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June 20, 1997

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JUN 20 1997

FPSC - Records/Reporting

HAND DELIVERED

Blanca S. Bayo, Director
Division of Records and Reporting
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

Re: Docket No. 960786-TP, In re: Consideration of
BellSouth Telecommunications, Inc. entry into
InterLATA services pursuant to Section 271 of the
Federal Telecommunications Act of 1996

Dear Ms. Bayo:

Enclosed for filing and distribution are the original and
fifteen copies of the FCCA's Motion to Compel in the above docket.

Please acknowledge receipt of the above on the extra copy
enclosed herein and return it to me. Thank you for your
assistance.

Yours truly,

Joseph A. McGlothlin

- ACK _____
- AFA _____
- APP _____
- CAF _____
- CMU Green
- CTR _____
- EAG _____
- LEG 1 Enclosures
- LIN 5
- OPC _____
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- SEC 1
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DOCUMENT NUMBER-DATE

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FPSC-RECORDS/REPORTING

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

FILED COPY

In re: Consideration of BellSouth)	
Telecommunications, Inc. entry into)	
InterLATA services pursuant to Section)	Docket No. 960786-TL
271 of the Federal Telecommunications)	
Act of 1996.)	Filed: June 20, 1997
)	

**FLORIDA COMPETITIVE CARRIERS ASSOCIATION'S
MOTION TO COMPEL**

Pursuant to rule 1.380, Florida Rules of Civil Procedure, the Florida Competitive Carriers Association (FCCA), through its undersigned counsel, moves for a second order compelling BellSouth Telecommunications, Inc. (BellSouth) to respond to FCCA Interrogatory No. 3. The answer which BellSouth has provided, following entry of an order granting FCCA's first Motion to Compel directed to Interrogatory 3, is evasive and non-responsive. As grounds for its motion, FCCA states:

Introduction

1. Since the outset of this case, FCCA has diligently attempted to obtain discovery from BellSouth regarding a matter that goes to the heart of the issues the Commission will consider in this case. However, almost a year after the interrogatory at issue was propounded and some two months before hearing, FCCA still does not have an answer that is responsive to perhaps its most fundamental discovery question. BellSouth's continuing avoidance of the obligation to provide substantive information regarding the extent, manner, and means by which it is providing each of the §271 checklist items should not be tolerated.

History of FCCA's Request and BellSouth's Failure to Respond

2. On July 26, 1996, FCCA propounded Interrogatory No. 3. Interrogatory

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FPSC-RECORDS/REPORTING

No. 3 asks BellSouth to describe in detail, with respect to any agreement it has with a competing provider of telephone exchange service which BellSouth contends satisfies any of the criteria of section 271(c)(2)(B)(i)-(xiv), the arrangement, services, facilities or means of access that BellSouth is actually providing. Interrogatory No. 3 states:

REQUEST: With respect to each criterion of Section 271(c)(2)(B)(i)-(xiv) identified in the response to Interrogatory 2 above, describe in detail with respect to each agreement through which BellSouth contends it has satisfied the criterion, the arrangement, services, facilities, or means of access that BellSouth is presently and actually providing and that are related to BellSouth's claim that it has satisfied the criterion. Include in the description all quantitative, qualitative, technical, and geographical data and all pricing information necessary to fully describe the present ability of BellSouth to provide each service, arrangement, or access (in terms of maximum capacity or quantities, or in terms of time needed for response); the specific facilities being used to provide the service; the extent to which the services, arrangements, and/or access are presently being provided; and the terms on which they are being provided.

3. BellSouth filed an evasive and incomplete answer to this interrogatory on August 16, 1996. FCCA filed a motion to compel on August 23, 1996. BellSouth responded on August 30, 1996. A telephonic hearing on the Motion to Compel was held on September 4, 1996.

4. On September 9, 1996, the Prehearing Officer entered Order No. PSC-96-1135-PCO-TL, granting FCCA's Motion to Compel. In her order, the Prehearing Officer found BellSouth's answer to be unresponsive and required BellSouth to supply the information. Order No. PSC-96-1135-PCO-TL at 2.

5. On September 19, 1996, BellSouth filed a motion for reconsideration of the Prehearing Officer's order. FCCA responded on September 30, 1996. Parties were permitted to address the Commission during the May 6, 1997 Agenda Conference, when BellSouth's motion for reconsideration was considered. The Commission entered Order Denying Motion for Reconsideration, Order No. PSC-97-0590-FOF-TL, on May 23, 1997. In the order, the Commission denied BellSouth's motion for reconsideration in its entirety.

6. On June 16, 1997, BellSouth filed its answers to the discovery requests which were the subject of the Order Denying Motion for Reconsideration. BellSouth's answer to Interrogatory No. 3 is grossly insufficient. Thus, FCCA has been required to file its second motion to compel.

Argument

7. In response to Interrogatory No. 3, BellSouth states:

RESPONSE: The requested detailed analysis fills approximately 100 binders of information. Due to the volume of this information, it would be unduly burdensome to require BellSouth to copy and deliver this information. Consequently, BellSouth will make this information available at a mutually agreeable time for inspection at BellSouth's offices in Atlanta. Further, the information is proprietary, confidential information pursuant to F.S. 364.183 and access to this information will be provided only after the execution of an appropriate non-disclosure agreement. The Florida specific information will be available for review on or after June 24, 1997.

