

BEFORE THE PUBLIC SERVICE COMMISSION

In re: Complaint and request for summary disposition to enforce contract audit provisions in interconnection agreement with NewSouth Communications Corp., by BellSouth Telecommunications, Inc.

DOCKET NO. 040028-TP  
ORDER NO. PSC-04-0186-PCO-TP  
ISSUED: February 23, 2004

ORDER TO SUBMIT BRIEFS AND HOLDING DOCKET IN ABEYANCE

On January 12, 2004, BellSouth Communications, Inc. (BellSouth) filed its Complaint and Request for Summary Disposition to Enforce Contract Audit Provisions in Interconnection Agreement with NewSouth Communications Corp. (NewSouth). On February 2, 2004, NewSouth filed its Answer and Response in Opposition to BellSouth's Complaint and Request for Summary Disposition.

BellSouth's Complaint argues that its audit rights of the Special Access Circuits which were converted to EELs at the request of NewSouth are determined solely by the terms of the Interconnection Agreement. NewSouth argues that the audit rights are determined primarily by the terms found in In the Matter of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, CC Docket No. 96-98, Supplemental Order Clarification, 15 FCC Rcd 9587 (2000) ("Supplemental Order Clarification"). In addition, NewSouth argues that some of the provisions of the FCC's Triennial Review Order (TRO) apply in the present matter. Neither party discussed the Change in Law provisions of their Interconnection Agreement, as it relates to the TRO.

An appropriate resolution of this Complaint can only be accomplished through the application of the correct and legally controlling law. That becomes the crux of this determination. Accordingly, the parties should provide this Commission with additional briefing regarding only the issue of the correct law to be applied in determining the audit rights of BellSouth in regard to the referenced circuits. This matter will be held in abeyance pending receipt of such briefs. The briefs shall be no longer than 25 pages in length and shall discuss the applicability, if any, of the Triennial Review Order, the Supplemental Order Clarification, the prevailing Interconnection Agreement, the Change-in-law provisions in that Agreement, and any other documents which the parties believe controlling in this matter. The briefs will be due 30 days from the date this Order is issued.

DOCUMENT NUMBER-DATE

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Based upon the foregoing, it is

ORDERED by Commissioner J. Terry Deason, as Prehearing Officer, that each party shall submit a brief within 30 days of the issuance of this Order, in accordance with the direction given in the body of this Order. It is further

ORDERED that consideration of this Docket be held in abeyance pending receipt of the subject briefs.

By ORDER of Commissioner J. Terry Deason, as Prehearing Officer, this 23rd day of February, 2004.

  
J. TERRY DEASON  
Commissioner and Prehearing Officer

(SEAL)

LF

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

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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.