

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition of Competitive Carriers for Commission action to support local competition in BellSouth Telecommunications, Inc.'s service territory.

DOCKET NO. 981834-TP

In re: Petition of ACI Corp. d/b/a Accelerated Connections, Inc. for generic investigation to ensure that BellSouth Telecommunications, Inc., Sprint-Florida, Incorporated, and GTE Florida Incorporated comply with obligation to provide alternative local exchange carriers with flexible, timely, and cost-efficient physical collocation.

DOCKET NO. 990321-TP  
ORDER NO. PSC-04-0046-PCO-TP  
ISSUED: January 15, 2004

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

I. Background

By Proposed Agency Action Order No. PSC-99-1744-PAA-TP, issued September 7, 1999, we adopted a set of procedures and guidelines for collocation, focused largely on those situations in which an incumbent local exchange company (ILEC) believes there is no space for physical collocation. Thereafter, we conducted a hearing to further address collocation guidelines. By Order No. PSC-00-2190-PCO-TP, issued November 17, 2000, various motions for reconsideration and/or clarification of our post-hearing decision regarding collocation guidelines were addressed by the Commission. By that Order, these Dockets were left open to address the remaining issues associated with collocation, including pricing.

By Order No. PSC-03-1358-FOF-TP, issued November 26, 2003, we resolved a number of outstanding technical and policy issues regarding collocation. We are currently scheduled for hearing January 28-30, 2004, on the remaining pricing issues.

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On October 10, 2003, Dieca Communications, Inc. d/b/a Covad Communications Company (Covad) filed a Motion to Compel BellSouth Telecommunications, Inc. (BellSouth) to respond to Covad's Second Set of Discovery. That same day, Covad filed a similar Motion to Compel against Verizon Florida, Inc. (Verizon). On October 17, 2003, Verizon timely filed its Response in Opposition, and on October 23, 2003, BellSouth filed its Memorandum in Opposition.

This Order addresses both Motions to Compel filed by Covad. The discovery requests sent by Covad to BellSouth and Verizon were essentially identical and numbered the same (Interrogatories 6 - 31 and Request for Production of Documents No. 2). Although BellSouth objected to more of the requests (Interrogatories 6 - 16, and 20 - 31) than did Verizon (Interrogatories 6, 7, 8\*, 9, 12, and 20 - 31), the objections were made on very similar bases. Thus, these Motions are addressed together. As such, to the extent that the arguments by the parties are redundant of each other, they are not repeated. For ease of reference, the discovery requests at issue are attached to this Order as Attachment A.

## II. Arguments

### A. Covad

Covad argues that both BellSouth's and Verizon's objections fall into two categories, relevance and burdensomeness. With regard to the relevance objections, Covad contends that its discovery requests are relevant. By way of example, Covad contends that Interrogatory 6 seeks information regarding the costs to construct power plants in central offices, while Interrogatory 7 seeks similar information regarding offices where augmentations have occurred. Covad contends that Interrogatory 9 asks for information on the manner in which construction and augment costs are paid. As for Interrogatories 20 - 31, Covad argues that these are relevant because they seek information about the capacity in amperes in the ILECs' central offices.

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\*Covad notes that while Verizon did not specifically object to this Interrogatory No. 8, it did not respond to the request, other than to provide a person's name.

Covad contends that these requests are all relevant, because they seek information necessary to the resolution of issues in Phase II of this proceeding. Covad argues it seeks pertinent cost information, as well as information regarding whether or not BellSouth's and Verizon's proposed charges result in double recovery for the same capacity. Covad further contends that it seeks necessary infrastructure information without which base collocation rates cannot be set. Covad adds that this information is in line with discussions at the Phase I hearing regarding separating the infrastructure and energy charges into two separate charges. *Citing* TR pp. 171, 179-181, 193. As such, Covad argues that its requests are relevant.

