainant)	
v.)	ORDER ISSUING PRELIMINARY
)	INJUNCTION AND SCHEDULING
)	EVIDENTIARY HEARING
BellSouth Telecommunications, Inc.,)	
Respondent)	

BY THE COMMISSION HEARING PANEL: On December 5, 2003, US LEC of North Carolina, Inc. (US LEC) filed a Verified Complaint and Motion for Temporary Restraining Order and Preliminary Injunction against BellSouth Telecommunications, Inc. (BellSouth), amended on December 9, 2003, concerning alleged anticompetitive and unreasonably discriminatory conduct by BellSouth, which US LEC contends has caused it irreparable harm.

Specifically, US LEC stated that it had contracted with TSI Telecommunications Services, Inc. (TSI) to provide electronic information to other telecommunications carriers such as BellSouth who provide telephone service to persons called by US LEC customers. In order to provide these services to US LEC, TSI had entered into a Calling Name (CNAM) agreement with BellSouth to provide electronic information to BellSouth customers on the identity of callers using other carriers such as US LEC. US LEC believes that BellSouth had agreed in the CNAM agreement to obtain information on caller identity of calls from US LEC customers from the TSI database for use by BellSouth customers with Caller ID in North Carolina and elsewhere. However, on September 18, 2003, BellSouth sent TSI a letter in which it requested TSI to amend the terms of its contract with BellSouth and threatened to stop performing Caller ID queries from the TSI database unless TSI agreed to the amendment. TSI did not agree, and BellSouth thereafter stopped performing Caller ID queries on the TSI database identifying the sources of calls originating on the US LEC network.

In its amended complaint, US LEC dropped its third-party beneficiary contract count but alleged that Bellsouth had violated its interconnection agreement with US LEC, which provides in Section 5.5 of Attachment 3 that the parties were to provide

LEC-to-LEC Common Channel Signaling (CCS) to each other, where available, in conjunction with all traffic in order to enable full interoperability of CLASS features and functions except for call



return...The Companies may establish CCS interconnections either directly or through a third party. The Parties will exchange TCAP messages to facilitate interoperability of CCS-based features between their respective networks, including all CLASS features and functions, to the extent each party offers such features and functions to its own end users.

Before October of 2003, BellSouth would send a query to TSI via a TCAP message for the name of the US LEC customer each time its customer received a call from a US LEC customer, and TSI provided this information. By refusing since October to continue its practice, pursuant to contract, of asking for US LEC's customer names from TSI, BellSouth has breached and continues to breach its interconnection agreement with US LEC—which has inflicted, and continues to inflict, irreparable harm on US LEC.

As a consequence of BellSouth's action, US LEC's customers in North Carolina report that their names are not being delivered to BellSouth customers. They are unable to complete calls to BellSouth customers in North Carolina with Privacy Director features on their phones without first going through the tedious process of answering a recording asking for their names. Sometimes BellSouth customers with Caller ID service that does not include Privacy Director decline to answer the phone when the name is not given on their Caller ID display. US LEC believes that this has resulted in loss of business and damage to the customer's reputation and to itself. Some US LEC customers who are unable to have the Caller ID information delivered to BellSouth customers are of the opinion that US LEC service is inferior to that of BellSouth.

US LEC argued that BellSouth's conduct constitutes a failure to provide reasonable service and is unreasonably discriminatory. BellSouth has also violated its CNAM agreement with TSI, as well as its own interconnection agreement with US LEC. These actions have irreparably damaged US LEC. US LEC further argued that it has shown a likelihood of prevailing on the merits, and thus its complaint justifies injunctive relief.

In response to US LEC's filing, the Commission issued on December 8, 2003, an Order scheduling an oral argument on US LEC's Motions the following day.

On December 9, 2003, the same day as the oral argument, BellSouth made several filings: a Memorandum of Law in opposition to US LEC's Motions, an Answer, a Motion to Dismiss, and an Affidavit of Malika Blakely.

