

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition to Establish Generic Docket
To Consider Amendments to Interconnection
Agreements Resulting from Changes of
Law.

Docket No. 041269-TP
Filed: October 13, 2005

**COMPETITIVE CARRIERS OF THE SOUTH, INC.'S MOTION TO COMPEL
PRODUCTION OF DOCUMENTS FROM
BELL SOUTH TELECOMMUNICATIONS, INC.**

Competitive Carriers of the South, Inc. (CompSouth), pursuant to rule 28-106.303, Florida Administrative Code, file this Motion to Compel BellSouth Telecommunications, Inc. (BellSouth) to respond to CompSouth's First Request for Production of Documents (No. 1). As grounds for the motion, CompSouth states:

1. On September 21, 2005, CompSouth, pursuant to Rule 1.350, Florida Rules of Civil Procedure, and Rule 28-106.206, Florida Administrative Code, filed and served its First Request for Production of Documents (No.1) to BellSouth.

2. Production Request No.1 asked BellSouth to provide:

Separately for each state in the BellSouth region, please provide a copy of Part II of BellSouth's Form 477 Local Competition Report Response to the FCC for data as of June 30, 2005.

3. On October 3, 2005 BellSouth filed and served General and Specific Objections to this Production Request (as well as to an interrogatory).

4. BellSouth made one specific objection¹ to CompSouth's request:

BellSouth objects to Request No. 1 on the grounds that it is not relevant to the subject matter of this docket and is not reasonably calculated to lead to the discovery of admissible evidence.

¹ BellSouth included 11 "General Objections" in its objections. None of these "general" objections (other than number 5, which is the same as BellSouth's "specific" objection) are related to CompSouth's production request.

5. As this Commission is well aware, the standard for discovery is very broad and relevancy is liberally interpreted. (Order No. PSC-05-0546-PCO-TP) The information CompSouth seeks in Production Request No. 1 is clearly relevant to the issues in this docket.

6. As CompSouth explains below, the document requested is directly relevant to the number of UNE arrangements in Florida (and other states²) and, as such, is relevant to the subject matter of this docket.

7. Issues 3 and 4 in this proceeding concern how to determine the number of “business lines,” which is then used to determine whether particular wire centers satisfy certain thresholds used to determine impairment for high capacity loop and transport facilities.³ The number of UNE Loop arrangements (as well as the number of business UNE-P arrangements), are two components used by BellSouth to calculate the alleged number of Business Lines used in the impairment analysis.⁴

8. There is substantial dispute in this proceeding as to whether BellSouth correctly determined the number of UNE-L arrangements. The higher the number of UNL-arrangements that BellSouth claims, the more unbundling relief it gains. Because of this incentive, it is important to cross-check the number of UNE-L arrangements BellSouth claims here (where the

² By agreement among the parties, discovery requested in one state may be extended to all states in the BellSouth region.

³ Issue 3(i) includes the issue how should “Business Line” be defined, while Issue 4(b) asks “What procedures should be used to identify those wire centers that satisfy the FCC’s Section 251 non-impairment criteria for high-capacity loops and transport?”

⁴ Specifically, the FCC defines “Business Line” as follows (C.F.R. § 51.5):

Business line. A business line is an incumbent LEC-owned switched access line used to serve a business customer, whether by the incumbent LEC itself or by a competitive LEC that leases the line from the incumbent LEC. The number of business lines in a wire center shall equal the sum of all incumbent LEC business switched access lines, plus the sum of all UNE loops connected to that wire center, including UNE loops provisioned in combination with other unbundled elements. Among these requirements, business line tallies (1) shall include only those access lines connecting end-user customers with incumbent LEC end-offices for switched services, (2) shall not include non-switched special access lines, (3) shall account for ISDN and other digital access lines by counting each 64 kbps-equivalent as one line. For example, a DS1 line corresponds to 24 64 kbps-equivalents, and therefore to 24 “business lines.”

data is being used to identify areas of non-impairment), with the number of UNE-L arrangements that BellSouth identifies where its incentives are more neutral. The only source of state-specific UNE data that BellSouth routinely files are its biannual local competition reports with the FCC (Form 477), which is the data being requested by CompSouth in its request for production.

9. CompSouth has already identified a *substantial* discrepancy between the number of UNE-L arrangements that BellSouth claims existed in Florida at the end of 2004 with the number that of such arrangements that it filed with the FCC for the same period. This discrepancy could be inflating the number of business lines that BellSouth asserts in this proceeding by over 210,000 lines.⁵

10. The document being requested by CompSouth in its request for production is the UNE data that BellSouth provided to the FCC for the period ending June 30, 2005. This data will show whether the discrepancy identified by CompSouth is growing or declining, and thus whether the impairment claims being made by BellSouth in this proceeding are becoming more or less suspect (relative to its federal data).

11. As indicated, the data requested by CompSouth has already been filed by BellSouth and will, at some point (typically in December or early January) be publicly released by the FCC.⁶ This data is necessary for CompSouth to have the most current information concerning BellSouth's UNE volumes in order to evaluate BellSouth's claims in this proceeding with respect to Issues 3 and 4. The data is directly relevant to the issues and will be provide critical admissible evidence concerning one of the key issues in the proceeding (*i.e.*, has BellSouth properly calculated the number of business lines).

⁵ See CompSouth Supplemental Response to Staff's Interrogatory No. 27, filed October 12, 2005.

⁶ <http://www.fcc.gov/wcb/iatd/comp.html>

12. Counsel for CompSouth has contacted counsel for BellSouth in an attempt to resolve this discovery dispute; however, BellSouth counsel has stated that BellSouth will not respond to this request.

WHEREFORE, CompSouth requests that the Commission grant this motion to compel and require BellSouth to immediately provide CompSouth with the documents responsive to Request for Production of Documents No.1.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Motion To Compel Production Of Documents From Bell South Telecommunications, Inc. was served on the following by electronic mail or U.S. Mail this 13th day of October 2005:

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