

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Investigation into the establishment of operations support systems permanent performance measures for incumbent local exchange telecommunications companies.

DOCKET NO. 000121-TP
ORDER NO. PSC-01-0994-PCO-TP
ISSUED: April 20, 2001

ORDER DENYING MOTION TO ACCEPT SUPPLEMENTAL TESTIMONY AND
TO PERMIT THE WITHDRAWAL OF THE DIRECT TESTIMONY

By Order No. PSC-01-0242-PCO-TP, issued January 26, 2001, Direct Testimony was due March 1, 2001, and rebuttal testimony was due March 21, 2001.

On April 11, 2001, IDS Telecom LLC (IDS) filed its Motion to Accept Supplemental Direct Testimony of Keith Kramer and to Permit the Withdrawal of the Direct Testimony of William Gulas (Motion). In its Motion, IDS asserts that it recently became aware of this docket and was not prepared to file complete testimony on the due date. While IDS did file summary testimony in an attempt to comply with the deadline, the witnesses had not had a chance to review Commission staff's testimony. In addition, IDS believes that the problems it has experienced with BellSouth's OSS systems since March 1, 2001, are relevant to the performance metric issues in this docket and would like to inform the Commission of these problems.

In support of its Motion, IDS states that because it is a small company, it has been compelled to focus its resources and has been unable to participate in this docket. In addition, IDS contends that several additional serious problems with BellSouth's OSS systems occurred after the March 1, 2001, direct testimony filing date.

IDS states that because this proceeding will be addressing issues regarding service quality measurements and enforcement plans, the Commission's decision will directly affect IDS' interests. Moreover, IDS' experience in actually utilizing BellSouth's OSS systems makes IDS' input in this docket invaluable.

DOCUMENT NUMBER-DATE

04990 APR 20 2001

FPCO-RECORDS REPORTING

On April 18, 2001, BellSouth filed its Response in Opposition to IDS's Motion (Response). In its Response, BellSouth states that late-filed testimony should only be accepted based upon a showing that (1) the neglect to timely file the testimony is excusable, and (2) that the late filing will not prejudice any party.

BellSouth alleges that IDS' proposed testimony is more in the nature of a complaint about services they have received from BellSouth and does not relate to the issues in this docket. BellSouth contends that if IDS has a legitimate complaint about service, it should file a formal complaint instead of filing in this generic proceeding. By filing in this generic proceeding, BellSouth will not have the opportunity to fully respond, and the Commission will not have the opportunity to consider and rule upon the ALEC's alleged grievance.

BellSouth alleges that the proposed testimony contains allegations that are irrelevant to the generic proceeding and even if this testimony were timely filed, it should be stricken as irrelevant. Filing this testimony six weeks after direct testimony was due and three weeks after rebuttal testimony was due removes any possibility that BellSouth will be able to respond to the claims of IDS.

BellSouth argues that while IDS alleges that the testimony relates to events that allegedly occurred after March 1, 2001, a review of pages four through ten consists of allegations of the events that occurred in 1999 and 2000. BellSouth further argues IDS has failed to offer any justification for the untimely filing of testimony and that there is no excuse for testimony to be filed this late. Moreover, filing at this late date shortly before the hearing is prejudicial to BellSouth.

Upon review of IDS' proposed testimony, it is apparent that most of the information could have been timely filed by the March 1 due date. As for the portions regarding information that could not have been reasonably addressed by the March 1 due date, IDS has not sustained its burden to demonstrate the testimony's relevance to the issues in this docket. Specifically, it appears that those portions directed to allegations of problems with BellSouth's OSS system, regardless of when the alleged problems occurred, would be

better served in either a formal complaint before this Commission or by participating in the OSS Third Party test currently underway.

Based on the foregoing, the Motion to Accept Supplemental Direct Testimony of Keith Kramer and to Permit the Withdrawal of the Direct Testimony of William Gulas Filed by IDS is hereby denied. Consequently, the testimony of witnesses Keith Kramer and William Gulas, timely filed on March 1, 2001, will remain, unless a subsequent motion to withdraw this testimony is filed.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that the Motion to Accept Supplemental Direct Testimony of Keith Kramer and to Permit the Withdrawal of the Direct Testimony of William Gulas filed by IDS is hereby denied.

By ORDER of Commissioner Michael A. Palecki, as Prehearing Officer, this 20th day of April, 2001.



MICHAEL A. PALECKI
Commissioner and Prehearing Officer

(S E A L)

JKF

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.