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January 17, 2003

Mrs. Blanca S. Bayó
Division of the Commission Clerk and
Administrative Services
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

Re: Docket No. 020507-TL (FCCA Complaint)

Dear Ms. Bayó:

Enclosed is an original and fifteen copies of BellSouth Telecommunications, Inc.'s Second Emergency Motion to Compel Against the Florida Competitive Carriers Association, which we ask that you file in the captioned docket.

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,


Meredith E. Mays (KA)

Enclosure

cc: All Parties of Record
Marshall M. Criser III
R. Douglas Lackey
Nancy B. White

476661

DOCUMENT NUMBER DATE

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FPSC-COMMISSION CLERK

**CERTIFICATE OF SERVICE
DOCKET NO. 020507-TL**

I HEREBY CERTIFY that a true and correct copy of the foregoing was served via Electronic Mail and Federal Express this 17th day of January 2003 to the following:

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Meredith Mays (CA)

(+) Signed Protective Agreement

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Complaint of the Florida)
Competitive Carriers Association) Docket No. 020507-TL
Against BellSouth Telecommunications, Inc.)
And Request for Expedited Relief) Filed: January 17, 2003
_____)

BELLSOUTH TELECOMMUNICATIONS, INC.'S
SECOND EMERGENCY MOTION TO COMPEL AGAINST
THE FLORIDA COMPETITIVE CARRIERS ASSOCIATION

I. INTRODUCTION

BellSouth Telecommunications, Inc. ("BellSouth") files this second emergency motion seeking an immediate order from the Florida Public Service Commission ("Commission") compelling the Florida Competitive Carriers Association ("FCCA") to respond fully and completely to BellSouth's Third Set of Interrogatories. On December 26, 2002, BellSouth served interrogatories and requests for production on FCCA seeking answers to specific questions directly related to FCCA's rebuttal testimony, which testimony was filed on December 23, 2002. Although the FCCA responded to most of BellSouth's interrogatories on January 15, 2003, certain responses were evasive and failed to fully address the questions asked. In addition, as to two interrogatories, the FCCA objected, in relevant part, on the basis that the discovery sought information from a member company. Such objections are without merit. *See* Order No. PSC-03-0084-PCO-TL, issued January 10, 2003.

In order to avoid having to involve the Commission in discovery issues, BellSouth emailed counsel for FCCA outlining its concerns with the responses and objections provided. A copy of this email is attached. By close business January 16, 2003, BellSouth had not received any response from FCCA. To the extent the FCCA supplements its responses after the filing of

this motion, then BellSouth will not object to withdrawing the motion. In the meantime, however, in light of the current schedule BellSouth respectfully requests the Commission grant BellSouth's emergency motion to compel and order FCCA to provide complete responses to BellSouth's discovery requests in advance of the January 30, 2003 hearing.

II. DISCUSSION

A. **FCCA's Incomplete Answers Fail to Meet its Discovery Obligation**

Under Florida law, "an evasive or incomplete answer shall be treated as a failure to answer." *See* Rule 1.380 (3) of the Florida Rules of Civil Procedure. Moreover, parties are required to disclose information in their possession at the time responses are provided. *See Shearson Lehman Hutton, Inc. v. Lambros*, 135 F.R.D. 195, 198-199 (U.S. Dist. Ct. M.D. Fla. 1990). In response to interrogatories, parties must indicate the underlying facts. *Id.* As to expert witnesses, parties are permitted to discover facts known and opinions held, including "the substance of the facts and opinions to which the expert is expected to testify." Rule 1.280 (4) of the Florida Rules of Civil Procedure. The FCCA's responses to the interrogatories below fail to comply the requirements of Florida law. Accordingly, this Commission should order the FCCA to provide BellSouth with complete responses.

Interrogatory 43. Does Mr. Bradbury claim to be a witness qualified by education, training or experience to give an expert opinion on economic matters?

FCCA Response: Mr. Bradbury is qualified by education, training and experience to opine upon all of the matters discussed in his rebuttal testimony submitted in this docket.

