

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Consideration of  
BellSouth Telecommunications,  
Inc.'s entry into interLATA  
services pursuant to Section 271  
of the Federal  
Telecommunications Act of 1996.

DOCKET NO. 960786-TL  
ORDER NO. PSC-97-0835-PCO-TL  
ISSUED: July 11, 1997

ORDER GRANTING MOTION TO COMPEL AND  
ORDER DENYING REQUEST FOR EXTENSION OF TIME

Motion and Response

On June 20, 1997, the Florida Competitive Carriers Association (FCCA) filed a Motion to Compel stating that BellSouth Telecommunication, Inc.'s response to FCCA's Interrogatory 3 is evasive and non-responsive. FCCA and BellSouth presented further argument on the Motion to Compel during the status conference held on Wednesday, July 9, 1997. Interrogatory 3 reads:

**REQUEST:** With respect to each criterion of Section 271(c)(2)(B)(I) - (xiv) identified in the response to Interrogatory 2 above, describe in detail with respect to each agreement through which BellSouth contends it has satisfied the criterion, the arrangement, services, facilities, or means of access that BellSouth is presently and actually providing and that are related to BellSouth's claim that it has satisfied the criterion. Include in the description all quantitative, qualitative, technical, and geographical data and all pricing information necessary to fully describe the present ability of BellSouth to provide each service, arrangement, or access (in terms of maximum capacity or quantities, or in terms of time needed for response); the specific facilities being used to provide the service; the extent to which the services, arrangements, and/or access are presently being provided; and the terms on which they are being provided.

BellSouth first responded to this interrogatory on August 16, 1996. FCCA filed a Motion to Compel on August 23, 1996. After considering arguments of the parties on September 4, 1996, I

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granted FCCA's Motion to Compel by Order No. PSC-96-1135-PCO-TL, issued on September 9, 1996. BellSouth filed a Motion for Reconsideration on September 19, 1996 and FCCA responded in opposition to that Motion on September 30, 1996. The Commission denied the Motion for Reconsideration by Order No. PSC-97-0590-FOF-TL, issued on May 23, 1997.

On June 13, 1997, BellSouth filed its response to the interrogatory. Specifically BellSouth responded as follows:

**RESPONSE:** The requested detailed analysis fills approximately 100 binders of information. Due to the volume of this information, it would be unduly burdensome to require BellSouth to copy and deliver this information. Consequently, BellSouth will make this information available at a mutually agreeable time for inspection at BellSouth's offices in Atlanta. Further, the information is proprietary, confidential information pursuant to F.S. 364.183 and access to this information will be provided only after the execution of an appropriate non-disclosure agreement. The Florida specific information will be available for review on or after June 24, 1997.

FCCA states that Section 271(c)(2)(B), of the Telecommunications Act of 1996, hereinafter referred to as the Act, delineates fourteen requirements with which BellSouth must comply to satisfy a portion of its burden to demonstrate that it should be permitted to enter the interLATA market. It argues that Interrogatory 3 called on BellSouth to provide the particulars as to any checklist items it is providing, in sufficient detail to enable FCCA to gauge the sufficiency of the status of each checklist item. FCCA expected and argues that it is entitled to a narrative, explanatory description by a knowledgeable employee sufficient to communicate the factual basis for the contention that one or more checklist items is presently being met.

FCCA argues that BellSouth's offer to Produce Documents is an inappropriate and inadequate response. This option, it states, is only available when:

...the burden of deriving or ascertaining the answer is substantially the same for the party serving the

interrogatory as for the party to whom it is directed...  
(Citing Rule 1.340(c), Florida Rules of Civil Procedure.

FCCA asserts that, in its answer, BellSouth makes no attempt to explain why it has made no effort to prepare a narrative response. Further, BellSouth does not support the statement that proprietary information would necessarily be involved in composing the answer. Instead, the FCCA states, BellSouth refers to the availability for review of 100 binders of documents. According to FCCA, the burden of deriving the information requested is clearly not the same for FCCA as it is for BellSouth. FCCA argues that BellSouth knows the information on which it intends to rely in an attempt to show that it has satisfied the criteria of Section 271(c)(2)(B)(i)(xiv). Further, BellSouth's employees who are familiar with the information requested can provide a narrative response. FCCA concludes that it is ludicrous to suggest that FCCA and BellSouth are positioned similarly with respect to "answering" the interrogatory.

