

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Consideration of  
BellSouth Telecommunications,  
Inc.'s entry into interLATA  
services pursuant to Section 271  
of the Federal Telecommuni-  
cations Act of 1996.

DOCKET NO. 960786A-TL  
ORDER NO. PSC-01-1979-PCO-TL  
ISSUED: October 5, 2001

ORDER GRANTING FDN'S MOTION TO COMPEL

Part II of the Federal Telecommunications Act of 1996 (the Act), P.L. 104-104, 104th Congress 1996, provides for the development of competitive markets in the telecommunications industry. Part III of the Act establishes special provisions applicable to the Bell Operating Companies (BOCs). In particular, BOCs must apply to the FCC for authority to provide interLATA service within their in-region service areas. The FCC must consult with the Attorney General and the appropriate state commission before making a determination regarding a BOC's entry into the interLATA market. See Subsections 271(d)(2)(A) and (B). With respect to state commissions, the FCC is to consult with them to verify that the BOC has complied with the requirements of Section 271(c) of the Act.

On June 28, 1996, we opened this docket to begin to fulfill our consultative role on the eventual application of BellSouth Telecommunications, Inc. for authority to provide in-region interLATA service. On June 12, 1997, Order No. PSC-97-0703-PCO-TL, Second Order Establishing Procedure, was issued. That Order established the hearing schedule in the case and required BellSouth to submit specific documentation in support of its Petition, which was scheduled to be filed on July 7, 1997. On July 2, 1997, Order No. PSC-97-0792-PCO-TL, Order Modifying Procedural Schedule, was issued. That Order set out additional issues to be addressed. After hearing, having considered the record, by Order No. PSC-97-1459-FOF-TL, issued November 19, 1997, we rendered findings on whether BellSouth had met the requirements of Section 271(c). Specifically, we found that BellSouth was not eligible to proceed under Track B at that time, because it had received qualifying requests for interconnection that if implemented would meet the requirements of Section 271(c)(1)(A), also known as Track A.

DOCUMENT NUMBER-DATE

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FPSC-COMMISSION CLERK

Our evaluation of the record on whether BellSouth met the requirements of Section 271(c)(1)(A) indicated that while there was a competitive alternative in the business market, there was not sufficient evidence to determine whether there was a competitive alternative in the residential market. Thus, based on the evidence in the record, we found that BellSouth had not met all of the requirements of Section 271(c)(1)(A). This Commission found that BellSouth had met checklist items 3,4,8,9,10,11,12,13, and the majority of checklist item 7. BellSouth had not met the requirements of checklist items 1,2,5,6, and 14. BellSouth had met the requirements of several checklist items in this proceeding, and therefore, we indicated it may not be required to relitigate those issues before us in a future proceeding. We did find, however, that when BellSouth refiles its 271 case with us, it must provide us with all documentation that it intends to file with the FCC in support of its application. Finally, we found that we could not approve BellSouth's SGAT at that time.

On March 6, 2001, BellSouth filed a Motion to Request Scheduling Conference. On March 28, 2001, a status conference was conducted with all of the parties. Thereafter, by Order No. PSC-01-0832-PCO-TL, issued March 30, 2001, the schedule for this proceeding was established. On April 24, 2001, I conducted an Issues Identification Conference to discuss which issues needed to be identified for resolution in this proceeding and to hear argument on any disputed issues. Thereafter, I issued Order No. PSC-01-1025-PCO-TL on April 25, 2001. In that Order, I defined the issues to be addressed in this proceeding and specifically excluded certain issues proposed by the parties. On May 2, 2001, the Florida Competitive Carriers Association (FCCA) and AT&T Communications of the Southern States, Inc., (AT&T) (herein jointly referred to as FCCA/AT&T) filed a Motion for Reconsideration of Order No. PSC-01-1025-PCO-TL. That same day, MCI WorldCom, Inc., (WorldCom) also filed a Motion for Reconsideration. On May 9, 2001, BellSouth filed its Responses to the Motions for Reconsideration. By Order No. PSC-01-1252-FOF-TP, issued June 5, 2001, the Motions for Reconsideration were denied. A hearing is currently scheduled for October 11-12 and 17-19, 2001.

On September 28, 2001, Florida Digital Network, Inc. (FDN) filed a Motion to Compel BellSouth Telecommunications, Inc. to Respond to Discovery. FDN seeks a response to its Document Request

No. 1 served on BellSouth on September 6, 2001, in which it asked BellSouth to "[p]rovide all documents referring or relating to projected or actual market share results from BellSouth winback programs in Florida." Instead of providing the requested information, BellSouth served its objection on FDN on September 17, 2001. In its objection, BellSouth argued "that [the request was] not relevant and not reasonably calculated to lead to the discovery of admissible evidence." BellSouth further argued that "[w]inback programs are not within the scope of section 271 of the Telecommunications Act and therefore not relevant to this proceeding." The purpose of FDN's motion to compel is to have the Commission order BellSouth to provide the documents requested by FDN in its Document Request No. 1.

In support of its motion, FDN argues that BellSouth should produce the requested documents because BellSouth has submitted evidence in this case that is designed to prove that competition in Florida's local exchange market is viable, irreversible, and sustainable. According to FDN, because winback programs exist to enhance BellSouth's market share, FDN is entitled to know the intent behind and extent of BellSouth's winback results in order to test the validity of evidence that BellSouth argues is proof that local competition is viable, irreversible, and sustainable.

BellSouth responded in opposition to FDN's motion to compel on October 2, 2001. BellSouth argues that the reasoning behind FDN's motion is flawed because of the arguments raised by FDN in its Motion to Strike Portions of Prefiled Surrebutal Testimony and Exhibit of BellSouth Telecommunications, Inc. filed September 7, 2001. BellSouth points out that in that motion, FDN argued that I had already ruled that BellSouth's winback activities are outside the scope of this proceeding. BellSouth also argues that the information requested by FDN is not necessary to analyze the status of competition in Florida. According to BellSouth, if FDN truly intended to test the validity of BellSouth's evidence regarding the status of competition, it should have asked for the underlying data supporting Mr. Wakeling's affidavit and Ms. Cox's rebuttal testimony. Finally, BellSouth argues FDN's motion should be denied because the information sought is irrelevant to this proceeding.

Under Rule 28-106.206, Florida Administrative Code, the rule of civil procedure that governs the scope of permissible discovery

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in civil proceedings, Rule 1.280, Florida Rules of Civil Procedure, is applicable in this proceeding as well. Rule 1.280(b)(1), Florida Rules of Civil Procedure, provides that "[p]arties may obtain discovery regarding any matter, not privileged, that is relevant to the subject matter of the pending action . . . ." The rule of civil procedure further 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."

Having reviewed and considered the pleadings, I find that FDN's motion shall be granted. I find that FDN's request could lead to the discovery of information that would be admissible at hearing. BellSouth shall comply with FDN's Document Request No. 1 by Tuesday, October 9, 2001.

Based on the foregoing, it is

ORDERED by Commissioner J. Terry Deason, as Prehearing Officer, that Florida Digital Network, Inc.'s Motion to Compel BellSouth Telecommunications, Inc. to Respond to Discovery shall be granted. BellSouth shall provide the requested documents by Tuesday, October 9, 2001.

By ORDER of Commissioner J. Terry Deason, as Prehearing Officer, this 5th day of October, 2001.

  
J. TERRY DEASON  
Commissioner and Prehearing Officer

( S E A L )

MAH

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 the Commission Clerk and Administrative Services, 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.