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Legal Department

MICHAEL P. GOGGIN
General Attorney

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BellSouth Telecommunications, Inc.
150 South Monroe Street
Room 400
Tallahassee, Florida 32301
(305) 347-5558

RECORDS AND
REPORTING

April 12, 1999

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

Re: Docket Nos. 980947-TL, 980948-TL, 981011-TL and 981012-TL

Dear Ms. Bayó:

Enclosed is an original and fifteen copies of BellSouth Telecommunications, Inc.'s Memorandum in Opposition to Motion of Intermedia Communications, Inc. to Compel Discovery, which we ask that you file in the captioned dockets.

A copy of this letter is enclosed. Please mark it to indicate that the original was filed and return the copy to me. Copies have been served to the parties shown on the attached Certificate of Service.

Sincerely,

Michael P. Goggin (ke)
Michael P. Goggin

- ACK _____
- AFA 2 _____
- APP _____
- CAF _____
- CMU _____
- CTR _____
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- LEG 2 _____
- LIN 5 _____
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- SEC 4 _____
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- OTH _____

cc: All parties of record
Marshall M. Criser III
William J. Ellenberg II

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CERTIFICATE OF SERVICE
Docket Nos. 980947-TL, 980948-TL, 981011-TL, and 981012-TL

I HEREBY CERTIFY that a true and correct copy of the foregoing was served via

U.S. Mail this 12th day of April, 1999 to the following:

Beth Keating, Esq.
Staff Counsel
Florida Public Service
Commission
Division of Legal Services
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

Charles J. Pellegrini
Wiggins & Villacorta, P.A.
2145 Delta Boulevard
Suite 200
P.O. Drawer 1657
Tallahassee, FL 32302
Tel. No. (850) 385-6007
Fax. No. (850) 385-6008

Steve Brown
Intermedia Communications, Inc.
3625 Queen Palm Drive
Tampa, FL 33619-1309
Tel. No. (813) 829-0011
Fax. No. (813) 829-4923

Floyd R. Self, Esq.
Messer, Caparello & Self, P.A.
215 South Monroe Street
Suite 701
Tallahassee, FL 32301-1876
Tel. No. (850) 222-0720
Fax. No. (850) 224-4359

Mr. Brian Sulmonetti
WorldCom Technologies, Inc.
1515 South Federal Highway
Suite 400
Boca Raton, FL 33432
Tel. No. (561) 750-2940
Fax. No. (561) 750-2629

David V. Dimlich, Esq.
Legal Counsel
Supra Telecommunications &
Information Systems, Inc.
2620 S.W. 27th Avenue
Miami, FL 33133
Tel. No. (305) 476-4235
Fax. No. (305) 443-1078

Amanda Grant
BellSouth Telecommunications, Inc.
Regulatory & External Affairs
675 West Peachtree Street, N.E.
Room 38L64
Atlanta, Georgia 30375

Norman H. Horton, Jr.
Messer, Caparello & Self, P.A.
215 S. Monroe Street
Suite 701
Tallahassee, Florida 32301-1876
Tel. No. (850) 222-0720
Fax. No. (850) 224-4359
Represents e.spire»

James C. Falvey, Esq.
e.spire™ Communications, Inc.
133 National Business Parkway
Suite 200
Annapolis Junction, Maryland 20701
Tel. No. (301) 361-4298
Fax. No. (301) 361-4277

Kenneth A. Hoffman, Esq.
John R. Ellis, Esq.
Rutledge, Ecenia, Underwood,
Purnell & Hoffman, P.A.
P.O. Box 551
Tallahassee, FL 32301
Tel. No. (850) 681-6788
Fax. No. (850) 681-6515

Steven Gorosh
Vice President and General Counsel
NorthPoint Communications, Inc.
222 Sutter Street, 7th Floor
San Francisco, CA 94108
Tel. No. (415) 659-6518
Fax. No. (415) 658-4190

Charles A. Hudak, Esq.
Jeremy D. Marcus, Esq.
Gerry, Friend & Sapronov, LLP
Three Ravinia Drive, Suite 1450
Atlanta, GA 30346-2131
Tel. No. (770) 399-9500
Fax. No. (770) 395-0000
Attys. for ACI Corp.

Jeffrey Blumenfeld, Esq.
Elise P.W. Kiely, Esq.
Blumenfeld & Cohen
1615 M Street, NW
Suite 700
Washington, DC 20036
Tel. No. (202) 955-6300
Fax. No. (202) 955-6460
Attys. for ACI Corp.

