

MEMORANDUM

October 12, 1998

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RECORDS AND  
REPORTING

TO: DIVISION OF RECORDS AND REPORTING

FROM: DIVISION OF LEGAL SERVICES (B. KEATING) *BK*  
*MB*

RE: DOCKET NO. 980733-TL - DISCOVERY RELATED TO STUDY ON FAIR  
AND REASONABLE RATES AND ON RELATIONSHIPS AMONG COSTS AND  
CHARGES ASSOCIATED WITH CERTAIN TELECOMMUNICATIONS  
SERVICES PROVIDED BY LOCAL EXCHANGE COMPANIES (LECS), AS  
REQUIRED BY CHAPTER 98-277, LAWS OF FLORIDA.

98-1356-P00

Attached is an ORDER GRANTING, IN PART, AND DENYING, IN PART,  
MOTIONS TO COMPEL, to be issued in the above-referenced docket.  
(Number of pages in order - 10)

BK/anr  
Attachment  
cc: Division of Communications  
I: 980733o.bk

*see 9*

*40/13* *RAR.*

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Discovery related to study on fair and reasonable rates and on relationships among costs and charges associated with certain telecommunications services provided by local exchange companies (LECs), as required by Chapter 98-277, Laws of Florida.

DOCKET NO. 980733-TL  
ORDER NO. PSC-98-1356-PCO-TL  
ISSUED: October 12, 1998

The following Commissioners participated in the disposition of this matter:

JULIA L. JOHNSON, Chairman  
J. TERRY DEASON  
SUSAN F. CLARK  
JOE GARCIA  
E. LEON JACOBS, JR.

ORDER GRANTING, IN PART, AND DENYING, IN PART,  
MOTIONS TO COMPEL

BY THE COMMISSION:

In accordance with the new Chapter 98-277, General Laws of Florida, the Commission is required, among other things, to study and report to the Legislature, by February 15, 1999, its conclusions regarding the fair and reasonable rate for Florida residential basic local telecommunications service. In order to effectuate the timely completion of the required report, we have established this matter as Special Project No. 980000A-SP, Fair and Reasonable Residential Basic Local Telecommunications Rates. In conjunction with this Special Project, Docket No. 980733-TL has been opened for discovery purposes related to the project. This docket has been established to address any discovery disputes that may arise. By Order No. PSC-98-0843-PCO-TL, issued June 25, 1998, the procedure for this discovery docket was established.

On September 1, 1998, the Attorney General filed a Motion to Compel GTE Florida Incorporated (GTEFL) to Respond to its First Set

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of Interrogatories and Third Request for Production of Documents (PODs), For Expedited Ruling, and Request for Oral Argument. The Attorney General also filed a Motion to Compel BellSouth Telecommunications, Inc. (BellSouth) to Respond to its First Set of Interrogatories and Third Request for Production of Documents, For Expedited Ruling, and Request for Oral Argument that day. On September 4, 1998, GTEFL filed its Opposition to the Attorney General's Motion. On September 8, 1998, the Attorney General filed a Motion to Compel Sprint-Florida, Incorporated (Sprint) to Respond to its First Set of Interrogatories and Third Request for Production of Documents, For Expedited Ruling, and Request for Oral Argument. On September 9, 1998, Sprint filed its Response to the Attorney General's Motion. On September 11, 1998, the Office of Public Counsel (OPC) filed a Response in Support of the Attorney General's Motions to Compel. On September 14, 1998, BellSouth filed its Response to the Attorney General's Motion to Compel.

On September 11, 1998, the prehearing officer heard oral argument regarding these motions. This matter was referred by the prehearing officer for consideration by the full Commission.

The arguments in the Motions to Compel and the responses of BellSouth, Sprint, and GTEFL (the companies or the LECs) are similar. Therefore, we addressed all three motions together. Our decision on these motions is set forth below.

