

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition by BellSouth Telecommunications, Inc. for approval for arbitration of an interconnection agreement with US LEC of Florida, Inc. pursuant to the Telecommunications Act of 1996.

DOCKET NO. 000084-TP  
ORDER NO. PSC-00-1831-PCO-TP  
ISSUED: October 6, 2000

ORDER DENYING MOTION FOR CONTINUANCE AND ABATEMENT  
AND TO RESCHEDULE PREHEARING CONFERENCE AND FINAL HEARING,  
GRANTING IN PART ALTERNATIVE MOTION FOR EXTENSION OF TIME FOR  
FILING TESTIMONY AND PREHEARING STATEMENTS,  
AND MODIFYING CERTAIN PROCEDURAL DATES

On January 25, 2000, BellSouth Telecommunications, Inc. (BellSouth) filed a Petition for Arbitration of certain unresolved issues in its negotiations with US LEC of Florida, Inc. (US LEC). In accordance with Section 252(b)(4)(c) of the Telecommunications Act of 1996 (the Act), US LEC's response was due on February 19, 2000. On February 14, 2000, US LEC filed a Motion for Extension of Time, wherein it requested a 90-day extension to file its Response to BellSouth's Petition. That Motion was granted by Order No. PSC-00-0645-PCO-TP, issued April 6, 2000. Pursuant to that Order, US LEC's response was due May 19, 2000. On May 18, 2000, US LEC filed a Notice of Substitution of Counsel and a Second Motion for Extension of Time to File Response to BellSouth's Petition for Arbitration. By Order No. PSC-00-2029-PCO-TP, issued June 9, 2000, US LEC's second request was granted and it was allowed until July 20, 2000, to file its Response, which it did.

On August 17, 2000, Order No. PSC-00-1483-PCO-TP establishing procedure was issued. On September 18, 2000, pursuant to Rules 28-106.204 and 28-106.210, Florida Administrative Code, US LEC filed a Motion for Continuance and Abatement and Alternative Motion for Extension of Time for Filing Testimony and Prehearing Statements and to Reschedule Prehearing Conference and Final Hearing (Motion). On September 21, 2000, BellSouth filed its Direct Testimony pursuant to the Order Establishing Procedure. BellSouth filed its Response to US LEC's Motion on September 25, 2000. The hearing is scheduled for December 14, 2000.

DOCUMENT NUMBER-DATE

12768 OCT-68

FPSC-RECORDS/REPORTING

Arguments

US LEC

US LEC requests a continuance and abatement of these proceedings pending the disposition of the matters at issue in Docket No. 000075-TP (Investigation into Appropriate Method to Compensate Carriers for the Exchange of Traffic Subject to Section 251 of the Telecommunications Act of 1996) scheduled to be decided June 5, 2001. In the alternative, US LEC requests a 90-day extension of time for the filing of prefiled testimony, exhibits, and prehearing statements, as well as the rescheduling of the prehearing conference and final hearing for approximately 90 days after the dates set forth in Order No. PSC-00-1483-PCO-TP (Order Establishing Procedure).

In support of its Motion, US LEC asserts that it has sought to avoid the time and expenditure of resources associated with an arbitration hearing by awaiting the filing of a reasonably satisfactory BellSouth interconnection agreement with the Commission that it can adopt pursuant to Section 252(i) of the Act. US LEC asserts that its past Motions to extend the proceeding have not been opposed by BellSouth. US LEC contends that there may be a preemptive decision by the FCC, Congress, or this Commission in Docket No. 000075-TP that could effectively resolve the open issues between BellSouth and US LEC.

In the meantime, US LEC maintains that it is willing to continue to live by the rates, terms, and conditions of its current interconnection agreement with BellSouth pending a decision on issues concerning reciprocal compensation for termination of ISP-bound traffic. US LEC asserts such action is consistent with past Commission decisions.

US LEC maintains that BellSouth would not be prejudiced by a continuance and abatement of the proceedings as requested and would benefit by avoiding the unnecessary expenditure of time and resources associated with a hearing. US LEC states that it has conferred with counsel for BellSouth and represents that BellSouth opposes the Motion.

