BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition of Competitive Carriers for Commission action to support local competition in BellSouth Telecommunications, Inc.'s service territory.	DOCKET NO. 981834-TP
In re: Petition of ACI Corp. d/b/a Accelerated Connections, Inc. for generic investigation to ensure that BellSouth Telecommunications, Inc., Sprint-Florida, Incorporated, and GTE Florida Incorporated comply with obligation to provide alternative local exchange carriers with flexible, timely, and cost-efficient physical collocation.	DOCKET NO. 990321-TP ORDER NO. PSC-03-0857-PCO-TP ISSUED: July 22, 2003

ORDER GRANTING, IN PART, AND DENYING, IN PART, MOTION TO COMPEL

I. Background

By Proposed Agency Action Order No. PSC-99-1744-PAA-TP, issued September 7, 1999, we adopted a set of procedures and guidelines for collocation, focused largely on those situations in which an incumbent local exchange company (ILEC) believes there is no space for physical collocation. Thereafter, we conducted a hearing to further address collocation guidelines. By Order No. PSC-00-2190-PCO-TP, issued November 17, 2000, various motions for reconsideration and/or clarification of our post-hearing decision regarding collocation guidelines were addressed by the Commission. By that Order, this Docket was left open to address remaining issues associated with collocation, including pricing.

By Order No. PSC-02-1513-PCO-TP, issued November 4, 2002, the procedural schedule and hearing dates were established for this phase of this proceeding in which we will address the remaining technical and pricing issues regarding collocation. On February 7,

2003, the Commission Staff filed a Motion to Revise Order Establishing Procedure.

By Order No. PSC-03-288-PCO-TP, issued March, 4 2003, Staff's Motion to Revise Order Establishing Procedure was granted. On May 15, 2003, pursuant to Rules 1.160 and 1.280 of the Florida Rules of Civil Procedure and Rule 28-106.204, Florida Administrative Code, Verizon and Sprint (Joint Movants) filed an Emergency Joint Motion to Strike, or in the Alternative for an Extension of Time(Joint Motion). By Order No. PSC-03-0702-FOF-TP, issued June 11, 2003, we approved the agreement reached between the parties and our staff to resolve the Joint Motion to Strike, or in the Alternative Grant an Extension of Time. By Order No. PSC-03-0776-PCO-TP, issued July 1, 2003, the procedural schedule was modified to reflect the agreement reached between the parties and our staff.

On May 8, 2003, Verizon served its Second Set of Interrogatories to AT&T. On May 19, 2003, AT&T served its general Objections to the discovery. On May 28, 2003, AT&T served its responses, including specific objections to the discovery requests. On June 30, 2003, Verizon filed a Motion to Compel asking that AT&T be directed to respond to all of its Second Set of Interrogatories. AT&T filed its response on July 7, 2003.

II. Arguments

Verizon seeks to compel AT&T to respond to its Second Set of Interrogatories. Verizon believes the information is necessary to support its arguments regarding CLEC collocation requirements, to rebut CLEC arguments about cable racking requirements, and to provide comparative information about CLEC engineering and accounting practices. AT&T contends that the requests seek irrelevant information, since CLEC practices are not comparable to ILEC requirements. Because ILECs are subject to federal unbundling requirements and the TELRIC pricing methodology, any comparison of CLEC and ILEC information would be "apples to oranges," and thus, ineffective and irrelevant. Furthermore, AT&T contends that the requests are unduly burdensome in that several of them seek a laundry list of information about every AT&T collocation arrangement.

With regard to the specific discovery requests, the arguments are as follows:

Interrogatories 5 & 6

In these requests, Verizon seeks information about AT&T's Florida-specific collocation practices. Verizon contends that it needs the information to support its assertions regarding CLEC collocation requirements, especially as they pertain to DC power requirements. AT&T contends that this information is irrelevant to a determination of Verizon's forward-looking TELRIC obligations. Thus, AT&T believes the information sought is not likely to lead to the discovery of admissible evidence.

Interrogatories 7-10

Verizon contends that this information will support elements in its EIS Cost Study. AT&T, however, argues that its business practices regarding provisioning of collocation have nothing to do with this case and will not lead to admissible evidence. Furthermore, AT&T contends that these requests seek an excessive amount of information that far exceeds the scope of this proceeding, particularly to the extent that they seek information about AT&T's lessees that are not CLECs.

Interrogatories 11-14

In these requests, Verizon seeks information about AT&T's power costs and practices. Verizon contends this information will support its own proposed costs in this proceeding. Verizon adds that it obtained similar information from AT&T in proceedings in New York. AT&T responds that these interrogatories seek information about AT&T's most recent power plant installations in the world and in Florida. AT&T contends that this information is not likely to lead to the discovery of admissible evidence, because AT&T does not provide power to CLECs as TELRIC prices. AT&T adds that these requests amount to a broad fishing expedition.

Interrogatory 15

Verizon seeks information about AT&T's cable racking practices through this interrogatory. Verizon believes that this information

will rebut AT&T's contention that BellSouth, and by implication Verizon, has understated capacity. AT&T, however, believes that its racking practices are not comparable to Verizon's, particularly since only Verizon is required by the Telecommunications Act to provide collocation.

Interrogatories 16-20

These requests seek information about AT&T's depreciation lives, rates, and methods. Verizon believes that this information will be helpful as a comparison with the lives that Verizon has proposed to determine what are the most appropriate forward-looking depreciation lives. AT&T contends that this argument is flawed, because its depreciation lives are not comparable to those of Verizon in view of the fact that AT&T is primarily a long distance network. Furthermore, AT&T emphasizes that Verizon is subject to the TELRIC standard, whereas AT&T is not. Thus, AT&T does not believe that these interrogatories are likely to lead to the discovery of admissible evidence.

