

BEFORE THE PUBLIC SERVICE COMMISSION

In re: Implementation of requirements arising from Federal Communications Commission's triennial UNE review: Location-Specific Review for DS1, DS3 and Dark Fiber Loops, and Route-Specific Review for DS1, DS3 and Dark Fiber Transport.

DOCKET NO. 030852-TP  
ORDER NO. PSC-04-0234-PCO-TP  
ISSUED: March 2, 2004

**ORDER GRANTING, IN PART, AND DENYING, IN PART, FCCA'S MOTION TO COMPEL**

**I. Case Background**

In response to the Federal Communications Commission's (FCC) August 21, 2003, Triennial Review Order (TRO), this Commission opened two dockets to ascertain whether a requesting carrier is impaired by lack of access to certain incumbent local exchange companies' network elements.

On February 11, 2004, FCCA filed a Motion to Compel BellSouth to respond to its Requests for Interrogatories Nos. 16 -19, 31 (i-l, q), 32 (d-g, k) and 33 (n-q). FCCA contends that BellSouth did not provide responses to these specific requests. On February 18, 2004, BellSouth filed its Response in Opposition to the Motion.

**II. Standard of Review**

Rule 1.280(b)(1), Florida Rules of Civil Procedure, states that:

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

This standard is not, however, without limit. Relevancy for purposes of discovery is broader than relevancy and admissibility for purposes of a hearing. Discovery may be permitted on information that would be inadmissible at trial, if it would likely lead to the discovery of relevant, admissible evidence. Also see Allstate Insurance Co. v. Langston, 655 So.2d 91 (Fla. 1995). Furthermore, objections that discovery is "burdensome" or "overly broad" must be supported by a substantive demonstration as to why the discovery is objectionable. First City Developments of Florida, Inc. v. Hallmark of Hollywood Condominium Ass'n, Inc., 545 So. 2d 502, 503 (Fla. 4<sup>th</sup> DCA 1989)

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### III. Disputed Requests

Counsel for both parties have indicated that through a series of discussions they have reached a partial resolution of the disputed requests. Specifically, counsel for BellSouth stated it would provide responses to Interrogatories 16-19 if BellSouth was granted authority to disclose customer specific information covered by the FCC's Customer Proprietary Network Information (CPNI) rules, 47 CFR §64.2007. Additionally, counsel for FCCA has stated that if BellSouth is granted authority to disclose CPNI, the only remaining interrogatories to be addressed are 31 and 32. Counsel for FCCA did not indicate that Interrogatory 33 was still in dispute; thus, it is not addressed herein.

#### A. INTERROGATORIES NOS. 16-19

These requests are framed as follows:

**Interrogatory No. 16:** For each transport route identified in Exhibits SWP-9 and SWP-10 as satisfying the self-provisioning trigger, identify all instances in which BellSouth has provisioned to any of the carriers identified as self-provisioners (i) UNE transport, (ii) UNE dark fiber or (iii) special access between the "A" and "Z" locations on the route. Provide for each carrier, the number of circuits or elements for which BellSouth is currently billing the carrier, the type of service provided (i.e., UNE transport, UNE dark fiber, special access) and the capacity level of each circuit or element provisioned. Please provide any such list in manipulable electronic format.

**Interrogatory No. 17:** For each transport route identified in Exhibits SW-7, SWP-9 and SWP-10 as satisfying the wholesale provisioning trigger, identify all instances in which BellSouth has provisioned to any of the carriers identified as wholesale providers (i) UNE transport, (ii) UNE dark fiber or (iii) special access between the "A" and "Z" locations on the route. Provide for each carrier, the number of circuits or elements for which BellSouth is currently billing the carrier, the type of service provided (i.e., UNE transport, UNE dark fiber, special access) and the capacity level of each circuit or element provisioned. Please provide any such list in manipulable electronic format.

**Interrogatory No. 18:** For each transport route identified in Exhibits SWP-9 and SWP-10 as satisfying the self-provisioning trigger, identify all instances in which BellSouth has provisioned to any of the carriers

identified as self-provisioners (i) UNE transport, (ii) UNE dark fiber or (iii) special access, where one end point of the circuit or element is either the "A" or "Z" locations on the route. Provide for each carrier, the number of circuits or elements for which BellSouth is currently billing the carrier, the type of service provided (i.e., UNE transport, UNE dark fiber, special access) and the capacity level of each circuit or element provisioned. Please provide any such list in manipulable electronic format.

