

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Complaint of MCI Metro
Access Transmission Services,
Inc. against BellSouth
Telecommunications, Inc. for
breach of approved
interconnection agreement.

DOCKET NO. 980281-TP
ORDER NO. PSC-00-2001-FOF-TP
ISSUED: June 6, 2000

The following Commissioners participated in the disposition of this matter:

JOE GARCIA, Chairman
J. TERRY DEASON
SUSAN F. CLARK
E. LEON JACOBS, JR.
LILA A. JABER

ORDER GRANTING MOTION TO ENFORCE COMMISSION ORDERS

BY THE COMMISSION:

BACKGROUND

On February 23, 1998, MCI Metro Access Transmission Services, Inc. (MCI) filed a complaint against BellSouth Telecommunications, Inc. (BellSouth) for alleged violations of the Telecommunications Act of 1996 (the Act), and for alleged breaches of the parties' Interconnection Agreement (Agreement) approved by us on June 19, 1997. On March 16, 1998, BellSouth filed its answer and response to MCI's complaint.

On August 5, 1998, we held a hearing in which we received testimony concerning MCI's claims that BellSouth failed to perform under the terms of the agreement and the Act. Thereafter, by Order No. PSC-98-1484-FOF-TP, issued November 5, 1998, we made our determination on the terms of the agreement and required BellSouth to provide MCI with data and services pursuant to the agreement no later than December 5, 1998. On November 20, 1998, BellSouth filed a timely Motion for Reconsideration, for Clarification and for Extension of Time. MCI timely filed its response on November 30, 1998. By Order No. PSC-99-0081-FOF-TP, issued January 11, 1999, we denied in part and granted in part, BellSouth's Motion and ordered

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the docket to remain open pending BellSouth's Compliance with the requirements of Order No. PSC-98-1484-FOF-TP.

Between January 1999 and March 2000, our staff sent letters to and met with the parties asking if compliance with the Orders had occurred in order to close the docket. On March 10, 2000, MCIm filed its Motion to Enforce Commission Orders. On March 17, 2000, BellSouth timely filed its Response in Opposition to the Motion.

ARGUMENTS

MCImetro Access Transmission Services, LLC's Position

In its Motion, MCIm requests that we enforce Orders Nos. PSC-98-1484-FOF-TP (Order) and PSC-99-0081-FOF-TP (Reconsideration Order) in this Docket and direct BellSouth to provide a download of the agreed upon portion of the Regional Street Address Guide (RSAG) without requiring a license agreement.

MCIm states that the Order required BellSouth to provide the RSAG download and directed the parties to negotiate in good faith an appropriate subset of the database to be provided. MCIm states that in addressing the Motion for Reconsideration, we clarified that BellSouth was permitted to provide RSAG updates within the same time frames and in the same manner that BellSouth provided updates to itself. MCIm asserts that in the Reconsideration Order, we further noted that the Agreement required BellSouth to provide updates to the RSAG download, not a daily download of the entire database, and finally, that the data would be provided at no cost.

MCIm states that it has specified the subset of the RSAG that it wants BellSouth to download, and that BellSouth has confirmed that it is operationally ready to download the data. MCIm states that BellSouth now refuses to provide the download until MCIm signs a license agreement restricting MCIm's usage of the data. MCIm states that BellSouth did not raise the need for a license agreement at the hearing or in its Motion for Reconsideration, and, by our Orders, did not require MCIm to sign such an agreement. MCIm argues that "it would have made little sense for the Commission to have done so because the Orders limited the RSAG download and updates to nonproprietary portions of the database."

MCIm states that while it regarded BellSouth's request for a license agreement as improper and unauthorized, it attempted to negotiate such an agreement with BellSouth in an effort to resolve

the RSAG issue without our further involvement. Upon reaching an impasse, the parties met with our staff, but were unable to reach a resolution.

MCIm states that the license agreement BellSouth has demanded is onerous and unreasonable. The agreement, among other things, provides that: (a) BellSouth will retain title to any works MCIm derives from RSAG data; (b) MCIm may not transfer RSAG data to any affiliate; (c) RSAG data only may be used for purposes of local telecommunications; and (d) MCIm must return RSAG data upon termination of the Agreement. MCIm argues that none of these conditions is contemplated by the provisions of the Interconnection Agreement making the RSAG available to MCIm, and none of these conditions was imposed by our Order. MCIm states that it is still a new entrant in the Florida local market and cannot now identify all business uses to which the RSAG might be put. However, MCIm stated it has no intention of selling the data on the open market and would agree to such a restriction. MCIm asserts it should not be bound by additional restrictions that were not ordered by us and that BellSouth did not raise during litigation.

Finally, MCIm states that BellSouth is justifying its demand for a license agreement on the theory that the RSAG data has intrinsic value. MCIm argues that the only unique value the data has is that it is correctly formatted for validating addresses in the BellSouth system. MCIm further argues that there are other sources just as good as the RSAG for applications such as marketing. MCIm asserts that BellSouth's arguments are without merit as BellSouth raises the issue too late, and that it would have been more appropriate to raise the issue during the litigation. MCIm requests that we order BellSouth to immediately download the designated portion of the RSAG to MCIm, and to provide updates, without MCIm being required to sign the license agreement BellSouth demands.