In the Memorandum of Law, BellSouth reviewed the standard for the issuance of a temporary restraining order (TRO) or a preliminary injunction—i.e., a showing by the plaintiff of a likelihood of success on the merits and the existence of irreparable loss unless the injunction is issued or if issuance is necessary to protect the plaintiff's rights—and found these elements lacking in US LEC's filings. BellSouth also argued that US LEC lacks standing in this case because US LEC is neither a customer nor a

party to any contract with BellSouth pertaining to the access or delivery of customer names, nor does it have a direct interest in or represent anyone with a direct interest in the subject matter. Instead, US LEC is seeking to force a regulated entity to pay an unregulated entity for an unregulated service pursuant to a contract which the Commission has not approved and over which it does not have jurisdiction. Even if US LEC has standing, it has not shown the existence of justiciable case or controversy.

In its Answer, BellSouth argued that it was providing reasonable telephone service and was otherwise complying with federal and state law and regulations, and it denied that its Caller ID services were being provided on an unreasonably discriminatory basis. BellSouth further argued that it complies with Section 5.5 of the interconnection agreement between itself and US LEC and that the reciprocal obligations under this Section are being met. BellSouth pointed out that the contract between TSI and BellSouth states [in the "Whereas" clauses] that "this agreement does not require either Party to query the database of the other Party," and, therefore, there has been no breach of contract between TSI and US LEC. With respect to the Caller ID-Deluxe and Privacy Director services, BellSouth noted that these are voluntary services which are not mandated by either state or federal requirement which many local exchange companies, including on information and belief US LEC, do not offer.

The affidavit of Malika Blakely, Product Manager for Caller ID Deluxe, explained that the Privacy Director Service only intercepts calls if the caller's number is blocked and cannot be delivered. So long as the caller's number is delivered along with SS7 information, the call rings directly to the recipient's telephone. So long as the number is delivered, the name delivery has no impact on the operation of the Privacy Director Service. Caller ID Deluxe, by contrast, allows the recipient's phone to show the caller's name if BellSouth has the caller's name in its database or pays to "dip" into another database, such as that maintained by TSI. Caller ID Deluxe is a tariffed service, and the costs of maintaining its own database or "dipping" into another database are costs incurred by BellSouth to provide this service. At the time that BellSouth was negotiating and executing its contract with TSI, BellSouth did not know which carrier's customers were included in TSI's database. Ms. Blakely attached a copy of the Privacy Director tariff and the BellSouth/TSI contract.

Oral Argument

The oral argument was held as scheduled on December 9, 2003. The Public Staff was present as an intervenor, and supported the position of US LEC from its perspective as a representative of the using and consuming public, including the customers of both BellSouth and US LEC. In essence, the Public Staff argued that BellSouth's failure to retrieve and deliver the names of callers who use competitors results in a reduction of service to both the BellSouth customers and the US LEC subscribers. BellSouth and US LEC recapitulated and expanded upon the arguments made in their filings.

US LEC focused on its view that BellSouth has a statutory duty to fully provide the service it has undertaken to provide and that it is furthermore obligated to fully provide the Caller ID service under Section 5.5 of Attachment 3 of the BellSouth/US LEC interconnection agreement. US LEC noted that there were three contracts that are relevant to the provision of the service in this case—the contract between US LEC and BellSouth, the contract between BellSouth and TSI, and the contract between TSI and US LEC. The fact of the BellSouth Caller ID tariff offering is also relevant. US LEC noted that the BellSouth/TSI contract had been in effect for three years and had been renewed as late as July 2003. US LEC was not informed that BellSouth was no longer “dipping” with TSI; rather, it learned of this fact through the complaints of its customers. US LEC admitted that there are other database providers, but TSI is one with which it has chosen to do business. Prior to receiving complaints from customers, US LEC had no reason to know or believe that BellSouth had any problem with US LEC’s decision to use TSI as its database provider. BellSouth’s argument that its “dipping” with TSI is purely optional, even if true, is irrelevant because BellSouth has the obligation to provide fully the service it has undertaken to provide to its own customers and pursuant to the US LEC/BellSouth contract. The Commission has jurisdiction under G.S. 62-32 (Supervisory powers; rates and services), G.S. 62-42 (Compelling efficient service), and G.S. 62-73 (Complaints). US LEC has standing both because of the interest of its own customers and those of BellSouth also.

