

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Request for arbitration
concerning complaint of IDS
Telcom LLC against BellSouth
Telecommunications, Inc.
regarding breach of
interconnection agreement.

DOCKET NO. 010740-TP
ORDER NO. PSC-01-1790-PCO-TP
ISSUED: September 5, 2001

ORDER DENYING BELLSOUTH'S MOTION TO
DEFER ANTICOMPETITIVE ISSUES
AND ORDER GRANTING BELLSOUTH'S MOTION TO COMPEL

IDS Long Distance, Inc. n/k/a IDS Telecom, L.L.C. (IDS) filed a Complaint and Request for Emergency Relief against BellSouth Telecommunications, Inc. (BellSouth). IDS raises four counts against BellSouth: (1) BellSouth has breached the interconnection agreement by failing to provide IDS OSS and UNEs at parity; (2) BellSouth has perpetrated an anticompetitive campaign of "win back" tactics against IDS, including the Full Circle Program and fraudulent telemarketing schemes; (3) BellSouth has permitted the sharing of IDS's customer proprietary network information between its retail and wholesale divisions in violation of the Telecommunications Act of 1996; and (4) the Commission should immediately initiate a show cause proceeding to investigate and sanction BellSouth for its anticompetitive activities that have harmed citizens of the State of Florida. BellSouth filed a response and the matter is set for hearing on September 21 and October 1, 2001.

BellSouth's Motion to Defer Anticompetitive Issues

On August 21, 2001, pursuant to Rule 28-106.204, Florida Administrative Code, BellSouth filed a Motion to Defer Issues to Generic Docket Established to Investigate the Existence of Anticompetitive Behavior by BellSouth. In its motion, BellSouth requests that the issues in this docket that deal with alleged anticompetitive practices by BellSouth against IDS be moved to Docket No. 011077-TL, in which the Commission is investigating allegations of anticompetitive behaviors and practices by BellSouth. The issues for which BellSouth has requested deferral state:

DOCUMENT NUMBER-DATE

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3. Has BellSouth engaged in anticompetitive activities against IDS in violation of Chapter 364, Florida Statutes, and the Telecommunications Act of 1996?
4. Has BellSouth inappropriately utilized IDS' CPNI data in violation of the Telecommunications Act of 1996?
5. What remedies, if any, should the Commission order BellSouth to provide IDS in the event IDS proves that BellSouth . . . engaged in anticompetitive activities?

BellSouth argues that the anticompetitive allegations raised by IDS can have broader application than any impact on IDS and IDS' customers because they can apply to all ALECs. According to BellSouth, the showings that IDS will attempt to make in this docket are the same as those that it would attempt to make in Docket No. 011077-TL. BellSouth argues that it would be inefficient for these issues to be addressed in both proceedings and that it is Commission practice to decide common issues in generic proceedings. BellSouth agrees that the issues related to whether BellSouth breached its interconnection agreement with IDS should remain in this docket.

IDS filed its response to BellSouth's motion to defer the anticompetitive issues on August 28, 2001, in which it strongly objects to BellSouth's motion. According to IDS, it has a legal right to put on its evidence regarding BellSouth's anticompetitive practices against IDS individually in a formal Section 120.569 proceeding. IDS argues this proceeding is different from Docket No. 011077-TL because ALEC intervenors would not be able to participate in this docket since they have not been damaged or are not substantially affected by BellSouth's alleged anticompetitive actions directed towards IDS. In addition, IDS argues that deferment of the issues would be extremely time consuming and more costly because of the large number of parties that are expected to participate in Docket No. 011077-TP. IDS also argues that it would be a denial of its due process rights to move the issues to Docket No. 011077-TP. According to IDS, the specific relief it seeks is unavailable in Docket No. 011077-TP.