BellSouth Telecommunications, Inc.'s Response

BellSouth notes that MCIm's Motion is misnamed since compliance with the Commission's Orders are not at issue. Instead, BellSouth claims the issue is that BellSouth has requested MCIm to execute a license agreement to ensure that MCIm will, in fact, use the database only for address validation. BellSouth states that MCIm has represented that it needs a download of the RSAG to perform address validation. BellSouth states that MCIm is arguing that it should be allowed to use the database in any way that it

wishes and is, therefore, objecting to restrictions that are designed to prevent it from using the database in the provision of long distance service, for marketing purposes, or to create derivative works for profit. BellSouth argues that none of these intended, or even potential, uses for the database were identified by MCIm during the hearing and that our Orders cannot fairly be read to require BellSouth to provide the database to MCIm for any of these purposes. BellSouth asserts that it is appropriate for MCIm to be restricted in some fashion to using the RSAG database only to validate street addresses, that MCIm's contention to the contrary should be rejected, and that its Motion should be denied.

In support of its argument, BellSouth asserts that the execution of an Interconnection Agreement was to provide MCIm with the tools to enter the local market. BellSouth argues that there is nothing in the Telecommunications Act of 1996 (the Act) to suggest that it is proper for an alternative local exchange company to obtain a service, functionality, or database under the terms of an Interconnection Agreement for the purpose of using it for anything other than the provision of local service. BellSouth emphasizes that the appropriate use of the RSAG database is to perform address validations in the context of rendering local service.

BellSouth argues that the testimony MCIm filed in this proceeding repeatedly stated that its intended use of this data is address validation. BellSouth notes that we specifically instructed the parties to "negotiate in good faith the appropriate subset of the database to be provided" and that "this subset should exclude any BellSouth proprietary information, but include at a minimum all the Florida address validation and facility availability data."

BellSouth asserts that MCIm did not object to initial negotiations to enter into a license agreement that would ensure MCIm would utilize the database only for address validation after the Order was issued. BellSouth states that sporadic negotiations took place over the course of the next year, apparently without success, and notes that now MCIm claims that BellSouth has no right to request a license agreement. BellSouth notes the objections MCIm raises in its Motion and states that none of the restrictions would present an impediment to MCIm's utilization of the database for address validation, and further, that MCIm does not contend otherwise.

BellSouth then addresses MCI's arguments that BellSouth's right to require a license agreement is waived, because the issue of the license agreement only arose during the post-Order negotiation period prescribed by the Order and not when the Interconnection Agreement was originally negotiated. BellSouth states that two crucial facts were ignored by MCI. First, BellSouth argues that its interpretation of the agreement only required it to provide MCI access to the database, not the download. Had its position prevailed, BellSouth argues, the issue would have not arisen and thus, there would be no need for a license agreement. Second, BellSouth argues that MCI ignores the fact that the restrictions it wishes to place on MCI's use of the information are consistent with MCI's testimony as to how it intended to use the database. BellSouth argues its assumption that we intended for the database provided to MCI be used for address validation only was reasonable, because we made note of the testimony relating to that fact in the Final Order. BellSouth asserts that our decision requiring the download of the RSAG data may have been different had MCI testified that it intended to utilize the database to develop a derivative work, to sell (or give) it to other parties, or to provide it to its long distance affiliate to market long distance service. BellSouth argues that the restrictions it seeks would do nothing more than to hold MCI to its word.

BellSouth argues that statements in MCI's Motion support its position that a license agreement is a reasonable requirement. For instance, "MCI states that it 'is still a new entrant in the Florida local market and cannot now identify all business uses to which the RSAG might be put.'" BellSouth argues MCI's "newness" to the local market did not, of course, prevent it from identifying the need for address validation three years ago during negotiations or two years ago during the hearing. BellSouth points out that now, however, while MCI does not know what it wishes to do with the information, it does not want to be subject to any restrictions. BellSouth argues that MCI should not be able to argue both sides but should be limited to using the database as it said it would during the proceeding.

BellSouth counters MCI's assertion that the information is of so little worth that it does not deserve protection, by asking why MCI wants the information without restriction. BellSouth argues that MCI's claim that the database has little intrinsic value is based upon a fundamental misreading of the Final Order. BellSouth believes the download information of all of the Florida address

validation and facility availability data allows anyone having access to the database to know precisely what facilities are available at any given address listed in the database. BellSouth argues that there is no other database from which MCIm could obtain this information for BellSouth's service territory, and no other means for MCIm to obtain this information except from BellSouth. BellSouth argues that to the extent that MCIm implies that this information is publicly available, this assertion is not true.

BellSouth asserts that MCIm takes issue with only four aspects of the proposed license agreement but requests that it obtain the database without signing an agreement that contains any restrictions. BellSouth, believing each of the restrictions well-founded, submits that if we determine that one or more of the restrictions should not be contained in the license agreement, we should not reject out of hand the approach of requiring MCIm to sign an agreement with the appropriate restrictions.

