

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Request for arbitration concerning complaint of Intermedia Communications, Inc. against BellSouth Telecommunications, Inc. for breach of terms of interconnection agreement under Sections 251 and 252 of the Telecommunications Act of 1996, and request for relief.

DOCKET NO. 991534-TP  
ORDER NO. PSC-00-2035-PCO-TP  
ISSUED: June 13, 2000

ORDER DENYING MOTION FOR PROTECTIVE ORDER

On October 8, 1999, Intermedia Communications, Inc. (Intermedia) filed a complaint against BellSouth Telecommunications, Inc. (BellSouth), alleging that BellSouth breached its interconnection agreement with Intermedia. The agreement was approved by the Commission on October 7, 1996, in Order No. PSC-96-1236-FOF-TP and an amendment to the agreement was approved on October 21, 1998 in Order No. PSC-98-1347-FOF-TP. This matter has been set for an administrative hearing on June 13, 2000.

On May 4, 2000, BellSouth notified Intermedia that BellSouth wanted to depose Intermedia's corporate representatives with knowledge of: 1) Intermedia's interconnection arrangements in Georgia, including but not limited to any request by Intermedia for multiple tandem access (MTA) in Georgia; and, 2) reciprocal compensation billing by Intermedia to BellSouth in BellSouth's service territory, including Georgia. The depositions were discussed at the prehearing conference on May 18, 2000.

On May 26, 2000, Intermedia filed a Motion for Protective Order objecting to the depositions. On June 1, 2000, BellSouth faxed its response. A hard copy was filed on June 5, 2000. The closing date for discovery in this docket is June 6, 2000.

Intermedia objects to the deposition on reciprocal compensation billing in BellSouth's service territory. Intermedia does not object to the deposition on interconnection arrangements. Intermedia claims that an inquiry into reciprocal compensation billing practices will not produce information reasonably calculated to lead to discovery of admissible evidence, and therefore, exceeds the scope of discovery allowed in Rule 1.280(b)(1), Florida Rules of Civil Procedure. Intermedia argues that the issue in this docket is the correct billing rate for reciprocal compensation, and that BellSouth never raised

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Intermedia's billing practices as an issue. Intermedia states that the basis for its bills to BellSouth is clear, and that BellSouth never expressed a lack of understanding of bills from Intermedia.

BellSouth argues that, at the prehearing conference, Intermedia agreed to both depositions and that the parties were directed to proceed with the depositions. BellSouth notes that, at the prehearing conference, Intermedia argued that the subject of the depositions exceeded the scope of discovery. BellSouth's argument as to why billing practices are within the scope of discovery is discussed later in this Order.

Based on a review of the transcript of the prehearing conference, BellSouth stated it wanted to take depositions of two corporate officers, but did not provide specifics on the subject matter of each deposition. Intermedia objected to BellSouth's intent to pursue questioning on interconnection arrangements in Georgia, but not Florida. Intermedia's subsequent motion, however, objects to a deposition on billing practices, not interconnection.

At the prehearing conference, Intermedia argued that questions on interconnection arrangements in Georgia would exceed the scope of discovery for lack of relevancy. Intermedia then agreed to the deposition, presumably on interconnection arrangements, and stated that if the deposition included testimony it considered inadmissible, it would object at the hearing. The parties were then directed to proceed with the deposition. The understanding at the time was, however, that the deposition would address the matters discussed at the prehearing conference.

The subject of a deposition on billing practices, specifically, never arose at the prehearing conference. Therefore, contrary to BellSouth's assertions, the discussion at the prehearing conference does not bear directly on the issue decided in this motion, which is whether Intermedia must produce a witness on its billing practices.

The scope of discovery is addressed in Rule 1.280(b)(1), Florida Rules of Civil Procedure, which states:

Parties may obtain discovery regarding any matter, not privileged, that is relevant to the subject matter of the pending action ... It is not grounds 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.

The Commission has broad discretion in resolving discovery disputes. See Order No. PSC-98-0465-FOF-TL, issued March 31, 1998, in Docket No. 970808-TL; Orlowitz v. Orlowitz, 199 So. 2d 97 (Fla 1967). To fall within the scope of discovery, there must be a logical connection between the information sought and the issues in the case. See Order No. PSC-98-0465-FOF-TL, issued March 31, 1998, in Docket No. 970808-TL; Cazares v. Calderbank, 435 So. 2d 377, 379 (Fla. 5th DCA 1983). If a logical connection is not apparent, the questioner should explain why he or she thinks the question may be expected to reasonably lead to admissible evidence. See Cazares at 379. The fact that an inquiry, apparently irrelevant, "might" lead to admissible evidence, is not sufficient to satisfy the requirements of Rule 1.280(b)(1) absent an explanation of the logical connection. See id.

Here, Intermedia questions the relevance of billing practices in a case where the issue is billing rates. BellSouth explains how the information it seeks may logically and reasonably be expected to lead to admissible evidence. First, in its Response to Intermedia Communication, Inc.'s Motion for Protective Order, BellSouth states:

The Issue to be decided in this proceeding is ultimately very simple -- is the Rate Amendment to the Interconnection Agreement applicable only to multiple tandem access ("MTA") arrangements or applicable to all local traffic. Intermedia takes the position that the Rate Amendment applies only in situations where Intermedia utilizes an MTA arrangement in a state to route traffic. Thus, under Intermedia's interpretation, Intermedia should bill BellSouth at what Intermedia calls "MTA rates" in those states where an MTA arrangement is used by Intermedia to route traffic

What Intermedia seeks to hide through its Motion for Protective Order is the fact that in those states where Intermedia has MTA arrangements, Intermedia does not bill BellSouth at the "MTA rates." Instead, Intermedia bills BellSouth at the rates for local traffic set forth in the original Interconnection Agreement, which are significantly higher than the local traffic rates found in the Rate Amendment....It is this inconsistency between

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Intermedia's stated position and its conduct that BellSouth seeks to explore through the corporate representative dispositions.

The contract applies to five states. Whether and how Intermedia's interpretation of the contract varies by state is relevant to how Intermedia interprets the contract in Florida.

In addition, testimony by BellSouth witness David Scollard demonstrates that there is a logical connection between billing practices and rates. Mr. Scollard explains that the Carrier Access Billing System (CABS) can not bill a single carrier using a composite rate for one category of calls and an elemental rate for another. CABS can only apply on rate type to a carrier. This testimony shows that there is a very direct connection between billing practices and the rates billed.

In light of the above, there is a logical connection between billing practices and billing rates. Therefore, questions about Intermedia's billing practices fall within the scope of discovery allowed under Rule 1.280(b)(1). Intermedia's Motion for Protective Order is, therefore, denied.

Based on the foregoing, it is

ORDERED by Commissioner Clark, as Prehearing Officer, that the Motion for Protective Order filed by Intermedia Communications, Inc. is denied.

By ORDER of Commissioner Susan F. Clark, as Prehearing Officer, this 13th Day of June, 2000.

  
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SUSAN F. CLARK  
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.

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, if issued by a Prehearing Officer; (2) reconsideration within 15 days pursuant to Rule 25-22.060, Florida Administrative Code, if issued by the Commission; or (3) 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 Records and Reporting, 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.