

ORIGINAL

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Implementation of requirements
Arising from Federal Communications
Commission Triennial UNE review: Local
Circuit Switching For Mass Market Customers

Docket No. 030851-TP

Filed: October 20, 2003

**OBJECTIONS OF NETWORK TELEPHONE CORPORATION TO
BELLSOUTH'S FIRST SET OF INTERROGATORIES**

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Pursuant to the *Order Establishing Procedure*, Order No. PSC-03-1054-PCC-TP, issued September 22, 2003 ("*Procedural Order*"), Rule 28-106.206 of the Florida Administrative Code, and Rules 1.280 and 1.340 of the Florida Rules of Civil Procedure, Network Telephone Corporation ("Network Telephone") submits its preliminary objections to BellSouth Telecommunications, Inc.'s ("BellSouth") First Set of Interrogatories to Network Telephone.

Network Telephone files these objections to comply with the seven (7) day requirement set forth in the *Procedural Order*. These objections are preliminary in nature. Should additional grounds for objection be discovered as Network Telephone prepares its responses to any discovery, Network Telephone reserves the right to supplement these objections.

Further, at the time of the filing of these objections, the issues to be addressed in this proceeding have not yet been identified. Should additional grounds for objections develop as the Commission identifies the issues to be addressed in this proceeding, Network Telephone reserves the right to supplement these objections.

GENERAL OBJECTIONS

Network Telephone makes the following general objections to the First Set of Interrogatories:

1. Network Telephone objects to the "Definitions" section, the "General Instructions," and the individual items of BellSouth's First Set of Interrogatories to Network

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Telephone to the extent that they are overly broad, unduly burdensome, and/or oppressive. Network Telephone will attempt to identify specific requests to which this objection applies within the specific objections that follow.

2. Network Telephone objects to the “Definitions,” the “General Instructions,” and the individual interrogatories to the extent they seek information that is irrelevant and not reasonably calculated to lead to the discovery of admissible evidence. By way of illustration and not limitation, Network Telephone objects to interrogatories that seek information that is unrelated to or inconsistent with the methodology and parameters of the analysis of impairment prescribed by the FCC in its Triennial Review Order. Network Telephone will attempt to identify individual items to which this general objection is applicable within the specific objections that follow.

3. Network Telephone objects to the “Definitions,” the “General Instructions,” and the individual interrogatories to the extent they are vague, ambiguous, imprecise, or utilize terms that are subject to multiple interpretations but are not properly defined or explained for purposes of these Requests.

4. Network Telephone objects to the “General Instructions” and the items of BellSouth’s First Set of Interrogatories to Network Telephone to the extent that they purport to impose discovery obligations on Network Telephone that exceed the scope of discovery allowed by the applicable Florida Rules of Civil Procedure.

5. Network Telephone objects to BellSouth’s First Set of Interrogatories to Network Telephone to the extent that the interrogatories seek discovery of materials and/or information protected by the attorney/client privilege, the work product doctrine, the accountant/client privilege, or any other applicable privilege.

6. Network Telephone objects to BellSouth's First Set of Interrogatories to the extent that the requests would require disclosure of information that constitutes trade secrets and/or confidential, proprietary business information, which either should not be disclosed at all or should be disclosed (provided the information is otherwise discoverable) only pursuant to the terms of a mutually acceptable confidentiality agreement and use of the Commission's rules and procedures relating to confidential and proprietary information.

7. Network Telephone objects to all interrogatories which would require Network Telephone to provide information which is already in BellSouth's possession (as a consequence, for instance, of the billing information BellSouth uses to submit bills to Network Telephone) or is in the public record before the Commission. To duplicate information that BellSouth already has or is readily available to BellSouth would be unduly burdensome and oppressive.

8. Network Telephone objects to BellSouth's First Set of Interrogatories to the extent BellSouth seeks to impose an obligation on Network Telephone to respond on behalf of subsidiaries and/or former officers, employees, agents, and directors on the grounds that such requests for production are overly broad, unduly burdensome, oppressive, and not permitted by applicable discovery rules.