**Interrogatory No. 19:** For each transport route identified in Exhibits SWP-7, SWP-9 and SWP-10 as satisfying the wholesale provisioning trigger, identify all instances in which BellSouth has provisioned to any of the carriers identified as wholesale providers (i) UNE transport, (ii) UNE dark fiber or (iii) special access, where one end point of the circuit or element is either the "A" or "Z" locations on the route. Provide for each carrier, the number of circuits or elements for which BellSouth is currently billing the carrier, the type of service provided (i.e., UNE transport, UNE dark fiber, special access) and the capacity level of each circuit or element provisioned. Please provide any such list in manipulable electronic format.

**B. DECISION**

As noted above, counsel for BellSouth has indicated BellSouth will provide the requested information if granted authority to disclose CPNI. Section 364.24(2), Florida Statutes, states that:

Any officer or person in the employ of any telecommunications company shall not intentionally disclose customer account records except as authorized by the customer or as necessary for billing purposes, **or required by subpoena, court order, other process of court, or as otherwise allowed by law.**

Accordingly, I find that BellSouth shall provide all parties of record that have entered into the appropriate protective agreements information that may consist of, or that may contain, CPNI. Upon receipt of any materials deemed CPNI, a party shall treat the information as confidential and shall only disseminate the information to: (1) its counsel; and (2) its witnesses in this proceeding, or other consultants and experts retained for purposes of this proceeding. At the conclusion of the hearing and after the appellate period has run, parties must return their copy of the information to BellSouth or this Commission for destruction.

C. **INTERROGATORIES NOS. 31(i-l, q) and 32(d-g, k)**

These requests are framed as follows:

**Interrogatory No. 31(i-l, q):** Please state how many of the 387 locations BellSouth witness Mr. Banerjee identified as able to be “economically served” by competitors currently are served by a CLEC. For each location currently served by a CLEC, please state:

- (i) The total number of DS1 circuits currently provided by BellSouth into the building;
- (j) The total number of DS3 circuits currently provided by BellSouth into the building;
- (k) The total number of OC(3) circuits currently provided by BellSouth into the building;
- (l) The total number of dark fiber circuits currently provided by BellSouth into the building
- (q) Please provide each long term contract between BellSouth and tenants/customers of the building for high capacity loop, private line, or special access arrangements at the DS1, DS3, OC(3) and above, and dark fiber capacity levels.

**Interrogatory 32(d-g, k):** Of the 387 buildings BellSouth witness Mr. Banerjee identified as able to be “economically served” by CLECs, how many currently have no CLECs serving the location. For each building, please state:

- (d) The total number of DS1 circuits currently provided by BellSouth into the building;
- (e) The total number of DS3 circuits currently provided by BellSouth into the building;
- (f) The total number of OC(3) circuits currently provided by BellSouth into the building;

(g) The total number of dark fiber circuits currently provided by BellSouth into the building

(k) Please provide each long term contract between BellSouth and tenants/customers of the building for high capacity loop, private line, or special access arrangements.

In its motion, the FCCA argues that the requested information is necessary to determine the demand for high capacity loops and the costs incurred to provide service to those buildings. FCCA contends that such information is relevant to determine whether the potential deployment test is satisfied.

BellSouth argues that FCCA has failed to demonstrate the relevancy of the information requested, nor has it cited to any portion of the TRO to justify the requests. BellSouth contends that it has provided evidence concerning the amount of spending per building in its prefiled testimony, and FCCA has no legitimate need for additional information. BellSouth argues further that the FCCA has requested responses to four discrete subparts addressing each of 387 buildings, and are therefore, unduly burdensome.

#### **D. DECISION**

With the standard for discovery in mind, I find that the FCCA has failed to provide sufficient justification why the information requested is reasonably calculated to lead to the discovery of admissible evidence, such that BellSouth should be required to undertake the burdensome task of responding to FCCA's requests. Accordingly, FCCA's Motion to Compel responses to Interrogatories 31 and 32 is denied.

#### **IV. Conclusion**

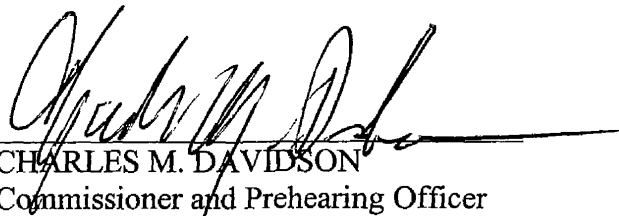
Based on the foregoing, FCCA's Motion to Compel is granted, in part, and denied, in part, to the extent set forth herein.

It is therefore

ORDERED by Commissioner Charles M. Davidson, as Prehearing Officer, that FCCA's Motion to Compel is granted, in part, and denied, in part, as set forth in the body of this Order. It is further

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By ORDER of Commissioner Charles M. Davidson, as Prehearing Officer, this 2nd  
day of March, 2004.

  
CHARLES M. DAVIDSON  
Commissioner and Prehearing Officer

(SEAL)

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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.