

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Complaint by BellSouth Telecommunications, Inc. against Thrifty Call, Inc. regarding practices in the reporting of percent interstate usage for compensation for jurisdictional access services.

DOCKET NO. 000475-TP
ORDER NO. PSC-08-0339-PCO-TP
ISSUED: May 28, 2008

ORDER GRANTING AT&T FLORIDA'S MAY 5, 2008, MOTION TO COMPEL

I. Case Background

On April 21, 2000, BellSouth Telecommunications, Inc. d/b/a AT&T Florida (AT&T Florida) filed a complaint against Thrifty Call, Inc. (Thrifty Call). AT&T Florida alleges that Thrifty Call intentionally and unlawfully reported erroneous Percent Interstate Usage (PIU) factors to AT&T Florida in violation of AT&T Florida's Intrastate Access Tariff and the rules and regulations established by the Commission. AT&T Florida alleges that erroneous PIUs have resulted in the under reporting of intrastate access terminating minutes to AT&T Florida, causing AT&T Florida financial harm.

On August 20, 2001, Thrifty Call filed a Motion to Stay or in the Alternative, to Bifurcate the Proceedings. On August 28, 2001, Order No. PSC-01-1749-PCO-TP was issued, establishing procedure. On September 4, 2001, AT&T Florida filed its Opposition to Thrifty Call's Motion to Stay or in the Alternative, to Bifurcate the Proceedings. On November 21, 2001, Order No. PSC-01-2309-PCO-TP was issued, granting Thrifty Call's Motion to Stay.

On July 20, 2005, AT&T Florida filed a Motion to Lift Stay and Establish Procedural Schedule. On November 2, 2005, Order No. PSC-05-1100-PCO-TP was issued, granting AT&T Florida's Motion to Lift Stay and Establish Procedural Schedule. On December 28, 2007, Order No. PSC-07-1027-PCO-TP was issued, modifying procedure.

On May 5, 2008, AT&T Florida filed a Motion to Compel Thrifty Call to respond to certain discovery requests. On May 7, 2008, AT&T Florida filed another Motion to Compel Thrifty Call to respond to certain discovery requests. On May 12, 2008, Thrifty Call filed its Response in Opposition to AT&T Florida's May 5, 2008, Motion to Compel. On May 14, 2008, Thrifty Call filed its Response in Opposition to AT&T Florida's May 7, 2008, Motion to Compel.

II. AT&T Florida's Motion to Compel, filed May 5, 2008

In its motion, filed May 5, 2008, AT&T Florida seeks to compel Thrifty Call to respond to its First Request for Admissions, Nos. 3, 4, 5, 6, 12, 13, 15, 16, 17 and Fifth Set of Interrogatories, Nos. 106, 107, 108, 109, 115, 116, 118, 119, and 120 (disputed discovery requests). AT&T Florida asserts that the thrust of its complaint against Thrifty Call is that

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Thrifty Call has misreported the jurisdictional nature of traffic terminated to AT&T Florida. AT&T Florida further asserts that its discovery requests are tailored to this specific issue such that the information it seeks is relevant to the subject matter of the issues of the proceeding and is clearly reasonably calculated to lead to the discovery of admissible evidence.

Thrifty Call objects to the disputed discovery requests on the grounds that they are overly broad, vague, ambiguous, and call for a legal conclusion. AT&T Florida argues that such objections are invalid. In terms of the disputed discovery requests being overly broad, AT&T Florida cites to case law, arguing that Thrifty Call's failure to quantify such objections alone warrants overruling the objection.¹ Further, AT&T Florida asserts that, in any case, the disputed discovery requests are not overly broad and are narrowly tailored to an issue in the case—whether the PIU that Thrifty Call reported to AT&T Florida was accurate or not.

In terms of vagueness and ambiguity, AT&T Florida asserts that even from a cursory review of the disputed discovery requests, it is obvious that they can be answered with a simple admit or deny and, if necessary, a brief explanation. Further, Rule 1.370, Florida Rules of Civil Procedures, provides for a simple and straightforward procedure for admissions, denials, and, if necessary, the qualifying of answers.

As for the objections that the disputed discovery requests call for a legal conclusion, AT&T Florida argues that requests to admit propositions that would ultimately decide the case are proper. In support of its position, AT&T cites to Rule 1.370(a), Florida Rules of Civil Procedures, which states that “[a] party who considers that a matter of which an admission has been requested presents a genuine issue for trial may not object to the request on that ground alone; the party may deny the matter or set forth reasons why the party cannot admit or deny it, subject to rule 1.380(c).”

In summary, AT&T Florida argues that Thrifty Call's objections are an attempt to play “keep away” with the facts. The information sought by the disputed discovery requests is relevant, reasonably calculated to lead to the discovery of admissible evidence, not ambiguous, vague, or overly broad. AT&T Florida is in need of the information requested to properly prepare its case for hearing. Further, AT&T Florida conferred with Thrifty Call in an attempt to resolve the issues raised by its motion, but no resolution was reached.