As for burdensomeness, Covad notes that both Verizon and BellSouth objected to Interrogatories 6, 7, and 23 - 31 on this basis. Covad argues, however, that it is willing to limit Interrogatories 6 and 7, which seek information regarding power plants in the ILECs' central offices back to 1996, to the last five power plants constructed or augments made, respectively. Covad notes that both Verizon and BellSouth provided similar cost information regarding their last two power plants in response to Covad's Interrogatory 3; thus, Covad contends that its requests for information regarding the last five power plants cannot be unduly burdensome. Likewise, Covad notes that both Verizon and BellSouth objected on similar bases to Interrogatories 23 - 31; thus, Covad states it is willing to limit these Interrogatories to BellSouth's and Verizon's central offices where Covad is collocated.

Finally, Covad states that BellSouth and Verizon both object to Interrogatories 13 - 16 and Request for Production of Documents No. 2, because these requests are speculative. Covad, however, argues that these requests relate directly to the discussions during Phase I regarding the feasibility of separate charges for infrastructure and energy.

B. BellSouth and Verizon

BellSouth and Verizon (the Respondents) contend that Covad's Motion does not accurately represent the information that its discovery requests actually seek. While Covad contends that it seeks pertinent cost information, BellSouth and Verizon contend that Covad's discovery requests actually seek information relevant,

if at all, to Phase I of this proceeding, instead of Phase II. With regard to Interrogatories 6 - 12 and 20 - 31, the Respondents contend that Covad's requests specifically seek infrastructure and capacity information, which is not addressed by any witness in this phase, and which was the subject of Issues 6A and B from Phase I. Thus, the Respondents contend that the discovery requests are improper and irrelevant for this phase of the proceeding.

BellSouth and Verizon also argue that Covad's requests are unduly burdensome. Specifically addressing Interrogatories 6 and 7, they argue that even with the limitations proposed by Covad in its Motion, these interrogatories are irrelevant and unduly burdensome. Verizon notes that its engineers have estimated that responding will take approximately 60 hours, while BellSouth estimates it would take about 500 hours. Verizon further emphasizes that Covad's comparison of these two requests to Covad's earlier Interrogatory 3 is not valid, because Interrogatory 3, while also burdensome, requested information about Verizon's power costs, whereas Interrogatories 6 and 7 seek capacity information.

As for Interrogatories 20 - 31, the Respondents argue that even with the limitation proposed by Covad, responding to these requests would still be unduly burdensome. Verizon specifically contends that it does not keep this information in the ordinary course of business, and as such, producing it would be extremely burdensome, if not impossible. BellSouth also contends that responding would be very burdensome, necessitating approximately 2000 hours of labor.

In addition, Verizon argues that responding to Interrogatory 12 would be unduly burdensome for Verizon, because Covad seeks detailed capacity information that would be difficult for Verizon to provide for the number of central offices.

Finally, with regard to Interrogatories 13 - 16 and Request for Production of Documents No. 2, the Respondents contend that these requests seek information that would essentially necessitate a new cost study be performed in order to respond. They also contend that the requests ask the Respondents to speculate regarding a separate charge scenario that has not been proposed and was not at issue in Phase I of this proceeding. Because separate infrastructure and power charges were not at issue in Phase I, the

Respondents contend that requiring them to do a cost study making that assumption is improper. Furthermore, Verizon adds that making it do such a cost study under Covad's assumption that the infrastructure costs would be recovered through a non-recurring charge would add a further layer of speculation into the equation. Both Respondents emphasize that it would be impossible to respond without knowing the specifics of the referenced, hypothetical Order.

### III. Decision

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. 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). Furthermore, 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. 4<sup>th</sup> DCA 1989).

Bearing in mind the above cited standard, I find that the Motions to Compel shall be granted, in part, and denied, in part. BellSouth and Verizon shall be required to respond to Interrogatories Nos. 13 - 16, as well as Request for Production of Documents No. 2. While both contend that the requests are speculative and require them to make assumptions about a hypothetical Commission decision, I do not find these arguments

persuasive, particularly in view of the fact that there was debate in our Phase I proceeding about the feasibility of separate power and infrastructure charges. To the extent that BellSouth and Verizon find it necessary to explain any additional assumptions they find necessary to use to develop their answers and to include caveats regarding the hypothetical nature of their response, they may do so.