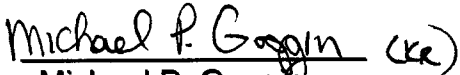
Peter M. Dunbar, Esq.
Barbara D. Auger, Esq.
Pennington, Moore, Wilkinson
& Dunbar, P.A.
Post Office Box 10095
Tallahassee, FL 32302-2095
Tel. (850) 222-3533
FAx (850) 222-2126
Attys for Time Warner Telecom

Carolyn Marek
VP of Reg. Affairs
Time Warner Communications
233 Bramerton Court
Franklin, TN 37069
Tel. (615) 376-6404
Fax (615) 376-6405

Monica M. Barone
Sprint Communications Company
Limited Partnership
3100 Cumberland Circle
Mailstop GAATLN0802
Atlanta, GA 30339

James D. Earle, Esq.
Covad Communications, Inc. d/b/a
DIECA Communications
700 Thirteenth Street NW
Suite 950
Washington, DC 20005
Tel: (202) 434-8902
Fax: (202) 434-8932

Richard D. Melson
Gabriel E. Nieto
Hopping Green Sams & Smith
Post Office Box 6526
Tallahassee, FL 32314
Attys. for ACI Corp.


Michael P. Goggin

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

ORIGINAL

In re: Petition for Waiver of Physical) Docket No.: 980947-TL
Collocation Requirements Set Forth)
In the Telecommunications Act of 1996)
And the FCC's First Report and Order,)
for the Boca Raton Boca Teeca Central)
Office, By BellSouth Telecommunications, Inc.)
_____)
In re: Petition for Waiver of Physical) Docket No.: 980948-TL
Collocation Requirements Set Forth)
In the Telecommunications Act of 1996)
And the FCC's First Report and Order,)
for the Miami Palmetto Central)
Office, By BellSouth Telecommunications, Inc.)
_____)
In re: Petition for Waiver of Physical) Docket No.: 981011-TL
Collocation Requirements Set Forth)
In the Telecommunications Act of 1996)
And the FCC's First Report and Order,)
For the West Palm Beach Gardens)
Central Office, By BellSouth)
Telecommunications, Inc.)
_____)
In re: Petition for Waiver of Physical) Docket No.: 981012-TL
Collocation Requirements Set Forth)
In the Telecommunications Act of 1996)
And the FCC's First Report and Order,)
For the North Dade Golden Glades)
Central Office, By BellSouth)
Telecommunications, Inc.)
_____) Filed: April 12, 1999

**MEMORANDUM OF BELLSOUTH TELECOMMUNICATIONS, INC.
IN OPPOSITION TO MOTION OF
INTERMEDIA COMMUNICATIONS, INC. TO COMPEL DISCOVERY**

BellSouth Telecommunications, Inc., ("BellSouth" or "Company"), hereby files, pursuant to Rule 25-22.037, Florida Administrative Code, and Rules 1.380 and 1.280, Florida Rules of Civil Procedure, the following Memorandum in Opposition to Intermedia Communication Inc.'s ("Intermedia's") Motion to

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Compel Discovery (the "Motion"). The Motion is both premature and without merit and BellSouth therefore requests that it be denied.

1. Intermedia's Motion is Premature.

On March 12, 1999, Intermedia served its First Set of Interrogatories, its First Request for Admission and its First Request for Production of Documents on BellSouth in dockets concerning four requests by BellSouth for waivers from the physical collocation requirements of the Telecommunications Act of 1996. The interrogatories for each central office were virtually identical. BellSouth's responses to these interrogatories are due on April 12, 1999.

In accordance with the Commission's procedural order in this docket, BellSouth served its preliminary objections to these interrogatories on March 22, 1999. On March 31, 1999, 12 days before BellSouth's responses to the interrogatories were due, Intermedia filed its Motion to Compel Discovery. Under the Florida Rules of Civil Procedure, there is no basis for filing a motion to compel discovery prior to the time that discovery is due.

Intermedia filed its Motion pursuant to Rule 1.380 of the Florida Rules of Civil Procedure. That rule plainly states that "a party may move for an order compelling an answer" to an interrogatory if "a party fails to answer an interrogatory." Intermedia cannot, with a straight face, claim that BellSouth has failed to answer when its responses are not yet due. Accordingly, the Motion is plainly premature and should be denied on that basis alone.

2. Intermedia's Motion Lacks Merit.

Even if Intermedia's Motion were permitted under the Rules, it lacks merit. Its Motion is not so much a motion to compel as it is a series of objections to specific objections made by BellSouth. BellSouth intends to respond to each of the interrogatories in question, notwithstanding its specific objections. Nevertheless, given Intermedia's motion, we feel compelled to note that each of BellSouth's objections is well-founded.

