



BellSouth Telecommunications, Inc.

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October 16, 2006

VIA HAND DELIVERY

filed electronically in docket office on 10/16/06

Hon. Sara Kyle, Chairman
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, TN 37238

Re: Complaint of Aeneas Communications, LLC
Docket No. 02-01274

Dear Chairman Kyle:

Enclosed are the original and four copies of BellSouth's Response to Restated Petition.

A copy is being provided to counsel of record.

Very truly yours,

A handwritten signature in black ink, appearing to be "Guy M. Hicks", written over a horizontal line.

Guy M. Hicks

GMH:njc

BEFORE THE TENNESSEE REGULATORY AUTHORITY
Nashville, Tennessee

IN RE: Complaint of Aeneas Communications, LLC

Docket 02-01274

BELLSOUTH TELECOMMUNICATIONS, INC.
RESPONSE TO RESTATED PETITION

BellSouth Telecommunications, Inc. ("BellSouth") responds to the Restated Petition ("Petition") of Aeneas Communications, LLC ("Aeneas") and states the following:

FIRST ISSUE

1. Responding to the first issue raised by Aeneas, BellSouth denies engaging in any unauthorized "self-help" regarding the recovery of SEEM overpayments that Aeneas received under the prior Tennessee SQM/SEEM plan ("Prior TN Plan").¹ Rather, nothing in the Prior Plan nor in the current Tennessee SQM/SEEM Plan ("Current TN Plan")² prevents BellSouth from recouping SEEM overpayments. Further, nothing in the Prior TN Plan nor in the Current TN Plan authorizes a competitive local exchange carrier ("CLEC") to unjustly keep as a windfall any SEEM overpayment.

In 2004, the Florida Commission commenced an independent third-party audit, conducted by Liberty Consulting Group ("Liberty"), of certain aspects of the prior

¹ In 2002, and in connection with approving a settlement agreement regarding several matters, the Tennessee Regulatory Authority ("Authority") adopted the Florida SQM/SEEM plan. *See* Docket No. 01-00193, *Final Order Accepting Settlement Agreement and Adopting Performance Measurements, Benchmarks and Enforcement Mechanisms*, dated October 4, 2002.

² During the Authority Conference held on April 27, 2005, the Authority approved a settlement agreement that established a new SQM/SEEM plan for BellSouth in Tennessee. Docket No. 04-00150, *Order Approving Settlement Agreement*, dated August 25, 2005.

Florida SQM/SEEM plan (Prior FL Plan).³ Among other things, Liberty concluded that BellSouth had made certain SEEM overpayments under the Prior FL Plan. Of course, the Prior FL Plan and the Prior TN Plan were the same plan. Accordingly, this meant that BellSouth had made certain SEEM overpayments under the Prior TN Plan.

Aeneas is among the many CLECs which received SEEM overpayments under the Prior TN Plan. Rather than demanding the immediate repayment of SEEM overpayments, BellSouth initially chose to recoup SEEM overpayments by applying (or crediting) future SEEM liabilities towards SEEM overpayments (thus reducing the amount of the overpayment). In December 2005, after several months of “crediting,” BellSouth requested Aeneas to repay the remaining SEEM overpayment balance (over \$22,000). Other similarly situated CLECs received similar requests to repay SEEM overpayments.

Aeneas has refused to repay BellSouth, and thus has wrongfully held on to monies that Aeneas has no right to retain. As such, BellSouth has continued to apply SEEM liabilities to reduce the amount Aeneas owes BellSouth. As of September 2006, Aeneas still owed BellSouth over \$11,000.

There is no litigation pending in Florida regarding the recoupment of SEEM overpayments under the Prior FL Plan. Indeed, the Florida Commission Staff is currently conducting a periodic review of the current FL SQM/SEEM plan. In connection with such periodic review – open to all interested parties --- CLECs have proposed adding to the current FL SQM/SEEM plan a “repayment” provision that addresses the “Aeneas situation.” That is, CLECs have proposed a plan provision that addresses what options a

³ See FL Commission Docket No. 000121A-TP. Liberty’s Final Audit Report has been filed with the Florida Commission.