According to US LEC, BellSouth customers are, in effect, being deceived because they are paying for Caller ID services and expecting to receive the name information from customers of US LEC or other CLPs, while BellSouth’s own actions prevent delivery of this information. A bond is not appropriate in this case under G.S. 1A-1, Rule 65(c). The interests of the public should not depend on whether US LEC is able or willing to post a bond. The relief being requested is simply for BellSouth to provide the service it has undertaken to provide—if this can be done without “dipping” from TSI, US LEC has not objection to this, but the service should be fully provided.

With respect to Section 5.5 of Attachment 3, US LEC maintained that the provision that the parties are to provide LEC-to-LEC CCS to “enable full interoperability of CLASS features and functions” clearly creates an obligation upon the parties—and, more specifically in the instant case, upon BellSouth—to provide the Caller ID service fully, which it is not doing by not delivering caller names. BellSouth’s apparent view that the provision is “reciprocal” and contingent upon whether the other party offers comparable Caller ID service itself (a view which US LEC disputes) in any event falls to the ground because US LEC does in fact offer comparable Caller ID service to its customers.

BellSouth restated and amplified many of the arguments made in its filings, including the “standing” argument. BellSouth emphasized that the BellSouth/TSI contract is nonexclusive and does not require that BellSouth “dip” into TSI’s database. BellSouth furthermore professed that it had no knowledge that US LEC was part of TSI’s database when it stopped “dipping,” and it was BellSouth’s belief that US LEC

was not offering Caller ID service. BellSouth denied that Section 5.5 created any obligation to US LEC with respect to the matter at hand and instead emphasized what it believed to be the “reciprocal” nature of the provision with which, it argued, it was in full compliance.

On December 12, 2003, the Commission issued an Order Requiring Information from the parties—specifically, from US LEC a copy of its contract with TSI; from both US LEC and BellSouth, a statement of the pricing terms in their respective contracts with TSI; and, from all parties, a concise statement of their interpretation of the meaning of Section 5.5 of Attachment 3 of the BellSouth/US LEC interconnection agreement, with particular reference to the sentence containing the acronym TCAP.

Current Version of Section 5.5 of Attachment 3

The current version of Section 5.5 of Attachment 3 reads as follows:

Both parties will provide LEC-to-LEC Common Channel Signaling (“CCS”) to each other, where available, in conjunction with all traffic in order to enable full interoperability of CLASS features and functions except for call return. All CCS signaling parameters will be provided, including automatic number identification (“ANI”), originating line information (“OLI”), calling company category, charge number, etc. All privacy indicators will be honored, and each party will cooperate with each other on the exchange of Transactional Capabilities Application (“TCAP”) messages to facilitate full interoperability of CCS-based features between the respective networks.

The Parties will provide CCS to one another in conjunction with all trunk groups where applicable. The Companies may establish CCS interconnections either directly or through a third party. The Parties will exchange TCAP messages to facilitate full interoperability of CCS-based features between their respective networks, including all CLASS features and functions, to the extent each party offers such features and functions to its own end-users. All CCS signaling parameters will be provided including CPN. All privacy indicators will be honored.

Responses

US LEC provided the copy of the TSI/US LEC contract under seal as its Exhibit 1 and the pricing terms of that contract, also under seal, as Exhibit 2. With respect to Section 5.5, US LEC explained that this provision means that the parties will provide signaling to each other to permit the full interoperability of CLASS features. “CLASS” is an acronym for “customer local area signaling service,” of which calling name is one service. “Full interoperability” means that both parties will enable their respective networks to receive and deliver calling names and other CLASS features each party offers to its customers whenever its customer receive calls from or make calls to

customers of the other party. The importance of full interoperability is emphasized by its use twice in the section. It is US LEC's view that BellSouth has blocked full interoperability of the calling name CLASS features and has thereby breached the agreement. "TCAP" is an acronym for "Transactional Capabilities Application Part," and it provides the signaling function between network databases. The US LEC customer name is transmitted via TCAP messages over Common Channel Signaling (CCS) system interconnection.