FCCA asserts that BellSouth does not state in its response to Interrogatory 3 that it would be burdensome to respond; rather, BellSouth states that it would be burdensome to require it to provide voluminous documents in Tallahassee, as though that was what FCCA requested in the interrogatory. Even if BellSouth's response appeared to be a claim that responding to the interrogatory would be burdensome, FCCA argues that BellSouth has failed to make its case on this point. FCCA argues that it is well-settled that the burden of proving a claim of burdensomeness rests with the party making the claim. (Citing Charles Sales Corp. v. Rovenger, 88 So.2d 551(Fla. 1956)). FCCA argues that BellSouth has not met its burden simply by claiming that the information is contained in numerous documents.

Finally, FCCA argues that BellSouth may not avoid answering the interrogatory on the grounds that providing the answer would require it to exert some effort.

Based on the foregoing arguments, FCCA requests an Order compelling BellSouth to respond in full to FCCA Interrogatory No. 3 within 5 days of the Prehearing Officer's oral ruling on its motion; and that the deadline for intervenors' testimony be extended day-for-day for each day from the granting of the motion to compel until the date the Prehearing Officer finds that BellSouth has served a satisfactory answer.

BellSouth argues that it has answered the interrogatory. According to BellSouth, the answer is fully responsive and provides the information FCCA says it is seeking in the form that FCCA says it wants.

BellSouth states that Section 271(c)(2)(B) of the Act, i.e. the competitive checklist, requires Bell Companies to open their local exchanges by interconnecting, unbundling network elements and discounting retail services for competitors to resell before they can enter their in-region long distance markets. Many of these obligations, BellSouth states, involve very technical details of network operation. BellSouth argues that FCCA's Interrogatory 3 is extremely broad and any response dealing with the technical issues could be expected to run many, many pages.

BellSouth argues that it has prepared a narrative answer to FCCA's Interrogatory 3 that fills 87 binders. It states that this narrative was originally prepared for filing in Georgia. In response to FCCA's interrogatory, BellSouth states that it modified the filing to include Florida specific information where appropriate and that this narrative is presently available for review. According to BellSouth, FCCA now asserts, apparently without having taken the trouble to examine the response contained in the binders, that the above-described reference to the "requested detailed analysis" is a reference to underlying documents rather than to the "narrative response" that FCCA would prefer. BellSouth argues that its answer was clear that it was not referring FCCA to the underlying documents, as is BellSouth's right in the circumstances, but, instead was providing a "detailed analysis" that answered the interrogatory.

BellSouth states that the information contained in the binders provides a description of the factual basis for BellSouth's meeting its Competitive Checklist obligations. BellSouth provided an index of the binders. The binder(s) addressing each checklist item are divided into seven sections. (technical service description; live activity; testing; ordering procedures; provisioning procedures; maintenance procedures; and other). According to BellSouth, each section details information relevant to how BellSouth is meeting the checklist requirement at issue. The binders, BellSouth states, were prepared by a large team of product managers, project managers and others within BellSouth who have day-to-day responsibility for the products and services which are available to alternative local exchange carriers on either an unbundled or resale basis. "Underlying the work of this team was substantially more than

80,000 pages of information. The information the team gathered was distilled into a consistent format fully describing the products BellSouth makes available to meet its obligations."

BellSouth concludes that FCCA's Motion to Compel is baseless and its failure to look at the answer it asserts to be non-responsive is indefensible. BellSouth argues that FCCA propounded an extremely broad interrogatory and BellSouth has set out a broad, carefully organized response that provides the narrative statement FCCA asserts it wants.

### Decision

Upon consideration of the arguments of the parties, I grant FCCA's Motion to Compel to the extent discussed in detail below. BellSouth shall provide its response by Wednesday, July 16, 1997.