CLEC has when SEEM liabilities are insufficient to cover a SEEM overpayment that such CLEC received. The CLEC proposal is attached as **Exhibit 1**.⁴ Thus, completely contrary to Aeneas' allegations, the CLEC proposal demonstrates the obvious – CLECs have acknowledged that BellSouth has the right to recoup SEEM overpayments.

Finally, to the extent Aeneas has a performance plan-related concern, the appropriate place to raise such concern is in the Authority's performance plan docket.⁵

SECOND ISSUE

2. BellSouth denies charging Aeneas any "unjust, unreasonable, unduly preferential or discriminatory pricing for collocation in its Jackson, Tennessee CO [central office]." ⁶ Further, BellSouth denies that Aeneas is entitled to any refund. To the contrary, BellSouth has properly charged Aeneas for collocation-related activity in accordance with the parties' interconnection agreement.⁷

THIRD ISSUE

3. Under the parties' current interconnection agreement, Aeneas does not have the right to bill BellSouth a Local Service Request ("LSR") charge "when a phone number must be ported away from Aeneas to BellSouth."⁸ Moreover, Aeneas' current interconnection agreement is out-dated and not compliant with the law. Accordingly, BellSouth has reasonably refused to voluntarily agree to amend a non-compliant interconnection agreement in the "piece-part" manner proposed by Aeneas. As noted by all parties that participated in the Authority's generic change of law docket,⁹

⁴ BellSouth does not necessarily agree with the CLEC proposal.

⁵ Docket No. 04-00150.

⁶ Petition (Second Issue).

⁷ BellSouth denies that Aeneas has attached all relevant portions of the parties' interconnection agreement.

⁸ Petition (Third Issue).

⁹ See Docket No. 04-00381.

interconnection agreements must be amended to remove the availability of unbundled network elements (“UNEs”) de-listed by the Federal Communications Commission (“FCC”) pursuant to Section 251 of the Telecommunications Act of 1996 (the “Act”).¹⁰ Accordingly, Aeneas’s request to amend in a “piece-meal” fashion an outdated, non-compliant interconnection agreement should be rejected.

BellSouth further states that the Tennessee statutes cited by Aeneas speak for themselves and require no response from BellSouth. To the extent such statutes are applicable, BellSouth complies with such statutes.

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

FIRST AFFIRMATIVE DEFENSE

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

SECOND AFFIRMATIVE DEFENSE

6. The requested relief regarding the payment of LSR charges on a retroactive basis is barred by the doctrine of laches.

Respectfully submitted,

BELLSOUTH TELECOMMUNICATIONS, INC.

By: 

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¹⁰

See id. BellSouth’s Post-Hearing Brief at 73-74; Joint CLEC Post-Hearing Brief at 11-12.

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Vicki Gordon Kaufman
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October 5, 2006

Via E-mail

Ms. Blanca Bayo
Florida Public Service Commission
2450 Shumard Oak Boulevard
Tallahassee, FL 32399

Re: CLEC Response to Action Item 3
Docket No. 000121A

Dear Ms. Bayo:

Attached please find the CLEC Coalition's response to action item 3 in the above-referenced docket.

Sincerely,

/s/Vicki Gordon Kaufman
Vicki Gordon Kaufman

VGK/pg
Enclosure

cc: Parties of Record

Action Item 3. Please provide revised language for 4.4.7.2 regarding notification of overpayments and any proposed formula for payback.

If a SEEM overpayment is made to a CLEC, and BellSouth's SEEM liability calculated and payable to that CLEC in Florida in the next month's payment cycle is insufficient to cover the overpayment, BellSouth shall continue to apply the remaining overpayment amount to future Florida SEEM payments to the CLEC for a period of up to six months. After that time, if additional overpayment monies are due to BellSouth, BellSouth will contact the CLEC in writing to make payment arrangements. If, after negotiating in good faith for a period of 30 days, no agreement on payment arrangements can be made, the parties may appeal to the Commission to resolve the dispute.

CERTIFICATE OF SERVICE

I hereby certify that on October 16, 2006, a copy of the foregoing document was served on the parties of record, via the method indicated:

☐ Hand
☐ Mail
☐ Facsimile
☐ Overnight
☒ Electronic

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