

ORIGINAL

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February 18, 2004

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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. 030852-TP

Dear Ms. Bayó:

Enclosed are an original and fifteen copies of BellSouth Telecommunications Inc.'s Response in Opposition to FCCA's Motion to Compel, in the above referenced 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,

Nancy B White
Nancy B. White (KST)

Enclosure

cc: All Parties of Record
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Meredith Mays
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CERTIFICATE OF SERVICE
Docket No. 030852-TP

I HEREBY CERTIFY that a true and correct copy of the foregoing was served via Electronic Mail, Hand Delivery* and FedEx this 18th day of February 2004 to the following:

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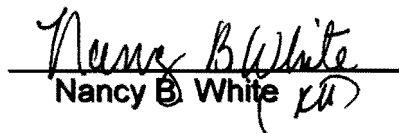
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(+) signed protective agreement
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ORIGINAL

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Implementation of requirements arising)
from Federal Communications Commission)
triennial UNE review: Location-Specific Review)
for DS1, DS3 and Dark Fiber Loops, and)
Route-Specific Review for DS1, DS3 and Dark)
Fiber Transport)
_____)

Docket No. 030852-TP

Filed: February 18, 2004

BELLSOUTH TELECOMMUNICATION, INC.'S RESPONSE IN OPPOSITION TO FCCA'S MOTION TO COMPEL

BellSouth Telecommunications, Inc. ("BellSouth") files this response in opposition to the Motion to Compel responses to FCCA's interrogatories 16-19, and certain subparts of 31-22. BellSouth has categorized the information requested as "information relevant to potential trigger candidates" and "potential deployment." BellSouth's response follows this organizational structure.

Information the FCCA Contends is Relevant to Potential Trigger Candidates – FCCA-16 - 19

With respect to the FCCA's Interrogatories 16-19, BellSouth previously advised counsel for FCCA that it would supplement its responses to the extent the information requested is readily available in BellSouth's systems. With respect to any information that may constitute CPNI, BellSouth has previously requested that parties obtain subpoenas in order to obtain carrier specific information. BellSouth will supplement its responses to these questions, and requests that the Commission either (1) issue an order or (2) require the FCCA obtain a subpoena that clearly allows BellSouth to disclose carrier specific information. The information the FCCA is requesting seeks BellSouth to disclose carrier names and seeks BellSouth to identify services purchased by these carriers. It is not clear to BellSouth that the protective order issued in this proceeding allows such disclosure; however, if the Commission has authorized such disclosure, then BellSouth simply requests clarification of that authorization.

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Information the FCCA Contends is Relevant to Potential Deployment

Concerning Interrogatories 31 – 33, the FCCA mistakenly claims, “BellSouth must demonstrate there is sufficient demand for high capacity loops for that building such that multiple competitors could justify the investment to build loop facilities into that building.” Conspicuously absent from the FCCA’s motion is a single citation to any portion of the rules or the TRO that would support this position. The FCC’s potential deployment test considers various factors “affecting the ability to economically deploy” at a particular locations. *See* TRO, ¶ 335. None of the factors listed in either the rules or the TRO suggests that BellSouth must provide some particular evidence of demand. In any event, BellSouth has provided evidence concerning the amount of spending per building as detailed in BellSouth’s prefiled testimony and the FCCA has no legitimate need for additional information and the FCCA has failed to demonstrate the relevancy of the information it has requested.

Moreover, a subpart of the FCCA’s requests, seeks to compel BellSouth to provide “each long term contract between BellSouth and tenants/customers . . . for high capacity loop, private line, or special access arrangements at the DS1, DS3, OC(3) and above, and dark fiber” Even assuming the FCCA’s request was relevant – which it is not – it would be unnecessarily oppressive and burdensome for BellSouth to attempt to search for contracts, that may not exist, for hundreds of buildings, and then provide the FCCA with “each” of them. The FCCA’s suggestion that BellSouth has not demonstrated why it would be unduly burdensome is nonsensical – simple logic dictates that the time required to for BellSouth to search its records to attempt to locate contracts for multiple buildings that may or may not exist to begin with is burdensome on its face.

The overly broad, unduly burdensome, and oppressiveness of the FCCA's discovery requests are obvious – the FCCA seeks to compel BellSouth to engage in laborious discovery to obtain information that the FCCA has failed to demonstrate any need for. The FCCA has failed to cite to any portion of the rules, the TRO, or BellSouth's testimony that would justify its requests. The FCCA has imposed no limitations whatsoever on its requests, which requests apply to hundreds of buildings. A simple mathematical equation illustrates the breadth of the FCCA's request – the FCCA's interrogatories cite 387 customer locations for which the FCCA has requested responses for four discrete subparts of three discovery responses. This results in a total of twelve requests that apply to 387 buildings; multiplying 12 and 387 equals 4,644 responses, which is well in excess of this Commission's limitation on discovery requests, which provides that "interrogatories, including all subparts, shall be limited to 750." Order No. PSC-03-1055-PCO-TP, p. 6. Moreover, the subparts of the FCCA's requests contain additional discrete parts; for example, Interrogatory 33 seeks monthly revenue for "DS1 channel terminations or equivalent, total and per DS1." This subpart contains within it two additional subparts – total and per DS1 – the FCCA cannot realistically claim that its requests are not unduly burdensome and its motion should be denied on this basis also.

III. CONCLUSION

As set forth above, BellSouth respectfully requests that the Commission: (1) authorize BellSouth to disclose any carrier specific information in connection with its planned supplemental responses to Interrogatories 16 – 19 and acknowledge that the supplemental responses shall be limited to the information that is readily available in BellSouth's systems, and (2) deny the FCCA's Motion to Compel responses to Interrogatories 31 - 33.

Respectfully submitted this 18th day of February 2004.



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