III. Thrifty Call's Response in Opposition to AT&T Florida's May 5, 2008, Motion to Compel

In its response, Thrifty Call asserts that AT&T Florida's May 5, 2008, Motion to Compel is not timely. Specifically, while Thrifty Call has timely filed all objections and responses to

¹ AT&T Florida includes the following citation and parenthetical: *First City Development of Florida, Inc. v. Hallmark of Hollywood Condominium Ass'n, Inc.* 545 So. 2d 502, 503 (Fla. 4th DCA 1989) (“it is incumbent upon [the objecting party] to quantify for the trial court the manner in which such discovery might be overly broad or burdensome. They must be able to show the volume of documents, or the number of man-hours required in their production, or some other quantitative factor that would make it so.”).

AT&T Florida's voluminous discovery requests, AT&T Florida waited over two weeks to move to compel responses thereby failing to complete its discovery before the discovery cutoff date. Thrifty Call argues that if AT&T Florida was truly in need of the information requested to properly prepare its case, it would have and should have filed its Motion to Compel in a timely manner. Thrifty Call points out that the amended discovery cutoff date of May 5, 2008, had passed and that the case is scheduled for prehearing in eight days and for hearing in 29 days. Thrifty Call argues that AT&T Florida's complaint was filed in April 2000, and that AT&T Florida has had every opportunity since then to ask questions to which it now seeks answers to in its untimely Motion to Compel. Thrifty Call asserts that Florida courts have recognized that when a party has not been diligent in seeking discovery, the court is free to deny motions to compel.

IV. Ruling

The disputed discovery requests listed in AT&T Florida's May 5, 2008, Motion to Compel are AT&T Florida's First Request for Admissions, Nos. 3, 4, 5, 6, 12, 13, 15, 16, 17 and Fifth Set of Interrogatories, Nos. 106, 107, 108, 109, 115, 116, 118, 119, and 120. The requests for admissions seek the admission or denial of statements that relate to the jurisdictionalizing of traffic and Thrifty Call's determination of the PIU reported to AT&T Florida. The interrogatories seek the reason and basis for any such denials. Thrifty Call objects on the grounds that these requests are overly broad, vague, ambiguous, and call for a legal conclusion. The disputed discovery requests, however, are rather specific such that it appears Thrifty Call would be in a position to admit or deny the requests and state its reasons for any denials thereof. Moreover, Thrifty Call's objection that the requests call for a legal conclusion has no real merit. Rule 1.370(a), Florida Rules of Civil Procedures, provides that a "party who considers that a matter of which an admission has been requested presents a genuine issue for trial may not object to the request on that ground alone; the party may deny the matter or set forth reasons why the party cannot admit or deny it, subject to rule 1.380(c)." Thus, because the disputed discovery requests do not appear to be overly broad, vague, and ambiguous, and because the objection that a request calls for a legal conclusion is alone insufficient grounds for objecting, Thrifty Call's objections, in their entirety, are invalid.

The issue of timeliness that Thrifty Call raises in its response to opposition likewise has no merit. Rule 1.380(1) Florida Rules of Civil Procedures, provides that "[u]pon reasonable notice to other parties and all persons affected, a party may apply for an order compelling discovery . . ." Rule 1.380(1)(2), Florida Rules of Civil Procedure, goes on to state the details. Pertinent here are the following statements:

. . . the discovering party may move for an order compelling an answer, or a designation or an order compelling inspection, or an order compelling an examination in accordance with the request. The motion must include a certification that the movant in good faith, has conferred or attempted to confer with the person or party failing to make the discovery in an effort to secure the information or material without court action.

Thus, there is no specific rule as to when a party may file a motion to compel. At a minimum, the motion must be made upon reasonable notice to other parties and after the moving party has conferred or attempted to confer with the other party in an effort to reach a resolution. Here, AT&T Florida received Thrifty Call's objections to its First Request for Admissions and Fifth Set of Interrogatories on April 18, 2008. AT&T Florida's filing of its motion on May 5, 2008, just over two weeks of receiving the objections, is not unreasonable. Further, AT&T Florida certifies that it conferred with Thrifty Call on the matter prior to the filing of its motion.


Rule 1.370(a), Florida Rules of Civil Procedure, provides that "[u]nless the court determines that an objection is justified, it shall order that an answer be served." As stated above, it does not appear that the disputed discovery requests are overly broad, vague and ambiguous. The issue of whether the requests call for a legal conclusion is not, by itself, a sufficient ground for objecting. Filing of the motion just over two weeks after receiving the objections is not unreasonable. Therefore, because the objections have no merit and the motion was timely filed, AT&T Florida's Motion to Compel, filed May 5, 2008, is hereby granted. Thrifty call shall provide the responses compelled herein by June 3, 2008.

Based on the foregoing, it is therefore

ORDERED by Commissioner Lisa Polak Edgar, as Prehearing Officer, that AT&T Florida's Motion to Compel, filed May 5, 2008 is hereby granted. It is further

ORDERED that Thrifty Call, Inc. shall provide the responses compelled herein by June 3, 2008.

By ORDER of Commissioner Lisa Polak Edgar, as Prehearing Officer, this 28th day of May, 2008.



LISA POLAK EDGAR
Commissioner and Prehearing Officer

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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.

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 Office of Commission Clerk, 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 Office of Commission Clerk, 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.