



# Public Service Commission

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COMMUNICATIONS

**DATE:** FEBRUARY 17, 1999

**TO:** DIRECTOR, DIVISION OF RECORDS AND REPORTING (BAYÓ)

**FROM:** DIVISION OF LEGAL SERVICES (CLEMONS) *Am*  
DIVISION OF TELECOMMUNICATIONS (WOLFE) *me* FAVORS *CRK me*

**RE:** DOCKET NO. **990930-TL** - PETITION OF BELLSOUTH TELECOMMUNICATIONS, INC. FOR EMERGENCY RELIEF TO COMPEL SPRINT-FLORIDA, INCORPORATED TO PROVIDE DIRECTORY LISTINGS OF SPRINT'S CUSTOMERS IN FLORIDA

DOCKET NO. 991037-TP - PETITION OF ORLANDO TELEPHONE COMPANY TO COMPEL SPRINT-FLORIDA, INCORPORATED AND BELLSOUTH TELECOMMUNICATIONS, INC. TO ACCEPT ITS WHITE PAGE DIRECTORY LISTING AND DIRECTORY ASSISTANCE INFORMATION ORDERS

**AGENDA:** 2/29/00 - REGULAR AGENDA - ISSUE 1 - MOTION FOR CLARIFICATION OR RECONSIDERATION - ISSUE 2 - WITHDRAWAL OF PETITION - ISSUE 3 - WITHDRAWAL OF COMPLAINT - INTERESTED PERSONS MAY PARTICIPATE

**CRITICAL DATES:** NONE

**SPECIAL INSTRUCTIONS:** NONE

**FILE NAME AND LOCATION:** S:\PSC\LEG\WP\990930R2.RCM

### CASE BACKGROUND

On July 16, 1999, BellSouth Telecommunications, Inc. (BellSouth) filed a Petition for Emergency Relief against Sprint-Florida, Inc. (Sprint) to compel Sprint to provide BellSouth with the directory listings of Sprint's customers in Florida. Consequently, Docket No. 990930-TL was established.

On August 5, 1999, Sprint filed a Motion to Dismiss BellSouth's Petition for failure to state a cause of action. On

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DATE: FEBRUARY 17, 2000

September 3, 1999, Sprint filed its Answer of Sprint-Florida, Incorporated to BellSouth's Petition.

On August 4, 1999, Orlando Telephone Company, Inc. (OTC) filed a Petition against both BellSouth and Sprint regarding the companies' "method of providing directory assistance and white page directory listing information." As a result, Docket No. 991037-TP was established. On September 2, 1999, BellSouth filed its Answer and Response to Petition of Orlando Telephone Company. Sprint did not file a response to OTC's Petition.

By Order No. PSC-99-2126-PCO-TP, issued October 26, 1999, Sprint's Motion to Dismiss was denied, the Commission declined to grant BellSouth emergency relief on its petition, and Dockets Nos. 990930-TL and 991037-TP were consolidated for hearing.

On November 12, 1999, Sprint filed a Motion for Clarification or Reconsideration of Order No. PSC-99-2126-PCO-TP. No objections to the motion were filed. On December 15, 1999, BellSouth filed a Notice of Withdrawal of its petition. On January 31, 2000, OTC filed a Withdrawal of Complaint, and on February 1, 2000, staff received a letter from Sprint, stating that both Sprint and BellSouth had resolved their dispute with OTC.

Staff's recommendation addresses Sprint's Motion for Clarification or Reconsideration of Order No. PSC-99-2126-PCO-TP, and BellSouth's and OTC's withdrawal of their respective petitions. Sprint has indicated that it still wishes to have its motion considered because of certain decisions in the Order that Sprint believes may be problematic for it on a going-forward basis.

#### **DISCUSSION OF ISSUES**

**ISSUE 1:** Should the Commission grant Sprint's Motion for Clarification or Reconsideration of Order No. PSC-99-2126-PCO-TP?

