

MCWHIRTER REEVES ORIGINAL
ATTORNEYS AT LAW

TAMPA OFFICE:
400 NORTH TAMPA STREET, SUITE 2450
TAMPA, FLORIDA 33602
P. O. BOX 3350 TAMPA, FL 33601-3350
(813) 224-0866 (813) 221-1854 FAX

PLEASE REPLY TO:

TALLAHASSEE

TALLAHASSEE OFFICE:
117 SOUTH GADSDEN
TALLAHASSEE, FLORIDA 32301
(850) 222-2525
(850) 222-5606 FAX

January 17, 2003

VIA HAND DELIVERY

Blanca S. Bayo, Director
Division of Records and Reporting
Betty Easley Conference Center
4075 Esplanade Way
Tallahassee, Florida 32399-0870

RECEIVED
COMMISSION
CLERK
JAN 17 PM 4:53

Re: Docket No.: 020507-TP

Dear Ms. Bayo:

On behalf of the Florida Competitive Carriers Association (FCCA), enclosed for filing and distribution are the original and 15 copies of the following:

- ▶ Florida Competitive Carriers Association's Request for Oral Argument, and **00556-03**
- ▶ Motion for Reconsideration of Order No. PSC-03-0084-PCO-TL. **00555-03**

Please acknowledge receipt of the above on the extra copy of each and return the stamped copies to me. Thank you for your assistance.

Sincerely,

Joseph A. McGlothlin

AUS _____
CAF _____
CMP _____
COM JAM/bae
CTR _____
ECR _____
GCL _____
OPC _____
MMS _____
SEC
OTH _____

Enclosures

RECEIVED
R.V.N
FEB 10 2003

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Complaint of Florida Competitive Carriers Association against BellSouth Telecommunications, Inc. regarding BellSouth's practice of refusing to provide FastAccess Internet Service to customers who receive voice service from a competitive voice provider, and request for expedited relief.

DOCKET NO. 020507-TL

FILED: January 17, 2003

THE FLORIDA COMPETITIVE CARRIERS ASSOCIATION'S MOTION FOR RECONSIDERATION OF ORDER NO. PSC-03-0084-PCO-TL

The Florida Competitive Carriers Association (FCCA), pursuant to rules 25-22.0367 and 28-106.204, Florida Administrative Code, files this Motion for Reconsideration of Order No. PSC-03-0084-PCO-TL (Discovery Order). As grounds therefor, the FCCA states:

I.
Introduction

The FCCA initiated this Complaint proceeding because BellSouth Telecommunications, Inc. (BellSouth) a dominant incumbent LEC, refuses to provide its FastAccess service to a consumer who selects a competitive voice provider. In its complaint, the FCCA alleges BellSouth's practice of providing FastAccess service only to customers who use BellSouth's voice service is discriminatory and contrary to state and federal law. BellSouth's behavior in this regard is not in dispute and the FCCA requested that the Commission "[o]rder BellSouth to cease and desist from its practice of refusing to provide its FastAccess service to customers who select another customer for voice service."¹ The Commission had previously reached this issue in two

¹ FCCA Complaint at 10.

arbitrations² and the FCCA complaint was intended to provide an administratively efficient means of addressing a concern common to all CLECs without engaging in multiple arbitrations.

On October 30, 2002, Staff conducted an issue identification meeting in this docket. BellSouth proposed to include an issue expanding this case into a docket concerning *all* ALECs and ILECs. The FCCA opposed the issue's inclusion. The parties briefed the propriety of the issue and the Prehearing Officer excluded the issue, finding it beyond the scope of the FCCA's Complaint. BellSouth sought reconsideration of the Prehearing Officer's Order, or in the alternative, sought to convert this case to a generic proceeding. The full Commission denied BellSouth's motion for reconsideration and also refused its alternative request to change the FCCA's specific Complaint into a generic investigation.

On November 15, 2002, BellSouth served the FCCA with Interrogatory Nos. 1-32 and Requests for Production of Documents Nos. 1-4. The FCCA objected to many of the requests because they were inconsistent with the purpose of this docket -- to determine whether BellSouth's conduct to refuse service to its existing customers and customers seeking Fast Access is unlawfully discriminatory and anticompetitive -- and thus irrelevant, were overbroad, burdensome and harassing, sought information regarding matters outside the state of Florida, and sought information not in the FCCA's possession, custody or control.

On December 17, 2002, BellSouth filed a Motion to Compel the FCCA to respond to all of its discovery. The FCCA filed a response on December 26, 2002 and also filed a Motion for Protective Order to protect it from the irrelevant and burdensome discovery BellSouth sought.

On January 10, 2003, the Prehearing Officer entered the Discovery Order that is the subject of this Motion for Reconsideration. The Discovery Order requires the FCCA, and its individual members, to respond to most of BellSouth's discovery requests. In so ruling, the

² Order Nos. PSC-020765-FOF-TP and PSC-02-0878-FOF-TP.

Prehearing Officer ignored, failed to address or overlooked several matters and made mistakes of law. On reconsideration, the Commission should modify the Discovery Order and enter the Protective Order the FCCA requested.

II.
Standard for Motion for Reconsideration

The standard for a motion for reconsideration is whether the motion identifies a point of fact or law which was overlooked or which the Commission failed to consider in rendering its order. See, *Stewart Bonded Warehouse, Inc. v. Bevis*, 294 So.2d 315 (Fla. 1974); *Diamond Cab Co. v. King*, 146 So.2d 889 (Fla. 1962); *Pingree v. Quaintance*, 394 So.2d 162 (Fla. 1st DCA 1981). In this instance, the Prehearing Officer overlooked several points of law that necessitate reconsideration.

III.
Basis for Reconsideration³

A.

**The Discovery Order Conflicts with The Commission's Orders
Refusing to Include an Issue Related to All ALECs
or to Convert This Case to a Generic Proceeding**

The Discovery Order is in direct conflict with this Commission's Order denying BellSouth's request to include an issue addressing the behavior of all ALECs or, alternatively, convert this case to a generic proceeding.⁴ The issues in this case turn on the question of how BellSouth treats its consumers who wish to purchase voice services from an ALEC and DSL service from BellSouth. This is a Complaint proceeding in which the FCCA alleges that

³ In this Motion, the FCCA asserts five grounds for reconsideration. Often more than one ground is applicable to a particular request. Because the number of discovery requests is voluminous, a chart listing the requests at issue and the grounds for reconsideration is included as Attachment A. BellSouth's discovery requests and the FCCA's objections are attached as Attachment B.

⁴ Interrogatory Nos. 5, 6, 7, 8, 2nd 6, 7(i), 7(ii), 7(iii), 7(iv), 8(i), 9, 10(i), 10(ii), 10(iii), 11, 12(i), 12(ii), 12(iii), 13(i), 14, 15, 16, 17(i), 17(ii), 17(iii), 17(iv), 18, 19, 20(i), 20(ii), 20(iii), 20(iv), 21, 22, 23, 24, 25, 26, 27, 28, Production Request Nos. 1, 2, 3.

BellSouth's practice of terminating or refusing to provide its FastAccess service to a consumer who selects a voice provider other than BellSouth is violative of state and federal law and creates a barrier to local voice competition. This case is about BellSouth's failure to allow customers to have a choice in violation of the Telecommunications Act of 1996 (Telecom Act) and the Florida Statutes. The issues are ones of customer choice -- should a customer be *forced* to change DSL providers simply because the customer prefers a different voice carrier?

This case is *not* a broad based, generic investigation into the policies, practices or business decisions of the entire telecommunications industry.⁵ Nor does the docket involve an examination of the size and scope of the overall DSL market. What others have done to enter that market is completely irrelevant to the narrow issue of this case. This case -- as the Prehearing Officer and the full Commission ruled -- is a Complaint against BellSouth. Though BellSouth tried several times to convert this Complaint proceeding into a generic docket, both the Prehearing Officer⁶ and the full Commission⁷ denied BellSouth's request for a generic proceeding.⁸ The Prehearing Officer said in his order excluding the issue:

After giving due consideration to the arguments raised by the parties in their briefs, I find it appropriate to exclude BellSouth's proposed issue. I believe the issue as written goes well beyond the scope of the complaint. *To include an issue regarding all ALECs and ILECs would require the Commission to review the individual practices of all the ALECs and ILECs.* The Complaint, however, only addresses whether BellSouth's actions regarding its FastAccess service are anticompetitive.⁹

⁵ It is interesting to note that when the FCCA asked BellSouth to produce documents regarding its DSL entry strategy outside its nine-state region, it objected on the basis that the request was irrelevant. See BellSouth's Objections to the FCCA's Second Request for Production of Documents, No. 8

⁶ Order No. PSC-02-1537-PCO-TL, Order No. PSC-02-1618-PCO-TL.

⁷ Order No. PSC-03-0016-FOF-TL.

⁸ The BellSouth issue which the Commission refused to include in this proceeding read: "Should any decisions made in this proceeding apply to all ALECs and ILECs?"

⁹ Order No. PSC-02-1618-PCO-TL at 2, emphasis supplied.

The full Commission, on reconsideration, refused to include BellSouth's proposed issue seeking to apply the decision in this case to entities other than BellSouth and refused to make this a generic docket. The full Commission's Order denying BellSouth's request states:

. . . We agree that this is merely a complaint proceeding in which FCCA has alleged anticompetitive behavior by BellSouth. As such, we believe that this case may best be addressed in an individual proceeding rather than a generic proceeding, since it requires specific fact-finding.

Further, we find that to convert this docket to a generic proceeding would serve no purpose other than [to] delay the present docket. We agree that expansion of the scope of the hearing to address generic matters . . . would needlessly delay resolution of the issues raised in FCCA's complaint. Moreover, we find it is premature to address these issues in a generic proceeding.

For the foregoing reasons, we find it is not appropriate to establish a generic proceeding to address these issues at this time. Therefore, BellSouth's Motion, in the Alternative, to Convert to a Generic Proceeding shall be denied.¹⁰

Having ruled correctly on BellSouth's effort to broaden the scope of the docket, and having been sustained in that view by the full Commission, the Prehearing Officer effectively reversed those rulings with the Discovery Order. The Discovery Order is inconsistent with the scope of the Complaint, and with the applicable regulatory standard discussed below. The Discovery Order's requirement that information be provided regarding services and offerings of new entrants is in direct conflict with the Commission's decision that an issue relating to the behavior of all ALECs and ILECs not be part of this case and that this case not proceed as a generic docket.

B.

The Discovery Order Overlooks the Statutory Standard That Imposes a Higher Level of Regulation on BellSouth

Eight of the requests¹¹ the Discovery Order requires the FCCA to respond to require it to provide information about what FCCA members do or do not do in the marketplace; if an ALEC

¹⁰ Order No. PSC-03-0016-FOF-TL at 9.

would or would not charge for a particular service in a particular situation; and if so, how much the charge would be. For example, Interrogatory No. 23¹² asks:

If you currently provide Broadband Service, do you have any objection to the Public Service Commission in those states *in which you provide such service* from *requiring you to provide* Broadband Service to an end user irrespective of whether that customer also purchases telecommunications service from you...?

