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January 24, 2003

VIA HAND DELIVERY

Blanca S. Bayo, Director
Division of Records and Reporting
Betty Easley Conference Center
4075 Esplanade Way
Tallahassee, Florida 32399-0870

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Re: Docket No.: 020507-TP

Dear Ms. Bayo:

On behalf of the Florida Competitive Carriers Association (FCCA), enclosed for filing and distribution are the original and 15 copies of the following:

- ▶ The Florida Competitive Carriers Association's Response to BellSouth Telecommunications, Inc.'s Second Emergency Motion to Compel.

Please acknowledge receipt of the above on the extra copy of each and return the stamped copies to me. Thank you for your assistance.

Sincerely,



Timothy J. Perry

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Complaint of the Florida Competitive Carriers Association Against BellSouth Telecommunications, Inc. Regarding BellSouth's practice of Refusing to Provide FastAccess Internet Service to Customers who Receive Voice Service from a Competitive Voice Provider, and Request For Expedited Relief.

Docket No. 020507-TP

Filed: January 24, 2003

**THE FLORIDA COMPETITIVE CARRIERS ASSOCIATION'S
RESPONSE TO BELL SOUTH TELECOMMUNICATIONS, INC.'S
SECOND EMERGENCY MOTION TO COMPEL**

The Florida Competitive Carriers Association (FCCA), pursuant to rule 28-106.204, Florida Administrative Code, files its response to BellSouth Telecommunications, Inc.'s (BellSouth) Second Emergency Motion to Compel. The FCCA requests that the Commission enter an order denying BellSouth's motion. In support thereof, the FCCA states:

Introduction

1. The FCCA initiated this Complaint proceeding on June 12, 2002. In its Complaint, the FCCA alleges that BellSouth's policy of disconnecting or refusing to provide its FastAccess service to a consumer who selects a competitive voice provider is discriminatory and contrary to state and federal law.

2. On December 26, 2002, BellSouth served the FCCA with its Third Set of Interrogatories. The FCCA filed its Objections on January 6, 2003, and its Responses on January 15, 2003. On January 17, 2003, BellSouth filed a Motion to Compel seeking to compel the

FCCA to further respond to Interrogatory Nos. 43, 44, 51, 52, 58, 62, 66 and 67.¹ For the reasons discussed below, BellSouth's motion should be denied.

Discussion

3. BellSouth's assertions that the FCCA has failed to appropriately respond to its discovery requests are without merit. As discussed further below, the FCCA provided appropriate answers to the questions as framed. Each interrogatory is discussed individually below.

4. BellSouth's Interrogatory No. 43 states:

INTERROGATORY NO. 43: Does Mr. Bradbury claim to be a witness qualified by education, training or experience to give an expert opinion on economic matters?

The FCCA provided the following response:

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.

5. Contrary to BellSouth's assertion, the FCCA's answer to this interrogatory is responsive. As the FCCA's answer explains, Mr. Bradbury is qualified to opine on the matters discussed in his testimony. The FCCA does not claim that Mr. Bradbury is an expert witness qualified to testify on *any and all* economic matters. Rather, Mr. Bradbury's 32 years of experience in the telecommunications field are more than sufficient to qualify him by "education, training and experience" to express the opinion he has provided.

6. BellSouth's Interrogatory No. 44 states:

INTERROGATORY NO. 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

¹ On January 21, 2003, the FCCA provided supplemental responses to BellSouth's Interrogatory Nos. 58 and 62. Therefore, the portions of BellSouth's Second Motion to Compel relating to Interrogatory Nos. 58 and 62 are moot and not addressed herein.

identify every proceeding Mr. Bradbury is aware of where he has been qualified as a witness who could give expert testimony on economic matters.

The FCCA provided the following response:

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.

7. The FCCA's answer to this interrogatory is also responsive. The FCCA's answer directs BellSouth to Mr. Bradbury's testimony, which summarizes his educational and professional background supporting his ability to express his opinion in the context of this case, and provides additional detail beyond the summary. As noted above, Mr. Bradbury's education, training and experience qualify him to express the views in his testimony.

8. BellSouth's Interrogatory No. 51 states:

INTERROGATORY NO. 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.

The FCCA provided the following response:

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 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 16, lines 11-21.

9. Apparently, in this instance, BellSouth would like the FCCA to answer a question different than the one it asked. BellSouth's interrogatory asks about making FastAccess service *available to ALECs*. As the FCCA's answer accurately reflects, to the FCCA's knowledge, FastAccess is an offering made to BellSouth retail end use customers. This case is not about making FastAccess available to ALECs. Mr. Bradbury's testimony discusses BellSouth's ability to provide FastAccess service to *existing and potential retail customers*.

10. Further, BellSouth's Interrogatory No. 51 is argumentative. As BellSouth's Motion to Compel states: "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." Thus, BellSouth insinuates that Mr. Bradbury's opinion should be discredited simply because Mr. Milner is a BellSouth employee and Mr. Bradbury is not. The FCCA is not required to accept the premise of BellSouth's question and has appropriately pointed out in other responses the range and depth of Mr. Bradbury's experience in the OSS area.

