

**BellSouth Telecommunications, Inc.**  
601 W. Chestnut Street  
Room 407  
Louisville, KY 40203

Dorothy.Chambers@BellSouth.com

**Dorothy J. Chambers**  
General Counsel/Kentucky

502 582 8219  
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October 21, 2004

**RECEIVED**

OCT 22 2004

PUBLIC SERVICE  
COMMISSION

Ms. Beth O'Donnell  
Executive Director  
Public Service Commission  
211 Sower Boulevard  
P. O. Box 615  
Frankfort, KY 40602

Re: Vanover, Hall & Bartley, P.S.C., Complainant v. BellSouth  
Telecommunications, Inc., Defendant  
PSC 2004-00410

Dear Ms. O'Donnell:

Enclosed for filing in the above-captioned case are the original and ten (10) copies of BellSouth Telecommunications, Inc.' Motion to Dismiss. Exhibit 1 to the Motion is a copy of the affidavit of Sandra DeMoya. The original of the affidavit will be filed with the Commission in the very near future.

Sincerely,

  
Dorothy J. Chambers

Enclosure

cc: Party of Record

554592

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

**RECEIVED**

OCT 22 2004

PUBLIC SERVICE  
COMMISSION

In the Matter of:

VANOVER, HALL & BARTLEY, P.S.C.	)	
	)	
COMPLAINANT	)	
	)	
v.	)	CASE NO. 2004-00410
	)	
BELLSOUTH TELECOMMUNICATIONS, INC.	)	
	)	
DEFENDANT	)	

BELLSOUTH TELECOMMUNICATIONS, INC.'S  
MOTION TO DISMISS

Comes BellSouth Telecommunications, Inc. ("BellSouth"), by counsel, and moves to dismiss this complaint.

INTRODUCTION

Even if the facts alleged in the complaint are entirely accurate, which BellSouth's records indicate is not the case, this complaint should be dismissed because BellSouth has offered to provide all of the relief to which this customer possibly could be entitled. This Complaint concerns a customer that was receiving both voice telephone service and high-speed Internet service (BellSouth® FastAccess® Internet service) from BellSouth. The customer changed its voice telephone service to another provider. As a result of the change in its voice provider, BellSouth made attempts to contact this customer to see if the customer wishes to retain BellSouth's FastAccess service and to

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set up a billing method for that service. The customer continued to receive FastAccess from BellSouth for over two months, without paying for the FastAccess Internet service and without making any billing arrangements to pay for that service. As a result, after more than two months, BellSouth disconnected the customer's FastAccess service. The customer immediately filed this Complaint. BellSouth again contacted the customer offering to restore FastAccess service to the customer upon the making of billing arrangements. The customer has not responded to any of BellSouth's offers. The customer also may receive high-speed Internet access service from its CLEC provider over this resale line utilizing BellSouth's wholesale DSL service pursuant to BellSouth's tariff on file with the FCC. Because the customer has received an offer from BellSouth for the service it said it is seeking, this Complaint should be dismissed.

#### DISCUSSION

Gregory L. Hall, a partner with Vanover, Hall & Bartley, P.S.C. ("Complainant"), alleges in the complaint that the Complainant was provided DSL Internet service by BellSouth from March 2, 2003, until October 7, 2004. The Complaint also alleges that in July 2004, Complainant made arrangements for basic telephone service from another telephone provider. BellSouth agrees that these initial allegations are essentially correct. In July of 2004, the Complainant moved its voice service to a competitive local exchange company ("CLEC"), SouthEast Telephone Company ("SouthEast"), provided by SouthEast over a "resold" line from BellSouth. Until July 2004, Complainant had obtained both voice and high-speed Internet access from BellSouth. The high-speed Internet access was delivered by BellSouth as an unregulated retail product known as BellSouth® FastAccess® Internet service. After the Complainant changed its voice

service to a competitor of BellSouth, the Complainant still was able to continue to receive BellSouth's FastAccess DSL service over this resale line so long as Complainant made billing arrangements with BellSouth or, if the Complainant chose, it could obtain high-speed Internet service from another provider, such as its new CLEC provider, SouthEast. As noted, over BellSouth's resale line, the CLEC is able to order BellSouth's wholesale DSL service from BellSouth's FCC tariff.