The Discovery Order's requirement that FCCA members respond to questions of this type erroneously applies a standard to the ALECs' behavior that only applies to BellSouth's behavior pursuant to the requirements of the Telecom Act and chapter 364 of the Florida Statutes. Section 364.01(4)(d) (emphasis added) provides that the Commission shall exercise its jurisdiction to:

Promote competition by encouraging new entrants into telecommunications markets and by allowing a transitional period in which *new entrants are subject to a lesser level of regulatory oversight than local exchange companies.*

Thus, pursuant to statute, the Commission regulates new entrants more "lightly" than incumbents, so as to provide new entrants with the ability to gain a toehold in areas and as to services that the incumbent has traditionally provided.

The Discovery Order ignores, overlooks, and misapprehends the explicit direction of the Telecom Act and the Florida Statutes that provide for an entirely different standard of regulation for BellSouth, as an incumbent, than is imposed on new entrants. The standard by which BellSouth's behavior is to be judged is whether BellSouth's behavior is anticompetitive and hampers the opening of local markets to competition. If BellSouth believes that any ALEC is engaged in anticompetitive conduct, then it is free to file a complaint. BellSouth, however, has never alleged such conduct -- its discovery request is nothing more than a burglar demanding the right to investigate law-abiding citizens on the eve of its trial.

¹¹ Interrogatory Nos. 11, 12(i), 12(iii), 13(i), 26, 27, 28; Production Request Nos. 1.

¹² Emphasis added.

Unless the Commission reconsiders the Discovery Order on this significant point, the mistake of failing to recognize the different regulatory standards applicable to incumbents and new entrants will have serious, though unintended, consequences. The Commission has always encouraged the participation of industry associations and groups as an effective and efficient way to coordinate presentations and present information to the Commission.¹³ Association participation before the Commission has the effect of streamlining proceedings because the Commission need not have all individually affected parties intervene and present their case in a docket that affects the interests of many. And, in fact, many trade groups have a history of appearances before the Commission to provide the points of view of various industry segments. Participation by industry groups has been a valuable way for the Commission to receive critical information so as to make informed decisions that directly impact the lives of Florida consumers every day.

Absent reconsideration on the grounds discussed herein, the Discovery Order would set a dangerous and unfounded precedent that would create an enormous deterrent to association participation in Commission proceedings. The Discovery Order would turn association participation before the Commission into a license for the unbridled discovery of information regarding individual member companies¹⁴, who are not parties to a case.

The Discovery Order would dramatically impact industry groups and perhaps the Commission itself. First, industry group participation before the Commission will significantly

¹³ And, in fact, the FCCA viewed the filing of this Complaint as an administratively efficient way to receive an answer to a pressing policy issue; instead, the Discovery Order turns this proceeding into a burdensome discovery exercise. In fact, the Commission has already ruled on the policy issue two times, Order Nos. PSC-02-0765-FOF-TP and PSC-02-0878-FOF-TP, without any of the discovery at issue here.

¹⁴ The instant case is a perfect example of just such a situation. BellSouth served at least 23 discovery requests applicable to each FCCA non-party company.

diminish. The requirement to respond to voluminous and intrusive discovery requests¹⁵ would have a chilling effect on industry's willingness to participate before the Commission. In declining to convert this matter into a generic investigation, Chairman Jaber recognized the dangers of making the Commission process too resource intensive:

but its important to me, the chilling effect that it may have when companies. . . if they file a complaint thinking it's going to be handled in an expedited fashion, because frankly, it takes a shorter time period to process a complaint than a generic proceeding. I would hate for that company to add to their level . . . of analysis, if I file this complaint do I run the risk of it turning into a generic investigation, which adds time and money into a process. And absolutely from an economic development standpoint, we cannot ignore the fact that this entire industry needs to be cautious in where their resources are placed, never mind this agency.¹⁶

As the Commission is well aware, extensive resources and time are required to litigate a matter before the Commission. Many companies do not individually have such resources¹⁷ and are unable to litigate on an individual basis before the Commission.¹⁸ In fact, the only way that many smaller companies can participate in Commission dockets at all is through the vehicle of an industry association, where the cost and burden of administrative litigation can be shared among numerous companies. If the benefits of association participation are negated because individual companies must spend very scarce time and resources to cope with extensive discovery requests, such companies will simply be unable to participate. Thus, these companies' access to Commission proceedings will be greatly diminished.

¹⁵ In this instance, in just the First Set of Discovery, BellSouth served 54 interrogatories (this number includes subparts). BellSouth subsequently served three more sets of discovery.

¹⁶ Agenda Conference Transcript, December 17, 2002 at p. 27-28. The Discovery Order has the very impact Chairman Jaber warned against. Companies will be very reluctant to participate in Commission proceedings via an association if it will expose them to the expensive and time-consuming task of responding to extensive discovery.

¹⁷ This is especially the case in the current economic climate and is even more so for the telecommunications industry.

¹⁸ Alternatively, the company must severely limit those cases in which it participates, even though there are other policy matters which will affect it and as to which its input would be valuable to the Commission.

The Florida Supreme Court expressed concern with the ability of the public to access governmental agencies in *Florida Home Builders*. The Court noted that the inability of an association to represent the interests of its members in an administrative proceeding (in that case a rule challenge) would significantly limit the public's ability to challenge agency rules. While recognizing that individual builders could prosecute such proceedings, the Court was aware that

the cost of instituting and maintaining a rule challenge proceeding may be prohibitive for small builders. Such a restriction would also needlessly tax the ability of the Division of Administrative Hearings to dispose of multiple challenges based upon identical or similar allegations of unlawful agency action.¹⁹

The impact of the policy embodied in the Discovery Order may well be felt by the Commission as well. As mentioned above, the Commission has always encouraged group presentations as a way to make its proceedings more efficient. If individual member companies who have not intervened in a case as a party, are treated, as this Discovery Order does, as though *they are* individual parties to a case, such companies, to the extent they have the resources to do so, will simply intervene and participate on an individual company basis. Thus, the Commission will receive more pleadings to process and be required to conduct lengthier proceedings as individual companies intervene and each participates individually in various dockets. The "encouragement" of participation by numerous, multiple parties, when it is not necessary, will not foster an effective and efficient process at the Commission.

C.

The Discovery Order Overlooks the Fact that Many of the Requests Are Irrelevant, Overbroad, Burdensome and Harassing²⁰

The FCCA objected to many of the requests on the grounds that they are irrelevant, overbroad, burdensome and in the nature of harassment. It is well-settled that:

¹⁹ *Florida Home Builders* at 353.

²⁰ Interrogatory Nos. 7(i), 7(ii), 7(iii), 7(iv), 8(i), 10(i), 10(ii), 10(iii), 11, 12(i), 12(ii), 12(iii), 13(i), 14, 15, 16, 17(i), 17(ii), 17(iii), 17(iv), 18, 19, 20(i), 20(ii), 20(iii), 20(iv), 21; Production Request Nos. 1, 2 3.

A party may not obtain discovery that imposes excessive expense, or otherwise unduly is burdensome or oppressive to the opposing party or witness from whom it is sought, which is often the case where the discovery request is overly broad. Discovery also should not be compelled where it is determined that the purpose thereof is to harass or embarrass the opposing party or witnesses. Indeed, the Rules of Civil Procedure specifically provide that a protective order may be issued to spare a party or person from annoyance, embarrassment, oppression, or undue burden or expense. In order to overcome such objections, the party seeking the discovery must demonstrate an overwhelming need therefore.²¹

And, as the Court noted in *Travelers Indemnity Co. v. Salido*, 354 So.2d 963, 964 (Fla. 1978)

(citations omitted):

The law is clear that discovery under the Florida Rules of Civil Procedure, although wide-ranging, has certain limits. It cannot be utilized to explore all the minute details of a controversy or delve into immaterial or inconsequential matters. Nor can such discovery be so unduly burdensome upon a party as to be oppressive.

While finding some of the questions overbroad, the Discovery Order overlooks the standard discussed above and the extremely overreaching nature of many of the requests.

Two examples are illustrative. Interrogatory No. 10 states:

If the answer to Interrogatory No. 9 [regarding where members provide service outside of Florida] is in the affirmative, please:

- i. Identify those states in which FCCA members provide Broadband Service and/or DSL service;
- ii. Describe with *particularity* the nature of the Broadband Service and/or DSL Service FCCA members are providing in each state, including a description of the protocols used (e.g., ADSL, ISDL, Cable Modem, etc.) as well as all *applicable rates, terms and conditions of such service*;
- iii. State the total number of customers to whom FCCA is providing Broadband Service and/or DSL service in *each such state*, including stating the total number of residential and business customers being provided service.²²

²¹ 19A Fla. Jur, *Discovery & Depositions*, §37.

²² Emphasis added

Though the Discovery Order requires FCCA members to answer this question for “just” BellSouth’s nine-state region (as opposed to all 50 states), the question remains overbroad and burdensome.

Another example of a burdensome and harassing request is Interrogatory No. 19 which states:

Has any FCCA member *at any time* entered into an agreement or held *any discussions* with *any* DSL provider and/or wholesale DSL network provider regarding (a) a joint offering or package of services involving the FCCA member's voice services and the DSL service provider's Broadband Service, *including, but not limited to*, engaging in line splitting; and/or (b) purchasing a wholesale broadband package for the purpose of creating a retail broadband service offering?²³

This interrogatory is not limited in time, in geographic location, or in scope. It would require each company to canvas each employee (current and former) to answer this question. Such overbroad, burdensome and harassing questions, requiring the extensive expenditure of time and resources to respond, are clearly beyond the bounds of appropriate discovery. The Discovery Order overlooks this. Again, this request also seeks information about the ALECs’ DSL services that is completely outside the scope of this proceeding. This proceeding is to address BellSouth’s failure to provide DSL services when a customer chooses an ALEC for voice services.

In *In re: Petition for Determination of Need for Electrical Power Plant in Okeechobee County by Okeechobee Generating Company, L.L.C.*, Docket No. 991462-EU, Order No. PSC-00-0562-PCO-EU (March 17, 2000), the Commission denied numerous discovery requests served on *investor-owned utilities* (IOUs), which it found to be burdensome. The Commission found that responses to the requests would, for example, “be a massive undertaking for FPL

²³ Emphasis added.

(Florida Power and Light)” and “create an undue burden on FPL.”²⁴ Similar findings were made as to Florida Power Corporation²⁵ and Tampa Electric Company.²⁶ The burden that would be imposed on the FCCA members, with their extremely limited resources, far exceeds any burden that might have been imposed on the IOUs in the determination of need case.

D.

The Order Impermissibly Requires Extensive Discovery From Entities Not Parties to the Case

Thirty-one (31)²⁷ of the discovery requests that the Discovery Order compels answers to require information from "each FCCA member." The Discovery Order overlooks the fact that requiring individual members, who have not intervened and who are not parties to the docket, to provide the extraordinarily broad range of information encompassed in the Discovery Order is a mistake of law. It also overlooks the fact that the requests seek information that the entity of the FCCA does not possess and does not control.

First, the Florida Administrative Code provides that the Florida Rules of Civil Procedure govern discovery in this matter. Rule 28-106.206, Florida Administrative Code (emphasis added) states:

. . . [P]arties may obtain discovery *through the means and in the manner* provided in Rules 1.280 through 1.400, Florida Rules of Civil Procedure.

