

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-04-1137-PCO-TP ISSUED: November 17, 2004
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ORDER GRANTING JOINT MOTION FOR  
EXTENSION OF TIME FOR SUPPLEMENTAL BRIEFS

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.

On August 4, 2004, the parties filed a Joint Motion to Permit Supplemental Briefs to address the TRO, USTA II<sup>1</sup>, the FCC's interim UNE rules, and the FCC's ongoing rulemaking proceeding. Order No. PSC-04-0784-PCO-TP, issued August 10, 2004, granted the Joint Motion. On August 17, 2004, the parties filed their Joint Motion for Extension of Time for Supplemental Briefs. By Order No. PSC-04-0884-PCO-TP, issued September 9, 2004, the Joint Motion was granted.

The FCC released an *Interim Order*<sup>2</sup> on August 20, 2004, requiring ILECs to continue providing unbundled access to mass market local circuit switching, high capacity loops and dedicated transport until the earlier of the effective date of final unbundling rules or six months after Federal Register publication of the *Interim Order*. On August 23, 2004, certain ILECs filed a *Mandamus Petition*<sup>3</sup> with the D.C. Circuit Court of Appeals in response to the FCC's *Interim Order*.

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<sup>1</sup> See, United States Telecom Ass'n v. FCC, 359 F.3d 554 (D.C. Cir. 2004) (and consolidated cases)(hereinafter USTA II).

<sup>2</sup> In the Matter of Unbundling Access to Network Elements, WC Docket No. 04-313; In the Matter of Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, CC Docket No. 01-338, Order and Notice of Proposed Rulemaking, FCC 04-179, rel. August 20, 2004 (Interim Order).

<sup>3</sup> United States Telecom Ass'n v. FCC, Petition for a Writ of Mandamus to Enforce the Mandate of the Court, August 23, 2004 (Mandamus Petition).

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On September 15, 2004, the parties filed their Joint Motion for Additional Extension of Time for Supplemental Briefs. In support of the Joint Motion the parties contend that it would be appropriate to delay the filing of supplemental briefs until at least after the D.C. Circuit Court of Appeals issues a ruling on the *Mandamus Petition*. The parties assert further that this matter has been held in abeyance since October 2003, and there would be no harm or prejudice in continuing the suspension of this matter for an additional short period of time. Thus, the parties agree that the due date for the supplemental briefs should be 20 days after the D.C. Circuit Court of Appeals issues its decision on the *Mandamus Petition*.


Accordingly, I find it appropriate to grant the Joint Motion for Additional Extension of Time for Supplemental Briefs. The parties shall file supplemental briefs 20 days after the D.C. Circuit Court of Appeals issues its decision on the *Mandamus Petition*.

Based on the foregoing, it is,

ORDERED by Chairman Braulio L. Baez, as Prehearing Officer, that ITC^DeltaCom Communications, Inc. and BellSouth Telecommunications, Inc.'s Joint Motion of BellSouth and ITC for Additional Extension of Time for Supplemental Briefs is hereby granted. It is further

ORDERED that the parties shall file supplemental briefs 20 days after the D.C. Circuit Court of Appeals issues its decision on the *Mandamus Petition*.

By ORDER of Chairman Braulio L. Baez, as Prehearing Officer, this 17th day of November, 2004.



BRAULIO L. BAEZ  
Chairman and Prehearing Officer

(SEAL)

AJT

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.