

LAW OFFICES
Messer, Caparello & Self
A Professional Association

Post Office Box 1876
Tallahassee, Florida 32302-1876
Internet: www.lawfla.com

ORIGINAL

September 25, 2003

RECEIVED FPSC
SEP 25 AM 11:36
COMMISSION
CLERK

BY HAND DELIVERY

Ms. Blanca Bayó, Director
Division of Records and Reporting
Room 110, Easley Building
Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, Florida 32399-0850

Re: Docket Nos. ~~98~~1834-TP and 990321-TP


Dear Ms. Bayó:

Enclosed for filing on behalf of AT&T Communications of the Southern States, LLC are an original and fifteen copies of AT&T Communications of the Southern States, LLC Motion to Compel Discovery to Verizon Florida, Inc. in the above referenced dockets.

Please acknowledge receipt of these documents by stamping the extra copy of this letter "filed" and returning the same to me.


Thank you for your assistance with this filing.

Sincerely yours,


for Floyd R. Self

FRS/amb
Enclosure
cc: Tracy W. Hatch, Esq.
Parties of Record
AUS _____
CAF _____
CMP _____
COM _____
CTR _____
ECR _____
GCI _____
OPC _____
MMS _____
SEC _____
OTH _____

RECEIVED & FILED


FPSC-BUREAU OF RECORDS

DOCUMENT NUMBER DATE
09198 SEP 25 0
FPSC-COMMISSION CLERK

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition of Competitive Carriers for)
Commission action to support local competition) Docket No. 981834-TP
in BellSouth Telecommunications, Inc.'s service)
territory.)
_____)

Petition of ACI Corp. d/b/a Accelerated)
Connections, Inc. for generic investigation to)
ensure that BellSouth Telecommunications, Inc.,)
Sprint-Florida, Incorporated, and GTE) Docket No. 990321-TP
Florida Incorporated comply with obligation)
obligation to provide alternative local exchange)
carriers with flexible, timely, and cost-efficient)
physical collocation)
_____)

AT&T's MOTION TO COMPEL DISCOVERY TO VERIZON FLORIDA, INC.

In accordance with Rule 28-106.206, Florida Administrative Code, and Florida Rule of Civil Procedure 1.380(a), AT&T Communications of the Southern States, LLC ("AT&T" or the "Company") requests that the Florida Public Service Commission ("FPSC" or "Commission") or the prehearing officer enter an order compelling Verizon Florida, Inc. ("Verizon") to fully answer Interrogatory Nos. 12-14 in AT&T's 3rd Set of Interrogatories to Verizon.

On August 27, 2003, AT&T served Verizon with its Third Set of Interrogatories (Nos. 12-14). On September 5, 2003, Verizon filed its Initial Objections to the Interrogatories that incorporated ten general "boilerplate" objections, as well as specific objections to each Interrogatory. On September 16, 2003, Verizon interposed identical relevancy objections to each interrogatory, provided a response only to Interrogatory 12, and provided *no* responsive information at all to Interrogatories 13 and 14. As this Commission has recognized, discovery is

proper and may be compelled if it is not privileged and is or likely will lead to relevant and admissible information:

The test for determining whether discovery is appropriate is set forth in Rule 1.280(b)(1) of the Florida Rules of Civil Procedure which provides that "parties may obtain discovery regarding any matter, not privileged, that is relevant for the subject matter of the pending action . . . It 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." Section 90.401 of the Florida Evidence Code defines "relevance" as evidence tending to prove or disprove a material fact.

Order No. PSC-93-0652-PCO-WS, *In Re Jasmine Lakes Utilities Corporation*, Docket No. 920148-WS, dated April 28, 1993.

For the reasons stated below, AT&T's discovery requests are both relevant and likely to lead to the discovery of additional relevant and admissible information. Indeed, the information requested is integral to AT&T's case on pricing issues and is cost related. The information sought regarding Verizon's usage and usable capacity is essential in determining the existing utilization factor. The same argument holds for the reported Manufacturer's Published List 1 Drains on Verizon's installed equipment. The information sought in discovery is necessary to determine Verizon's growth expectations, which are relevant to issues of pricing and cost. Verizon's refusals to answer are thus improper, and therefore AT&T respectfully submits this Motion to Compel Verizon to provide immediately full and complete responses, without objection, to each interrogatory in AT&T's Third Set.

AT&T's Third Set of Interrogatories contains three interrogatories, two with subparts, and the Verizon responses to those Interrogatories are as follows:

INTERROGATORY NOS. 12-14

12. Does Verizon have any central offices where there are no CLEC collocation arrangements?

Response:

Yes.