#### Relevant Provisions

The portions of Chapter 98-277, Laws of Florida, that are relevant to this discovery dispute are as follows:

Section 2 (1) The Legislature has determined that charges for intrastate switched access and other services may be set above costs and may be providing an implicit subsidy of residential basic local telecommunications service rates in this state. Therefore, the Public Service Commission shall, by February 15, 1999, study and report to the President of the Senate and the Speaker of the House of Representatives the relationships among the costs and charges associated with providing basic local service, intrastate

access, and other services provided by local exchange telecommunications companies.

(2)(a) The commission shall, by February 15, 1999, report to the President of the Senate and the Speaker of the House of Representatives its conclusions as to the fair and reasonable Florida residential basic local telecommunications service rate considering affordability, the value of service, comparable residential basic local telecommunications rates in other states, and the cost of providing residential basic local telecommunications services in this state, including the proportionate share of joint and common costs. . . .

(b) The local exchange companies shall provide to the commission by August 1, 1998, cost data and analysis that support the cost of providing residential basic local telecommunications service in their service area, as prescribed by the commission for purposes of recommending the fair and reasonable rate. For the purpose of verifying the submitted cost data and analysis, the commission and all intervenors shall have access to the records related to the cost of providing residential basic local telecommunications service of each local exchange company.

Attorney General

In its Motions, the Attorney General argues that the Legislature intended that all interested persons and participants should have access to cost data, revenue data, and other analyses relevant to this proceeding. The Attorney General asserts that such data includes any information necessary to investigate the "relationships among the costs and charges associated with providing basic local service, intrastate access, and other services provided by local exchange telecommunications companies."

Chapter 98-277, Section 2(1), Laws of Florida. The Attorney General further emphasizes that interested persons and participants are not limited to access to information necessary to verify the cost data and analysis provided to our staff, as the companies argue.

The Attorney General states that participants may seek information beyond that which has been obtained by our staff. The Attorney General argues that participants are entitled to any information necessary to analyze and address the issues to be covered in our report to the Legislature. In developing our report, the Attorney General believes that we must study intrastate access and the relationship between the costs and charges associated with other services provided by LECs, as well as the costs and charges associated with providing residential basic local service. The Attorney General states that the Legislature did not limit the services under review to only residential service or regulated services. The Attorney General argues that the LECs are attempting to limit the information provided to information related to residential basic local service. According to the Attorney General, this is improper and was not the intent of the Legislature.

In addition, the Attorney General notes that some competitive services have been deregulated by the FCC. The Attorney General states that it is necessary to obtain information regarding these services in order to review the relationship between competitive and non-competitive services. The Attorney General asserts that some LEC employees work on regulated and deregulated services. This, argues the Attorney General, affects the allocation of expenses. The Attorney General argues that it is necessary, therefore, to review information regarding deregulated services. Likewise, the Attorney General argues that information regarding affiliates is relevant to this proceeding. The Attorney General states that some affiliate costs have already been included in the companies' studies. The Attorney General also states that some affiliates provide services for the LECs. The costs associated with affiliates are, therefore, pertinent to this study. The Attorney General adds that the fact that these LECs are now price-regulated companies does not affect the Commission's ability to review information on non-regulated services or affiliates in order to complete the report as directed by the Legislature.

Finally, the Attorney General argues that the companies should provide copies of responses provided to the Commission staff and to

any other participant in this proceeding, including responses that have already been provided. The Attorney General asserts that Rule 1.340, Florida Rules of Civil Procedure, requires that answers to interrogatories be served on all parties. The Attorney General states that this principle applies even in informal proceedings. The Attorney General argues that this is not an administrative burden.

### The Companies

Sprint, BellSouth, and GTEFL argue that participants and interested persons are limited to discovering information relevant for purposes of verifying the cost data and analysis submitted to the Commission staff. They note that our staff's data request asked for separations cost studies from each local exchange company, with intrastate operations divided into interLATA message toll, interLATA special, intraLATA message toll, intraLATA special, and other breakdowns of the companies' local system, such as extended area service (EAS) or local private line. The companies assert that the Attorney General's interrogatories seek to supplement our staff's data requests, instead of verifying the information provided. They argue that this is improper in view of the language in Section 2 (2)(b) of Chapter 98-277, Laws of Florida, which states that, "For the purpose of verifying the submitted cost data and analysis, the commission and all intervenors, shall have access to the records related to the cost of providing residential basic local telecommunications service of each local exchange company." The LECs believe that this language limits discovery to information necessary to verify the data provided in response to our staff's data request.

