

BEFORE THE TENNESSEE REGULATORY AUTHORITY
Nashville, Tennessee

In Re: *BellSouth's Motion For The Establishment Of A New Performance Assurance Plan*

Docket 04-00150

**BELLSOUTH TELECOMMUNICATIONS, INC.'S MOTION TO
COMPEL DISCOVERY RESPONSES FROM
TALK AMERICA**

BellSouth Telecommunications, Inc. ("BellSouth") files this *Motion to Compel Discovery Responses from Talk America* ("Talk America") and respectfully shows the Tennessee Regulatory Authority ("Authority" or "TRA") as follows:

DISCUSSION

On January 7, 2005, BellSouth responded to CompSouth's discovery in this docket and provided CompSouth more than 6,000 pages of responsive documents. BellSouth took the responsibility of discovery seriously: investing hours of time to search for and review information.

On the day that BellSouth electronically served the parties and the TRA with this voluminous amount of information in response to discovery, BellSouth received in turn, from Talk America, precisely nothing at all. Unlike CompSouth, Talk America did not even submit objections to the discovery. Rather, Talk America ignored the discovery.¹

¹ CompSouth clearly asserted that it was not required to answer for Talk America and made no reference to interposing objections related to the individual discovery served on Talk America. These parties cannot have it both ways

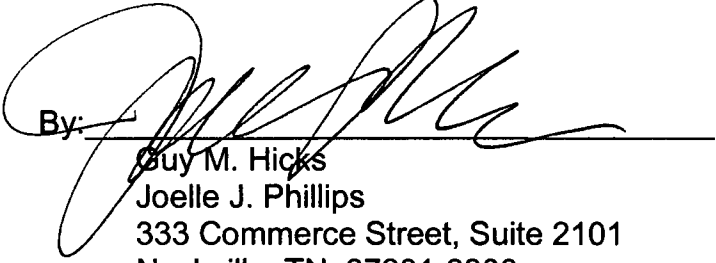
Obviously, the TRA convened this docket and instructed the hearing office to set a schedule so that this case could proceed. Talk America's failure to respond to discovery – or even acknowledge it – obstructs the process of this docket and it should not be tolerated.

As Talk America has interposed no objections, an order compelling its responses to all the discovery propounded by BellSouth is warranted.

For the reasons articulated above, BellSouth respectfully seeks an order requiring Talk America to answer all discovery propounded in *BellSouth's First Set of Interrogatories to Talk America*² in full.

Respectfully submitted,

BELLSOUTH TELECOMMUNICATIONS, INC.

By: 

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² For ease of referenced, the discovery (including Certificate of Service) is attached to this Motion as Exhibit 1

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BELLSOUTH TELECOMMUNICATIONS, INC.'S FIRST
INTERROGATORIES TO
TALK AMERICA

BellSouth Telecommunications, Inc. ("BellSouth"), hereby requests Talk America ("Talk America") to provide answers in response to the following discovery requests in the time established by the Procedural Schedule in this docket.

DEFINITIONS

1. "BellSouth" means BellSouth Telecommunications, Inc , and its subsidiaries, their present and former officers, employees, agents, representatives, directors, and all other persons acting or purporting to act on behalf of BellSouth Telecommunications, Inc.

2 The terms "you" and "your" refer to Talk America.

3. "Plan" means the Tennessee Performance Assurance Plan.

4 "Talk America" means Talk America, and its subsidiaries, their present and former officers, employees, agents, directors, and all other persons acting or purporting to act on behalf of Talk America.

5 The term "person" means any natural person, corporation, corporate division, partnership, other unincorporated association, trust, government agency, or entity.

