

MEMORANDUM

June 26, 1998

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RECORDS AND
REPORTING

TO: DIVISION OF RECORDS AND REPORTING

FROM: DIVISION OF LEGAL SERVICES (PELLEGRINI) *CF bk f MEB*

RE: DOCKET NO. 971560-TL - Petition by BellSouth
Telecommunications, Inc. for Waiver of Rule 25-4.115,
F.A.C., Directory Assistance, and for Authorization to
Provide National Directory Assistance (NDA) in Florida.

PSC-98-0857-PCO-TL

Attached is an Order Granting Intervention to be issued in the
above-referenced docket. (Number of pages in order - 4)

CJP/slh
Attachment
cc: Division of Communications
I:971560ai.cjp

MUST GO TODAY

4/0

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition by BellSouth Telecommunications, Inc. for Waiver of Rule 25-4.115, F.A.C., Directory Assistance, and for Authorization to Provide National Directory Assistance (NDA) in Florida.

DOCKET NO. 971560-TL
ORDER NO. PSC-98-0857-PCO-TL
ISSUED: June 29, 1998

ORDER GRANTING INTERVENTION

On March 5, 1998, the Commission issued Proposed Agency Action Order No. PSC-98-0362-FOF-TL, granting BellSouth Telecommunications, Inc.'s (BellSouth's) petition for waiver of Rule 25-4.115, Florida Administrative Code, and thereby authorizing the company to provide National Directory Assistance (NDA) in Florida. On March 26, 1998, MCI Telecommunications Corporation and MCImetro Access Transmission Services, Inc., (MCI) filed a protest of the order. On April 30, 1998, BellSouth and MCI executed a memorandum of understanding concerning BellSouth's continued provisioning of NDA in the pendency of MCI's protest. The parties agreed that the dispute be resolved by means of a Section 120.57 (2), Florida Statutes, hearing.

On June 15, 1998, AT&T Communications of the Southern States, Inc., (AT&T) filed a petition to intervene and a brief. On June 22, 1998, BellSouth filed a motion to dismiss AT&T's petition to intervene and to strike AT&T's brief.

In its petition, AT&T notes that Rule 25-4.115, Florida Administrative Code, prohibits BellSouth in its present capacity as a local exchange company, without 47 U.S.C. §271(d) authority, from providing directory assistance listings for telephone numbers outside the Home Numbering Plan Area (HNPA) to its Florida customers. AT&T asserts that its substantial interests as an interexchange telecommunications carrier will be affected by the Commission's decision to again authorize BellSouth to provide NDA services to its Florida customers, or not. AT&T alleges that in providing NDA services, BellSouth is in violation of 47 U.S.C. §271(a).

In its motion to dismiss AT&T's petition to intervene, BellSouth argues that the petition is simply untimely. BellSouth notes that it filed its petition for waiver of Rule 25-4.115,

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Florida Administrative Code, on November 26, 1997, and that no party submitted comments following notice publication in the Florida Administrative Law Weekly on December 19, 1997. BellSouth further notes that AT&T did not file a protest of the Commission's proposed agency action, nor did it participate in issue identification workshops held on April 16 and April 21, 1998. BellSouth argues that in seeking to participate in this proceeding for the first time on June 15, 1998, the day the parties' briefs were to be submitted, AT&T is acting too late. BellSouth alleges that AT&T's right to intervene is limited by Rule 25-22.039, Florida Administrative Code, to at least five days before final hearing, and that in this case the filing of briefs substitutes for the hearing for the purpose of applying this rule.

Rule 25-22.039, Florida Administrative Code, authorizes persons with a substantial interest in a pending proceeding to petition for leave to intervene. Before one can be considered to have a substantial interest in the outcome of a proceeding, he or she must demonstrate injury in fact of sufficient immediacy of the type the proceeding is designed to protect. Agrico Chemical Co. v. Department of Environmental Regulation, 406 So.2d 478 (Fla. 2d DCA 1981). Although Florida courts have been reluctant to protect purely economic or competitive interests, the issues raised by MCI's protest concern whether BellSouth is proscribed under 47 U.S.C. §1 et seq., from providing NDA services until it obtains 47 U.S.C. §271 authority to provide interLATA services. Whether it is or is not, the substantial interests of AT&T as a provider of national and international directory assistance services are affected.

Rule 25-22.039, Florida Administrative Code, also requires that a petition to intervene must be filed no later than five days before the final hearing in the proceeding. BellSouth's argument that in a Section 120.57(2), Florida Statutes, hearing, the submission of briefs may substitute for the hearing for the purpose of applying the rule is intriguing, but not persuasive. Florida courts have held that it is an abuse of discretion to deny intervention unless the participation would delay or disrupt the proceedings. See, e.g., Sweetwater Country Club Homeowners' Ass'n v. Huskey Co., 613 So.2d 936 (Fla. 5th DCA 1993); Hartford Fire Insur. Co. v. School Bd. of Dade County, 661 So.2d 111 (Fla. 3d DCA 1995). The limitation of Rule 25-22.039, Florida Administrative Code, is clearly and reasonably designed to assure the orderliness of Section 120.57(1), Florida Statutes, hearings, but it can have no similar purpose for Section 120.57(2), Florida Statutes, hearings. AT&T filed its petition to intervene and submitted its

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brief on the same day that BellSouth and MCI were to submit their briefs. While AT&T has not caused a disruption or delay of this proceeding, its late appearance can be said to have prejudiced BellSouth in the preparation of its brief. Therefore, AT&T shall be permitted to intervene in this proceeding, but BellSouth shall be permitted to file an answer brief addressing the allegations and argument in AT&T's brief. BellSouth's answer brief shall be filed within 20 days of the issuance of this Order

For the reasons stated, BellSouth's motion to dismiss AT&T's petition to intervene and to strike AT&T's brief is denied. AT&T's petition to intervene is granted.

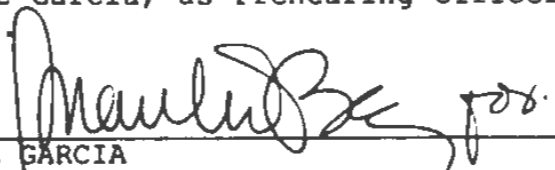
Based on the foregoing, it is

ORDERED by Commissioner Joe Garcia, as Prehearing Officer, that BellSouth Telecommunications, Inc.'s Motion to Dismiss AT&T Communications of the Southern States, Inc.'s Petition to Intervene and to Strike AT&T's Brief is denied. It is further

ORDERED that AT&T Communications of the Southern States, Inc.'s Petition to Intervene is granted. It is further

ORDERED that BellSouth Telecommunications, Inc., shall be permitted to file an answer brief as set forth in the body of this Order.

By ORDER of Commissioner Joe Garcia, as Prehearing Officer, this 29th day of June, 1998.



JOE GARCIA
Commissioner and Prehearing Officer

(SEAL)

CJP

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

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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.

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.