The Florida Rules of Civil Procedure are clear regarding the general rule as to whom discovery may be directed as well as a party's obligation to provide responses -- such obligations rest only with parties to the case. Regarding interrogatories, rule 1.340(a) (emphasis added) states:

²⁴ Order No. PSC-00-0562-PCO-EU at 15.

²⁵ *Id.* at 29.

²⁶ *Id.* at 41.

²⁷ Interrogatory Nos. 2nd 6, 7(i), 7(ii), 7(iii), 7(iv), 8(i), 9, 10(i), 10(ii), 10(iii), 11, 12, 13(i), 14, 15, 16, 17(i) 17(ii), 17(iii), 17(iv), 18, 19, 20(i), 20(ii), 20(iii), 20(iv), 21, 22, 23, 24, 25; Production Request Nos. 1, 2, 3.

. . . [A]ny party may serve upon any other *party* written interrogatories *to be answered* (1) *by the party* to whom the interrogatories are directed, or (2) if that party is a[n] . . . association . . . by any officer or agent, who shall furnish the information *available to that party*.

Rule 1.340(b) (emphasis added) provides that:

A party shall respond to such interrogatory by giving the information *the party has* and the source on which the information is based.

As to production requests, rule 1.350(a) (emphasis added) states:

Any party may request any other *party* (1) to produce . . . documents . . . that are *in the possession, custody, or control of the party to whom the request is directed*.

Rule 1.350(c) specifically provides:

This rule does not preclude an independent action against a person not a party for production of documents. . . .

The provisions quoted above demonstrate that discovery, under the circumstances in this matter, is not available from non-parties.

This principle is well established in Florida law. Trawick's *Florida Practice and*

Procedure notes that:

Interrogatories may be served by a party *on any other party*. If the interrogated party is a[n] . . . association . . ., the organization must designate an officer or agent to answer the interrogatories. He must give all of the information available to the organization whether he personally knows it or not. The propounding party cannot specify who is to answer for the organization. Interrogatories may not be directed to a *non-party* witness through a party."²⁸

The Discovery Order overlooks²⁹ the specific rules of procedure and law applicable to discovery from non-parties, resulting in a mistake of law.

Second, the Discovery Order's reliance upon the *FCTA Order* to require the production of extensive and burdensome information from individual member companies is misplaced.³⁰ The

²⁸ Henry P. Trawick, *Florida Practice and Procedure* § 16-9 (The Harrison Company), emphasis added, footnotes omitted.

²⁹ The Discovery Order omits any mention of these Rules of Civil Procedure.

FCTA Order stands for the limited proposition that discovery, in narrow circumstances, may be permissible from an association regarding its members if the discovery is narrowly tailored and directed toward the issue of associational standing. This was the context of the discovery discussed in the *FCTA Order*. Further, the discovery compelled by the *FCTA Order* was limited to only four interrogatories and three production requests, which were narrowly tailored.

The BellSouth requests addressed in the Discovery Order are fundamentally unlike the discovery in the *FCTA Order*. BellSouth's discovery seeks information regarding the FCCA members' business practices³¹, customer base³², and networks.³³ The scope of BellSouth's discovery is far beyond any information related to standing. Moreover, as discussed above, much of the discovery is related to services FCCA members provide in other states.³⁴ Such requests are completely unrelated to standing in Florida. And unlike the discovery allowed by the *FCTA Order*, BellSouth's discovery is extensive. While the *FCTA Order* compelled answers to just four interrogatories and three production requests, BellSouth has served voluminous discovery requests seeking information from individual members. The purpose of such intrusive discovery can be nothing more than a tactic designed to harass and punish the FCCA for lodging its Complaint. The Commission's reliance on the *FCTA Order* to support the provision of the information it requires from individual members is in error.

Third, the Discovery Order mistakenly relies on *Florida Home Builders Association v. Department of Labor and Security*³⁵ to require the provision of the information in dispute. However, as discussed above, the *Florida Home Builders* case supports the position the FCCA

³⁰ Order No. PSC-92-0122-PCO-TL.

³¹ Interrogatories 6 (second) – 28.

³² Interrogatories 7(ii), 10(iii), 12(ii), and 14.

³³ Interrogatories 7(ii) – (v), 10(ii), 12(i), and 15.

³⁴ Interrogatories 9, 10, 11, 12, 14, 15, 22, and 23.

³⁵ 412 So.2d 351 (Fla. 1982).

urges. The third prong of the *Florida Home Builders* test requires that an association show that “neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit.”³⁶ The Discovery Order would render just the opposite true: it would require the FCCA members to participate in the case as though they were actually parties and require them to respond to extensive BellSouth’s discovery. The point of the *Florida Home Builders* case is that an association has the right to represent its members without the need for the members to participate as parties to the case.³⁷ On reconsideration, the Commission should affirm the FCCA’s right and ability to participate on behalf of its members.

E.

The Order Impermissibly Requires Responses to Discovery Regarding Matters Outside the State of Florida

The Discovery Order impermissibly requires the FCCA to provide responses to discovery pertaining to states other than Florida that are not relevant to this proceeding.³⁸ In the context of the issues in this case, such discovery is impermissible, as well as unduly burdensome.

In the past, the Commission has declined to allow discovery as to states other than Florida.³⁹ For example, in Docket No. 880069-TL, the Prehearing Officer refused to permit Public Counsel to conduct discovery of BellSouth on three separate occasions.⁴⁰ In Order No. 19421, the Prehearing Officer declined to compel BellSouth to produce documents related to

³⁶ *Id.* at 353.

³⁷ *Id.* at 354, reversing *Florida Dept. of Education v. FEA/United, AFT/AFL/CIO*, 378 So. 2d 893 (Fla 1st DCA 1979) (which held that since no teacher was a party to the action, the teacher’s association had no standing to challenge rule on behalf of its members).

³⁸ Interrogatories 9, 10(i), 10(ii), 10(iii), 11, 12(i), 12(ii), 12(iii), 14, 15, 16, 17, 18, 19, 20(i), 20(ii), 20(iii), 20(iv), 21, 22, 23; Production Request Nos. 1, 3.

³⁹ Florida courts have also refused to allow discovery pertaining to business operations outside the state of Florida. See, *Orkin Exterminating Company, Inc. v. Couchman Crossing Associates, L.P.*, 790 So.2d 419 (Fla. 2nd DCA 2001) (“The order of the trial court is quashed to the extent it permits discovery from Orkin branches located outside the state of Florida.”)

⁴⁰ See Order Nos. 19421, 19681, and 23503.

construction budgets in other states because the information was not relevant.⁴¹ Similarly, in Order No. 19681, the Prehearing Officer again refused to compel BellSouth to produce information related to other states because the information was irrelevant. The Prehearing Officer's order stated: "This Commission has no interest in nor authority over Southern Bell operations in other states." In Order No. 23503, the Commission again refused to order BellSouth to produce documents related to other states.

In this instance, the out-of-state discovery BellSouth seeks from the FCCA's members, like that described in the Commission's orders above, is not relevant to the issues in this case, and as discussed earlier, would be expensive and time-consuming to provide. This case is about BellSouth's provisioning of FastAccess *in Florida*. The business practices of BellSouth's competitors in other states are irrelevant to the disposition of the issues in this proceeding. The Discovery Order erred in requiring responses.

IV.

Conclusion

The Prehearing Officer overlooked and failed to consider matters constituting mistakes of law when he granted BellSouth's Motion to Compel and denied the FCCA's Motion for Protective Order.

⁴¹ The Prehearing Officer's order was later affirmed by the full Commission on reconsideration in Order No. 19685. The Commission stated: "We do not believe that [the information about other states' operations] is relevant to this proceeding."

WHEREFORE, the FCCA requests that the Commission reconsider the Discovery Order and enter a Protective Order providing that the FCCA does not have to respond to the discovery.


Joseph A. McGlothlin
Vicki Gordon Kaufman
McWhirter, Reeves, McGlothlin, Davidson,
Decker, Kaufman & Arnold, PA
117 South Gadsden Street
Tallahassee, Florida 32301
(850) 222-2525 Telephone
(850) 222-5606 Telefax

Attorneys for the Florida Competitive
Carriers Association

Basis for Reconsideration

Discovery Order is in Conflict with Prior Orders in this Case	Discovery Order Violates Statutory Standard	Discovery Order Requires Responses to Irrelevant, Overbroad, Burdensome, Harassing Questions	Discovery Order Requires Extensive Discovery from Non-Parties	Discovery Order Requires Responses Regarding States Other than Florida
Interrogatories	Interrogatories	Interrogatories	Interrogatories	Interrogatories
5, 6, 7, 8, 2nd 6, 7(i), 7(ii), 7(iii), 7(iv), 8(i), 9, 10(i), 10(ii), 10(iii), 11, 12(i), 12(ii), 12(iii), 13(i), 14, 15, 16, 17(i), 17(ii), 17(iii), 17(iv), 18, 19, 20(i), 20(ii), 20(iii), 20(iv), 21, 22, 23, 24, 25 26, 27, 28	11, 12(i), 12(iii), 13(i), 26, 27, 28	7(i), 7(ii), 7(iii), 7(iv), 8(i), 10(i), 10(ii), 10(iii), 11, 12(i), 12(ii), 12(iii), 13(i), 14, 15, 16, 17(i), 17(ii), 17(iii), 17(iv), 18, 19, 20(i), 20(ii), 20(iii), 20(iv), 21	2nd 6, 7(i), 7(ii), 7(iii), 7(iv), 8(i), 9, 10(i), 10(ii), 10(iii), 11, 12, 13(i), 14, 15, 16, 17(i), 17(ii), 17(iii), 17(iv), 18, 19, 20(i), 20(ii), 20(iii), 20(iv), 21, 22, 23, 24, 25	9, 10(i), 10(ii), 10(iii), 11, 12(i), 12(ii), 12(iii), 14, 15, 16, 17, 18, 19, 20(i), 20(ii), 20(iii), 20(iv), 21, 22, 23
Production of Documents	Production of Documents	Production of Documents	Production of Documents	Productions of Documents
1, 2, 3	1	1, 2, 3	1, 2, 3	1, 3

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Complaint of the Florida Competitive Carriers Association Against BellSouth Telecommunications, Inc. And Request for Expedited Relief))))
Docket No. 020507-TL
Filed: November 15, 2002

BELLSOUTH TELECOMMUNICATIONS, INC.'S FIRST SET OF INTERROGATORIES TO FLORIDA COMPETITIVE CARRIERS ASSOCIATION

BellSouth Telecommunications, Inc. ("BellSouth") hereby requests the Florida Competitive Carriers Association ("FCCA") to provide answers in response to the following Interrogatories consistent with the timeframes established in the November 12, 2002 scheduling order.

DEFINITIONS

(1) "DOCSIS" refers to "data over cable service interface specification" and/or the cable industry equipment standard used to send high-speed data over cable TV networks.

(2) "FCCA" means the Florida Competitive Carriers Association and each of individual member companies that provide competitive telecommunications services in the state of Florida, and any predecessors in interest, parent(s), subsidiaries, and affiliates, their present and former officers, employees, agents, directors, and all other persons acting or purporting to act on behalf of FCCA.

(3) "You" and "your" refer to FCCA as well as FCCA's individual member companies.

