

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition by Verizon Florida Inc. to reform intrastate network access and basic local telecommunications rates in accordance with Section 364.164, Florida Statutes.

DOCKET NO. 030867-TL

In re: Petition by Sprint-Florida, Incorporated to reduce intrastate switched network access rates to interstate parity in revenue-neutral manner pursuant to Section 364.164(1), Florida Statutes.

DOCKET NO. 030868-TL

In re: Petition for implementation of Section 364.164, Florida Statutes, by rebalancing rates in a revenue-neutral manner through decreases in intrastate switched access charges with offsetting rate adjustments for basic services, by BellSouth Telecommunications, Inc.

DOCKET NO. 030869-TL

In re: Flow-through of LEC switched access reductions by IXCs, pursuant to Section 364.163(2), Florida Statutes.

DOCKET NO. 030961-TI  
ORDER NO. PSC-03-1366-PCO-TL  
ISSUED: December 2, 2003

ORDER ON OPC'S SECOND AND THIRD MOTIONS TO COMPEL INTERROGATORIES  
AND PRODUCTION OF DOCUMENTS FROM BELL SOUTH

On August 27, 2003, BellSouth Telecommunications, Inc. (BellSouth), Verizon Florida Inc. (Verizon), and Sprint-Florida, Incorporated (Sprint),, each filed petitions pursuant to Section 364.164, Florida Statutes, and respective Dockets Nos. 030867-TL, 030868-TL, and 030869-TL have been opened to address these petitions in the time frame provided by Section 364.164, Florida Statutes. During the 2003 Regular Session, the Florida Legislature enacted the Tele-Competition Innovation and Infrastructure

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Enhancement Act (Tele-Competition Act or Act). The Act became effective on May 23, 2003. Part of the new Tele-Competition Act is the new Section 364.164, Florida Statutes, whereby the Legislature established a process by which each incumbent local exchange telecommunications carrier (ILEC) may petition the Commission to reduce its intrastate switched network access rate in a revenue-neutral manner. This matter has been set for hearing on December 10-12, 2003.

On September 23 and 24, 2003, the Office of Public Counsel on behalf of the Citizens of Florida (OPC) filed its Second and Third Motions to Compel Answers to Interrogatories and Production of Documents from BellSouth Telecommunications, Inc. (BellSouth), respectively. On September 30, 2003, BellSouth filed its Responses in opposition to OPC's Second and Third Motions to Compel. This Order addresses OPC's Second and Third Motions to Compel.

## I. ARGUMENT

### A. OPC's Motion

In support of its Motions, OPC states that on September 12, 2003, BellSouth served its Initial Objections to its Second Set of Interrogatories and Second Set of Production of Documents dated September 5, 2003. OPC asserts that BellSouth lists eleven "general" and "specific" objections to its discovery, none of which identifies a single interrogatory or request for production of documents (PODs) to which any or all of them may apply. OPC claims that as such BellSouth has presented to it a wonderful game of "read the Company's mind." OPC asserts emphatically that these "general" and "specific" objections of BellSouth are wholly inapplicable to its discovery requests. OPC goes through each of "initial" and "preliminary" objections made by BellSouth, regarding the interrogatories and PODs.

OPC cites to the Order Establishing Procedure, Order No. PSC-03-0994-PCO-TL, which instructs the parties regarding discovery that "Any objection to . . . discovery requests shall be made within five business day of service of the discovery request." OPC contends that it does not believe that instruction envisioned a listing of any and all objections that might be available to a

party in the event that some specific discovery request was made of that party to which one or more of those available objections could be claimed and argued. OPC argues that not one of these general objections made by BellSouth identifies a single interrogatory or POD to which it might apply. OPC states that if these objections were actually applicable to its discovery, OPC would be faced with the impossible task of responding directly to these general objections, all of which address nothing in particular. OPC contends that these objections are wholly inappropriate and totally irrelevant to its discovery requests.

OPC states that after listing their general objections, BellSouth identifies some specific objections to particular discovery requests, as required by the Florida Rules of Civil Procedure. OPC then proceeds to identify the specific objections by interrogatory and POD and its responses to same which are summarized below in Section II of this Order.

