

BEFORE THE PUBLIC SERVICE COMMISSION

In re: Petition for arbitration of unresolved issues in negotiation of interconnection agreement with BellSouth Telecommunications, Inc. by ITC^DeltaCom Communications, Inc. d/b/a ITC^DeltaCom.

DOCKET NO. 030137-TP
ORDER NO. PSC-07-0559-PCO-TP
ISSUED: July 3, 2007

ORDER GRANTING MOTION
TO HOLD ARBITRATION PROCEEDINGS IN ABEYANCE

I. Case Background

On February 7, 2003, ITC^DeltaCom Communications, Inc. (DeltaCom) filed its Petition for Arbitration with BellSouth pursuant to the Telecommunications Act of 1996. On March 4, 2003, BellSouth Telecommunications, Inc. d/b/a AT&T Florida (AT&T Florida) filed its response to DeltaCom's Petition. By Order No. PSC-03-0534-PCO-TP (Order Establishing Procedure), issued April 23, 2003, the hearing date, prehearing date, and other key activities dates were established. An administrative hearing was held on September 3-4, 2003.

Subsequent to the hearing, through a series of FCC decisions and corresponding appeals,¹ the regulatory framework governing the business relationship of incumbent local exchange companies (ILECs) and competitive local exchange companies (CLECs) was substantially revised. During this period, the parties requested that the Commission postpone rendering a decision until all relevant appeals of the FCC decisions were finalized.

Our staff held periodic conference calls with the parties to discuss the status of the case. During a conference call held on November 6, 2006, the parties jointly requested that the Commission resolve the remaining issues. On December 14, 2006, the parties filed a Joint Issues Matrix delineating Issues 2, 9, 44, 46, 47, 56, 62, and 63 as the remaining unresolved issues.

II. Motion to Hold Arbitration Proceedings in Abeyance

On April 24, 2007, DeltaCom filed its Motion to Hold Arbitration Proceedings in Abeyance (Motion). DeltaCom requests the Commission hold this docket in abeyance pending

¹ See Order No. FCC 03-36, released August 21, 2003, CC Docket Nos. 01-338, 96-98, and 98-147, In Re: Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, and Deployment of Wireline Services Offering Advanced Telecommunications Capability, Report and Order and Order on Remand and Further Notice of Proposed Rulemaking; United States Telecom Association v. FCC, decided March 2, 2004, 359 F. 3d 554 (D.C. Cir. 2004); Order No. FCC 04-290, released February 4, 2005, WC Docket No. 04-313 and CC Docket No. 01-338, In Re: Unbundled Access to Network Elements and Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, Order on Remand.

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the resolution of its request to AT&T to “port,” or make available in Florida, the existing North Carolina Interconnection Agreement between AT&T and DeltaCom. In support of its Motion, DeltaCom asserts that on March 26, 2007, the FCC issued its Merger Order² authorizing the merger between BellSouth Corporation (and its subsidiaries) and AT&T, Inc. In the Merger Order, the FCC ordered BellSouth and AT&T to comply with the Merger Commitments, as set forth in Appendix F therein. In its Motion, DeltaCom cites the following Merger Commitment:

Reducing Transaction Costs Associated with Interconnection Agreements.

1. The AT&T/BellSouth ILECs shall make available to any requesting telecommunications carrier any entire effective interconnection agreement, whether negotiated or arbitrated, that an AT&T/BellSouth ILEC entered into in any state in the AT&T/BellSouth 22-state ILEC operating territory, subject to state-specific pricing and performance plans and technical feasibility, and provided, further, that an AT&T/BellSouth ILEC shall not be obligated to provide pursuant to this commitment any interconnection arrangement or UNE unless it is feasible to provide, given the technical, network, and OSS attributes and limitations in, and is consistent with the law and regulatory requirements of, the state for which the request is made.

DeltaCom asserts that porting the North Carolina interconnection agreement to Florida will render further proceedings in this docket unnecessary and requests the Commission hold this docket in abeyance until the ported agreement is established in Florida. Finally, DeltaCom states it will promptly move to dismiss this docket when the resulting agreement is established or will advise the Commission if further proceedings are required in the event the parties cannot agree upon the method by which the ported agreement is to be established.

On May 1, 2007, AT&T Florida filed a letter stating it had no objection to DeltaCom’s Motion.

III. Decision


Upon consideration of the foregoing, DeltaCom’s Motion is granted. Parties should notify the Commission promptly upon the porting of the North Carolina interconnection agreement or if the parties are unable to agree upon the method by which the ported agreement is to be established.

² See Order No. 06-189, released March 26, 2007, WC Docket No. 06-74, In Re: In the Matter of AT&T Inc. and BellSouth Corporation Application for Transfer of Control, Memorandum Opinion and Order.

Based upon the foregoing, it is

ORDERED by Commissioner Katrina J. McMurrin, as Prehearing Officer, that DeltaCom, Inc.'s Motion to Hold Arbitration Proceedings in Abeyance is hereby granted.

By ORDER of Commissioner Katrina J. McMurrin, as Prehearing Officer, this 3rd day of July, 2007.


KATRINA J. McMURRIAN
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 Office of Commission Clerk, 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.