Before addressing what BellSouth shall provide in its response, I note that Interrogatory 3 appears quite broad and BellSouth's answer, the 87 binders, appears to be correspondingly broad. Further, during the status conference, there appeared to be some confusion about what would satisfy FCCA's request for information. After considering the interrogatory and FCCA's statements during the status conference, I believe FCCA's Interrogatory 3 can be summarized as follows: with respect to each agreement BellSouth contends meets the requirement of Section 271(c)(2)(B)(i)-(xiv), what services are actually being provided, how are they being provided, over what facilities are they being provided, how much is being provided and what are the terms of the arrangement(s), including pricing information.

During the status conference call FCCA conceded that it had not reviewed the binders that BellSouth proffered as its answer to Interrogatory 3. It appears FCCA's argument that BellSouth's response is evasive and incomplete is largely based on the form of the response. During its oral argument, FCCA referred to Volume 4-3 of the 87 binders that addresses Checklist item 4, Unbundled loops. Specifically the volume addresses Network Interface Devices. FCCA argues that the manual instructions, computer printouts, procedures, form sample letters and work instructions do not equate to a narrative response. Rather, BellSouth has filed a compilation of underlying documents. FCCA also argued that the information was not prepared in response to interrogatory 3; it is not limited to those items that are actually presently being provided as represented; and, there is no proprietary information.

Finally FCCA argues, there is a huge number of underlying documents that do not comport with the representation that there is a narrative description.

As discussed above, FCCA believes that BellSouth's response contains underlying documents. Rule 1.340(c) of the Florida Rules of Civil Procedure, provides that when an answer to an interrogatory may be derived or ascertained from the records of the party to whom the interrogatory is directed and the burden of deriving or ascertaining the answer is substantially the same for the party serving the interrogatory as for the party to whom it is directed, an answer to the interrogatory specifying the records from which the answer may be derived or ascertained, and offering to give the party serving the interrogatory a reasonable opportunity to examine, audit or inspect the records and to make copies is a sufficient answer. Since FCCA believed this information contained underlying documents, I find it difficult to understand why FCCA did not attempt to look at the information in the binders to be prepared to argue specifically why it believes the burden would be greater for FCCA to derive an answer to its interrogatory based on these documents. In this regard, it appears FCCA's own inaction has contributed to the discovery dispute at hand.

In Department of Professional Regulation v. Florida Psychological Practitioners Assn., 483 So.2d 817 (Fla 1st. DCA 1986), the First District Court of Appeal overturned the trial court's order. The Court stated: "We find no competent substantial evidence to support the trial court's finding that searching the micro-film would be more burdensome for the FPPA than for DPR." In the instance case, FCCA simply asserts, without having reviewed the documents, that BellSouth knows the information on which it intends to rely and that BellSouth's employees who are familiar with the information requested can provide a narrative response. I cannot determine, based on the arguments presented, whether the binders contain the type of documentation contemplated by Rule 1.340(c), and if so whether the burden of deriving the answer to Interrogatory 3 would be greater for FCCA.

Contrary to FCCA's argument, BellSouth argues that the 87 binders are not underlying documents. According to BellSouth, they are the detailed analysis FCCA requests. BellSouth argues that its answer is responsive. BellSouth stated in its answer, however, that it would be burdensome to provide the voluminous documents in Tallahassee, and that it would make the information available at a

mutually agreeable time for inspection at BellSouth's offices in Atlanta. BellSouth stated that the Florida specific information would be available for review on or after June 24, 1997. I find this response insufficient. This is particularly true in view of the fact that these same documents were provided to the parties on July 7, 1997. If these documents were developed in response to the interrogatory and they were ready on June 24, 1997, I find it incongruous that these documents could not be provided on June 24, 1997, but could be provided on July 7, 1997. Therefore, based on BellSouth's assertion that the binders contained its response to interrogatory 3, I find that BellSouth should have provided its response to FCCA when the Florida specific information was available.