B. BellSouth Argument

BellSouth states that in regard to its use of general objections, nothing in Order No. PSC-04-0994-PCO-TL, precludes the use of general objections and, in light of the expedited discovery time frames for this proceeding, BellSouth's use of general objections - in which it lists standard discovery objections and reserves its rights - is entirely appropriate. BellSouth asserts that the discovery dispute that has resulted in OPC's Second and Third Motions to Compel is centered around the statutory language that gave rise to BellSouth's petition. Specifically, BellSouth states, the newly created Section 364.164, Florida Statutes, sets forth a process for rebalancing intrastate switch access revenue and basic local telecommunications in a revenue neutral manner.

BellSouth cites to Section 364.164(3), Florida Statutes, which provides, in relevant part, that "any discovery or information requests under this section must be limited to a verification of historical pricing units necessary to ensure that the company's adjustments make the revenue neutral for each annual filing. BellSouth contends that if OPC is permitted to engage in broad discovery, the focus of the proceeding shifts from a narrowly focused proceeding to an endless free for all, which BellSouth believes contravenes the statutory intent.

OPC's Second Motion to Compel to BellSouth includes Interrogatories Nos. 23-29, 31, 34-36, 38-29, and 41-48 and Production of Document Nos. 26-29. OPC's Third Motion to Compel to BellSouth includes Interrogatories Nos. 49 and 50. The individual arguments regarding the interrogatories or PODs are addressed below. Further, the decision relating to each interrogatory and POD is addressed under that individual interrogatory and POD.

## II. DECISION

After reviewing the parties' motions and responses, as well as the interrogatories and PODs in question, OPC's Second and Third Motions to Compel shall be granted in part and denied in part in the manner and 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.

However, certain of the requests appear to be burdensome; therefore, those requests are limited as set forth below.

### A. Interrogatories

#### Interrogatory No. 23:

OPC states that BellSouth specifically objects to its Interrogatory No. 23 which asks BellSouth to provide the company's (and/or the related long distance affiliate) intrastate pricing units/volumes separately for MTS, and all "other optional calling plans" (all "other optional calling plans" should be provided separately if available, or on a combined basis), and provide this information for both residential and business customers. The above information should be provided for day, evening, and night/weekend categories. The information should be provided for both the test period, and the year prior to the test period.

OPC contends that this docket relates directly to the access charges proposed by BellSouth and the beneficial impact for

customers that the company claims will flow through to them in the form of reduced intrastate long distance charges. OPC contends that for this Commission to fully understand the benefits that may or may not accrue to Florida's residential basic local exchange customers, it needs to know what impacts the proposals in this docket will have on all Florida long distance carriers in terms of the volume of traffic, applicable rates and the rates that will apply following the changes proposed by the Company in this docket.

OPC also argues that BellSouth witness Gordon states that "economic activity in Florida will increase in Florida as a result of the companies' plans because rebalancing generates substantial customer benefits" and he states that, "consumers will likely increase their purchases of those services whose price has come down." OPC cites Section III and IV of witness Gordon's testimony, which describes the customer benefits from the rebalancing proposal of the company, and page 32 of his testimony where he states that Florida consumers will use more toll services as a result of the reduction in intrastate toll prices. OPC asserts that this discovery request directly addresses the issue of intrastate toll price reductions that Florida consumers may, or may not, experience. OPC states that it objects to BellSouth's contention that the statute limits discovery to the most recent 12 months. OPC contends that the discovery is relevant and pertinent to the proceeding. OPC asserts that BellSouth's reliance on Section 364.164(3), Florida Statutes, is misplaced. OPC contends that the discovery limitation addressed in that section pertains only to the rate adjustment filings identified in Section 364.164(2), Florida Statutes, and further addressed in Section 364.164(3) and 364.164(7), Florida Statutes.

BellSouth, in its response, asserts that OPC's indication that the Commission "needs to know what impacts" BellSouth's proposal will have on "all Florida long distance customers" is simply off base. BellSouth contends that OPC seeks to enforce BellSouth to conduct OPC's investigation, which BellSouth is not required to do.

BellSouth also objects to Interrogatory No. 23 to the extent that it seeks information from BellSouth Long Distance, Inc. who is not a party to this docket. In addition, BellSouth objects to this interrogatory on the grounds that it is not relevant to the subject

matter of this docket, is not reasonably calculated to the discovery of admissible evidence, and beyond the scope of Section 364.164(3), Florida Statutes. Moreover, BellSouth asserts that there is no "test period" in this docket.