9. Network Telephone will interpret each interrogatory as relating to intrastate Florida operations within BellSouth's service area. To the extent any interrogatories are not intended to relate to Florida intrastate operations within BellSouth's Florida service area, Network Telephone objects to such interrogatories as overbroad, unduly burdensome, irrelevant, and not reasonably calculated to lead to the discovery of admissible evidence.

10. Network Telephone objects to the use of the terms "qualifying service" and "nonqualifying service" on the grounds the terms are subject to differing interpretations.

SPECIFIC OBJECTIONS TO INDIVIDUAL INTERROGATORIES

Network Telephone hereby incorporates by reference the above general objections. To the extent possible given the constraints of the seven-day preliminary objection period, Network Telephone will attempt to identify individual items that are objectionable. Network Telephone reserves the right to add to or enlarge upon these objections when it files its responses.

INTERROGATORY 7: With regard to the voice-grade equivalent lines identified by ILEC wire center area (or ILEC exchange) in response to Interrogatory 6, separate the lines by end user and end user location in the following manner:

(a) The number of end user customers to whom you provide one (1) voice-grade equivalent line;

(b) The number of end user customers to whom you provide two (2) voice-grade equivalent lines;

(c) The number of end user customers to whom you provide three (3) voice-grade equivalent lines;

(d) The number of end user customers to whom you provide four (4) voice-grade equivalent lines;

(e) The number of end user customers to whom you provide five (5) voice-grade equivalent lines;

(f) The number of end user customers to whom you provide six (6) voice-grade equivalent lines;

(g) The number of end user customers to whom you provide seven (7) voice-grade equivalent lines;

(h) The number of end user customers to whom you provide eight (8) voice-grade equivalent lines;

(i) The number of end user customers to whom you provide nine (9) voice-grade equivalent lines;

(j) The number of end user customers to whom you provide ten (10) voice-grade equivalent lines;

(k) The number of end user customers to whom you provide eleven (11) voice-grade equivalent lines;

(l) The number of end user customers to whom you provide twelve (12) voice-grade equivalent lines; and

(m) The number of end user customers to whom you provide more than twelve (12) voice-grade equivalent lines;

OBJECTION: This interrogatory asks Network Telephone to break down the total voice-grade equivalent lines identified by ILEC wire center in a prior response on the basis of “end user and end user location.” Network Telephone objects to this interrogatory on the grounds it is vague and ambiguous. The meaning of “customer location” is unclear in context. Network Telephone requests clarification of the item. Network Telephone also objects on the basis that the information sought with respect to BellSouth’s switches is known to BellSouth. Further, in the event BellSouth intends to require Network Telephone to provide the information for each customer’s address, Network Telephone objects to the interrogatory on the basis that it is onerous, unduly burdensome, and asks for confidential, proprietary information that BellSouth does not require for its legitimate discovery purposes.

INTERROGATORY 11: Identify by name, address, and CLLI code each ILEC wire center area, i.e., the territory serviced by the wire center, in which you provide qualifying service to any end user customers in Florida using an ILEC's switch either on an unbundled or resale basis. If you assert that you cannot identify or do not know how to ascertain the boundaries of a wire center area, provide the requested information for the ILEC exchange in which your end user customer is located.

OBJECTION: Network Telephone objects to this interrogatory on the grounds that, with respect to the information relating to the wire center area of a BellSouth switch used by Network Telephone, the information is already in BellSouth's possession.

INTERROGATORY 12: For each ILEC wire center area identified in the foregoing Interrogatory (or ILEC exchange if you do not provide the information by wire center area) identify the total number of voice - grade equivalent lines you are providing to end user customers in that wire center area using an ILEC's switch either on an unbundled or resale basis.

OBJECTION: Network Telephone objects to this interrogatory on the grounds it requests information -i.e., the number of lines that Network Telephone provides using BellSouth switches - that is already in BellSouth's possession.

