

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Request for arbitration concerning complaint of TCG South Florida and Teleport Communications Group against BellSouth Telecommunications, Inc. for breach of terms of interconnection agreement.

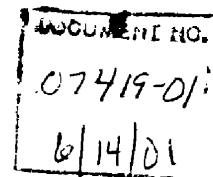
DOCKET NO. 001810-TP
ORDER NO. PSC-01-1300-PCO-TP
ISSUED: June 14, 2001

ORDER ON TCG'S MOTION TO COMPEL AND
REQUEST FOR EXPEDITED ORDER

Background

On December 20, 2000, TCG South Florida and Teleport Communications Group (TCG) filed a complaint against BellSouth Telecommunications, Inc. (BellSouth) alleging that BellSouth has failed to pay reciprocal compensation for Internet bound traffic and switched access charges for intraLATA toll traffic originated and terminated by TCG under the terms of the Second BellSouth/TCG Agreement. On January 9, 2001, BellSouth filed its response to TCG's complaint. This matter has been scheduled for an administrative hearing on June 22, 2001.

On May 10, 2001, TCG served its First Set of Requests for Production of Documents (PODs) and First Set of Interrogatories on BellSouth. On May 21, 2001, BellSouth filed objections to PODs Nos. 2, 4, 5, 7, 8, 9, 10, 11, 15, 16, 17 and 18 and Interrogatories Nos. 4, 5, 6 and 7. On May 25, 2001, TCG filed its Motion to Compel and Request for Expedited Order. On June 1, 2001, BellSouth filed its Opposition to TCG's Motion to Compel (Response). At the prehearing conference held May 30, 2001, the parties were directed to try to resolve the outstanding discovery disputes. The parties were further directed to inform Commission staff regarding any remaining outstanding discovery disputes by filing a supplemental pleading.



Pending Discovery Disputes

In its Motion, TCG requested that BellSouth be required to respond to PODs Nos. 2, 4, 5, 7, 8, 9, 10, 11, 15, 16, 17 and 18 and Interrogatory Nos. 4, 5, 6 and 7. BellSouth in its Response indicated that despite its objections, responses have been provided for PODs Nos. 2, 4, 5, 7, 8, 9, 10, 11, and 18, as well as, partial responses to Interrogatories Nos. 4 and 5. As noted above, the parties were instructed to provide a supplemental filing outlining any remaining discovery disputes.

At the June 12, 2001, Agenda Conference, Counsel for TCG represented that TCG had been unable to complete its review of all the documents provided by BellSouth to determine if the responses were complete. Counsel was again directed to contact staff counsel by the end of the day regarding any outstanding discovery dispute. TCG's counsel called staff counsel on June 12, 2001, but could not indicate what discovery dispute, if any, remains outstanding. As of June 13, 2001, no supplemental pleading has been filed regarding the remaining outstanding discovery. As noted at the prehearing conference, the discovery cutoff date is June 15, 2001, one week prior to hearing.

BellSouth has provided responses to PODs Nos. 2, 4, 5, 7, 8, 9, 10, 11, and 18. Moreover, TCG did not file a supplemental pleading indicating otherwise. As such, no ruling is necessary on TCG's Motion to Compel with regard to the above-referenced PODs. The PODs and Interrogatories for which BellSouth has not provided a response or a complete response are addressed below.

Requests for Production Nos. 15, 16 and 17

TCG's PODs 15, 16, and 17, read as follows:

Request # 15 - Produce any FCC, Florida Public Service Commission, or Court Rulings or Orders that have required ALECs to accept and comply with a unilateral "notice" from BellSouth of its position to withhold payment for all ISP-bound traffic without arbitrating the issue before the Florida Public Service Commission.

Request #16 - Produce any FCC, Commission, Court Rulings or Orders that have required ALECs to accept and comply with any ILEC's unilateral "notice" of its position to withhold payment for all ISP-bound traffic without arbitrating the issue.

Request #17 - Produce any Orders by the Florida Public Service Commission after BellSouth's August 12, 1997 letter to ALECs addressing whether ISP-bound traffic is treated as local in any of BellSouth's interconnection agreements.

In its Motion, TCG asserts that it is requesting BellSouth to produce these documents because of BellSouth witness Shiroishi's testimony regarding reciprocal compensation. TCG contends that these documents go to the heart of the issues in this docket and that BellSouth's objections are specious.

In its Response, BellSouth objects to these PODs on the grounds that the PODs address other cases and are not relevant to the contract dispute with TCG. BellSouth also claims that these requests are public records and are accessible to TCG. In its Response, BellSouth did not address its objection to POD 15.

