

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Consideration of) DOCKET NO. 960786-TL
BellSouth Telecommunications,) ORDER NO. PSC-96-1135-PCO-TL
Inc.'s entry into InterLATA) ISSUED: September 9, 1996
services pursuant to Section 271)
of the Federal)
Telecommunications Act of 1996.)
_____)

ORDER GRANTING THE FLORIDA INTEREXCHANGE
CARRIERS ASSOCIATION'S MOTION TO COMPEL

On August 23, 1996, the Florida Interexchange Carriers Association (FIXCA) filed a Motion to Compel answers to items contained in its First and Second Sets of Interrogatories and First Request to Produce. On August 30, 1996, BellSouth Telecommunications, Inc. (BellSouth) served its Response in Opposition to FIXCA's Motion to Compel. FIXCA and BellSouth presented their arguments on September 4, 1996, during the weekly status conference call in this docket. Upon consideration of the arguments of the parties, my findings are set forth below.

1. Interrogatories 1,2,3,5,14 and Request to Produce Item 4

Both FIXCA and BellSouth acknowledge that Interrogatory 1 is the question upon which the rest of the above-captioned items are based. Item 1 asks BellSouth whether it intends to assert in this proceeding that it has met the requirements of Section 271(c)(1)(A). If yes, FIXCA asks BellSouth to identify each agreement between BellSouth and an unaffiliated competing provider of telephone exchange service on which it intends to rely in support of its contention. In its answer, BellSouth states that as of today, the Commission has not approved an agreement which BellSouth believes meets all the requirements of Section 271(c)(1)(A)." In its response in opposition to FIXCA's Motion to Compel, BellSouth states that its response simply means that, as of today, BellSouth has not made the determination that any agreement, approved or otherwise, meets the requirements of 271. Therefore, BellSouth asserts, it cannot say upon what it intends to rely at some future date.

In its Motion to Compel, FIXCA argued that BellSouth answered a question different than the one FIXCA posed. As a result, FIXCA asserts, the answer to number 1 is ambiguous. During the status conference, FIXCA concluded that BellSouth's response to Interrogatory 1 is evasive and unresponsive and that BellSouth

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should try to identify those agreements on which it intends to rely at this point. BellSouth's response was that it does not know what it is going to rely on when it files its petition for interLATA authority.

Upon consideration, I find that BellSouth's answer to interrogatory 1 is unresponsive. BellSouth did not answer the question posed. BellSouth was asked whether it intends to assert in this proceeding that it has met the requirements of Section 271(c)(1)(A). BellSouth shall answer this question. If BellSouth's response is in the affirmative, it should identify the agreement or agreements that BellSouth intends to rely upon at this stage. However, should BellSouth desire to argue, at a later date in this proceeding, that another agreement or additional agreements satisfy Section 271(c)(1)(A), it will not be precluded from doing so. Accordingly, FIXCA's Motion to Compel is granted with respect to interrogatories 1,2,3,5 and First Request for Production of Documents, item 4.

2. Interrogatory Number 4

This interrogatory states:

Describe in detail the technical and operational measures BellSouth has taken specifically to implement the competitive checklist of Section 271(c)(2)(B) prior to the filing of BellSouth's petition in this docket. Include all changes to the network; all features installed for the purpose; and any capabilities added to its network and/or provisioning systems.

BellSouth's response to this interrogatory is that it has not developed any operational measures specifically to implement Section 271(C)(2)(B). Further, BellSouth states that any such operational measures have been undertaken to promote local competition as Congress intended or to meet the requests of specific parties identified during the negotiations. FIXCA argues in its Motion to Compel that BellSouth's answer is evasive and incomplete.

During the status conference, BellSouth agreed to identify the technical and operational measures it has taken to implement agreements it has entered into with unaffiliated competitors. FIXCA agreed to this compromise; therefore, I will consider FIXCA's Motion to Compel with respect to interrogatory 4 withdrawn. BellSouth, as part of its response, should identify the specific checklist items that any of the technical and operational measures involve.

3. Interrogatories 6,7,8 and 34(b)

Interrogatories 6,7 and 8 ask for the total number of loops provided by BellSouth, the total number of residential loops and total number of business loops within the state of Florida and on a LATA by LATA basis within Florida respectively. BellSouth responded that the information requested on a LATA by LATA basis is not readily available. Interrogatory 34(b) asks BellSouth to state the number of BellSouth access lines resold by each unaffiliated competitive provider of telephone exchange service presently competing with BellSouth. BellSouth responded that it had resold 136 access lines as of July 31, 1996 and that the information by competitor is not readily available.

In its Motion to Compel, FIXCA asserts that whether information is readily available is not the applicable standard and that even a claim that a request is unduly burdensome requires support. With respect to items 6,7 and 8, BellSouth states that it does not keep the information in this form and that it has provided FIXCA with everything it needs to summarize the information by LATA. BellSouth argues that it has provided FIXCA with more information than it asked for and that FIXCA can aggregate the information to see what falls into what LATA just as BellSouth can. FIXCA argues that BellSouth has the ability to provide the information and the obligation to do so.

Upon consideration, I find that BellSouth's response that information is not readily available is an inappropriate basis for refusing to answer an interrogatory. Further, BellSouth has stated that it can aggregate this information. Therefore, FIXCA's Motion to Compel is granted.