6. The term "document" shall have the broadest possible meaning under applicable law. "Document" means every writing or record of every type and description that is in the possession, custody or control of Talk America, including, but not limited to, correspondence, memoranda, drafts, work papers, summaries, stenographic or handwritten notes, studies, publications, books, pamphlets, reports, surveys, minutes or statistical compilations, computer and other electronic records or tapes or printouts, including, but not limited to, electronic mail files, and copies of such writings or records containing any commentary or notation whatsoever that does not appear in the original. The term "document" further includes, by way of illustration and not limitation, schedules, progress schedules, time logs, drawings, computer disks, charts, projections, time tables, summaries of other documents, minutes, surveys, work sheets, drawings, comparisons, evaluations, laboratory and testing reports, telephone call records, personal diaries, calendars, personal notebooks, personal reading files, transcripts, witness statements and indices

7. The term "communication" means any oral, graphic, demonstrative, telephonic, verbal, electronic, written or other conveyance of information, including, but not limited to, conversations, telecommunications and documents.

8. The term "referring or relating to" means consisting of, containing, mentioning, suggesting, reflecting, concerning, regarding, summarizing, analyzing, discussing, involving, dealing with, emanating from, directed at, pertaining to in any way, or in any way logically or factually connected or associated with the matter discussed.

9. "And" and "or" as used herein shall be construed both conjunctively and disjunctively and each shall include the other whenever such construction will serve to bring within the scope of these discovery requests any information that would otherwise not be brought within their scope.

10. The singular as used herein shall include the plural, and vice versa, and the masculine gender shall include the feminine and the neuter.

11. "Identify" or "identifying" or "identification" when used in reference to a natural person means to state:

- a) the full legal name of the person;
- b) the name, title and employer of the person at the time in question;
- c) the present or last known employer of such person;
- d) the present or last known home and business addresses of the person; and
- e) the present home address.

12. "Identify" or "identifying" or "identification" when used in reference to a person other than a natural person means to state:

- a) the full name of the person and any names under which it conducts business;
- b) the present or last known address of the person; and
- c) the present or last known telephone number of the person.

13. "Identify" or "identifying" or "identification" when used in reference to a document means to provide with respect to each document requested to be identified

by these discovery requests a description of the document that is sufficient for purposes of a request to produce or a subpoena duces tecum, including the following:

- a) the type of document (e.g., letter, memorandum, etc.);
- b) the date of the document;
- c) the title or label of the document;
- d) the Bates number or other identifier used to number the document for use in litigation;
- e) the identity of the originator;
- f) the identity of each person to whom it was sent;
- g) the identity of each person to whom a copy or copies were sent,
- h) a summary of the contents of the document;
- i) the name and last known address of each person who presently has possession, custody or control of the document; and
- j) if any such document was, but is no longer, in your possession, custody or control or is no longer in existence, state whether it: (1) is missing or lost; (2) has been destroyed; or (3) has been transferred voluntarily or involuntarily, and, if so, state the circumstances surrounding the authorization for each such disposition and the date of such disposition.

14. "Identify," "identifying" or "identity" when used in reference to a communication means to state the date of the communication, whether the communication was written or oral, the identity of all parties and witnesses to the

communication, the substance of what was said and/or transpired and, if written, the identity of the document(s) containing or referring to the communication.

15. "Business case" refers to any undertaking that analyzes or evaluates, among other things, the business value to be realized, the tangible and intangible benefits, the effect on business processes and people's jobs, the financials, the technology to be applied, and the risks, potential problems and rewards of a particular course of action. It is the process that would be undertaken prior to going into a particular business, or before undertaking a particular course of action in order to determine whether the actions taken would provide a positive business benefit, when balanced against the potential problems that might be incurred.

GENERAL INSTRUCTIONS

1 If you contend that any response to any Interrogatory may be withheld under the attorney-client privilege, the attorney work product doctrine or any other privilege or basis, please state the following with respect to each such response in order to explain the basis for the claim of privilege and to permit adjudication of the propriety of that claim:

- a) the privilege asserted and its basis;
- b) the nature of the information withheld; and
- c) the subject matter of the document, except to the extent that you claim it is privileged.