The second paragraph of Section 5.5 provides that the CCS interconnection may be established directly or through a third party. US LEC chose to use a third party—viz., TSI. Before the agreement was breached, BellSouth sent a query to TSI via a TCAP message for the name of the US LEC customer each time a BellSouth customer who subscribed to Caller ID received a call from a US LEC customer. TSI responded to the query with a TCAP message containing the calling party's name from the database it maintains for US LEC and other carriers. The third sentence in the second paragraph again requires the parties to exchange TCAP messages to facilitate "full interoperability" of CCS-based features to its own customers. This sentence simply means that, to the extent that either party requires interoperability to provide a service, such as CNAM, the parties must exchange TCAP messaging to facilitate that service. US LEC offers CNAM service to its customers in North Carolina and elsewhere. The calling party's name is displayed on interstate and intrastate calls. BellSouth is refusing to retrieve US LEC customer name information from the TSI database and is instead retrieving outdated/expired information from its own database or, if the calling name is not on BellSouth's database, it is delivering the originating caller's city and state in lieu of the calling party's name. The final sentence of the section requires all CCS signaling parameters to be provided by the parties to each other to permit the interoperability required under the agreement.

Public Staff noted that there were two references to TCAP in Section 5.5. The first reference stated that the parties were agreeing to "cooperate with each other on the exchange" of TCAP messages, while the second reference repeats what is clearly stated in the first paragraph—that the "full interoperability of CLASS features and functions except Call Return" includes the exchange of TCAP messages. The additional language in the second reference ("to the extent each party offers such features and functions to its own end users") serves two functions. First, it limits the parties' obligations, under certain circumstances; and, second, it imposes an affirmative obligation to prevent discrimination. The language would limit BellSouth's obligation to offer the calling name of a US LEC subscriber to a BellSouth subscriber if BellSouth did not offer calling name display to its own end users. However, both BellSouth and US LEC offer calling name display to their own end users in one or more states in their service areas, so the additional language does not act to limit the parties' obligations to exchange TCAP messages. The more important function of this language is, however, to prevent discrimination in the provision of CCS features—that is, the circumstance in which one of the parties would undertake to provide the benefits of a CLASS service to its subscribers without also making the same service available to subscribers of the other party. Since BellSouth uses its name database to provide the calling names of its

own subscribers to its own calling name display subscribers, it is obligated under the terms of the agreement to cooperate with US LEC to provide the names of BellSouth subscribers to US LEC subscribers and to provide the names of US LEC subscribers to its calling name display subscribers.

BellSouth provided the pricing terms its contract with TSI. With respect to Section 5.5, BellSouth argued that the purpose of this provision was to ensure parity between competing entities by requiring both parties to reciprocate in exchanging TCAP messages and to allow their interconnecting networks to operate in a manner so that one provider cannot have a competitive advantage by offering a function or feature to its customers that a competing provider is operationally unable to provide. For example, if BellSouth were to receive TCAP messages from a CLP so that BellSouth could offer Caller ID-Deluxe with the other company's customer names, it could not deny the other company a reciprocal right to receive messages to provide a comparable-type service. The functions that a provider chooses to offer are business judgments. Nothing in Section 5.5 dictates how, or to what degree, any particular feature must be provided. It would be wrong to allow a competitor to dictate the cost of another provider's offerings. In the instant case, the tariff rate for BellSouth's Caller-ID Deluxe service is paid only by BellSouth's customers, and the costs for providing it are incurred only by BellSouth. Neither US LEC nor any other provider pays for this service. To allow a competitor to require BellSouth to incur costs for a service for which its customers do not pay would diverge interests in a way that is contrary to good regulatory policy and common sense.