Decision

For the reasons fully articulated in Order No. PSC-03-1155-PCO-TL, issued October 20, 2003, on OPC's First Motions to Compel, I find the language in Section 364.164(3), Florida Statutes, limits discovery only regarding the pricing units upon which the party's petition is based. Thus, to the extent the discovery request goes to information not related to the "pricing units upon which the party's petition is based," discovery is permitted under the Florida Rules of Civil Procedures, and is not limited to a 12-month historical review.

Further, at the November 3, 2003, Agenda Conference, this Commission voted to consolidate the IXC flow-through docket with these petitions. Thus, BellSouth's argument that this information is beyond the matters to be addressed by this Commission regarding its petition is inapplicable. In addition, its argument that the information would not help this Commission is inconsistent with this Commission's recent decision mentioned above.

Based on the foregoing, this discovery request appears relevant. Thus, BellSouth shall respond to this discovery request.

Interrogatory No. 24:

OPC states that BellSouth specifically objects to its Interrogatory No. 24 which asks BellSouth to provide the Company's (and/or the related long distance affiliate) average revenues per minute separately for MTS, and all "other optional calling plans" (all "other optional calling plans" should be provided separately if available, or on a combined basis), and provide this information for both residential and business customers. The information should be provided for both the test period, and each of the two years prior to the test period. OPC refers to the arguments it made to BellSouth's objection to Interrogatory No. 23. BellSouth refers to its response to OPC's Motion to Compel regarding Interrogatory No. 23.

Decision

For the reasons articulated under the decision for Interrogatory No. 23, this discovery request appears relevant to the extent that this question does not call for information related to the revenues upon which the ILECs Petition were based. Thus, BellSouth shall respond to this discovery request.

Interrogatory No. 25:

OPC states that BellSouth specifically objects to its Interrogatory No. 25 which asks BellSouth to provide the average intrastate toll/long distance usage charges (billed/invoiced amount) separately for customers of residential MTS, all other combined residential "optional calling plans," business MTS, and all other combined business "optional calling plans." Provide this information for the test period and the prior twelve months. Explain if this includes any PICC. OPC refers to the arguments it made to BellSouth's objection to Interrogatory No. 23. BellSouth refers to its response to OPC's Motion to Compel regarding Interrogatory No. 23.

Decision

For the reasons articulated under the decision in Interrogatory No. 23, this discovery request appears relevant. Thus, BellSouth shall respond to this discovery request.

Interrogatory No. 26:

OPC states that BellSouth specifically objects to its Interrogatory No. 26 which asks BellSouth to assume that the company's proposal is adopted and provide all information to show that the decrease in residential long distance rates (from the flow-through impact) will equal or exceed the increase in residential local rates. Provide all supporting calculations, assumptions, and explanations, and provide information in electronic format. Explain how this can be determined if the time period that long distance rate reductions will be in place is not known or determinable. OPC refers to the arguments it made to BellSouth's objection to Interrogatory No. 23. BellSouth refers to

its response to OPC's Motion to Compel regarding Interrogatory No. 23.

Decision

For the reasons articulated under the decision in Interrogatory No. 23, this discovery request appears relevant. However, this request is limited to all information in BellSouth's possession or control. Thus, BellSouth shall respond to this discovery request as limited above.

Interrogatory No. 27:

OPC states that BellSouth specifically objects to its Interrogatory No. 27, which asks BellSouth to assume that the company's proposal is adopted without changes (and that the company, and/or its long distance affiliate would flow-through the rate reductions) provide the company's best estimate of the flow-through impact on reduced long distance rates for the company (and/or its affiliate), and reduced long distance rates generally for all of the Florida long distance market for all other carriers. In addition, assuming that the proposals for the other two LECs are adopted without change, provide the company's best estimate of how the combined flow-through impact of all LECs affects the long distance rates generally for all of the Florida long distance market for all other carriers. This information can be expressed as the best estimate impact of the reduction in average long distance revenues per minute, or some other basis for long distance rates. Provide all supporting calculations and explanations. OPC refers to the arguments it made to BellSouth's objection to Interrogatory No. 23.

BellSouth refers to its Response to OPC's Motion to Compel to Interrogatory No. 23.

