

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Request for arbitration
concerning complaint of IDS
Telcom LLC against BellSouth
Telecommunications, Inc.
regarding breach of intercon-
nection agreement.

DOCKET NO. 010740-TP
ORDER NO. PSC-01-1878-PCO-TP
ISSUED: September 20, 2001

ORDER ADDRESSING PREHEARING MOTIONS
AND
MODIFYING PREHEARING ORDER

IDS Long Distance, Inc. n/k/a IDS Telecom, LLC (IDS) filed a Complaint and Request for Emergency Relief against BellSouth Telecommunications, Inc. (BellSouth) on May 11, 2001. IDS raises four counts against BellSouth: (1) BellSouth has breached the interconnection agreement by failing to provide IDS OSS and UNEs at parity; (2) BellSouth has perpetrated an anticompetitive campaign of "win back" tactics against IDS, including the Full Circle Program and fraudulent telemarketing schemes; (3) BellSouth has permitted the sharing of IDS' customer proprietary network information between its retail and wholesale divisions in violation of the Telecommunications Act of 1996; and (4) the Commission should immediately initiate a show cause proceeding to investigate and sanction BellSouth for its anticompetitive activities that have harmed citizens of the State of Florida. BellSouth filed a response and the matter has been set for hearing.

Since the prehearing conference on September 10, 2001, IDS filed four motions which require resolution prior to the commencement of the hearing on September 21, 2001. The motions are: IDS' Motion to Modify the Order of IDS' Witnesses; IDS' Motion to Compel BellSouth to Produce Witnesses for Deposition Regarding Win Back Allegations; IDS' Motion to Provide an Equitable Division of Hearing Time for Both Parties in Regard to the Cross-examination of Witnesses; and IDS' Motion to Allow Customers to Testify via Telephone. Pursuant to Rule 28-106.211, Florida Administrative Code, I have broad authority to "issue any orders necessary to effectuate discovery, to prevent delay, and to promote the just, speedy, and inexpensive determination of all aspects of

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the case" To that end, my rulings on these motions are stated below.

IDS' MOTION TO MODIFY THE ORDER OF IDS' WITNESSES

By motion filed September 17, 2001, IDS seeks to modify the order of witnesses that was established in the Prehearing Order, Order No. PSC-01-1865-PHO-TP, issued September 17, 2001. IDS now requests the Commission to hear its direct and rebuttal witnesses together, instead of having them appear before and after BellSouth's witnesses. According to IDS, this should expedite the hearing process.

BellSouth filed a response to IDS' motion on September 19, 2001. BellSouth does not oppose IDS' motion to modify the order of witnesses.

Having reviewed and considered the pleadings, I find that the order of witnesses established in Part VI of Order No. PSC-01-1865-PHO-TP shall be modified as follows:

<u>Witness</u>	<u>Proffered By</u>	<u>Issues #</u>
<u>IDS Direct and Rebuttal</u>		
William P. Gulas Becky Wellman (rebuttal panel)	IDS	All issues
Becky Wellman (direct)	IDS	All issues
Bradford Hamilton (direct and rebuttal)	IDS	3, 4
Keith Kramer Becky Wellman (rebuttal panel)	IDS	All issues
Keith Kramer (direct and rebuttal)	IDS	All issues
Angel Leiro (direct and rebuttal)	IDS	3, 4

<u>Witness</u>	<u>Proffered By</u>	<u>Issues #</u>
Robert Hacker (rebuttal)	IDS	5
<u>BST Direct and Rebuttal</u>		
John A. Ruscilli Elizabeth Rokholm Shelley Walls (rebuttal panel, Ruscilli also filed direct and supplemental rebuttal)	BellSouth	2, 3, 4, 5
Ken L. Ainsworth Claude P. Morton Linda W. Tate (rebuttal panel, Ainsworth also filed direct, Tate also filed supplemental rebuttal)	BellSouth	1, 2, 3
Mary K. Batcher, Ph.D. (rebuttal)	BellSouth	3
Jerry L. Wilson Pattie Knight Pat Rand Jimmy Patrick (rebuttal panel, Wilson also filed direct, Rand and Patrick also filed supplemental rebuttal)	BellSouth	1, 2, 5
Petra Pryor Michael Lepkowski (rebuttal panel, Pryor also filed direct)	BellSouth	1, 2
Sandra Harris (direct and rebuttal)	BellSouth	2

<u>Witness</u>	<u>Proffered By</u>	<u>Issues #</u>
Janet Miller-Fields Robby K. Pannell (rebuttal panel, Miller-Fields also filed direct and supplemental rebuttal)	BellSouth	1, 2, 3, 4
Beth Shiroishi (direct and rebuttal)	BellSouth	2, 3

IDS' MOTION TO COMPEL BELLSOUTH TO PRODUCE WITNESSES FOR DEPOSITION
REGARDING WIN BACK ALLEGATIONS

By motion filed September 17, 2001, IDS seeks an order compelling BellSouth to produce certain witnesses for deposition. IDS states that on or about August 20, 2001, IDS verbally requested BellSouth to identify, for deposition purposes, the names of two BellSouth employees with knowledge concerning BellSouth's policy and implementation of its win back programs. IDS again verbally requested BellSouth to identify win back witnesses on September 14, 2001. IDS acknowledges the cut-off date for discovery had passed when it filed its motion, yet argues that in other cases the Commission has permitted discovery after discovery cut-off dates, and such a ruling is required here because of the timeliness of the first request and the expedited nature of the proceeding.

