

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition by BellSouth Telecommunications, Inc. for waiver of Rules 25-4.107, 25-4.108, and 25-4.113, F.A.C., which require provision of basic telecommunications service to certain locations and persons.

DOCKET NO. 000028-TL
ORDER NO. PSC-01-0722-PHO-TL
ISSUED: March 23, 2001

Pursuant to Notice and in accordance with Rule 28-106.209, Florida Administrative Code, a Prehearing Conference was held on March 12, 2001, in Tallahassee, Florida, before Commissioner Lila A. Jaber, as Prehearing Officer.

APPEARANCES:

NANCY B. WHITE, ESQUIRE AND JAMES MEZA III, ESQUIRE, C/O Tallahassee Regulatory Office, 150 South Monroe Street, Suite 400, Tallahassee, Florida 32301 and R. DOUGLAS LACKEY, ESQUIRE, Suite 4300, 675 W. Peachtree Street, NE, Atlanta, Georgia 30375
On behalf of BellSouth Telecommunications, Inc.

MR. ANTHONY PARKS, Post Office Box 812283, Boca Raton, Florida 33481
Appearing Pro Se.

TIM VACCARO, ESQUIRE, Florida Public Service Commission, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850
On behalf of the Commission Staff.

PREHEARING ORDER

I. CONDUCT OF PROCEEDINGS

Pursuant to Rule 28-106.211, Florida Administrative Code, this Order is issued to prevent delay and to promote the just, speedy, and inexpensive determination of all aspects of this case.

DOCUMENT NUMBER-DATE

03588 MAR 23 01

II. CASE BACKGROUND

On January 10, 2000, BellSouth Telecommunications, Inc. (BellSouth) filed a petition seeking a waiver of Rules 25-4.107, 25-4.108 and 25-4.113, Florida Administrative Code, pursuant to Section 120.542, Florida Statutes. The rules require a local exchange company (LEC) to assist any customer or applicant in obtaining telephone service adequate to his communication needs, to provide service, and limit circumstances under which a LEC may refuse telephone service. BellSouth indicates in its petition that it is seeking a permanent waiver of these rules for one particular customer. BellSouth seeks a waiver to forego service to this person and service to the locations that he owns, leases, or with which he is, in any way, associated.

By Order No. PSC-00-0902-PAA-TL, issued May 5, 2000, BellSouth's petition was granted. On May 30, 2000, Mr. Anthony Parks filed a protest of Order No. PSC-00-0902-PAA-TL and requested a formal hearing pursuant to Rule 25-22.029, Florida Administrative Code. Accordingly, this matter has been scheduled for an administrative hearing. Opening statements, if any, shall not exceed ten minutes per party.

Procedural dates were established by Order No. PSC-00-2406-PCO-TP (Order Establishing Procedure), issued December 14, 2000. That Order required that parties prefile, in writing, all testimony that they intend to sponsor. The Order also required each party to file prehearing statements that include, in part, information regarding that party's witnesses, exhibits, questions of fact, law and policy to be addressed at hearing, and the party's positions regarding those questions. The Order Establishing Procedure also provided that failure of a party to timely file a prehearing statement shall be a waiver of any issue not raised by other parties or by the Commission. That Order further provides that such failure shall preclude the party from presenting testimony in support of its position. Mr. Parks failed to prefile testimony and exhibits, and did not file a prehearing statement.

III. PROCEDURE FOR HANDLING CONFIDENTIAL INFORMATION

A. Any information provided pursuant to a discovery request for which proprietary confidential business information status is

requested shall be treated by the Commission and the parties as confidential. The information shall be exempt from Section 119.07(1), Florida Statutes, pending a formal ruling on such request by the Commission, or upon the return of the information to the person providing the information. If no determination of confidentiality has been made and the information has not been used in the proceeding, it shall be returned expeditiously to the person providing the information. If a determination of confidentiality has been made and the information was not entered into the record of the proceeding, it shall be returned to the person providing the information within the time periods set forth in Section 364.183, Florida Statutes.

B. It is the policy of the Florida Public Service Commission that all Commission hearings be open to the public at all times. The Commission also recognizes its obligation pursuant to Section 364.183, Florida Statutes, to protect proprietary confidential business information from disclosure outside the proceeding.

1. Any party intending to utilize confidential documents at hearing for which no ruling has been made, must be prepared to present their justifications at hearing, so that a ruling can be made at hearing.

2. In the event it becomes necessary to use confidential information during the hearing, the following procedures will be observed:

- a) Any party wishing to use any proprietary confidential business information, as that term is defined in Section 364.183, Florida Statutes, shall notify the Prehearing Officer and all parties of record by the time of the Prehearing Conference, or if not known at that time, no later than seven (7) days prior to the beginning of the hearing. The notice shall include a procedure to assure that the confidential nature of the information is preserved as required by statute.
- b) Failure of any party to comply with 1) above shall be grounds to deny the party the opportunity to

present evidence which is proprietary confidential business information.