Conclusions

The purpose of a preliminary injunction is to preserve the status quo pending a trial on the merits. Preliminary injunctions are temporary and are in effect only through the course of litigation. A preliminary injunction is appropriately issued in the discretion of the Commission where the complaining party is able to show a likelihood of success on the merits of its case and is also able to show that it is likely to suffer irreparable loss or irreparable harm to its rights unless an injunction is issued pending trial and final judgment on the merits of the case.

In this docket, US LEC has established a likelihood of success on the merits of its claim that BellSouth has breached its obligations under the parties' interconnection agreement. Section 5.5 of Attachment 3 of the BellSouth/US LEC Interconnection Agreement requires both parties to provide LEC-to-LEC CCS to each other in order to enable full interoperability of customer local area signaling service (CLASS) features and functions. CLASS encompasses a number of features, including calling name. The only CLASS feature excluded from the interoperability obligations under Section 5.5 of the Agreement is call return. Based on the language of Section 5.5, it is likely that the Commission will find that BellSouth and US LEC are obligated by the terms of their interconnection agreement to receive and deliver as part of their Caller ID with name service offerings¹, the names of each other's customers when one party's customers

¹ BellSouth calls this service Caller ID Deluxe.

call the other party's customers. US LEC has argued, and BellSouth has not denied, that since BellSouth's unilateral decision to cease to receive certain information from third-party provider, TSI, BellSouth either does not provide its "Caller ID with name subscribers" with caller name information when US LEC customers call them or it provides information that is outdated and inaccurate. Therefore, it appears likely that US LEC will be able to prove at hearing that BellSouth is not providing its Caller ID subscribers with caller name information for US LEC callers and that the failure to do so is a breach of its obligation under the Interconnection Agreement.

Further, Section 5.5 also provides that "each party will cooperate with each other" on the exchange of TCAP messages to facilitate full interoperability of CCS-based features between respective networks, including all CLASS features and functions with the exception of call return. Once it became aware that its actions impacted US LEC and US LEC customers, BellSouth's continued adherence to its unilateral action and refusal to deliver US LEC caller name information to BellSouth's Caller ID customers without attempting to work with US LEC to agree on mutually acceptable terms and conditions for obtaining and delivering caller names is likely a breach of its contractual duty to cooperate with US LEC to achieve full interoperability.

While BellSouth argued that full interoperability under Section 5.5 is somehow dependent or contingent on the reciprocity of both parties' exchanging TCAP messages and providing Caller ID service and that US LEC fails to meet such a reciprocity requirement, the Commission is not presently persuaded that this argument defeats US LEC's likelihood of success on its breach of contract claim. Reading Section 5.5 in its entirety leads the Commission to conclude that what BellSouth reads as a requirement that both parties must offer Caller ID services to their customers before the full interoperability language is invoked, is, as argued by the Public Staff and US LEC, a limiting clause that requires exchange of TCAP messages to the extent either party needs interoperability to provide a service it chooses to offer. The parties will act to facilitate full interoperability, but full interoperability only to the extent that a party needs it to offer a service of its choosing. That is to say, Section 5.5 does not impose interoperability that would require a party to provide a CLASS feature (such as caller name) to its customers when that feature is part of a service (such as Caller ID) that the party does not provide to its customers. The agreement does not require that either party provide a service that it chooses not to offer. However, even if the Commission accepted BellSouth's reciprocity argument as correct, US LEC has proffered that it does provide comparable Caller ID service in North Carolina and in other states where BellSouth is the incumbent provider. Therefore, if, by the terms of Section 5.5, interoperability is contingent upon reciprocity, it is likely that US LEC will be able to establish that it meets the reciprocity test.

