

BEFORE THE PUBLIC SERVICE COMMISSION

In re: Emergency complaint seeking order requiring BellSouth Telecommunications, Inc. and Verizon Florida Inc. to continue to honor existing interconnection obligations, by XO Florida, Inc. and Allegiance Telecom of Florida, Inc. (collectively, Joint CLECs).

DOCKET NO. 040489-TP

In re: Emergency petition seeking order requiring BellSouth Telecommunications, Inc. and Verizon Florida Inc. to continue to honor existing interconnection obligations, by the Florida Competitive Carriers Association, AT&T Communications of the Southern States, LLC, MCI metro Access Transmission Services, LLC, and MCI WorldCom Communications, Inc.

DOCKET NO. 040520-TP

ORDER NO. PSC-04-1083-PCO-TP

ISSUED: November 4, 2004

ORDER HOLDING DOCKETS IN ABEYANCE

On May 21, 2004, in Docket No. 040489-TP, XO Florida, Inc. (XO) and Allegiance Telecom of Florida, Inc. (Allegiance) filed their Emergency Complaint Seeking An Order Requiring BellSouth Telecommunications Inc. (BellSouth) and Verizon Florida Inc. (Verizon) to Continue to Honor Existing Interconnection Obligations. On June 10, 2004, BellSouth filed its Response in Opposition and Motion to Dismiss and Verizon filed its Motion to Dismiss with Supporting Memorandum.

On May 28, 2004, in Docket 040520-TP, Florida Competitive Carriers Association (FCCA), AT&T Communications of the Southern States, LLC, (AT&T), and MCI metro Access Transmission Services, LLC and MCI WorldCom Communications, Inc. (collectively MCI), filed their Emergency Petition Seeking Order Requiring BellSouth and Verizon to Continue to Honor Existing Interconnection Obligations. On June 17, 2004, BellSouth filed its Response in Opposition and Motion to Dismiss and Verizon filed its Response in Opposition.

The Petitioners in both dockets request that the Commission require BellSouth and Verizon to continue to honor their existing obligations, under state and federal law, as set forth in Commission-approved interconnection agreements and to continue to provide service pursuant to those agreements pending resolution of judicial review of the Federal Communications

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Commission's (FCC's) *TRO*¹ and any resulting FCC action or additional Commission action. Subsequent to the Petitioner's filings, on June 16, 2004, the D.C. Circuit Court of Appeals issued its mandate vacating and remanding certain TRO provisions.²

As a result of the Court's mandate, the FCC released an *Interim Order*³ on August 20, 2004, requiring ILECs to continue providing unbundled access to mass market local circuit switching, high capacity loops and dedicated transport until the earlier of the effective date of final unbundling rules or six months after Federal Register publication of the *Interim Order*. Additionally, the rates, terms, and conditions of these UNEs are required to be those that applied under interconnection agreements as of June 15, 2004. On August 23, 2004, certain ILECs filed a *Mandamus Petition*⁴ with the D.C. Circuit Court of Appeals in response to the FCC's *Interim Order*.

Subsequent to the FCC's *Interim Order*, on October 7, 2004, our staff conducted a conference call with all parties to discuss how the docket should proceed in light of the *USTA II* mandate and the FCC's *Interim Order*. All parties agreed that these Dockets should be held in abeyance pending resolution by the D.C. Circuit Court of the *Mandamus Petition*. All parties to these Dockets have since filed letters with the Commission stating they have no objection to both Dockets being held in abeyance. Since holding these Dockets in abeyance is agreed upon by all parties, I find it reasonable and appropriate to hold these Dockets in abeyance pending resolution by the D.C. Circuit Court of the *Mandamus Petition*.

Based on the foregoing, it is

ORDERED by J. Terry Deason, as Prehearing Officer, that Docket Nos. 040489-TP and 040520-TP shall be held in abeyance pending resolution by the D.C. Circuit Court of the *Petition for a Writ of Mandamus* filed on August 23, 2004.


¹ In the Matter of Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, Deployment of Wireline Services Offering Advanced Telecommunications Capability, CC Docket Nos. 01-338, 96-98, 98-147, Report and Order and Order on Remand and Further Notice of Proposed Rulemaking, rel. August 21, 2003 (*TRO*).

² On March 2, 2004, the D.C. Circuit Court of Appeals released its decision in *United States Telecom Ass'n v. FCC*, 359 F. 3d 554 (D.C. Cir. 2004) (*USTA II*). The D.C. Circuit Court stayed the issuance of the mandate vacating and remanding certain TRO provisions for 60 days and later extended that stay for another 45 days, until June 15, 2004.

³ In the Matter of Unbundling Access to Network Elements, WC Docket No. 04-313; In the Matter of Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, CC Docket No. 01-338, Order and Notice of Proposed Rulemaking, FCC 04-179, rel. August 20, 2004 (*Interim Order*).

⁴ *United States Telecom Ass'n v. FCC*, Petition for a Writ of Mandamus to Enforce the Mandate of the Court, August 23, 2004 (*Mandamus Petition*).

By ORDER of Commissioner J. Terry Deason, as Prehearing Officer, this 4th day of November, 2004.



J. TERRY DEASON
Commissioner and Prehearing Officer

(SEAL)

AJT

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 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.