**RECOMMENDATION:** Yes, the Commission should grant Sprint's Motion for Clarification or Reconsideration of Order No. PSC-99-2126-PCO-TP, to clarify the Order to delete the portions which appear to go beyond the four corners of the complaint and reach the merits of the dispute between the parties. **(CLEMONS)**

**STAFF ANALYSIS:** The proper standard of review for a motion for reconsideration is whether the motion identifies a point of fact or law which was overlooked or which the Commission failed to consider in rendering its Order. See Stewart Bonded Warehouse, Inc. v. Bevis, 294 So. 2d 315 (Fla. 1974); Diamond Cab Co. v. King, 146 So. 2d 889 (Fla. 1962); and Pingree v. Quaintance, 394 So. 2d 161 (Fla. 1st DCA 1981). In a motion for reconsideration, it is not appropriate to reargue matters that have already been considered. Sherwood v. State, 111 So. 2d 96 (Fla. 3rd DCA 1959); citing State ex. rel. Jaytex Realty Co. v. Green, 105 So. 2d 817 (Fla. 1st DCA 1958). Furthermore, a motion for reconsideration should not be granted "based upon an arbitrary feeling that a mistake may have been made, but should be based upon specific factual matters set forth in the record and susceptible to review." Stewart Bonded Warehouse, Inc. v. Bevis, 294 So. 2d 315, 317 (Fla. 1974).

As stated previously, on July 16, 1999, BellSouth filed a Petition for Emergency Relief against Sprint. In its Petition, BellSouth requested that the Commission compel Sprint to "provide BellSouth with the directory listings of Sprint's customers in Florida." BellSouth alleged that, pursuant to FCC Order No. 98-271 and 47 CFR Sec. 51.217, it advised Sprint that it "would begin providing Sprint's directory listings to third parties, including Alternative Local Exchange Companies (ALECs)." BellSouth also stated that, after a series of correspondence between the companies, Sprint, on June 17, 1999, ceased sending new and updated directory listing information to BellSouth, causing BellSouth to remove the existing Sprint directory listing information from its databases "in light of the strong possibility that the information was no longer accurate."

Sprint, on August 5, 1999, filed a Motion to Dismiss BellSouth's petition for failure to state a cause of action. Sprint argued that even if all the factual allegations made by BellSouth were deemed true, "on its face the Petition does not describe actions or omissions by Sprint which are in violation of any cited FPSC rule or order." While Sprint admitted that it is no longer sending directory assistance listings to BellSouth, it asserted that the only rule cited by BellSouth, Rule 25-4.040(5), Florida Administrative Code, imposes no obligation "on a supplier of numbers . . . to provide listings so that the LEC serving the LEC's territory can discharge its obligations." Sprint further stated that the rule:

speaks only to (1) BellSouth's own obligation to provide directory assistance in the area where BellSouth furnishes service and (2) to

the internal obligation of BellSouth to insure that its own listings are updated within 48 hours from within the BellSouth service ordering completion process.

Sprint's Motion to Dismiss at 3-4.

On August 17, 1999, BellSouth filed its Response to the Motion to Dismiss. BellSouth argued that Sprint misinterprets its claims. It stated that BellSouth has an obligation under FCC Order 98-271 and 47 C.F.R. Sec. 51.217 to permit any competing provider of local exchange service to have access to its Directory Assistance database, including the listings provided to BellSouth by Sprint. BellSouth argued that Sprint, on the other hand, has an obligation to provide its directory listings, including EAS listings, to BellSouth pursuant to its contract with BellSouth and pursuant to Rule 25-4.040(5), Florida Administrative Code.

By Order No. PSC-99-2126-PCO-TP, issued October 26, 1999, Sprint's Motion to Dismiss was denied.