BellSouth and Verizon shall not, however, be required to respond to Interrogatories Nos. 6 - 12 and 20 - 31, to the extent that they have not already responded. I am persuaded that requiring BellSouth and Verizon to respond to Interrogatories Nos. 6 and 7, even as limited by Covad, would be unduly burdensome. As drafted, and even as limited by Covad, responding to these interrogatories would likely take a very significant amount of time, while much of the information sought by the requests does not appear relevant to this phase of the proceeding. Considering the amount of time that would be invested compared to whether much of the information sought would be likely to lead to admissible information, I do not believe that compelling responses to Interrogatories 6 and 7 is warranted.

As for Interrogatories Nos. 8 - 12 and 20 - 31, I find that these requests do not meet the discovery standard set forth above. These requests do not appear likely to lead to the discovery of admissible evidence in that they seek information pertinent to the matters addressed in Phase I of this proceeding.


Based on the foregoing, it is therefore

ORDERED by Commissioner J. Terry Deason, as Prehearing Officer, that Dieca Communications, Inc. d/b/a Covad Communications Company's Motions to Compel BellSouth Telecommunications, Inc. and Verizon Florida, Inc. to Respond to Covad's Second Set of Discovery are hereby granted, in part, and denied, in part, as set forth in the body of this Order. It is further

ORDERED that BellSouth and Verizon shall provide responses to the compelled Interrogatories and Request for Production of Documents by close of business on Monday, January 26, 2004.

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By ORDER of Commissioner J. Terry Deason, as Prehearing Officer, this 15th Day of January, 2004.

  
J. TERRY DEASON  
Commissioner and Prehearing Officer

( S E A L )

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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

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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.



ATTACHMENT A

**INTERROGATORY NO. 6.** For each new power plant constructed in BellSouth's central offices in Florida since January 1, 1996, provide:

- a. the central office CLLI code;
- b. The date of the new construction;
- c. The total cost of the power plant;
- d. The total capacity of the power plant after completion of the construction;
- e. The total capacity of the power plant before the new construction, if any;
- f. The number of collocated CLECs at the central office immediately before the new construction;
- g. The total requested available DC power in amperes by all collocated CLECs at the central office immediately before the new construction;
- h. The total available power requirements of BellSouth at the central office immediately before the new construction;
- i. Whether available power requested by collocated CLECs were causative of the need for the new construction.

**INTERROGATORY NO. 7.** For each augment to batteries, rectifiers or generators made to power plants in BellSouth's central office in Florida since January 1, 1996, provide:

- a. the central office CLLI code;
- b. The date of the augment to batteries, rectifiers or generators;
- c. The total cost of the augment to batteries, rectifiers or generators;
- d. The total capacity of the power plant after completion of the augment to batteries, rectifiers or generators;
- e. The total capacity of the power plant before augment to batteries, rectifiers or generators;
- f. The number of collocated CLECs at the central office immediately before the augment to batteries, rectifiers or generators;
- g. The total requested available DC power in amperes by all collocated CLECs at the central office immediately before the augment to batteries, rectifiers or generators;
- h. The total available power requirements of BellSouth at the central office immediately before the augment to batteries, rectifiers or generators;
- i. Whether available power requested by collocated CLECs were causative of the need for the augment to batteries, rectifiers or generators.

If more than one augment has been done to a particular central office since January 1, 1996, provide the above information separately for each augment done.

**INTERROGATORY NO. 8.** What is the oldest un-augmented power plant in a Florida central office still operating today?

**INTERROGATORY NO. 9.** For all power plants constructed or augmented prior to January 1, 1996, were the costs of said power plants or augments to power plants paid for by adjustments to the rates for local service in Florida? If not, please explain.

**INTERROGATORY NO. 10.** How many central offices does BellSouth have in Florida?

**INTERROGATORY NO. 11.** How many of the central offices identified in response to Interrogatory No. 10 contain physically collocated CLECs today.

**INTERROGATORY NO. 12.** For each central office with current physically collocated CLEC(s), please provide:

- a. The CLLI code identifying the central office
- b. The current number of collocated CLECs in the central office
- c. The total amperes ordered by each CLEC (if the CLEC uses its own BDFB, please only indicate the actual ordered amperes, not the fused amperes)
- d. Identify the date each said CLEC physically collocated in the central office.

