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RECORDS AND REPORTING

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August 5, 1999

Ms. Blanca S. Bayo, Director  
Division of Records and Reporting  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, Florida 32399-0850

Re: Docket No. 990930-TL

Dear Ms. Bayo:

Enclosed for filing is the original and seven (7) copies of Sprint-Florida, Incorporated Motion to Dismiss BellSouth's Petition for Emergency Relief.

Please acknowledge receipt and filing of the above by stamping the duplicate copy of this letter and returning the same to this writer.

Sincerely,

RECEIVED & FILED

  
FPSC-BUREAU OF RECORDS



Charles J. Rehwinkel

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FPSC - RECORDS/REPORTING

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: BellSouth Telecommunications,  
Inc.'s Petition for Emergency Relief to  
Compel Sprint-Florida, Inc. to Provide  
Directory Listings of Sprint's Customers  
in Florida.

Filed: August 5, 1999

Docket No. 990930-TL

MOTION TO DISMISS

Sprint-Florida, Incorporated ("Sprint") hereby files, pursuant to rules 25-22.036(2), 28-106.201(4) and 28-106.204(2), Florida Administrative code, this Motion to Dismiss BellSouth Telecommunications, Inc.'s Petition for Emergency Relief to Compel Sprint-Florida, Inc. to Provide Directory Listings of Sprint's Customers in Florida. Sprint states as follows:

I. Background.

BellSouth has filed a pleading styled as a "Petition." Pursuant to the recently adopted Uniform Rules of Procedure (28-101, et. seq.), there is some question regarding whether the pleading is a Complaint or Petition. Sprint is uncertain, but asserts that the distinction is not material. Under the Uniform Rules, the Petition seems to be a response to an agency action, while a complaint is defined in 25-22.036(2) as:

[A]ppropriate when a person complains of an act or omission by a person subject to Commission jurisdiction which affects the complainant's substantial interests and which is in violation of a statute enforced by the Commission, or of any Commission rule or order.

Sprint does not assert any fatal infirmity in BellSouth's chosen styling of the pleading. In an abundance of caution, however, Sprint is filing this motion within the 20-day time allowed for responses (or Motions to Dismiss) to Petitions. Regardless of the styling of the pleading, dismissal is appropriate, as here, if the pleading fails to establish a cause of action.

In the Petition, BellSouth has made certain factual allegations that Sprint generally denies, but even if all the factual allegations were to be deemed true, on its face the Petition does not describe actions or omissions by Sprint which are in violation of any cited FPSC rule or order. In fact there is no authority (rule, order, or statute) cited by BellSouth that applies to Sprint as the wholesale provider of Directory Assistance (DA) listings to BellSouth.

In a nutshell, BellSouth has generally alleged that Sprint ceased sending new and updated "directory"<sup>1</sup> listings to BellSouth. It is true that Sprint is no longer sending directory assistance listings to BellSouth. Left unexplained is the full story behind the contractual dispute between the parties. That side of the story would be addressed in an Answer if one is ultimately required. BellSouth has complained that Sprint's refusal to provide additional listings is a violation of rule 25-4.040(5), F.A.C. and that has "impaired BellSouth's ability to

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<sup>1</sup>BellSouth describes the listings as "directory listings." Sprint believes this is merely unartful and not intended to convey to the Commission that listings in the telephone books are affected. No change to the mutual purchase of telephone directory listings has occurred. The only listings at issue here are directory assistance listings.

provide customer service, has impaired competition, and it not in the best interest of the public.” BellSouth then asks the Commission to compel Sprint to supply listings to BellSouth “in the best interest of the public.” Only the citation to the rule qualifies as authority for consideration of possible Commission relief under the Petition.

As discussed below, BellSouth’s pleading fails to state a cause of action or a basis upon which the Commission can grant relief. For this reason it should be dismissed.

## II. Argument

The gravamen of Sprint’s Motion is that BellSouth has not cited one rule, statute or order that imposes an obligation on Sprint to provide directory listings to BellSouth. The only legal authority cited in BellSouth’s Petition is FPSC Rule 25-4.040(5). That rule is inapposite to the matter at hand. In relevant part the rule provides that:

Directory assistance operators shall maintain records of all telephone numbers (except for non-published telephone numbers) in the area for which they have the responsibility of furnishing service.

