STATE OF SOUTH CAROLINA

(Caption of Case)

IN RE:

Application of BellSouth Telecommunications, Inc. to Provide In-Region InterLATA Services Pursuant to Section 271 of the Telecommunications Act of 1996

BEFORE THE PUBLIC SERVICE COMMISSION OF SOUTH CAROLINA

COVER SHEET

DOCKET NUMBER: 2001 - 209 - C

(Please type or print)
Submitted by: John J. Pringle, Jr.

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NOTE: The cover sheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for use by the Public Service Commission of South Carolina for the purpose of docketing and must be filled out completely.

DOCKETING INFORMATION (Check all that apply)

☐ **Emergency Relief demanded in petition**

☐ **Request for item to be placed on Commission's Agenda expeditiously**

☐ **Other:**

INDUSTRY (Check one)	NATURE OF ACTION (Check all that apply)		
☐ Electric	☐ Affidavit	☐ Letter	☐ Request
☐ Electric/Gas	☐ Agreement	☐ Memorandum	☐ Request for Certification
☐ Electric/Telecommunications	☐ Answer	☐ Motion	☐ Request for Investigation
☐ Electric/Water	☐ Appellate Review	☒ Objection	☐ Resale Agreement
☐ Electric/Water/Telecom.	☐ Application	☐ Petition	☐ Resale Amendment
☐ Electric/Water/Sewer	☐ Brief	☐ Petition for Reconsideration	☐ Reservation Letter
☐ Gas	☐ Certificate	☐ Petition for Rulemaking	☐ Response
☐ Railroad	☐ Comments	☐ Petition for Rule to Show Cause	☐ Response to Discovery
☐ Sewer	☐ Complaint	☐ Petition to Intervene	☐ Return to Petition
☒ Telecommunications	☐ Consent Order	☐ Petition to Intervene Out of Time	☐ Stipulation
☐ Transportation	☐ Discovery	☐ Prefiled Testimony	☐ Subpoena
☐ Water	☐ Exhibit	☐ Promotion	☐ Tariff
☐ Water/Sewer	☐ Expedited Consideration	☐ Proposed Order	☐ Other:
☐ Administrative Matter	☐ Interconnection Agreement	☐ Protest	
☐ Other:	☐ Interconnection Amendment	☐ Publisher's Affidavit	
	☐ Late-Filed Exhibit	☐ Report	

Print Form Reset Form

ELLIS : LAWHORNE

John J. Pringle, Jr.
Direct dial: 803/343-1270
jpringle@ellislawhorne.com

February 20, 2009

FILED ELECTRONICALLY
The Honorable Charles L.A. Terreni
Chief Clerk
South Carolina Public Service Commission
Post Office Drawer 11649
Columbia, South Carolina 29211

RE: Application of BellSouth Telecommunications Inc. to Provide In-Region InterLATA Services Pursuant to Section 271 of the Telecommunications Act of 1996
Docket No. 2001-209-C

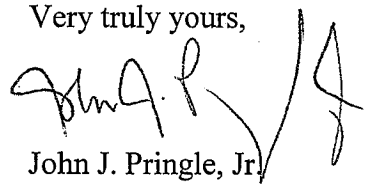
Dear Mr. Terreni:

Enclosed is the **Objection of CompSouth to AT&T's Declaration of Force Majeure Event** for filing on behalf of the Competitive Carriers of the South, Inc. ("CompSouth") in the above-referenced docket. By copy of this letter, I am serving all parties of record in this proceeding and enclose my certificate of service to that effect.

If you have any questions or need additional information, please do not hesitate to contact me.

With kind regards, I am

Very truly yours,



John J. Pringle, Jr.

JJP/cr
cc: Garry Sharp
all parties of record
Enclosures

BEFORE THE
SOUTH CAROLINA PUBLIC SERVICE COMMISSION

IN RE:	)	
	)	
Application of BellSouth Telecommunications, Inc. to Provide In-Region InterLATA Services Pursuant to Section 271 of the Telecommunications Act of 1996	)	**DOCKET NO. 2001-209-C**