Sprint asserts that the Fair and Reasonable Rates study is not a proceeding conducted pursuant to Chapter 120, Florida Statutes. Sprint argues, therefore, that our study is not a "pending action" in which discovery is available. In addition, Sprint argues that we will not make a final determination in this proceeding that will affect the substantial interests of any party. As such, Sprint believes that discovery is not available to intervenors and participants beyond the specific access to records outlined in Chapter 98-277, Section 2 (2)(b), Laws of Florida.

Sprint also disagrees with the Attorney General's assertion that the use of the term "charges" in the statute authorizes access to revenue information. Sprint asserts that charges and revenues

are not equivalent. Sprint also disputes the Attorney General's assertion that discovery is allowed regarding the relationships between the costs and charges of other services provided by the LECs. Sprint also argues that the Attorney General is actually seeking earnings information about non-regulated services, rather than allocation details. Sprint further asserts that the Attorney General has not justified its request for directory advertising information.

Similarly, GTEFL argues that a number of the Attorney General's interrogatories and PODs seek revenue information that is unrelated to our study. GTEFL argues that the only purpose for seeking revenue information is to conduct a rate case, which is not what the Legislature intended in directing this study. GTEFL also asserts that responding to several of the Attorney General's interrogatories would require GTEFL to manually compile data to produce an additional study, because GTEFL's systems no longer keep data at the level of detail requested by the Attorney General.

GTEFL believes that information regarding affiliates and unregulated services is outside the scope of our study. GTEFL also objects to providing GTEFL's last depreciation study. GTEFL argues that its last depreciation study is irrelevant to this proceeding and would be inaccurate, because GTEFL uses economic depreciation, instead of any depreciation prescriptions.

In addition, GTEFL asserts that we should not require it to provide disconnection information or repair information. GTEFL argues that such information cannot provide any relevant information to this proceeding. GTEFL argues that disconnect rates have no meaningful connection to affordability of local residential service, because most disconnections are related to high toll bills. GTEFL also does not believe that repair information has any relevance in a review of the fair and reasonable rate for basic local telecommunications service. GTEFL argues that it should not be required to provide irrelevant information. Furthermore, GTEFL states that interrogatories 21 and 21(a) are unduly burdensome.

BellSouth joins in Sprint's Response to the Attorney General's Motion to Compel. BellSouth also emphasizes that the Attorney General seeks information regarding revenues and deregulated services. BellSouth believes that this information is irrelevant to this proceeding. BellSouth further agrees with Sprint that the Attorney General has inappropriately equated the term "charges" with "revenues."

Regarding POD 6, BellSouth does not believe it should be required to provide copies of future discovery responses to the Attorney General. BellSouth states that the Attorney General can request copies of any future responses if further discovery requests are served on BellSouth. BellSouth argues that it would be unduly burdensome to require it to automatically provide the Attorney General with copies of future responses. BellSouth adds that if the Attorney General's request is granted, other participants might make the same request, which would create an even greater administrative burden for BellSouth.

Determination

Upon consideration of the arguments presented, we hereby grant, in part, and deny, in part, the Attorney General's Motions to Compel. We believe that the following requests seek information that is relevant or is likely to lead to information that is relevant to this proceeding:

**INTERROGATORIES**

<b>GTE FLORIDA</b>	<b>BELLSOUTH</b>	<b>SPRINT-FLORIDA</b>
1(a), 2(a), 5(c), 5(d), 9(a-d), 15, 18, 19(a), 19(b), 21, 21(a), 47(a), 47(b)	19, 21	1(a), 2(a), 9(a-d), 19(a), 19(b), 21, 28(a), 28(b)

**REQUESTS FOR PRODUCTION OF DOCUMENTS**

<b>GTE FLORIDA</b>	<b>BELLSOUTH</b>	<b>SPRINT-FLORIDA</b>
6, 10, 11, 12, 15, 16	6, 12	6, 11, 12

The remainder of the disputed requests seek information that is irrelevant to the study being conducted by us. In addition, certain other requests are unduly burdensome to the companies, particularly in view of the expedited schedule for this study.