Decision

This discovery request is over broad regarding the portion of the question which asks BellSouth to provide information regarding ". . . reduced long distance rates generally for all of the Florida long distance market for all other carriers. In addition, assuming



that the proposals for the other two LECs are adopted without change, provide the company's best estimate of how the combined flow-through impact of all LECs affects the long distance rates generally for all of the Florida long distance market for all other carriers. This information can be expressed as the best estimate impact of the reduction in average long distance revenues per minute, or some other basis for long distance rates." Thus, BellSouth shall not be required to respond to this portion of the discovery request. However, the remainder of the request appears relevant and BellSouth shall respond.

Interrogatory No. 28:

OPC states that BellSouth specifically objects to its Interrogatory No. 29, which asks BellSouth to address the following regarding potential long distance rate reductions for the company (and/or its long distance affiliate):

- (a) Explain if the company (and/or its long distance affiliate) will flow-through access reductions to long distance rates, and provide its best estimates of rates it will offer for each long distance service assuming its rebalancing proposal is adopted. Explain why the company will not reduce rates if this is the case.
- (b) Explain the time period the company will maintain its reduced long distance rates, before it subsequently increases long distance rates and explain the rationale for this approach.
- (c) Explain if the company will lower its "intrastate" long distance rates to match (or go below) the rates of all similar lower priced "interstate" long distance rates. Provide and list of these long distance services, and explain why the company will or will not reduce its intrastate rates to match (or go below) interstate rates.

OPC refers to the arguments it made to BellSouth's objection to Interrogatory No. 23. BellSouth refers to its response to OPC's Motion to Compel regarding Interrogatory No. 23.

Decision

For the reasons articulated under the decision in Interrogatory No. 23, this discovery request appears relevant to the extent it is related to Florida. Thus, BellSouth shall respond to this discovery request as limited to Florida.

Interrogatory No. 29:

OPC states that BellSouth specifically objects to its Interrogatory No. 29, which asks BellSouth to assume that the LEC (and/or its long distance affiliate) and other long distance carriers will flow-through long distance rate reductions to customers. Explain what actions the Florida Commission should take if the LEC and/or other long distance carriers subsequently increase their long distance rates (to negate all or some impact of the access flow-through) within a 6-month period, 1 year period, or some other period. Explain why local rates should be permanently increased if long distance rates will not be permanently decreased, or at least decreased for some substantial time period.

OPC refers to the arguments it made to BellSouth's objection to Interrogatory No. 23. BellSouth refers to its response to OPC's Motion to Compel regarding Interrogatory No. 23.

Decision

For the reasons articulated under the decision in Interrogatory No. 23, this discovery request appears relevant. Thus, BellSouth shall respond to this discovery request.

Interrogatory No. 31:

OPC states that BellSouth specifically objects to its Interrogatory No. 31, which asks BellSouth to explain all proof that access reductions will be flowed through equitably to both residential and business customers of the LEC (and/or its long distance affiliate) and other carriers, or indicate if carriers could choose to flow-through the entire impact of the access reduction to business long distance customers (and not residential long distance customers). Provide all information to support the company's statements or opinion. OPC refers to the arguments it

made to BellSouth's objection to Interrogatory No. 23. Also, OPC contends that BellSouth's argument that the law does not allow companies to flow through the access reduction solely to business customers, however, OPC asserts that the interrogatory asks the company to demonstrate that the flow-through will be equitable. BellSouth refers to its response to OPC's Motion to Compel regarding Interrogatory No. 23

Decision

For the reasons articulated under the decision in Interrogatory No. 23, this discovery request appears relevant. Thus, BellSouth shall respond to this discovery request.

Interrogatory No. 34:

OPC states that BellSouth specifically objects to its Interrogatory No. 34, which asks BellSouth for those states which have reduced access and rebalanced local rates in the past few years such as indicated in witness Gordon's testimony (i.e. California, Illinois, Ohio, Massachusetts, Maine, and any others), to provide a list of services introduced or available in these states that are not available in other states that have not rebalanced local rates (to supposedly eliminate support). OPC contends that the burden of proof in this case rests with BellSouth to prove that its proposals are in compliance with Florida Statutes and beneficial to residential customers. OPC asserts that the specific information in this request relates directly to conclusions that witness Gordon has presented in his testimony. OPC argues that it has a right to test the validity of the conclusions of witness Gordon.

In its response to Interrogatory No. 34, BellSouth states that it will file a supplemental response simultaneously with this opposition. BellSouth also states that if OPC maintains its motion after receiving BellSouth's supplemental request, any such request is without merit.

