

BEFORE THE PUBLIC SERVICE COMMISSION

In re: Petition for arbitration of unresolved issues in negotiation of interconnection agreement with BellSouth Telecommunications, Inc. by ITC^DeltaCom Communications, Inc. d/b/a ITC^DeltaCom.

DOCKET NO. 030137-TP
ORDER NO. PSC-04-0784-PCO-TP
ISSUED: August 10, 2004

ORDER ON DELTACOM'S MOTION TO INCREASE THE
NUMBER OF PAGES IN POST HEARING BRIEF

BY THE COMMISSION:

On February 7, 2003, ITC^DeltaCom Communications, Inc. (ITC) filed its Petition for Arbitration with BellSouth pursuant to the Telecommunications Act of 1996. On March 4, 2003, BellSouth Telecommunications, Inc. (BellSouth) filed its response to ITC's Petition. By Order No. PSC-03-0534-PCO-TP, issued April 23, 2003 (Order Establishing Procedure), the hearing date, prehearing date, and other key activities dates were established. An administrative hearing was held on September 3-4, 2003. The parties submitted post hearing briefs on October 17, 2003. At the parties' request, the post hearing procedures were held in abeyance. The parties have continued to negotiate outstanding issues and have resolved some additional issues since the hearing.

On August 4, 2004, the parties filed a Joint Motion to Permit Supplemental Briefs. In their Motion, the parties note that at the time of the final hearing in this matter (in early September 2003), the Federal Communications Commission (FCC) issued its Report and Order in its triennial review proceeding.¹ The parties contend that because of the short time between the issuance of the TRO (August 21, 2004) and the arbitration proceedings in this docket, the parties were not able to fully address the impact of the TRO on the issues in the instant arbitration. The parties state that while they did have some opportunity to address the TRO in the post hearing briefs submitted October 17, 2003, the record probably would have been developed differently had the TRO been released earlier in the arbitration process.

The parties state that subsequent to the proceedings in this docket, on March 2, 2004, the United States District Court for the District of Columbia issued its decision in United States Telecom Ass'n v. FCC, 359 F.3d 554 (D.C. Cir. 2004) (and consolidated cases)(hereinafter USTA II). The parties assert that the USTA II decision invalidated parts of the TRO and has led

¹ Report and Order and Order on Remand and Further Notice of Proposed Rulemaking, Order No. FCC 03-35, issued August 21, 2003, in CC Docket Nos. 01-338, 96-98, and 98-147 (TRO).

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the FCC to initiate interim rules and to undertake a new rulemaking proceeding to remedy the Court's concerns. The parties note that the FCC has not sought further judicial review of the USTA II decision.

The parties assert that while BellSouth and ITC have continued to resolve some issues, the full impact of the remaining effective portions of the TRO, the USTA II decision, the new interim rules, and the ongoing FCC rulemaking on those still outstanding issues in this docket has yet to be explored. The parties contend that as a matter of judicial economy, given the complexity of these matters, it is in the best interests of the Commission, Commission Staff, and the parties to fully understand the effects of these various matters on this docket before a final decision is made. The parties assert that the best means of presenting such information to the Commission at this time would be in the form of supplemental post hearing briefs to address only these very limited, critical, but specific impacts. The parties request that they be permitted to submit supplemental briefs on August 20, 2004, that address the TRO, USTA II, the FCC's interim UNE rules, and the FCC's ongoing rulemaking proceeding.

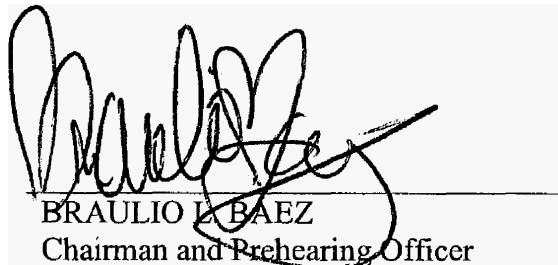
Based on the foregoing, I find it appropriate to allow the parties to file supplemental post hearing briefs which address the TRO, USTA II, the FCC's interim UNE rules, and the FCC's ongoing rulemaking proceeding. Thus, the Joint Motion of BellSouth and ITC to Permit Supplemental Briefs shall be granted.

Based on the foregoing, it is,

ORDERED by Chairman Braulio L. Baez, as Prehearing Officer, that the Joint Motion of BellSouth and ITC to Permit Supplemental Briefs is hereby granted. It is further

ORDERED that the parties shall file supplemental briefs on August 20, 2004.

By ORDER of Chairman Braulio L. Baez, as Prehearing Officer, this 10th day of



BRAULIO L. BAEZ
Chairman 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 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.