Interrogatories Nos. 4 and 5

In its Motion, TCG states that Interrogatories Nos. 4 and 5 are as follows:

Interrogatory #4- State the total dollar amount of reciprocal compensation that BellSouth has not paid to TCG as a result of BellSouth excluding from its payments the minutes it deemed to be ISP-bound traffic from February 8, 1996 through April 30, 2001, for the state of Florida.

Interrogatory #5 - State the total amount of MOUs that BellSouth has excluded from its payments to TCG as a result of BellSouth's calculations of ISP-bound traffic from February 8, 1996 through April 30, 2001, for the state of Florida.

In its Motion, TCG asserts that the information requested in these interrogatories is relevant to Issues 2, 3, 4(a) and 4(b) contained in Order No. PSC-01-0833-PCO-TP, issued March 30 2001, Order Establishing Procedure. TCG contends that BellSouth's method of calculating ISP-bound traffic and MOUs for the time frame indicated above are reasonably calculated to lead to the discovery of admissible evidence concerning the reliability of BellSouth's calculations.

In its Response, BellSouth objects to Interrogatories Nos. 4 and 5 on the grounds that the requested information relates to years in which the Second BellSouth/TCG agreement was not in effect. BellSouth claims that issues of reciprocal compensation for time periods before the execution of the Second TCG Agreement were disposed of with Order No. PSC-98-1216-FOF-TP in which the Commission interpreted the First TCG Agreement. Information for the period after the Second BellSouth/TCG Agreement is not relevant because the agreement is no longer in effect. BellSouth provided the requested information for the term of the Second BellSouth/TCG Agreement. BellSouth still objects to these interrogatories to the extent indicated above.

Interrogatories Nos. 6 and 7

In its motion, TCG states that Interrogatories 6 and 7 are as follows:

Interrogatory #6 - State the total dollar amount of reciprocal compensation that BellSouth has not paid to all ALECs as a result of BellSouth's excluding from its payments the minutes it deemed to be ISP-bound traffic from February 8, 1996 through April 30, 2001, for the state of Florida.

Interrogatory #7 - State the total amount of MOUs for which BellSouth has refused compensation for ISP-bound traffic to all ALECs based on its calculations from February 8, 1996 through April 30, 2001, in the state of Florida.

TCG claims that the answers to these questions are relevant to Issues 2, 3, 4(a) and 4(b). TCG states that these answers will

provide information about the reliability and accuracy of BellSouth's calculations of ISP-bound traffic and are reasonably calculated to lead to admissible evidence.

In its Response, BellSouth objects to these interrogatories because these interrogatories seek information for time periods before and after the Second BellSouth/TCG Agreement and seek information regarding all ALECs in the state of Florida.

Decision

Rule 1.280(b)(1), Rules of Civil Procedure, states that "[i]t is not ground 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." TCG's discovery requests for PODs Nos. 15, 16, and 17, as well as, Interrogatories Nos. 4, 5, 6, and 7, appear to be reasonably calculated to lead to the discovery of admissible evidence.

TCG's Motion is granted with the condition stated below regarding PODs Nos. 15, 16, and 17, and Interrogatories Nos. 4, 5, 6, and 7. By June 15, 2001, BellSouth is hereby compelled to provide responses to PODs Nos. 15, 16 and 17, and Interrogatories Nos. 4, 5, 6 and 7. Should BellSouth in good faith be unable to provide a response, BellSouth shall state specifically the reasons why it is unable to respond. Regarding PODs Nos. 2, 4, 5, 7, 8, 9, 10, 11, and 18, no ruling is necessary as discussed previously.

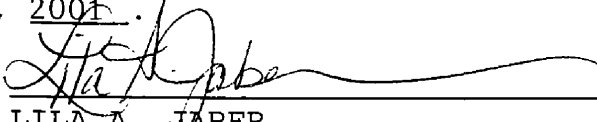
Based on the foregoing, it is

ORDERED by Commissioner Lila A. Jaber, as Prehearing Officer, that TCG South Florida and Teleport Communications Group's Motion to Compel and Request for Expedited Order is hereby granted as set forth in the body of this Order. It is further

ORDERED that BellSouth Telecommunications, Inc. shall provide responses to TCG South Florida and Teleport Communications Group's Requests for Production of Documents Nos. 15, 16, and 17, and Interrogatories Nos. 4, 5, 6, and 7, by June 15, 2001.

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By ORDER of Commissioner Lila A. Jaber as Prehearing Officer,
this 14th day of June, 2001.



LILA A. JABER
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.