OBJECTION OF COMPSOUTH TO
AT&T'S DECLARATION OF FORCE MAJEURE EVENT

Competitive Carriers of the South, Inc. ("CompSouth"), through its undersigned counsel, pursuant to section 4.5.2.2 of the Self-Effectuating Enforcement Mechanism (SEEM) plan approved by the Commission, hereby file this Objection to BellSouth Telecommunications, Inc. d/b/a AT&T South Carolina d/b/a AT&T Southeast's (AT&T) declaration of a Force Majeure Event related to an incident in its St. Louis data center occurring on December 6, 2008. For the reasons set out below, the Commission should find that AT&T did not provide proper notice of this event, that this event was not a Force Majeure Event, and that AT&T should be required to make all payments required under the SEEM plan. As grounds therefor, CompSouth states:

Background

1. In 2001, the Commission opened 2001-209-C to consider AT&T's entry into the interLATA long distance market and to develop permanent performance metrics for the evaluation of the operations support systems ("OSS") of AT&T. The Commission issued Order No. 2002-77 on February 14, 2002 delineating performance requirements and approving the SEEM plan. This docket has remained open since that time to address issues and concerns arising from OSS performance.

2. CompSouth is an association of competitive local exchange carriers ("CLECs"). CompSouth is comprised of Access Point, Inc., Birch Communications (fka Access Integrated

Networks, Inc.), Cavalier Telephone, Cbeyond Communications, Covad Communications Company, Deltacom, Level 3 Communications, Momentum Telecom, Inc., NuVox Communications, Inc., Sprint Nextel, tw telecom, Inc., and XO Communications, Inc.

The members of CompSouth are customers and competitors of AT&T in South Carolina and across the Southeast.

3. On February 10, 2008, AT&T filed a letter with the Commission notifying it that it declared a Force Majeure Event pursuant to an incident in its St. Louis data center occurring on December 6, 2008 and that it did not intend to make SEEM payments for certain SQM measures which it was unable to meet from December 8 – 12, 2008. The letter is attached hereto as **Exhibit One**.

4. CompSouth contends that this event was not properly noticed as required by the SEEM plan and that it does not meet the SEEM plan requirements for a Force Majeure Event.

AT&T Failed to Give Prompt Notice as the SEEM Plan Requires

5. Force majeure events are addressed in section 4.5 of the SEEM plan. Specifically, section 4.5.2 requires AT&T to give the Commission and CLECs "prompt" notice of a force majeure event. This section provides:

> BellSouth, upon giving *prompt notice* to the Commission and CLECs, shall be excused from such performance on a day-to-day basis to the extent of such prevention, restriction, or interference. . . . (Emphasis added).

6. Section 4.5.2.1 of the SEEM plan states:

> To invoke the application of Section 4.5.2 (Force Majeure Event), BellSouth will provide written notice to the Commission and post notification of such filing on BellSouth's website wherein BellSouth will identify the Force Majeure Event, the affected measures, and the impacted wire centers including affected NPAs and NXXs.

7. In this instance, AT&T failed to comply with sections 4.5.2 and 4.5.2.1 of the SEEM plan because it did not give prompt notice of the alleged force majeure event.

8. The event in question occurred in AT&T's St. Louis data center on *December 6, 2008*. On December 10, 2008, AT&T provided an Accessible Letter "apprising" CLECs of the event. On December 11, 2008, AT&T sent the Commission a letter "as information" regarding the St. Louis power outage.[1] Nothing further was heard from AT&T on this matter until *February 10, 2009* - over two months later -- when AT&T declared a force majeure event.

9. Merriam-Webster's Dictionary defines "prompt"[2] as "being ready and quick to act as occasion demands" or "performed readily or immediately." A two-month delay in providing notice of a force majeure event cannot, under any set of imaginable circumstances or any reasonable definition, be equated with the "prompt" notice the SEEM plan requires for a force majeure declaration.

10. AT&T has provided absolutely no reason for such an extraordinary delay in declaring a force majeure event.

11. Interestingly, it appears that AT&T did not declare this incident to be a force majeure event until *after* it calculated the SEEM payments that would be due as a result of its failure to comply with the applicable SQMs. This can be seen by reviewing the timeframe for SEEM payments related to this event.

12. Section 4.4.1 of the SEEM plan provides that AT&T must remit SEEM payments on the day on which the final validated SEEM reports are posted in accordance with section 2.4 of the SEEM plan.

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[1] Neither of these communications complies with or comprises the notice required by sections 4.5.2 and 4.5.2.1. Section 4.5.2.1 requires AT&T to "identify the Force Majeure Event, the affected measures, and the impacted wire centers, including affected NPAs and NXXs." This required information was not provided until AT&T's February 10th letter.