Specifically, we shall not require GTEFL to manually compile information that its systems do not maintain in order to respond to Interrogatory 2(b). This would be unduly burdensome in view of the time constraints. We also shall not require any of the companies



to provide a depreciation study with the "best fit" observed average service life indication required by the Attorney General's Interrogatory 8(a). If the companies have a recent depreciation study, one that was completed within the past two years, they shall provide it, but we will not require them to provide the detailed breakdown required by Interrogatory 8(a). We believe that this would also be unduly burdensome.

With regard to Interrogatories 6, 7, 14, and 23, we do not believe that these interrogatories seek information that is likely to lead to information that is relevant to our study. Interrogatories 6 and 7 seek revenue, tax, and expense information for deregulated services. In developing our report, we acknowledge that it is appropriate to analyze the relationship between the costs and charges of providing deregulated services and residential basic local service. The revenue and expense information sought through these interrogatories is not, however, likely to lead to information relevant to this study. We agree with GTEFL that these interrogatories appear to seek information regarding the profitability of deregulated services and seem more appropriate for a rate case proceeding.

As to Interrogatory 14, the Attorney General asks whether a yellow page listing is part of business basic local service and seeks the name of the largest city where the company provides business basic local service. This interrogatory does not appear relevant or likely to lead to information relevant to this matter. This interrogatory seeks only information regarding the provision of business basic service; thus, it does not appear likely to lead to information relevant for purposes of our study on the fair and reasonable rate for Florida residential basic local telecommunications service.

Interrogatory 23 seeks information regarding interstate revenues. Similar to Interrogatory 14 discussed above, this interrogatory seeks information directed specifically at interstate revenues. It is not likely that this interrogatory will lead to information relevant for purposes of our study on the fair and reasonable rate for Florida residential basic local telecommunications service.

Interrogatory 9, and PODs 11 and 12, seek information regarding directory advertising revenues and costs included in the separations study requested by our staff. While we believe such information may be relevant to our study, we shall not require the

companies to make any additional calculations or adjustments in order to provide this information. If the companies have this information readily available, they must provide it. If they have to make additional calculations or analyses in order to respond, the companies shall not be required to provide the information. At this late date, we believe that requiring the companies to make additional calculations or analyses in order to respond to these requests would be unduly burdensome. Likewise, if the companies would have to make additional calculations or extensive analyses in order to respond to any other request addressed in this Order, the companies shall not be required to respond.

As for interrogatory subparts 9(e) and 9(f), these subparts seek information that does not appear likely to lead to information relevant to our study. Thus, we shall not require the companies to respond.

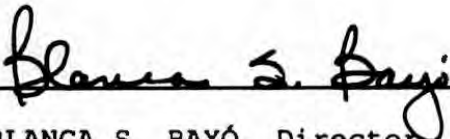
Finally, we address POD 6, which seeks copies of discovery responses provided to our staff and other participants in this proceeding. This is an entirely appropriate request and would not be unduly burdensome to the companies. We shall, therefore, require the companies to respond to this request. We emphasize, however, that this requirement does not mean that the companies must automatically serve all participants with all discovery responses.

Based on the foregoing, it is therefore

ORDERED by the Florida Public Service Commission that the September 1, 1998, and September 8, 1998, Motions to Compel Responses to Its First Set of Interrogatories and Third Request for Production of Documents filed by the Attorney General are granted, in part, and denied, in part, as set forth in the body of this Order.

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By ORDER of the Florida Public Service Commission this 12th  
day of October, 1998.

  
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BLANCA S. BAYÓ, Director  
Division of Records and Reporting

( S E A L )

BK

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, 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

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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.