

BEFORE THE PUBLIC SERVICE COMMISSION

In re: Implementation of requirements arising from Federal Communications Commission's triennial UNE review: Location-Specific Review for DS1, DS3 and Dark Fiber Loops, and Route-Specific Review for DS1, DS3 and Dark Fiber Transport.

DOCKET NO. 030852-TP
ORDER NO. PSC-04-0159-PCO-TP
ISSUED: February 16, 2004

**ORDER GRANTING IN PART AND DENYING IN PART
MOTION TO COMPEL**

I. Case Background

In response to the Federal Communications Commission's (FCC) August 21, 2003, Triennial Review Order (TRO), this Commission opened two dockets to ascertain whether a requesting carrier is impaired by lack of access to certain incumbent local exchange companies' network elements.

All parties filed direct testimony on December 22, 2003. On February 2, 2004, the Florida Competitive Carriers Association (FCCA) filed a Motion to Compel BellSouth Telecommunications, Inc. (BellSouth), to respond to Item No. 5 of FCCA's First Request for Production of Documents, which seeks the GeoLIT Plus Report (GeoLIT Report). Alternatively, if BellSouth is not compelled to produce the GeoLIT Report, FCCA requests that the portions of BellSouth's prefiled testimony that rely on the GeoLIT Report be stricken. FCCA asserts that BellSouth relies on the GeoLIT Report to support specific claims that carriers provide loops at certain customer locations. Accordingly, FCCA argues that BellSouth must produce the report to allow FCCA to challenge or test the validity of BellSouth's claims.

On February 5, 2004, BellSouth filed a brief response in opposition to FCCA's motion. In its response, BellSouth stated it was contemporaneously filing a supplemental response¹ to Item No. 5 of FCCA's First Request for Production of Documents.

At the prehearing conference on February 9, 2004, both parties were given the opportunity to briefly address the merits of FCCA's motion. During its argument, BellSouth stated that it would provide FCCA access to the GeoLIT Report at any of its nine southeastern offices, but could not provide FCCA a copy of the GeoLIT Report due to licensing restrictions.

II. Decision

At the outset, I note that the GeoLIT Report is commercially available and that FCCA could itself obtain a copy of the report. It has chosen not to do so. Upon consideration of the

¹ BellSouth filed a copy of the GeoLIT Plus Report to be kept in the Commission Records division.

DOCUMENT NUMBER-DATE

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FPSC-COMMISSION CLERK

ORDER NO. PSC-04-0159-PCO-TP

DOCKET NO. 030852-TP

PAGE 2

parties' arguments, I find that FCCA should be allowed full access to BellSouth's copy of the GeoLIT Report for the purpose of verifying BellSouth's claims in this proceeding. However, due to license restrictions, I find that BellSouth should only be required to allow FCCA access for inspection of the GeoLIT Report at a BellSouth southeastern office of FCCA's choosing. FCCA is not permitted to copy or remove the GeoLIT Report from the BellSouth office absent BellSouth's express consent. Accordingly, I hereby grant in part and deny in part FCCA's Motion to Compel BellSouth to respond to Item No. 5 of FCCA's First Request for Production of Documents.

Based upon the foregoing, it is

ORDERED by Commissioner Charles M. Davidson, Prehearing Officer, that the Florida Competitive Carriers Association's Motion to Compel and, in the Alternative, Motion to Strike is hereby granted in part and denied in part. It is further

ORDERED that BellSouth Telecommunications, Inc. shall allow the Florida Competitive Carriers Association full access to the GeoLIT Report at the BellSouth southeastern office that the Florida Competitive Carriers Association so chooses. It is further

ORDERED that FCCA is not permitted to copy or remove the GeoLIT Report from the BellSouth office absent BellSouth's express consent.

By ORDER of Commissioner Charles M. Davidson, as Prehearing Officer, this 16th day of February, 2004.



CHARLES M. DAVIDSON
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 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.