Argument

The FCCA's answer is unresponsive to the request. In his rebuttal testimony at page 8, Mr. Bradbury testified that:

While Mr. Gillan is the economist and has addressed the lack of any economic rationale for BellSouth's behavior (other than its desire to protect its position as the

voice monopolist), I would note that BellSouth's policy is economically unsound. Willfully disconnecting revenue-paying customers from in-service investments in the first instance and refusing to place installed investments into revenue-producing service in the second is a decision that makes no sense.

Mr. Bradbury's testimony provides an opinion that "BellSouth's policy is economically unsound." BellSouth's Interrogatory 43 asked whether Mr. Bradbury claimed to be qualified to give an expert opinion on economic matters. FCCA's response does not state that Mr. Bradbury claims to be an expert on anything, but merely opines that he is qualified to opine on the matters covered by his testimony. The answer is not responsive. If Mr. Bradbury is claiming to be testifying as a lay witness on the subject of what is economically sound, as opposed to being an expert witness, BellSouth is entitled to know that.

Interrogatory 44. If the answer to Interrogatory 43 is anything other than an unqualified negative answer, please provide detailed information about why Mr. Bradbury believes he should be so qualified and identify every proceeding Mr. Bradbury is aware of where he has been qualified as a witness who could give expert testimony on economic matters.

Response: Mr. Bradbury's educational and professional background is summarized on pages 1-3 of his rebuttal testimony submitted in this docket. Additional information on Mr. Bradbury's education, employment and training is attached hereto. Further, since 1997, Mr. Bradbury has provided testimony, similar in scope to that presented in this docket, multiple times in each of the nine states in the BellSouth region, including testimony before the Florida Public Service Commission in various dockets related to section 271 matters and arbitrations. The forums in which Mr. Bradbury has provided such testimony is a matter of public record.

Argument

The FCCA's response to Interrogatory No. 44 is completely non-responsive to a fairly clear question. Mr. Bradbury, as evidenced by the quote from his testimony, has given an opinion regarding whether BellSouth's policy is economic or not. The answer to Interrogatory 43, to the extent it was answered, was answered in the affirmative. Therefore, if Mr. Bradbury claims to be qualified to give an opinion as an expert witness on economic matters, BellSouth is entitled to know where Mr. Bradbury has been qualified as a witness who could give expert

testimony on economic matters by a commission or a court. *See* Rule 1.280 (4), Florida Rules of Civil Procedure. Responding to Interrogatory No. 43, is simple -- either Mr. Bradbury has been specifically qualified by a court or a commission as a person who could give expert witness testimony on economic matters, or he has not.

Interrogatory 51. Please provide a detailed statement of the facts upon which Mr. Bradbury relies if he claims that he has more experience, more understanding or has more knowledge of the operation of BellSouth's provisioning systems (and also the ordering, billing, repair, and maintenance systems), than Mr. Milner, such that Mr. Bradbury's opinion regarding whether it would take a very large, complex, and detailed internal system change to convert BellSouth's wholesale DSL service or FastAccess® service into offerings available to ALECs, is more accurate than Mr. Milner's opinion.

Response. The FCCA has objected to this interrogatory. Without waiving its objections, the FCCA states that BellSouth's interrogatory is based upon a proposition or requirement that is not contained within the FCCA's Complaint or the identified issues. Specifically, BellSouth's interrogatory encompasses a requirement "to convert BellSouth's wholesale DSL service or FastAccess® service into offerings available to ALECs." Neither the FCCA Complaint nor the identified issues contain such a requirement. The issues at hand are the provisioning of FastAccess® service to existing end users already purchasing the service and end users desiring to purchase BellSouth FastAccess® service in areas in which it is otherwise available. ALECs do not purchase FastAccess®, offer FastAccess® to their customers, or receive any financial return when BellSouth provides FastAccess® to such customers.