[2] The word "prompt" must be given its plain and ordinary meaning. *See, e.g.. Lacke v. Lacke,* 362 S.C. 302, 308, 608 S.E.2d 147, 150 (S.C.App. 2005) The dictionary supplies the ordinary meaning of words. *See, e.g. Estate of Nicholson ex rel. Nicholson v. South Carolina Dept. of Health and* Human Services, 377 S.C. 590, 596, 660 S.E.2d 303, 305 (S.C.App. 2008) (*citing Lee v. Thermal Engineering Corp.*, 352 S.C. 81, 91-92, 572 S.E.2d 298, 303 (S.C.App. 2002)).

13. Section 2.4 provides that final validated SEEM reports will be posted on the 15th of the month following the posting of the final validated SQM reports for that data month. Section 2.3 provides that final SQM reports will be posted no later than the last day of the month following the date month in which the activity occurred.

14. Thus, in this case, the final validated SQM report for the December 6, 2008 event was posted on January 31, 2009 and the SEEM payment related to that event was due on February 15th. It is highly suspect that the declaration of the force majeure event did not occur until right before AT&T would have to make the SEEM payment for an event occurring over two months ago.

The St. Louis Outage Does Not Qualify as a Force Majeure Event

15. According to AT&T's February 10th letter, a water main break outside of AT&T's data center in St. Louis resulted in a flood that caused a power outage in the data center. AT&T claims that this water main break was "unforeseeable" and could not have "been anticipated or prevented by AT&T . . . ." AT&T February 10, 2009 letter to Charles L.A. Terreni at Page 1. CompSouth strongly disagrees.

16. Section 4.5.2 of the SEEM plan defines a force majeure event, in part, as one that prevents AT&T from complying with the SQM/SEEM plan because it is "beyond the reasonable control and without the fault or negligence of (BellSouth) [AT&T]."

17. AT&T's attempt to label the event a "flood" does not on its own make the December 6th incident a force majeure event. As explained below, not only was the "flood" foreseeable, it appears that it was a power outage that prevented AT&T from meeting the SQM standards. This outage was caused by AT&T's failure to properly plan for such a foreseeable event.

18. The likelihood that a basement may flood is certainly a foreseeable event. Most people would agree that a basement flood is likely to incur in any number of scenarios, including

instances of heavy rain or snow as well as when a water main breaks. And if electrical equipment is kept in the basement, it is certainly foreseeable that such equipment might be affected.

19. CompSouth understands that the reason that the power to the building failed (the actual cause of the outage) was not because of the water but because AT&T could not isolate the equipment in the basement affected by the water main break and therefore had to turn off the power to the *entire* building.

20. Had AT&T had the proper procedures in place, it could have quickly isolated the equipment in the basement. In that instance, AT&T would not have been required to shut down power to the entire building. AT&T's failure to properly plan for power outages, which are certainly common, foreseeable events, does not qualify as a force majeure event. AT&T's failure to anticipate and appropriately react to a power outage is not a force majeure event.

21. Finally, AT&T's failure to have redundancy in place so as to deal with power outage situations is also simply a case of poor planning, not a force majeure event. CompSouth understands that AT&T is now addressing redundancy requirements in its data centers.

AT&T's Force Majeure Declaration is Not Presumptively Valid

22. Section 4.5.2.3 of the SEEM provides that AT&T's invocation of the force majeure provision in section 4.5.2 shall be presumptively valid 30 days after notice is provided in accordance with section 4.5.2.1. As discussed above, such notice was not provided in accordance with the SEEM plan. Therefore, AT&T's force majeure declaration is not presumptively valid and should not automatically go into effect.

23. Furthermore, section 4.5.2.1 also provides that the Commission "may require BellSouth to provide a true-up of SEEM fees to affected carriers if a Force Majeure declaration is found to be invalid by the Commission after it has taken effect."

24. AT&T stated in its February 10th letter that it "will not make any SEEM payments associated [with the listed measures] on the dates identified herein." AT&T February 10, 2009 letter to Charles L.A. Terreni at Page 2.

25. The Commission should further investigate this event and should not permit AT&T to withhold any SEEM payments.

WHEREFORE, the Commission should enter an order:

1. finding that AT&T failed to give prompt notice regarding its declaration of a force majeure event as required by the SEEM plan;

2. finding that The St. Louis outage is not a force majeure event as it was foreseeable and the result of AT&T's poor planning and procedures;

3. requiring AT&T to make the payments under the SEEM plan; and

4. granting such other relief as is just and proper.