11. BellSouth's Interrogatory No. 52 states:

INTERROGATORY NO. 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.

i. Where should Customer A call to report a problem with the FastAccess® service, AT&T or BellSouth?

ii. If Customer A calls BellSouth, should Customer A call the appropriate business office number for BellSouth, the appropriate repair office or the appropriate Help Desk and technical support personnel? If the answer is to call some other place, please state where Customer A should call regarding problems with his or her FastAccess® service.

iii. If Customer A calls either the BellSouth business office, or the BellSouth repair center, or the BellSouth Help Desk, based on Mr. Bradbury's extensive knowledge of BellSouth's systems, is Customer A going to be asked to provide Customer A's telephone number?

iv. If the responding BellSouth representative puts Customer A's telephone number in to the system currently available to the BellSouth representative, what is going to happen?

v. Based on the existing systems that BellSouth's representatives are using, could the BellSouth representative put the service address into the system the representative uses, and if he or she did, what would the system, as it is currently arranged, tell the BellSouth representative?

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.

The FCCA provided the following response:

RESPONSE:

i. As is indicated on page 26 of 31 of Exhibit No. __ (JMB-2), Customer A (BellSouth's FastAccess® customer) should first attempt to "solve your problem yourself by checking the BellSouth online assistance. Then if Customer A still needs assistance with BellSouth's FastAccess® service "BellSouth's Help Desk and Technical Support personnel are available 24 hours a day, seven days a week." The following contact number is provided

for BellSouth Technical Support – 1-888-321-2375, Option 1, 2, 3 for home service, or 2, 2, 2 for business service.

ii. See i. above.

iii. Yes.

iv. Using the assumptions in this item (FastAccess® over UNE-P), the BellSouth Internet Service Account User Information, including, but not limited to, user identification and service address will be returned to the BellSouth representative, unless BellSouth has taken deliberate (and unnecessary) action to prevent the information from displaying.

v. Yes, the same BellSouth Internet Service Account User Information discussed in iv. above, can be retrieved by BellSouth's representative at the Technical Support number listed in i. above using the service address. In addition that same representative is also capable of obtaining the information discussed in iv., above, starting from the customer's BellSouth Internet Service user identification (fictitious example – JMB6925@bellsouth.net).

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

vii. Not applicable.

12. BellSouth moved to compel the FCCA to supplement its answers to subparts (vi) and (vii) of Interrogatory 52. However, the FCCA's answer is responsive to BellSouth's interrogatory. As explained in the answers to the prior subparts, Bell asks the FCCA to accept an assumption that is simply incorrect. The ways that a customer may access assistance regarding FastAccess are delineated in the FCCA's prior answers.

13. BellSouth's Interrogatory No. 66 states:

INTERROGATORY NO. 66: Referring to the rebuttal testimony of Mr. Joseph Gillan, page 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 providers . . . ma[kes] sense.” State all facts and identify all documents that support your response.

The FCCA provided the following response:

RESPONSE: The FCCA has objected to this interrogatory.

The FCCA objected on the following grounds:

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.

14. The FCCA objected to this interrogatory on the basis that the interrogatory is irrelevant to the issues in this proceeding. This Complaint concerns the conduct of BellSouth, not the conduct of ALECs. Though the wording of the question is unclear, it may also be an attempt to get information from the FCCA's individual members. While BellSouth argues that, pursuant to Order No. PSC-03-0084-PCO-TL, the FCCA should be required to respond to this interrogatory, the FCCA has requested reconsideration of that order and incorporates by reference the arguments made in its Motion for Reconsideration.

15. BellSouth's Interrogatory No. 67 states:

INTERROGATORY NO. 67: Referring to the rebuttal testimony of Jay Bradbury, page 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.

The FCCA provided the following response:

RESPONSE: The FCCA has objected to this interrogatory.

The FCCA objected on the following grounds:

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.

16. BellSouth's motion to compel did not address the FCCA's objection that the information sought by the interrogatory is not relevant and is not reasonably calculated to lead to the discovery of admissible evidence. The interrogatory refers to Mr. Bradbury's testimony at page 8, lines 9-11, which reads:

Q. Are there any additional operational costs for BellSouth to continue to provide FA service to its existing customers served by UNE-P or UNE-L or to. . . .


While the cited portion of Mr. Bradbury's testimony relates to the cost of providing FastAccess service, BellSouth's interrogatory inquires about a completely unrelated topic – discounts on service offerings. There is no connection between the passage of testimony referred to in the beginning of the interrogatory, and the question posed later in the interrogatory. Further, the subject of the interrogatory – discounts on service offerings – is not the subject of the FCCA's Complaint or the issues in the case. The information BellSouth seeks is not relevant to this proceeding, and not calculated to lead to the discovery of admissible evidence.

17. In addition, BellSouth attempts to impermissibly expand the scope of the interrogatory in its motion to compel. While the interrogatory is directed to one particular FCCA member, AT&T, BellSouth's motion to compel asks the Commission to require a response from all of the members of the FCCA. BellSouth may not expand the scope of an interrogatory through a motion to compel.

18. Further, the FCCA objected to this interrogatory on the basis that the interrogatory seeks information from the FCCA's member companies who are not a party to the proceeding and whose information is not in the FCCA's possession or control. While BellSouth argues that, pursuant to Order No. PSC-03-0084-PCO-TL, the FCCA should be required to

respond to this interrogatory, the FCCA has requested reconsideration of that order and incorporates by reference the arguments made in its Motion for Reconsideration.

WHEREFORE, BellSouth's motion should be denied.



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CERTIFICATE OF SERVICE

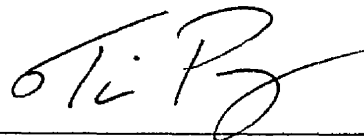
I HEREBY CERTIFY that a true and correct copy of the foregoing The Florida Competitive Carriers Association's Response to BellSouth Telecommunications, Inc.'s Second Emergency Motion to Compel has been furnished by (*) hand delivery, (**) electronic mail, or U.S. Mail this 24th day of January 2003, to the following:

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