

E. EARL EDENFIELD, JR.
General Attorney

BellSouth Telecommunications, Inc.
150 South Monroe Street
Room 400
Tallahassee, Florida 32301
(305) 347-5561

ORIGINAL

November 16, 2000

RECEIVED-FPSC
00 NOV 16 PM 4: 14
RECORDS AND REPORTING

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

Re: **000084-TP (US LEC Arbitration)**

Dear Ms. Bayó:

Enclosed is an original and fifteen copies of BellSouth Telecommunications, Inc.'s Response to US LEC of Florida, Inc.'s Motion To Strike, 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,

E. Earl Edenfield, Jr.
E. Earl Edenfield, Jr.

Enclosures

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

APP
JAF
CMP
JOM 3
DTR
ECR
LEG 1
OPC
PAI
RGO
SEC 1
SER
OTH

RECEIVED & FILED
Max
FPSC-BUREAU OF RECORDS

DOCUMENT NUMBER-DATE

14844 NOV 16 8

FPSC-RECORDS/REPORTING

CERTIFICATE OF SERVICE
Docket No. 000084-TP


I HEREBY CERTIFY that a true and correct copy of the foregoing was served via

U.S. Mail this 16th day of November, 2000 to the following:

Diana Caldwell
Staff Counsel
Florida Public Service
Commission
Division of Legal Services
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

Aaron Cowell
Executive Vice President and
General Counsel
US LEC Corporation
Transamerica Square
401 N. Tryon Street, Suite 1000
Charlotte, N.C. 28202
Tel. No. (704) 319-1117
Fax. No. (704) 319-0069

Kenneth A. Hoffman, Esq.
John R. Ellis, Esq.
Rutledge, Ecenia, Purnell & Hoffman
P.O. Box 551
Tallahassee, FL 32302
Tel. No.: (850) 681-6788
Fax. No. (850) 681-6515


E. Earl Edenfield, Jr.

BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

ORIGINAL

In re:)
) Docket No. 000084-TP
Petition for Arbitration of an Interconnection)
Agreement Between BellSouth Telecommunications,)
Inc. and US LEC of Florida, Inc. Pursuant to the)
Telecommunications Act of 1996.) Filed: November 16, 2000
)

**RESPONSE OF BELLSOUTH TELECOMMUNICATIONS, INC. TO
US LEC OF FLORIDA, INC.'S MOTION TO STRIKE**

BellSouth Telecommunications, Inc. ("BellSouth") responds to the Motion to Strike filed by US LEC of Florida, Inc. ("US LEC") on November 9, 2000, and says:

In support of its Motion to Strike, US LEC makes two arguments: (1) the issue of the reciprocal compensation rate is not an issue in this proceeding; and (2) even if the issue is properly in this proceeding, it was improper for BellSouth to raise it in rebuttal testimony. US LEC is wrong on both counts.

As the basis for its contention that the reciprocal compensation rate issue is not properly in this proceeding, US LEC refers to issue 7 of BellSouth's Proposed Issues List filed on August 8, 2000. Conveniently, US LEC fails to mention that the parties rejected the issue 7 language proposed by BellSouth. Instead, the parties *agreed* that Issue 7 should be worded as: "Should ISP-bound traffic be treated as local traffic for the purposes of reciprocal compensation, *or should it be otherwise compensated?*" (emphasis added) It is disingenuous, at best, for US LEC to have agreed to place the issue of how to compensate for ISP-bound traffic into the proceeding

DOCUMENT NUMBER-DATE

14844 NOV 16 8

FPSC-RECORDS/REPORTING

and now claim otherwise.¹ Further, BellSouth raised in its Pre-Hearing Statement the issue of prior Commission decisions on the ISP-bound traffic issue, including the inter-carrier compensation mechanism. As US LEC points out in the Motion to Strike, BellSouth relies on the Commission's August 29, 2000 decision (Order No. PSC-00-1680-FOF-TP) in the BellSouth/Global NAPs Arbitration (Docket No. 991220-TP). US LEC does not dispute that it was aware of the Commission's decision in the BellSouth/Global NAPs Arbitration, which set the rate discussed in BellSouth's rebuttal testimony, or that BellSouth agreed to be bound by those decisions, pending the FCC's final determination of this issue. In fact, US LEC witness Timothy Gates testified in pre-filed direct that "I would suggest that the Commission look to its own prior decisions ... in determining how to address the present dispute." (Gates Direct Testimony, at 46) Contrary to US LEC's assertions, the issue of the appropriate rate for ISP-bound traffic is an issue in this proceeding.