INTERROGATORY 13: With regard to the voice-grade equivalent lines identified by ILEC wire center area (or ILEC exchange) in response to Interrogatory 12, separate the lines by end user and end user location in the following manner:

(a) The number of end user customers to whom you provide one (1) voice-grade equivalent line;

(b) The number of end user customers to whom you provide two (2) voice-grade equivalent lines;

(c) The number of end user customers to whom you provide three (3) voice-grade equivalent lines;

(d) The number of end user customers to whom you provide four (4) voice-grade equivalent lines;

(e) The number of end user customers to whom you provide five (5) voice-grade equivalent lines;

(f) The number of end user customers to whom you provide six (6) voice-grade equivalent lines;

(g) The number of end user customers to whom you provide seven (7) voice-grade equivalent lines;

(h) The number of end user customers to whom you provide eight (8) voice-grade equivalent lines;

(i) The number of end user customers to whom you provide nine (9) voice-grade equivalent lines;

(j) The number of end user customers to whom you provide ten (10) voice-grade equivalent lines;

(k) The number of end user customers to whom you provide eleven (11) voice-grade equivalent lines;

(l) The number of end user customers to whom you provide twelve (12) voice-grade equivalent lines;

(m) The number of end user customers to whom you provide more than twelve (12) voice-grade equivalent lines;

OBJECTION: Network Telephone objects with respect to BellSouth's switching on the ground that the information sought is already known to and available to BellSouth.

INTERROGATORY 15: Identify every business case in your possession, custody or control that evaluates, discusses, analyzes or otherwise refers or relates to the offering of a qualifying service using: (1) the Unbundled Network Element Platform (UNE-P), (2) self-provisioned switching, (3) switching obtained from a third party provider other than an ILEC, or (4) any combination of these items.

OBJECTION: Network Telephone objects to this interrogatory on the grounds it seeks information that is irrelevant and not reasonably calculated to lead to the discovery of admissible evidence, inasmuch as the FCC has determined that the state commissions' analysis of impairment is not to be based on individual carriers' business cases. Network Telephone also objects on the grounds that the interrogatory seeks the disclosure of commercially sensitive, confidential and proprietary business information. Network Telephone also objects because as defined within the interrogatories the term "business case" is overbroad. Network Telephone also objects because, particularly in view of the fact the information is irrelevant, requiring Network Telephone to disclose its internal analyses would be oppressive and unduly burdensome.

INTERROGATORY 16: Identify any documents that you have provided to any of your employees or agents, or to any financial analyst, bank or other financial institution, shareholder or any other person that describes, presents, evaluates or otherwise discusses in whole or in part, how you intend to offer or provide local exchange service, including but not limited to such things as the markets in which you either do participate or intend to participate, the costs of providing such service, the market share you anticipate obtaining in each market, the

time horizon over which you anticipate obtaining such market share, and the average revenues you expect per customer.

OBJECTION: Network Telephone objects to this interrogatory on the grounds that, inasmuch as the FCC has determined the state commissions' impairment analyses is not to be based on individual carriers' business modules, it seeks information that is irrelevant to the impairment analysis to be conducted by the Commission and not reasonably calculated to lead to the discovery of admissible evidence. Network Telephone also objects on the grounds the interrogatory is overbroad, oppressive, and unduly burdensome. Network Telephone objects on the grounds the interrogatory requests proprietary and confidential business information.

INTERROGATORY 17: If not identified in response to a prior Interrogatory, identify every document in your possession, custody, or control referring or relating to the financial viability of self-provisioning switching in your providing qualifying services to end user customers.

OBJECTION: Network Telephone also objects on the grounds the interrogatory seeks information that is unrelated to and inconsistent with the impairment analysis prescribed by the FCC. It is therefore irrelevant and not reasonably calculated to lead to the discovery of admissible evidence. Network Telephone objects to this interrogatory on the grounds that the request to identify "every" document is unduly burdensome and oppressive. Network also objects on the grounds the interrogatory seeks the disclosure of confidential and proprietary business information.