Decision

To the extent that BellSouth witness Gordon relied on data in formulating his opinion and BellSouth has not provided a complete

response, BellSouth shall produce that data and if no such data was relied upon BellSouth shall clearly indicate such.

Interrogatory No. 35:

OPC states that BellSouth specifically objects to its Interrogatory No. 35, which asks BellSouth to provide an explanation of all increases in residential long distance rates for each service for the period January 2000 to the most recent date. For each service, provide the prior rate (and the date), the increased rate (and date of increase) and an explanation of the reason for the increase in long distance rates. OPC cites similar arguments that it made to BellSouth's objection to Interrogatory No. 23. Specifically, OPC states that the Commission needs to know what impacts the proposals in this docket will have on all Florida long distance customers, including the volume of traffic, applicable rates charged to customers, access charges paid by the carriers. OPC asserts that the discovery limitation addressed in Sections 364.164(2) and 364.164(3) pertains only the rate adjustment filings.

BellSouth objected to this request but also noted that responsive information is available to OPC as a matter of public record, indicating that OPC fails to address this fact. Thus, BellSouth concludes that OPC is capable of pursuing this information on its own.

Decision

This request appears to be over broad and unduly burdensome. Therefore, BellSouth shall not be required to respond.

Interrogatory No. 36:

OPC states that BellSouth specifically objects to its Interrogatory No. 36, which asks BellSouth to address the following regarding long distance rates:

- a) For the company (and/or its long distance affiliate) operations in Florida, provide a comparison and brief description of all current residential long distance calling plans and a comparison of the rates available on

an "intrastate" basis and an "interstate" basis. Identify those similar "intrastate" and "interstate" long distance plans, and explain the reason for any difference in rates.

b) Explain if this situation of having different intrastate and interstate rates for similar calling plans is unique to the company's Florida operations, or if it is unique to states which have not rebalanced local rates and provide documentation to support this (such as comparing rates in other states of the company operations, including states which have and have not rebalanced local rates).

c) For the company (and/or its long distance affiliate) operations in Florida, provide the name and a brief description of all current residential long distance calling plans that are available on an "interstate" basis, but not an "intrastate" basis. Explain why this situation exists and provide documentation to support this.

d) Explain if this situation of having certain "interstate" long distance calling plans (but not similar "intrastate" plans) is unique to the company's Florida operations, or if it is unique to states which have not rebalanced local rates and provide documentation to support this (such as comparing rates in other states of the company operations, including states which have and have not rebalanced local rates.)

e) For items (a) through (d) above, address these issues as it relates to those states which have rebalanced local rates in the past few years per the testimony of Dr. Gordon (i.e., California, Illinois, Ohio, Massachusetts, Maine, and others).

OPC refers to its response to BellSouth's Objection to Interrogatory Request Nos. 34 and 35. OPC asserts that the burden of proof here is upon BellSouth to demonstrate whether its proposals are beneficial to consumers and Citizens should not be required to travel to other states to evaluate of the testimony of

BellSouth witness Gordon. OPC indicates that the request in this interrogatory is to determine whether the beneficial impacts cited by witness Gordon have been experienced by the customers in those states that witness Gordon has used as role models. OPC contends that it has a right to test the validity of Gordon's assertions. OPC argues that BellSouth's reliance on Section 364.164(3), Florida Statutes, is misplaced. Further, OPC asserts that the discovery limitation addressed in that section pertains only to the rate adjustment filings identified in Section 364.164(2), and further addressed in section 364.164(3).

In its response, BellSouth indicates that it does not believe that this interrogatory is relevant to this proceeding.

Decision

For the reasons articulated under the decision in Interrogatory No. 23, this discovery request appears relevant. Other than a generalized objection, BellSouth did not articulate why responding to this request would be unduly burdensome. Thus, BellSouth shall respond to this discovery request.

Interrogatory No. 38:

OPC states that BellSouth specifically objects to its Interrogatory No. 38, which asks BellSouth to refer to witness Gordon's testimony addressing a list of states that have rebalanced rates in recent years (i.e. California, Illinois, Ohio, Massachusetts, Maine and others). For these states, explain if the reduced access and increased local rates have induced an increased competitive response and market entry by the RBOCs and larger LECs in these states. For example, explain if RBOCs have entered the service territories of other incumbent LECs to compete for residential and business customers, and explain if other incumbent LECs have entered the service territories of RBOCs to compete for residential and business customers. Explain this status to address the level of competition among and between RBOCs and incumbent LECs in these states.