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All new or changed listings shall be provided to directory assistance operators within 48 hours after connection of service, excluding Saturdays, Sundays and holidays.

By its plain terms and on the facts alleged (if taken to be true for purposes of this motion), the rule speaks only to (1) BellSouth’s own obligation to provide adequate directory assistance in the area where BellSouth furnishes service and (2) to the internal obligation of BellSouth to insure that its own listings are updated within 48 hours from within the

BellSouth service ordering completion process. On its face, the rule applies only to BellSouth, not an external provider of numbers. Furthermore, Sprint is unaware of any FPSC or other authority's interpretation of this rule which would (or could) impose an obligation on a supplier of numbers (i.e., a LEC outside of BellSouth's service territory) to provide listings so that the LEC serving the LEC's territory can discharge its obligations.

Clearly, BellSouth has not met the minimal threshold for maintaining this complaint. Vague citations of "public interest" and "harm to competition" cannot substitute for the legal requirement of stating with specificity the "rule, order or statute that has been violated" (complaint)<sup>2</sup> or a statement of the specific rules or statutes the petitioner contends [supports relief].<sup>3</sup>

Absent any showing that the cited rule imposes an obligation on Sprint, the Commission must dismiss the Petition for failure to state a cause of action. *In re: Complaint by MCI Telecommunications Corporation against GTE Florida Incorporated regarding anti-competitive practices related to excessive intrastate switched access pricing* Docket No. 970841-TP; Order No. PSC-97-1370-FOF-TP Florida Public Service Commission 97 FPSC 10:681 1997 Fla. PUC LEXIS 1430; 97 FPSC 681, October 29, 1997 (Complaint dismissed for failure to state a cause of action). *In re: Complaint and petition of John Charles Heekin against Florida Power & Light Company* Docket No. 981923-EI; Order no. PSC-99-1054-FOF-EI Florida Public Service Commission 1999 Fla. PUC LEXIS 922; 99 FPSC 5; 324, May 24, 1999 (Complaint dismissed for failure to state a cause of action).

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<sup>2</sup>Rule 25-22.036(4)(b)1.

<sup>3</sup>Rule 28-106.201(2)(f). Again Sprint notes that the uniform rules seem to contemplate Petitions challenging agency action. The citation to the uniform rule standard is made out of caution.

WHEREFORE, for the above stated reasons, Sprint respectfully requests the Commission to dismiss the Petition of BellSouth for failure to state a cause of action.

RESPECTFULLY SUBMITTED this 5<sup>th</sup> day of August 1999.



Charles J. Rehwinkel  
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ATTORNEYS FOR SPRINT

CERTIFICATE OF SERVICE  
DOCKET NO. 990930-TL

I HEREBY CERTIFY that a true and correct copy of the foregoing was served by U.S. Mail or hand-delivery this 5th day of August, 1999 to the following:

Nancy B. White  
C/o Nancy H. Sims  
BellSouth Telecommunications, Inc.  
150 S. Monroe Street Suite 400  
Tallahassee, Florida 32301-1556

Donna Clemmons  
Division of Legal Services  
Florida Public Service Commission  
2540 Shumard Oak Blvd.  
Tallahassee, Florida 32399-0850



Charles J. Rehwinkel

M.R.  
M/C  
8-13-99

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P.O. BOX 10095  
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August 13, 1999

**COMPLETED**

Ms. Blanca Bayo, Director  
Division of Records and Reporting  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, Florida 32399-0850

via Facsimile  
413-7118

8/16/99

Re: Docket No. 990930

Dear Ms. Bayo:

I am hereby requesting a copy of the BellSouth Telecommunications, Inc. Petition for emergency relief to compel Sprint-Florida, Incorporated to provide directory listings of customers in Florida filed 7/16/99 and Sprint's Motion to dismiss BellSouth's petition for emergency relief filed on 8/5/99.

The Pennington Firm would like to be added to the mailing list for this docket for monitoring purposes.

2.00.

Please call me as soon as possible when these documents are ready to be picked up. Thank you.

Respectfully,

PENNINGTON, MOORE, WILKINSON,  
BELL & DUNBAR, P.A.

*Theresa M. Zerkle*

Theresa M. Zerkle  
Legal Assistant to Peter M. Dunbar

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/tmz