

**ORIGINAL
FILE COPY**

BEFORE THE PUBLIC SERVICE COMMISSION

In Re: Petition by American Communications)
Services, Inc. and American Communications)
Services of Jacksonville, Inc. For Arbitration with)
BellSouth Telecommunications, Inc. Pursuant to)
the Telecommunications Act of 1996.)
_____)

DOCKET NO. 960914-TP
Filed: September 19, 1996

**ACSI'S MOTION TO COMPEL BELLSOUTH'S ANSWERS
TO ACSI'S FIRST REQUEST FOR PRODUCTION OF DOCUMENTS**

Pursuant to Rule 1.380 (a), Florida Rules of Civil Procedure, and Rule 25-22.034, Florida Administrative Code, American Communications Services, Inc., and American Communications Services of Jacksonville, Inc., (hereinafter "ACSI"), by and through counsel, respectfully request entry of an order compelling BellSouth Telecommunications, Inc.'s (hereinafter "BellSouth") Answers to Request for Production of Documents previously served by ACSI and as grounds therefore would state:

1. On August 13, 1996, ACSI served its First Request for Production of Documents numbered 1 through 16, to BellSouth, a copy of which is attached hereto as composite exhibit "A." On September 3, 1996, BellSouth filed objections to ACSI's First Request for Production of Documents. BellSouth objected to or provided partial responses to Items 1, 2, 3, 6, 7, 8, 9, 12, 14 and 15 and consolidated their objection to several items.

2. Pursuant to Rule 1.350 (b), Florida Rules of Civil Procedure, "any party may request any other party to produce and permit the party making the request, or someone acting in the requesting party's behalf to inspect and copy any designated documents, including writings, drawings, graphs, charts, photographs, phone-records, and other data compilations from which

DOCUMENT NUMBER-DATE

18006 SEP 19 96

FPSC-RECORDS/REPORTING

information can be obtained . . .” Further, a party is permitted to discover relevant evidence that would be inadmissible at trial so long as it would lead to the discovery of admissible evidence. Amente v. Newman, 653 So.2d 1030 (Fla. 1995). Relevancy describes evidence that has a legitimate tendency to prove or disprove a given proposition that is material as shown by the pleadings. Zabner v. Howard Johnsons, Inc., 227 So.2d 43 (4th DCA 1969). ACSI’s Request for Production of Documents seek such information.

I. Request to Produce Items 1 and 2.

3. Item 1 of ASCI’s First Request for Production of Documents, requested BellSouth to provide copies of all agreements between BellSouth and any CAP, ALEC, other LEC or IXC relating to local interconnection, local traffic exchange or access to unbundled network elements. Item 2 requested the same for cellular, PCS, SMR or other wireless providers. BellSouth objected to both requests on the basis that they are overly broad, oppressive and unduly burdensome. In addition, BellSouth contends that the request does not seek information relevant to the issues in this docket and are not reasonably calculated to lead to the discovery of admissible evidence.

4. Paragraph 1 of ASCI’s Request for Production of Documents, seeks information that is reasonably calculated to lead to admissible evidence. BellSouth is required to provide unbundled network elements on a nondiscriminatory basis pursuant to 47 U.S.C. §§ 251(c)(3) and 252 (d)(1). Additionally, Art XXII of the ACSI/BellSouth Interconnection Agreement includes a Most Favorable Provisions clause making elements available to ACSI on the same basis as to others. In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, Docket No. 96-98, First Report and Order, ¶¶ 13.09; 13.10; and 13.23 (released August 8, 1996). Only by reviewing Agreements between BellSouth and other telecommunications carriers,

including CAPs, CLECs, IXCs, and other LECs, is it possible to ascertain whether BellSouth is providing nondiscriminatory access and rates. As to agreements predating the Act, the FCC explicitly concluded that such agreements, including those between neighboring incumbent LECs, must be made available. Docket No. 96-98, First Report and Order, ¶ 165.

II. Request for Production Item 3 (d-g).

5. BellSouth has agreed to produce items 3 (a-c) but objects to Request No. 3 (d-g) on the grounds that these items were not requested in ACSI's Petition for Arbitration. Thus, BellSouth contends, the request is not reasonably calculated to lead to admissible evidence. In addition, BellSouth objects to the request to the extent it seeks to have BellSouth perform additional work on its cost studies.