4. Interrogatories 15 and 16

These interrogatories ask BellSouth whether it has refused to provide for or whether it has limited network functions, features, services, or arrangements requested by a competitive provider of telephone exchange service. BellSouth responded that it has never refused to provide to anyone network functions, features, services or arrangements as provided for under the Telecommunications Act of 1996. BellSouth further responded that it has never limited or constrained requested functions, features, services, or arrangements when the requested arrangement was appropriate under the Telecommunications Act of 1996. BellSouth goes on to state that this is not to say that requests have not been made for items not technically feasible.

In its Motion to Compel, FIXCA argues that BellSouth's response indicates that requests have been denied or constrained on the basis that they were not technically feasible. According to FIXCA, BellSouth should be required to provide the details of each instance of denial or limitation and that if BellSouth then wants to assert a justification for each instance of denial or limitation, it may do so. In its response in opposition, BellSouth states that FIXCA is requesting a detailed description of every request that has ever been made by anyone under any circumstances with which BellSouth could not comply for technical reasons. This, BellSouth argues, is not possible. BellSouth further argues that negotiations are an ongoing process in which parties' positions change constantly. According to BellSouth, FIXCA is asking it to go back through every negotiation with every party and detail everything that any party has requested that they did not get from BellSouth.

During the status conference, FIXCA stated that it is not asking for incremental negotiations rather it is asking for those situations where a competitor asks for and ultimately receives less than or nothing in response to its request.

Upon consideration, I find that BellSouth's answer to these interrogatories is unresponsive. BellSouth's response that certain items requested were not provided because they were not technically feasible is its purported justification. Therefore, BellSouth shall identify those instances where it has not ultimately provided a competitor with what it has requested. BellSouth's response should not be limited to negotiations that have resulted in arbitration proceedings. It is possible that BellSouth has provided a competitor with something other than what it requested or has not provided an item without proceeding to arbitration.

5. Interrogatories 17 and 18

These interrogatories ask BellSouth to provide a detailed description of procedures it will follow for ordering and provisioning requests from its long distance affiliate and of its business practices for transacting business with the affiliate. BellSouth responds that it will utilize the same procedures for handling ordering and provisioning requests received from its long distance affiliate as those used today for all such requests from IXC's. FIXCA argues that BellSouth's responses are incomplete and insufficient.

At the status conference BellSouth argued that had FIXCA asked it to produce any written procedures or standard practices that it has for ordering or provisioning from its long distance affiliate

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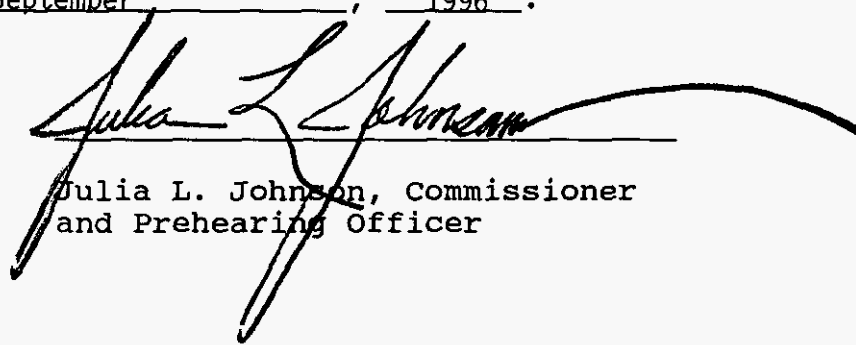
that would have been one thing. BellSouth further argued that it deals with its long distance affiliate in exactly the same way as it does IXCs. According to BellSouth, its practices and procedures for dealing with IXCs, particularly on ordering and provisioning, are fairly lengthy and FIXCA has seen them many times.

Upon consideration, I find that BellSouth's answer is unresponsive. If BellSouth wants to include in its response a copy of procedures and business practices and state that this is exactly what will be followed when dealing with its long distance affiliate that will suffice. Otherwise, BellSouth shall provide a detailed description as requested by FIXCA.

Based on the foregoing, it is

ORDERED by Commissioner Julia L. Johnson, as Prehearing Officer, that the Florida Interexchange Carriers Association's Motion to Compel is granted as set forth in the body of this Order.

By ORDER of Commissioner Julia L. Johnson, as Prehearing Officer, this 9th day of September, 1996.



Julia L. Johnson, Commissioner
and Prehearing Officer

(S E A L)

MMB

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.59(4), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative

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hearing or judicial review will be granted or result in the relief sought.

Any party adversely affected by this order, which is preliminary, procedural or intermediate in nature, may request: (1) reconsideration within 10 days pursuant to Rule 25-22.0376, Florida Administrative Code, if issued by a Prehearing Officer; (2) reconsideration within 15 days pursuant to Rule 25-22.060, Florida Administrative Code, if issued by the Commission; or (3) judicial review by the Florida Supreme Court, in the case of an electric, gas or telephone utility, or the First District Court of Appeal, in the case of a water or wastewater utility. A motion for reconsideration shall be filed with the Director, Division of Records and Reporting, in the form prescribed by Rule 25-22.060, Florida Administrative Code. Judicial review of a preliminary, procedural or intermediate ruling or order is available if review of the final action will not provide an adequate remedy. Such review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.