In these circumstances, where a customer changes to a BellSouth competitor that is providing voice service over a resold BellSouth line, BellSouth's procedures are to provide notice to the customer, by e-mail, advising that the customer may continue to receive BellSouth FastAccess DSL service, but the customer must make alternative billing arrangements. A customer who initially receives both voice and high-speed Internet service directly from BellSouth is billed for its BellSouth FastAccess service via its BellSouth phone bill. When such a customer decides to change voice providers, the customer ceases to receive a BellSouth phone bill. Accordingly, the customer must make other billing arrangements with BellSouth if the customer chooses to continue to obtain BellSouth's retail high-speed Internet access service. As a result, BellSouth offers the end-user the opportunity to continue its FastAccess service by making payment arrangements via credit card or a BellSouth telephone number. Of course, since another company is providing voice telephone service to that customer, and the customer no longer receives a BellSouth phone bill, this alternate billing arrangement is necessary for BellSouth to be paid for providing its retail FastAccess service. As noted, an end-user, such as this Complainant, also has other alternatives for high-speed Internet access service, such as receiving its high-speed Internet service from its new CLEC provider or through another competitive provider, such as a cable company.

With respect to the present complaint, BellSouth has researched its records and determined that an e-mail message was sent to the e-mail address BellSouth had on file for Complainant: h\_vanove@bellsouth.net on or about August 18, 2004. See attached affidavit of Sandra DeMoya, Paragraph 9, Exhibit 1.

In addition to notifying customers via e-mail of the need to make alternative billing arrangements to continue receiving FastAccess service, in situations such as that of the Complainant, it is BellSouth's standard procedure to utilize a voice messaging system called "Back Talk". Back Talk provides for a voice message to be left for the customer advising the customer of the need to make alternate billing arrangements. That message was sent on or about August 17, 2004, to this customer. See DeMoya Affidavit, Paragraph 9, Exhibit 1.

Complainant's high-speed Internet service was terminated on October 7, 2004, after Complainant failed to make alternative billing arrangements for its BellSouth FastAccess DSL service. By October 7, 2004, Complainant had been receiving BellSouth's FastAccess service for over two months without paying for the service and without making billing arrangements. See DeMoya Affidavit, Paragraph 10, Exhibit 1. BellSouth's records indicate that on the very next day, October 8, 2004, Complainant began receiving DSL service through SouthEast Telephone Company, this end-user's CLEC provider.

BellSouth received a copy of this subject complaint on October 14, 2004. Shortly thereafter, undersigned counsel left a message with the staff at Vanover, Hall & Bartley advising that the undersigned counsel would like to discuss the complaint and, if possible, resolve the customer's problem. Undersigned counsel also sent the letter, dated October 15, 2004, Exhibit 2, transmitted by facsimile and also by first class mail,

stating that BellSouth is willing to provide its FastAccess DSL service to Vanover, Hall & Bartley in accordance with BellSouth's usual practice in these circumstances. Therein, undersigned counsel conveyed the offer that if Vanover, Hall & Bartley wished to continue FastAccess service to advise the undersigned so that she could put this customer in touch with a BellSouth representative who could make the appropriate billing arrangements. The undersigned counsel has received no response to her message or to her letter offering to make arrangements for BellSouth's FastAccess DSL service to be provided to Vanover, Hall & Bartley. This lack of response may not be surprising given the fact, as noted, that Vanover, Hall & Bartley may obtain DSL service from another provider.