OPC refers to the arguments it made to BellSouth's objection to Interrogatory Nos 34 and 35. OPC contends that BellSouth has presented meaningless objections, prefaced with the qualifier "to

the extent that." OPC explains that in the event BellSouth wishes to argue at some point, however, that there is some hidden "extent" to which this interrogatory is "not relevant" to the subject matter, "not reasonably calculated" to lead to admissible evidence, and/or "beyond the scope" of the statute/

BellSouth states that it will file a supplemental response simultaneously with this opposition. BellSouth also states that if OPC maintains its motion after receiving BellSouth's supplemental request, any such request is without merit.

#### Decision

To the extent that BellSouth's expert witness Gordon relied on data in formulating his opinion, BellSouth shall produce that data and if no such data was relied upon BellSouth shall clearly indicate such.

#### Interrogatory 39

OPC states that BellSouth specifically objects to Interrogatory No. 39, which asks BellSouth to refer to the calendar years ending December 31, 2001, and December 31, 2002, as well as the study period associated with Caldwell Exhibit DDC-1, Attachment J, provide the total state jurisdictional revenue, basic area service revenue (Account 5001), basic local service revenue (Account 5000), and other local revenue (Account 5060) billed to residential consumers. OPC refers to the arguments it made to BellSouth's objection to Interrogatory No. 38. OPC indicates that BellSouth witnesses, who have referred to the various revenues and customer accounts throughout their testimony including their exhibits is relevant to this proceeding.

BellSouth states that this interrogatory seeks information concerning revenue from certain listed accounts and other local revenue billed to residential customers. BellSouth objects to this request on the ground that it is not relevant. BellSouth contends that the information sought is beyond the scope of this proceeding.

Decision

This discovery request appears relevant. Although there are concerns regarding the scope of this request, BellSouth did not articulate why responding to this request would be unduly burdensome. Thus, BellSouth shall respond to this discovery request.

Interrogatories 41 and 42

OPC states that BellSouth specifically objects to Interrogatories Nos. 41 and 42, which asks BellSouth to provide the number of residential accounts and billable access lines, and the number of business accounts and billable access for each month in the calendar years ending December 31, 2001, and December 31, 2002, as well as the study period associated with Caldwell Exhibit DDC-1, Attachment J.

BellSouth refers to its response to OPC's Motion to Compel regarding Interrogatory No. 39.

Decision

These discovery requests appear relevant. Although there are concerns regarding the scope of this request, BellSouth did not articulate why responding to this request would be unduly burdensome. Thus, BellSouth shall respond to these discovery requests.

Interrogatory No. 43

OPC states that BellSouth specifically objects to Interrogatories No. 43, which asks BellSouth to provide the number of business bills sent to customers for each billing cycle in the calendar year ending December 31, 2001, and December 31, 2002, as well as the study period associated with Caldwell Exhibit DDC-1.

BellSouth refers to its response to OPC's Motion to Compel regarding Interrogatory No. 39



Decision

This discovery request appears relevant. Although there are concerns regarding the scope of this request, BellSouth did not articulate why responding to this request would be unduly burdensome. Thus, BellSouth shall respond to these discovery requests.

Interrogatory No. 44

OPC states that BellSouth specifically objects to Interrogatory No. 44, which asks BellSouth to provide the number of residential bills sent to customers for each billing cycle in the calendar year ending December 31, 2001, and December 31, 2002, as well as the study period associated with Caldwell DDC-1.

BellSouth refers to its response to OPC's Motion to Compel regarding Interrogatory No. 39.

Decision

This discovery request appears relevant. Although there are concerns regarding the scope of this request, BellSouth did not articulate why responding to this request would be unduly burdensome. Thus, BellSouth shall respond to these discovery requests.

Interrogatories Nos. 45 and 46

OPC states that BellSouth specifically objects to Interrogatory No. 45, which asks BellSouth to explain how marketing costs are shared among the regulated and deregulated service with regard to BellSouth Complete Choice plans and other services offerings that combine local service with any deregulated service. Interrogatory No. 46 states:

For BellSouth Complete Choice plans and other services offerings that combine local service with any deregulated service:

(a) For the calendar year ending December 31, 2001, and December 31, 2002, as well as the study period associated with Caldwell Exhibit DDC-1, provide the total marketing expenses prior

to the allocation of any marketing expenses to the non-regulated services.