For example, in Intermedia's Interrogatory No. 9, it asked BellSouth to identify "obsolescent (unused)" equipment in its central offices. BellSouth objected to this interrogatory to the extent that it defined "obsolescent" as "not used." Intermedia, in apparent recognition of BellSouth's reasonable objection, rewrites its interrogatory in its Motion to state that it meant to inquire about equipment that is both obsolescent *and* not used. Motion at 3. After clarifying the offending language in a manner consistent with BellSouth's objection, Intermedia demands that the Commission compel BellSouth to answer the improved version. *Id.* at 6-7. This sort of procedural gamesmanship needlessly taxes the resources of the Commission, the staff and the parties. If Intermedia had waited to file its motion until BellSouth had a chance to respond to the interrogatory, it likely would have found BellSouth's answer fully responsive to the question it apparently intended to ask.

The remaining objections attacked by Intermedia fall into three categories. First, BellSouth objects to Intermedia's Interrogatory No. 2 because it would require the disclosure of customer proprietary information. Second, we object to

Interrogatory Nos. 2, 11, 18 and 19 because they seek information not calculated to lead to the discovery of admissible evidence. Lastly, we object to Intermedia's Interrogatory Nos. 15 and 17 as vague and ambiguous. In each case, BellSouth's objections are well-taken. Indeed, in some cases, Intermedia admits as much by propounding new interrogatories in its Motion to replace those to which BellSouth objected.

a) Intermedia's Attempt to Secure Competitively Sensitive, Customer Proprietary Information Should Be Rejected.

Intermedia's Interrogatory No. 2 asks BellSouth to identify all requests it has received for physical or virtual collocation at the four central offices, including the name of the requesting carrier, the date of the request, the amount of space requested and the specific details of each request, such as the type of collocation requested, and the conditions and specifications of each request. Intermedia appears to be taking advantage of the discovery process in this matter to discover information about its competitors' plans for deploying their facilities. BellSouth objects to this interrogatory because it calls for customer proprietary information contrary to Section 364.24(2).¹ In so far as carriers purchase or request services from BellSouth, whether those services are collocation services, UNE's, or basic telephone service, they are BellSouth customers, and BellSouth generally is prohibited under this provision from disclosing specific information about the services our customers purchase.

¹ BellSouth also objected to this interrogatory as beyond the scope of this proceeding in so far as it seeks information regarding virtual collocation. This issue is discussed below.

Intermedia points to Florida Statutes Section 364.02 as support for the notion that these carriers should not be considered “customers” for purposes of Section 364.24. Section 364.02, however, does not define “customer” but does state that the term “[s]ervice’ is to be construed in its broadest and most inclusive sense.” Accordingly, the only authority cited by Intermedia tends to bolster, rather than overcome BellSouth’s objection.

BellSouth is willing to identify in its response, all requests received by date and by the amount of space requested. To disclose such competitively sensitive information as the identity of the requesters would be harmful to the interests of the companies with whom Intermedia and BellSouth compete. If the Commission should require BellSouth to disclose this information, BellSouth respectfully requests that each customer’s information be treated as proprietary and confidential information of that company pursuant to Section 364.183, Florida Statutes.

b) Intermedia’s Interrogatories Attempt to Discover Information Beyond the Scope of the Issues to be Decided in these Dockets.

Intermedia’s Interrogatory No. 2 asks BellSouth to disclose information regarding any requests it may have received from carriers for virtual, as well as physical collocation at each of the four central offices (including all of the same competitively sensitive customer proprietary information discussed above). Similarly, Intermedia’s Interrogatory Nos. 11 and 18 concern the terms upon which BellSouth will offer virtual collocation and any limits on the number of

carriers who might be offered virtual collocation in each of the four central offices.

BellSouth objected to these interrogatories as not reasonably calculated to lead to the discovery of admissible evidence. The only issue to be decided in these dockets is whether or not there is sufficient space available in each central office to accommodate *physical* collocation. Accordingly, the identity of carriers who may have requested *virtual* collocation, the manner in which they have chosen to deploy their networks, or, indeed any other question regarding virtual collocation is simply beyond the scope of these dockets.

Intermedia's response to this objection is that its opportunities for virtual collocation in these central offices "may be limited by the capacity of BellSouth's facilities." Motion at 3, 4. This is no doubt true in the abstract. That question is not an issue in these proceedings, though. These dockets concern BellSouth's requests for waivers from its obligation to offer space for physical collocation. The identity of those who choose virtual collocation, and the terms upon which they may receive it are simply irrelevant here. Nevertheless, subject to the general objections it has made, and the specific objection to Interrogatory No. 2 regarding customer information, BellSouth will respond to these interrogatories.