#### CONCLUSION

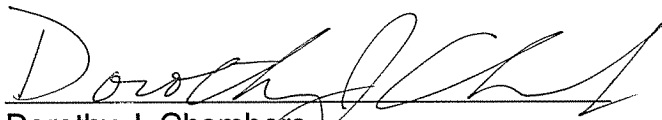
The Commission should dismiss this complaint because even if the facts alleged by Complainant are accurate, BellSouth already has offered the Complainant all of the relief to which it possibly could be entitled in this proceeding. Furthermore, BellSouth's records indicate that in accordance with BellSouth's usual practice, this customer was advised by both e-mail and a voice message that upon the customer's moving its voice telephone service to a competitive local exchange company over a resale line, the customer could choose to continue to receive BellSouth's unregulated retail high-speed Internet access service known as BellSouth FastAccess DSL service. BellSouth has no record of the customer making alternative billing arrangements. Nor does the customer allege that it made any alternative billing arrangements. On October 7, 2004, BellSouth's FastAccess DSL service was disconnected because no billing arrangements had been made by Complainant and Complainant had received

BellSouth's FastAccess service for more than two months with no payments being made for the service.

Complainant filed this subject complaint at the Public Service Commission. Upon receipt of the complaint, BellSouth responded with both a voice message and written correspondence advising Complainant that BellSouth's FastAccess DSL service is available to the customer and offering to arrange billing. Complainant has received an offer from BellSouth for the relief requested and for all relief to which it could be entitled as a result of this complaint.

For these reasons, BellSouth respectfully moves that this complaint be dismissed.

Respectfully submitted,



Dorothy J. Chambers  
601 W. Chestnut Street, Room 407  
P. O. Box 32410  
Louisville, KY 40232  
Telephone No. (502) 582-8219

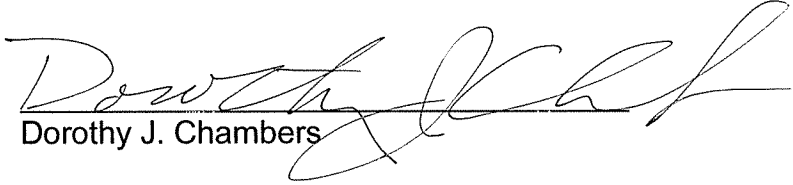
Robert A. Culpepper  
Suite 4300, BellSouth Center  
675 W. Peachtree Street, N.E.  
Atlanta, GA 30375  
Telephone No. (404) 335-0841

COUNSEL FOR BELL SOUTH  
TELECOMMUNICATIONS, INC.

**CERTIFICATE OF SERVICE**

It is hereby certified that a true and correct copy of the foregoing was served on the following individual by mailing a copy thereof, this 21st day of October, 2004.

James Vanover, Esq.  
Gregory L. Hall, Esq.  
Vanover, Hall & Bartley, P.S.C.  
152 Third Street  
Pikeville, KY 41501

  
Dorothy J. Chambers



**AFFIDAVIT OF SANDRA DEMOYA**

Comes the Affiant, Sandra Demoya, and after being duly sworn states as follows:

1. I am employed by BellSouth Billing, Inc. as a Manager. In that position, my responsibilities include obtaining information necessary to bill end users for BellSouth's various Internet services. When a BellSouth Internet service customer is identified as not having valid billing information for BellSouth Billing, Inc. to bill that customer for those Internet services, my organization is responsible for attempting to obtain correct billing information.

2. On such occasions, my organization sends information to Mail People, a group at BellSouth that is responsible for sending certain communications (emails) to customers indicating that a valid bill method is needed to maintain service. The email is sent to the email address that we have in our database. The end user is sent an electronic message which states as follows:

\*\*\*\*\*If you have sent to us your new billing information\*\*\*\*\*  
\*\*\*\*\*since Month Date Year\*\*\*\*\* \*\*\*\*\*Please disregard this notice\*\*\*\*\*

Dear BellSouth (r) Internet Service Member,

According to our records, the telephone number we have on file to bill your BellSouth Internet Service, is no longer a valid BellSouth telephone number. This may occur when you move to a new address, change your telephone number or you change your local telephone company.