- c) When confidential information is used in the hearing, parties must have copies for the Commissioners, necessary staff, and the Court Reporter, in envelopes clearly marked with the nature of the contents. Any party wishing to examine the confidential material that is not subject to an order granting confidentiality shall be provided a copy in the same fashion as provided to the Commissioners, subject to execution of any appropriate protective agreement with the owner of the material.
- d) Counsel and witnesses are cautioned to avoid verbalizing confidential information in such a way that would compromise the confidential information. Therefore, confidential information should be presented by written exhibit when reasonably possible to do so.
- e) At the conclusion of that portion of the hearing that involves confidential information, all copies of confidential exhibits shall be returned to the proffering party. If a confidential exhibit has been admitted into evidence, the copy provided to the Court Reporter shall be retained in the Division of Records and Reporting's confidential files.

IV. POST-HEARING PROCEDURES

Each party shall file a post-hearing statement of issues and positions. A summary of each position of no more than 50 words, set off with asterisks, shall be included in that statement. If a party's position has not changed since the issuance of the prehearing order, the post-hearing statement may simply restate the prehearing position; however, if the prehearing position is longer than 50 words, it must be reduced to no more than 50 words. If a party fails to file a post-hearing statement, that party shall have waived all issues and may be dismissed from the proceeding.

Pursuant to Rule 28-106.215, Florida Administrative Code, a party's proposed findings of fact and conclusions of law, if any, statement of issues and positions, and brief, shall together total no more than 40 pages, and shall be filed at the same time.

V. PREFILED TESTIMONY AND EXHIBITS; WITNESSES

Testimony of all witnesses to be sponsored by BellSouth has been prefiled. All testimony which has been prefiled in this case will be inserted into the record as though read after the witness has taken the stand and affirmed the correctness of the testimony and associated exhibits. All testimony remains subject to appropriate objections. Each witness will have the opportunity to orally summarize his or her testimony at the time he or she takes the stand. Summaries of testimony shall be limited to five minutes. Upon insertion of a witness' testimony, exhibits appended thereto may be marked for identification. After all parties and Staff have had the opportunity to object and cross-examine, the exhibit may be moved into the record. All other exhibits may be similarly identified and entered into the record at the appropriate time during the hearing.

Witnesses are reminded that, on cross-examination, responses to questions calling for a simple yes or no answer shall be so answered first, after which the witness may explain his or her answer.

The Commission frequently administers the testimonial oath to more than one witness at a time. Therefore, when a witness takes the stand to testify, the attorney calling the witness is directed to ask the witness to affirm whether he or she has been sworn.

VI. ORDER OF WITNESSES

<u>Witness</u>	<u>Proffered By</u>	<u>Issues #</u>
<u>Direct</u>		
Panel Testimony of Nancy H. Sims and Patricia K. Shields	BellSouth	All

VII. BASIC POSITIONS

BELLSOUTH: BellSouth should be allowed to refuse to provide service to Mr. Anthony Parks, a former customer of BellSouth, and to the locations he currently owns, leases, or with which he is in any way associated. Mr. Parks has been linked to at least twenty-five separate accounts with BellSouth, both residence and business. He has used many avenues to obtain service, and, in every instance, his account has been disconnected for fraudulent practices and/or for nonpayment. Mr. Parks currently owes BellSouth more than \$22,750 in past due billing. BellSouth has been more than fair in giving Mr. Parks every opportunity to establish service and to keep service. BellSouth has spent an inordinate amount of time, money, and resources on treating Mr. Parks and his related accounts. This is time, money and resources that had to be redirected from providing service to BellSouth's other customers. For these reasons, BellSouth should not be required to provide service to Mr. Parks.

PARKS: The Commission is without authority to act in this case since BellSouth has sought not to seek permission or advise of the direct named account holders of the accounts in question. (This is regardless of whether or not BellSouth thinks I am involved or not, I am not the holder of record.)

STAFF: Staff's positions are preliminary and based on materials filed by the parties and on discovery. The preliminary positions are offered to assist the parties in preparing for the hearing. Staff's final positions will be based upon all the evidence in the record and may differ from the preliminary positions.

VIII. ISSUES AND POSITIONS

ISSUE A: [LEGAL ISSUE] What is the Commission's jurisdiction in this matter?

POSITIONS

BELLSOUTH: The Commission has jurisdiction in this matter because state law and not federal law is the basis for the rules that govern the provision of telecommunications service to Mr. Parks and the requested waiver.