Sprint's Motion for Clarification or Reconsideration of Order No. PSC-99-2126-PCO-TP

Sprint filed its motion pursuant to Rule 25-22.060, Florida Administrative Code. In its motion, Sprint states that at the October 5, 1999, Agenda conference, in which the Commission voted on Sprint's Motion to Dismiss, it urged that "staff's position was incorrectly based on an assumption that the Commission could interpret and apply Federal law and . . . that the recommendation was based on an incorrect interpretation of federal laws." Sprint argues that it also objected to the inclusion in the recommendation of "an expansive interpretation of a Commission Rule that is seemingly at odds with the plain language of the rule." Sprint maintains that the Commission did not adopt any basis for its decision, but that the prevailing motion of a Commissioner was essentially to approve staff's recommendation on the basis that BellSouth had stated a cause of action.

Sprint asserts that it seeks reconsideration or clarification of the order for the sole purpose of "removing from the Order language which is incorrect, unnecessary or prejudicially prematurely dispositive of the ultimate issue in the proceeding." According to Sprint, some of the language in the Commission's Order amounts to summary judgment for BellSouth on bases that were never raised by BellSouth, and, therefore, it violates the principle that in determining the sufficiency of the petition, the Commission

should confine its consideration to the petition and the grounds asserted in the motion to dismiss. See Flye v. Jeffords, 106 So. 2d 229 (Fla. 1st DCA 1958).

Any order which forecloses Sprint from putting on its case, Sprint argues, is inappropriate. Sprint further argues:

No opportunity has been given for presentation of evidence, even in the form of affidavits, as allowed by Rule 1.510, Florida Rules of Civil Procedure. If the evidence raises any issues of material fact, or if the evidence is conflicting or will permit different reasonable inferences, summary judgment cannot be granted. See, *In re: Petition by Florida Power & Light Company for enforcement of Order 4285, which approved a territorial agreement and established boundaries between the Company and the City of Homestead* Docket No. 970022-EU; Order No. PSC-97-1552-PCO-EU Florida Public Service Commission 1997 Fla. PUC Lexis 176697 FPSC 12:170 December 10, 1997.

Sprint maintains that, although it does not agree with the Commission's conclusion regarding the existence of a cause of action, it does object to certain portions of the order which are overly broad and unfairly prejudicial, which exceed the scope of a decision on a motion to dismiss, and which present erroneous conclusions of fact or law. It asserts that those portions of the order should be clarified and/or deleted to reflect the Commission's sole basis for denying its motion, which is that Rule 25-4.040(5), Florida Administrative Code, could be interpreted to give BellSouth a forum for its complaint. Specifically, Sprint objects to the language from the Order as underlined below:

Rule 25-4.040(5), Florida Administrative Code, provides, in pertinent part:

Directory Assistance operators shall maintain records of all telephone numbers (except for non-published telephone numbers) in the area for which they have the responsibility of furnishing service. . . All new or changed listings shall be provided to directory assistance operators within 48 hours after

connection of service, excluding Saturdays, Sundays and holidays.

It appears that the objective of Rule 25-4.040(5), Florida Administrative Code, is the same as that of Section 251(b)(3) of the Act, 47 C.F.R. §51.217(c)(3)(I) and (ii), FCC Order 98-271 and PSC-98-1484-FOF-TP, which is that all customers should have access to all listings through directory assistance, notwithstanding their local service provider. Therefore, we shall not read the rule narrowly to impose no obligation upon Sprint to supply its listings to other LECs, including BellSouth. We believe that Sprint already has this obligation under 47 C.F.R. §51.217(c)(3)(I) and (ii), because the rule applies to all LECs.

Sprint is correct in that there has been no interpretation of Rule 25-4.040(5), Florida Administrative Code, to date; however, we believe that a broad reading of the rule is appropriate. The phrase, "In the area for which they have the responsibility of furnishing service", shall be interpreted to mean that a LEC has a responsibility, not just for the directory assistance listings of its customers in its territory, but for all customers of the entire local service area (especially when expanded calling scopes are involved). This interpretation mandates the sharing of directory assistance listings between LECs in the same local service area for the benefit of the customer. If the rule was interpreted any other way, it would lead to absurd results. On the one hand, BellSouth would be obligated to provide its listings to third party requestors so that all customers would have access to listings through directory assistance, notwithstanding their local service provider, but on the other hand, Sprint would not be required to give its listings to BellSouth in the first place, defeating entirely the purpose of the rule.

