

ORIGINAL

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for waiver of physical collocation requirements set forth in the Telecommunications Act of 1996 and the FCC's First Report and Order, for the Boca Teeca Central Office, by BellSouth Telecommunications, Inc.

) Docket No. 980947-TL

In re: Petition for waiver of physical collocation requirements set forth in the Telecommunications Act of 1996 and the FCC's First Report and Order, for the Miami Palmetto Central Office, by BellSouth Telecommunications, Inc.

) Docket No. 980948-TL

In re: Petition for waiver of physical collocation requirements set forth in the Telecommunications Act of 1996 and the FCC's First Report and Order, for the West Palm Beach Gardens Central Office, by BellSouth Telecommunications, Inc.

) Docket No. 981011-TL

In re: Petition for waiver of physical collocation requirements set forth in the Telecommunications Act of 1996 and the FCC's First Report and Order, for the North Dade Golden Glades Central Office, by BellSouth Telecommunications, Inc.

) Docket No. 981012-TL

) Filed: 3-31-99

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MOTION OF INTERMEDIA COMMUNICATIONS INC. TO COMPEL DISCOVERY

COMES NOW Intermedia Communications Inc., ("Intermedia") and, pursuant to Rule 1.380(a)(2), Florida Rules of Civil Procedure, requests the Prehearing Officer to issue an Order

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compelling BellSouth Telecommunications, Inc. (“BellSouth”) to respond to discovery. In support of this request, Intermedia states as follows:

(1) On March 12, 1999, Intermedia served discovery on BellSouth in each of the consolidated Dockets Nos. 981011-TL, 981012-TL, 980947-TL, and 980948-TL, consisting of First Set of Interrogatories, First Request for Production of Documents, and First Request for Admissions.

(2) On March 22, 1999, BellSouth filed with this Commission Objections to Intermedia’s First Set of Interrogatories in each of these dockets. BellSouth’s specific objections address the same interrogatories in each set of interrogatories in the same way. Intermedia’s responses below, therefore, are applicable in each docket, except as noted.

I.

(3) In its first specific objection, BellSouth objects to Intermedia’s second interrogatory “to the extent that it calls for the disclosure of customer proprietary information contrary to Section 364.24(2), Florida Statutes, and to the extent that it calls for information regarding virtual collocation, as not relevant to the subject matter of this docket and not reasonably calculated to lead to the discovery of admissible evidence.”

(4) Intermedia’s second interrogatory is as follows:

- (a) Please identify all requests by requesting carrier received to date for (1) physical and (2) virtual collocation in the [Miami Palmetto/North Dade Golden Glades/Boca Raton Boca Teeca/West Palm Beach Gardens] central office.
- (b) Please identify the dates upon which BellSouth officially received each of the requests identified in (a) above.
- (c) Please identify the amount of space requested in each of the requests identified in (a) above.
- (d) Please specify what collocation types, conditions and specifications were requested in each of the requests identified in (a) above.

(5) BellSouth's first specific objection should not be allowed to stand. First, Section 364.24(2), Florida Statutes, is inapplicable. It prohibits a telecommunications company from disclosing customer account records except under specified circumstances. Competitive carriers are not "customers" of BellSouth within the meaning of the statute. "Customers" of BellSouth within the meaning of the statute are end users of telecommunications services provided by BellSouth as defined in Section 364.02, Florida Statutes. There is no statutory basis that would justify withholding disclosure of the requested information. Second, the information requested related to virtual collocation is material to these proceedings because Intermedia's virtual collocation opportunities may in fact be limited by the capacity of BellSouth's facilities. Intermedia may elect these opportunities, if they exist, dependent on the Commission's decisions in these proceedings.

II.

(6) In its second specific objection, BellSouth objects to Intermedia's ninth interrogatory, part (a), "to the extent that it defines 'obsolescent' as 'not used.'"

(7) Intermedia's ninth interrogatory, part (a), is as follows:

- (9) Please identify any and all space in the [Miami Palmetto/North Dade Golden Glades/Boca Raton Boca Teeca/West Palm Beach Gardens] central office occupied by:
- (a) obsolescent (unused) equipment.

(8) BellSouth's second specific objection should not be allowed to stand. Intermedia's ninth interrogatory, part (a), merely seeks the identification of equipment, if any, that is both obsolescent and not used, but still in place in these central offices.

III.

(9) In its third specific objection, BellSouth objects to Intermedia's eleventh and eighteenth interrogatories "to the extent that each calls for information regarding the terms upon which BellSouth will offer virtual collocation as not relevant to the subject matter of this docket and not reasonably calculated to lead to the discovery of admissible evidence."

(10) Intermedia's eleventh interrogatory is as follows:

As a general matter, please identify specifically what limiting, restrictive, or exclusionary conditions BellSouth requires of virtual collocation arrangements

(11) Intermedia's eighteenth interrogatory is as follows:

What, if any, restrictions or limitations exist relative to the number of competitive carriers that can collocate through virtual collocation in the [Miami Palmetto/North Dade Golden Glades/Boca Raton Boca Teeca/West Palm Beach Gardens] central office.