The facts supporting Mr. Bradbury's position are included in his rebuttal testimony at page 12, line 1 through page 14, line 8 and at page 6, lines 11-21.

Argument

The above FCCA response is also non-responsive. Interrogatory 51 does not relate to the language in FCCA's complaint, or to the wording of the issues in this proceeding. Instead, this interrogatory goes directly to the rebuttal testimony that Mr. Bradbury has filed, and certain claims that he has made in that testimony. Specifically, in Mr. Bradbury's testimony, at pages 5 and 6, he states:

Collectively, BellSouth's witnesses claim that providing FA Service to *its own existing customers* or to consumers who want to be BellSouth FA Service customers,

when they receive voice service from an ALEC, will cause harm to BellSouth and the consumers of Florida because of vaguely described operational issues, including:

- ALEC control over the entire loop (in both UNE-P and UNE-L situations)
 - Permission for BellSouth to use the high frequency portion of the loop (HFPL)
 - BellSouth does not have any means to determine if any one of the hundreds of ALECs in the BellSouth region has granted authorization for BellSouth to access the HFPL for any given loop.
 - Negotiating rates, terms and conditions
- Additional operational costs
 - Inability to “take full advantage of its DSL investments”
 - Unexplained “additional costs” to continue service to its own customers
- Would require that BellSouth provide
 - Terminating ATM circuit
 - Help Desk
 - Installation Services
 - Access to the Internet
 - Customer Premises Equipment
- BellSouth would have to develop an alternative method of billing
- The “telephone” number is the driver for provisioning, maintenance, billing and record-keeping.
 - All systems and “hundreds” of supporting sub-systems.
 - UNE-P and UNE-L wipe numbers from BellSouth systems.
 - BellSouth’s database does not include loop information for facilities-based ALEC telephone numbers, and BellSouth cannot use its database to readily determine whether a given loop is DSL compatible.
 - Systems “would have to be totally revamped.”
 - **Very large, complex, and detailed internal system change**
 - Massive amount of expensive and time consuming “re-writes”
 - Very large amount of resources.
- Providing DSL signals over ALEC UNE-L loops is a “technical challenge,” and requires “additional equipment.”
- Mechanized maintenance and trouble isolation systems cannot be used on stand-alone loops purchased by ALECs.
- Providing service to BellSouth’s customers “is simply not feasible.”

None of BellSouth’s witnesses provide any information or data to support these vague claims. And, as I will explain below, none of these allegations impose any significant administrative or operational burden upon BellSouth’s ability to provide FA Service to its own existing and potential customers. BellSouth’s claims are exaggerated, misleading, based on partial truths, and even where partially true, have been eliminated or mitigated by existing procedures and systems presently available to BellSouth.

(Footnotes omitted; Emphasis added)

At footnote 6, which relates to that portion of Mr. Bradbury's testimony in which the highlighted text above is found, Mr. Bradbury refers to Mr. Milner's testimony, where Mr. Milner states in pertinent part: "It would take a very large, complex, and detailed internal system change to convert BellSouth's wholesale DSL service or FastAccess service into offerings available to ALECs." Clearly the purpose of Mr. Bradbury's testimony cited above is to argue that BellSouth's testimony, and specifically the testimony Mr. Bradbury noted in his footnotes was devoid of information to support these "vague" claims. Further, Mr. Bradbury then goes on to claim that: "... as I will explain below, none of these allegations impose any significant administrative or operational burden upon BellSouth's ability to provide FA Service to its own existing and potential customers." The issue Mr. Bradbury poses is whether his, Mr. Bradbury's, opinion is correct regarding this matter, or whether Mr. Milner's opinion, with which Mr. Bradbury disagrees, is correct. Since Mr. Bradbury has raised the specter that he, Mr. Bradbury, is in a position to opine on the accuracy of Mr. Milner's testimony, BellSouth is entitled to know the facts upon which Mr. Bradbury bases any conclusion that he knows more about this subject than Mr. Milner. Objecting to this interrogatory on spurious grounds and then simply referring to Mr. Bradbury's testimony is not responsive and fails to meet the requirements of Florida law.