US LEC and the Public Staff have also argued that BellSouth's failure to provide caller name information to its Caller ID Deluxe subscribers violates statutory obligations under N.C.G.S §§ 62-32, 62-42 and 62-118. Having found that US LEC is likely to succeed on its breach of contract claim, the Commission makes no comment regarding the likelihood of the movants' prevailing on these additional claims. The first part of the

two-part test to succeed on a motion for preliminary injunction is satisfied by US LEC's showing that it is likely to succeed on the merits of its claim for breach of the interconnection agreement.

US LEC has also established that it, as well as its customers, will suffer irreparable harm and loss unless an injunction is issued pending final resolution of the issues raised by its Complaint. US LEC's business customers are being harmed when their names are not delivered to BellSouth Caller ID subscribers that they call in the course of their business. They are often unable to reach the party being called because the recipient will not answer unless the caller is identified pursuant to the service the recipient has purchased from BellSouth. When the US LEC customer's name is not delivered as part of the Caller ID service, the recipient assumes the caller is someone who does not want its name revealed and who does not have a legitimate business reason to call or a prior business relationship with the recipient. In turn, US LEC's reputation as a local service provider is injured when its customers' caller names are not provided to BellSouth's Caller ID subscribers. It is highly likely that some US LEC customers, upon learning that they cannot have their caller names displayed because they receive their telephone service from US LEC instead of BellSouth, may come to believe that US LEC's service is inferior to BellSouth's or that US LEC cannot provide them with the quality of service that BellSouth's provides. US LEC represented that at least one of its large business customers discontinued its service with US LEC because of the inability to have its caller name delivered to BellSouth customers as long as it continued receiving service from US LEC. Thus, unless a preliminary injunction is issued and if BellSouth continues not to deliver caller name information to its Caller ID subscribers, there is a great likelihood that US LEC will suffer both economic loss and harm to its reputation as a reliable and quality provider of local telephone and telecommunications service.

In opposing the motion for a preliminary injunction, BellSouth argued that US LEC did not have standing. The Commission finds this argument without merit. US LEC has standing to bring an action for breach of the interconnection agreement to which both US LEC and BellSouth are parties. Further, US LEC and US LEC customers are the parties allegedly injured by BellSouth's failure or unwillingness to deliver caller name information to BellSouth's Caller ID subscribers. In addition, the Public Staff has intervened in the matter on behalf of US LEC customers, BellSouth customers, and the public. The Public Staff also seeks injunctive relief and agrees that BellSouth's own customers are injured by BellSouth's failure to provide complete and accurate Caller ID information, including caller name. BellSouth's Caller ID Deluxe customers are billed for receipt of this information and may be missing calls they want to receive because they are not receiving complete and accurate Caller ID information.

Accordingly, the Commission concludes that a preliminary injunction should issue pending a hearing on the merits. The Commission will not require the posting of a bond inasmuch as the Public Staff intervened in this matter and seeks injunctive relief on behalf of the using and consuming public. Protection of the public should not depend on whether US LEC is able to post a bond in this matter.

IT IS, THEREFORE, ORDERED as follows:

1. That BellSouth is hereby ordered, by issuance of this preliminary injunction pending final determination on the merits, to return US LEC and its customers to the status quo that existed prior to its decision not to perform Caller ID queries utilizing the TSI database;
2. That BellSouth is hereby ordered to deliver complete and accurate Caller ID information, including caller name, of US LEC customers who call BellSouth customers in North Carolina that subscribe to BellSouth Caller ID service, as it did prior to its decision not to perform Caller ID queries utilizing the TSI database;
3. That BellSouth may obtain the caller name information for US LEC customers using any reasonable means it has available to it;
4. That an evidentiary hearing on US LEC's Complaint is set for 9:00 a.m., on Tuesday, January 6, 2004, in the Commission Hearing Room 2115, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina; and,
5. That, among other issues, the parties should be prepared to address at the evidentiary hearing the appropriate terms and conditions for transmission of caller name information between the parties.

ISSUED BY ORDER OF THE COMMISSION.

This the 23rd day of December, 2003.

NORTH CAROLINA UTILITIES COMMISSION

Gail L. Mount

Gail L. Mount, Deputy Clerk

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