

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition by AT&T)
Communications of the)
Southern States, Inc., for)
Arbitration with)
BellSouth Telecommunications, Inc.,)
Concerning Interconnection and)
Resale under the)
Telecommunications Act of 1996.)
_____)

DOCKET NO. 960833-TP

FILED: August 21, 1996

**AT&T'S RESPONSE TO BELLSOUTH'S MOTION TO COMPEL
COMPLIANCE WITH THE TELECOMMUNICATIONS ACT OF 1996
AND FLORIDA PUBLIC SERVICE COMMISSION ORDER
NO. PSC-96-0933-PCO-TP**

AT&T Communications of the Southern States, Inc. ("AT&T"), hereby responds to BellSouth Telecommunications, Inc.'s ("BellSouth") Motion to Compel, filed August 9, 1996. BellSouth's Motion to Compel and Brief in Support thereof ("Motion") requests the Florida Public Service Commission ("Commission") to issue an order directing AT&T to comply with specific provisions of the Telecommunications Act of 1996 (the "Act") and the Commission's Order No. PSC-96-0933-PCO-TP ("Order") issued July 17, 1996, setting forth the procedural schedule in this docket. In essence, BellSouth seeks a restatement of resolved and unresolved issues from the parties' negotiations that AT&T previously set forth in its Petition for Arbitration ("Petition") and supporting documents filed in this docket on July 17, 1996. BellSouth has misinterpreted the requirements of the Act and this Commission's Order to avoid having to identify the issues that it wishes to arbitrate, an obligation that both the Act and the Order expressly impose on BellSouth. Moreover, BellSouth's Motion would result in slowing and confusing the arbitration

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process. Thus, the Commission should deny BellSouth's Motion.

The Act requires a party requesting arbitration to file a petition for arbitration. 47 U.S.C. § 252(b)(1). The petition is to set forth the issues the petitioner desires to be arbitrated. See id. § 252(b)(4). The Act also requires that when filing a petition, the petitioner "shall provide the state Commission all relevant documents concerning (i) the unresolved issues; (ii) the position of each of the parties with respect to those issues; and (iii) any other issue discussed and resolved by the parties." Id. § 252(b)(2).

AT&T filed its Petition on July 17, 1996 with this Commission. AT&T's Petition sets forth the major issues that AT&T believes are unresolved and the parties' respective positions. Under 47 U.S.C. § 252(b)(4)(A), these issues, along with any issues raised by BellSouth in its Response to AT&T's Petition, are the issues that AT&T is entitled to have arbitrated.

AT&T also submitted all documentation relevant to unresolved and resolved issues, including a copy of AT&T's proposed Interconnection Agreement, which is attached to AT&T's Petition as Attachment 4 and is incorporated by reference therein. The significance of the proposed Interconnection Agreement is that it sets forth the agreement that AT&T believes BellSouth should accept. Thus, it represents the agreement that, should the Commission find for AT&T on the issues AT&T requests to be arbitrated, the Commission will be asked to approve pursuant to 47 U.S.C. § 252(e).

BellSouth concedes in its Motion that AT&T's Petition identified unresolved issues in compliance with the Act. BellSouth's Motion to Compel at 2. Moreover, BellSouth does not argue that AT&T failed to provide any relevant documentation. Rather, BellSouth asserts that there are unresolved issues not listed in AT&T's petition.

Importantly, however, the Act anticipates such a situation, and expressly allows BellSouth to submit to this Commission a list of any additional issues it believes this Commission should resolve. Further, the Act requires the Commission to consider any issues in AT&T's Petition and BellSouth's response, and precludes the Commission from considering any other issues. See 47 U.S.C. § 252(b)(3)-(4). BellSouth has submitted its response to the Commission but has failed to identify any additional issue that it wishes to be arbitrated. AT&T has complied with its requirements under 47 U.S.C. § 252(b) and BellSouth, assuming that it believes other issues require arbitration, has not.

