

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  
ORDER NO. PSC-03-0832-PCO-TL  
ISSUED: July 17, 2003

ORDER ON BELLSOUTH'S EMERGENCY MOTION TO COMPEL

On June 12, 2002, the Florida Competitive Carriers Association (FCCA) filed a Complaint against BellSouth Telecommunications, Inc. (BellSouth) and a Request for Expedited Relief seeking relief from BellSouth's practice of refusing to provide its FastAccess service to customers who receive voice service from an Alternative Local Exchange Carrier (ALEC). By Order No. PSC-03-0611-AS-TL, issued May 19, 2003, the Commission approved the Parties' Joint Motion for Approval of Settlement Agreement resolving the parties' discovery disputes up to that point in that time. In addition, by Order No. PSC-03-0611-AS-TL, the Commission, in approving the settlement, acknowledged the substitution of AT&T Communications of the Southern States, LLC (AT&T), MCI WorldCom Communications, Inc. and MCImetro Access Transmission Services, LLP (collectively, WorldCom), ITC^DeltaCom Communications, Inc. (ITC^DeltaCom), Access Intergrated Networks, Inc. (AIN) for the FCCA. By Order No. PSC-03-0636-PCO-TL, issued May 23, 2003, the administrative hearing in the matter was scheduled for July 21 and 22, 2003.

On July 15, 2003, BellSouth filed an Emergency Motion to Compel Against AT&T. BellSouth states that it is requesting that AT&T fully and completely respond to BellSouth's Second Set of Interrogatories. BellSouth states that it sought information with Interrogatory No. 4 as follows:

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4. As of December 31, 1999; June 30, 2000; December 31, 2000; June 30, 2001; December 31, 2001; June 30 2002; December 31, 2002; and June 30, 2003 (or the most recent date for which data is available) please state:

a) The total number of lines that AT&T provides using UNE-P loops leased from BellSouth in Florida, designated by Florida deaveraged UNE rate zones 1, 2, and 3;

b) The total number of lines that AT&T provides using unbundled loops (without switching) leased from BellSouth in Florida, designated by Florida deaveraged UNE rate zone 1, 2, and 3;

c) The total number of lines that AT&T provides using resold BellSouth lines in Florida, designated by Florida deaveraged UNE rate zones 1, 2, and 3;

d) The total number of lines that AT&T provides in Florida using exclusively its own facilities, designated by Florida deaveraged UNE rate zones 1, 2, and 3.

BellSouth claims that AT&T objected to this Interrogatory claiming that the request was not reasonably calculated to lead to the discovery of admissible evidence and is not relevant to the subject matter of this action. Further, BellSouth states that AT&T directed BellSouth to its own records. BellSouth argues that pursuant to Rule 1.280, Florida Rules of Civil Procedure, they are entitled to the discovery. BellSouth argues that discovery rules are to be liberally construed so as to permit any form of discovery within the scope of the rules. See, Weyant v. Rawlings, 389 So.2d 710, 711 (Fla. Dist. Ct. App. 1980); Jones v. Seaboard Coast Line Railroad Co., 297 So.2d 861, 863 (Fla. Dist. Ct. App. 1974).

BellSouth argues that AT&T cannot reasonable contend that BellSouth's discovery question is not relevant. BellSouth contends that it is fully entitled to request information relating to its defenses and that may lead to the discovery of admissible evidence. BellSouth cites to Issues 3, 4, and 5 in this proceeding. BellSouth state that Issue 3 considers whether BellSouth's practice violates state and federal law. BellSouth also states that Issues 4, 5, and 6 relate to the rates, terms, and conditions of

BellSouth's provision of FastAccess. BellSouth argues that in considering these issues, it is clear that whether AT&T uses resold lines is relevant to whether AT&T currently has a means available to obtain FastAccess. BellSouth asserts that in considering BellSouth's practices, the extent to which AT&T has invested in its own facilities may have impacted "why and how" BellSouth has implemented its practices.

BellSouth argues that AT&T witness Gillan's testimony demonstrates the relevancy of its discovery request, citing witness Gillan's 1) claims that BellSouth's strategy results in a barrier to competition; 2) claims that local competition is just beginning to take root via entry strategies such as UNE-P; and 3) statement that resale is not viable. BellSouth contends that this testimony demonstrates that AT&T's historical line data is directly relevant to these claims and statements. Thus, BellSouth argues that AT&T should be directed to respond to the question as soon as possible so that BellSouth may utilize the discovery response in presenting its defense to the Commission.

No written response has been received, but the seven day response period has not expired. However, given the short time frame before the scheduled hearing, it is appropriate to address this issue without delay. After reviewing BellSouth's Motion, as well as the interrogatory in question, BellSouth's Motion to Compel shall be granted for the reasons set forth below.

Rule 1.280(b) states that:

It is not ground for objection that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

AT&T objects on the grounds that the information is not reasonably calculated to lead to the discovery of admissible evidence and is not relevant to the subject matter of this action. Even if AT&T were to claim that only BellSouth's actions are in question in this proceeding, BellSouth would still be entitled to seek discovery reasonably calculated to lead to admissible evidence regarding its defenses. See, Rule 1.280, Florida Rules of Civil Procedure. In reviewing the Interrogatory in question, it appears reasonably

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calculated to lead to the discovery of admissible evidence. Further, BellSouth states that AT&T referred BellSouth to its own records in responding to the question. Referring a party to its own records in this instance is not responsive to the interrogatory. Even if BellSouth has its own records, it is still entitled to discovery from AT&T regarding this matter.

In view of the short time remaining before the hearing, AT&T is directed to respond by Friday, July 18, 2003. The responses shall be provided to BellSouth with a copy to staff, by hand delivery or facsimile, to be received by no later than 5:00 p.m. on that date.


Based on the foregoing, it is

ORDERED by Commissioner Braulio L. Baez, as Prehearing Officer, that BellSouth Telecommunications, Inc.'s Motion to Compel is granted as set forth in the body of this Order. It is further

ORDERED that the AT&T Communications of the Southern States, LLC shall respond to the discovery requests set forth in the body of this Order within the time limits and in the manner described in the body of this Order. It is further

ORDERED that this Docket shall remain open pending resolution of the matters to be addressed at hearing.

By ORDER of Commissioner Braulio L. Baez, as Prehearing Officer, this 17th Day of July 2003.

 for Commissioner Braulio Baez

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BRAULIO L. BAEZ  
Commissioner and Prehearing Officer

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NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

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

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