**INTERROGATORY NO. 13.** If the Commission requires BellSouth to offer a non-recurring charge (NRC) to recover its infrastructure cost on a per ampere basis, how much should such a charge be?

**INTERROGATORY NO. 14.** If maintenance costs are included in the NRC provided in Interrogatory No. 13 above, what portion of the charge is attributable to maintenance?

**INTERROGATORY NO. 15.** If maintenance costs are not included in the NRC provided in Interrogatory No. 13 above, what additional charges would apply if the Commission required the NRC to reflect maintenance?

**INTERROGATORY NO. 16.** Provide all calculations supporting the charges listed in Interrogatory Nos. 13 -15 above.

**INTERROGATORY NO. 20.** Provide the total capacity in amperes on an aggregate basis for all BellSouth central offices in Florida today.

**INTERROGATORY NO. 21.** Of the total capacity in amperes provided in response to Interrogatory No. 20, what percentage of that capacity is currently ordered available capacity by CLECs who are collocated with BellSouth?

**INTERROGATORY NO. 22.** Of the total capacity in amperes identified in response to Interrogatory No. 20, how much of that total capacity in amperes is currently unused or spare capacity?

**INTERROGATORY NO. 23.** Provide the total capacity in amperes that has been added as augments or new construction on an aggregate basis for all BellSouth central offices in Florida since January 1, 1996.

**INTERROGATORY NO. 24.** Of the total capacity in amperes provided in response to Interrogatory No. 23, what percentage of that capacity is currently ordered available capacity by CLECs who are collocated with BellSouth?

**INTERROGATORY NO. 25.** Of the total capacity in amperes identified in response to Interrogatory No. 23, how much of that total capacity in amperes is currently unused or spare capacity?

**INTERROGATORY NO. 26.** For each BellSouth central office in Florida, provide the current power capacity in amperes.

**INTERROGATORY NO. 27.** For each BellSouth central office in Florida, of the capacity in amperes per central office provided in response to Interrogatory No. 26, what percentage of that capacity has been ordered by CLECs who are collocated with BellSouth?

**INTERROGATORY NO. 28.** For each BellSouth central office in Florida, of the total capacity in amperes identified in response to Interrogatory No. 26, how much of that total capacity in amperes is currently unused or spare capacity?

**INTERROGATORY NO. 29.** For each BellSouth central office in Florida, provide the total capacity in amperes that has been added as augments or new construction in Florida since January 1, 1996.

**INTERROGATORY NO. 30.** For each BellSouth central office in Florida, of the capacity in amperes per central office provided in response to Interrogatory No. 29, what percentage of that capacity has been ordered by CLECs who are collocated with BellSouth?

**INTERROGATORY NO. 31.** For each BellSouth central office in Florida, of the total capacity in amperes identified in response to Interrogatory No. 29, how much of that total capacity in amperes is currently unused or spare capacity?

ATTACHMENT A

**INTERROGATORY NO. 6.** For each new power plant constructed in Verizon's central offices in Florida since January 1, 1996, provide:

- a. the central office CLLI code;
- b. The date of the new construction;
- c. The total cost of the power plant;
- d. The total capacity of the power plant after completion of the construction;
- e. The total capacity of the power plant before the new construction, if any;
- f. The number of collocated CLECs at the central office immediately before the new construction;
- g. The total requested available DC power in amperes by all collocated CLECs at the central office immediately before the new construction;
- h. The total available power requirements of Verizon at the central office immediately before the new construction;
- i. Whether available power requested by collocated CLECs were causative of the need for the new construction.

