

BEFORE THE PUBLIC SERVICE COMMISSION

In re: Implementation of requirements arising from Federal Communications Commission's 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
ORDER NO. PSC-04-0235-PCO-TP
ISSUED: March 2, 2004

ORDER GRANTING VERIZON'S MOTION TO COMPEL

I. Case Background

In response to the Federal Communications Commission's (FCC) August 21, 2003, Triennial Review Order (TRO), this Commission opened two dockets to ascertain whether a requesting carrier is impaired by lack of access to certain incumbent local exchange companies' network elements.

On February 9, 2004, Verizon filed a Motion to Compel AT&T to respond to its First Set of Interrogatories 1-24, First Requests for Admission 1-2, and First Request for Production of Documents 1- 11. Verizon contends that although AT&T did provide initial responses to these requests, the responses are incomplete and do not provide the information requested. On February 16, 2004, AT&T filed its Response in Opposition to the Motion and attached thereto its supplemental response to Interrogatory 1.

II. Standard of Review

Rule 1.280(b)(1), Florida Rules of Civil Procedure, states that:

. . . Parties may obtain discovery regarding any matter, not privileged, that is relevant to the subject matter of the pending action, whether it relates to the claim or defense of the party seeking discovery or the claim or defense of any other party. . . . 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.

This standard is not, however, without limit. Relevancy for purposes of discovery is broader than relevancy and admissibility for purposes of a hearing. Discovery may be permitted on information that would be inadmissible at trial, if it would likely lead to the discovery of relevant, admissible evidence. Also see Allstate Insurance Co. v. Langston, 655 So.2d 91 (Fla. 1995). Furthermore, objections that discovery is "burdensome" or "overly broad" must be supported by a substantive demonstration as to why the discovery is objectionable. First City Developments of Florida, Inc. v. Hallmark of Hollywood Condominium Ass'n, Inc., 545 So. 2d

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502, 503 (Fla. 4th DCA 1989) Finally, assertions that information sought is subject to privilege as a “trade secret” must be set forth in such a way that parties (and the tribunal) can assess the applicability of the alleged privilege. See TIG Ins. Corp. of America v. Johnson, 799 So. 2d 339 (Fla. 4th DCA 2001).

III. Disputed Requests

Verizon asserts (a) that its discovery requests seek information regarding AT&T’s fiber optic transport facilities used to transport traffic between Verizon’s central offices, and (b) that AT&T’s objections to providing such information are based on a misapprehension of the FCC’s definition of dedicated transport. Verizon contends that AT&T must provide comprehensive information concerning its network architecture in order for this Commission to decide whether AT&T is a self-provider of transport under the meaning of the TRO and thus whether either of the unbundled transport triggers is satisfied.

In its supplemental response to Interrogatory 1, AT&T contends, based on the definition of transport in the TRO¹ and the definition provided in Verizon’s discovery², that AT&T simply does not own, maintain, or wholesale transport facilities in Florida. AT&T relies on the following rationale, provided in its response to Interrogatory No.1:

AT&T self-provides facilities that connect, for example, [AT&T’s] switch to ILEC office A and facilities that connect [AT&T’s] switch to ILEC office B using portions of a fiber that passes near/through both A and B, but does not either (1) connect A to B or (2) take on a dedicated basis and “traffic” that originates at either one to the other and therefore AT&T’s facilities are not dedicated transport as by the TRO and new FCC rule.

AT&T asserts that its original responses and the clarified supplemental response are unambiguous and responsive to the questions asked. Furthermore, AT&T argues that to the extent its responses are incorrect, or are an inaccurate reflection of AT&T’s Florida-based facilities and

¹ 47 C.F.R. §51.319(e) defines dedicated transport as “An incumbent LEC shall provide a requesting telecommunications carrier with nondiscriminatory access to dedicated transport on an unbundled basis, in accordance with section 251(c)(3) of the Act and this part and as set forth in paragraph (e)(1) through (e)(5) of this section. As used in those paragraphs, a “route” is a transmission path between one of an incumbent LEC’s wire centers or switches and another of the incumbent LEC’s wire centers or switches. A route between two points (e.g., wire center or switch “A” and wire center or switch “Z”) may pass through one or more intermediate wire centers or switches (e.g., wire center or switch “X”). Transmission paths between identical end points (e.g., wire center or switch “A” and wire center or switch “Z”) are the same “route,” irrespective of whether they pass through the same intermediate wire centers or switches, if any.

² Verizon’s discovery defined the terms “transport services” or “transport facilities” as including but not limited to transport services or facilities that directly or indirectly connect a Verizon wire center or switch to another Verizon wire center or switch.

services, then Verizon is free to either serve additional discovery on AT&T with more specific, clearly defined terminology and/or cross-examine the AT&T witness at the hearing about the facilities and services AT&T provides in Florida.

IV. Decision

This dispute between Verizon and AT&T is one of differing interpretations as to how dedicated transport is defined pursuant to the TRO. As summarized in its Response to Verizon's Motion to Compel, AT&T objects to all of Verizon's discovery requests at issue because they "seek information pertaining to AT&T's transport facilities in Florida without regard to whether or not those facilities are 'dedicated transport' facilities as defined by the TRO." We will be addressing the appropriate definition of dedicated transport in our Final Order based on evidence presented in this proceeding. It would be premature at this time to make such a determination.

Accordingly, the information sought by Verizon may be critical in identifying transport routes which satisfy the triggers set forth in the TRO. At a minimum, responses to Verizon's requests will likely lead to the discovery of relevant, admissible evidence. Therefore, I hereby grant Verizon's Motion to Compel and order AT&T to respond to Verizon's discovery to the extent it seeks information pertaining to AT&T's transport facilities. This will require AT&T to provide the requested information on its transport facilities even if these facilities are routed through an intermediate AT&T switch between Verizon central offices, or are otherwise routed in a manner that AT&T believes is not dedicated transport according to its interpretation of the TRO. AT&T shall provide the compelled responses by noon on Tuesday, March 2, 2004.

V. Conclusion

Based on the foregoing, Verizon's Motion to Compel is granted as set forth herein.


It is therefore

ORDERED by Commissioner Charles M. Davidson, as Prehearing Officer, that Verizon's Motion to Compel is granted as set forth in the body of this Order. It is further

ORDERED that AT&T shall provide the responses compelled herein by noon on Tuesday, March 2, 2004, as set forth in the body of this Order.

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By ORDER of Commissioner Charles M. Davidson, as Prehearing Officer, this 2nd
day of March, 2004.



CHARLES M. DAVIDSON
Commissioner and Prehearing Officer

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NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

Any party adversely affected by this order, which is preliminary, procedural or intermediate in nature, may request: (1) reconsideration within 10 days pursuant to Rule 25-22.0376, Florida Administrative Code; or (2) judicial review by the Florida Supreme Court, in the case of an electric, gas or telephone utility, or the First District Court of Appeal, in the case of a water or wastewater utility. A motion for reconsideration shall be filed with the Director, Division of the Commission Clerk and Administrative Services, in the form prescribed by Rule 25-22.060, Florida Administrative Code. Judicial review of a preliminary, procedural or intermediate ruling or order is available if review of the final action will not provide an adequate remedy. Such review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.