

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition by AT&T
Communications of the Southern
States, Inc., TCG South Florida,
and MediaOne Florida
Telecommunications, Inc. for
structural separation of
BellSouth Telecommunications,
Inc. into two distinct wholesale
and retail corporate
subsidiaries.

DOCKET NO. 010345-TP
ORDER NO. PSC-01-1615-PCO-TP
ISSUED: August 8, 2001

ORDER GRANTING MOTION TO CLARIFY AND AMEND

On March 21, 2001, AT&T Communications of the Southern States, Inc., TCG South Florida and MediaOne Florida Telecommunications, Inc. (collectively, "AT&T"), filed a petition requesting that this Commission institute proceedings and enter an order requiring the structural separation of BellSouth Telecommunications, Inc. ("BellSouth") "into two distinct wholesale and retail corporate subsidiaries." Subsequently, on April 10, 2001, BellSouth filed its Motion to Dismiss, or in the Alternative, Motion to Strike AT&T's Petition seeking the Structural Separation of BellSouth. On May 2, 2001, AT&T filed a response opposing BellSouth's Motion to Dismiss.

MOTION

On June 20, 2001, AT&T filed its Motion to Clarify and Amend Petition for Structural Separation (Motion). In its Motion, AT&T seeks to amend its Petition to clarify that it requests the Commission to consider all relief necessary or appropriate under the circumstances.

RESPONSE

On July 2, 2001, BellSouth filed its Opposition to Motion to Clarify and Amend AT&T's Petition for Structural Separation. BellSouth argues that after setting the scope of this proceeding, AT&T is attempting to greatly expand the scope of this proceeding by introducing new issues and seeking additional, unlimited and

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unspecified claims of relief. BellSouth cites to Warfield v. Dowry, 41 So. 2d 877, 878 (Fla. 1941) (cit. omit.) for the standard that amendments of pleadings "are not allowed if they 'would change the issue, or introduce new issues, or materially vary the grounds for relief.'"

BellSouth further alleges that it will be severely prejudiced by the amendment because it cannot prepare a defense to the unlimited, unspecified claims for relief. Moreover, AT&T has not stated any good cause why it has waited three months to amend its Petition.

DECISION

Rule 28-106.202, states that "[t]he petitioner may amend the petition after the designation of the presiding officer only upon order of the presiding officer." AT&T's Motion was filed subsequent to the designation of a presiding officer, and BellSouth timely filed a response in opposition. AT&T then filed a Reply to BellSouth's Opposition to Motion to Clarify and Amend Petition. Such a pleading is not contemplated by Commission rules, so it will not be addressed herein. See Order No. PSC-01-1168-PCO-TP, issued May 22, 2001, in Docket No. 010098-TP.

The longstanding policy in Florida, and of this Commission in particular, is to allow pleadings to be freely amended so that disputes may be resolved on their merits. See Adams v. Knabb Turpentine Co., 435 So. 2d 944, 946 (Fla. 1st DCA 1983); see also Order No. PSC-98-0332-PCO-TP, issued February 26, 1998, in Docket No. 970730-TP.

The sole case relied upon by BellSouth is inapplicable to the facts of this case. In Warfield, the plaintiff sought to amend her petition after she had testified at trial. 41 So. 2d at 877. The court declined to allow amendment of her pleadings because "by the time she got around to submitting the amended bill the liberality in allowing such amendments had diminished to the point where she was entitled to very little consideration on the part of the chancellor." Id. at 879.

This proceeding is still in its early stages, with only the filing of the original petition and a motion to dismiss that petition. It does not appear that BellSouth will be unduly

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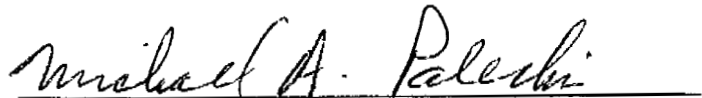
prejudiced by the amendment. Accordingly, AT&T's Motion to Clarify and Amend Petition for Structural Separation is hereby granted. Any response to AT&T's Clarified and Amended Petition¹ shall be filed within 20 days of the issuance date of this order.

Based on the foregoing, it is

ORDERED by Commissioner Michael A. Palecki, as Prehearing Officer, that the Motion to Clarify and Amend Petition for Structural Separation filed by AT&T Communications of the Southern States, Inc., TCG South Florida, Inc., and MediaOne Florida Telecommunications, Inc., is hereby granted. It is further

ORDERED that any response to the Clarified and Amended Petition for Structural Separation filed by AT&T Communications of the Southern States, Inc., TCG South Florida, Inc., and MediaOne Florida Telecommunications, Inc., shall be filed within 20 days from the issuance date of this order.

By ORDER of Commissioner Michael A. Palecki, as Prehearing Officer, this 8th day of August, 2001.



MICHAEL A. PALECKI
Commissioner and Prehearing Officer

(S E A L)

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¹The Clarified and Amended Petition supersedes the original petition. See Rice v. Clement, 184 so. 2d 678 (Fla. 4th DCA 1966) (stating that "an original pleading is superseded by an amendment of it which does not express an intention to save any portion of it.").

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 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.