

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Consideration of ) DOCKET NO. 960786-TL  
BellSouth Telecommunications, ) ORDER NO. PSC-96-1093-PCO-TL  
Inc. entry into InterLATA ) ISSUED: August 23, 1996  
services pursuant to Section 271 )  
of the Federal )  
Telecommunications Act of 1996. )  
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ORDER DENYING THE FLORIDA INTEREXCHANGE CARRIERS ASSOCIATION'S  
MOTION TO COMPEL ITEMS 3(b)-(f)

On August 13, 1996, the Florida Interexchange Carriers Association (FIXCA) filed its Amended Request for Production of Documents, Item 3. On August 16, 1996, BellSouth Telecommunications, Inc. served its Response and Objections to FIXCA's request. FIXCA made an oral Motion to Compel on August 21, 1996, during the weekly status conference call in this docket. Upon hearing the arguments of the parties my findings are set forth below.

FIXCA's amended request asks BellSouth to produce all cost studies, together with all underlying work papers and analyses, performed by or for BellSouth that fall within the following categories: (1) all cost studies performed within the last 5 years to analyze the cost of each unbundled network element that BellSouth intends to offer in order to meet the unbundling requirement of Section 251; (2) the most recent cost study performed prior to the passage of the Act to analyze the cost of providing local service, vertical services, switched access service, and private line and special access service. See items 3(b)-(f) of FIXCA's Amended Request for Production Of Documents.

BellSouth has agreed to produce the current cost studies that support the unbundled network elements that it will offer to meet the unbundling requirement in Section 251. BellSouth objects to items 3(b)-(f) arguing that the documents requested are irrelevant and not calculated to lead to the discovery of admissible evidence. Specifically, BellSouth argues that the unbundled network elements that it will be offering to satisfy the section 251 requirements are provisioned and designed in ways that are different than the provisioning and design of the wide variety of services for which FIXCA has requested cost studies. BellSouth asserts that to the extent that any given unbundled network element has components that in some cases might be utilized for some other service, any cost studies that supported that other service would not be broken out in any manner that is comparable to the unbundled network elements.

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BellSouth further argues that items 3(b)-(f) are overbroad and burdensome and that the costs of these services are competitive information that is highly sensitive, and which could result in damage to BellSouth if it were disclosed to BellSouth's competitors.

At the August 21, 1996, status conference FIXCA moved for an order compelling BellSouth to produce the documents requested. FIXCA argues that the requested documents are relevant because the information derived from them serve as a check to determine whether BellSouth is being consistent in its approach to the network elements. These studies, FIXCA argues, serve as a reference point to determine whether BellSouth has changed its approach to conducting incremental cost studies as a result of the obligation to provide these network elements on an ongoing basis. FIXCA also argues that because the Act is so recent, and because there has been no final determination of what constitutes network elements, it may very well be that there will be no explicit studies offered with respect to certain elements that it contends are appropriately included as network elements. Finally, FIXCA argues that to the extent that the cost studies performed for the broader categories underlie the price that BellSouth charges for its own service involving these network elements, they may be useful to determine whether BellSouth is meeting the nondiscriminatory criterion of the rule.

BellSouth states that FIXCA wants the most recent cost study for, in effect, every service it provides. BellSouth argues FIXCA's request is overbroad and that the information requested is not relevant. BellSouth asserts that there are particular costs associated with unbundled elements because they are provisioned in a particular way. BellSouth argues that even in those instances where there may be some common component between the network elements BellSouth has unbundled and other services, those cost studies are not going to reveal any relevant information. The costs associated with network elements, BellSouth argues, are reflected in the cost studies it has offered to provide.

Upon consideration, I find that FIXCA's Motion to Compel is denied. The cost studies that FIXCA seeks to obtain do not appear reasonably calculated to lead to the discovery of admissible evidence. Further, on balance, it appears that any relevant information which might be gleaned from the cost studies appears slight in comparison to the burden of producing all of them.

47 U.S.C. § 271(c)(2)(B)(ii) requires a Bell operating company to provide nondiscriminatory access to network elements in accordance with the requirements of §§ 251(c)(2) and 252(d)(1). I

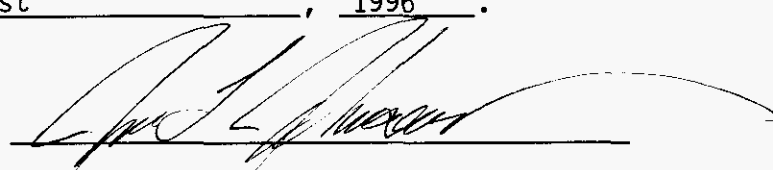
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note that the FCC in its First Report and Order, CC Docket No. 96-98, adopts the concept of unbundled elements as physical facilities of the network together with the features, functions and capabilities associated with those facilities. Further, the FCC states that network elements are defined by facilities or capabilities, and thus, cannot be defined as specific services. The FCC notes that a single network element could be used to provide many different services. The FCC concludes that the plain language of § 251(c)(3) does not obligate carriers purchasing access to network elements to provide all services that an unbundled element is capable of providing or are typically offered over that element. See Section V.C.3. I find these statements persuasive. They bolster the argument that the cost studies which FIXCA seeks do not involve network elements. The cost studies FIXCA seeks are for services. Even if some services included a network cost component, any cost study developed for a particular network element from multiple studies would be questionable.

Based on the foregoing, it is

ORDERED by Commissioner Julia L. Johnson, as Prehearing Officer, that the Florida Interexchange Carriers Association's Motion To Compel is denied as discussed in the body of this Order.

By ORDER of Commissioner Julia L. Johnson, as Prehearing Officer, this 23rd day of August, 1996.

  
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Julia L. Johnson, Commissioner  
and Prehearing Officer

( S E A L )

MMB

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.59(4), 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.

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, if issued by a Prehearing Officer; (2) reconsideration within 15 days pursuant to Rule 25-22.060, Florida Administrative Code, if issued by the Commission; or (3) 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 Records and Reporting, 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.