Similarly, Intermedia's Interrogatory No. 19 (which concerns only the Boca Teeca central office) requests information regarding the number of employees who work on the second floor, the nature of their responsibilities, and whether these individuals could be "removed" from their work place in order to "liberate"

this property.² So far, Intermedia and BellSouth's other competitors have been able to use this proceeding to obtain information about BellSouth's network architecture, equipment, and market growth projections. In addition, each has had the opportunity to view BellSouth's network operations first hand via visits to each of the central offices. Not content with this treasure trove of competitively sensitive data, Intermedia now apparently wishes to have BellSouth describe how it staffs and maintains its facilities. It is unclear to BellSouth how relevant such information may be to this proceeding. The possibility of the forced expulsion of such employees from BellSouth's central offices, however, presents a serious potential threat to BellSouth's network reliability and service quality. Accordingly, BellSouth will respond to this interrogatory, subject to the general objections it has made.

c) Intermedia Requests that the Commission Compel BellSouth to Respond to Vague and Ambiguous Interrogatories.

BellSouth objected to Intermedia's Interrogatory Nos. 15 and 17 as vague and ambiguous. In Interrogatory No. 15, Intermedia asks whether BellSouth foresees the need "to provide new space beyond the presently reserved space for its own needs" in each office in the years 2001-04. This request is subject to a number of interpretations. In apparent recognition of this vagueness,

² BellSouth wishes informally and lightheartedly to object to the use of the term "liberate" in this interrogatory. We are engaged in a process in which certain private enterprises are requesting that the Commission exercise the power of the state to force BellSouth, another private enterprise, to remove employees and equipment from real property it owns and to lease the space to others at rates far below fair market value. Intermedia's Castro-like description of this process as the "liberation" of BellSouth's property is witty indeed. To those of us who favor democracy, private property rights and free markets, it might be more accurately termed "confiscation." Nevertheless, we assume that the use of the word "liberate," was intended to be humorous; we

Intermedia suggests, in its Motion, that it intended to ask “whether BellSouth presently expects to provide telecommunications services from these central offices as they are presently sized and configured in the years 2001 through 2004.” Motion at 5. While this restatement of the question is not entirely clear either, subject to the general objections it has made, BellSouth will endeavor to provide a responsive answer to this interrogatory.

In Interrogatory No. 17, Intermedia asks BellSouth to “relate the annual business growth identified in Interrogatory No. 1 above to the capacity of [each central office].” Intermedia does not identify any annual business growth in its first interrogatory. Moreover, the capacity of each of BellSouth’s central offices, which is a function of the size of the building, ordinarily remains the same regardless of business growth. Again, in apparent recognition of the ambiguity and vagueness of its interrogatory, Intermedia has propounded a new one in its Motion. Now it wishes to know how much of the design capacity of each central office BellSouth “consumed” in the years 1990-1998. Motion at 5-6. Subject to the general objections it has made, BellSouth will respond to this interrogatory, as well.

Conclusion

Intermedia’s Motion should be denied. Intermedia should not be heard to complain that BellSouth has failed to answer its interrogatories prior to the date the responses are due. In addition, even if Intermedia’s Motion were not procedurally improper, it should not be granted. In its Motion, Intermedia

certainly got a smile out of it. We trust that this attempt at a rejoinder will be accepted in the same lighthearted manner.

purports to challenge BellSouth's well-founded objections to seven interrogatories. In the case of three of these, Intermedia tacitly accepts BellSouth's objections by propounding new interrogatories that attempt, with varying success, to satisfy the objection. Moreover, notwithstanding its well-founded specific objections, BellSouth will respond to each of the interrogatories at issue, (subject to its objection concerning customer proprietary information). Accordingly, even if Intermedia's Motion were permitted under the rules, it would not be justified by the facts. BellSouth accordingly requests that Intermedia's Motion be denied.

Respectfully submitted this 12th day of April, 1999.

BELLSOUTH TELECOMMUNICATIONS, INC.

Nancy B. White (ke)

NANCY B. WHITE

MICHAEL P. GOGGIN

c/o Nancy Sims

150 South Monroe Street, #400

Tallahassee, Florida 32301

(305)347-5555

William J. Ellenberg II (ke)

WILLIAM J. ELLENBERG II

J. PHILLIP CARVER

675 West Peachtree Street, #4300

Atlanta, Georgia 30375

(404)335-0711