**INTERROGATORY NO. 7.** For each augment to batteries, rectifiers or generators made to power plants in Verizon's central office in Florida since January 1, 1996, provide:

- a. the central office CLLI code;
- b. The date of the augment to batteries, rectifiers or generators;
- c. The total cost of the augment to batteries, rectifiers or generators;
- d. The total capacity of the power plant after completion of the augment to batteries, rectifiers or generators;
- e. The total capacity of the power plant before augment to batteries, rectifiers or generators;
- f. The number of collocated CLECs at the central office immediately before the augment to batteries, rectifiers or generators;
- g. The total requested available DC power in amperes by all collocated CLECs at the central office immediately before the augment to batteries, rectifiers or generators;
- h. The total available power requirements of Verizon at the central office immediately before the augment to batteries, rectifiers or generators;
- i. Whether available power requested by collocated CLECs were causative of the need for the augment to batteries, rectifiers or generators.

If more than one augment has been done to a particular central office since January 1, 1996, provide the above information separately for each augment done.

**INTERROGATORY NO. 8.** What is the oldest un-augmented power plant in a Florida central office still operating today

**INTERROGATORY NO. 9.** For all power plants constructed or augmented prior to January 1, 1996, were the costs of said power plants or augments to power plants paid for by adjustments to the rates for local service in Florida? If not, please explain.

**INTERROGATORY NO. 12.** For each central office with current physically collocated CLEC(s), please provide:

- a. The CLLI code identifying the central office
- b. The current number of collocated CLECs in the central office
- c. The total amperes ordered by each CLEC (if the CLEC uses its own BDFB, please only indicate the actual ordered amperes, not the fused amperes)
- d. Identify the date each said CLEC physically collocated in the central office

**INTERROGATORY NO. 13.** If the Commission requires BellSouth to offer a non-recurring charge (NRC) to recover its infrastructure cost on a per ampere basis, how much should such a charge be?

**INTERROGATORY NO. 14.** If maintenance costs are included in the NRC provided in Interrogatory No. 13 above, what portion of the charge is attributable to maintenance?

**INTERROGATORY NO. 15.** If maintenance costs are not included in the NRC provided in Interrogatory No. 13 above, what additional charges would apply if the Commission required the NRC to reflect maintenance?

**INTERROGATORY NO. 16.** Provide all calculations supporting the charges listed in Interrogatory Nos. 13 -15 above.

**INTERROGATORY NO. 20.** Provide the total capacity in amperes on an aggregate basis for all Verizon central offices in Florida today.

**INTERROGATORY NO. 21.** Of the total capacity in amperes provided in response to Interrogatory No. 20, what percentage of that capacity is currently ordered available capacity by CLECs who are collocated with Verizon?

**INTERROGATORY NO. 22.** Of the total capacity in amperes identified in response to Interrogatory No. 20, how much of that total capacity in amperes is currently unused or spare capacity?

**INTERROGATORY NO. 23.** Provide the total capacity in amperes that has been added as augments or new construction on an aggregate basis for all Verizon central offices in Florida since January 1, 1996.

**INTERROGATORY NO. 24.** Of the total capacity in amperes provided in response to Interrogatory No. 23, what percentage of that capacity is currently ordered available capacity by CLECs who are collocated with Verizon?

**INTERROGATORY NO. 25.** Of the total capacity in amperes identified in response to Interrogatory No. 23, how much of that total capacity in amperes is currently unused or spare capacity?

**INTERROGATORY NO. 26.** For each Verizon central office in Florida, provide the current power capacity in amperes.

**INTERROGATORY NO. 27.** For each Verizon central office in Florida, of the capacity in amperes per central office provided in response to Interrogatory No. 26, what percentage of that capacity has been ordered by CLECs who are collocated with Verizon?

**INTERROGATORY NO. 28.** For each Verizon central office in Florida, of the total capacity in amperes identified in response to Interrogatory No. 26, how much of that total capacity in amperes is currently unused or spare capacity?

**INTERROGATORY NO. 29.** For each Verizon central office in Florida, provide the total capacity in amperes that has been added as augments or new construction in Florida since January 1, 1996.

**INTERROGATORY NO. 30.** For each Verizon central office in Florida, of the capacity in amperes per central office provided in response to Interrogatory No. 29, what percentage of that capacity has been ordered by CLECs who are collocated with Verizon?

**INTERROGATORY NO. 31.** For each Verizon central office in Florida, of the total capacity in amperes identified in response to Interrogatory No. 29, how much of that total capacity in amperes is currently unused or spare capacity?