

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Complaint of Florida
Competitive Carriers Association
against BellSouth
Telecommunications, Inc.
regarding BellSouth's practice
of refusing to provide
FastAccess Internet Service to
customers who receive voice
service from a competitive voice
provider, and request for
expedited relief.

DOCKET NO. 020507-TL
ORDER NO. PSC-02-1618-PCO-TL
ISSUED: November 22, 2002

ORDER CLARIFYING ORDER ESTABLISHING PROCEDURE

On June 12, 2002, the Florida Competitive Carriers Association (FCCA) filed a Complaint against BellSouth Telecommunications, Inc. (BellSouth). By Order No. PSC-02-1464-FOF-TL, issued October 23, 2002, BellSouth's Motion to Dismiss was denied and FCCA's Motion for Summary Final Order was denied without prejudice. Shortly thereafter, an issue identification meeting was held between the parties. At the issue identification meeting, BellSouth identified the following issue which it believed should be included in this proceeding:

Should any decisions made in this proceeding apply to all ALECs and ILECs?

By Order No. PSC-02-1537-PCO-TL, issued November 12, 2002 (Order Establishing Procedure), the above issue was excluded from this proceeding. However, no further explanation was given in the order as to why the issue was not included. Therefore, it is appropriate to clarify the reasons for not including the above issue in this proceeding.

On November 6, 2002, BellSouth filed a brief in support of the above issue, tentatively identified as Issue 7. In its brief, BellSouth argues that the issue should be included because the Commission may render a policy decision which would impact the whole telecommunications industry, yet would be applied to BellSouth alone. BellSouth further argues that without inclusion

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of its proposed issue, any policy ruling would be arbitrary and capricious and such policy decision would require rulemaking. FCCA file a brief in opposition to the inclusion of the issue on November 8, 2002. In its opposition brief, FCCA argues that the issue goes far beyond the scope of the issues raised by its Complaint and excluding BellSouth's open-ended issue will permit the Commission and the parties to focus on matters raised in the Complaint.

After giving due consideration to the arguments raised by the parties in their briefs, I find it is appropriate to exclude BellSouth's proposed issue. I believe that the issue as written goes well beyond the scope of the Complaint. To include an issue regarding all ALECs and ILECs would require the Commission to review the individual practices of all ALECs and ILECs. The Complaint, however, only addresses whether BellSouth's actions regarding its FastAccess service are anticompetitive. Therefore, I find that inclusion of an issue that applies to all ILECs and ALECs would be more appropriately addressed in a generic proceeding. Even though the issue is being excluded from this proceeding, BellSouth is not precluded from petitioning this Commission to address this issue in a separate proceeding.

Additionally, scrivener's errors were noted in Order No. PSC-02-1537-PCO-TL regarding certain dates and these are clarified as follows:

Prehearing Conference	January 6, 2003
Discovery Cutoff Date	January 23, 2003

Based on the foregoing, it is

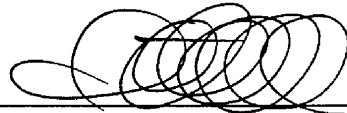
ORDERED by Commissioner Braulio L. Baez, as Prehearing Officer, that it is hereby clarified and reaffirmed that BellSouth Telecommunications, Inc.'s proposed Issue 7 (Should any decisions made in this proceeding apply to all ALECs and ILECs?) shall not be included as an issue in this docket. It is further

ORDERED that the Prehearing Conference date is January 6, 2003, and the Discovery Cutoff Date is January 23, 2003. It is further

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ORDERED that Order No. PSC-02-1537-PCO-TL, issued November 12, 2002, is reaffirmed in all other respects.

By ORDER of Commissioner Braulio L. Baez, as Prehearing Officer, this 22nd Day of November, 2002.



FR BAEZ

BRAULIO L. BAEZ
Commissioner and Prehearing Officer

(S E A L)

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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.

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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 the Commission Clerk and Administrative Services, 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.