Two additional facts support AT&T's compliance with the Act. First, at the same time AT&T requested arbitration by this Commission, AT&T filed similar requests for arbitration with other state commissions. BellSouth has not filed a motion alleging that AT&T has violated the Act in any of these states. Second, the North Carolina Utilities Commission has held that AT&T's petition and supporting documentation, which are virtually identical to those that AT&T provided to this Commission, met the issues statement requirements of the Act¹. The Commission's order, citing the requirements under Section 252(b)(2) for stating resolved and unresolved issues, states that "AT&T appears to have done that in its July 17, 1996, Petition for Arbitration." North Carolina Order at 1.

On July 17, 1996, the day on which AT&T filed its Petition, the Prehearing Officer in this proceeding issued Order No. PSC-96-0933-PCO-TP which sets forth the procedural requirements for this docket. The Order addressed the duties of the petitioner

¹ See Order Requiring Summary in Matrix Form, issued by the North Carolina Utilities Commission on August 5, 1996, in Docket No. P-140, Sub 50, attached hereto as Attachment 1.

and stated:

Petitioner shall file with the petition a clear description of the provisions that have been agreed upon and the issues that are unresolved. The petitioner shall also file a proposed list of issues for this proceeding and the position of each of the parties with respect to those issues. The petitioner shall also file any other issues discussed and resolved by the petitioner and respondent.

Order 96-0933 at 6. AT&T received the Commission's Order after it filed its petition and supporting documentation, a fact BellSouth ignores. Nevertheless, AT&T's Petition and proposed Interconnection Agreement set forth the issues AT&T believed are resolved and unresolved and the parties' relative positions at the time of filing. Since the issuance of the Order, AT&T has complied with the Order's other requirements, supplying prefiled testimony and exhibits. In addition, AT&T submitted a proposed issues list to the Commission staff on July 26, 1996, and has participated in two issue identification conferences with the staff and BellSouth, one held on July 31, 1996, and the other on August 20, 1996, to refine the issues to be presented to the Commission. The Commission has not requested that AT&T supply additional statements on resolved or unresolved issues.

The Commission's Order additionally places the burden on each of the parties to put before the Commission those issues that are relevant to the arbitration. The Order specifies that "[a]ny issue not raised by a petitioner or respondent prior to the issuance of a prehearing order shall be waived by that party, except for good cause shown." Order at 6. AT&T's Petition for Arbitration and supporting documentation state those issues

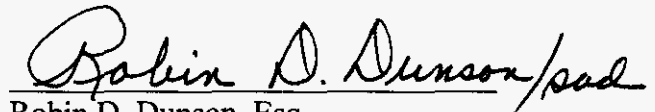
which AT&T believes remain to be arbitrated. AT&T, however, cannot speak for those additional issues which BellSouth asserts remain unresolved, and BellSouth bears the burden of bringing those issues to the attention of the Commission. AT&T can only assume that BellSouth, like AT&T, maintains information on what issues it believes are resolved or remain unresolved.

AT&T's Petition for Arbitration and supporting documents clearly meet the requirements of the Act. It clearly sets forth the issues AT&T seeks this Commission to arbitrate. There are several hundred sub-issues, however, that the parties have been negotiating under the Act. If the commission would like for AT&T to submit a list of those sub-items that AT&T believes has been resolved and those that AT&T believes remain unresolved, AT&T will do so. Due to the length and complexity of such a list, however, AT&T believes that such a requirement would divert the parties and this Commission from the purpose of the arbitration as required by the Act -- to resolve those issues AT&T and BellSouth have put before the Commission. AT&T respectfully requests that the Commission DENY BellSouth's motion to compel.

Respectfully submitted this 21st day of August, 1996.

A handwritten signature in cursive script, appearing to read "Tracy Hatch", written over a horizontal line.

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CERTIFICATE OF SERVICE

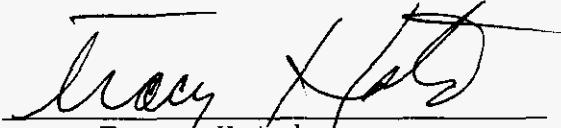
DOCKET NOS. 960833-TP and 960846-TP

I HEREBY CERTIFY that a true copy of the foregoing has been furnished by U. S. Mail or hand-delivery to the following parties of record this 21st day of August, 1996:

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