INTERROGATORY 20: If you offer a qualifying service outside of the MSAs identified in response to Interrogatory 19, identify those geographic areas either by describing those areas in words or by providing maps depicting the geographic areas in which you offer

such service, without regard to whether you are offering the service using your own facilities, UNE-P, resale, or in some other fashion.

OBJECTION: Network Telephone objects to this interrogatory on the grounds that BellSouth already has in its possession the information pertaining to the areas in BellSouth's service area in which Network Telephone provides qualifying services through UNE-P and resale. Network Telephone will make reasonable efforts to respond with the locations of its facilities-based customers.

INTERROGATORY 26: For those end user customers to whom you only provide qualifying service in the State of Florida, please state the average monthly revenues you receive from each such end user customer.

OBJECTION: Network Telephone objects on the grounds the interrogatory asks for information that is irrelevant to the impairment analysis prescribed in the Triennial Review Order and not reasonably calculated to lead to the discovery of admissible evidence. Network Telephone also objects to this interrogatory on the grounds it seeks confidential and proprietary business information. Further, Network Telephone interprets this interrogatory to request aggregate information. If BellSouth intended to request average monthly revenues for each individual end use customer, then Network Telephone objects on the grounds that the interrogatory is unduly burdensome and oppressive.

INTERROGATORY 34: For each class or type of end user customer referenced in Interrogatory No. 33, please state the average acquisition cost for each such end user class or type. Please provide this information for each month from January 2000 to the present.

OBJECTION: Network Telephone objects to this interrogatory on the grounds it seeks information that is unrelated to and inconsistent with the impairment analysis prescribed in

the Triennial Review Order, is therefore irrelevant to the issues in the case and the analysis to be conducted by the Commission, and is not reasonably designed to lead to the discovery of admissible evidence. Network Telephone also objects on the grounds the interrogatory seeks the disclosure of commercially sensitive, confidential and proprietary business information. Network Telephone objects to the request for information on a monthly basis since January 2000 as onerous, oppressive, unduly burdensome and beyond any legitimate discovery need.

INTERROGATORY 35: For each class or type of end user customer referenced in Interrogatory No. 33, please state the typical churn rate for each such end user class or type. Please provide this information for each month from January 2000 to the present.

OBJECTION: Network Telephone objects to this interrogatory on the grounds it seeks information that, inasmuch as it is unrelated to and inconsistent with the impairment analysis prescribed in the Triennial Review Order, is irrelevant to the issues in this case and the analysis that the Commission is to conduct, and is not reasonably calculated to lead to the discovery of admissible evidence. Network Telephone also objects on the grounds the interrogatory seeks the disclosure of commercially sensitive, confidential and proprietary information. Network Telephone also objects on the grounds that the request for monthly information beginning with January 2000 is unduly burdensome.

INTERROGATORY 39: Describe how the marketing organization that is responsible for marketing qualifying service in Florida is organized, including the organization's structure, size in terms of full time or equivalent employees including contract and temporary employees, and the physical work locations for such employees. In answering this Interrogatory, please state whether you utilize authorized sales representatives in your marketing efforts in

Florida, and, if so, describe with particularity the nature, extent, and rates, terms, and conditions of such use.

OBJECTION: Network Telephone objects to this interrogatory on the grounds that, because it relates to Network Telephone's individual business model, it is inconsistent with the analysis prescribed in the Triennial Review order, is unrelated to the analysis the Commission is to make, irrelevant to the issues in the docket and not reasonably calculated to lead to the discovery of admissible evidence. Network Telephone also objects on the basis that the interrogatory seeks the disclosure of confidential and proprietary business information. Network Telephone also objects on the grounds the interrogatory as framed is overbroad and unduly burdensome.

INTERROGATORY NO. 40: How do you determine whether you will serve an individual customer's location with multiple DSOs or whether you are going to use a DS1 or larger transmission system? Provide a detailed description of the analysis you would undertake to resolve this issue, and identify the factors that you would consider in making this type of a decision.