If we adopted Sprint's view and interpreted our rule to impose no obligation upon Sprint to provide its directory assistance listings to BellSouth, a customer calling BellSouth's directory assistance in Orlando, for example, may have difficulty obtaining the listing of a Sprint customer living in Altamonte Springs, absent a private agreement between the companies, even though both customers are within the same local service area. Sprint has conceded that BellSouth does indeed have an obligation to provide its entire directory assistance listings database to third party requestors pursuant to Section 251(b)(3) of the Act, 47 C.F.R. §51.217(c)(3)(I) and (I), FCC Order 98-271 and PSC-98-1484-FOF-TP, but the objective of these regulatory requirements -- customer access to directory assistance listings, notwithstanding the provider -- would be thwarted if Sprint was not also under any obligation to provide its listings to competing carriers so that "directory assistance operators . . . [could] maintain records of all telephone numbers . . . in the area for which they have the responsibility of furnishing service." See Rule 25-4.040(5), Florida Administrative Code.

Based on the foregoing, BellSouth has stated a cause of action for which we may grant relief. Therefore, Sprint's Motion to Dismiss is hereby denied. (Order at 7-9).

\* \* \*

We believe that the heart of the dispute between the parties is whether Sprint should be compensated for its directory listings that are included in BellSouth's database when BellSouth sells its database to third parties. Neither of the parties have raised compensation as an issue in this case. Order No. PSC-98-1484-FOF-TP, which ordered BellSouth to provide its entire Directory Assistance listings database to MCI was also silent as to compensation. Nonetheless, we

believe that the parties may well benefit from the negotiation of new contract terms which may or may not provide for reciprocal compensation because our decision herein, as well as the MCI Order, effectively renders null and void any current contract provision between the parties which may deem to prohibit the resale of Sprint's Directory Assistance listings by BellSouth. The parties should also keep in mind our belief that Sprint has as much obligation to provide its Directory Assistance listings database to BellSouth and other LECs as BellSouth does to Sprint and other LECs.

Order at 10. As noted previously, BellSouth did not respond to Sprint's motion.

#### Staff's Analysis

Staff believes that Sprint's motion fails to identify a point of fact or law which was overlooked or which the Commission failed to consider in rendering its decision in Order No. PSC-99-2126-PCO-TP. Staff agrees with Sprint, however, that a clarification of the Order is appropriate. It appears that the Order goes beyond what is required for rendering a decision on a motion to dismiss. In evaluating a motion to dismiss, the court must confine its consideration to the four corners of the complaint. Kest v. Nathanson, 216 So.2d 233 (Fla. 4th DCA 1968); Alvarez v. E & A Produce Corp., 708 So.2d 997 (Fla. 3rd DCA 1998); Abrams v. General Ins. Co., 460 So.2d 572 (Fla. 3rd DCA 1984). The merits of the case are wholly irrelevant and immaterial in reaching a determination of whether the petition can withstand a motion to dismiss for failure to state a cause of action. See Kest, 216 So.2d at 235.

Based upon the foregoing, staff believes that it is appropriate to clarify the Order to delete the portions which appear to go beyond the four corners of the complaint and reach the merits of the dispute between the parties. Accordingly, staff recommends that Sprint's Motion for Clarification of Order No. PSC-99-2126-PCO-TP be granted to clarify the Order with the following recommended additions (indicated by underline) and recommended deletions (indicated by strikethrough):

Rule 25-4.040(5), Florida Administrative Code, provides, in pertinent part:



Directory Assistance operators shall maintain records of all telephone numbers (except for non-published telephone numbers) in the area for which they have the responsibility of furnishing service. . . All new or changed listings shall be provided to directory assistance operators within 48 hours after connection of service, excluding Saturdays, Sundays and holidays.