Interrogatory 52. For the purpose of this interrogatory, please assume that Customer A is a local customer of AT&T, and that AT&T provides Customer A's local service using UNE-P. Assume further that the Florida Public Service Commission has ordered BellSouth to provide Customer A with FastAccess[®] service, which is being provided over the high frequency portion of the loop that AT&T is using in providing local service to Customer A. Finally, assume that Customer A now has a problem with his or her FastAccess[®] service.

* * *

- vi. Is it FCCA's position that end user subscribers generally know their circuit numbers? If the answer is negative, how does Mr. Bradbury propose that

BellSouth use Customer A's circuit number to address Customer A's FastAccess[®] service problem.

- vii. If Mr. Bradbury claims that he does not know the answers to all of the foregoing subparts of this interrogatory, please state in detail the facts upon which he relies to assert, or to imply, that BellSouth can use service addresses or circuit numbers to address FastAccess[®] service problems where the ALEC is providing Customer A's voice service.

Response:

- vi. This question is not applicable to the assumptions BellSouth has established for this item.
- vii. Not applicable.

FCCA's answer is absolutely non-responsive. The question was very simple: does the FCCA maintain that end users generally know their circuit numbers? Mr. Bradbury, in response to BellSouth's contention that its FastAccess systems are driven by the subscriber's telephone number, has claimed that "Virtually all BellSouth Operations Support Systems (OSS) and associated databases can be used with equal effectiveness when presented with any one of three key identifiers – the telephone number, a circuit identification number, or the service address." (Footnote omitted). The interrogatory simply asked whether the FCCA takes the position that end users know their circuit numbers. The answer is either "yes" or "no." If the answer is "no" BellSouth simply asked how Mr. Bradbury thought, where a subscriber had a FastAccess issue, and BellSouth did not have the telephone number for the subscriber in its data base, that BellSouth could use the circuit ID associated with the line the subscriber used. If that is not Mr. Bradbury's position, the FCCA should simply say so.

Interrogatory 58. In her testimony, Ms. Lichtenberg provides the number of potential MCI customers who had BellSouth FastAccess[®] service who supposedly refused to move to MCI's local service because of the BellSouth policy Ms. Lichtenberg is complaining about. For the same period that Ms. Lichtenberg reports upon, how many BellSouth

customers with FastAccess[®] service did in fact move to WorldCom Inc.'s local service in Florida?

Response: The FCCA has objected to this interrogatory. Without waiving that objection, the FCCA states that with respect to the 5,938 rejects received from BellSouth for Florida customers from January 1, 2002 to December 12, 2002, 260 of the customers involved subsequently became MCI local customers. Again, some or all of these customers in fact may not have been receiving BellSouth DSL service and initially may have been rejected in error.

Argument

This interrogatory asked, for a specified period, how many BellSouth customers with FastAccess service in fact moved to MCI's local service. In response, FCCA answered that of the 5,938 rejects that MCI had mentioned in a previous response, 260 customers had moved to MCI. Setting aside the fact that the 5,938 "rejects" clearly do not represent 5,938 customers, the question was not limited to the "rejects" that MCI reported, but was broader than that. For instance, there could well have been customers who had BellSouth's FastAccess service who voluntarily dropped the service to move to MCI's local service offering. The FCCA should be required to either provide that number, or to admit that MCI did not track these numbers, if that is the case.

Interrogatory 62: On page 4 of her testimony, in speaking about providing FastAccess[®] service via resale, Ms. Lichtenberg states that "BellSouth should not be allowed to dictate ALECs' business plans by preventing them from using the UNE-P service delivery method (or the delivery method of their choice) authorized by this Commission for a given segment of BellSouth's retail customer base." Does Ms. Lichtenberg concede that she is requesting the Florida Public Service Commission to dictate BellSouth's business plan for its unregulated FastAccess[®] service? If the answer is other than an unqualified affirmative, please provide a detailed explanation of Ms. Lichtenberg's basis for distinguishing between what she claims BellSouth should not be allowed to do, and what the ALECs want the Florida Public Service Commission to do regarding BellSouth's FastAccess[®] service business plan.