Respectfully submitted,

John J. Pringle, Jr., Esquire
1501 Main Street, 5th Floor
P.O. Box 2285
Columbia, South Carolina 29202
Telephone: (803) 343-1270
Facsimile: (803) 799-8479

Attorneys for CompSouth

Columbia, South Carolina
February 20, 2009

Exhibit One

Patrick W. Turner
General Counsel-South Carolina
Legal Department

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Columbia, SC 29201

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F: 803.254.1731
patrick.turner.1@att.com
www.att.com

February 11, 2009

The Honorable Charles Terreni
Chief Clerk of the Commission
Public Service Commission of South Carolina
Post Office Drawer 11649
Columbia, South Carolina 29211

Re: Application of BellSouth Telecommunications, Inc. to Provide In-Region InterLATA Services Pursuant to Section 271 of the Telecommunications Act of 1996
Docket No. 2001-209-C

Dear Mr. Terreni:

As previously noted in the correspondence and Accessible Letter filed in this docket on December 17, 2008, an unforeseeable water main break that occurred outside of AT&T's data center in St. Louis, Missouri resulted in flooding that caused a power outage in the data center ("the outage"). The outage occurred on December 6, 2008, and impacted AT&T's retail and wholesale operations throughout its 22-state region. The outage, which could not have been anticipated or prevented by AT&T, interfered with AT&T's ability to process orders that are handled in the St. Louis data center. As it relates to performance that is measured by the SQM/SEEM Plan, the outage prevented AT&T from meeting the performance standards associated with two ordering metrics – specifically the ordering measures known as Reject Interval ("RI") and Firm Order Confirmation Timeliness ("FOCT").

Accordingly, pursuant to Section 4.5.2 of the SEEM Plan,[1] BellSouth Telecommunications, Inc. d/b/a AT&T South Carolina ("AT&T South Carolina") hereby declares the outage a Force Majeure Event that prevented AT&T South Carolina from meeting the performance standards associated with the RI and FOCT measures on the following dates:[2]

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1 SEEM Plan, Section 4.5.2 provides in relevant part that AT&T "shall not be obligated to pay Tier-1 or Tier-2 Enforcement Mechanisms (SEEM payments) for non-compliance with a performance measurement if such non-compliance was the result of any Force Majeure Event that either directly or indirectly prevented, restricted, or interfered with performance as measured by the SQM/SEEM Plan." Section 4.5.2 specifically identifies a flood as a Force Majeure Event.

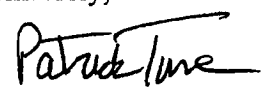
2 Because of AT&T's restoration and recovery efforts, the outage impacted AT&T's performance for a limited duration. Accordingly, the requirements of SEEM Sections 4.5.2.4 and 4.5.2.5 are not applicable.

USA Proud Sponsor of the U.S. Olympic Team

- FOCT Fully Mechanized – December 8 and 9, 2008
- FOCT Partially Mechanized – December 8, 9, 10, 11, and 12, 2008
- RI Fully Mechanized – December 8, 2008
- RI Partially Mechanized – December 8, 9, 10, and 11, 2008

Enclosed with this filing are two documents which demonstrate the impact – on a nine-state southeast regional basis the outage had on the above-mentioned ordering measures. Because the Force Majeure Event prevented AT&T from meeting the performance standards associated with these measures on the dates identified herein, AT&T will not make any SEEM payments associated with such measures on the dates identified herein.

Sincerely,



Patrick W. Turner

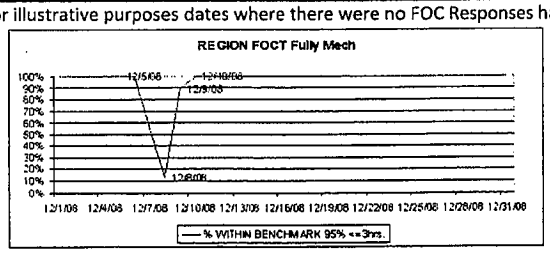
Enclosures
PWT/nml
cc: All parties of record