(12) BellSouth's third specific objection should not be allowed to stand. The information requested related to virtual collocation in Intermedia's eleventh and eighteenth interrogatories is material to these proceedings because Intermedia's virtual collocation opportunities may in fact be limited by the capacity of BellSouth's facilities. Intermedia may elect these opportunities, if they exist, dependent on the Commission's decisions in these proceedings. The Commission's determination of physical collocation space availability in these central offices may in fact be partly informed by the availability of virtual collocation space.

IV.

(13) In its fourth specific objection, BellSouth objects to Intermedia's fifteenth and seventeenth interrogatories "as vague and ambiguous."

(14) Intermedia's fifteenth interrogatory is as follows:

- (a) Does BellSouth foresee the need to provide new space beyond the presently reserved space for its own needs in the [Miami Palmetto/North Dade Golden Glades/Boca Raton Boca Teeca/West Palm Beach Gardens] central office for the year 2001?
- (b) Does BellSouth foresee the need to provide new space beyond the presently reserved space for its own needs in the [Miami Palmetto/North Dade Golden Glades/Boca Raton Boca Teeca/West Palm Beach Gardens]central office for the year 2002?
- (c) Does BellSouth foresee the need to provide new space beyond the presently reserved space for its own needs in the [Miami Palmetto/North Dade Golden Glades/Boca Raton Boca Teeca/West Palm Beach Gardens] central office for the year 2003?
- (d) Does BellSouth foresee the need to provide new space beyond the presently reserved space for its own needs in the [Miami Palmetto/North Dade Golden Glades/Boca Raton Boca Teeca/West Palm Beach Gardens]central office for the year 2004?

(15) Intermedia's seventeenth interrogatory is as follows:

Please relate the annual business growth identified in the 1st Interrogatory above to the capacity of [Miami Palmetto/North Dade Golden Glades/Boca Raton Boca Teeca/West Palm Beach Gardens] central office.

(16) BellSouth's fourth specific objection should not be allowed to stand. BellSouth alleges that effectively all the remaining space in these central offices that is unoccupied and useful has been reserved to itself for its business expansion needs through the year 2000. In its fifteenth interrogatory, Intermedia clearly asks whether BellSouth projects additional space needs beyond its present reservations for the years 2001 through 2004. The interrogatory is neither vague nor ambiguous as stated, but could be restated so as to ask whether BellSouth presently expects to provide telecommunications services from these central offices as they are presently sized and configured in the years 2001 through 2004. In its seventeenth interrogatory, Intermedia clearly asks BellSouth to relate the business growth rates it experienced in the years 1990 through 1998 to the capacities of these central offices. The interrogatory is neither vague nor ambiguous as stated, but

could be restated so as to ask BellSouth how much of the design capacity of these central offices the business growth experienced in each of the years 1990 through 1998 consumed.

V.

(17) In its fifth specific objection, BellSouth objects to Intermedia's nineteenth interrogatory in Docket No. 980947-TL "as irrelevant and not reasonably calculated to lead to the discovery of admissible evidence."

(18) Intermedia's nineteenth interrogatory in Docket No. 980947-TL is as follows:

On the second floor of the Boca Raton Boca Teeca central office, 12,946 square feet of space are occupied by employees performing administrative functions. Petition, ¶6.

(a) How many employees are involved in the administrative functions carried out on the second floor of the Boca Raton Boca Teeca central office?

(b) What specific function(s) does each one of the employees referred to in (a) above perform?

(c) Can these functions be removed to another site in order to liberate the space they occupy for collocation purposes?

(d) If the answer to (c) above is "no," please explain why not.

(19) BellSouth's fifth specific objection should not be allowed to stand. In the Boca Raton Boca Teeca central office, BellSouth uses the entire second floor of nearly 13,000 square feet for a relatively small-scale administrative function, while denying Intermedia's request for physical collocation on the grounds that space for physical collocation in that central office is not available. Space presently used for administrative functions is especially the kind of space that Intermedia expects BellSouth to be able to readily liberate through condensation or relocation for physical collocation use. Thus, Intermedia's nineteenth interrogatory is not in any way irrelevant or not reasonably calculated to lead to the discovery of admissible evidence.

WHEREFORE, for all of the reasons set forth above, Intermedia Communications Inc. requests the Prehearing Officer to issue an Order compelling BellSouth Telecommunications, Inc.,

to respond to its second, ninth, part(a), eleventh, fifteenth, seventeenth, eighteenth and nineteenth interrogatories in its First Set of Interrogatories served in Dockets Nos. 980947-TL, 980948-TL, 981011-TL and 981012-TL.

Respectfully submitted this 31st day of March, 1999.



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished by U.S. Mail this 31st day of March, 1999, to the following:

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