(4) "Person" means any natural person, corporation, corporate division, partnership, other unincorporated association, trust, government agency, or entity.

NOV 18 2002
Unafed
RECEIVED

(5) "And" and "or" shall be construed both conjunctively and disjunctively, and each shall include the other whenever such construction will serve to bring within the scope of these Interrogatories information that would not otherwise be brought within their scope.

(6) The singular as used herein shall include the plural and the masculine gender shall include the feminine and the neuter.

(7) "Identify" or "identifying" or "identification" when used in reference to a person includes a natural person, association, partnership, or corporation, and means to state:

- a) the full legal name of the person;
- b) the person's present or last known address; and
- c) the person's present or last known telephone number.

(8) "Identify" or "identifying" or "identification" when used in reference to a document means to provide with respect to each document requested a description of the document, including the following:

- a) the type of document (*e.g.*, letter, memorandum, etc.);
- b) the date of the document;
- c) the title or label of the document;
- e) the identity of the originator;
- f) the identity of each person to whom it was sent;
- g) the identity of each person to whom a copy or copies were sent;
- h) a summary of the contents of the document;
- i) the name and last known address of each person who presently has possession, custody or control of the document; and

j) if any such document was, but is no longer, in your possession, custody or control or is no longer in existence, state whether it: (1) is missing or lost; (2) has been destroyed; or (3) has been transferred voluntarily or involuntarily, and, if so, state the circumstances surrounding the authorization for each such disposition and the date of such disposition.

(9) The term "document" shall have the broadest possible meaning under applicable law. "Document" means every writing or record of every type and description that is in the possession, custody or control of FCCA and its members, including, but not limited to, correspondence, memoranda, work papers, summaries, stenographic or handwritten notes, studies, publications, books, pamphlets, reports, surveys, minutes or statistical compilations, computer and other electronic records or tapes or printouts, including, but not limited to, electronic mail ("Email") files, and copies of such writings or records containing any commentary or notation whatsoever that does not appear in the original. The term "document" further includes, by way of illustration and not limitation, schedules, progress schedules, time logs, drawings, computer disks, charts, projections, time tables, summaries of other documents, minutes, surveys, work sheets, drawings, comparisons, evaluations, laboratory and testing reports, telephone call records, personal diaries, calendars, personal notebooks, personal reading files, transcripts, witness statements and indices.

(10) The phrases "refer to" and "relate to" mean consisting of, containing, mentioning, suggesting, reflecting, concerning, regarding, summarizing, analyzing, discussing, involving, dealing with, emanating from, directed at, pertaining to in any way, or in any way logically or factually connected or associated with the matter discussed.

(10) The term "Complaint" refers to the complaint filed by FCCA with the Florida Public Service Commission on June 12, 2002 in Docket No. 020507-TL.

(11) The term "FastAccess®" refers to a BellSouth retail DSL-based information service offering customers high-speed Internet access.

(12) The term "Digital Subscriber Line" or "DSL" service refers to a type of Broadband Service that allows a customer to have both conventional voice and high-speed data carried on the same line simultaneously and includes, but is not limited to, such services as Asymmetric Digital Subscriber Line ("ADSL"), High Bit Rate Digital Subscriber Line ("HDSL"), ISDN Digital Subscriber Line ("IDSL"), Rate Adaptive Digital Subscriber Line ("RADSL"), Symmetrical Digital Subscriber Line ("SDSL"), Symmetrical High Speed Digital Subscriber Line ("SHDSL"), and Very-high-data rate Digital Subscriber Line ("VDSL").

(13) The term "Cable Modem" service refers to a type of Broadband Service that allows a customer to receive high-speed data using the same basic network architecture used to provide multichannel video service.

(14) The term "Broadband Service" refers to any service that is used to provide access to the Internet and consists of or includes the offering of a capability to transmit information at a rate that is generally not less than 150 kilobits per second in at least one direction, regardless of the technology or medium used, including, but not limited to, wireless, copper wire, fiber optic cable, or coaxial cable.

(15) The term "DSLAM" also known as "Digital Subscriber Line Access Multiplexer" means any equipment used to provide traditional voice service and high speed Internet service to an end user customers and which transmits a DSL signal on a copper loop to an end-user

location, splits the voice and DSL signal for separate processing, and multiplexes the DSL service for transport to a Broadband Service provider.

INSTRUCTIONS

(1) If you contend that any response to any Interrogatory may be withheld under the attorney-client privilege, the attorney work product doctrine or any other privilege or basis, please state the following with respect to each such contention in order to explain the basis for the claim of privilege and to permit adjudication of the propriety of that claim:

- a) the privilege asserted and its basis;
- b) the nature of the information withheld; and
- c) the subject matter of the information or document, except to the extent that you claim such information itself is privileged.

(2) These Interrogatories are to be answered with reference to all information in your possession, custody or control or reasonably available to you. These Interrogatories are intended to include requests for information, which is physically within FCCA's possession, custody or control as well as in the possession, custody or control of FCCA members, agents, attorneys, or other third parties from which such information may be obtained.

(3) If any Interrogatory cannot be answered in full, answer to the extent possible and specify the reasons for your inability to answer fully.

(4) These Interrogatories are continuing in nature and require seasonal supplemental responses in accordance with applicable rules.

INTERROGATORIES

1. For each Interrogatory, identify the person or persons providing information in response thereto.

2. Please provide a full listing of all FCCA individual member companies, including the legal name and any trade names or "doing business as" names of each individual member company.

3. Please describe with particularity how FCCA is funded; including, but not limited to, a description of the financial contributions and percentages of contributions made by each individual FCCA member.

4. Please list the names, titles, and business addresses of the officers, directors, and management employees of FCCA. State also whether each officer, director, and management employee is affiliated with an individual member company of FCCA; if so, provide the title and name of the individual member company.

5. Do you contend that the Florida Public Service Commission has jurisdiction over Broadband Services?

6. If the answer to Interrogatory No. 5 is in the affirmative, please cite all statutes, rules, regulations, orders, or other legal authority that support your contention.

7. Do you contend that the Florida Public Service Commission has jurisdiction over Cable Modem service?

8. If the answer to Interrogatory No. 7 is in the affirmative, please cite all statutes, rules, regulations, orders, or other legal authority that support your contention.

6. Please state whether any of FCCA's members provide Broadband Service and/or DSL service to customers in Florida.

7. If the answer to Interrogatory No. 6 is in the affirmative, please:

- i. Describe with particularity the nature of the Broadband Service and/or DSL service each FCCA member is providing in Florida, including a

description of the protocols used (e.g., ADSL, IDSL, Cable Modem, etc.) as well as all applicable rates, terms, and conditions of such service;

- ii. State the total number of customers to whom each FCCA member is providing Broadband Service and/or DSL service in Florida, including stating the total number of residential and business customers being provided such service;
- iii. Describe with particularity the nature of the technology used to provide the Broadband Service and/or DSL service; including, but not limited to, the number of customers served by the particular technology (e.g., if xDSL based the number of customers served by IDSL, the number of customers served by ADSL, etc.);
- iv. State whether the FCCA member utilized its own broadband equipment or purchased broadband connectivity from another provider;
- v. If the FCCA purchased connectivity from another provider, state the provider from whom the connectivity was purchased and describe with particularity the nature of the broadband service each member is purchasing in Florida, including, but not limited to a description of the protocols (e.g., ADSL, IDSL, DOCSIS) used, the rates, terms and conditions of the service, the number of circuits purchased specifying the location of the circuits by central office, remote terminal, or other location, and specifying the number of potential or qualified business and residential lines available from the provider specifying the location of the

potential or qualified business lines by central office, remote terminal or other location..

8. If the answer to Interrogatory No. 6 is in the negative, please:
 - i. Describe with particularity all reasons, whether technical, financial, or otherwise, why each FCCA member does not provide its own Broadband Service and/or DSL service to customers in Florida; and
 - ii. Identify all documents referring or relating to each FCCA member's decision not to provide its own Broadband Service and/or DSL service to customers in Florida.

9. Please state whether FCCA members provide Broadband Service and/or DSL service to customers in states other than Florida.

10. If the answer to Interrogatory No. 9 is in the affirmative, please:
 - i. Identify those states in which FCCA members provide Broadband Service and/or DSL service;
 - ii. Describe with particularity the nature of the Broadband Service and/or DSL service FCCA members are providing in each such state, including a description of the protocols used (e.g., ADSL, IDSL, Cable Modem, etc.) as well as all applicable rates, terms, and conditions of such service; and
 - iii. State the total number of customers to whom FCCA is providing Broadband Service and/or DSL service in each such state, including stating the total number of residential and business customers being provided service.

11. If FCCA members provide Broadband Service and/or DSL service, will these members provide such service to an end user customer irrespective of whether that customer also purchases telecommunications service from the FCCA member providing the voice service (i.e., do any FCCA members provide a stand-alone Broadband Service and/or DSL service)?

12. If the answer to Interrogatory No. 11 is in the affirmative, please:

- i. Describe with particularity the nature of the stand-alone Broadband Service and/or DSL service the FCCA member is providing, including identifying the states in which such service is provided and including a description of the protocols used (e.g., ADSL, IDSL, Cable Modem, etc.) as well as all applicable rates, terms, and conditions;
- ii. State the total number of customers to whom the FCCA member is providing the stand-alone Broadband Service and/or DSL service, including stating the total number of residential and business customers being provided such service in each state; and
- iii. Identify all documents referring or relating to the stand-alone Broadband Service and/or DSL service the FCCA member is providing.

13. If the answer to Interrogatory No. 11 is in the negative, please:

- i. Describe with particularity the reasons, whether technical, financial or otherwise, why each FCCA member does not provide its own Broadband Service and/or DSL service to customers of other voice providers in Florida;

- ii. Identify the equipment providers and/or vendors with whom you have had discussions concerning the potential purchase of equipment capable of providing DSL services;
- iii. State the date when discussions with equipment providers and/or vendors took place;
- iv. Describe with particularity the nature of any such discussion and/or agreement; including, but not limited to applicable rates, price quotes, terms, and conditions for the purchase of equipment capable of providing DSL services;
- v. Identify all documents referring or relating to each FCCA members' decision not to provide its own Broadband Service and/or DSL service to customers of other voice providers in Florida as well as all documents referring or relating to discussions between you and equipment vendors and/or providers.

14. Identify each market in which any FCCA member is providing DSL service and state the number of customers in each such market to whom the service is being provided, including stating the total number of residential and business customers being provided such service.

15. Describe with particularity each FCCA member's DSL network; including, but not limited to, identifying the location of that network and describing the specific equipment that comprises that network, identifying the vendor and/or provider of the DSL equipment, the number, manufacturer, and size of DSLAMs installed in that network by central office, remote

terminal or other location, as well as the total number of collocation sites in which the FCCA member has collocated its facilities with facilities of BellSouth.

16. Has any FCCA member at any time entered into any agreement or held any discussions with any Cable Modem service provider regarding a joint offering or package of services involving the FCCA member's voice service and the Cable Modem service provider's Broadband Service.

17. If the answer to Interrogatory No. 16 is in the affirmative, please:

- i. Identify the Cable Modem service provider with whom you have had such an agreement or discussions;
- ii. State the date when such an agreement was executed or such discussions took place;
- iii. Describe with particularity the nature of such an agreement or discussions, including applicable rates, terms, and conditions for a joint offering or package of services involving the FCCA member's voice service and the Cable Modem service provider's Broadband Service; and
- iv. Identify all documents referring or relating to such an agreement or discussions.