Response: The FCCA is requesting the Commission to require BellSouth to change its DSL policy, but only as it relates to BellSouth's provision of wholesale local voice service to ALECs. The Commission is charged with opening the

Florida voice market to local competition, and thus it is entirely appropriate that the Commission should prevent BellSouth from using its inherited local voice monopoly to engage in anticompetitive practices that would serve to impair local voice competition.

Argument

Interrogatory No. 62 should have been answered directly. Ms. Lichtenberg complains that BellSouth is attempting to dictate “ALECs’ business plans.” Ms. Lichtenberg presumably understands that BellSouth’s business plan with regard to FastAccess does not contemplate selling FastAccess on a stand-alone basis. The FCCA position, as captured in Ms. Lichtenberg’s testimony, is that the Commission should order BellSouth to do something with what is an otherwise unregulated service, that is contrary to BellSouth’s business plan. The interrogatory simply asked Ms. Lichtenberg to directly answer what seems to be a rather obvious point, yet the answer to the interrogatory completely evades this simple question by providing statements more appropriate for post-hearing briefs. The FCCA should be required to give a simple and clear “yes” or “no” response before launching off into its story.

Interrogatory 66: Referring to the rebuttal testimony of Mr. Joseph Gillan, p. 18, lines 6-7, describe with particularity whether any FCCA members have explored “partner[ing] with competing DSL providers.” Also, describe with particularity when “partner[ing] with competing DSL provides . . .ma[kes] sense.” State all facts and identify all documents that support your response.

Response: The FCCA has objected to this interrogatory.

Objection: The FCCA objects on the basis that the information sought by the interrogatory is not relevant and is not reasonably calculated to lead to the discovery of admissible evidence. The FCCA further objects to this interrogatory as it requests information about the FCCA’s member companies that is not in its possession or control. The FCCA objects to this interrogatory as an impermissible attempt to seek discovery from its members who are not parties to the case.

Argument

The FCCA objected to this interrogatory on the basis that it sought information from the members of the FCCA, who are not individually parties to this proceeding. The Commission has already addressed this objection in Order No. PSC-03-0084-PCO-TL, issued January 10, 2003, and overruled objections based on such a claim. In light of this ruling, BellSouth has asked FCCA to respond to this Interrogatory. In the event that the FCCA continues to fail to respond to this interrogatory, the Commission should compel a response by the individual members of the FCCA.

Interrogatory 67: Referring to the rebuttal testimony of Jay Bradbury, p. 8, lines 9-11, is it AT&T's practice to provide discounts available when customers elect bundled service offerings generally available when the customer no longer purchases the entire bundle? State all facts and identify all documents that support your response.

Response: The FCCA has objected to this interrogatory.

Objection: The FCCA objects on the basis that the information sought by the interrogatory is not relevant and is not reasonably calculated to lead to the discovery of admissible evidence. The FCCA further objects to this interrogatory as it requests information about the FCCA's member companies that is not in its possession or control. Further, the FCCA objects to this interrogatory as an impermissible attempt to seek discovery from its members who are not parties to the case.

Argument

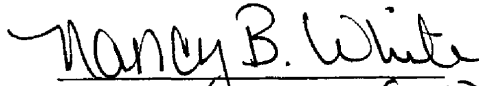
BellSouth's argument relating to this Interrogatory is as set forth above concerning Interrogatory 66; namely, the FCCA objected to this interrogatory on the basis that it sought information from the members of the FCCA, who are not individually parties to this proceeding. The Commission has already addressed this objection in Order No. PSC-03-0084-PCO-TL, issued January 10, 2003, and overruled objections based on such a claim. In light of this ruling, BellSouth has asked FCCA to respond to this Interrogatory. In the event that the FCCA

continues to fail to respond to this interrogatory, the Commission should compel a response by the individual members of the FCCA.