Information Sought is Fundamental to this Proceeding

8. Section 271(c)(2)(B) delineates fourteen requirements with which BellSouth must comply to satisfy a portion of its burden to demonstrate it should be

permitted to enter the interLATA market. In Interrogatory 3, FCCA called on BellSouth to provide the particulars as to any checklist items it is providing, in sufficient technical, geographical, qualitative, and quantitative detail to enable FCCA to gauge the sufficiency of the status of each checklist item. FCCA expected -- and is entitled to -- a narrative, explanatory description by a knowledgeable employee sufficient to communicate the factual basis for the contention that one or more checklist items is presently being met. This is certainly no different than the type of evidentiary showing BellSouth will have to make to support its petition. The whole reason for opening this docket was to permit parties to discover the information on which BellSouth will rely, in time to prepare a case that addresses the sufficiency or deficiency of that information. BellSouth has refused to answer this most basic question.

BellSouth's Offer to Produce Documents is an Inappropriate Response

9. BellSouth's reference to documents available for review is inappropriate and inadequate. It is an abuse of the limited option of producing records in lieu of an interrogatory response. This option is available only when:

. . .the burden of deriving or ascertaining the answer is substantially the same for the party serving the interrogatory as for the party to whom it is directed. . . .

Rule 1.340(c), Florida Rules of Civil Procedure.

10. In its answer, BellSouth makes no attempt to explain why it has made no effort to prepare a narrative response. Nor does it support the statement that proprietary information would necessarily be involved in composing the answer.

Instead, BellSouth refers to the availability for review of "100 binders" of documents. In the instance of the interrogatory at issue here, the burden of deriving the information requested is clearly not the same for FCCA as it is for BellSouth.¹ BellSouth knows the information, on which it intends to rely in an attempt to show that it has satisfied the criteria of section 271(c)(2)(B)(i)-(xiv). Further, BellSouth's employees who are familiar with the information requested can provide a narrative response. It is ludicrous to suggest that FCCA and BellSouth are positioned similarly with respect to "answering" the interrogatory.

BellSouth's Claim of Burden is Without Merit

11. In an abundance of caution, FCCA will address the issue of burdensomeness raised in BellSouth's response to Interrogatory No. 3. It should be noted, however, that BellSouth's response does not say it would be burdensome to respond; rather, BellSouth states that it would be burdensome to require it to provide voluminous documents in Tallahassee, as though that was what FCCA requested in the interrogatory. BellSouth's proffer of documents is not a proper response.

12. Even if the Commission were to regard BellSouth's answer as a claim that responding to Interrogatory No. 3 would be burdensome, BellSouth has failed to make its case on this point. It is well-settled that the burden of proving a claim of burdensomeness rests with the party making the claim. Charles Sales Corp. v.

¹ This case is to be contrasted with Department of Professional Regulation v. Florida Psychological Practitioners Assn., 483 So.2d 817 (Fla 1st DCA 1986). In that case, the court found that the burden of searching microfilm files for name and address information was the same for each party.

Rovenger, 88 So.2d 551 (Fla. 1956). BellSouth has not met its burden simply by claiming that the information is contained in numerous documents.

13. Further, while it made no effort to do so (and can therefore not satisfy applicable standards), BellSouth may not avoid answering the interrogatory on the grounds that providing the answer would require it to exert some effort. MacArthur v. Moffett, 340 So. 2d 500 (Fla. 4th DCA 1976), cert. denied. 348 So.2d 949 (Fla. 1977). See also, Ford Motor Co. v. Edwards, 363 So.2d 867 (Fla. 1st DCA 1978); Goodyear Tire and Rubber Co. v. Cooney, 359 So.2d 1200 (Fla. 1st DCA 1978). FCCA has propounded a legitimate interrogatory which BellSouth must answer.

Remedy

14. The information which FCCA began seeking almost a year ago is fundamental to its ability to assess BellSouth's claim that it has complied with § 271. FCCA has been prejudiced in its hearing preparation by BellSouth's refusal to supply the information requested in Interrogatory No. 3. More importantly, the intent of the Commission to provide a procedural mechanism to enable the Commission and parties to obtain and assess pertinent information prior to BellSouth's filing has been frustrated by BellSouth's repeated refusals.

15. It is clear that more than simply granting FCCA's motion to compel is needed. In view of BellSouth's failure to respond to FCCA's basic discovery needs, even after being ordered to do so by both the Prehearing Officer and the full Commission, and by the prejudice associated with the passage of time, FCCA requests that the deadline for Intervenors' testimony be extended day-for-day for each day from

the granting of this motion to compel until the date the Prehearing Officer finds that BellSouth has served a satisfactory answer².

WHEREFORE, FCCA requests that the Prehearing Officer take up this motion during the July 2, 1997 status conference; and after consideration enter an order:

1. Compelling BellSouth to respond in full to FCCA Interrogatory No. 3 within 5 days of the Prehearing Officer's oral ruling on this motion; and
2. Extending the deadline for testimony relative to the information sought in Interrogatory 3 as outlined in the body of this motion.



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Attorneys for Florida Competitive
Carriers Association

²Pursuant to Order No. PSC-97-0703-PCO-TL, BellSouth is to file its petition, testimony and supporting documentation on July 7, 1997.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the **Florida Competitive Carriers Association's** foregoing **Second Motion to Compel** has been furnished by U. S. Mail, by hand delivery(*) or by overnight delivery(**) on this **20th** day of **June, 1997**, to the following:

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