

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Complaint by BellSouth
Telecommunications, Inc. against
Global Crossing
Telecommunications, Inc.
regarding practices in reporting
of percent interstate usage for
compensation for jurisdictional
access services.

DOCKET NO. 011378-TP
ORDER NO. PSC-02-0081-PCO-TP
ISSUED: January 14, 2002

ORDER GRANTING MOTION TO HOLD IN ABEYANCE

Background

On October 19, 2001, BellSouth Telecommunications, Inc. (BellSouth) filed a complaint against Global Crossing Telecommunications, Inc. (Global). BellSouth alleges that Global is intentionally and unlawfully reporting erroneous Percent Interstate Usage (PIU) factors to BellSouth in violation of BellSouth's Intrastate Access Tariff and the rules and regulations established by this Commission. BellSouth alleges that erroneous PIUs have resulted in the under-reporting of intrastate access terminating minutes to BellSouth, causing BellSouth financial harm. BellSouth has requested that we take all action appropriate to protect the company from further financial harm.

On November 13, 2001, Global timely filed a Motion to Dismiss or, in the Alternative, to Hold in Abeyance BellSouth's Complaint. On November 21, 2001, BellSouth filed its Motion for Extension of Time to Respond to Global's Motion to Dismiss. That Motion was granted by Order No. PSC-01-2327-PCO-TP, entered November 29, 2001. On December 3, 2001, BellSouth filed its Opposition to Global's Motion to Dismiss or, in the Alternative, to Hold in Abeyance BellSouth's Complaint.

Argument

Global asserts that this proceeding has one central issue: What is the appropriate percent interstate usage (PIU) to be applied to the traffic that terminated to BellSouth? Global maintains that for over 15 years BellSouth's federal tariffs have set forth a reasonable and workable approach to resolving disputes over the allocation of the percentages. Those provisions are

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mirrored in BellSouth's state tariffs. Specifically, under procedures developed by the Federal Communications Commission (FCC) and the Federal-State Joint Board on Separations, local exchange carriers disputing a reported PIU are to request an independent audit of the carrier's interstate usage. According to Global, BellSouth has failed to follow its own federal tariffs.

Global alleges that BellSouth has failed to adhere to the procedures for the calculation and verification of access charges which are clearly outlined in its tariffs. Additionally, Global asserts that BellSouth is seeking to recover for periods expressly barred by its tariffs, the Florida Administrative Code, and Florida's statute of limitations.

Global further alleges that BellSouth is seeking to avoid an earlier-filed action for declaratory judgment and injunctive relief brought by Global in the United States District Court for the Northern District of Georgia, which raises the very same issues that BellSouth raises in this action. According to Global, instead of filing its answer and counter-claims to that court action, BellSouth filed this or similar complaints before seven other state commissions to avoid having its claim heard in connection with the pending federal litigation.

Global seeks, first, a dismissal of the complaint filed by BellSouth. In the alternative, Global asked that this matter be held in abeyance, pending resolution of the action filed in the Federal District Court in Georgia. Global asserts that the granting of its Motion would avoid the inefficient use of administrative resources in having nine different oversight bodies hear, review, and make determinations on the same factual and legal issues.

In its Opposition to Global's Motion to Dismiss or, in the Alternative, to Hold in Abeyance, BellSouth asserts that the fundamental error in Global's motion is that Global believes the issues in this case are governed by BellSouth's federal tariff, rather than BellSouth's intrastate tariff. BellSouth contends that the issue has been addressed previously by the FCC in In the Matter of LDDS Communications, Inc. v. United Telephone of Florida, 15 FCC Rcd 4950, 2000 WL 253661(F.C.C.) (rel. March 8, 2000). There, the FCC ruled:

Where the fundamental issue raised in the PIU dispute was the proper payment of intrastate access charges . . . the relationship between interstate and intrastate minutes of use does not subject to federal law, and the terms of the interstate tariff, all changes in a carrier's minutes of intrastate use. Rather, the traffic measurements process identifies the jurisdiction to which an IXC's traffic is assigned. Once that assignment has been accomplished, it is the appropriate tariff, as construed and applied by the proper regulatory authority, that governs the process for charging for minutes of use. In light of this regulatory structure, LDDS's complaint is properly viewed as challenging the two separate calculations - performed under two different tariffs - that resulted in United's retroactive adjustment of the access charge liability. The first transaction is the reduction of the carriers' interstate access-charge liability. To the extent that LDDS challenges this transaction, it challenges an access-charge calculation made under a tariff filed with the FCC and over which the Commission certainly has jurisdiction. On the other hand, the second transaction is plainly outside of the Commission's jurisdiction. In calculating the new intrastate access charges, United applied the terms of its intrastate tariff to the revised figure for intrastate minutes of use. Under the Act's dual-track system, this transaction falls squarely within the, jurisdiction of the Florida PSC; as such, it is beyond the jurisdiction of the Commission.

Id. at ¶¶ 10-12. BellSouth argues that from a jurisdictional perspective, its dispute with Global is indistinguishable from the LDDS-United dispute. BellSouth believes the dispute is governed solely by its Florida tariff, and, therefore, there is no legitimate reason for the progress of this case to be delayed.

BellSouth has filed a Motion to Dismiss the action filed by Global in the United States District Court for the Northern District of Georgia. BellSouth asserts that it does not object to staying further proceedings in this matter until BellSouth's motion to dismiss is resolved by the federal court. However, BellSouth vehemently opposes any dismissal of the present matter or any stay until the final outcome of the federal case.

Decision

Global's argument in support of a stay of this proceeding rests on its action filed in the United States District Court for the Northern District of Georgia, and its assertion that the findings from that court should be dispositive of issues in this proceeding. BellSouth appears equally assured that Global's action in the Federal court will be dismissed.

An examination of the Federal action discloses that the issues are, indeed, the same. This Commission would, in no event, abdicate its jurisdiction or responsibilities in any matter wherein we have an interest. We are, however, ever aware of the need for judicial economies and the efficient use of government's limited resources. At this point, therefore, it would appear prudent to hold in abeyance our consideration of this matter until the Federal Court renders a decision on the Motion to Dismiss now pending before it. That decision would apparently be binding on all nine of the agencies now facing the very same issues. It is, also, likely that the decision of the Court on that Motion will alter the positions of the parties on the present action pending before us.

This Order should not be construed as addressing the merits of the Complaint in any way. In the event it becomes necessary, a full and complete analysis of the merits will be conducted at a future time.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that Global Crossing Telecommunications, Inc.'s Motion to Hold in Abeyance is granted, pending disposition of BellSouth Telecommunications, Inc.'s Motion to Dismiss now before the United States District Court for the Northern District of Georgia. It is further

ORDERED that the parties in this matter notify this Commission within 10 days of the disposition of said Motion to Dismiss, and file any additional requests for relief from this Commission within 30 days thereof. It is further

ORDERED that this docket shall remain open.

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By ORDER of Commissioner Braulio L. Baez, as Prehearing Officer, this 14th Day of January, 2002.



FOR BAEZ

BRAULIO L. BAEZ
Commissioner and Prehearing Officer

(S E A L)

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.

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.