18. If the answer to Interrogatory No. 16 is in the negative, please describe with particularity all reasons, whether technical, financial, or otherwise, why the FCCA member has decided not to enter into an agreement or discussions with a Cable Modem service provider concerning a joint offering or package of services involving the FCCA member's voice service and the Cable Modem service provider's Broadband Service.

19. Has any FCCA member at any time entered into an agreement or held any discussions with any DSL service provider and/or wholesale DSL network provider regarding (a) a joint offering or package of services involving the FCCA member's voice service and the DSL service provider's Broadband Service, including, but not limited to, engaging in line splitting; and/or (b) purchasing a wholesale broadband package for the purpose of creating a retail broadband service offering?

20. If the answer to Interrogatory No. 19 is in the affirmative, please:

- i. Identify the DSL service provider with whom the FCCA member has had such an agreement or discussions;
- ii. State the date when such an agreement was executed or such discussions took place;
- iii. Describe with particularity the nature of such an agreement or discussions, including applicable rates, terms, and conditions for (a) a joint offering or package of services involving the FCCA member's voice service and the DSL service provider's Broadband Service and/or (b) a wholesale offering or wholesale broadband package; and
- iv. Identify all documents referring or relating to such an agreement or discussions.

21. If the answer to Interrogatory No. 19 is in the negative, please describe with particularity all reasons, whether technical, financial, or otherwise, why (a) any FCCA member has not entered into an agreement or discussions with any DSL service provider concerning a joint offering or package of services involving the FCCA member's voice service and the DSL service provider's Broadband Service, including, but not limited to, engaging in line splitting;

and/or (b) any FCCA member has not entered into an agreement or discussions with any wholesale DSL service provider.

22. If you currently provide Broadband Service, do you have any objection to the Public Service Commission in those states in which you provide such service from requiring you to provide Broadband Service to an end user customer irrespective of whether that customer also purchases telecommunications service from you (i.e., requiring you to provide a stand-alone Broadband Service)? If the answer to the foregoing Interrogatory is in the affirmative, describe with particularity all such objections.

23. If you currently provide DSL Service, do you have any objection to the Public Service Commission in those states in which you provide such service from requiring you to provide DSL Service over the unbundled loops purchased by any and all other ALECs operating in those states? If the answer to the foregoing Interrogatory is in the affirmative, describe with particularity all such objections.

24. Do you have any objection to BellSouth, or any ALEC, utilizing free of charge the high frequency portion of unbundled loops purchased by you to (a) provision DSL Service to your end user customers; and (b) access the unbundled loop to perform testing, repair, maintenance, and/or troubleshooting? If the answer to the foregoing Interrogatory is in the affirmative, describe with particularity all such objections.

25. Do you have any objection to BellSouth, or any ALEC, taking whatever steps are necessary in order to provision its DSL Service over unbundled loops purchased by you to provision DSL Service to your end user customers? If the answer to the foregoing Interrogatory is in the affirmative, describe with particularity all such objections.

26. What rates, terms and conditions, if any, do you contend should apply when BellSouth, or any ALEC, uses the high-frequency portion of an unbundled loop purchased by you to provide DSL Service to your end user customers?

27. If BellSouth, or any ALEC, were to use the high frequency portion of an unbundled loop purchased by you for the purpose of providing DSL Service, would you request compensation for such use of the high frequency portion of that loop?

28. If the answer to Interrogatory No. 32 is in the affirmative, state the amount of compensation you would charge and describe with particularity how this charge was calculated.

29. Do you contend that any state or federal laws, rules, or regulations are violated when BellSouth does not provide FastAccess service to carriers that offer DSL service (as contrasted to carriers that do NOT offer DSL service)? If the answer to the foregoing Interrogatory is in the affirmative, state all facts and identify all documents that support this contention.

30. With respect to the statement in the Complaint that an objective of this Commission is to “protect consumers in their ability to access a full array of market options – whether that option is basic telecommunications service, broad band service, long distance service, or whatever combination of these and/or other services a particular consumer selects to serve his or her own unique needs” do you contend that seeking to regulate only BellSouth’s provision of FastAccess accomplishes this goal? If the answer to the foregoing Interrogatory is in the affirmative, state all facts and identify all documents that support this contention.

31. With respect to statement in the Complaint that “the Commission should ensure that its policy decision is applicable to all competitive providers” is it your contention that any company that provides both telecommunications services and Broadband service should be

required to provide Broadband service when a customer changes voice providers? If the answer to the foregoing Interrogatory is in the negative, state all facts and identify all documents that support this contention.

32. With respect to the allegations in Paragraph 12 of the Complaint, do you contend that the Commission's role is solely focused on the behavior that incumbent local providers and that ALECs do not engage in behavior "that hampers the development of a competitive market"? If the answer to the foregoing Interrogatory is in the affirmative, state all facts and identify all documents that support this contention. State also whether you contend that the market for Broadband services is competitive; if not, state all facts and identify all documents that support this contention.

Respectfully submitted, this 15 day of November, 2002.

BELLSOUTH TELECOMMUNICATIONS, INC.

 (TSB)

NANCY B. WHITE

JAMES MEZA

c/o Nancy Sims

150 South Monroe Street, #400

Tallahassee, Florida 32301

(305) 347-5558

R. DOUGLAS LACKEY

PATRICK W. TURNER

BellSouth Center – Suite 4300

675 West Peachtree Street, N.E.

Atlanta, GA 30375

(404) 335-0761

469823

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Complaint of the Florida)
Competitive Carriers Association) Docket No. 020507-TL
Against BellSouth Telecommunications, Inc.)
And Request for Expedited Relief) Filed: November 15, 2002

BELLSOUTH TELECOMMUNICATIONS, INC.'S REQUEST FOR PRODUCTION OF DOCUMENTS TO FLORIDA COMPETITIVE CARRIERS ASSOCIATION

BellSouth Telecommunications, Inc. ("BellSouth") hereby requests the Florida Competitive Carriers Association ("FCCA") to provide answers in response to the following Request for Production of Documents consistent with the timeframes established in the November 12, 2002 scheduling order.

DEFINITIONS

- (1) "DOCSIS" refers to "data over cable service interface specification" and/or the cable industry equipment standard used to send high-speed data over cable TV networks.
- (2) "FCCA" means the Florida Competitive Carriers Association and each of individual member companies that provide competitive telecommunications services in the state of Florida, and any predecessors in interest, parent(s), subsidiaries, and affiliates, their present and former officers, employees, agents, directors, and all other persons acting or purporting to act on behalf of FCCA.
- (3) "You" and "your" refer to FCCA as well as FCCA's individual member companies.
- (4) "Person" means any natural person, corporation, corporate division, partnership, other unincorporated association, trust, government agency, or entity.

NOV 18 2002
Via Fed Ex
RECEIVED

- (5) "And" and "or" shall be construed both conjunctively and disjunctively, and each shall include the other whenever such construction will serve to bring within the scope of these Interrogatories information that would not otherwise be brought within their scope.
- (6) The singular as used herein shall include the plural and the masculine gender shall include the feminine and the neuter.
- (7) "Identify" or "identifying" or "identification" when used in reference to a person includes a natural person, association, partnership, or corporation, and means to state:
- a) the full legal name of the person;
 - b) the person's present or last known address; and
 - c) the person's present or last known telephone number.
- (8) "Identify" or "identifying" or "identification" when used in reference to a document means to provide with respect to each document requested a description of the document, including the following:
- a) the type of document (*e.g.*, letter, memorandum, etc.);
 - b) the date of the document;
 - c) the title or label of the document;
 - e) the identity of the originator;
 - f) the identity of each person to whom it was sent;
 - g) the identity of each person to whom a copy or copies were sent;
 - h) a summary of the contents of the document;

i) the name and last known address of each person who presently has possession, custody or control of the document; and

j) if any such document was, but is no longer, in your possession, custody or control or is no longer in existence, state whether it: (1) is missing or lost; (2) has been destroyed; or (3) has been transferred voluntarily or involuntarily, and, if so, state the circumstances surrounding the authorization for each such disposition and the date of such disposition.

(9) The term "document" shall have the broadest possible meaning under applicable law. "Document" means every writing or record of every type and description that is in the possession, custody or control of FCCA and its members, including, but not limited to, correspondence, memoranda, work papers, summaries, stenographic or handwritten notes, studies, publications, books, pamphlets, reports, surveys, minutes or statistical compilations, computer and other electronic records or tapes or printouts, including, but not limited to, electronic mail ("Email") files, and copies of such writings or records containing any commentary or notation whatsoever that does not appear in the original. The term "document" further includes, by way of illustration and not limitation, schedules, progress schedules, time logs, drawings, computer disks, charts, projections, time tables, summaries of other documents, minutes, surveys, work sheets, drawings, comparisons, evaluations, laboratory and testing reports, telephone call records, personal diaries, calendars, personal notebooks, personal reading files, transcripts, witness statements and indices.

(10) The phrases “refer to” and “relate to” mean consisting of, containing, mentioning, suggesting, reflecting, concerning, regarding, summarizing, analyzing, discussing, involving, dealing with, emanating from, directed at, pertaining to in any way, or in any way logically or factually connected or associated with the matter discussed.

(10) The term “Complaint” refers to the complaint filed by FCCA with the Florida Public Service Commission on June 12, 2002 in Docket No. 020507-TL.

(11) The term “FastAccess®” refers to a BellSouth retail DSL-based information service offering customers high-speed Internet access.

(12) The term “Digital Subscriber Line” or “DSL” service refers to a type of Broadband Service that allows a customer to have both conventional voice and high-speed data carried on the same line simultaneously and includes, but is not limited to, such services as Asymmetric Digital Subscriber Line (“ADSL”), High Bit Rate Digital Subscriber Line (“HDSL”), ISDN Digital Subscriber Line (“IDSL”), Rate Adaptive Digital Subscriber Line (“RADSL”), Symmetrical Digital Subscriber Line (“SDSL”), Symmetrical High Speed Digital Subscriber Line (“SHDSL”), and Very-high-data rate Digital Subscriber Line (“VDSL”).

(13) The term “Cable Modem” service refers to a type of Broadband Service that allows a customer to receive high-speed data using the same basic network architecture used to provide multichannel video service.

(14) The term “Broadband Service” refers to any service that is used to provide access to the Internet and consists of or includes the offering of a capability to transmit information at a rate that is generally not less than 150 kilobits per second in at least one direction, regardless of

the technology or medium used, including, but not limited to, wireless, copper wire, fiber optic cable, or coaxial cable.

(15) The term "DSLAM" also known as "Digital Subscriber Line Access Multiplexer" means any equipment used to provide traditional voice service and high speed Internet service to an end user customers and which transmits a DSL signal on a copper loop to an end-user location, splits the voice and DSL signal for separate processing, and multiplexes the DSL service for transport to a Broadband Service provider.