Pursuant to Rule 28-106.211, Florida Administrative Code, presiding officers have broad authority to issue orders to, among other things, "promote the just, speedy, and inexpensive determination of all aspects of the case" The uniform rules thus give me authority to decide whether to defer any issues to another open docket at the Commission. Having reviewed BellSouth's motion and IDS' response, I find that IDS is entitled to have the Commission hear its complaint in a proceeding that addresses IDS' complaint only. Accordingly, BellSouth's motion to defer the anticompetitive issues to Docket No. 011077-TL is denied.

BellSouth's Motion to Compel Discovery

On August 22, 2001, BellSouth filed a Motion to Compel Discovery and for a Continuance. As stated in BellSouth's motion, Order No. PSC-01-1501-PCO-TP set an expedited time frame for discovery responses because this proceeding is on an expedited schedule. In particular, Order No. PSC-01-1501-PCO-TP required any objections to discovery requests to be made within 10 days of service of the discovery, and also required responses to interrogatories and production of documents to be made within 20 days of service of the request. IDS did not object to any of BellSouth's discovery requests, nor has IDS sought an extension of time to respond. According to BellSouth, on August 20, 2001, the time by which IDS should have responded to its discovery requests, IDS' answer for 48 of the 103 propounded interrogatories was:

IDS has not had the resources to collect all of [sic] records, notes, correspondence that it may have in its possession. If and when IDS has this document compiled it will provide them to BellSouth.

BellSouth also states that for at least 23 additional interrogatories, IDS provided a partial answer and stated that it had additional responsive information and would provide it to BellSouth "if and when" it had the time.

IDS responded to BellSouth's motion on August 29, 2001. In its response, IDS noted that it provided BellSouth supplemental discovery responses on August 23 and 24, 2001. IDS argued that any party, even a large company, would have had difficulty responding in a timely fashion to such an excessive number of interrogatories

and requests for production of documents. According to IDS, there is no comparison between IDS' and BellSouth's resources, and even BellSouth has had difficulties meeting the discovery demands of this case. IDS also argues that BellSouth's motion is moot because it has provided the requested discovery and made an extreme good faith effort to do so.

Pursuant to Rule 28-106.206, Florida Administrative Code, presiding officers "may issue appropriate orders to effectuate the purposes of discovery and to prevent delay, including the imposition of sanctions in accordance with the Florida Rules of Civil Procedure, except contempt." Thus, I have the authority to rule on BellSouth's motion to compel. Having reviewed the pleadings and IDS' discovery responses and supplemental discovery responses, I find that IDS' response is incomplete and not timely. There are still 43 interrogatory questions to which IDS' only response is that it has not had the resources to answer the question, and will do so if and when it has the time. Such an answer is not an adequate response to an interrogatory, especially in a case where the complaining party asked for the proceeding to be expedited. In addition, it appears there are other interrogatory questions that have been insufficiently answered.

I find that BellSouth's motion to compel shall be granted. IDS shall have until Thursday, September 6, 2001, to comply with all outstanding discovery requests from BellSouth. At the prehearing conference on Monday, September 10, 2001, the parties shall be prepared to argue whether all discovery is complete and whether the hearing should be continued based on the status of incomplete discovery, if any.

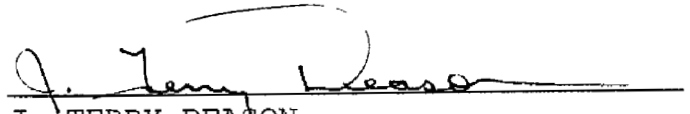
Based on the foregoing, it is

ORDERED by Commissioner J. Terry Deason, as Prehearing Officer, that BellSouth Telecommunications, Inc.'s Motion to Defer Issues to Generic Docket Established to Investigate the Existence of Anticompetitive Behavior by BellSouth is hereby denied. It is further

ORDERED that BellSouth Telecommunications, Inc.'s Motion to Compel Discovery is granted.

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By ORDER of Commissioner J. Terry Deason, as Prehearing Officer, this 5th day of September, 2001.



J. TERRY DEASON
Commissioner and Prehearing Officer

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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

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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.