

BEFORE THE PUBLIC SERVICE COMMISSION

In re: Complaint of BellSouth Telecommunications, Inc. against Miami-Dade County for alleged operation of a telecommunications company in violation of Florida statutes and Commission rules.

DOCKET NO. 050257-TL  
ORDER NO. PSC-06-0815-PCO-TL  
ISSUED: October 3, 2006

ORDER GRANTING IN PART AND DENYING IN PART  
MOTIONS TO STRIKE AND EXTENDING DISCOVERY PERIOD

I. Case Background

On April 13, 2005, BellSouth Telecommunications, Inc. (BellSouth) filed its Complaint regarding the operation of a telecommunications company in violation of applicable Florida Statutes and Commission rules against Miami-Dade County (County). The County filed its Answer on May 24, 2005.

This Order addresses the County's Motions to Strike BellSouth's Supplements to the Preliminary Exhibit List and BellSouth's Motion for Extension of Time to Complete Discovery.

II. Parties' Arguments

*Miami-Dade Counties Motions to Strike*

On July 18, 2006, the County filed its first Motion to Strike BellSouth's Supplement to Preliminary Exhibit List on the basis that the Supplement violates the discovery procedures as set forth in Commission Order No. PSC-06-0326-PCO-TL, issued on April 21, 2006. The County asserts that BellSouth's Supplement should be stricken because BellSouth did not show good cause for filing the Supplement and the documents were not identified or produced during discovery. The County further asserts that a majority of the Supplement documents have been in BellSouth's possession and predate BellSouth's submission of its Preliminary Exhibit List. On July 17, 2006, BellSouth filed its Second Supplement to Preliminary Exhibit List (Second Supplement). On July 19, 2006, the County filed another Motion to Strike BellSouth's Second Supplement on the same basis of its first Motion.

*BellSouth's Response*

On July 19, 2006, BellSouth filed its Response to the County's first Motion to Strike. BellSouth asserts that the Motion to Strike is premature because the final exhibits lists have not been prepared or served under Commission Order No. PSC-06-0326-PCO-TL. Furthermore, BellSouth asserts that it did show good faith by putting the County on notice of its intentions to use the documents and providing the County time to address the documents in discovery.

DOCUMENT NUMBER-DATE

09116 OCT-3 06

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BellSouth asserts that good cause exists for all documents identified and produced in its two Supplements. First, BellSouth claims that the fifteen (15) documents listed in its initial Supplement were not in its possession until after the submission of its Preliminary Exhibit List. BellSouth further asserts that the documents are needed to ensure a fair and accurate presentation of the history of the Airport Exemption; therefore, good cause exists to add these documents. Second, BellSouth claims that the five (5) remaining items in BellSouth's initial Supplement are newspaper articles featuring the success of the shopping mall and stores located within the Miami International Airport. BellSouth asserts that these articles are relevant to whether the County's provision of telecommunications services to these clients falls within the Airport Exemption. In addition, BellSouth claims that a majority of these newspaper articles were not available to BellSouth at the time the Preliminary Exhibit List was served.

According to BellSouth, its Second Supplement contains a composite exhibit of several e-mails exchanged by Nextira and Commission staff. BellSouth asserts that these e-mails are directly relevant to the issues in this proceeding because they document Commission staff's concern with Nextira's need for certification, as well as the County's communication with Commission staff over the same concern. Furthermore, BellSouth claims that it obtained the e-mails after the Preliminary Exhibit List was submitted.

In the alternative, BellSouth asserts that if we grant its concurrently filed motion for extension of the discovery period, then the County's Motion to Strike could be rendered moot since the County would be able to address and respond to any documents contained in BellSouth's supplements.

#### *BellSouth's Motion for Extension of Time to Complete Discovery*

On July 19, 2006, BellSouth filed its Motion for Extension of Time to Complete Discovery in which it requests that we issue an order extending the discovery period, so it may depose a County employee who is responsible for airport security. According to BellSouth, it contacted the County with one week remaining in the discovery period and requested the deposition. Four days later the County responded and informed BellSouth that the employee had retired.

On July 20, 2006, the County filed its Response in Opposition to BellSouth's Motion for Extension of the Discovery Period. The County believes BellSouth waited too long before pursuing the deposition and should not be granted additional time to conduct a deposition. BellSouth responds it needed to review the County's discovery responses before it could determine if a deposition was necessary.

### III. Decision

Based upon the parties' arguments, I find it reasonable and appropriate to grant in part, and deny in part, the County's Motions to Strike documents contained in BellSouth's initial and Second Supplements. I find that BellSouth has shown good cause for those documents and materials that were obtained through the course of discovery. Furthermore, the news articles

published after submission of the Preliminary Exhibit List shall be allowed. Therefore, all documents and materials, except for news articles published prior to submission of the Preliminary Exhibit List, shall be allowed.

In addition, BellSouth's Motion for Extension of Time to Complete Discovery is granted and BellSouth shall have an additional thirty (30) days to conduct discovery. Within the 30 days, BellSouth shall have an opportunity to conduct its requested deposition and serve one round of discovery strictly limited to the County's customer list pursuant to the Protective Order Governing Handling of Confidential Information.

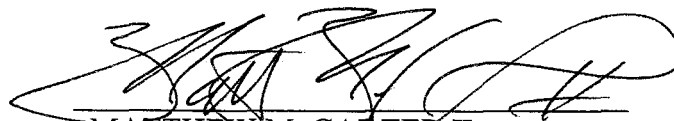
Based upon the foregoing, it is

ORDERED by Commissioner Matthew M. Carter II, as Prehearing Officer, that Miami-Dade County's Motions to Strike BellSouth Telecommunications, Inc.'s Supplement to Preliminary Exhibit List and Second Supplement to Preliminary Exhibit List is hereby granted in part, and denied in part, as set forth in the body of this Order. It is further

ORDERED that all documents and materials contained in BellSouth Telecommunications, Inc.'s initial and Second Supplements shall be allowed, except for news articles published prior to submission of the Preliminary Exhibit List. News articles published after submission of the Preliminary Exhibit List shall be allowed. It is further

ORDERED that BellSouth Telecommunications, Inc. shall have an additional thirty (30) days to conduct discovery. Within the 30 days, BellSouth Telecommunications, Inc. shall have an opportunity to conduct its requested deposition and serve one round of discovery strictly limited to Miami-Dade County's customer list pursuant to the Protective Order Governing Handling of Confidential Information.

By ORDER of Commissioner Matthew M. Carter II, as Prehearing Officer, this 3rd day of October, 2006.

  
MATTHEW M. CARTER II  
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.