**EXHIBIT****1**

BellSouth Internet Service can only bill your account through a valid BellSouth telephone number or a valid American Express, MasterCard or VISA credit card.

To prevent any interruption in your BellSouth Internet Service, please provide us with a new credit card number or a valid BellSouth telephone number by Month Date Year.

In order to update your billing information, log into Account Information at <https://www5.bellsouth.net/AllLogin.shtml>, and select the Billing Method link to make the appropriate updates.

After selecting the Billing Method link, follow the prompts to either update your telephone number billing information (you will need a copy of your BellSouth telephone bill to provide all of the necessary information), or change the bill method to a valid American Express, MasterCard, or Visa credit card.

Please update your billing information or contact us as soon as possible. If you have questions regarding the charges or need assistance, please call our Customer Support at 1-800-4DOTNET, and select the option for Billing Questions or Service Changes.

**\*\*NOTE: TO PREVENT THE SPREAD OF VIRUSES PLEASE DO NOT REPLY WITH ATTACHMENTS\*\***

Thank you for using BellSouth Internet Service.

BellSouth Internet Service Billing Department

3. This department receives confirmation that the electronic message in paragraph 2 above has been sent to the end user customer at the email address my office has provided.

4. The information regarding an unbillable customer is next sent to a BellSouth group this is responsible for initiating an automated telephone call where an automated voice message is sent to the contact number on file in our customer database. The customer's telephone number by means of a service

known as back talk. The following message is provided to the end user through the voice messaging system called "Back Talk":

### This is BellSouth's automated billing notification system. Your Internet Service account will be canceled within 10 days. Please respond to this message immediately.

### According to our records, the telephone number we bill your Internet service to is no longer valid.

### To continue your BellSouth Internet Service, you will need to update your billing method by providing us with either a valid BellSouth telephone number or valid credit card number.

### To update your billing method immediately, please access our Help Center website at [www.help.bellsouth.net](http://www.help.bellsouth.net) (double u double u double u dot help dot bellsouth dot net.) Once changes are submitted, your account will be automatically updated.

### You may also update your billing method by phone. Press '1' now to speak with a customer service representative in our billing department. Press '2' to repeat this message.

### Thank you for using BellSouth Internet Service.

5. Approximately 7 to 10 days after the Back Talk message is delivered for the end user, BellSouth representatives in my group attempt to update valid billing information if available.

6. End users who respond to either the electronic message noted in paragraph 2 or the Back Talk message noted in paragraph 4, are asked to make alternative billing arrangements for their BellSouth Internet service either through providing credit card information (we accept Master Card, Visa or American Express) or a valid BellSouth telephone number for billing purposes.

7. End users of BellSouth's Internet services who do not have proper billing information and who do not respond to these inquiries are disconnected from their BellSouth Internet service or services, because BellSouth does not have a valid method of billing those customers.

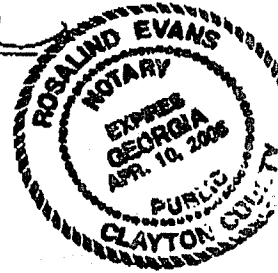
8. These same procedures are applied to any end users of BellSouth's Internet services, regardless of whether the end user has left BellSouth for a competitor where billing information is invalid for any of a number of reasons.

9. I have reviewed the records related to the Vanover, Hall and Bartley Complaint, and have determined that BellSouth's records indicate an electronic mail message, as identified in paragraph 2, was sent to h\_vanove@bellsouth.net on or about August 18, 2004. I also have determined that information for a voice message was provided to the Back Talk Provisioning Group for a message to be left with this customer on or about August 17, 2004, stating the information provided in paragraph 4.