INSTRUCTIONS

(1) If you contend that any response to any Interrogatory may be withheld under the attorney-client privilege, the attorney work product doctrine or any other privilege or basis, please state the following with respect to each such contention in order to explain the basis for the claim of privilege and to permit adjudication of the propriety of that claim:

- a) the privilege asserted and its basis;
- b) the nature of the information withheld; and
- c) the subject matter of the information or document, except to the extent that you claim such information itself is privileged.

(2) These Interrogatories are to be answered with reference to all information in your possession, custody or control or reasonably available to you. These Interrogatories are intended to include requests for information, which is physically within FCCA's possession, custody or control as well as in the possession, custody or control of FCCA members, agents, attorneys, or other third parties from which such information may be obtained.

(3) If any Interrogatory cannot be answered in full, answer to the extent possible and specify the reasons for your inability to answer fully.

(4) These Interrogatories are continuing in nature and require seasonal supplemental responses in accordance with applicable rules.

REQUESTS FOR PRODUCTION

1. Produce all documents identified in response to these Interrogatories.
2. Produce all documents that refer or relate to any Broadband Service and DSL service that FCCA or its members provide to its customers in Florida.
3. Produce all documents that refer or relate to any Broadband Service and DSL service that FCCA or its members provide to its customers in states other than Florida.
4. Produce all documents that refer or relate to FCCA or its members' consideration or investigation of their ability to resell BellSouth's local exchange service in order to provide voice service as well as FastAccess to its customers in Florida.

Respectfully submitted, this 15 day of November, 2002.

BELLSOUTH TELECOMMUNICATIONS, INC.

Patrick Turner (305)

NANCY B. WHITE

JAMES MEZA

c/o Nancy Sims

150 South Monroe Street, #400

Tallahassee, Florida 32301

(305) 347-5558

R. DOUGLAS LACKEY

PATRICK W. TURNER

BellSouth Center - Suite 4300

675 West Peachtree Street, N.E.

Atlanta, GA 30375

(404) 335-0761

RECEIVED
NOV 25 2002

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION
FPSC-COMMISSION CLERK

In re: Complaint of the Florida
Competitive Carriers Association
Against BellSouth Telecommunications, Inc.
and Request for Expedited Relief

Docket No. 020507-TP

Filed: November 25, 2002

FLORIDA COMPETITIVE CARRIERS ASSOCIATION'S
OBJECTIONS TO BELL SOUTH TELECOMMUNICATIONS, INC.'S FIRST SET OF
INTERROGATORIES (NOS. 1 - 32)

Pursuant to Rule 28-106.206, Florida Administrative Code, and Rule 1.340, Florida Rules of Civil Procedure, the Florida Competitive Carriers Association (FCCA) files the following objections to BellSouth Telecommunications, Inc.'s (BellSouth) First Set of Interrogatories (Nos. 1-32).¹ The objections stated herein are preliminary in nature and are made at this time to comply with the 10-day requirement set forth in Order No. PSC-02-1537-PCO-TL. Should additional grounds for objection be discovered as the FCCA prepares its answers, it reserves the right to supplement, revise or modify its objections at the time it serves its responses.

General Objections


1. The FCCA objects to any interrogatory that calls for information protected by the attorney-client privilege, the work product doctrine, the accountant-client privilege, the trade secret privilege, or any other applicable privilege or protection afforded by law, whether such privilege or protection appears at the time the response is first made to these interrogatories or is later determined to be applicable based on the discovery of documents, investigation or analysis. FCCA in no way intends to waive any such privilege or protection.

2. In certain circumstances, the FCCA may determine upon investigation and analysis that information responsive to certain interrogatories to which objections are not otherwise asserted are confidential and proprietary and should not be produced at all or should be produced

¹ BellSouth misnumbered the Interrogatories, resulting in 6, 7 and 8 being used twice. The FCCA has used BellSouth's numbering.

RECEIVED & FILED

1


FPSC-BUREAU OF RECORDS

only under an appropriate confidentiality agreement and protective order. By agreeing to provide such information in response to such interrogatory, the FCCA is not waiving its right to insist upon appropriate protection of confidentiality by means of a confidentiality agreement and protective order. FCCA hereby asserts its right to require such protection of any and all documents that may qualify for protection under the Florida Rules of Civil Procedure and other applicable statutes, rules and legal principles.

3. The FCCA objects to these interrogatories and any definitions and instructions that purport to expand the FCCA's obligations under applicable law. The FCCA will comply with applicable law.

4. The FCCA objects to these interrogatories to the extent they purport to require FCCA to conduct an analysis or create information not prepared by FCCA's experts or consultants in their preparation for this case. The FCCA will comply with its obligations under the applicable rules of procedure.

5. The FCCA objects to any interrogatory that requires the identification of "all" or "each" responsive document, as it can not guarantee, even after a good faith and reasonably diligent attempt, that "all" or "each" responsive document will be identified.

6. The FCCA objects to these interrogatories to the extent they impermissibly seek information from FCCA members who are not a party to the case, on the grounds that such request is overly broad, unduly burdensome, oppressive and not permitted by the applicable rules of discovery.

7. The FCCA objects to providing information to the extent it is in the public records or in the possession of BellSouth.

8. The FCCA objects to each request that is not limited in time as overly broad, unduly burdensome and vague.

9. For each specific objection made below, the FCCA incorporates by reference all of the foregoing general objections into each of its specific objections as though pleaded therein.

Specific Objections

10. BellSouth Interrogatory No. 2 states:

Please provide a full listing of all FCCA individual member companies, including the legal name and any trade names or "doing business as" names of each individual member company.

The FCCA objects to this interrogatory as irrelevant, overbroad, oppressive, harassing, unduly burdensome and not calculated to lead to the discovery of admissible evidence. Notwithstanding these objections, and without waiving the objections, the FCCA intends to provide certain basic information about the FCCA's membership.

11. BellSouth Interrogatory No. 3 states:

Please describe with particularity how FCCA is funded: including, but not limited to, a description of the financial contributions and percentages of contributions made by each individual FCCA member.

The FCCA objects to this interrogatory as irrelevant, overbroad, oppressive, harassing, and not calculated to lead to the discovery of admissible evidence.

12. BellSouth Interrogatory No. 4 states:

Please list the names, titles, and business addresses of the officers, directors, and management employees of FCCA. State also whether each officer, director, and management employee is affiliated with an individual member company of FCCA; if so, provide the title and name of the individual member company.

The FCCA objects to this interrogatory as irrelevant, oppressive, harassing, and not calculated to lead to the discovery of admissible evidence. Notwithstanding these objections, and without waiving the objections, the FCCA intends to provide certain basic information about the FCCA's officers.

13. BellSouth Interrogatory No. 5 states:

Do you contend that the Florida Public Service Commission has jurisdiction over Broadband Service?

The FCCA objects to this interrogatory as irrelevant and not calculated to lead to the discovery of admissible evidence.

14. BellSouth Interrogatory No. 6 states:

If the answer to Interrogatory No. 5 is in the affirmative, please cite all statutes, rules, regulations, orders, or other legal authority that support your contention.

The FCCA has objected to Interrogatory No. 5 and objects to this interrogatory as irrelevant and not calculated to lead to the discovery of admissible evidence.

15. BellSouth Interrogatory No. 7 states:

Do you contend that the Florida Public Service Commission has jurisdiction over Cable Modem service?

The FCCA objects to this interrogatory as irrelevant and not calculated to lead to the discovery of admissible evidence.

16. BellSouth Interrogatory No. 8 states:

If the answer to Interrogatory No. 7 is in the affirmative, please cite all statutes, rules, regulations, orders, or other legal authority that support your contention.

The FCCA has objected to Interrogatory No. 7 and objects to this interrogatory as irrelevant and not calculated to lead to the discovery of admissible evidence.

17. BellSouth Interrogatory No. 6 states:

Please state whether any of FCCA's members provide Broadband Service and/or DSL service to customers in Florida.

The FCCA objects to this interrogatory as irrelevant, overbroad, oppressive, harassing, unduly burdensome and not calculated to lead to the discovery of admissible evidence. The FCCA objects to this interrogatory as an impermissible attempt to seek discovery from entities who are not parties to this case.

18. BellSouth Interrogatory No. 7 states:

If the answer to Interrogatory No. 6 is in the affirmative, please:

- i. Describe with particularity the nature of the Broadband Service and/or DSL service each FCCA member is providing in Florida, including description of the protocols used (e.g., ADSL, IDSL, Cable Modem, etc.) as well as all applicable rates, terms and conditions of such services;
- ii. State the total number of customers to whom each FCCA member is providing Broadband Service and/or DSL Service in Florida, including stating the total number of residential and business customers being provided such service;
- iii. Describe with particularity the nature of the technology used to provide the Broadband Service and/or DSL service; including, but not limited to, the number of customers served by the particular technology (e.g., if xDSL based the number of customers served by IDSL, the number of customer served by ADSL, etc.);
- iv. State whether the FCCA member utilized its own broadband equipment or purchased broadband connectivity from another provider;
- v. If the FCCA purchased connectivity from another provider, state the provider from whom the connectivity was purchased and describe with particularity the nature of the broadband service each member is purchasing in Florida, including, but not limited to a description of the protocols (e.g., ADSL, IDSL, DOCSIS) used, the rates, terms and conditions of the service, the number of circuits purchased specifying the location of the circuits by central office, remote terminal, or other location, and specifying the number of potential or qualified business and residential lines available from the provider specifying the location of the potential or qualified business lines by central office, remote terminal or other location.

The FCCA has objected to Interrogatory No. 6 and objects to this interrogatory as irrelevant, vague, overbroad, oppressive, harassing, unduly burdensome and not calculated to lead to the discovery of admissible evidence. The FCCA objects to this interrogatory to the extent it seeks confidential proprietary business information and trade secret information. The FCCA objects to this interrogatory as an impermissible attempt to seek discovery from entities who are not parties to this case.

19. BellSouth Interrogatory No. 8 states:

If the answer to Interrogatory No. 6 is in the negative, please:

- i. Describe with particularity all reasons, whether technical, financial, or otherwise, why each FCCA member does not provide its own Broadband Service and/or DSL service to customers in Florida; and
- ii. Identify all documents referring or relating to each FCCA member's decision not to provide its own Broadband Service and/or DSL service to customers in Florida.

The FCCA has objected to Interrogatory No. 6 and objects to this interrogatory as irrelevant, vague, overbroad, oppressive, harassing, unduly burdensome and not calculated to lead to the discovery of admissible evidence. The FCCA objects to this interrogatory to the extent it seeks confidential proprietary business information and trade secret information. The FCCA objects to this interrogatory as an impermissible attempt to seek discovery from entities who are not parties to this case.

20. BellSouth Interrogatory No. 9 states:

Please state whether FCCA members provide Broadband Service and/or DSL service to customers in states other than Florida.

The FCCA objects to this interrogatory as irrelevant, overbroad, oppressive, harassing, unduly burdensome and not calculated to lead to the discovery of admissible evidence. The FCCA objects to this interrogatory as an impermissible attempt to seek discovery from entities who are not parties to this case.

21. BellSouth Interrogatory No. 10 states:

If the answer to Interrogatory No. 9 is in the affirmative, please:

- i. Identify those states in which FCCA members provide Broadband Service and/or DSL service;
- ii. Describe with particularity the nature of the Broadband Service and/or DSL Service FCCA members are providing in each state, including a description of the protocols used (e.g., ADSL, ISDL, Cable Modem, etc.) as well as all applicable rates, terms and conditions of such service;

- iii. State the total number of customer to whom FCCA is providing Broadband Service and/or DSL service in each such state, including stating the total number of residential and business customers being provided service.

