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BEFORE THE

PUBLIC SERVICE COMMISSION

OF SOUTH CAROLINA

DOCKET NO. 1999-377-C

United Telephone Company of the Carolinas	)	
	)	RESPONSE OF BELLSOUTH
v.	)	TELECOMMUNICATIONS, INC.
	)	TO MOTION TO STRIKE
BellSouth Telecommunications, Inc.	)	

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UTILITIES DEPARTMENT

BellSouth Telecommunications, Inc. ("BellSouth") hereby responds to the Motion to Strike ("Motion") filed with the South Carolina Public Service Commission ("Commission") by United Telephone Company of the Carolinas ("United") on December 22, 1999. United's Motion should be denied by the Commission. BellSouth presents the following in support of its response:

1. United complains that portion of Exhibits to BellSouth's Answer in this docket contain "redundant, immaterial, and impertinent matter . . . ". Specifically, United cites to "matter concerning the South Carolina Telephone Coalition," stating that the members of that coalition are not "parties to this proceeding, they did not participate in the development of the agreement upon which United's claim in this proceeding is based, and they were not parties to that agreement."[1] United moves the Commission to strike the following portions of BellSouth's Answer and attachments:

(a) Page 4, third full paragraph, through page 7, first full paragraph;

[1]Motion to Strike, p. 1, and pp. 3-4.

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(b) Page 8, footnote 10;

(c) Page 8, second full paragraph, second sentence;

(d) Exhibit 4, the Affidavit of Keith Oliver: and,

(e) Exhibit 5, the Affidavit of James C. Meade.

2. United's position is that the Commission should eliminate highly relevant information which is critical in order for BellSouth to respond to United's Complaint. As stated in BellSouth's Answer, the genesis of the instant issue resulted from the introduction and implementation of 10XXX intraLATA competition and the depooling of the intraLATA toll pool. The Commission set up an industry task force to address these issues.[2] Four entities, including BellSouth and United, subsequently executed two documents to implement the work done by the task force: the "South Carolina IntraLATA Depooling Plan (March 12, 1993)" (the "Depooling Plan") and the "Area Calling Plan Principles (March 12, 1993)" (the "ACP Principles").

Later, on June 21, 1993, BellSouth, GTE and United signed a document entitled the "South Carolina Depooling Guidelines" (the "Depooling Guidelines"). It is solely under the Depooling Guidelines that United seeks its recovery—attempting to ignore the prior related work done on the depooling issues in the previous two documents.

3. The above-referenced three documents are inter-related, and can not be looked at separately in a vacuum. The Commission approved the Depooling Plan and the ACP Principles simultaneously went into effect.[3]

[2] Order No. 92-919, dated November 2, 1992. (Exhibit B to United's Complaint.)

[3] Order No. 93-462 dated June 3, 1993. (Exhibit C to United's Complaint.).

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4. The Depooling Guidelines, upon which United relies, were signed after the Depooling Plan and ACP Principles, but which were designed to be consistent with those two documents. The Guidelines state this in the second paragraph where reference is made to the very dockets that established the Depooling Plan and ACP Principles:

> The guidelines contained within this agreement are intended to be consistent with the limited intraLATA competition as contemplated by the South Carolina Public Service Commission in the Order in combined Docket Nos. 92-182-C, 92-183,C, and 92-200-C.

United's misplaced reliance on paragraph 13 of the Depooling Guidelines is inconsistent with those prior documents, and the course of negotiations leading to the execution of all three documents. In fact, all the actual negotiations were conducted during the development of the Depooling Plan and the ACP Principles. The Depooling Guidelines were subsequently written by GTE and accepted by BellSouth as merely providing more details related to the prior negotiations. There was never any new negotiation designed to modify any of the principles developed in the initial two documents.

5. The implementation of 10XXX intraLATA competition, the end of the intraLATA toll pool and the treatment of various area calling plans impacted all local exchange carriers ("LECs"), not just United and BellSouth. It should be noted that in paragraph 3 of the Depooling Guidelines, reference is made to any subsequent LEC's who would become toll providers:

> The non-initial toll providing local exchange carriers (LEC's operating within South Carolina have the option to become toll providers also. The LEC's that become toll providers shall operate under the same guidelines as delineated herein.

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Certainly other LEC's have an interest in these proceedings. Therefore, the portions of BellSouth's Answer and Exhibits which set forth these facts is highly relevant and material to the instant issue.

6. In order to make a proper determination in this matter, the Commission must hear all relevant evidence. In order to have a complete record, the parties must be allowed to present all relevant testimony. United is fully aware of the relevancy and import of the witnesses' testimony in this matter, which is the precise reason United has moved to Strike the relevant portions of the Answer and Exhibits. Such a silencing of the testimony of relevant witnesses should not be allowed.

7. Rule 103-837 of the Commission's Rules of Practice and Procedure states, in pertinent part, as follows:

> 103-837. Answers.
>
> A. Content of Answers.
>
> (1) Answers shall be drawn so as to advise fully and completely the Commission and any party as to the nature of the defense.

The portions of the Answer and Exhibits which United seeks to strike squarely address the foregoing rule. BellSouth has thereby produced evidence of the intent and meaning of the depooling agreements at issue. If the Commission deems to strike the portions of the Answer and Exhibits at issue, BellSouth will be deprived of its ability to fully advise the Commission as to the nature of its defense in this docket.

8. Rule 103-870 and 103-873 of the Commission's Rules of Practice and Procedure allow that irrelevant, immaterial or unduly repetitious evidence may be excluded. As explained above, the evidence complained of herein is not irrelevant nor immaterial. It is not repetitious of any evidence presented. Clearly, United did not

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present any evidence at all regarding the ACP Principles or the Depooling Plan. Therefore, under the Commission's own Rules of Practice and Procedure, the Motion to Strike should be denied.

WHEREFORE, based on the foregoing, BellSouth respectfully requests that the Commission deny United's Motion to Strike, and grant all other relief deemed appropriate by the Commission.

Respectfully Submitted,

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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. ("BellSouth") and that she has caused the Response of BellSouth Telecommunications, Inc. to Motion to Strike in Docket No. 1999-377-C to be served by placing such in the care and custody of the United States Postal Service, with first-class postage affixed thereto and addressed to the following this January 13, 2000:

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