13. If yes, please provide the following information for the three largest (based on total access lines served) central offices that provide switched services where collocations are not located in the buildings:

- a. The total power plant rectifier capacity.
- b. The total inventory of manufacturer's List 1 drains for the equipment installed in the central office.
- c. The latest inventory of the total current usage measurements of the power plant that depicts the total usage

Response:

As Verizon FL noted in its Initial Objections to AT&T's Third Set of Interrogatories, filed on September 5, 2003 ("Initial Objections"), in addition to its General Objections, which are incorporated herein by reference, Verizon FL objects to this Interrogatory on the grounds that it seeks information related solely to the technical phase of this proceeding, which is now closed. Specifically, AT&T is seeking to challenge the testimony given at the technical hearing by witnesses for all three ILECs that BellSouth, Sprint, and Verizon FL build power on a committed basis. But AT&T could have sought this information through discovery in advance of the technical hearing, and it could have - and did - cross-examine the ILEC witnesses at that hearing. The technical record is now closed, and it is thus too late to pursue such information. In addition, this Interrogatory seeks information in formats not maintained by Verizon FL. While Verizon FL has produced - and will continue to produce - relevant workpapers and other information in the formats used by Verizon FL, it is under no obligation to create new files for purposes of discovery.

14. For the three largest (based on access lines served) central offices that provide switched services where collocations are located in the central office building, please provide the following information:

- a. The total power plant rectifier capacity.

b. The total inventory of manufacturer's List 1 drains for the equipment installed in the central office.

c. The latest inventory of the total current usage measurements of the power plant that depicts the total usage.

Response:

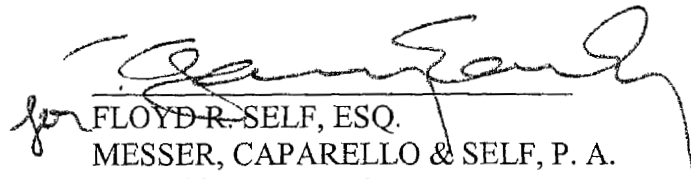
As Verizon FL noted in its Initial Objections, in addition to its General Objections, which are incorporated herein by reference, Verizon FL objects to this Interrogatory on the grounds that it seeks information related solely to the technical phase of this proceeding, which is now closed. Specifically, AT&T is seeking to challenge the testimony given at the technical hearing by witnesses for all three ILECs that BellSouth, Sprint, and Verizon FL build power on a committed basis. But AT&T could have sought this information through discovery in advance of the technical hearing, and it could have - and did cross-examine the ILEC witnesses at that hearing. The technical record is now closed, and it is thus too late to pursue such information. In addition, this Interrogatory seeks information in formats not maintained by Verizon FL. While Verizon FL has produced - and will continue to produce - relevant workpapers and other information in the formats used by Verizon FL, it is under no obligation to create new files for purposes of discovery.

While the information sought would have been relevant to the technical phase of this proceeding, that does not as a consequence make it irrelevant in the cost phase of this proceeding. As noted above, the information sought in the three interrogatories above is both relevant and likely to lead to the discovery of additional relevant and admissible information in the cost phase of this proceeding. The information will provide Verizon's usage and usable capacity and is essential in determining the existing utilization factor, as well as providing Verizon's Manufacturer's Published List 1 Drain which will provide essential information regarding Verizon's growth expectations. That type of information directly bears on the current and projected pricing of collocation and the overall cost to competitors seeking entry to the market. As a result, it is most definitely cost related and relevant to this phase of the proceeding.

CONCLUSION

For the foregoing reasons, AT&T respectfully requests that the Commission grant this Motion to Compel Discovery, and require that Verizon provide full, complete and accurate responses to Interrogatories 13 and 14 as set forth herein.

Respectfully submitted this 25th day of September, 2003.


FLOYD R. SELF, ESQ.
MESSER, CAPARELLO & SELF, P. A.
Post Office Box 1876
Tallahassee, FL 32302-1876
(850) 222-0720

and

Tracy W. Hatch, Esq.
AT&T Communications of the Southern
States, LLC
101 N. Monroe Street, Suite 700
Tallahassee, FL 32301
(850) 425-6360

Attorneys for AT&T Communications of the
Southern States, LLC

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served on the following parties by Hand Delivery (*) and/or U. S. Mail this 25th day of September, 2003.