The FCCA has objected to Interrogatory No. 9 and objects to this interrogatory as irrelevant, overbroad, oppressive, harassing, unduly burdensome and not calculated to lead to the discovery of admissible evidence. The FCCA objects to this interrogatory to the extent it seeks confidential proprietary business information and trade secret information. The FCCA objects to this interrogatory as an impermissible attempt to seek discovery from entities who are not parties to this case.

22. BellSouth Interrogatory No. 11 states:

If FCCA members provide Broadband Service and/or DSL service, will these members provide such service to an end user customer irrespective of whether that customer also purchases telecommunications service from the FCCA member providing the voice service (i.e., do any FCCA members provide a stand-alone Broadband Service and/or DSL service)?

The FCCA objects to this interrogatory as irrelevant, overbroad, oppressive, harassing, unduly burdensome and not calculated to lead to the discovery of admissible evidence. The FCCA objects to this interrogatory as an impermissible attempt to seek discovery from entities who are not parties to this case.

23. BellSouth Interrogatory No. 12 states:

If the answer to Interrogatory No. 11 is in the affirmative, please:

- i. Describe with particularity the nature of the stand-alone Broadband Service and/or DSL service the FCCA member is providing, including identifying the states in which such service is provided and including a description of the protocols used (e.g., ADSL, IDSL, Cable Modem, etc.) as well as all applicable rates, terms, and conditions;
- ii. State the total number of customers to whom the FCCA member is providing the stand-alone Broadband Service and/or DSL service,

including stating the total number of residential and business customers being provided such service in each state; and

- iii. Identify all documents referring or relating to the stand-alone Broadband Service and/or DSL service the FCCA member is providing.

The FCCA has objected to Interrogatory No. 11 and objects to this interrogatory as irrelevant, overbroad, oppressive, harassing, unduly burdensome and not calculated to lead to the discovery of admissible evidence. The FCCA objects to this interrogatory to the extent it seeks confidential proprietary business information and trade secret information. The FCCA objects to this interrogatory as an impermissible attempt to seek discovery from entities who are not parties to this case.

24. BellSouth Interrogatory No. 13 states:

If the answer to Interrogatory No. 11 is in the negative, please:

- i. Describe with particularity the reasons, whether technical, financial or otherwise, why each FCCA member does not provide its own Broadband Service and/or DSL service to customers of other voice providers in Florida;
- ii. Identify the equipment providers and/or vendors with whom you have had discussions concerning the potential purchase of equipment capable or providing DSL service;
- iii. State the date when discussions with equipment providers and/or vendors took place;
- iv. Describe with particularity the nature of any such discussion and/or agreement; including, but not limited to applicable rates, price quotes, terms, and conditions for the purchase or equipment capable of providing DSL services;
- v. Identify all documents referring or relating to each FCCA members' decision not to provide its own Broadband Service and/or DSL service to customers of other voice providers in Florida as well as all documents referring to discussions between you and equipment vendors and/or providers.

The FCCA has objected to Interrogatory No. 11 and objects to this interrogatory as irrelevant, overbroad, oppressive, harassing, unduly burdensome and not calculated to lead to the discovery of admissible evidence. The FCCA objects to this interrogatory to the extent it seeks confidential proprietary business information and trade secret information. The FCCA objects to this interrogatory as an impermissible attempt to seek discovery from entities who are not parties to this case.

25. BellSouth Interrogatory No. 14 states:

Identify each market in which any FCCA member is providing DSL service and state the number of customers in each such market to whom the service is being provided, including stating the total number of residential and business customers being provided such service.

The FCCA objects to this interrogatory as irrelevant, overbroad, oppressive, harassing, unduly burdensome and not calculated to lead to the discovery of admissible evidence. The FCCA objects to this interrogatory to the extent it seeks confidential proprietary business information and trade secret information. The FCCA objects to this interrogatory as an impermissible attempt to seek discovery from entities who are not parties to this case.

26. BellSouth Interrogatory No. 15 states:

Describe with particularity each FCCA member's DSL network; including, but not limited to, identifying the location of that network and describing the specific equipment that comprises that network, identifying the vendor and/or provider of the DSL equipment, the number, manufacturer, and size of DSLAMs installed in that network by central office, remote terminal or other location, as well as the total number of collocation sites in which the FCCA member has collocated its facilities with facilities of BellSouth.

The FCCA objects to this interrogatory as irrelevant, overbroad, oppressive, harassing, unduly burdensome and not calculated to lead to the discovery of admissible evidence. The FCCA objects to this interrogatory to the extent it seeks confidential proprietary business information

and trade secret information. The FCCA objects to this interrogatory as an impermissible attempt to seek discovery from entities who are not parties to this case.

27. BellSouth Interrogatory No. 16 states:

Has any FCCA member at any time entered into any agreement or held any discussions with any Cable Modem service provider regarding a joint offering or package of services involving the FCCA member's voice service and the Cable Modem service provider's Broadband Service.

The FCCA objects to this interrogatory as irrelevant, overbroad, oppressive, harassing, unduly burdensome and not calculated to lead to the discovery of admissible evidence. The FCCA objects to this interrogatory to the extent it seeks confidential proprietary business information and trade secret information. The FCCA objects to this interrogatory as an impermissible attempt to seek discovery from entities who are not parties to this case.

28. BellSouth Interrogatory No. 17 states:

If the answer to Interrogatory No. 16 is in the affirmative, please:

- i. Identify the Cable Modem service provider with whom you have had such an agreement or discussions;
- ii. State the date when such an agreement was executed or such discussions took place;
- iii. Describe with particularity the nature of such an agreement or discussion, including applicable rates, terms and conditions for a joint offering or package of services involving the FCCA member's voice service and the Cable Modem service provider's Broadband Service; and
- iv. Identify all documents referring or relating to such an agreement or discussion.

The FCCA has objected to Interrogatory No. 17 and objects to this interrogatory as irrelevant, overbroad, oppressive, harassing, unduly burdensome and not calculated to lead to the discovery of admissible evidence. The FCCA objects to this interrogatory to the extent it seeks confidential proprietary business information and trade secret information. The FCCA objects to

this interrogatory as an impermissible attempt to seek discovery from entities who are not parties to this case.

29. BellSouth Interrogatory No. 18 states:

If the answer to Interrogatory No. 16 is in the negative, please describe with particularity all reasons, whether technical, financial, or otherwise, why the FCCA member has decided not to enter into an agreement or discussions with a Cable Modem service provider concerning a joint offering or package of services involving the FCCA member's voice service and the Cable Modem service provider's Broadband Service.

The FCCA has objected to Interrogatory No. 16 and objects to this interrogatory as irrelevant, overbroad, oppressive, harassing, unduly burdensome and not calculated to lead to the discovery of admissible evidence. The FCCA objects to this interrogatory to the extent it seeks confidential proprietary business information and trade secret information. The FCCA objects to this interrogatory as an impermissible attempt to seek discovery from entities who are not parties to this case.

30. BellSouth Interrogatory No. 19 states:

Has any FCCA member at any time entered into an agreement or held any discussions with any DSL service provider and/or wholesale DSL network provider regarding (a) a joint offering or package of service involving the FCCA member's voice service and the DSL service provider's Broadband Service, including, but not limited to, engaging in line splitting; and/or (b) purchasing a wholesale broadband package for the purpose of creating a retail broadband service offering?

The FCCA objects to this interrogatory as irrelevant, overbroad, oppressive, harassing, unduly burdensome and not calculated to lead to the discovery of admissible evidence. The FCCA objects to this interrogatory to the extent it seeks confidential proprietary business information and trade secret information. The FCCA objects to this interrogatory as an impermissible attempt to seek discovery from entities who are not parties to this case.

31. BellSouth Interrogatory No. 20 states:

If the answer to Interrogatory No. 19 is in the affirmative, please:

- i. Identify the DSL service provider with whom the FCCA member has had such an agreement or discussion;
- ii. State the date when such an agreement was executed or such discussions took place;
- iii. Describe with particularity the nature of such an agreement or discussions, including applicable rates, terms, and conditions for (a) a joint offering or package of services involving the FCCA member's voice service and the DSL service provider's Broadband Service and/or (b) a wholesale offering or wholesale broadband package; and
- iv. Identify all documents referring or relating to such an agreement or discussion.

The FCCA has objected to Interrogatory No. 19 and objects to this interrogatory as irrelevant, overbroad, oppressive, harassing, unduly burdensome and not calculated to lead to the discovery of admissible evidence. The FCCA objects to this interrogatory to the extent it seeks confidential proprietary business information and trade secret information. The FCCA objects to this interrogatory as an impermissible attempt to seek discovery from entities who are not parties to this case.

32. BellSouth Interrogatory No. 21 states:

If the answer to Interrogatory No. 19 is in the negative, please describe with particularity all reasons, whether technical, financial, or otherwise, why (a) any FCCA member has not entered into an agreement or discussions with any DSL service provider concerning a joint offering or package of services involving the FCCA member's voice service and the DSL service provider's Broadband Service, including, but not limited to, engaging in line splitting and/or (b) any FCCA member has not entered into an agreement or discussions with any wholesale DSL service provider.

The FCCA has objected to Interrogatory No. 19 and objects to this interrogatory as irrelevant, vague, overbroad, oppressive, harassing, unduly burdensome and not calculated to lead to the discovery of admissible evidence. The FCCA objects to this interrogatory to the extent it seeks

confidential proprietary business information and trade secret information. The FCCA objects to this interrogatory as an impermissible attempt to seek discovery from entities who are not parties to this case.

33. BellSouth Interrogatory No. 22 states:

If you currently provide Broadband Service, do you have any objection to the Public Service Commission in those states in which you provide such service from requiring you to provide Broadband Service to an end user customer irrespective of whether that customer also purchases telecommunications service from you (i.e., requiring you to provide a stand-alone Broadband Service)? If the answer to the foregoing Interrogatory is in the affirmative, describe with particularity all such objections.

The FCCA objects to this interrogatory as irrelevant, overbroad, oppressive, harassing, unduly burdensome and not calculated to lead to the discovery of admissible evidence.

34. BellSouth Interrogatory No. 23 states:

If you currently provide DSL Service, do you have any objections to the Public Service Commission in those states in which you provide such service from requiring you to provide DSL Service over the unbundled loops purchased by any and all other ALECs operating in those states? If the answer to the foregoing Interrogatory is in the affirmative, describe with particularity all such objections.

The FCCA objects to this interrogatory as irrelevant, overbroad, vague and not calculated to lead to the discovery of admissible evidence.

35. BellSouth Interrogatory No. 24 states:

Do you have any objection to BellSouth, or any ALEC, utilizing free of charge the high frequency portion of unbundled loops purchased by you to (a) provision DSL Service to your end user customers; and (b) access the unbundled loop to perform testing, repair, maintenance, and/or troubleshooting? If the answer to the foregoing Interrogatory is in the affirmative, describe with particularity all such objections.

The FCCA objects to this interrogatory as irrelevant, overbroad, vague and not calculated to lead to the discovery of admissible evidence.