6. As to the items to which BellSouth objects, ACSI requested copies of the TSLRIC, TELRIC and/or other cost studies prepared by or for BellSouth which show the cost of providing each of the following types of local loops as an unbundled network element: (d) 2-Wire ADSL-Compatible Loop(s); (e) 2-Wire HDSL-Compatible Loop(s); (f) 4-Wire HDSL-Compatible Loops(s); (g) *Integrated Digital Loop Carrier*. In addition, the request asks that BellSouth identify non-recurring costs, recurring costs, fixed costs and distance-related costs. Also, that BellSouth breakdown the cost information provided to either: (1) specify the localities where ACSI has request interconnection or, if not available, (2) reflect costs at a disaggregated basis below the statewide level such as by exchange, switching center or density cell.

7. Items (d-g) of Request No. 3 are directly addressed in the petition, testimony and Interconnection Agreement attached to ACSI's Petition for Arbitration. (Robertson's Direct Testimony pp. 15 and 20, Exhibit C-2 to the Interconnection Agreement.) The premise upon which

BellSouth based its objection, i.e., that the items were not part of the petition, is clearly in error. Consequently, the objection is not well founded. Further, this information is critical for a determination as to whether new entrants receive cost based pricing under § 252(c).

III. Request for Production Items 6, 7, 11, 12(1), 14 and 15.

8. BellSouth collectively objected to Requests No. 6, 7, 11, 12(1), 14 and 15 on the grounds that the documents requested are not relevant and are not calculated to lead to the discovery of admissible evidence. Further, BellSouth contends the requests are overly broad, unduly burdensome, oppressive and seek sensitive competitive information.

9. In Item 6, ACSI requested copies of the TELRIC and/or other cost studies which show the cost of providing interoffice transport to ACSI. Without waiving its argument as to relevancy, ACSI withdraws this request.

10. In Item 7, ACSI requested BellSouth provide copies of TSLRIC, TELRIC and/or other cost studies prepared by or for BellSouth which related to the cost of providing each of the following services: (a) Special access (DS1 and DS3 level); (b) Private line (DS1 and DS3 level); (c) Centrex access and features; (d) PBX Trunk service and DID; (e) Residential local exchange services (1FR or the equivalent); (f) Business local exchange service (1MD or the equivalent); (g) Switched access transport (DS1 DTT, DS3 DTT and tandem switching); (h) Local switching. These studies are critical to enable ACSI to analyze BellSouth's cost evidence in this proceeding. ACSI cannot analyze BellSouth's cost studies in a vacuum. ACSI therefore requires cost studies of the comparable services listed in this request in order to compare whether BellSouth has consistently applied the same costing methodology. ACSI will also want to determine whether BellSouth, in conducting studies for the purposes of this proceeding, has taken the opportunity to include

additional shared and common costs or inflate inputs relative to other cost studies. The requested unbundled loop represents one part of several of the listed services, and comparisons will also be useful from this perspective. Finally, ACSI will utilize these cost studies for the purposes of examining overhead loadings utilized in past studies, as compared to those used in BellSouth's unbundled loop studies. To the extent the information is highly sensitive, ACSI is willing to enter into a protective agreement before reviewing this highly relevant data and in fact has executed such agreement.

11. In Item 11, ACSI requested copies of any cost studies which have been prepared by or for BellSouth to support the non-recurring charge that BellSouth assesses when a customer elects to change its presubscribed long distance carrier. The information regarding non-recurring charges (NRCs) relating to presubscribed long-distance carriers is directly relevant for purposes of comparison with NRCs for local exchange services. A key issue in this proceeding is determining TELRIC based NRCs for unbundled loops. Many of the administrative and other activities required for a presubscription change are identical to the administrative and other activities required to provide unbundled loops. ACSI requires additional detail as to the presubscription process and any associated cost studies. Further, to the extent the information requested is highly sensitive, ACSI is willing to enter into a protective agreement before reviewing this purportedly highly sensitive data.