10. BellSouth's records indicate that Vanover, Hall & Bartley failed to provide any current billing information so BellSouth Billing, Inc. was not able to bill this customer for their Internet services billed after July 7, 2004. As a result, after more than two months of FastAccess® DSL Service had been provided to Vanover, Hall & Bartley and no arrangements had been made for payment and no payments were made for this service, BellSouth disconnected the BellSouth FastAccess Service being provisioned to this customer.

Further, Affiant sayeth naught.

Sandra Demoya  
SANDRA DEMOYA



STATE OF GEORGIA )  
COUNTY OF CLAYTON ) ss

SUBSCRIBED AND SWORN TO before me by SANDRA DEMOYA on this 21 day of October, 2004.

My commission expires: April 10, 2005.

Rosalind Evans  
NOTARY PUBLIC

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**BellSouth Telecommunications, Inc.**  
601 W. Chestnut Street  
Room 407  
Louisville, KY 40203

Dorothy.Chambers@BellSouth.com

**Dorothy J. Chambers**  
General Counsel/Kentucky

502 582 8219  
Fax 502 582 1573

October 15, 2004

James Vanover, Esq.  
Gregory L. Hall, Esq.  
Vanover, Hall & Bartley, P.S.C.  
152 Third Street  
Pikeville, KY 41501

Re: Vanover, Hall & Bartley, P.S.C., Complainant, v. BellSouth  
Telecommunications, Inc., Defendant  
KPSC 2004-00410

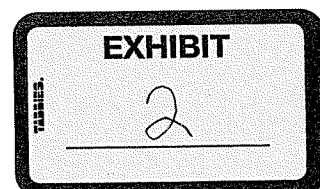
Dear Messrs. Vanover and Hall:

This relates to the Complaint you filed with the PSC on October 8, 2004, which BellSouth received on October 14, 2004.

BellSouth is and always has been willing to provide its unregulated retail high-speed Internet access service, known as BellSouth FastAccess® DSL, to a customer, such as your firm, that is obtaining voice telephone service from a competitive local exchange company over a resale line. Our investigation has revealed that your firm's local voice service is being provided via a resale line, so your firm is eligible to continue to receive FastAccess. The issue is that you must make an alternate billing arrangement. Your firm was initially billed for FastAccess via your BellSouth phone bill. Once your firm changed voice providers, BellSouth should have offered your firm the opportunity to continue your FastAccess service by making arrangements to bill via credit card. The alternative billing arrangement, of course, is necessary because your voice telephone service no longer is billed to your firm by BellSouth. If BellSouth did not contact your firm to make alternate billing arrangements, we apologize for any inconvenience that was caused.

If you would like to continue with FastAccess service, please let me know and I will be happy to put you in touch with a BellSouth representative so you can make billing arrangements.

FastAccess service is unregulated and the Kentucky Public Service Commission has recognized in previous cases that it does not have jurisdiction regarding that unregulated service. BellSouth reserves its right to assert this and all other defenses it

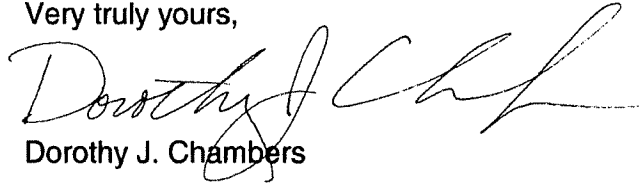


James Vanover, Esq.  
Gregory L. Hall, Esq.  
October 15, 2004  
Page 2

has to the complaint you have filed with the Public Service Commission in the event that you pursue the Complaint.

I apologize for what appears to have been a misunderstanding, and the inconvenience to you and the members of your firm. If you should wish to discuss this letter or your complaint, please do not hesitate to contact me.

Very truly yours,

A handwritten signature in black ink, appearing to read "Dorothy J. Chambers". The signature is fluid and cursive, with a large initial "D" and a long, sweeping tail.

Dorothy J. Chambers

cc: Ms. Beth O'Donnell, Executive Director  
Kentucky Public Service Commission

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