

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Complaint of Florida
Competitive Carriers Association
against BellSouth
Telecommunications, Inc.
regarding BellSouth's practice
of refusing to provide
FastAccess Internet Service to
customers who receive voice
service from a competitive voice
provider, and request for
expedited relief.

DOCKET NO. 020507-TL
ORDER NO. PSC-03-0636-PCO-TL
ISSUED: May 23, 2003

FOURTH ORDER GRANTING CONTINUANCE

I. BACKGROUND

On June 12, 2002, the Florida Competitive Carriers Association (FCCA) filed a Complaint against BellSouth Telecommunications, Inc. (BellSouth) and a Request for Expedited Relief seeking relief from BellSouth's practice of refusing to provide its FastAccess service to customers who receive voice service from an Alternative Local Exchange Carrier (ALEC).

On July 3, 2002, BellSouth filed a Motion to Dismiss FCCA's Complaint and an Opposition to Request for Expedited Relief. On July 9, 2002, FCCA filed its Response in Opposition to BellSouth's Motion to Dismiss and filed a Motion for Summary Final Order. By Order No. PSC-02-0935-PCO-TL, issued July 12, 2002, the request for expedited relief was denied. By Order No. PSC-02-1464-FOF-TL, issued October 23, 2002, we denied BellSouth's Motion to Dismiss and FCCA's Motion for Summary Final Order without prejudice.

By Order No. PSC-02-1537-PCO-TL, issued November 12, 2002, the Prehearing Officer issued the Order Establishing Procedure which excluded BellSouth's proposed Issue 7 from this proceeding. On November 22, 2002, the Prehearing Officer provided clarification regarding the reasons for excluding BellSouth's proposed Issue 7 and reaffirmed the decision to exclude proposed Issue 7, in Order No. PSC-02-1618-PCO-TL (Clarification Order).

DOCUMENT NUMBER DATE

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FPSC-COMMISSION CLERK

On December 2, 2002, BellSouth filed its Motion for Reconsideration and/or Modification of Order No. PSC-02-1618-PCO-TL to the Full Commission, or in the Alternative, Motion to Convert to a Generic Proceeding. On December 9, 2002, FCCA and ITC[^]DeltaCom Communications, Inc. (DeltaCom) filed their Joint Response to BellSouth's Motion. DeltaCom was granted intervention by Order No. PSC-02-1515-PCO-TL, issued November 5, 2002. By Order No. PSC-03-0016-FOF-TL, issued January 3, 2003, BellSouth's Motion for Reconsideration and/or Modification of Order No. PSC-02-1618-PCO-TL to the Full Commission, or in the Alternative, Motion to Convert to a Generic Proceeding was denied. On January 6, 2003, the Prehearing Conference was held and Order No. PSC-03-0152-PHO-TL, the Prehearing Order, was issued January 29, 2003.

On December 17, 2002, BellSouth filed its Emergency Motion to Compel against FCCA. On December 26, 2002, FCCA filed its Response to BellSouth's Motion to Compel and its Motion for Protective Order. By Order No. PSC-03-0084-PCO-TL, issued January 10, 2003, the Motion to Compel was granted, in part, and denied, in part. The Motion for Protective Order was denied. Thereafter, on January 17, 2003, FCCA filed a Motion for Reconsideration of Order No. PSC-03-0084-PCO-TL and Request for Oral Argument. On January 22, 2003, BellSouth filed its Response in Opposition to the Motion for Reconsideration.

In addition, on January 22, 2003, BellSouth filed a Motion for Continuance. On January 23, 2003, FCCA filed its Response to BellSouth's Motion for Continuance. By Order No. PSC-03-0129-PCO-TL, issued January 23, 2003, the hearing was continued. By Order No. PSC-03-0177-PCO-TL, issued February 5, 2003, the hearing was rescheduled to April 16, 2003. By Order No. PSC-03-0201-PCO-TL, issued February 11, 2003, the hearing was again rescheduled to April 22, 2003.

On January 17, 2003, BellSouth filed its Second Emergency Motion to Compel against FCCA. On January 24, 2003, FCCA filed its Response to BellSouth's Second Motion to Compel. By Order No. PSC-03-0180-PCO-TL, issued February 6, 2003, the Prehearing Officer granted in part and denied, in part BellSouth's Second Motion to Compel.

