

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Request for arbitration
concerning complaint of
Worldlink Long Distance Corp.
against BellSouth
Telecommunications, Inc.
regarding resale agreement.

DOCKET NO. 990332-TP
ORDER NO. PSC-00-1026-FOF-TP
ISSUED: May 23, 2000

The following Commissioners participated in the disposition of this matter:

SUSAN F. CLARK
E. LEON JACOBS, JR.

FINAL ORDER GRANTING BELLSOUTH TELECOMMUNICATIONS, INC.'S
MOTION TO DISMISS

BY THE COMMISSION:

Worldlink Long Distance Corporation (Worldlink) is an ALEC, reselling BellSouth Telecommunications, Inc. (BellSouth) local services in Florida. On March 15, 1999, we received a letter from Worldlink, enumerating several non-specific complaints about the service received from BellSouth. There was no indication that BellSouth had been provided with a copy of the complaint.

On March 23, 1999, our staff forwarded a copy of the Worldlink complaint letter to BellSouth and requested a response to the allegations contained therein. On April 8, 1999, BellSouth filed a Motion for a More Definite Statement, and provided a copy of the Motion to Worldlink.

On August 5, 1999, our staff filed a Recommendation that BellSouth's Motion for More Definite Statement be granted. During the August 17, 1999 Agenda Conference, Worldlink filed with the Commission's Division of Records and Reporting a document, representing it as the More Definite Statement requested by BellSouth. The document, however, merely enumerated six cases wherein Worldlink felt BellSouth's provisioning of services for Worldlink customers was inadequate. The document did not specify the duty owed by BellSouth nor how that duty was breached, as requested in BellSouth's Motion for a More Definite Statement. As a result of the filing of that document, however, consideration of

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this matter was deferred to determine whether a resolution of this dispute could be reached.

Commission staff set up an informal meeting on September 2, 1999, between the parties in this docket and provided each party with a notice of the time, date and place of the meeting. Also provided was a telephone number through which the parties could participate should they choose not to attend the meeting in person. At the meeting, Worldlink did not appear, nor did it call in. Since BellSouth had expended considerable resources to have two out-of-town representatives present, our staff attempted to reach someone from Worldlink who would be able to discuss their complaint. Finally, staff was able to locate a representative to participate. BellSouth had records available on the six cases listed on Worldlink's document, but Mr. Belatour, Worldlink's representative, appeared ill-prepared to discuss any specifics at the meeting. BellSouth represented that it would work with Worldlink to resolve the issues and, if necessary, another meeting would be convened in the future.

In October, 1999, it was reported to our staff by BellSouth that Worldlink had made no effort to work with it in resolving the issues, so another meeting was scheduled with the parties for November 9, 1999, again providing a telephone number for remote participation. On the afternoon of November 8, 1999, staff was advised by Worldlink that it would not be able to participate in the meeting the next day because it could not get a flight to Tallahassee. The company indicated that it was important to appear in person, rather than by telephone. The meeting was rescheduled for November 23, 1999. On November 15, 1999, Worldlink filed another list of customers wherein it alleged improper service provisioning by BellSouth.

At the November 23, 1999 meeting, Worldlink did not appear in person, but did appear by telephone. At the meeting, BellSouth provided an analysis of the specific problem cases Worldlink had identified, indicating that much of the problem was a result of Worldlink's apparent improper handling of the orders placed with BellSouth. BellSouth had also brought to the meeting documents demonstrating how Worldlink could prevent many of the problems it was having by improving the manner and quality of the orders placed with BellSouth. Again, Worldlink seemed ill-prepared to support its complaints, but did not accept BellSouth's explanations. BellSouth also reported that it had made several inquiries of

Worldlink in an effort to resolve the complaints, and had not received any response from Worldlink.

Our staff endeavored to give Worldlink direction as to what would be required as an appropriate response, and requested that it respond to the BellSouth documents within the next two weeks following the November 23, 1999 meeting. As of this date, neither we nor BellSouth have heard anything further from Worldlink. On April 3, 2000, BellSouth filed its Motion to Dismiss the Worldlink Complaint. Responses to the Motion were due April 17, 2000. To date, Worldlink has not filed a response.

As stated by the Court in Varnes v. Dawkins, 624 So. 2d 349, 350 (Fla. 1st DCA 1993), "[t]he function of a motion to dismiss is to raise as a question of law the sufficiency of facts alleged to state a cause of action." In determining the sufficiency of the Complaint, the Commission should confine its consideration to the Complaint and the grounds asserted in the Motion to Dismiss. See Flye v. Jeffords, 106 So. 2d 229 (Fla. 1st DCA 1958). Furthermore, we should construe all material allegations against the moving party in determining if the Complainant has stated the necessary allegations. See Matthews v. Matthews, 122 So. 2d 571 (Fla. 2nd DCA 1960).

In its Motion BellSouth asks that the Complaint by Worldlink be dismissed because it is not sufficiently specific to put BellSouth on notice as to the nature of Worldlink's claims. Worldlink has not identified the duty owed them under statute, rule or contract, nor the breaches by BellSouth of that duty. The complaint is of a general nature, merely expressing general dissatisfaction with the BellSouth service to Worldlink customers. Accordingly, it does not provide adequate notice to BellSouth of any specific allegation to which a response would be required. Thus, it simply fails to state a claim.

Additionally, in the year that Worldlink's Complaint has been pending, we note that Worldlink has not prepared for participation in either of the two informal meetings arranged for the parties in an effort to resolve the issues, and has otherwise failed to diligently pursue its Complaint. Also, Worldlink did not comply with minimal data requests from our staff on two occasions. It has become apparent that our attempts to assist the parties in reaching a resolution of this dispute have been to no avail, due largely to Worldlink's lack of cooperation with us and with BellSouth.

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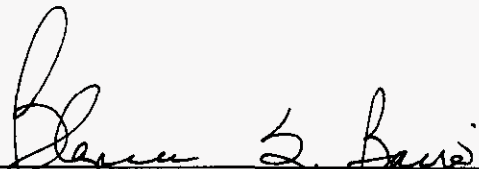
Applying the standard set forth above, we are persuaded that the Complaint is not sufficiently specific to state a cause of action upon which we could grant relief, or for BellSouth to adequately respond to the issues therein. The Complaint simply expresses general dissatisfaction with the service That BellSouth has provided to Worldlink. Therefore, the Motion to Dismiss is granted. By granting this Motion to Dismiss Complaint, BellSouth's pending Motion for More Definite Statement will be rendered moot.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that the Motion to Dismiss Complaint filed by BellSouth Telecommunications, Inc., is hereby granted. It is further

ORDERED that this Docket shall be closed.

By ORDER of the Florida Public Service Commission this 23rd day of May, 2000.



BLANCA S. BAYÓ, Director
Division of Records and Reporting

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CLF

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.

Any party adversely affected by the Commission's final action in this matter may request: 1) reconsideration of the decision by filing a motion for reconsideration with the Director, Division of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, within fifteen (15) days of the issuance of this order in the form prescribed by Rule 25-22.060, 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 and/or wastewater utility by filing a notice of appeal with the Director, Division of Records and reporting and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days after the issuance of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900(a), Florida Rules of Appellate Procedure.