Finally, BellSouth argues that if we agree with MCIm and do not allow the consummation of the license agreement, that at least we should modify our Order to state that MCIm is prohibited from using the RSAG database in any way other than address validation in the context of providing local service.

DECISION

Both MCIm and BellSouth agree that neither the Interconnection Agreement nor our Orders explicitly provide for a license agreement. While we note that neither the Interconnection Agreement nor our Orders explicitly prohibit a license agreement either, we agree with MCIm and believe that there is nothing in the Agreement or the Orders that requires a license agreement.

Our rationale is consistent with our decision in Order No. PSC-98-1484-FOF-TP in which we stated with regard to requiring BellSouth to provide the RSAG database and updates to MCIm at no charge to MCIm that "we find no language in the contract that requires MCIm to pay for the RSAG data." (Order, p. 13) Similarly, there is no language in the Interconnection Agreement that requires MCIm to enter a license agreement before the RSAG database can be downloaded. Therefore, we believe that because there is no specific reference to a license agreement, consistent with our earlier interpretation regarding provisioning of the RSAG at no charge, that MCIm is not required to enter into one. In addition, we believe BellSouth should not be allowed to add

requirements to the Agreement after its execution just because BellSouth had a different interpretation of the meaning of the Agreement. Because we do not believe that the Interconnection Agreement nor the Orders can be read to require the execution of a license agreement, we, therefore, grant MCIm's Motion to Enforce Commission Orders and order that MCIm shall not be required to execute a license agreement before the RSAG database is downloaded. We believe that a license agreement is not required in order to limit MCIm's use of the RSAG database.

The question becomes, however, whether any restrictions regarding the use of the RSAG data were contemplated either between the parties in their execution of the Interconnection Agreement or by us in our Orders. We believe that while no such implication could be derived from the Interconnection Agreement, certain restrictions could be implied from our Orders. BellSouth argues it can be implied that where MCIm's witness testified as to a specific use for the RSAG download - address validation for local service - and no other uses were described, it is reasonable for us to assume that was what the information was intended to be used for. We agree with this assumption. In addition, because it is reasonable to conclude from the testimony that the RSAG data would be used for address validation of local service, we believe it is also reasonable to conclude that the RSAG data provided to MCIm may not be transferred to its affiliates or other providers and that the data may only be used for the purposes of local telecommunications. On the other hand, we believe that it is not reasonable to conclude from the testimony that BellSouth would have the right to retain title to any works MCIm derives from the data or that MCIm must return the RSAG data upon termination of the agreement. We believe that the return of data may make sense if MCIm was receiving a daily download of the entire database, however, MCIm is receiving daily updates only.

We find reasonable restrictions contemplated by the parties should apply to the use of the RSAG download data. MCIm's witnesses testified that the RSAG database was to be used for address validation in the context of providing local service. In addition, MCIm stated it has no intention of attempting to sell the data on the open market and would agree to such a restriction. Therefore, we grant MCIm's Motion to Enforce Commission Orders by prohibiting BellSouth from requiring MCIm to execute a license agreement prior to the release of the RSAG download data base. However, we restrict MCIm's use of the RSAG download to address validation for local telecommunications service to be consistent

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with its testimony in the record. In addition, MCI shall not attempt to sell the data on the open market. Finally, we find that the RSAG download data provided to MCI shall not be transferred to any entity, including affiliates.

It is therefore

ORDERED by the Florida Public Service Commission that MCI's Motion to Enforce Commission Orders by prohibiting BellSouth Telecommunications, Inc. from requiring MCI Metro Access Transmission Services, Inc. to execute a license agreement prior to the release of the Regional Street Address Guide download data base is granted. It is further

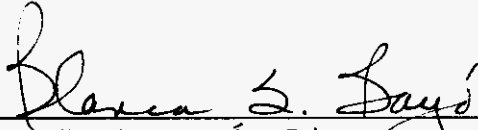
ORDERED that MCI Metro Access Transmission Services, Inc.'s use of the Regional Street Address Guide download shall be restricted to address validation for local telecommunications service to be consistent with the record in this case. It is further

ORDERED that MCI Metro Access Transmission Services, Inc. shall not attempt to sell the data on the open market. It is further

ORDERED that the Regional Street Address Guide download data provided to MCI Metro Access Transmission Services, Inc. shall not be transferred to any entity, including affiliates. It is further

ORDERED that this docket shall be closed.

By ORDER of the Florida Public Service Commission this 6th day of June, 2000.



BLANCA S. BAYÓ, Director
Division of Records and Reporting

(S E A L)

DWC

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.

Any party adversely affected by the Commission's final action in this matter may request: 1) reconsideration of the decision by filing a motion for reconsideration with the Director, Division of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, within fifteen (15) days of the issuance of this order in the form prescribed by Rule 25-22.060, 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 and/or wastewater utility by filing a notice of appeal with the Director, Division of Records and reporting and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days after the issuance of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900(a), Florida Rules of Appellate Procedure.