2. These discovery requests are to be answered with reference to all information in your possession, custody or control or reasonably available to you. These discovery requests are intended to include requests for information, which is physically within your possession, custody or control as well as in the possession,

custody or control of your agents, attorneys, or other third parties from which such documents may be obtained.

3. If any Interrogatory cannot be answered in full, answer to the extent possible and specify the reasons for your inability to answer fully

4. These interrogatories are continuing in nature and require supplemental responses should information unknown to you at the time you serve your responses to these interrogatories subsequently become known.

5. For each Interrogatory, provide the name of the company witness(es) or employee(s) responsible for compiling and providing the information contained in each answer.

6 To the extent Talk America has previously provided a response to any Interrogatory, which prior response is responsive to any of the following Interrogatories, in Tennessee or any other state in proceedings in which BellSouth and Talk America are parties, Talk America need not respond to such Interrogatory again, but rather may respond to such Interrogatory by identifying the prior response to such Interrogatory by state, proceeding, docket number, date of response, and the number of such response. If such prior response does not respond to the Interrogatory contained below in its entirety, you should provide all additional information necessary to make your answers to these Interrogatories complete.

INTERROGATORIES

1. State each example of BellSouth's performance in its wholesale service of any kind that you will contend in this docket has declined in quality since BellSouth obtained 271 relief in Tennessee. For each such example, provide the basis for your

contention, including all examples of specific instances of performance issues of which you are aware, and, if your contention is based on any fact other than your company's own experience, state the source of such information, including the company involved.

2. Identify each SEEM penalty payment you have received in the last twelve months, and, for each payment, describe in detail how such payment relates to actual harm sustained by your company as a result of the wholesale service measured by the particular benchmark for which the SEEM payment was provided.

3. State the percentage of your company's Tennessee (intra-state) revenue represented by Tennessee SEEM payments for each calendar year beginning in 2002.

4. Identify all CLEC customers (if any) that you contend you have lost as a result of the quality of wholesale service provided by BellSouth, and for each such customer, identify the service issue you believe caused the loss.

5. Do you contend that your company has sustained harm to its reputation as a quality local service provider as a result of BellSouth's wholesale performance. If your answer is anything other than an unqualified "no", then state all facts, including all specific customer information, on which your contention is based.

6. If you contend that there have been instances where BellSouth erroneously reported that a trouble has been repaired and the trouble ticket closed, yet your customer still did not have service, please provide the trouble ticket number, date of ticket closure and line or circuit identifier for each instance

7. Identify all damages (if any) you have sustained that arise out of the quality of wholesale service provided by BellSouth pursuant to the Plan.

8. Quantify all damages (if any) you have sustained that arise out of the quality of wholesale service provided by BellSouth pursuant to the Plan.

9. Describe in detail all examples of CLEC customers that you contend have been negatively impacted by service provided by BellSouth for each SEEM submetric that is associated with:

- (i) Troubles Within 30 days of Provisioning
- (ii) Repeat Troubles Within 30 Days
- (iii) Customer Trouble Report Rate
- (iv) Missed Repair Appointments
- (v) Inability To Test Line Shared Loops
- (vi) Premature Trouble Closure
- (vii) Any other measure (list specific measure)

10. Describe in detail all examples of CLEC customers that you contend have been negatively impacted by service provided by BellSouth in any function not currently reflected in the SQM or SEEM.

11. If you contend that BellSouth is “backsliding” (providing service inferior to that service provided when BellSouth received 271 relief) in the quality of wholesale service in Tennessee, describe in detail all such instances you contend to be examples of “backsliding”.

12. Identify each specific provision of BellSouth’s SQM and SEEM proposal filed on May 13, 2004 to which you object and the nature and reason for the objection.

13. If you contend that the Plan’s scope should be extended beyond ensuring BellSouth’s continued compliance with obligations arising under Section 251, please

identify all legal authority, including but not limited to case law, orders, and statutes, that supports your contention.