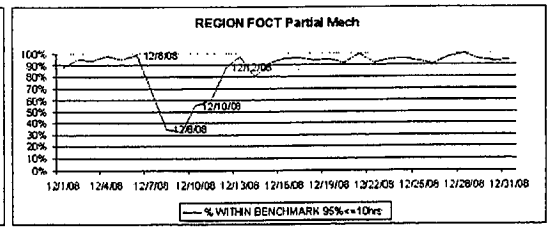
729484

Nine-State Southeast Region
0-9 [FOCT]: Firm Order Confirmation Timeliness

FOCT-REGIONAL FULLY MECHANIZED				FOCT-REGIONAL PARTIALLY MECHANIZED			
DATE	TOTAL FOCT RESPONSES	RESPONSE BENCHMARK MISSED	% WITHIN BENCHMARK 95% <=3hrs.	DATE	TOTAL FOCT RESPONSES	RESPONSE BENCHMARK MISSED	% WITHIN BENCHMARK 95%<=10hrs.
12/1/08	22304	12	99.95%	12/1/08	1335	164	87.72%
12/2/08	21594	23	99.89%	12/2/08	1861	93	95.00%
12/3/08	19280	15	99.92%	12/3/08	1380	82	94.06%
12/4/08	18127	12	99.93%	12/4/08	1927	38	98.03%
12/5/08	15953	14	99.91%	12/5/08	1377	62	95.50%
12/6/08	3634	1	99.97%	12/6/08	327	4	98.78%
12/7/08	0	0	0.00%	12/7/08	0	0	0.00%
12/8/08	16815	14633	12.98%	12/8/08	158	103	34.81%
12/9/08	23324	2478	89.38%	12/9/08	1669	1136	31.94%
12/10/08	16916	10	99.94%	12/10/08	1761	795	54.86%
12/11/08	16919	9	99.95%	12/11/08	1331	524	60.63%
12/12/08	14105	14	99.90%	12/12/08	1227	150	87.78%
12/13/08	5018	4	99.92%	12/13/08	381	10	97.38%
12/14/08	961	0	100.00%	12/14/08	5	1	80.00%
12/15/08	21171	13	99.94%	12/15/08	1200	98	91.83%
12/16/08	17860	12	99.93%	12/16/08	1522	66	95.66%
12/17/08	18335	15	99.92%	12/17/08	1190	39	96.72%
12/18/08	17927	14	99.92%	12/18/08	1186	75	93.68%
12/19/08	14411	4	99.97%	12/19/08	1100	58	94.73%
12/20/08	4050	3	99.93%	12/20/08	490	38	92.24%
12/21/08	688	0	100.00%	12/21/08	20	0	100.00%
12/22/08	21148	6	99.97%	12/22/08	972	80	91.77%
12/23/08	16597	11	99.93%	12/23/08	1120	63	94.38%
12/24/08	10883	6	99.94%	12/24/08	1095	45	95.89%
12/25/08	1435	0	100.00%	12/25/08	6	0	0.00%
12/26/08	10725	5	99.95%	12/26/08	603	54	91.04%
12/27/08	3348	1	99.97%	12/27/08	199	6	96.98%
12/28/08	671	0	100.00%	12/28/08	8	0	100.00%
12/29/08	20346	7	99.97%	12/29/08	815	36	95.58%
12/30/08	19808	7	99.96%	12/30/08	1117	75	93.29%
12/31/08	16667	4	99.98%	12/31/08	1525	96	93.70%
TOTAL	411020	17333	95.78%	TOTAL	28907	3991	86.19%

For illustrative purposes dates where there were no FOC Responses have been removed from the charts below.

