

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Request for arbitration concerning complaint of ITC^DeltaCom Communications, Inc. against BellSouth Telecommunications, Inc. for breach of interconnection terms, and request for immediate relief.

DOCKET NO. 991946-TP
ORDER NO. PSC-00-0211-PCO-TP
ISSUED: February 2, 2000

ORDER DENYING MOTION TO CONSOLIDATE

On December 17, 1999, ITC^DeltaCom Communications, Inc. (ITC) filed a Complaint against BellSouth Telecommunications, Inc. (BellSouth) for breach of interconnection terms and conditions of the Interconnection Agreements and Amendments thereto between ITC and BellSouth dated March 12, 1997. Also on December 17, 1999, ITC filed a Motion to Consolidate its Complaint (Motion) with the Complaint filed by Global NAPs, Inc. (GNAPs) against BellSouth in Docket No. 991267-TP. On January 11, 2000, BellSouth filed its Response to ITC's Motion to Consolidate.

In support of its Motion, ITC states that the Commission has not ruled upon its Motion to Intervene in Docket No. 991267-TP. ITC states that GNAPs adopted the ITC/BellSouth Agreement in accordance with Section 252(i) of the Telecommunications Act of 1996, and therefore, the language contained in the GNAPs and ITC Interconnection Agreements is the same.

ITC further states that the same contract language and the same question of law underlying the dispute between GNAPs and BellSouth is the subject of ITC's complaint. ITC argues that Commission staff and resources, as well as the Parties' resources will be more efficiently utilized by consolidating the complaints. ITC asserts that judicial economy dictates that where the same contract language is at issue, only one proceeding is necessary.

Finally, ITC states that it is willing to accept the current hearing date of January 25, 2000, and suggests that direct testimony be filed on December 27, 1999, and rebuttal and prehearing statements be filed by January 3, 2000. ITC represented that GNAPs supported ITC's Motion for Consolidation.

DOCUMENT NUMBER-DATE

01421 FEB-28

FPSC-RECORDS/REPORTING

In response, BellSouth asserts that the relevant facts to be decided in the ITC case are different than those in the GNAPS case. BellSouth also argues that it would be inefficient to delay the GNAPS hearing to accommodate ITC. BellSouth states that, at the time of this response, the direct and rebuttal testimony and the prehearing statements had been filed in Docket No. 991267-TP. BellSouth also emphasized that the hearing has been scheduled for January 25, 2000.

BellSouth further argues that, in the ITC/BellSouth proceeding, the Commission will have to investigate and determine facts that go beyond the plain language of the agreement and are not relevant to the GNAPS proceeding. BellSouth argues that although GNAPS adopted the terms of the ITC agreement when it entered into its own interconnection agreement, GNAPS can only adopt the language of another agreement. BellSouth argues that GNAPS cannot adopt the subjective intentions of the parties to the original agreement. BellSouth argues that these underlying intentions are not reflected in the plain language of the ITC agreement.

Finally, BellSouth argues that consolidating the proceedings would render the proceeding inefficient. BellSouth asserts that ITC wants to consolidate an entirely new complaint concerning an agreement to which GNAPS is not a party, and which will include facts and issues that do not need to be decided in the GNAPS case. BellSouth further argues that, as a matter of fairness, it would be impossible to consolidate these cases and allow sufficient time for the parties to adequately respond to the allegations, conduct discovery, prepare and file testimony, and prepare for a hearing in the allotted time. BellSouth notes that GNAPS filed its complaint in August 1999. If however, the ITC Complaint were consolidated with the GNAPS Complaint, BellSouth argues that it would be prejudiced having insufficient time to prepare its defense to ITC's Complaint unless the hearing were delayed. If the hearing were delayed, Global NAPS and BellSouth would be prejudiced by having the resolution of their dispute put off for months.

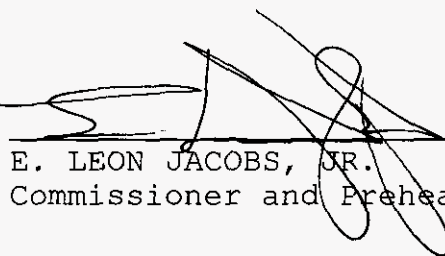
Based upon the foregoing, I find BellSouth's arguments persuasive that the parties would have insufficient time to prepare for hearing should the consolidation be granted and that it would be unfair to the parties to Docket No. 991267-TP if the hearing in that case was postponed. Upon consideration, I find that ITC's Motion to Consolidate should be denied.

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It is therefore

ORDERED by Commissioner E. Leon Jacobs, Jr. that ITC^DeltaCom Telecommunications, Inc.'s Motion to Consolidate Global NAPs and ITC^DeltaCom's Complaints is denied.

By ORDER of Commissioner E. Leon Jacobs, Jr. as Prehearing Officer, this 2nd day of February, 2000.



E. LEON JACOBS, JR.
Commissioner and Prehearing Officer

(S E A L)

DWC

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,

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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.