

BEFORE THE PUBLIC SERVICE COMMISSION

In re: Complaint of XO Florida, Inc. against BellSouth Telecommunications, Inc. for alleged refusal to convert circuits to UNEs; and request for expedited processing.	DOCKET NO. 041114-TP ORDER NO. PSC-05-0096-PCO-TP ISSUED: January 24, 2005
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ORDER GRANTING IN PART AND DENYING IN PART XO FLORIDA, INC.'S MOTION TO COMPEL

Case Background

On September 22, 2004, XO Florida, Inc. filed a complaint against BellSouth Telecommunications, Inc. for alleged refusal to convert special access circuits to UNEs and request for expedited processing. By Order No. PSC-04-1068-PCO-TP, XO's request for expedited processing was denied. Subsequently, pursuant to Order No. PSC-04-1147-PCO-TP, this matter has been set for an administrative hearing.

On December 17, 2004, XO filed a Motion to Compel BellSouth to Respond to Discovery. XO seeks to compel discovery as it relates to the process of converting special access circuits to Enhanced Extended Loops (EELs). On December 23, 2004, BellSouth filed its Opposition to the Motion to Compel. BellSouth objects to XO Interrogatories 1, 3, 4, 7, and 8 as well as XO Requests to Produce Documents 1, 2, 4, and 6. BellSouth cites that the information sought by XO is either irrelevant or has already been provided.

Standard of Review

Rule 1.280(b)(1), Florida Rules of Civil Procedure, states in part 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. Rule 1.350(b) Florida Rules of Civil Procedure, governs the procedure for a request for production of documents, and specifically requires that the request shall set forth the items to be inspected either by individual item or by category, and describe each item and category with reasonable particularity.

This standard is not, however, without limit. What is relevant for purposes of discovery is a broader matter than what is relevant and admissible at 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). While liberal construction is to be given to rules of discovery, the request must still seek relative matters and must not be so excessive so as to be unduly burdensome to the party ordered

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to produce. Riddle Airlines, Inc. v. Mann, 123 So.2d 685 (Fla.3d DCA 1960); International Business Machines Corporation v. Elder, 187 So.2d 82 (Fla.3d DCA 1966); Jones v. Seaboard Coast Line Railroad Company, 297 So.2d 861 (Fla.2d DCA 1974). However, objections to discovery that is “burdensome” or “overly broad” must be quantified. First City Developments of Florida, Inc. v. Hallmark of Hollywood Condominium Ass’n, Inc., 545 So. 2d 502, 503 (Fla. 4th DCA 1989).

Last, it should be noted that pretrial discovery was implemented to simplify the issues in a case, to eliminate the element of surprise, to encourage the settlement of cases, to avoid costly litigation, and to achieve a balanced search for the truth to ensure a fair trial. Dodson v. Persell, 390 So. 2d 704 (Fla. 1980); Surf Drugs, Inc. v. Vermette, 236 So. 2d 108 (Fla. 1970).

Ruling

As stated above, Florida law recognizes that relevancy for purposes of discovery is a broader matter than what is deemed relevant and admissible at 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. However, while liberal construction is to be given to rules of discovery, the request must still seek subject matter relative to the proceeding and must not be so excessive so as to be unduly burdensome to the party ordered to produce.

Upon consideration of the arguments, I find that information regarding the process of converting special access circuits to Enhanced Extended Loops to be relevant to the case at hand. Therefore, BellSouth shall provide responses to the following within seven calendar days of the issuance of this order: XO Interrogatories Nos. 3 and 8 as well as XO Request to Produce Documents No. 2.

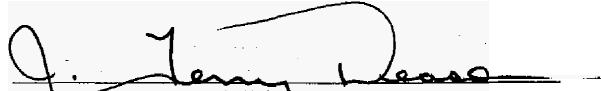
Furthermore, I find that it would be inappropriate to compel BellSouth to respond to XO Interrogatories Nos. 3, 4, and 7, as well as XO Requests to Produce Documents Nos. 1, 4, and 6. To do so would subject BellSouth to an undue burden in responding to discovery that is overly broad.

Based on the foregoing, it is

ORDERED by J. Terry Deason, as Prehearing Officer, that XO Florida, Inc.’s Motion to Compel is granted in part and denied in part as stated in the body of this Order. It is further

ORDERED that BellSouth Telecommunications, Inc. must provide XO Interrogatories No. 3 and 8 as well as XO Requests to Produce Documents No. 2 within seven calendar days of issuance of this Order.

By ORDER of Commissioner J. Terry Deason, as Prehearing Officer, this 24th day of
January, 2005.


J. TERRY DEASON
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.