14. Have you developed an alternative performance assessment plan for BellSouth in Tennessee? If so, please provide all information that describes the alternative plan.

15. Identify all amounts that you have paid to any customer as a result of service issues you contend to have arisen out of quality of wholesale service provided by BellSouth pursuant to the Plan.

16. Do you agree that an enforcement plan should have both positive incentives and negative consequences? If not, why not?

17. Compare the amounts paid to you under the Tennessee SEEM plan to the amounts paid in each other state outside of BellSouth's region where you have operations. The amounts should be stated in total and per access line you serve in that state.

REQUESTS FOR PRODUCTION OF DOCUMENTS

1. Produce any documents relied upon in responding to First Set of Interrogatories.

2. Produce any documents identified in responses to BellSouth's First Set of Interrogatories.

3. Produce all documents in your possession relating to SEEM penalties received by your company since the adoption of the Tennessee plan, including but not limited to any budgeting or financial planning documents or forecasting materials.

4. Produce all internal communications discussing or relating in any way to BellSouth's wholesale performance

5. Identify and produce all correspondence in your possession regarding BellSouth's wholesale performance from 2002 to present.

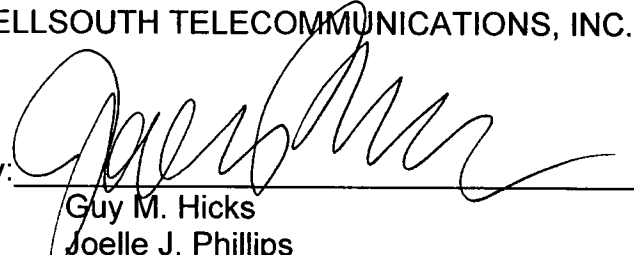
6. Produce any alternative performance assessment plan or recommendations that you have developed.

7. Produce any draft or partial alternative performance assessment plan that you have discussed or considered in any of BellSouth's region (Tennessee, Florida, Georgia, Kentucky, North Carolina, South Carolina, Alabama, Louisiana and Mississippi).

8. Produce all contract and tariff provisions that relate to your company's obligations (if any) in the event that your customer sustains a service interruption or otherwise sustains a derogation of service.

Respectfully submitted,

BELLSOUTH TELECOMMUNICATIONS, INC.

By: 

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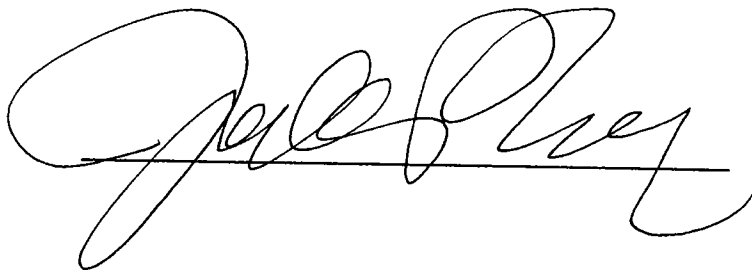
Atlanta, GA 30375

CERTIFICATE OF SERVICE

I hereby certify that on December 15, 2004, a copy of the foregoing document was served on the parties of record, via the method indicated:

- ☐ Hand
- ☐ Mail
- ☐ Facsimile
- ☐ Overnight
- ☒ Electronic

Henry Walker, Esquire
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hwalker@boultcummings.com

A handwritten signature in cursive script, appearing to read "Henry Walker", is written over a horizontal line.

CERTIFICATE OF SERVICE

I hereby certify that on January 14, 2005, a copy of the foregoing document was served on the following, via hand delivery, facsimile, overnight, electronic mail or US Mail, addressed as follows:

- ☐ Hand
- ☐ Mail
- ☐ Facsimile
- ☐ Overnight
- ☒ Electronic

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A handwritten signature in black ink, appearing to read "H. Walker", is written over a horizontal line.