Interrogatory 21

With this request, Verizon seeks information about AT&T's cost of capital. Here, Verizon believes that a comparison between its proposed cost of capital and that used by AT&T will be beneficial to the Commission's consideration in this proceeding. Verizon believes that AT&T's cost of capital will support Verizon's proposed cost of capital, and it notes that the FCC has required AT&T to produce similar information in the Virginia UNE proceeding.[1] While AT&T agrees that some comparisons of various telecommunications companies' cost of capital may be useful, AT&T contends that the companies used in the comparison must be comparable for the comparison of their respective costs of capital to have merit. As an IXC, AT&T maintains that it is not comparable

---

[1]*Citing* Petition of WorldCom, Inc., et al., Pursuant to Section 252(e)(5) of the Communications Act for Expedited Preemption of the Jurisdiction of the Virginia State Corporation Commission Regarding Interconnection Disputes with Verizon Virginia Inc., and for Expedited Arbitration, CC Docket 00-218 at Transcript pp. 3641-3642.

to Verizon. Furthermore, AT&T asserts that simply because the information was produced in another jurisdiction does not mean that the information is relevant to this proceeding. AT&T notes that Verizon provides no rationale as to why the information will be helpful in determining the appropriate cost of capital for Verizon's provision of collocation to CLECs.

III. Decision

The scope of discovery under the Florida Rules of Civil Procedure is liberal. Rule 1.280(b)(1), Florida Rules of Civil Procedure, states that:

> . . . Parties may obtain discovery regarding any matter, not privileged, that is relevant to the subject matter of the pending action, whether it relates to the claim or defense of the party seeking discovery or the claim or defense of any other party. . . . It is not ground for objection that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

This standard is not, however, without limit, as noted by AT&T. Applying the above standard, the Motion to Compel is hereby granted, in part, and denied, in part, as set forth below:

A. Interrogatories 5 and 6 - AT&T shall respond to Interrogatory 5, but must do so only to the extent that AT&T provides the itemized information for its five most recent collocation arrangements in each ILECs territory in Florida (Verizon, Sprint, and BellSouth). This information appears likely to lead to the discovery of admissible evidence in this proceeding. The information requested by Interrogatory 6, however, does not, because it seeks information regarding collocation in non-telecommunications space. This appears to be too far beyond the scope of this proceeding to lead to admissible evidence.

B. Interrogatories 7, 8, 9, and 10 - AT&T shall respond to Interrogatories 7 and 8. This information could lead

to the discovery of admissible comparative costing information. AT&T shall also respond to Interrogatory 9. This request does not appear unduly burdensome and may lead to admissible information regarding collocation practices. However, AT&T shall not be required to respond to Interrogatory 10. The collocation practices of AT&T's lessees is beyond the scope of this proceeding and not likely to lead to the discovery of admissible information. Furthermore, this request appears unduly broad.

C. Interrogatories 11, 12, 13, and 14 - AT&T shall not be required to respond to Interrogatory 11. The request is unduly broad and overly burdensome in that it seeks information regarding the last three power plants installed by AT&T, its parents or affiliates, anywhere. AT&T shall, however, respond to Interrogatory 12, which is limited to AT&T itself, and its power plant installations in Florida. This request seeks information reasonably related to this proceeding and likely to lead to the discovery of admissible evidence. AT&T need not respond to Interrogatory 13 for the same rationale pertinent to Interrogatory 11. AT&T shall, however, be required to respond to Interrogatory 14 for the same rationale applicable to Interrogatory 12.

D. Interrogatory 15 - AT&T shall respond to this interrogatory. This interrogatory does not appear unduly broad and appears to be likely to lead to the discovery of admissible evidence in this proceeding. To the extent, however, that AT&T has concerns about the relevance of this information, AT&T shall have leave to provide additional explanation within its response to this interrogatory.

E. Interrogatories 16, 17, 18, 19, and 20 - AT&T shall be required to respond to Interrogatories 16, 17, and 19 to the extent that its responses shall be limited to situations pertaining to AT&T's provision, or intent to provision, local exchange service. AT&T shall not be required to respond to Interrogatories 18 and 20. The information sought by these requests appears to be beyond

the scope of this proceeding, unduly burdensome to produce to the extent repetitive of Interrogatory 16, and otherwise unlikely to lead to the discovery of admissible evidence.

F. Interrogatory 21 - AT&T shall not be required to respond to Interrogatory 21. This proceeding is designed to consider collocation practices and costs, while this request appears to seek information regarding AT&T's threshold for entering a local exchange market. Thus, the information sought in this request appears to be beyond the scope of this proceeding to such an extent that it appears unlikely to lead to the discovery of admissible information.

For those interrogatories to which AT&T has been directed to respond, AT&T shall provide its responses within 10 days of the issuance of this Order.

It is therefore

ORDERED by J. Terry Deason, as Prehearing Officer, that Verizon Florida Inc.'s Motion to Compel is granted, in part, and denied, in part, as set forth in the body of this Order. It is further

ORDERED that AT&T Communications of the Southern States, LLC shall provide its responses within 10 days of the issuance of this Order.

By ORDER of Commissioner J. Terry Deason as Prehearing Officer, this 22nd Day of July, 2003.

J. TERRY DEASON
Commissioner and Prehearing Officer

(S E A L)

BK

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; or (2) 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 the Commission Clerk and

Administrative Services, 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.