



Tracy Hatch  
Attorney

Suite 700  
101 N. Monroe St.  
Tallahassee, FL 32301  
904 425-6364  
FAX: 904 425-6361

October 29, 1996

Mrs. Blanca S. Bayo, Director  
Division of Records and Reporting  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, Florida 32399-0850

Docket No. 960833-TP

Dear Mrs. Bayo:

Enclosed for filing in the above referenced docket are an original and fifteen (15) copies of AT&T's Response to BellSouth Telecommunications, Inc.'s Notice of Order of The Eighth Circuit Court of Appeal's Order Granting Stay Pending Judicial Review and Request for Relief and Motion to Strike BellSouth's "Notice" As An Improper Pleading.

Copies of the foregoing are being served on all parties of record in accordance with the attached Certificate of Service.

- ACK
- AFA \_\_\_\_\_
- APP \_\_\_\_\_
- CAF \_\_\_\_\_
- CMU \_\_\_\_\_
- CTR \_\_\_\_\_
- EAG \_\_\_\_\_
- LEG 2
- LIN 5
- OPC \_\_\_\_\_
- RCH \_\_\_\_\_
- SEC 1
- WAS \_\_\_\_\_
- OTH \_\_\_\_\_

Yours truly,  
  
Tracy Hatch

Attachments

cc: Parties of Record

RECEIVED & FILED  
  
FPSC-BUREAU OF RECORDS

DOCUMENT NUMBER-DATE  
11492 OCT 29 1996  
FPSC-RECORDS/REPORTING

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10/29/96

In re: Petitions by AT&T )  
of the Southern States, Inc., )  
MCI Telecommunications )  
Corporation MCI Metro Access )  
Transmission Services, Inc., )  
American Communications )  
Services, Inc. for arbitration) )  
of certain terms and )  
conditions of a proposed )  
agreement with BellSouth )  
Telecommunications, Inc. )  
concerning interconnection )  
and resale under the )  
Telecommunications Act of 1996)

Docket No. 960833-TP  
Docket No. 960846-TP  
Docket NO. 960916-TP

Filed: October 29, 1996

AT&T COMMUNICATIONS OF THE SOUTHERN STATES, INC.'S RESPONSE  
TO BELLSOUTH TELECOMMUNICATIONS, INC.'S NOTICE OF ORDER OF  
THE EIGHTH CIRCUIT COURT OF APPEAL'S ORDER GRANTING STAY  
PENDING JUDICIAL REVIEW AND REQUEST FOR RELIEF

AND

MOTION TO STRIKE

AT&T Communications of the Southern States, Inc. (AT&T) hereby files its response to and motion to strike BellSouth's "Notice of Order to the Eighth Circuit Court of Appeal's Order Granting Stay Pending Judicial Review and Request for Relief," filed October 17, 1996. In support, AT&T states:

1. BellSouth's Notice seeks to have the Commission take official notice of the Eighth Circuit's Order Granting Stay Pending Judicial Review, filed October 15, 1996.

2. Based on the Court's opinion imposing a stay of only the pricing provisions and the "pick and choose" rule, the Notice proceeds to ask the Commission to:

- a) reject TELRIC pricing and adopt an embedded cost pricing standard;
- b) set interim prices above the FCC's proxies and subject to true-up;
- c) reject any geographic deaveraging of rates for unbundled elements;
- d) price rebundled elements that resemble a service provided by the ILEC the same as the coincident wholesale service;
- e) include any rebundled elements within the joint marketing prohibitions
- f) price each function of the switch as a separate wholesale service

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- g) establish wholesale prices according to BellSouth's "actually avoided" proposal
- h) reject mutual traffic exchange and set interconnection transport and termination rates based on company specific costs
- i) impose switched access charges on any toll traffic that is carried via an unbundled element
- j) preemptively reject any request of a CMRS provider to interpret the Act in a manner similar to the FCC; and finally,
- k) reject the application of Section 252(i) to the rate provisions of negotiated or arbitrated agreements.

3. AT&T does not object to BellSouth's request for official notice of the Eight Circuit's Order imposing a stay pending judicial review of the FCC's Order and Rules implementing the Communications Act of 1996.

4. AT&T strenuously objects to BellSouth's inclusion in a "Notice" its argument and requests for relief based on the implications or the Court's Stay Order.

5. The Eighth Circuit's Order was premised solely on jurisdictional grounds. The Court expressly refrained from making any findings regarding the merits of the FCC's pricing proposals. The simple effect of the Order is to allow state commissions to proceed to address pricing issues without being bound specifically to FCC's pricing standards or proxies. Nothing precludes this Commission from adopting any of the pricing standards advanced by the FCC upon an adequate record. Without any finding by the Court on the substantive arguments regarding the pricing proposals, BellSouth's requests for relief are without any support.

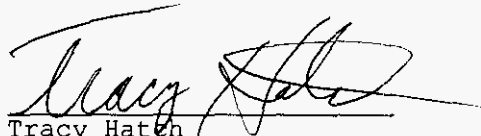
6. The Eighth Circuit's Order was filed on October 15, 1996. To the extent that BellSouth desired to include its arguments regarding the Order in the context of its arbitration with AT&T, it could and should have included such comments in its post-hearing brief, filed on October 22, 1996, in this proceeding. BellSouth's arguments are no more than an inappropriate reiteration of its arguments in its arbitration proceeding. With the exception of a preemptive strike at CMRS

providers, BellSouth's arguments and requests for various forms of relief match virtually every major proposal that BellSouth advanced in its arbitration with AT&T before this Commission. Under the guise of a "Notice" BellSouth has reargued its entire case against AT&T. BellSouth's blatant attempt at a second bite at the arbitration apple is inappropriate and should not be countenanced by this Commission.

7. BellSouth's arguments are, at the very least, an inappropriate supplement to its arbitration brief. Including substantive arguments in the form of a notice, is an even more inappropriate attempt to inject a new form of post-hearing pleading that is not allowed either under the Commission's rules or under the Procedural Order in this case.

WHEREFORE, based on the foregoing, AT&T moves the Commission to strike BellSouth's Notice to the extent that it seeks anything other than official recognition of the Stay Order entered by the Eight Circuit Court of Appeals.

RESPECTFULLY submitted this 29th day of October, 1996.



Tracy Hatch  
Michael W. Tye  
101 N. Monroe St.  
Suite 700  
Tallahassee, Florida 32301

Attorneys for AT&T Communications  
of the Southern States, Inc.

**CERTIFICATE OF SERVICE**

**DOCKET NOS. 960833-TP, 960846-TP and 960916-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 29<sup>th</sup> day of October, 1996:

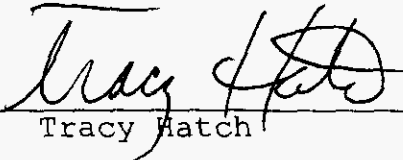
BellSouth Telecommunications  
c/o Nancy H. Sims  
150 S. Monroe Street, Suite 400  
Tallahassee, FL 32301

Donna Canzano, Esq.  
Division of Legal Services  
Florida Public Service Comm.  
2540 Shumard Oak Boulevard  
Tallahassee, FL 32399

Richard D. Melson, Esq.  
Hopping Green Sams & Smith  
123 S. Calhoun Street  
Tallahassee, FL 32301

Floyd R. Self, Esq.  
Messer, Caparello et al  
215 S. Monroe Street  
Tallahassee, FL 32301

Nancy B. White, Esq.  
BellSouth Telecommunications  
675 West Peachtree St., Room 4300  
Atlanta, GA 30375

  
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Tracy Hatch