

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Joint petition of US LEC of Florida, Inc., Time Warner Telecom of Florida, L.P., and ITC^DeltaCom Communications objecting to and requesting suspension of proposed CCS7 Access Arrangement tariff filed by BellSouth Telecommunications, Inc.

DOCKET NO. 020129-TP
ORDER NO. PSC-02-0876-PCO-TP
ISSUED: June 28, 2002

ORDER ON MOTION IN LIMINE

On January 18, 2002, BellSouth Telecommunications, Inc. (BST) filed a tariff with this Commission introducing the CCS7 Access Arrangement. This tariff filing also restructures the offering for Commercial Mobile Radio Service (CMRS) providers, and directs them to the equivalent CCS7 Access Arrangement available in the Access Services Tariff. Further, as part of this filing, local switching rates have been reduced to reflect the introduction of charges for intrastate CCS7 usage. The tariff filing went into effect on February 17, 2002.

On February 15, 2002, US LEC of Florida, Inc., Time Warner Telecom of Florida, L.P., and ITC^DeltaCom Communications (Petitioners) filed a Joint Petition objecting to and requesting suspension of the CCS7 Access Arrangement Tariff filed by BST, and requesting that this Commission schedule a formal administrative hearing to address the issues raised in its Petition. On March 22, 2002, BST filed its response to the Petition. This matter was set for an administrative hearing by this Commission by Order No. PSC-02-0739-PCO-TP, issued May 31, 2002.

On June 14, 2002, the Petitioners filed a Motion in Limine in which they requested that BellSouth be precluded in this proceeding from submitting prefiled testimony offering legal opinion and interpretations addressing the legal issue(s) in this case. On June 21, 2002, BellSouth filed its response to the Petitioners' motion. BellSouth argues that this type of testimony is routinely admitted by the Commission and given whatever weight it deserves.

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Specifically, the Petitioners argue that legal argument concerning the interpretation and application of Section 364.163, Florida Statutes, is not the proper subject of testimony and should properly be addressed in the posthearing briefs of the participating parties. Petitioners assert that this is a well-established evidentiary rule of law which has previously been applied by the Commission. Petitioners further assert that they should not be placed in the position of having to secure an "expert" on the application of Chapter 364, Florida Statutes, to present testimony in this proceeding when such testimony is precluded under Florida law.

For these reasons, Petitioners argue that BellSouth should be precluded from prefiling testimony in this proceeding that offers legal opinions and interpretations addressing the legal issues in this docket.

In its response, BellSouth asserts that the Petitioners' Motion in Limine is premature. BellSouth states that it does not anticipate retaining an "expert" witness, but rather intends to have its policy witness give a "layman's" opinion of the law to the extent necessary to explain or support the fact and/or its policy positions. Additionally, BellSouth asserts that the rule that legal argument is not the proper subject of testimony is not absolute and rather is at the discretion of this Commission.

For these reasons, BellSouth requests that the Petitioners' Motion in Limine be denied.

In support of their assertions, both parties cite to Order No. PSC-99-0099-PCO-TP, issued January 20, 1999, in Docket No. 981008-TP. In that Order, in a ruling on a Motion to Strike, the prehearing officer found that

While legal opinion is, generally, more appropriately expressed through post-hearing briefs, we do have the discretion of allowing such testimony to be presented and simply giving it the weight that it is due in our deliberations.

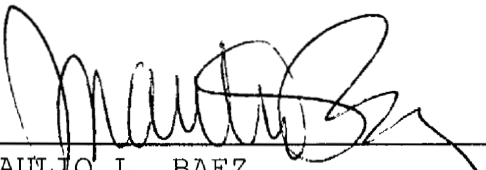
Therefore, the prehearing officer denied the Motion to Strike in part, allowing legal opinion testimony that was within the scope of the proceeding.¹ Upon consideration of the arguments presented, I find that a similar approach is appropriate in this matter, and therefore, the Petitioners' Motion in Limine shall be denied.

A decision to preclude the pre-filed testimony designated by the Petitioner would be premature at this time. Full comprehension by this Commission of BellSouth's perceived compliance with Section 364.163, Florida Statutes is imperative to deciding the issues in this proceeding. A decision to place the limitation requested by the Petitioners on pre-filed testimony might unduly limit the record in this proceeding. Further, this decision in no way precludes the Petitioners from seeking that specific testimony, once it has been filed, be stricken from the record for other reasons.

It is therefore

ORDERED by Commissioner Braulio L. Baez, as Prehearing Officer, that the Motion in Limine filed by US LEC of Florida, Inc., Time Warner Telecom of Florida, L.P., and ITC^DeltaCom Communications is hereby denied.

By ORDER of Commissioner Braulio L. Baez, as Prehearing Officer, this 28th Day of June, 2002.



BRAULIO L. BAEZ
Commissioner and Prehearing Officer

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¹ In Order No. PSC-99-0099-PCO-TP, the Prehearing Officer did find an "extensive" amount of legal analysis and opinion that extended beyond the scope of the record which was stricken accordingly.

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.