(b) For the calendar year ending December 31, 2001, and December 31, 2002, as well as the study period associated with Caldwell DDC-1, provide the amount of marketing expenses allocated to non-regulated services and BellSouth affiliates.

(c) For the calendar year ending December 31, 2001, and December 31, 2002, as well as the study period associated with Caldwell DDC-1, provide the amount of marketing expenses allocated to BellSouth's state jurisdictional service.

OPC refers to its response to BellSouth objection to Interrogatory No. 38, as well as Interrogatory No. 39. OPC asserts that BellSouth witness Gordon states in his testimony that it is correct for the Commission to assign the full costs of the local loop to the basic local exchange ratepayer (page 5, lines 6-7). Witness Gordon indicates that the full cost of the local loop should be included in the forward-looking cost of residential service and its should thus be recovered. OPC asserts that it seeks to quantify how BellSouth applies its economic theories to the recovery of its marketing costs among the various regulated and unregulated services it provides.

BellSouth states Interrogatories 45 and 46 seek information concerning marketing costs and expenses relating to BellSouth's Complete Choice plan and other deregulated services, which has no bearing on this proceeding. BellSouth states that OPC's interest in how BellSouth applies economic theories to the recovery of its marketing costs will be fully addressed in Staff's Interrogatory No. 29, concluding that no further Commission action is necessary.

#### Decision

Because it appears that Interrogatories Nos. 45 and 46 are relevant to this proceeding, BellSouth shall respond to these discovery requests.

Interrogatories Nos. 47 and 48

OPC states that BellSouth specifically objects to Interrogatory No. 47, which asks BellSouth to provide total regulated and state jurisdictional expenses in Account 6613.1 Sales Advertising- Business; Account 6613.2 Sales- Advertising- Residential, revenue; Account 6613.3 Sale Advertising- Public; Account 6613.9 Sales Advertising- Other for the calendar year ending December 31, 2001, and December 31, 2002 as well as the study associated with Caldwell Exhibit DDC-1. Interrogatory No. 48 with regard to Interrogatory No. 47, asks whether any of the advertising is for non-basic services such as long distance, vertical services such as Call Waiting or Centrex. If so, provide a separate advertising expenses for long distance, vertical services and Centrex. OPC refers to its response to BellSouth's objection to Interrogatory No. 38 as well as Interrogatory No. 39, above.

BellSouth refers to its response to OPC's Motion to Compel regarding Interrogatory No. 39.

Decision

This discovery request appears relevant. Although there are concerns regarding the scope of this request, BellSouth did not articulate why responding to this request would be unduly burdensome. Thus, BellSouth shall respond to this discovery request.

Interrogatory No. 49

OPC states that BellSouth objects specifically to Interrogatory No. 49, which asks BellSouth to provide the total regulated revenue subject to separations and the total state jurisdictional revenue for the calendar year ending December 31, 2001, and December 31, 2002, as well as the study period associated with Caldwell Exhibit DDC-1, Attachment J. Again, OPC asserts that BellSouth's "general" and "specific" objections are meaningless. OPC states that Interrogatory No. 49 requests information relating to BellSouth's total regulated revenue that is subject to separations, and the total state jurisdictional revenue, all of which is information readily available to BellSouth. OPC further

states that this discovery request relates directly to the testimony filed by BellSouth witness Bigelow in this proceeding, who references the revenues of the company in Exhibit SB1, pages 1-13.

BellSouth states that Interrogatory No. 49 seeks "total regulated revenue subject to separations." BellSouth contends that the issues in this proceeding do not include "total regulated revenue"; rather the relevant information relates to intrastate access and basic local service revenue. BellSouth argues that this discovery request far exceeds the issues in this case.

#### Decision

To the extent that BellSouth witness Bigelow addresses total regulated revenue, BellSouth shall respond to this discovery request.

#### Interrogatory No. 50

OPC states that BellSouth specifically objects to Interrogatory No. 50, which asks BellSouth to provide the number of bills sent to carriers for each billing cycle in the calendar year ending December 31, 2001, and December 31, 2002, as well as the study period associated with Caldwell DDC-1. OPC references similar arguments as indicated in its Motion to Compel Interrogatory No. 49. Also, OPC states that BellSouth's transactions with connecting carriers are relevant to this issue.

