

BEFORE THE PUBLIC SERVICE COMMISSION

|   |   |
|---|---|
| In re: Petition to recover 2005 tropical system related costs and expenses, by BellSouth Telecommunications, Inc. | DOCKET NO. 060598-TL<br>ORDER NO. PSC-06-0818-PCO-TL<br>ISSUED: October 4, 2006 |
|---|---|

ORDER GRANTING MOTION FOR LEAVE TO FILE AMENDED PETITION  
AND MODIFYING PROCEDURAL SCHEDULE

I. Case Background

On September 1, 2006, BellSouth Telecommunications, Inc. (BellSouth) filed its Petition to Recover 2005 Tropical System Related Costs and Expenses pursuant to 364.051(4), Florida Statutes. Order No. PSC-06-0783-PCO-TL, issued September 20, 2006, set forth the procedural schedule governing this docket.

On September 20, 2006, BellSouth filed its Motion for Leave to File Amended Petition. The Competitive Carriers of the South, Inc. (CompSouth) filed its Response on September 22, 2006.

II. Parties Arguments

*BellSouth's Motion*

In its Motion, BellSouth requests leave to file an Amended Petition in order to correct errors that resulted in the understatement of the number of unbundled loops in service as of June 2006. BellSouth asserts this revision increases the amount that BellSouth estimates it is entitled to potentially recover pursuant to Section 364.051(4)(b), Florida Statutes. In support of its Motion, BellSouth contends in several proceedings this Commission has recognized its broad discretion to allow amended pleadings. BellSouth argues further that Florida courts have recognized that leave to amend should be freely given. See Gamma Development Corp. v. Steinberg, 621 So.2d 718 (Fla 4<sup>th</sup> DCA 1993). See also, Haag v. Philips, 333 So.2d 507 (Fla. 2d DCA 1976).

BellSouth asserts that the Amended Petition will not prejudice the parties to this proceeding. Furthermore, BellSouth states it will not use the filing of the Amended Petition to seek to extend the time period to file responses to previously-issued discovery.

*CompSouth Response*

In its Response, CompSouth contends it does not object to BellSouth's Motion so long as the procedural schedule is adjusted to reflect that the 120-day time period in Section 364.051(4)(a), Florida Statutes, is restarted as a result of the requested amendment. CompSouth

DOCUMENT NUMBER-DATE

09155 OCT-4 06

FPSC-COMMISSION CLERK

argues the 120-day period should begin on September, 20, 2006, the date BellSouth filed its Motion. Consequently, CompSouth requests additional time to file its Rebuttal Testimony. CompSouth asserts it will need additional time to review BellSouth's revised estimate of the number of unbundled loops.

III. Decision

It is a general principle that an amendment should be allowed until the privilege to do so has been abused or the opposing party is prejudiced. See Fouts v. Margules, 98 So. 2d 394 (3d D.C.A. 1957). Upon consideration, it appears reasonable and appropriate to grant BellSouth's Motion for Leave to File Amended Petition.

Trawick, Fla. Practice and Proc., § 14-2 states:

An amended pleading is substituted for the former pleading and the former pleading ceases to have any effect.<sup>1</sup>

Consequently, the 120-day time period for Commission action that commenced with BellSouth's initial filing no longer applies. I hereby find that the 120-day time period shall start anew with the filing of BellSouth's Motion and attached Amended Petition (September 20, 2006).

Due to a highly congested Commission schedule in the months of December and January the hearing date shall remain December 6, 2006. However, in light of the additional information included in BellSouth's Amended Petition, I find it reasonable to modify certain dates to allow additional time for parties to prepare rebuttal testimony.

Accordingly, the following controlling dates are hereby modified:

- |  |                   |
|--|-------------------|
| (1) Rebuttal testimony and exhibits    | October 20, 2006  |
| (2) Issue Identification Conference    | October 26, 2006  |
| (3) Prehearing Statements              | November 13, 2006 |
| (4) Surrebuttal testimony and exhibits | November 17, 2006 |

---

<sup>1</sup> See Shannon v McBride, 105 So. 2d 16 (Fl. 2<sup>nd</sup> DCA 1958); Dee v. Southern Brewing Co., 1 So.2d 562 (Fl. 1941).


Based upon the foregoing, it is

ORDERED by Commissioner J. Terry Deason, as Prehearing Officer, that BellSouth's Motion for Leave to File Amended Petition is granted as set forth in the body of this Order. It is further

ORDERED that certain controlling dates are modified as set forth in the body of this Order. It is further

ORDERED that Order No.. PSC-06-0783-PCO-TL is affirmed in all other aspects.

By ORDER of Commissioner J. Terry Deason, as Prehearing Officer, this 4th day of October, 2006.

  
J. TERRY DEASON  
Commissioner 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

ORDER NO. PSC-06-0818-PCO-TL

DOCKET NO. 060598-TL

PAGE 4

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.