

BEFORE THE PUBLIC SERVICE COMMISSION

In re: Complaint against BellSouth Telecommunications, Inc. for alleged overbilling and discontinuance of service, and petition for emergency order restoring service, by IDS Telecom LLC.

DOCKET NO. 031125-TP
ORDER NO. PSC-04-0835-PCO-TP
ISSUED: August 27, 2004

ORDER ON JOINT MOTION FOR CONTINUANCE

On November 3, 2003, IDS Telecom LLC (IDS) filed its informal complaint against BellSouth for alleged overbilling (CATS file 567409-T). On December 19, 2003, BellSouth denied IDS access to "LENS."¹ On December 23, 2003, IDS filed a Complaint against BellSouth Telecommunications, Inc. (BellSouth) for Overbilling and Discontinuance of Service and a Petition for Emergency Order Restoring Service. On December 24, 2003, BellSouth restored "LENS" access to IDS. On December 30, 2003, IDS amended its Complaint (Amended Complaint) to consist of five counts upon which it requests relief. On January 16, 2004, BellSouth filed its Partial Motion to Dismiss and Answer regarding the Amended Complaint. On February 6, 2004, IDS filed its response to BellSouth's Partial Motion to Dismiss and Answer. By Order No. PSC-04-0423-FOF-TP, issued April 26, 2004, BellSouth's Partial Motion to Dismiss part of IDS's Amended Complaint was granted.

By Order No. PSC-04-0472-PCO-TP, issued May 6, 2004 (Order Establishing Procedure), the procedure was established for this proceeding, and the hearing date was scheduled for October 14, 2004. By Order No. PSC-04-0625-PCO-TP, issued June 25, 2004, the Order Establishing Procedure was modified to reschedule to earlier dates the hearing, prehearing, and key activities dates. Currently, the hearing is scheduled for September 10, 2004 and the prehearing conference is scheduled for August 30, 2004. On August 19, 2004, the parties filed a Joint Motion for Continuance.

In support of their Motion for Continuance, the parties state that this case involves various billing disputes between IDS and BellSouth. The parties also contend that they have additional billing disputes that are not in issue in this case. They note that this Commission has encouraged the mediation and amicable resolution of disputes; thus, the parties have agreed to attempt to mediate all of their disputes before a Commission mediator in an effort to resolve their disputes without protracted litigation. The parties contend, however, that the proximity of the currently scheduled hearing on September 10, 2004, would require them to devote extensive resources and personnel to discovery and hearing preparation rather than to substantive settlement discussions. The parties request that this Commission: (1) continue the hearing of this matter; (2) hold all activities in this case, including discovery, in abeyance for 30 days from the

¹ "LENS" is an acronym for Local Exchange Navigation System; "LENS" is a support platform that BellSouth developed for competitive local exchange carriers.

DOCUMENT NUMBER-DATE

09389 AUG 27 3

FPSC-COMMISSION CLERK

date of this motion; and (3) reschedule this one-day hearing for the next available hearing date after the expiration of this 30-day time period. They also suggest that the currently scheduled Prehearing Conference set for August 30, 2004, be reschedule if it becomes necessary.

The parties also request that, if it becomes apparent prior to the expiration of the above 30-day time period that settlement will not be feasible, that the parties be permitted to continue litigating the case prior to the expiration of the 30-day period. They state in the event a settlement is not obtainable, they will notify the Commission. In addition, the parties request that should it become necessary to restart the schedule, the discovery period correspond with any new hearing date so that neither party is prejudiced in the event that settlement is not reached.

The parties have stated good cause for granting the Joint Motion for Continuance based on the reasons stated above. Accordingly, the hearing schedule and key activities dates are modified as follows:

- | | |
|--------------------------|-------------------|
| 1) Prehearing Conference | November 24, 2004 |
| 2) Hearing | December 3, 2004 |
| 3) Briefs | January 10, 2005 |

Further, the discovery cutoff date shall be November 29, 2004. For all discovery served on or after November 4, 2004, the discovery response period shall be reduced to 10 days. Except as modified herein, Order No. PSC-04-0472-PCO-TP, issued May 6, 2004, and Order No. PSC-04-0625-PCO-TP, issued June 23, 2004, are affirmed in all other respects.

Based on the foregoing, it is

ORDERED by Commissioner J. Terry Deason, as Prehearing Officer, that the hearing, prehearing conference, and key activities dates are modified as set forth in the body of this Order. It is further


ORDERED that this matter is held in abeyance for 30 days from August 19, 2004. It is further

ORDERED that if IDS Telecom LLC and BellSouth Telecommunications, Inc. are unable to reach a settlement, IDS Telecom LLC or BellSouth Telecommunications, Inc. shall notify the Commission. Upon the notification of the failure to reach a settlement, the parties may begin to litigate prior to the expiration of the 30-day abeyance period and the abeyance shall be terminated. It is further

ORDER NO. PSC-04-0835-PCO-TP
DOCKET NO. 031125-TP
PAGE 3

ORDERED that unless IDS Telecom LLC and BellSouth Telecommunications, Inc. file a negotiated settlement within the 30-day abeyance period, the abeyance shall terminate at the end of the 30 days.

By ORDER of Commissioner J. Terry Deason, as Prehearing Officer, this 27th day of August, 2004.


J. TERRY DEASON
Commissioner and Prehearing Officer

(S E A L)

PAC

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

ORDER NO. PSC-04-0835-PCO-TP
DOCKET NO. 031125-TP
PAGE 4

remedy. Such review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.