BellSouth responds that providing the number of bills sent to carriers is not useful information, nor would it be relevant to this proceeding. Further, BellSouth contends that OPC has failed to demonstrate any link between the information requested and the issues in this proceeding.

#### Decision

Because OPC has failed to demonstrate how Interrogatory No. 50 is relevant to this proceeding, BellSouth shall not be required to respond to this discovery request.

B. Production of Document Requests

POD No. 26

OPC states that BellSouth specifically objects to its POD No. 26, which asks BellSouth to provide, in electronic format, the company's (and/or the related long distance affiliate) intrastate pricing units/volumes separately for MTS, and all "other optional calling plans" (all "other optional calling plans" should be provided separately if available, or on a combined basis), and provide this information for both residential and business customers. The above information should be provided for day, evening, and night/weekend categories. The information should be provided for both the test period, and the year prior to the test period. Please also provide all supporting documents.

OPC refers to response to BellSouth's specific objection to Interrogatory No. 23. BellSouth refers to its response to OPC Motion to Compel Interrogatory No. 23.

Decision

For the reasons articulated under the decision in Interrogatory No. 23, this discovery request appears relevant. Thus, BellSouth shall respond to this discovery request.

POD NO. 27

OPC states that BellSouth specifically objects to its POD No. 27, which asks BellSouth to provide, in electronic format, the company's (and/or the related long distance affiliate) average revenues per minute separately for MTS, and all "other optional calling plans" (all "other optional calling plans" should be provided separately if available, or on a combined basis), and provide this information for both residential and business customers. The information should be provided for both the test period, and each of the two years prior to the test period. Please provide all supporting documents. OPC refers to its Response to BellSouth Objection to Production of Document Request No. 26. BellSouth also refers to its Response to OPC's Motion to Compel a Response to Request No. 26.

Decision

For the reasons articulated under the decision in Interrogatory No. 23, this discovery request appears relevant. Thus, BellSouth shall respond to this discovery request.

POD NO. 28

OPC states that BellSouth specifically objects to its POD No. 28, which asks BellSouth to provide, in electronic format, the average intrastate toll/long distance usage charges (billed/invoiced amount) separately for customers of residential MTS, all other combined residential "optional calling," business MTS, and all other combined business "optional calling plans." Providing this information for the test period and the prior twelve months. Please provide all supporting documents. OPC refers to its Response to BellSouth Objection to Production of Document Request No. 26. BellSouth also refers to its Response to OPC's Motion to Compel a Response to Request No. 26.

Decision

For the reasons articulated under the decision in Interrogatory No. 23, this discovery request appears relevant. Thus, BellSouth shall respond to this discovery request.

POD NO. 29

OPC states that BellSouth specifically objects to its POD No. 29, which asks BellSouth to assume that the company's proposal is adopted. Provide all documents in your possession, custody or control to show that the decrease in residential long distance rates (from the flow-through impact) will equal or exceed the increase in residential local rates. Please provide information in electronic format. OPC refers to its Response to BellSouth Objection to Production of Document Request No. 26. OPC states that BellSouth has stated in its objection that it does not charge for access to the local exchange network by its long distance affiliate. OPC states that it simply wants to clarify whether or not BellSouth long distance customers will benefit from the proposals of the company and these requested documents are intended to assist in that determination.

BellSouth also refers to its Response to OPC's Motion to Compel a Response to Request No. 26.

Decision

For the reasons articulated under the decision in Interrogatory No. 23, this discovery request appears relevant. Thus, BellSouth shall respond to this discovery request.

C. Timeframes

In view of the short time frame for this proceeding, BellSouth is directed to respond to the interrogatories and PODs for which the Motion to Compel has been granted within 7 days of the date of this Order. The responses shall be provided to OPC with a copies to the parties, including 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 Rudolph "Rudy" Bradley, as Prehearing Officer, that the Office of Public Counsel's Second and Third Motions to Compel discovery from BellSouth Telecommunications, Inc., Inc. are granted in part and denied in part as set forth in the body of this Order. It is further

ORDERED that BellSouth Telecommunications, Inc. 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.

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By ORDER of Commissioner Rudolph "Rudy" Bradley, as Prehearing Officer, this 2nd Day of December, 2003.

  
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RUDOLPH "RUDY" BRADLEY  
Commissioner and Prehearing Officer

( S E A L )

FRB

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



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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.