

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Request for arbitration concerning complaint of US LEC of Florida Inc. against BellSouth Telecommunications, Inc. regarding breach of terms of interconnection agreement and request for relief.

DOCKET NO. 990874-TP  
ORDER NO. PSC-00-0952-PCO-TP  
ISSUED: May 15, 2000

ORDER GRANTING CONSENT MOTION TO CONTINUE HEARING

On July 2, 1999, US LEC of Florida, Inc. (US LEC) filed a Complaint against BellSouth Telecommunications, Inc. (BellSouth) alleging breach of the terms of an interconnection agreement between the parties. On July 22, 1999, BellSouth filed its Answer and Response to Complaint of US LEC of Florida, Inc. By Order No. PSC-99-1781-PCO-TP, issued September 10, 1999, US LEC's Motion to file an amended complaint was granted. By Order No. PSC-99-2144-PCO-TP, Order on Procedure, issued November 1, 1999, the procedures were established and the controlling dates set. By Order No. PSC-99-2511-PCO-TP, issued December 22, 1999, US LEC's second motion to file an amended complaint and consented motion to extend time for filing testimony was granted, and the Order on Procedure was modified accordingly to revise the controlling dates. The Order on Procedure was reaffirmed in all other respects. On January 10, 2000, BellSouth filed its answer to US LEC's second amended complaint.

On February 18, 2000, US LEC filed a Motion to Modify Procedural Schedule. By Order No. PSC-00-0618-PCO-TP, issued March 31, 2000, the Order on Procedure was again revised to allow the parties to conduct discovery through April 10, 2000, and to extend the time for filing objections to the discovery requests served by both parties upon each other on February 11, 2000. The revised Order also expedited the response time for the parties' second round of discovery to 20 days from the date of service. Order No. PSC-99-2144-PCO-TP was again reaffirmed in all other respects.

On March 3, 2000, BellSouth filed a Motion to File Surrebuttal Testimony, or in the Alternative, to Strike, alleging that the testimony of US LEC witness, Wanda Montana, was improper rebuttal testimony. BellSouth requested that it be allowed to rebut Ms. Montano's testimony with the testimony of Robert Scheye, or in the alternative, that the testimony be stricken. On March 20, 2000, US LEC filed its response, stating that it had no objection to the

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surrebuttal testimony of Mr. Scheye, to rebut the testimony of Ms. Montano.

On March 30, 2000, BellSouth filed a Motion to Compel Discovery Responses, wherein it requests an order compelling responses to its Interrogatories Nos. 17 and 19 and Requests for Production of Documents Nos. 2, 3, 12, and 14.

On March 30, 2000, US LEC filed a Motion to Strike Portions of Pre-Filed Testimony or, in the Alternative, to Stay Portion of Pending Hearing. In its Motion, US LEC alleges that the pre-filed rebuttal testimony of BellSouth witness, Jerry Hendrix, addresses for the first time matters that had not been put into issue by the pleadings in the case. Specifically, US LEC argues that there is no claim of any kind in this case regarding the rate to be applied to the parties' reciprocal compensation obligations. Therefore, US LEC requests that Mr. Hendrix's testimony, regarding the reciprocal compensation rate, be stricken. Alternatively, US LEC requests that the portion of the hearing relating to the reciprocal compensation rate be stayed pending the Commission's ruling on the rate issue in a separate docket, Docket No. 991534-TP. Docket No. 991534-TP involves the BellSouth/Intermedia agreement, which was adopted by US LEC.

On March 31, 2000, BellSouth filed its response, asserting that US LEC had not articulated any legitimate grounds for striking the subject portion of Mr. Hendrix's testimony. BellSouth further argues that staying only a portion of the hearing is a waste of time and resources, since under US LEC's proposal, the Commission would be required to conduct two hearings rather than one.

On April 3, 2000, US LEC filed a Reply in Further Support of Motion to Strike Portions of Prefiled Rebuttal Testimony or in the Alternative, to Stay Portion of Pending Hearing. Therein, US LEC states that it disagrees with BellSouth's views on the merits of the Motion to Strike, but that "there is value in the suggestion that the interests of judicial economy will be served by resolving the entire dispute between the parties in a single proceeding that occurs after the Intermedia/BellSouth case has been resolved." US LEC further states:

A continuance of the hearing in this matter until after that date would permit the parties to resolve all of the factual and legal issues in a timely, cost-effective manner. It gives

US LEC the opportunity to pursue discovery on the . . . rate issue -- either in this case or in the separate complaint proceeding it intends to file -- and to submit testimony on that issue. It also permits the Commission to address the legal issues raised by a section 252(I) adoption.

Accordingly, US LEC withdrew the portion of its motion which sought to strike Mr. Hendrix's testimony on the rate issue with the understanding that BellSouth did not object to continuing the instant case until after the Intermedia proceeding or separate US LEC complaint proceeding was resolved by the Commission. US LEC also requested that the hearing be continued in accordance with the foregoing.

On April 3, 2000, the parties requested cancellation of the prehearing conference scheduled for the same day and the hearing scheduled for April 17, 2000. The parties' request was approved and a Notice of Cancellation was issued.

On April 17, 2000, the parties filed a Consent Motion to Continue Hearing, wherein they state that the interests of judicial economy would be served by continuing the case to enable them to litigate all issues in dispute in the course of a single hearing. Further, the parties agree that the hearing should be continued until after the Commission enters its ruling in Docket No. 991534-TP. Additionally, the parties agree that there is no present need for the Commission to act upon the pending motions and requests, specifically, BellSouth's Motion to File Surrebuttal Testimony or, in the Alternative, to Strike; US LEC's Motion to Strike Portions of Pre-Filed Rebuttal Testimony or, in the Alternative, to Stay Portion of Pending Hearing; US LEC's Reply in Further Support of Motion to Strike Portions of Rebuttal Testimony or, in the Alternative, to Stay Portion of Pending Hearing; and BellSouth's Motion to Compel Discovery.


Upon consideration, the parties' Consent Motion to Continue Hearing is hereby granted. The hearing schedule shall be continued until after the Commission enters a ruling in Docket No. 991534-TP.

Based upon the foregoing, it is

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ORDERED by Chairman Joe Garcia, as Prehearing Officer, that the Consent Motion to Continue Hearing is granted as set forth within the body of this Order.

By ORDER of Chairman Joe Garcia as Prehearing Officer, this 15th day of May, 2000.

  
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JOE GARCIA  
Chairman and Prehearing Officer

( S E A L )

DMC

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

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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.