36. BellSouth Interrogatory No. 25 states:

Do you have any objection to BellSouth, or any ALEC, taking whatever steps are necessary in order to provision its DSL Service over unbundled loops purchased by you to provision DSL Service to your end user customers? If the answer to the foregoing Interrogatory is in the affirmative, describe with particularity all such objections.

The FCCA objects to this interrogatory as irrelevant, overbroad, vague and not calculated to lead to the discovery of admissible evidence.

37. BellSouth Interrogatory No. 26 states:

What rates, terms and conditions, if any, do you contend should apply when BellSouth, or any ALEC, uses the high-frequency portion of an unbundled loop purchased by you to provide DSL Service to your end user customers?

The FCCA objects to this interrogatory as irrelevant and not calculated to lead to the discovery of admissible evidence.

38. BellSouth Interrogatory No. 27 states:

If BellSouth, or any ALEC, were to use the high frequency portion of an unbundled loop purchased by you for the purpose of providing DSL Service, would you request compensation for such use of the high frequency portion of that loop?

The FCCA objects to this interrogatory as irrelevant and not calculated to lead to the discovery of admissible evidence.

39. BellSouth Interrogatory No. 28 states:

If the answer to Interrogatory No. 32 is in the affirmative, state the amount of compensation you would charge and describe with particularity how this charge was calculated.

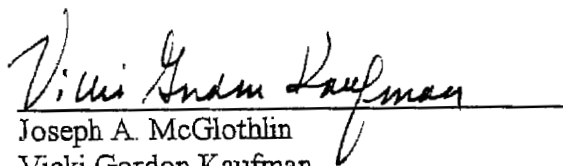
The FCCA objects to this interrogatory as vague and unintelligible. Interrogatory No. 32 does not reference a charge or compensation.

40. BellSouth Interrogatory No. 29 states:

Do you contend that any state or federal laws, rules, or regulations are violated when BellSouth does not provide FastAccess service to carriers that offer DSL service (as contrasted to carriers that do NOT offer DSL service)? If the answer

to the foregoing Interrogatory is in the affirmative, state all facts and identify all documents that support this contention.

The FCCA objects to this interrogatory as vague and unintelligible. It is the FCCA's understanding that FastAccess is offered to retail customers.



Joseph A. McGlothlin

Vicki Gordon Kaufman

McWhirter, Reeves, McGlothlin, Davidson,
Decker, Kaufman & Arnold, PA

117 South Gadsden Street

Tallahassee, Florida 32301

(850) 222-2525 Telephone

(850) 222-5606 Telefax

Attorneys for the Florida Competitive
Carriers Association

CERTIFICATE OF SERVICE


I **HEREBY CERTIFY** that a true and correct copy of the foregoing Florida Competitive Carriers Association's Objections to BellSouth Telecommunications, Inc.'s First Set of Interrogatories (Nos. 1-35) has been furnished by (*) hand delivery, (**) electronic mail or U.S. Mail this 25th day of November, 2002, to the following:

(*) (**) Patricia Christensen
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399

(*) (**) Nancy White
c/o Nancy Sims
BellSouth Telecommunications, Inc.
150 South Monroe Street
Suite 400
Tallahassee, Florida 32301-1556

(**) Floyd R. Self
215 South Monroe Street, Suite 701
Tallahassee, Florida 32301

(**) Nanette Edwards
Director-Regulatory
ITC^DeltaCom
4092 S. Memorial Parkway
Huntsville, AL 35802


Vicki Gordon Kaufman

RECEIVED
NOV 25 2002

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Complaint of the Florida
Competitive Carriers Association
Against BellSouth Telecommunications, Inc.
and Request for Expedited Relief

FPSC-COMMISSION CLERK

Docket No. 020507-TP

Filed: November 25, 2002

**FLORIDA COMPETITIVE CARRIERS ASSOCIATION'S OBJECTIONS
TO BELL SOUTH TELECOMMUNICATIONS, INC.'S FIRST REQUEST
FOR PRODUCTION OF DOCUMENTS (NOS. 1 - 4)**

Pursuant to rule 28-106.206, Florida Administrative Code, and Rule 1.350, Florida Rules of Civil Procedure, the Florida Competitive Carriers Association (FCCA) Objects to BellSouth Telecommunications, Inc.'s First Request for Productions of Documents (Nos. 1 - 4). The objections stated herein are preliminary in nature and are made at this time to comply with the 10-day requirement set forth in Order No. PSC-02-1537-PCO-TL. Should additional grounds for objection be discovered as the FCCA prepares its answers, it reserves the right to supplement, revise or modify its objections at the time it serves its responses.

General Objections

1. The FCCA objects to any request that calls for the production of documents protected by the attorney-client privilege, the work product doctrine, the accountant-client privilege, the trade secret privilege, or any other applicable privilege or protection afforded by law, whether such privilege or protection appears at the time the response is first made to these requests or is later determined to be applicable based on the discovery of documents, investigation or analysis. FCCA in no way intends to waive any such privilege or protection.

2. In certain circumstances, the FCCA may determine upon investigation and analysis that documents that respond to certain requests to which objections are not otherwise asserted are confidential and proprietary and should not be produced or should be produced only under an appropriate confidentiality agreement and protective order. By agreeing to produce

RECEIVED & FILED

1

Mos
FPSC-BUREAU OF RECORDS

documents in response to this request, the FCCA is not waiving its right to insist upon appropriate protection of confidentiality by means of a confidentiality agreement and protective order. The FCCA hereby asserts its right to require such protection of any and all documents that may qualify for protection under the Florida Rules of Civil Procedure and other applicable statutes, rules and legal principles.

3. The FCCA objects to these requests to the extent they purport to require the FCCA to prepare information or documents or perform calculations that the FCCA has not prepared or performed in the normal course of business as an attempt to expand the FCCA's obligations under applicable law. The FCCA will comply with applicable law.

4. The FCCA objects to these requests and any definitions or instructions that purport to expand FCCA's obligations under applicable law. The FCCA will comply with applicable law.

5. The FCCA objects to any request that requires the production of "all" or "each" responsive document, as it can not guarantee, even after a good faith and reasonably diligent attempt, that "all" or "each" responsive document will be found and because such a request is burdensome and overbroad.

6. The FCCA objects to these requests to the extent that they seek documents from FCCA members that are not parties to this case, on the grounds that such request is overly broad, unduly burdensome, oppressive and not permitted by the applicable rules of discovery.

7. The FCCA objects to providing information to the extent it is in the public record or in the possession of BellSouth.

8. The FCCA objects to each request that is not limited in time as overly broad, unduly burdensome and vague.

9. The FCCA incorporates by reference all of the foregoing general objections into each of its specific objections as well as the objections set forth in its Objections to BellSouth's First Set of Interrogatories as though pleaded therein.

Specific Objections

10. BellSouth's Request for Production No. 1 states:

Produce all documents identified in response to these Interrogatories.

The FCCA has objected to a number of questions in BellSouth's First Set of Interrogatories. The FCCA incorporates herein all objections made to BellSouth's First Set of Interrogatories as they relate to this request.

11. BellSouth's Request for Production No. 2 states:

Produce all documents that refer or relate to any Broadband Service and DSL service that FCCA or its members provide to its customers in Florida.

The FCCA objects to this request on the basis that the information sought is irrelevant, overbroad, oppressive, harassing, unduly burdensome, vague and not calculated to lead to the discovery of admissible evidence. The FCCA objects to this request to the extent it seeks confidential proprietary business information or trade secret information. The FCCA objects to this request as an impermissible attempt to seek discovery from entities who are not parties to the case.

12. BellSouth's Request for Production No. 3 states:

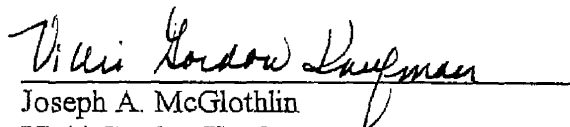
Produce all documents that refer or relate to any Broadband Service and DSL service that FCCA or its members provide to its customers in states other than Florida.

The FCCA objects to this request on the basis that the information sought is irrelevant, vague, overbroad, oppressive, harassing, unduly burdensome and not calculated to lead to the discovery of admissible evidence. The FCCA objects to this request to the extent it seeks confidential proprietary business information or trade secret information. The FCCA objects to this request as an impermissible attempt to seek discovery from entities who are not parties to the case.

13. BellSouth's Request for Production No. 4 states:

Produce all documents that refer or relate to FCCA or its members' consideration or investigation or their ability to resell BellSouth's local exchange service in order to provide voice service as well as FastAccess to its customers in Florida.

The FCCA objects to this request on the basis that the information sought is irrelevant, vague, overbroad, oppressive, harassing, unduly burdensome and not calculated to lead to the discovery of admissible evidence. The FCCA objects to this request to the extent it seeks confidential proprietary business information or trade secret information. The FCCA objects to this request as an impermissible attempt to seek discovery from entities who are not parties to the case.



Joseph A. McGlothlin

Vicki Gordon Kaufman

McWhirter, Reeves, McGlothlin, Davidson,
Decker, Kaufman & Arnold, PA

117 South Gadsden Street

Tallahassee, Florida 32301

(850) 222-2525 Telephone

(850) 222-5606 Telefax

Attorneys for the Florida Competitive
Carriers Association

CERTIFICATE OF SERVICE

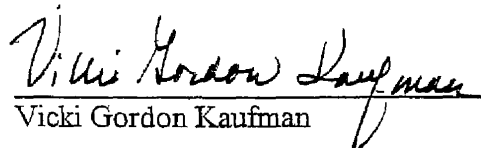
I **HEREBY CERTIFY** that a true and correct copy of the foregoing the Florida Competitive Carriers Association's Objections to BellSouth Telecommunications, Inc.'s First Request for Production of Documents (Nos. 1 - 4) has been furnished by (*) hand delivery, (**) electronic mail or by U. S. Mail this 25th day of November 2002, to the following:

(*) (**) Patricia Christensen
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399

(*) (**) Nancy White
c/o Nancy Sims
BellSouth Telecommunications, Inc.
150 South Monroe Street
Suite 400
Tallahassee, Florida 32301-1556

(**) Floyd R. Self
215 South Monroe Street, Suite 701
Tallahassee, Florida 32301

(**) Nanette Edwards
Director-Regulatory
ITC^DeltaCom
4092 S. Memorial Parkway
Huntsville, AL 35802


Vicki Gordon Kaufman

CERTIFICATE OF SERVICE

I **HEREBY CERTIFY** that a true and correct copy of the foregoing Florida Competitive Carriers Association's Motion for Reconsideration of Order No. PSC-03-0084-PCO-TL has been furnished by (*) Hand delivery, (**) Electronic mail or U.S. Mail this 17th day of January 2003, to the following:

(*) (**) Patricia Christensen
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399

(*) (**) Nancy White
(**) Meredith Mays
c/o Nancy Sims
BellSouth Telecommunications, Inc.
150 South Monroe Street
Suite 400
Tallahassee, Florida 32301-1556

(**) Floyd R. Self
215 South Monroe Street, Suite 701
Tallahassee, Florida 32301

(**) Nanette Edwards
Director-Regulatory
ITC^DeltaCom
4092 S. Memorial Parkway
Huntsville, AL 35802



Joseph A. McGlothlin