PARKS: The Commission is without authority to act in this case since BellSouth has sought not to seek permission or advise of the direct named account holders of the accounts in question. (This is regardless of whether or not BellSouth thinks I am involved or not, I am not the holder of record.)

STAFF: Section 120.542, Florida Statutes, authorizes the Commission to grant variances and waivers to requirements of its rules.

ISSUE 1: In the event that BellSouth is granted a waiver of Rules 25-4.107, 25-4.108, and 25-4.113, Florida Administrative Code, as set forth in its petition, will the purpose of the underlying statutes be achieved by other means?

POSITIONS

BELLSOUTH: Yes. The purpose of the underlying statutes, 364.03, 364.04, 364.19 and 427.704, Florida Statutes, is, in part, to promote the public health, safety and welfare by ensuring that basic local telecommunications services are available to all consumers. BellSouth's waiver will not undermine this purpose. Mr. Parks has available to him numerous ALECs that provide service in his area. In addition, there are several wireless carriers offering very reasonable flat and measured rate calling plans. Thus, if BellSouth's waiver request is granted, Mr. Parks will still be able to receive basic local telecommunications service.

PARKS: The Commission is without authority to act in this case since BellSouth has sought not to seek permission or advise of the direct named account holders of the accounts in question. (This is regardless of whether or not BellSouth thinks I am involved or not, I am not the holder of record.)

STAFF: Staff takes no position at this time.

ISSUE 2: Does the application of Rules 25-4.107, 25-4.108, and 25-4.113, Florida Administrative Code, as set forth in BellSouth's petition, create a substantial hardship for BellSouth or violate principles of fairness?

POSITIONS

BELLSOUTH: Yes. Mr. Parks has cost BellSouth as well as the Commission Staff a great deal of time and money. He has taken time away from BellSouth service representatives and Staff personnel that could have been used to handle valid customer concerns and needs. There is no way to accurately determine the number of hours that have been involved in repeatedly dealing with Mr. Parks.

PARKS: The Commission is without authority to act in this case since BellSouth has sought not to seek permission or advise of the direct named account holders of the accounts in question. (This is regardless of whether or not BellSouth thinks I am involved or not, I am not the holder of record.)

STAFF: Staff takes no position at this time.

ISSUE 3: Should BellSouth be granted a waiver of Rules 25-4.107, 25-4.108, and 25-4.113, Florida Administrative Code, as set forth in its petition?

POSITIONS

BELLSOUTH: Yes. Mr. Parks has been linked to at least twenty-five separate accounts with BellSouth. He has used many avenues to obtain service, and, in every instance his account has been disconnected for fraudulent practices and/or for nonpayment. Mr. Parks currently owes BellSouth more than \$22,750 in past due billing.

PARKS: The Commission is without authority to act in this case since BellSouth has sought not to seek permission or advise of the direct named account holders of the accounts in question. (This is regardless of whether or not BellSouth thinks I am involved or not, I am not the holder of record.)

STAFF: Staff takes no position at this time.

IX. EXHIBIT LIST

<u>Witness</u>	<u>Proffered By</u>	<u>I.D. No.</u>	<u>Description</u>
<u>Direct</u>			
Nancy H. Sims and Patricia K. Shields	BellSouth	NHS/PKS-1	Synopsis and Detailed Account Information

Staff and parties reserve the right to identify additional exhibits for the purpose of cross-examination.

X. PROPOSED STIPULATIONS

There are no proposed stipulations at this time.

XI. PENDING MOTIONS

Mr. Parks' Motion to Compel BellSouth to Copy Respondent With All Communication it Plans to Use at Trial, which will be ruled upon in a separate order prior to hearing.

XII. PENDING CONFIDENTIALITY MATTERS

BellSouth's Request for Specified Confidential Classification for Exhibit NHS/PKS-1, which will be ruled upon in a separate order prior to hearing.

XIII. RULINGS

Mr. Parks' Motion to Change Date of Hearing is hereby granted. The hearing has been rescheduled for May 21, 2001. Accordingly, briefs shall be due on June 12, 2001.

Based on the foregoing, it is

ORDERED by Commissioner Lila A. Jaber, as Prehearing Officer, that this Prehearing Order shall govern the conduct of these proceedings as set forth above unless modified by the Commission.

By ORDER of Commissioner Lila A. Jaber, as Prehearing Officer, this 23rd day of March, 2001.



LILA A. JABER
Commissioner and Prehearing Officer

(S E A L)

TV

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, if issued by a Prehearing Officer; (2) reconsideration within 15 days pursuant to Rule 25-22.060, Florida Administrative Code, if issued by the Commission; or (3) 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 Records and Reporting, 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.