12. In Item 12(1), ACSI requested a copy of the unbundled 4 wire DS1 Digital grade loop. The information requested in sub-part (1) is relevant because it would form the basis for a comparison of BellSouth's costing methodology for the unbundled loop types that ACSI has requested with 4-wire DS1 Digital Grade Loop, including an analysis of joint and common costs and

overhead loadings. The information is relevant and BellSouth has not given any reason as to how the production of a cost study is unduly burdensome or oppressive absent any showing the documents must be produced. To the extent subpart (1) seeks highly sensitive competitive information, ACSI is willing to enter into a proprietary agreement with BellSouth prior to reviewing such information.

13. Item 14 requests that BellSouth provide copies of all end user customer contracts entered into since January 1, 1995, relating to the provision by BellSouth of Centrex access and features, Private lines, PBX Trunk Service and DID, and Special Access. ACSI moves the PSC to compel BellSouth to respond to Request No. 14. ACSI takes the position that the overhead loadings that BellSouth includes for "competitive" services such as those identified in this request are extremely useful in determining what the upper bound on overhead loadings on unbundled network elements should be. BellSouth must not be permitted to apply a conservative overhead loading standard when it intends to drive down the price of competitive services, but a liberal standard in attempting to drive up the price of bottleneck elements sold to competitors. Prices contained in BellSouth end user contracts are accordingly critical to ACSI's ability to analyze BellSouth cost studies and should be obtained from BellSouth. These prices are also essential for direct comparison purposes. If these costs are less than the proposed BellSouth unbundled loop rates, despite the fact that an unbundled loop represents only a portion of these services, BellSouth's unbundled loop rates are fundamentally flawed.

14. In Item 15 of ACSI's Request, BellSouth was requested to provide copies of a revenue/cost comparison or justification for its end user customer contracts listed in item 14 to the extent that these are prepared.

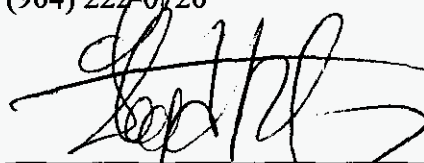
15. ACSI moves the PSC to compel BellSouth to respond to Request No. 15. The cost studies associated with end user contracts are of central significance for the reasons stated in ACSI's motion to compel a response to Request No. 14. Further, to the extent the information requested is highly sensitive, ACSI is willing to enter into a protective agreement before reviewing this purportedly highly sensitive data.

IV. Request for Production Items 8 and 9.

16. In response to Items 8 and 9 of the Production of Documents, BellSouth referred ACSI to the BellSouth response to Item No. 3 of ACSI's request for Production. BellSouth's objections to Items 3 (d-g) were founded on the mistaken belief that those items were not part of the Petition. ACSI would incorporate its response to Item No. 3 in this response.

WHEREFORE, AMERICAN COMMUNICATIONS SERVICES, INC., and AMERICAN COMMUNICATIONS SERVICES OF JACKSONVILLE, INC., request entry of an order compelling BellSouth Telecommunications, Inc., to immediately file responsive and complete answers to ACSI's First Request for Production of Documents.

Respectfully submitted,
MESSER, CAPARELLO, MADSEN,
GOLDMAN & METZ, P.A.
Post Office Box 1876
Tallahassee, FL 32302-1876
(904) 222-0720



FLOYD R. SELF, ESQ.
NORMAN H. HORTON, JR., ESQ.

Attorneys for American Communications Services, Inc.
and American Communications Services of
Jacksonville, Inc.

CERTIFICATE OF SERVICE

I hereby certify that a copy of ACSI's Motion to Compel BellSouth's Answers to ACSI's First Request for Production of Documents in Docket No. 960916-TP has been sent by Hand Delivery (*) on this 19th day of September, 1996 to the following parties of record:

Donna Canzano, Esq.*
Division of Legal Services
Room 370, Gunter Building
Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, FL 32399-0850

Phil Carver*
c/o Nancy H. Sims
BellSouth Telecommunications, Inc.
150 S. Monroe Street, Suite 400
Tallahassee, FL 32301

Tracy Hatch, Esq.*
AT&T Communications of the Southern States
101 N. Monroe Street, Suite 700
Tallahassee, FL 32301

Richard Melson, Esq.*
Hopping, Green, Sams & Smith
123 S. Calhoun St.
Tallahassee, FL 32301



Floyd R. Self