

ORIGINAL
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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Expanded Interconnection)
Phase II and Local Transport)
Restructure)

DOCKET NO. 921074-TP
DOCKET NO. 930955-TL
DOCKET NO. 940014-TL
DOCKET NO. 940020-TL
DOCKET NO. 931196-TL
DOCKET NO. 940190-TL

FILED: 08/16/94

INTERMEDIA COMMUNICATIONS OF FLORIDA, INC.'S
OBJECTIONS TO SOUTHERN BELL'S FIRST SET OF
INTERROGATORIES AND REQUEST FOR PRODUCTION
OF DOCUMENTS AND MOTION FOR PROTECTIVE ORDER

Intermedia Communications of Florida, Inc. ("ICI"), pursuant to Order No. PSC-94-0076-PCO-TL issued January 21, 1994, in this docket, Rules 25-22.006(5), 25-22.029(4), 25-22.034 and 25-22.0335(3), Florida Administrative Code, and Rules 1.280(c) and 1.340, Florida Rules of Civil Procedure, hereby files its Objections to BellSouth Telecommunications, Inc. d/b/a Southern Bell Telephone and Telegraph Company's ("Southern Bell") First Set of Interrogatories and First Request for Production of Documents

ACK _____ (see Attachment No. 1) and requests the Prehearing Officer to enter
AFA _____ a Protective Order determining that ICI is not required to Southern
APP _____ Bell's Interrogatories Nos. 2, 3, 4, 5, 6, and 8 nor produce the
CAF _____ documents requested in Southern Bell's Request for Production of
CMU *Reith* Documents Nos. 1 and 2.
CTR _____
EAG _____

LEG *Canjano* REQUEST FOR EXCEPTION TO ORDER NO. PSC-94-0076-PCO-FL

LIN 4 1. Southern Bell filed and served this discovery on ICI on
OPC _____ July 12, 1994. Under paragraph b of Order No. PSC-94-0076-PCO-TL,
RCY _____
SEC 1 ICI had until July 22, 1994, to object to the discovery.
WAS _____ Unfortunately, the discovery was apparently received at counsel's
OTH _____

DOCUMENT NUMBER-DATE

08339 AUG 16 94

FPSC-RECORDS/REPORTING

office combined with and obscured by Southern Bell's discovery on another party. The discovery on ICI was not recognized until August 1, 1994, during routine review of the file. Consequently, ICI was not able to object within ten days of the service date of the discovery. ICI thus requests that it be allowed to file this its objections, the literal requirements of paragraph b notwithstanding.

2. Counsel for ICI has been in contact with counsel for Southern Bell, and both parties are cautiously optimistic that this discovery dispute will be resolved without intervention of the Prehearing Officer. Thus, this motion is being filed to satisfy the purposes of paragraph b: to facilitate the timely resolution of discovery disputes.

ARGUMENT

3. As detailed below, if necessary the Prehearing Officer should grant ICI's Motion for Protective Order ("Motion") for the following reasons:

(a) information that Southern Bell requests constitutes "proprietary confidential business information" as defined and described in Section 364.183, Florida Statutes.

(b) the requests are overly broad in scope and would be unreasonably burdensome, expensive, oppressive and/or excessively time consuming to satisfy.

SPECIFIC REQUESTS AND OBJECTIONS

Interrogatory No. 2: List any service or services under development by your company or any of its affiliates or any services being considered as an offering to interexchange carriers or large end users within the next three years. For each service listed, describe how the service can be utilized by a customer and what type of telecommunication traffic can be carried over the service.

4. ICI objects to this interrogatory on the ground that it requests proprietary confidential business information concerning ICI's strategic business plans. Section 364.183, Florida Statutes, provides, in pertinent part, that proprietary confidential business information is information ". . . intended to be (treated) and . . . treated by the person or company as private in that the disclosure of the information would cause harm to the . . . company's business operations. . . ." Disclosure of the information requested above, assuming that it is available, would place ICI at a competitive disadvantage by disclosing valuable strategic business plans and trade secrets¹ to existing and potential competitors, and could impair ICI's efforts to contract with its customers at competitive rates. Such information is protected from disclosure under Section 364.183(3)(a) and (e), Florida Statutes.

¹Trade secrets are privileged under Section 90.506, Florida Statutes. The courts have held that a party who seeks disclosure of a trade secret must demonstrate a reasonable necessity for the information and that its interests outweigh the interests of the trade secret holder in maintaining the confidentiality of the information. Fortune Personnel Agency of Ft. Lauderdale, Inc. v. Sun Tech Inc. of South Florida, 423 So. 2d 545, 546, n. 6 (Fla. 4th DCA 1982); Eastern Cement Corporation v. Department of Environmental Regulation, 512 So. 2d 264, 266 (Fla. 1st DCA 1987).

5. Moreover, entering into a confidentiality agreement with Southern Bell will not overcome the fundamental problem of disclosure: Southern Bell is ICI's primary competitor in certain markets. ICI recognizes that confidentiality agreements may restrict distribution of provided materials to named individuals, and that this in theory limits the potential competitive threat. ICI remains profoundly uncomfortable with this approach, however. This approach places employees of Southern Bell in the impossible situation of having to forget ICI's information when in the future the employee is required to perform his or her job. From ICI's perspective, such non-disclosure agreements work best, to the extent they work at all, where an outside consultant or independent contractor is employed by the LEC to review the confidential data.