Substantively, I have reviewed Volume 4-3, referenced above. The tab labeled "Live Activity" reveals that the Network Interface Device is not currently being provided in Florida. The volume also contains Ordering procedures, Provisioning Procedures, and Maintenance Procedures. There is no pricing information in this volume. I have also reviewed Volume 4-2, Parts 1 and 2, Sub-Loop Unbundled Elements (Unbundled Loops). Here too, there is no activity in the state of Florida and no pricing information. It appears that none of the other 87 binders contain pricing information. Based on my review of volumes 4-3 and 4-2, it appears BellSouth has not provided the basic information FCCA has requested. FCCA's interrogatory seeks information on those checklist items actually being provided at this time, what is capable of being provided at this time, response time and capacity capabilities.

Since it appears that the binders do not contain some of the information requested and they appear to contain information that goes beyond what FCCA requested, BellSouth shall provide a summary of the current activity in Florida. BellSouth shall not refer FCCA to particular binders for that purpose. BellSouth shall state which items contained in Sections 271(c)(B)(i) - (xiv), also referred to as checklist items, are presently being provided, how many of each of the checklist items are being provided, over what facilities they are being provided, how they are being provided, and the terms under which they are being provided, including pricing information. BellSouth shall also include what it is capable of providing at this time, response time and any current limitations on the maximum capacity of providing the item.

With respect to the technical aspects of FCCA's request, I acknowledge BellSouth's concern that its response could be a reiteration of what may be in the binders. Therefore, I find that BellSouth may cite to a specific volume, section and page or pages in its description of the technical requirements.

During the status conference, FCCA stated that it is not asking that BellSouth specify who the agreements are with or the location of a particular item. FCCA states that with respect to each checklist item that BellSouth claims it has implemented by virtue of an agreement that has been implemented, it would like BellSouth to describe how it has accomplished that implementation and what facility is being used. This request appears reasonable and as discussed above, BellSouth shall provide this information for those items contained in Section 271(c)(2)(B)(i)-(xiv) that are currently being provided.

Finally, with respect to FCCA's request for an extension of time, I find, based on all of the facts surrounding this interrogatory, that an extension of time is not warranted at this juncture. Since BellSouth's response is due on July 16, 1997, FCCA will have 2 weeks to review the response and the binders before its rebuttal testimony is due. If, however, BellSouth fails to provide the descriptions required by this Order, FCCA shall not be precluded from asking for an extension of time or other appropriate relief.

It is, therefore,

ORDERED by Chairman Julia L. Johnson, as Prehearing Officer, that the Florida Competitive Carriers Association's (FCCA) Motion to Compel is granted as set forth herein. It is further

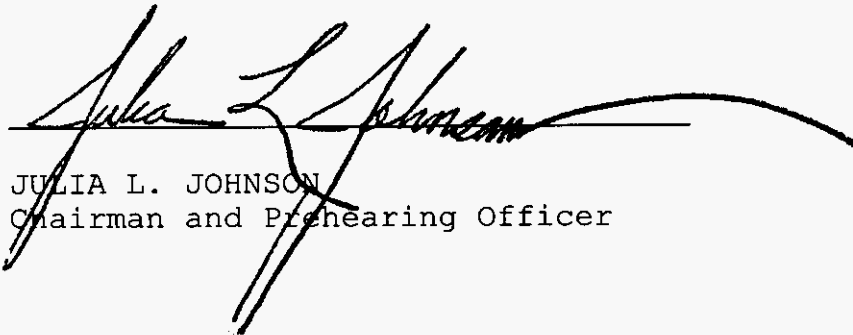
ORDERED that BellSouth Telecommunications, Inc. shall file its answer by July 16, 1997. It is further

ORDERED that FCCA's request for extension of time is denied.



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By ORDER of Chairman Julia L. Johnson, as Prehearing Officer,  
this 11th day of July, 1997.



JULIA L. JOHNSON  
Chairman and Prehearing Officer

( S E A L )

MMB

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), 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 hearing or judicial review will be granted or result in the relief sought.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

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

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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.