

BEFORE THE PUBLIC SERVICE COMMISSION

In re: Complaint of Florida Competitive Carriers Association against BellSouth Telecommunications, Inc. regarding BellSouth's practice of refusing to provide FastAccess Internet Service to customers who receive voice service from a competitive voice provider, and request for expedited relief.

DOCKET NO. 020507-TL  
ORDER NO. PSC-06-0308-FOF-TL  
ISSUED: April 20, 2006

The following Commissioner participated in the disposition of this matter:

J. TERRY DEASON

ORDER ON MOTION TO CLOSE DOCKET

BY THE COMMISSION:

Case Background

On June 12, 2002, the Florida Competitive Carriers Association (FCCA) filed a Complaint against BellSouth Telecommunications, Inc. (BellSouth) and a Request for Expedited Relief seeking relief from BellSouth's practice of refusing to provide its FastAccess service to customers who receive voice service from an Competitive Local Exchange Carrier (CLEC).<sup>1</sup> By Order No. PSC-02-0935-PCO-TL, issued July 12, 2002, the request for expedited relief was denied. On July 21 and 22, 2003, an administrative hearing was held in the above matter. On November 20, 2003, a recommendation was filed for consideration at the December 2, 3003, Agenda Conference. At the December 2, 2003, Agenda Conference, we deferred the post hearing recommendation pending the appeals of the FDN Order and Supra Reconsideration Order.

On March 25, 2005, the FCC issued a Memorandum Opinion and Order and Notice of Inquiry in *BellSouth Telecommunications, Inc. Request for Declaratory Ruling that State Commissions May Not Regulate Broadband Internet Access Services by Requiring BellSouth to*

---

<sup>1</sup> We previously required BellSouth to make available BellSouth FastAccess Internet service to voice service customers of Florida Digital Network, Inc. (FDN) and Supra Telecommunications and Information Systems, Inc. (Supra). See, In re: Petition by Florida Digital Network, Inc. for Arbitration of Certain Terms and Conditions of Proposed Interconnection and Resale Agreement with BellSouth Telecommunications, Inc. Under the Telecommunications Act of 1996 Order No. PSC-02-0765-FOF-TP, issued June 5, 2002, in Docket No. 010098-TP, (FDN Order) and In re: Petition by BellSouth Telecommunications, Inc. for Arbitration of Certain Issues in Interconnection Agreement with Supra Telecommunications and Information Systems, Inc., Order No. PSC-02-0878-FOF-TP, issued July 1, 2002, in Docket No. 001305-TP (Supra Reconsideration Order).

DOCUMENT NUMBER-DATE

03478 APR 20 06

FPSC-COMMISSION CLERK

*Provide Wholesale or Retail Broadband Services to Competitive LEC UNE Voice Customers.*<sup>2</sup> The FCC held that state commission decisions requiring BellSouth make available BellSouth FastAccess Internet service to CLEC voice service customers are inconsistent with the Telecommunications Act and FCC regulations.

On June 14, 2005, the United States District Court, Northern District of Florida, Tallahassee Division issued its Order and Judgment vacating the pertinent portions of the FDN Order requiring BellSouth make available BellSouth FastAccess Internet service to FDN voice service customers.<sup>3</sup> On July 18, 2005, the United States District Court, Northern District of Florida, Tallahassee Division issued its Order and Judgment vacating the pertinent portions of the Supra Reconsideration Order requiring BellSouth make available BellSouth FastAccess Internet service to Supra voice service customers.<sup>4</sup>

On January 13, 2006, BellSouth filed its Motion to Close Docket. In its Motion, BellSouth requests, in light of the FCC and District Court's decisions, that we enter an order closing this docket and dismissing any outstanding CLEC claims. We have not received any responses to BellSouth's Motion.

#### Decision

In light of the decision by the FCC and United States District Court, Northern District of Florida, we hereby grant BellSouth's Motion to Close Docket and dismiss FCCA's Complaint. The FCC has held that a state commission may not require ILECs to make available internet service to CLEC voice service customers because it is inconsistent with the Telecommunications Act and FCC regulations. Accordingly, we cannot grant the relief requested by FCCA in its Complaint.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that BellSouth Telecommunications, Inc.'s Motion to Close Docket is granted. It is further

ORDERED that this docket shall be closed.

---

<sup>2</sup> WC Docket No. 03-251, FCC 05-78, 20 FCC Rcd 6830.

<sup>3</sup> BellSouth Communications Inc., v. Florida Digital Network, Inc., et al., No. 4:03cv212-RH (Fla. N. Dist. June 14, 2005)

<sup>4</sup> BellSouth Telecommunications, Inc. v. Supra Telecommunications and Information Systems, Inc. et al., (2005 U.S. Dist. LEXIS 35517)

By ORDER of the Florida Public Service Commission this 20th day of April, 2006.

BLANCA S. BAYÓ, Director  
Division of the Commission Clerk  
and Administrative Services

By: Kay Flynn  
Kay Flynn, Chief  
Bureau of Records

( S E A L )

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.

Any party adversely affected by the Commission's final action in this matter may request: 1) reconsideration of the decision by filing a motion for reconsideration with the Director, Division of the Commission Clerk and Administrative Services, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, within fifteen (15) days of the issuance of this order in the form prescribed by Rule 25-22.060, 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 and/or wastewater utility by filing a notice of appeal with the Director, Division of the Commission Clerk and Administrative Services and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days after the issuance of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900(a), Florida Rules of Appellate Procedure.