The other basis for the Motion to Strike is equally misplaced. US LEC contends that the issue of the rate for ISP-bound traffic was not raised by US LEC, but instead was raised in the first instance in BellSouth's rebuttal testimony. Apparently, US LEC had not reviewed the direct testimony of its own witnesses in this proceeding as even a cursory review of the 26 pages of direct testimony filed by Mr. Gates on this issue (almost a third of his total direct testimony) reflects detailed discussions on the amount and method of compensation. For instance, the very first sentence of testimony on this issue provides, "US LEC argues that parties should compensate one another at the reciprocal compensation rate for ISP-bound traffic, just like any

¹ To the extent that US LEC argues that the scope of the docket is determined solely by its Petition and BellSouth's Response, US LEC is apparently suggesting that the Issue Identification and Order Establishing Procedure are irrelevant. US LEC waived any claim as to the scope of the issues raised in the Petition and Response when US LEC concurred with the issues list included in the Order Establishing Procedure.

other local call.” (Gates Direct Testimony, at 35) In other words, US LEC takes the position that there is no reason to differentiate the compensation to be paid for ISP-bound traffic from the rate paid for terminating local traffic. US LEC’s contention that “BellSouth attempts for the first time to raise the question of a different reciprocal compensation rate for ISP-bound traffic” is simply not true. (Motion to Strike, at ¶7) Instead, BellSouth’s rebuttal testimony is directly responsive to issues raised by US LEC in direct testimony, and therefore proper.

Although the Commission will base a ruling on its own reading of US LEC’s direct testimony, BellSouth finds the following portions of Mr. Gates’ direct testimony to be particularly enlightening on this issue of who raised the differing compensation rates:

This results from the fact that even though both voice-grade local calling and calls to the Internet use the same network in almost exactly the same way (thereby generating largely identical costs), local callers would be faced with two different pricing structures for these two identical or similar types of calling. If the Commission were to introduce such a pricing structure, it would arbitrarily distinguish between two types of traffic that are largely identical. For example, one hour of local calling from your computer to the Internet generates exactly the same level of cost on the network as does one hour of calling from your home to your best friend who may live across town.

(Gates Direct Testimony, at 38)

First, there is no technical or economic distinction between ISP-bound traffic and other types of local traffic, other than the fact that ISP-bound calls generally tend to have longer holding times than do average local calls... To isolate traffic that originates to a given customer group and contend that the network costs associated with switching traffic to that customer group differ substantially from all other traffic on the network is nonsensical. ... Hence, distinguishing between these two types of calls is an artificial distinction that can lead to poor rate design and consumption decisions.

(Gates Direct Testimony, at 40-41)

It is likely for that reason that BellSouth is acutely interested in the rates that will be paid for reciprocal compensation and the terms and conditions under which they will be assessed.

(Gates Direct Testimony, at 44)

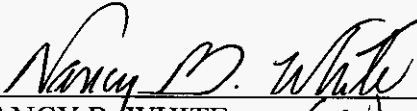
Yet we know that BellSouth is not indifferent because it has refused to agree to such a compensation framework as part of the new interconnection agreement. The question is: Why? The answer lies in one of two reasons. Either (1) BellSouth's current rate for call termination is not representative of its actual underlying costs and it realizes that paying an ALEC for terminating traffic actually makes it economically "worse off" than terminating the traffic itself, or (2)

(Gates Direct Testimony, at 56)

It is difficult to assess on whose testimony US LEC based the Motion to Strike, but one thing is certain; it could not have possibly been based on US LEC's direct testimony filed in this proceeding. Given the inconsistencies between the allegations in the Motion to Strike and the direct testimony filed by US LEC, BellSouth can only assume that this is yet another attempt by US LEC to unduly delay this proceeding.² Thus, BellSouth respectfully submits that the Commission should deny US LEC's Motion to Strike, including US LEC's alternative request to file sur-rebuttal testimony. Further, the Commission should consider whether it is appropriate to assess against US LEC the costs BellSouth incurred in responding to this baseless Motion.

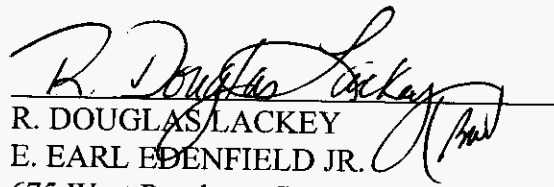
Respectfully submitted this 16th day of November 2000.

BELLSOUTH TELECOMMUNICATIONS, INC.



NANCY B. WHITE
c/o Nancy Sims
150 South Monroe Street, #400
Tallahassee, Florida 32301
(305) 347-5558

² Previously, US LEC made the unilateral decision to not file testimony on the due date and instead filed a Motion seeking a continuance of this proceeding. The Commission denied that Motion.


R. DOUGLAS LACKEY
E. EARL EDENFIELD JR.
675 West Peachtree Street, #4300
Atlanta, Georgia 30375
(404) 335-0763

236168