On February 13, 2003, FCCA filed its Request for Official Recognition of several cases in regards to the pending Motion for Reconsideration. Then FCCA filed its Motion for Reconsideration of a Portion of Order No. PSC-03-0180-PCO-TL (Second Reconsideration Motion). On February 24, 2003, BellSouth filed its Response to FCCA's Second Reconsideration Motion. By Order No. PSC-03- , issued , the Commission approved the Parties' Joint Motion for Approval of Settlement Agreement.

On April 2, 2003, FCCA and BellSouth filed a Joint Motion for Approval of Settlement Agreement and a Joint Motion for Continuance. The Motion for Continuance was addressed by Order No. PSC-03-0476-PCO-TL, issued April 9, 2003, whereby the hearing in this matter was rescheduled to August 6, 2003, along with the rescheduling of other key activities dates. On April 29, 2003, BellSouth filed its Motion for Continuance and/or Rescheduling of the August 6, 2003, hearing date. On May 6, 2003, FCCA filed its response.

II. MOTION AND RESPONSE

In support of its Motion, BellSouth states that two of its witness have scheduling conflicts with the August 6, 2003, hearing date. Although, BellSouth attempted to make the appropriate adjustments to the witnesses schedules, so that the hearing could proceed with the August 6, 2003, hearing date, they were unable to do so. BellSouth witness Ruscilli is scheduled to testify before the North Carolina Utilities Commission which was scheduled prior to the Commission's issuance of its Order rescheduling the hearing date to August 6, 2003. In addition, BellSouth witness Smith is scheduled to travel outside the country which arrangements were made on a nonrefundable basis prior the issuance of that Order. BellSouth states that it would be prejudiced without the live participation of these witnesses. In particular, witness Ruscilli is its main policy witness and witness Smith has the knowledge and experience to opine regarding BellSouth broadband deployment. BellSouth argues that no other witness could adequately adopt either person's testimony or replace them as a live witness. BellSouth states that it is willing and able to reschedule the hearing to occur earlier than the August 6, 2003, hearing dates.

In its Response, the FCCA states that due to the length of the proceeding, it is important that this case proceed to hearing as quickly as possible. FCCA states that it does not object to the continuance so long as the hearing can be held with 30 days of the August 6, 2003, date. Further, in a footnote, FCCA notes that the July 21 though July 23, 2003, hearing dates may become available. It appears that FCCA would not object if those dates should become available. However, FCCA would object if the continuance would delay the hearing longer than 30 days after the August 6, 2003, hearing date. FCCA argues that it would be prejudiced more by further delay than BellSouth would be by the unavailability of these witnesses because it is quite common for a company witness to adopt the testimony of another witness who becomes unavailable.

Upon consideration, BellSouth Motion for Continuance and/or Rescheduling shall be granted. I find it is appropriate to continue the hearing in this matter since the parties agree to the continuance if the hearing is rescheduled before August 6, 2003. Accordingly, the hearing and key activities dates are modified as follows:

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|--------------------------|----------------------|
| 1) Discovery Cutoff Date | July 14, 2003 |
| 2) Hearing | July 21 and 22, 2003 |
| 3) Briefs | August 19, 2003 |

Except as modified herein, Orders Nos. PSC-02-1537-PCO-TL, issued November 12, 2002 (the Order Establishing Procedure), and PSC-03-0152-PHO-TL, issued January 29, 2003 (the Prehearing Order), are reaffirmed in all other respects.

Based on the foregoing, it is

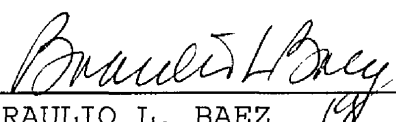
ORDERED by Braulio L. Baez, as Prehearing Officer, that the Hearing and key activities dates are modified as set forth in the body of this Order. It is further

ORDERED that Orders Nos. PSC-02-1537-PCO-TL, issued November 12, 2002 (the Order Establishing Procedure), and PSC-03-0152-PHO-TL, issued January 29, 2003 (the Prehearing Order), are reaffirmed in all other respects. It is further

ORDER NO. PSC-03-0636-PCO-TL
DOCKET NO. 020507-TL
PAGE 5

ORDERED that this docket shall remain open pending further proceedings.

By ORDER of Commissioner Braulio L. Baez, as Prehearing Officer, this 23rd Day of May, 2003.



BRAULIO L. BAEZ
Commissioner and Prehearing Officer

(S E A L)

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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; 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 or wastewater utility. A motion for reconsideration shall be filed

ORDER NO. PSC-03-0636-PCO-TL
DOCKET NO. 020507-TL
PAGE 6

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.