6. ICI has always been concerned that neither the AAV nor the LEC could guarantee that non-disclosure agreements would actually protect the other party. This is one of the reasons that ICI has never asked to see any LEC's proprietary market plans.²

7. ICI also objects to this request because it is overly broad and calls for speculation. ICI cannot provide meaningful information relevant to this docket concerning the types of services that ICI may provide within the next five years. ICI cannot predict the various kinds of services that its potential customers may require nor can it predict with any certainty the new

² ICI has asked to have access to customer proprietary information where such information has been developed as a result of the LEC's monopoly operations and has been used by the LEC to compete with ICI.

technologies that may emerge within that time. These technologies could make available a wide variety of telecommunications services that cannot be contemplated today. Thus, ICI cannot provide a response to this question that would offer the Commission any meaningful information in this docket, especially in light of the fact that this proceeding deals specifically with interconnection to LEC services.

8. This is not the first time that Southern Bell has sought from ICI proprietary and confidential business information. In Docket No. 890183-TL, Generic Investigation into the Operations of Alternate Access Vendors, Southern Bell sought extensive information relating to ICI's budgets, forecasts, contracts, and network. ICI filed a motion for a protective order and Southern Bell filed a motion to compel.

9. The Prehearing Officer resolved the dispute in Order No. 2300 by attempting to balance Southern Bell's legitimate interest in obtaining information relevant to the inquiry without "expos(ing) ICI and other alternate access vendors to an unreasonable risk of harm." *Id.* at 3. The Prehearing Officer required ICI to respond to discovery of reasonable scope³ without having to provide certain specifics that would expose ICI to an unreasonable risk of harm. Although Order 2300 provides an individual ruling for each objected to discovery request, the Prehearing Officer's overall approach was to allow ICI to respond

³ The Commission found that some of the discovery requests were not reasonably calculated to lead to the discovery of admissible evidence.

generically where specifics would have compromised Intemedia's competitive position.

10. ICI intends to respond to Southern Bell's discovery consistent with the approach used in Order No. 2300. Hopefully, ICI's responses will satisfy Southern Bell's purposes for the discovery, and avoid a motion to compel. Thus, ICI seeks no ruling from the Prehearing Officer at this time. If, however, Southern Bell finds it necessary to file a motion to compel, then ICI will timely renew this motion with a responsive pleading.

Interrogatory No. 3: List your company's or its affiliate's present service or services under development which do or would compete, upon either virtual or physical collocation, with the interstate DS1 or DS3 dedicated transport services of the LEC.

See response to Interrogatory No. 2 above. To the extent that ICI currently offers certain services, ICI will provide a description of these services when ICI submits its responses to the remaining interrogatories.

Interrogatory No. 4: List your company's or its affiliate's present services or services under development which do or would compete, upon either virtual or physical collocation, with the interstate common switched transport services of the LEC.

See responses to Interrogatory Nos. 2 and 3 above.

Interrogatory No. 5: List your company's or its affiliate's present services or services under development which do or would compete, upon either virtual or physical collocation, with the intrastate DS1 or DS3 dedicated transport services of the LEC.

See responses to Interrogatory Nos. 2 and 3 above.

Interrogatory No. 6: List your company's or its affiliate's present services or services under development which do or would compete, upon either virtual or physical collocation, with the intrastate common switched transport services of the LEC.

See responses to Interrogatory Nos. 2 and 3 above.

Requests for Production of Documents

Production Request No. 1: Produce all sales brochures, service descriptions, marketing documents, price lists, advertising documents, customer education documents, sales representative training documents, concerning services identified in response to Southern Bell's First Set of Interrogatories, Item Nos. 1, 2, 3, 4, 5, 6, 7, and 8.

Production Request No. 2: Produce all documents concerning describing related to the services identified in response to Southern Bell's First Set of Interrogatories, Item Nos. 2, 3, 4, 5, 6, and 7.

Southern Bell's request for production of the documents includes documents containing proprietary and confidential information such as ICI in-house training and education documents. To the extent that documents such as sales brochures and advertising documents are generally available to the public, ICI will submit such information in its responses to Southern Bell's interrogatories.

CONCLUSION

WHEREFORE, for the reasons set forth herein, ICI respectfully requests the Prehearing Officer to accept this Motion for Protective Order, but defer ruling on it until Southern Bell files a motion to compel and ICI responds. By deferring ruling on this motion, the Prehearing Officer will essentially be providing the parties time to resolve this dispute between themselves.

Respectfully submitted this 16th day of August, 1994.

Patrick K. Wiggins

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CERTIFICATE OF SERVICE

Docket No. 921074-TP

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by United States Mail this 16th day of August, 1994, to the following:

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Public Service Commission

-M-E-M-O-R-A-N-D-U-M-

DATE: August 17, 1994
TO: Division of Communications
FROM: Division of Records and Reporting (Smith) *JS*
RE: Docket No. 921074-TP - Petition of Expanded Interconnection for Alternative Access Vendors Within Local Exchange Company Central Offices by Intermedia Communications of Florida

This office received, on August 16, Late-Filed Exhibit LFX-1 to the 8/9/94 deposition of IAC witness Joseph Gillan. According to the cover letter from IAC attorney Joe McGlothlin, the exhibit contains cost information provided to IAC by Southern Bell, United, and GTEFL. United and GTEFL claim that their portion of the information is confidential. United already has on file a request for confidentiality of the material (the request was filed June 28 for confidentiality of Document No. 05622-94, which was filed with a notice of intent on June 7), and GTEFL filed a notice of intent for its portion of the IAC document on August 15.

Consideration of the confidentiality of this late-filed exhibit (assigned Document No. 08341-94) should occur in conjunction with consideration of United's 6/28 request, and with consideration of GTEFL's request. GTEFL's request should be filed by September 6.

I have attached a copy of Mr. McGlothlin's letter.

Attachment

cc: Division of Legal Services
Division of Appeals