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Order on Motions to Compel Discovery (Southern Telecom Inc.)

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IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA



SOUTHERN TELECOM, INC.,)
)
Plaintiff,)
)
v.)
)
TW TELECOM INC. OF GEORGIA)
L.P., F/K/A TIME WARNER)
TELECOM OF GEORGIA, L.P. AND)
TW TELECOM OF ALABAMA LLC,)
F/K/A TIME WARNER TELECOM OF)
ALABAMA LLC,)
)
Defendants.)

Civil Action File No.
2011-CV-198651

ORDER

This matter is before the Court on Southern Telecom’s Motion to Compel Phase II Discovery Responses from Defendants and Defendants’ Motion to Compel Discovery. Upon consideration of the parties’ briefs, and the record of the case, the Court finds as follows:

The facts of the case have been thoroughly set forth in this Court’s Order on Motions for Summary Judgment filed March 30, 2012, and the subsequent opinion of the Court of Appeals affirming this Court’s Order. The main point of contention raised in both parties’ motions to compel is whether Southern Telecom is entitled to discovery from Defendants (collectively, “tw”) related to buildings and services added to the ICG Legacy Network after two nearly identical Agreements related to telecommunications services in the Birmingham and Atlanta areas were assigned to tw in 2006. Both the Agreements clearly contemplate future growth of the ICG Legacy Network. This Court’s and the Court of Appeals’ decisions stated Southern Telecom will not be entitled to a revenue share from services offered by tw on their pre-existing

networks (those built independently of the Agreements at issue) in the two relevant markets. It does not foreclose revenue sharing—and thus discovery regarding—lines or services subsequently added to the ICG Legacy Network, either through Route Segments or extensions of ICG Legacy Cables, since the assignment of these Agreements. In light of this, the Court requests both parties revisit its responses to all Phase II discovery requests and ensure their responses are supplemented as necessary to comply with O.C.G.A. §9-11-26(e).

As to the specific discovery requests, while the Court agrees tw cannot appropriately limit its production of documents and information to its customers or buildings on the ICG Legacy Network at the time of the assignment of the Agreements, this Court finds some of Southern Telecom’s discovery requests are overly broad and burdensome in light of this Court’s Order affirmed on appeal. Specifically, the Court finds as follows:

Interrogatories 2, 5, and 8 to tw Georgia:

This Court compels tw to respond fully to Interrogatories 2, 5, and 8. Interrogatories 2 and 5 simply ask tw how they interpret contractual terms in the Agreement. Interrogatory 8 is narrowly tailored to inquire specifically about services offered over the ICG Legacy Network. This request is reasonably calculated to determine whether tw is paying its share of revenue to Southern Telecom for services that are “Telecommunications Service” as intended under the Agreements. As such, tw is compelled to answer these particular requests. Plaintiff’s request to compel responses to Interrogatories 2, 5, and 8 is **GRANTED**.

Interrogatories 6, 10, and 17 to tw Georgia:

As to Interrogatories 6, 10, and 17, the Court finds the requests are overly broad and burdensome. While discovery should not be restricted by date, this Court has made clear Southern Telecom is not entitled to information related to tw networks that were established in

these markets independently of ICG. In Interrogatory 6, for instance, Southern Telecom asks tw to identify any affiliate providing any service in the Atlanta MSA. This request clearly encompasses discovery of information wholly irrelevant to the claims raised in this matter.

As to Interrogatory #10, the court has clarified what should be considered the ICG Legacy Network and tw should update their responses accordingly. However, it is overly burdensome for Southern Telecom to seek the identity of all networks tw has in the markets it considers not to be a part of the ICG Legacy Network.

Similarly, Interrogatory #17 is impermissibly broad and burdensome in that it asks for tw to identify all services it furnishes that are not furnished over the ICG Legacy Network. This request is clearly irrelevant in a case about revenue sharing for services that are offered over the ICG Legacy Network. However, the Court will reconsider its position as to discovery of services offered by tw if Southern Telecom can present a reasonable basis to believe these services are being offered over the ICG Legacy Network based on tw's responses to the other discovery requests. As such, Plaintiff's request to compel responses to Interrogatories 6, 10, and 17 is **DENIED**.

Interrogatories 2 and 12 of tw Alabama:

Interrogatory 2 directed to tw Alabama requests the same information as Interrogatory 2 directed to tw Georgia, and for the reasons stated above, Plaintiff's request to compel a response to Interrogatory 2 is **GRANTED**.

Interrogatory 12 directed to tw Alabama requests the same information as Interrogatory 17 directed to tw Georgia, and for the reasons stated above, Plaintiff's request to compel as response to Interrogatory 17 is **DENIED**.

Interrogatory 6 of tw Alabama:

Interrogatory 6 directed to tw Alabama seeks an explanation of tw Alabama's calculation of revenues generated from non-switched point-to-point or point-to-point multipoint connections. Plaintiff's request to compel a response to Interrogatory 2 is **GRANTED**.

Plaintiff's Request for Production of Business Records:

Southern Telecom complains that tw, in response to document requests, has produced spreadsheets summarizing revenues from On Network Buildings in lieu of business records maintained in the normal course of business. To the extent tw maintains records related to the relevant ICG Legacy Network and subsequent addition of services or cables to this ICG Legacy Network, tw must produce them if requested. However, Southern Telecom does not point to a specific document request for which tw's response was lacking. The Court cannot compel production of documents without knowing which specific requests were allegedly unanswered by the opposing party. Southern Telecom's motion to compel particular business records is therefore **DENIED**. However, the parties should confer regarding particular requests that remain unsatisfied and notify the Court of any subsequent disputes that remain unresolved.

Tw's Motion to Compel:

Tw alleges that Southern Telecom's responses to Requests for Production 1-3, 8, 11, 14, and 19, Interrogatories 2, 3, 5, 6, 7, 8, 9, and 23, and Requests for Admission 16 and 17 were lacking. However, tw devotes most of its brief to discussing its interpretation of the Court's Order and the Court of Appeals opinion. The only clear complaint about Southern Telecom's responses to interrogatories and requests for production of documents is that Southern Telecom relies on speculation instead of solid evidence. Yet, Southern Telecom has responded it has produced all relevant information and documents in its possession. The Court finds Plaintiff has

satisfied its duty under O.C.G.A. § 9-11-33 and 9-11-34. Therefore, Defendants' motion to compel responses to interrogatories and requests for production of documents is **DENIED**.

As to the Requests for Admissions, Southern Telecom offered a denial to both, which satisfies its responsibilities under the Georgia Code. As such, tw's request to compel a response to its Requests for Admissions is **DENIED**.

SO ORDERED this 23rd day of May, 2014.

A handwritten signature in black ink, appearing to read "Melvin K. Westmoreland", is written above a horizontal line.

MELVIN K. WESTMORELAND, SENIOR JUDGE
Superior Court of Fulton County
Atlanta Judicial Circuit

Copies via email to:

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