

BEFORE THE PUBLIC SERVICE COMMISSION

In re: Petition to require BellSouth Telecommunication Services, Inc. to negotiate in good faith and/or require mediation concerning issues in an interconnection agreement by Saturn Telecommunication Services, Inc. d/b/a STS Telecom.

DOCKET NO. 040533-TP  
ORDER NO. PSC-05-0139-PCO-TP  
ISSUED: February 4, 2005

ORDER ON SATURN TELECOMMUNICATION SERVICES, INC.'S MOTION FOR LEAVE TO FILE LATE REPLY TO BELL SOUTH TELECOMMUNICATIONS, INC.'S RESPONSE IN OPPOSITION AND MOTION TO DISMISS THE AMENDED PETITION FOR MEDIATION AND/OR ARBITRATION

I. Case Background

On June 10, 2004, Saturn Telecommunication Services, Inc. d/b/a STS (STS) filed its Petition to Require BellSouth Telecommunications, Inc. to Negotiate in Good Faith and/or Require Mediation (Petition). In its Petition, STS is asking this Commission to enter an Order requiring BellSouth Telecommunications, Inc. (BellSouth) to negotiate a commercial agreement with it in good faith or require the parties to mediate the issues of a commercial agreement. On June 28, 2004, BellSouth filed its Response in Opposition and Motion to Dismiss the Petition to Require BellSouth Telecommunications, Inc. to Negotiate in Good Faith and/or Require Mediation in which it asserts that it has already negotiated with STS in good faith.

On July 19, 2004, STS filed its Response to BellSouth's Response and Motion to Dismiss in which STS contends that it has stated a claim upon which relief can be granted in that BellSouth has breached its duty to negotiate in good faith pursuant to 47 U.S.C. §251(c)(1) and (2). STS also asserts that this Commission has the broad authority to resolve disputes between competitive local exchange carriers (CLECs) and incumbent local exchange carriers (ILECs).

In a letter dated June 28, 2004, counsel for STS requested mediation in this matter as expeditiously as possible. In the intervening months, discussions with the parties regarding the viability of mediation proved unsuccessful.

On December 2, 2004, STS filed its Motion to Amend Petition to Require BellSouth Telecommunications, Inc. to Negotiate in Good Faith and/or Require Mediation (Amended Petition) in which it asks this Commission to require BellSouth and STS to arbitrate in addition to, or in lieu of, mediation pursuant to 47 U.S.C. §252(b)(1) within the next nine months. On December 20, 2004, BellSouth filed its Response in Opposition and Motion to Dismiss the Amended Petition for Mediation and/or Arbitration (Motion to Dismiss).

DOCUMENT NUMBER-DATE

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II. Motion for Leave to File Late Reply

On December 30, 2004, STS filed its Motion for Leave to File Late Reply to BellSouth's Response (Motion). In support of its Motion, STS asserted that counsel was unable to file a response to BellSouth's Motion to Dismiss due to the holidays and its office's vacation schedule. Additionally, counsel for STS stated that, during the holidays, it attempted to contact counsel for BellSouth to no avail. Furthermore, STS asserted that this 20-day delay will not prejudice BellSouth. In light of the above, STS requested an extension until January 20, 2005, to file a Reply to BellSouth's Motion to Dismiss STS' Amended Petition.

I emphasize with concern that, by this Motion, STS sought leave to file its Reply on January 20, 2005. It did not, however, actually file its Reply with this Commission until January 24, 2005. While I acknowledge that our staff counsel received STS' Reply via e-mail on January 20, 2005, e-mail service upon staff counsel does not constitute filing with this Commission. Thus, regardless of whether or not the Motion is granted, STS' Reply is untimely. For the remainder of this case, any similar demonstrations by STS of inability to comply with proper procedural requirements and inattention to the timeliness of filings will not be looked upon favorably. That being said, counsel for BellSouth has indicated to our staff counsel that it does not object to STS' Motion, or to the acceptance of the untimely filed Reply.

Upon consideration of the foregoing and with all due cautions extended, the due date of STS' Reply is hereby extended through January 24, 2005. Thus, STS' Motion for Leave to File Late Reply is rendered moot.

Based on the foregoing, it is

ORDERED by Commissioner Lisa Polak Edgar, as Prehearing Officer, that the due date for Saturn Telecommunication Services, Inc. d/b/a STS' Reply to BellSouth Telecommunications, Inc. Motion to Dismiss STS's Amended Petition is hereby extended until January 24, 2005, rendering STS' Motion for Leave to File Late Reply moot.

By ORDER of Commissioner Lisa Polak Edgar, as Prehearing Officer, this 4th day of February, 2005



LISA POLAK EDGAR  
Commissioner and Prehearing Officer

(SEAL)

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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.

This Order is preliminary, procedural or intermediate in nature. Any party adversely affected by this Order 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.