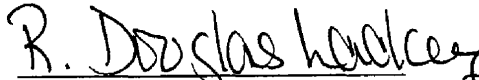
III. CONCLUSION

BellSouth respectfully requests that the Commission grant its Second Emergency Motion To Compel and order the FCCA to fully and complete respond to the Interrogatories referenced herein. BellSouth further requests that the Commission require responses in advance of the hearing in this case so that BellSouth may utilize the discovery responses in presenting its defense to the Commission.

Respectfully submitted this 17th day of January 2003.


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COUNSEL FOR BELLSOUTH
TELECOMMUNICATIONS, INC.

Attachment

-----Original Message-----

From: Mays, Meredith

Sent: Thursday, January 16, 2003 2:06 PM

To: 'Vicki Gordon Kaufman'

Subject: 020507 - FCCA's responses to BST's

Vicki,

This email is relating to FCCA's responses to BST's Third Set of Interrogatories and Requests for Production of Documents. BellSouth has specific concerns about certain responses we received and requests that the FCCA supplement its responses. Our concerns are outlined below. Given the procedural schedule in this case, we request that FCCA commit to supplement its responses by close of business today (January 16, 2002) and further request that FCCA provide BellSouth with the actual supplemental responses no later than close of business Tuesday (January 21, 2002). If we cannot reach agreement, then BellSouth intends to file the a motion to compel responses.

Interrogatory 43 - FCCA's answer was non-responsive. Mr. Bradbury testified that "BellSouth's policy is economically unsound." The interrogatory asked whether he claimed to be qualified to give an expert opinion on economic matters. If Mr.. Bradbury is claiming to be testifying as a lay witness on the subject of what is economically sound, as opposed to being an expert witness, BellSouth is entitled to know that.

Interrogatory 44 - FCCA's answer was non-responsive. Mr. Bradbury provided an opinion that "BellSouth's policy is economically unsound." BellSouth is entitled to know where Mr. Bradbury has been qualified as a witness who could give expert testimony on economic matters by a commission or a court.

Interrogatory 51 - FCCA's answer was non-responsive. This interrogatory does not relate to the language in FCCA's complaint, or even to the wording of the issues in this proceeding. Instead, this interrogatory addresses Mr. Bradbury's filed testimony and claims therein. BellSouth is entitled to know the facts upon which Mr. Bradbury bases any conclusion that he knows more about the subject of the interrogatory than Mr. Milner.

Interrogatory 52 (subpart vi) -- FCCA's answer was non-responsive. The question asked if the FCCA maintains that end users generally know their circuit numbers. The answer is either "yes" or "no." If the answer is "no" BellSouth simply asked how Mr. Bradbury thought, where a subscriber had a FastAccess issue, and BellSouth did not have the telephone number for the subscriber in its data base, that BellSouth could use the circuit ID associated with the line the subscriber used. If that is not Mr. Bradbury's position, please clarify that.

Interrogatory 58 - FCCA's answer was non-responsive. This interrogatory asked, for a specified period, how many BellSouth customers with FastAccess service in fact moved to WorldCom Inc.'s local service. In response, FCCA referred to 5,938 rejects mentioned in a previous response, stating that 260 customers had moved to MCI. The question was not limited to the "rejects" that MCI reported. There may have been customers who had BellSouth's FastAccess service who voluntarily dropped the service to move to MCI's local service offering. The FCCA should either provide that number, or to state it does not have that number.

Interrogatory 62 - FCCA's answer was nonresponsive. FCCA should provide a yes or no response. If the FCCA desires to include additional information that is fine; however a direct yes or no response should be provided.

Interrogatory 66 - Given the recent ruling, the FCCA's objection is not valid. BellSouth requests a response.

Interrogatory 67 - Given the recent ruling, the FCCA's objection is not valid. BellSouth requests a response.

If you wish to talk about BellSouth's concerns, please let me know.

Meredith
404-335-0750