

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Request for arbitration concerning complaint of Intermedia Communications, Inc. against BellSouth Telecommunications, Inc. for breach of terms of interconnection agreement under Sections 251 and 252 of the Telecommunications Act of 1996, and request for relief.

DOCKET NO. 991534-TP
ORDER NO. PSC-00-2036-PCO-TP
ISSUED: June 13, 2000

ORDER DENYING MOTION FOR LEAVE TO FILE SURREBUTTAL TESTIMONY

On October 8, 1999, Intermedia Communications, Inc. (Intermedia) filed a complaint against BellSouth Telecommunications, Inc. (BellSouth), alleging that BellSouth breached its interconnection agreement with Intermedia. The agreement was approved by the Commission on October 7, 1996, in Order No. PSC-96-1236-FOF-TP and an amendment to the agreement was approved on October 21, 1998 in Order No. PSC-98-1347-FOF-TP. This matter has been set for an administrative hearing on June 13, 2000.

On May 18, 2000, Intermedia filed a Motion for Leave to File Surrebuttal Testimony. BellSouth filed a response on May 25, 2000.

Intermedia's motion was prompted when Mr. W. Keith Milner filed rebuttal testimony for BellSouth in response to Mr. Edward Thomas's direct testimony for Intermedia. Mr. Milner did not file direct testimony.

Intermedia contends that it would be materially unfair to deny Intermedia the chance to challenge the allegations made by Mr. Milner in his rebuttal testimony. Intermedia further contends that prefiled surrebuttal testimony is needed to avoid a distorted record. Finally, Intermedia contends that Mr. Milner's rebuttal testimony cannot be addressed at the hearing through cross examination of Mr. Milner or redirect examination of Mr. Thomas.

BellSouth argues that Intermedia's motion should not be granted because Intermedia failed to demonstrate that Mr. Milner's rebuttal testimony raised a new issue, and because his testimony did not, in fact, raise a new issue.

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Broad discretion may be exercised when deciding whether to allow surrebuttal testimony. See Frazier v. State, 24 Fla. Law. W. D 466(4th DCA 1999); Cruse v. State, 588 So. 2d 983, 990 (Fla. 1991).

Mr. Milner's testimony does not appear to introduce any new issues. Furthermore, at the hearing, Intermedia will be able to examine witnesses on any of the issues addressed in the prefiled testimony. As such, Intermedia will have an opportunity to address Mr. Milner's testimony. Therefore, Intermedia's Motion for Leave to File Surrebuttal Testimony is denied.

Based on the foregoing, it is

ORDERED by Commissioner Clark, as Prehearing Officer, that the Motion for Leave to File Surrebuttal Testimony filed by Intermedia Communications, Inc. is denied.

By ORDER of Commissioner Susan F. Clark, as Prehearing Officer, this 13th Day of June, 2000.



SUSAN F. CLARK
Commissioner and Prehearing Officer

(S E A L)

MKS

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

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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, 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.