

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition of Competitive Carriers for Commission action to support local competition in BellSouth Telecommunications, Inc.'s service territory.

DOCKET NO. 981834-TP

In re: Petition of ACI Corp. d/b/a Accelerated Connections, Inc. for generic investigation to ensure that BellSouth Telecommunications, Inc., Sprint-Florida, Incorporated, and GTE Florida Incorporated comply with obligation to provide alternative local exchange carriers with flexible, timely, and cost-efficient physical collocation.

DOCKET NO. 990321-TP
ORDER NO. PSC-03-0910-PCO-TP
ISSUED: August 7, 2003

ORDER DENYING MOTION FOR MODIFICATION OF PROCEDURAL SCHEDULE

I. Background

By Proposed Agency Action Order No. PSC-99-1744-PAA-TP, issued September 7, 1999, we adopted a set of procedures and guidelines for collocation, focused largely on those situations in which an incumbent local exchange company (ILEC) believes there is no space for physical collocation. Thereafter, we conducted a hearing to further address collocation guidelines. By Order No. PSC-00-2190-PCO-TP, issued November 17, 2000, various motions for reconsideration and/or clarification of our post-hearing decision regarding collocation guidelines were addressed by the Commission. By that Order, this Docket was left open to address remaining issues associated with collocation, including pricing.

By Order No. PSC-02-1513-PCO-TP, issued November 4, 2002, the procedural schedule and hearing dates were established for this phase of this proceeding in which we will address the remaining technical and pricing issues regarding collocation. On February 7,

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2003, the Commission Staff filed a Motion to Revise Order Establishing Procedure.

By Order No. PSC-03-0288-PCO-TP, issued March 4, 2003, Staff's Motion to Revise Order Establishing Procedure was granted. On May 15, 2003, pursuant to Rules 1.160 and 1.280 of the Florida Rules of Civil Procedure and Rule 28-106.204, Florida Administrative Code, Verizon and Sprint (Joint Movants) filed an Emergency Joint Motion to Strike, or in the Alternative for an Extension of Time (Joint Motion). By Order No. PSC-03-0702-FOF-TP, issued June 11, 2003, we approved the agreement reached between the parties and our staff to resolve the Joint Motion to Strike, or in the Alternative Grant an Extension of Time. By Order No. PSC-03-0776-PCO-TP, issued July 1, 2003, the procedural schedule was modified to reflect the agreement reached between the parties and our staff.

In accordance with the procedural schedule, AT&T filed the Rebuttal Testimony of Steven E. Turner on April 18, 2003. Thereafter, on June 9, 2003, AT&T filed Revised Rebuttal Testimony for Witness Turner and on June 18, 2003, filed the Surrebuttal Testimony of Jeffrey A. King. On June 25, 2003, Verizon Florida, Inc. and Sprint-Florida, Incorporated filed a Joint Motion to Strike Revised Rebuttal Testimony of Steven E. Turner and Surrebuttal Testimony of Jeffrey A. King. BellSouth Telecommunications, Inc. and AT&T Communications of the Southern States, Inc. filed their responses on July 2, 2003. On July 8, 2003, AT&T responded to statements in BellSouth's Response to the Motion. By Order No. PSC-03-0856-PCO-TP, issued July 22, 2003, the Joint Motion to Strike was denied to the extent that the Motion had not already been rendered moot by AT&T's withdrawal of the testimony of Witness King.

On July 24, 2003, AT&T filed a Motion for Modification of Procedural Schedule. Therein, AT&T notes that Order No. PSC-03-0776-PCO-TP not only bifurcated the hearings for Issues 1-8 and Issues 9-10, it also provided separate briefing schedules which contemplates separate recommendations in this case. AT&T contends that, as a consequence, it will be prejudiced in the presentation of its case, because it had contemplated that there would be only one decision in this proceeding. Specifically, AT&T asserts that its Witness Turner, while primarily addressing the pricing issues,

also addresses Issues 6A-6C regarding the manner in which CLECs should be charged for power consumption. AT&T believes that the resolution of Issues 6A-6C is entwined in such a way with the resolution of the pricing issues that they should not be considered separately and that to do so would prevent the Commission from being able to give full consideration to the evidence pertinent to the resolution of the provision and pricing of power. In addition, AT&T contends that this complete bifurcation will be confusing. For these reasons, AT&T asks that the schedule be revised to provide for only one briefing schedule to follow the second hearing, followed by one decision addressing all of the issues considered.

In response, Verizon states that it does not oppose AT&T's request to consolidate the briefing schedule. Verizon further contends, however, that the Commission should remove Issue 6B from consideration at the August hearing and set it for a collaborative proceeding. Verizon contends that a collaborative proceeding will provide a more appropriate forum in which to address this issue, because it will enable the parties and Commission staff to more clearly define and address the power metering proposal set forth in AT&T's testimony and will enable technical experts to discuss the issue in a more open environment.

In the alternative, Verizon proposes that the DC power metering issue be moved to the November hearing, which would allow for additional time to conduct discovery on the issue and to address the issue through surrebuttal testimony. Verizon contends that this will lead to the development of a more complete record on this issue.

In its response, BellSouth states that, while it does not agree with AT&T's rationale, it does not oppose AT&T's proposal to have one briefing schedule, as well as one staff recommendation and one Commission Order, addressing both hearings. BellSouth does not believe the current schedule would actually prejudice AT&T, but it does agree that AT&T's proposal may be more efficient. BellSouth does, however, emphasize that if AT&T's request is granted, AT&T should not be allowed to use additional time after the August hearing to file additional, unauthorized testimony or other unauthorized pleadings.

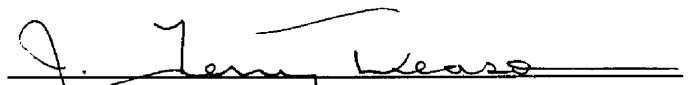
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Having fully considered the arguments put forth, the Motion for Modification of the Procedural Schedule is denied. The procedural schedule identifying the August hearing dates was originally set November 4, 2002. The schedule was modified March 4, 2003, to accommodate additional testimony. Thereafter, the schedule was again modified in June to allow additional time for discovery and testimony on the pricing issues. The parties have been on notice for quite some time when Issues 6A-6C would be addressed, and the schedule has already been modified twice to accommodate concerns regarding timing and to ensure no party is prejudiced. We are now only days from the hearing. Based on the arguments presented, there appears to be no undue prejudice that will result from maintaining the current schedule and no other overriding reason to do otherwise.

Based on the foregoing, it is

ORDERED by Commissioner J. Terry Deason as Prehearing Officer, that AT&T Communications of the Southern States, LLC's Motion for Modification of Procedural Schedule is denied.

By ORDER of Commissioner J. Terry Deason as Prehearing Officer, this 7th Day of August, 2003.



J. TERRY DEASON
Commissioner and Prehearing Officer

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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.