BellSouth filed its response in opposition to IDS' motion on September 19, 2001. BellSouth states that when IDS originally requested BellSouth to identify the names of two win back witnesses, BellSouth's counsel suggested the request be made in writing. IDS never did so. Moreover, BellSouth argues that IDS never made a Rule 1.310(b)(6) request as provided for in the Florida Rules of Civil Procedure. BellSouth also points out that IDS made its second verbal request on the last day discovery could be conducted under the Order Establishing Procedure, Order No. PSC-01-1501-PCO-TP, issued July 18, 2001. Nor did IDS raise this issue at the September 10, 2001, prehearing conference. Finally, BellSouth argues that granting this motion would prejudice BellSouth's ability to prepare for this case for which IDS has requested expedited treatment.

Having reviewed and considered the pleadings on this motion, I find that IDS' motion to compel shall be denied. The order establishing procedure was clear, all discovery was to cease by September 14, 2001. Moreover, there is no discovery to compel here since IDS failed to make a written request as is contemplated by the Florida Rules of Civil Procedure.

IDS' MOTION TO PROVIDE AN EQUITABLE DIVISION OF HEARING TIME FOR BOTH PARTIES IN REGARD TO THE CROSS-EXAMINATION OF WITNESSES

On September 17, 2001, IDS also filed a motion seeking an equitable division of hearing time for both parties in regard to the cross-examination of witnesses. Specifically, IDS requests the Commission to designate the first day of hearing to BellSouth to cross-examine IDS' witnesses, and conversely, the second day to IDS to cross-examine BellSouth's witnesses. According to IDS, this is the only possible way to ensure that the 23 witnesses who have prefiled testimony will have a chance to take the stand in the two hearing days that are scheduled. IDS states that it in no way intends to infringe upon the Commissioner's or staff's ability to cross-examine witnesses. IDS further argues that such a division would not prejudice BellSouth because both parties would be subject to the same time restrictions.

BellSouth filed its response in opposition on September 19, 2001. BellSouth argues that IDS should not be allowed to request emergency relief on an expedited basis, suggest to the Commission that this case can be tried in two days, subsequently file testimony that raises more factual disputes than can reasonably be addressed in one hearing day, and then attempt to limit to one hearing day the time BellSouth has to address the allegations IDS has chosen to make. Instead, BellSouth argues that fundamental fairness and due process dictate that BellSouth is entitled to defend itself against each allegation raised by IDS. Finally, BellSouth argues that IDS did not raise this issue at the prehearing conference, and thus has waived its right to do so four days prior to the commencement of the proceeding.

Having reviewed and considered the pleadings, I find that IDS' motion shall be denied. It would be an infringement upon BellSouth's due process rights to limit cross-examination as suggested by IDS. The parties are reminded, however, that the

Commission has broad authority "to prevent delay, and to promote the just, speedy, and inexpensive determination of all aspects of the case" Rule 28-106.212, Florida Administrative Code. The parties are also reminded that Section 120.569(2)(g), Florida Statutes, provides that "[i]rrelevant, immaterial, or unduly repetitious evidence shall be excluded" from proceedings that affect a party's substantial interests.

IDS' MOTION TO ALLOW CUSTOMERS TO TESTIFY VIA TELEPHONE

Finally, on September 18, 2001, IDS filed a motion in which it seeks permission for IDS customers to testify in this proceeding via telephone. According to IDS, it seeks this arrangement only for those customers who signed affidavits that are attached to the testimony of IDS witness Angel Leiro, and that IDS will notify BellSouth and the Commission prior to the hearing exactly which customers will testify. IDS further argues that this arrangement is necessary because of the costs associated with travel for these customers as well as the difficulties of travel brought on by the September 11, 2001, terrorist attacks. IDS also argues that granting this motion will not create prejudice because BellSouth is already aware of the identity of the customer witnesses.

BellSouth responded in opposition to IDS' motion on September 19, 2001. BellSouth argues that IDS' motion is a direct about-face from its position at the prehearing conference, at which IDS inquired into customers testifying in person. BellSouth points out that at the prehearing conference, I warned parties against recruiting customer testimony to circumvent the necessity of prefiling direct testimony. BellSouth also states that an IDS employee contacted customers about testifying after the prehearing conference at which the parties were admonished not to recruit customer testimony. Contrary to the arguments raised by IDS, BellSouth argues that its due process right would be violated by allowing telephonic testimony because BellSouth has a fundamental right to face its accuser.

Having reviewed and considered the pleadings, I find that IDS' motion to allow customers to testify via telephone shall be denied. It is inappropriate to make such a request three days prior to the commencement of the hearing.

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Based on the foregoing, it is

ORDERED by Commissioner J. Terry Deason, as Prehearing Officer, that IDS Telecom, LLC's Motion to Modify the Order of IDS' Witnesses is granted, and the order of witnesses established in the Prehearing Order, Order No. PSC-01-1865-PHO-TP, is modified as set forth in the body of this order. It is further

ORDERED that IDS Telecom, LLC's Motion to Compel BellSouth Telecommunications, Inc. to Produce Witnesses for Deposition Regarding Win Back Allegations is denied. It is further

ORDERED that IDS Telecom, LLC's Motion to Provide an Equitable Division of Hearing Time for Both Parties in Regard to the Cross-Examination of Witnesses is denied. It is further

ORDERED that IDS Telecom, LLC's Motion to Allow Customers to Testify Via Telephone is denied.

By ORDER of Commissioner J. Terry Deason as Prehearing Officer, this 20th day of September, 2001.



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, 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 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.