Beth Keating, Esq.*
Division of Legal Services, Room 370
Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, FL 32399-0850

Virginia Tate, Esq.
AT&T
1200 Peachtree St., Suite 8068
Atlanta, GA 30309

Ms. Lisa Riley
AT&T
1200 Peachtree St., Suite 8068
Atlanta, GA 30309

Nancy B. White
c/o Nancy H. Sims
BellSouth Telecommunications, Inc.
150 South Monroe Street, Suite 400
Tallahassee, FL 32301

Jeffrey Whalen, Esq.
John Fons, Esq.
Ausley Law Firm
P.O. Box 391
Tallahassee, FL 32302

Mr. Terry Monroe
Ms. Genevieve Morelli
CompTel
1900 M Street, NW, Suite 800
Washington, DC 20036

William H. Weber
Senior Counsel
Covad Communications Company
1230 Peachtree Street, NE, 19th Floor
Atlanta, GA 30309

Mr. Robert Waldschmidt
Howell & Fisher
Court Square Building
300 James Robertson Parkway
Nashville, TN 37201-1107

Michael A. Gross
Vice President, Regulatory Affairs
& Regulatory Counsel
Florida Cable Telecommunications Assoc., Inc.
246 E. 6th Avenue
Tallahassee, FL 32301

Vicki Kaufman, Esq.
Joe McGlothlin, Esq.
McWhirter, Reeves, McGlothlin,
Davidson, Rief & Bakas, P.A.
117 S. Gadsden Street
Tallahassee, FL 32301

Susan S. Masterton, Esq.
Charles J. Rehwinkel, Esq.
Sprint Communications Company Limited
Partnership
P.O. Box 2214
MC: FLTLHO0107
Tallahassee, FL 32316-2214

Matthew Feil, Esq.
Florida Digital Network, Inc.
390 North Orange Avenue, Suite 2000
Orlando, Florida 32801

Mr. David Tobin
Tobin & Reyes
7251 West Palmetto Park Road, #205
Boca Raton, FL 33433-3487

Richard D. Melson
Hopping Green Sams & Smith, P.A.
P.O. Box 6526
Tallahassee, FL 32314

Ms. Nanette S. Edwards
ITC^DeltaCom
4092 South Memorial Parkway
Huntsville, AL 35802-4343

Donna McNulty, Esq.
WorldCom
1203 Governors Square Blvd, Suite 201
Tallahassee, FL 32301-2960

Mr. John D. McLaughlin, Jr.
KMC Telecom, Inc.
1755 North Brown Road
Lawrenceville, GA 30043-8119

Ms. Deborah Eversole, General Counsel
Kentucky Public Service Commission
P.O. Box 615
Frankfort, KY 40602

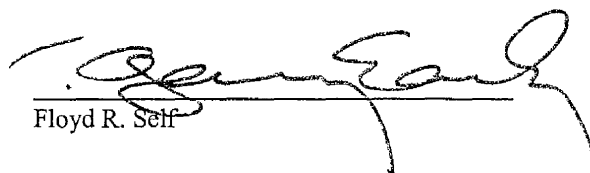
Marilyn H. Ash
MGC Communications, Inc.
3301 North Buffalo Drive
Las Vegas, NV 89129

Daniel McCuaig, Esq.
Wilmer Cutler & Pickering
2445 M Street, N.W.
Washington, DC 20037-1420

Mr. Don Sussman
Network Access Solutions Corporation
Three Dulles Tech Center
13650 Dulles Technology Drive
Herndon, VA 20171-4602

Tracy W. Hatch, Esq.
AT&T Communications of the Southern States, LLC
101 N. Monroe Street, Suite 701
Tallahassee, FL 32301

Kenneth A. Hoffman, Esq.
Rutledge Law Firm
P.O. Box 551
Tallahassee, FL 32302-0551


Floyd R. Self

Rodney L. Joyce
Shook, Hardy & Bacon LLP
600 14th Street, NW, Suite 800
Washington, DC 20005-2004

Charles J. Rehwinkel
Sprint-Florida, Incorporated
MC FLTH00107
P.O. Box 2214
Tallahassee, FL 32399-2214

Mark Buechele
Supra Telecom
1311 Executive Center Drive, Suite 200
Tallahassee, FL 32301

Andrew O. Isar
Miller Isar, Inc.
7901 Skansie Avenue, Suite 240
Gig Harbor, WA 98335

Carolyn Marek
Vice President of Regulatory Affairs
Southeast Region
Time Warner Communications
233 Bramerton Court
Franklin, TN 37069

Mr. David Christian
Verizon Florida, Inc.
106 East College Avenue, Suite 810
Tallahassee, FL 32301-7704

Kimberly Caswell
Verizon Select Services
P.O. Box 110 (FLTC0007)
Tampa, FL 33601-0110