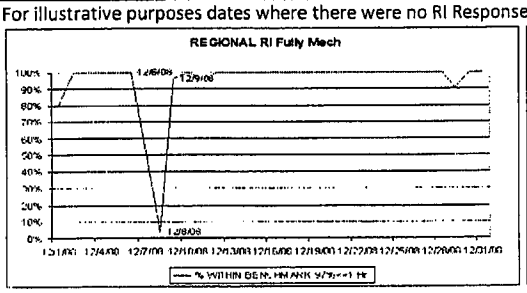


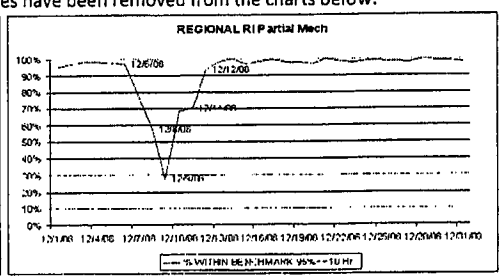


Nine-State Southeast Region
0-8 [RI]: Reject Interval

RI-REGIONAL FULLY MECHANIZED				RI-REGIONAL PARTIALLY MECHANIZED			
DATE	TOTAL RI RESPONSES	RESPONSE BENCHMARK MISSED	% WITHIN BENCHMARK 97%<=1 Hr.	DATE	TOTAL RI RESPONSES	RESPONSE BENCHMARK MISSED	% WITHIN BENCHMARK 95%<=10 Hr.
12/1/08	4086	815	80.05%	12/1/08	2134	104	95.13%
12/2/08	3292	4	99.88%	12/2/08	949	28	97.05%
12/3/08	3813	1	99.97%	12/3/08	1044	12	98.85%
12/4/08	3807	0	100.00%	12/4/08	1076	12	98.88%
12/5/08	3091	4	99.87%	12/5/08	1115	26	97.67%
12/6/08	958	0	100.00%	12/6/08	133	4	96.99%
12/7/08	0	0	0.00%	12/7/08	0	0	0.00%
12/8/08	3832	3681	3.94%	12/8/08	221	93	57.92%
12/9/08	4250	156	96.33%	12/9/08	1743	1261	27.65%
12/10/08	3508	0	100.00%	12/10/08	1162	365	68.59%
12/11/08	3512	170	95.16%	12/11/08	1061	312	70.59%
12/12/08	2918	0	100.00%	12/12/08	882	56	93.65%
12/13/08	1289	0	100.00%	12/13/08	156	2	98.72%
12/14/08	330	0	100.00%	12/14/08	9	0	100.00%
12/15/08	3941	0	100.00%	12/15/08	1340	40	97.01%
12/16/08	3344	1	99.97%	12/16/08	1172	13	98.89%
12/17/08	3960	0	100.00%	12/17/08	960	6	99.38%
12/18/08	3827	1	99.97%	12/18/08	909	14	98.46%
12/19/08	3377	1	99.97%	12/19/08	1058	18	98.30%
12/20/08	1052	0	100.00%	12/20/08	277	8	97.11%
12/21/08	172	0	100.00%	12/21/08	26	0	100.00%
12/22/08	3827	1	99.97%	12/22/08	1391	18	98.71%
12/23/08	3172	2	99.94%	12/23/08	969	15	98.45%
12/24/08	2499	0	100.00%	12/24/08	1001	10	99.00%
12/25/08	426	0	100.00%	12/25/08	0	0	0.00%
12/26/08	2601	1	99.96%	12/26/08	783	11	98.60%
12/27/08	831	0	100.00%	12/27/08	99	2	97.98%
12/28/08	235	0	100.00%	12/28/08	3	0	100.00%
12/29/08	3753	346	90.78%	12/29/08	981	10	98.98%
12/30/08	3950	0	100.00%	12/30/08	725	7	99.03%
12/31/08	2893	0	100.00%	12/31/08	875	19	97.83%
TOTAL	**82546**	**5184**	**93.72%**	**TOTAL**	**24254**	**2466**	**89.83%**

For illustrative purposes dates where there were no RI Responses have been removed from the charts below.





STATE OF SOUTH CAROLINA)
) CERTIFICATE OF SERVICE
COUNTY OF RICHLAND)

The undersigned, Nyla M. Laney, hereby certifies that she is employed by the Legal Department for BellSouth Telecommunications, Inc. d/b/a AT&T South Carolina ("AT&T") and that she has caused AT&T South Carolina's Letter Concerning St. Louis Data Center Water Main Break in Docket No. 2001-209-C to be served upon the following on February 11, 2009.

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General Counsel
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(Electronic Mail)

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Senior Counsel
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Joseph Melchers
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Jocelyn G. Boyd, Esquire
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(Knology of Charleston and Knology of
South Carolina, Inc.)
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John F. Beach, Esquire
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BEFORE THE
SOUTH CAROLINA PUBLIC SERVICE COMMISSION
DOCKET 2001-2009-C

IN RE:	)	
	)	
Application of BellSouth	)	
Telecommunications, Inc. to	)	**CERTIFICATE OF SERVICE**
Provide In-Region InterLATA	)	
Services Pursuant to Section 271 of the	)	
Telecommunications Act of 1996		

This is to certify that I have caused to be served this day, one (1) copy of the **Objection of CompSouth to AT&T's Declaration of Force Majeure Event** via electronic mail addressed as follows:

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February 20, 2009
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