US LEC explains that the Order Establishing Procedure requires prefiled direct testimony and exhibits to be filed September 21, 2000, but asserts that it is appropriate to postpone the filing of all prefiled direct testimony and exhibits pending the disposition

of these Motions. In the alternative, US LEC requests permission to defer the filing of its prefiled direct testimony and exhibits until, at least, 14 days after the date of an Order disposing of these Motions.

Finally, US LEC consents to an extension of the deadline set forth in 47 U.S.C. §252(b)(4)(C) of the Act for the resolution of the disputed interconnection agreement issues between BellSouth and US LEC for such time as may be necessary to grant this Motion.

**BellSouth**

BellSouth contends that US LEC's Motion represents the third time that US LEC has sought to delay the resolution of the issues raised. BellSouth notes that, while in the past, it has consented to US LEC's requests for delay, this time, it opposes the request.

BellSouth asserts that US LEC's supporting arguments serve to justify only denial of the Motion. BellSouth argues that continuing to operate under the terms of the expired agreement until the issue of the treatment of internet traffic is definitively settled by the Commission, the FCC, or the Congress would not in any way necessitate delaying the resolution of the other issues to be decided in this docket. BellSouth asserts that there is no reason why US LEC and BellSouth cannot put such language in their new agreement. BellSouth concludes that US LEC appears to be in agreement with its position on this issue which could help bring the arbitration to a conclusion.

BellSouth also argues that the Act does not permit US LEC to unilaterally impose the outmoded terms of the expired agreement on BellSouth. BellSouth suggests that if US LEC truly preferred to save the Commission and the parties the time and expense of arbitration, it could easily adopt provisions from one or more of the hundreds of agreements currently in effect and, if necessary, amend its agreement with provisions from subsequently approved agreements. BellSouth argues that US LEC's Motion is an attempt to have the Commission aid US LEC in prolonging an expired agreement. BellSouth contends that the Commission should refuse to do so and should deny US LEC's Motion.

BellSouth adds that US LEC unilaterally decided not to file direct testimony on the date ordered by this Commission and its arguments are without merit.

**Decision**

The Petition initiating this docket was filed January 25, 2000. This proceeding has been continued for 210 days. I believe that at this time, administrative economy dictates that this proceeding move forward toward sure resolution. Upon consideration, US LEC's Motion for a continuance and abatement of these proceedings is denied.

Continuance of the hearing is not necessary to allow the parties to continue their negotiations. In fact, the parties should further negotiate while preparing for the hearing. If at any time during this proceeding US LEC finds an agreement that it can adopt or the parties reach their own agreement, they should. Moreover, I encourage the parties to take advantage of the mediation program offered by this Commission. Should mediation be undertaken and progress made, I am inclined to revisit the issue of a continuance at that time. Finally, I note that to the extent decisions in other dockets or in other jurisdictions affect these issues, parties can modify their agreements accordingly.

US LEC's alternative motion for extension of time for filing testimony and prehearing statements is granted to the extent set forth below:

Direct testimony and Exhibits - US LEC	October 13, 2000
Rebuttal testimony and Exhibits - All	October 27, 2000
Prehearing Statement	October 27, 2000

Finally, US LEC's Motion to Reschedule the Prehearing Conference and Final Hearing is denied.

Based on the foregoing, it is therefore,


ORDERED by Commissioner Lila A. Jaber, as Prehearing Officer, that US LEC of Florida, Inc.'s Motion for Continuance and Abatement is denied. It is further

ORDERED that US LEC of Florida, Inc.'s Alternative Motion for Extension of Time for Filing Testimony and Prehearing Statement is granted as set forth in the body of this Order. It is further

ORDERED that US LEC of Florida, Inc.'s Motion to Reschedule Prehearing Conference and Final Hearing is denied.

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By ORDER of Commissioner Lila A. Jaber as Prehearing Officer,  
this 6th day of October, 2000.

  
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LILA A. JABER  
Commissioner and Prehearing Officer

( S E A L )

DWC

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, if issued by a Prehearing Officer; (2) reconsideration within 15 days pursuant to Rule 25-22.060, Florida Administrative Code, if issued by the Commission; or (3) 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 Records and Reporting, in the form prescribed by Rule 25-22.060,

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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.