

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-03-0129-PCO-TL
ISSUED: January 23, 2003

ORDER GRANTING MOTION FOR CONTINUANCE

On June 12, 2002, the Florida Competitive Carriers Association (FCCA) filed a Complaint against BellSouth Telecommunications, Inc. (BellSouth) and a Request for Expedited Relief seeking relief from BellSouth's practice of refusing to provide its FastAccess service to customers who receive voice service from an Alternative Local Exchange Carrier (ALEC). By Order No. PSC-02-0935-PCO-TL, issued July 12, 2002, the request for expedited relief was denied.

On December 17, 2002, BellSouth filed its Emergency Motion to Compel against Florida Competitive Carriers Association (FCCA). On December 26, 2002, FCCA filed its Response to BellSouth's Motion to Compel and its Motion for Protective Order. By Order No. PSC-03-0084-PCO-TL, issued January 10, 2003, the Motion to Compel was granted, in part, and denied, in part. The Motion for Protective Order was denied. Thereafter, on January 17, 2003, FCCA filed a Motion for Reconsideration of Order No. PSC-03-0084-PCO-TL and Request for Oral Argument. On January 22, 2003, BellSouth filed its Response in Opposition to the Motion for Reconsideration. In addition, BellSouth also filed a Motion for Continuance. On January 23, 2003, FCCA filed its Response to BellSouth's Motion for Continuance. It is noteworthy that other discovery motions have been filed in this time frame.¹

¹BellSouth's January 17, 2003, Second Emergency Motion to Compel and FCCA's January 22, 2003, Motion to Compel.

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The hearing in this matter is currently scheduled for January 30, 2003. This Order addresses only BellSouth's Motion for Continuance.

BellSouth argues that due to its inability to obtain the discovery FCCA was compelled to produce pursuant to Order No. PSC-03-0084-PCO-TL, BellSouth has been unduly hindered in its preparation for hearing. BellSouth contends that if the hearing in this matter proceeds as scheduled, it does not have sufficient time in which to review and make use of the compelled discovery even if the Commission renders a favorable decision on the FCCA's Motion for Reconsideration prior to the hearing.² BellSouth emphasizes that FCCA will not be unduly prejudiced by a continuance of the hearing, particularly since it is FCCA's refusal to produce discovery which has created this situation. Therefore, BellSouth requests that the hearing in this matter be continued until the FCCA has completely responded to the outstanding discovery.

In response, FCCA states that it does not oppose BellSouth's Motion for Continuance in view of the importance of the issues raised in FCCA's own Motion for Reconsideration of Order No. PSC-03-0084-PCO-TL. While FCCA disagrees with many of BellSouth's contentions, FCCA believes that the issues to be considered by the Commission relating to its Motion for Reconsideration are of great importance to the continued participation of associations in matters before the Commission. As such, FCCA believes that a continuance of the hearing is appropriate to allow the Commission adequate time to afford its Motion for Reconsideration full review and thorough consideration. FCCA asks that if the continuance is granted, that the hearing be rescheduled no later than 30 days after the Commission rules on its Motion for Reconsideration.

Upon consideration, BellSouth's Motion for Continuance is hereby granted. At this late date, even if the Commission denies FCCA's Motion for Reconsideration of Order No. PSC-03-0084-PCO-TL,

²Citing Carpenter v. Carpenter, 451 So. 2d 914, 915 (Fla. 1st DCA 1984) ("Special circumstances . . . may require a continuance where there has not been sufficient time to complete discovery and properly prepare for trial and where the continuance causes no substantial prejudice or injustice to the opposing party.")

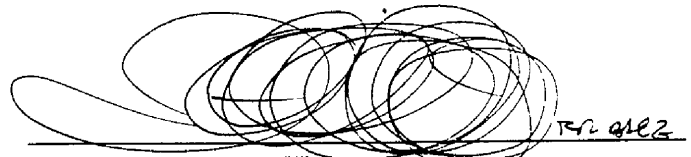
BellSouth will not have a reasonable opportunity prior to hearing to review and make use of the discovery responses that FCCA was compelled to produce. Furthermore, there are now two more outstanding Motions to Compel discovery responses pending in the Docket -- one filed by each party. Therefore, it is appropriate to continue the hearing in this matter until after the discovery disputes have been resolved and the FCCA's Motion for Reconsideration has been addressed by the Commission. The January 30, 2003, hearing shall, therefore, be continued. A new hearing date will be set at a later time.

It is therefore,

ORDERED by Commissioner Braulio L. Baez, as Prehearing Officer, that BellSouth Telecommunications, Inc.'s Motion for Continuance is granted. It is further

ORDERED that this Docket shall remain open pending rescheduling of the hearing and resolution of the matters to be addressed at hearing.

By ORDER of Commissioner Braulio L. Baez, as Prehearing Officer, this 23rd Day of January, 2003.


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.

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.