OBJECTION: Network Telephone objects to this interrogatory on the grounds it seeks confidential and proprietary information. Notwithstanding these objections, and without waiving them, subject to the execution of a confidentiality agreement Network Telephone will make reasonable efforts to provide responsive information.

INTERROGATORY NO. 41: Is there a typical or average number of DSOs at which you would chose to serve a particular customer with a DS1 or larger transmission system, all other things being equal? If so, please provide that typical or average number and explain how this number was derived.

OBJECTION: Network Telephone objects to this interrogatory on the grounds it seeks confidential and proprietary information. Notwithstanding these objections, and without waiving them, subject to the execution of a confidentiality agreement Network Telephone will make reasonable efforts to provide responsive information.


INTERROGATORY 43: What cost of capital do you use in evaluating whether to offer a qualifying service in a particular geographic market and how is that cost of capital determined?

OBJECTION: Network Telephone objects to the interrogatory on the grounds it seeks information that, given the determination in the Triennial Review Order that the impairment analysis is not to be based on individual carriers' business models, is irrelevant to the issues in the case and unrelated to the analysis the Commission is to conduct, and is not reasonably calculated to lead to the discovery of admissible evidence. Network Telephone also objects on the grounds the interrogatory seeks the disclosure of confidential and proprietary business information.

INTERROGATORY 44: With regard to the cost of capital you use in evaluating whether to provide a qualifying service in a particular geographic market, what are the individual components of that cost of capital, such as the debt-equity ratio, the cost of debt and the cost of equity?

OBJECTION: Network Telephone objects to this interrogatory on the grounds it seeks information that is inconsistent with the parameters of the Triennial Review Order, unrelated to the analysis the Commission is to conduct, irrelevant to the issues in the case, and not reasonably calculated to lead to the discovery of admissible evidence. Network Telephone

also objects on the grounds the interrogatory seeks the disclosure of confidential and proprietary business information.


Joseph A. McGlothlin
McWhirter, Reeves, McGlothlin, Davidson,
Kaufman & Arnold, P.A.
117 South Gadsden Street
Tallahassee, Florida 32301
(850) 222-2525
(850) 222-5606 (fax)
jmcglothlin@mac-law.com

Attorneys for Network Telephone Corporation

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Objections of Network Telephone Corporation to BellSouth's First Set of Interrogatories has been provided by (*) hand delivery, (**) email and U.S. Mail this 20th day of October 2003, to the following:

(*) (**) Adam Teitzman, Staff Counsel
Division of Legal Services
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

(**) Tracy Hatch
AT&T Communications of the
Southern States, LLC
101 North Monroe Street, Suite 700
Tallahassee, Florida 32301

(**) Nancy White
c/o Nancy Sims
BellSouth Telecommunications, Inc.
150 South Monroe Street, Suite 400
Tallahassee, Florida 32301-1556

(**) Michael Gross
Florida Cable Telecommunications
246 East 6th Avenue
Tallahassee, Florida 32302

(**) Richard Chapkis
Verizon Florida, Inc.
201 North Franklin Street
MC: FLTC0717
Tampa, Florida 33602

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

(**) Susan Masterton
Sprint Communications Company
1313 Blairstone Road
Post Office Box 2214
MC: FLTLHO0107
Tallahassee, Florida 32301

(**) Jeffrey J. Binder
Allegiance Telecom, Inc.
1919 M Street, NW
Washington, DC 20037

(**) Donna Canzano McNulty
MCI WorldCom
1203 Governors Square Boulevard
Suite 201
Tallahassee, Florida 32301

(**) Floyd R. Self
Messer, Caparello & Self
215 South Monroe Street, Suite 701
Tallahassee, FL 32301

(**) Nanette Edwards
ITC^DeltaCom
4092 S. Memorial Parkway
Huntsville, Alabama 35802


Joseph A. McGlothlin