It appears that ~~the objective of~~ Rule 25-4.040(5), Florida Administrative Code, could be interpreted to have the is the same objective as that of Section 251(b)(3) of the Act, 47 C.F.R. §51.217(c)(3)(I) and (ii), FCC Order 98-271 and PSC-98-1484-FOF-TP, which is that all customers should have access to all listings through directory assistance, notwithstanding their local service provider. ~~Therefore, we shall not read the rule narrowly to impose no obligation upon Sprint to supply its listings to other LECs, including BellSouth. We believe that Sprint already has this obligation under 47 C.F.R. §51.217(c)(3)(I) and (ii), because the rule applies to all LECs.~~

Sprint is correct in that there has been no interpretation of Rule 25-4.040(5), Florida Administrative Code, to date; however, we believe that a broad reading of the rule ~~is~~ could be appropriate. The phrase, "In the area for which they have the responsibility of furnishing service", ~~shall~~ could be interpreted to mean that a LEC has a responsibility, not just for the directory assistance listings of its customers in its territory, but for all customers of the entire local service area (especially when expanded calling scopes are involved). This interpretation would ~~mandates~~ the sharing of directory assistance listings between LECs in the same local service area for the benefit of the customer. ~~If the rule was interpreted any~~

~~other way, it would lead to absurd results. On the one hand, BellSouth would be obligated to provide its listings to third party requestors so that all customers would have access to listings through directory assistance, notwithstanding their local service provider, but on the other hand, Sprint would not be required to give its listings to BellSouth in the first place, defeating entirely the purpose of the rule.~~

~~If we adopted Sprint's view and interpreted our rule to impose no obligation upon Sprint to provide its directory assistance listings to BellSouth, a customer calling BellSouth's directory assistance in Orlando, for example, may have difficulty obtaining the listing of a Sprint customer living in Altamonte Springs, absent a private agreement between the companies, even though both customers are within the same local service area. Sprint has conceded that BellSouth does indeed have an obligation to provide its entire directory assistance listings database to third party requestors pursuant to Section 251(b)(3) of the Act, 47 C.F.R. §51.217(e)(3)(I) and (I), FCC Order 98-271 and PSC 98 1484 FOF TP, but the objective of these regulatory requirements -- customer access to directory assistance listings, notwithstanding the provider -- would be thwarted if Sprint was not also under any obligation to provide its listings to competing carriers so that "directory assistance operators . . . [could] maintain records of all telephone numbers . . . in the area for which they have the responsibility of furnishing service." See Rule 25 4.040(5), Florida Administrative Code.~~

Based on the foregoing, BellSouth has stated a cause of action for which we may grant relief. Therefore, Sprint's Motion to Dismiss is hereby denied.

\* \* \*

~~We believe that the heart of the dispute between the parties is whether Sprint should be compensated for its directory listings that are included in BellSouth's database when BellSouth sells its database to third parties. Neither of the parties have raised compensation as an issue in this case. Order No. PSC 98 1484 FOF TP, which ordered BellSouth to provide its entire Directory Assistance listings database to MCI was also silent as to compensation. Nonetheless, we believe that the parties may well benefit from the negotiation of new contract terms which may or may not provide for reciprocal compensation because our decision herein, as well as the MCI Order, effectively renders null and void any current contract provision between the parties which may deem to prohibit the resale of Sprint's Directory Assistance listings by BellSouth. The parties should also keep in mind our belief that Sprint has as much obligation to provide its Directory Assistance listings database to BellSouth and other LECs as BellSouth does to Sprint and other LECs.~~

**ISSUE 2:** Should the Commission acknowledge BellSouth's Notice of Withdrawal?

**RECOMMENDATION:** Yes, the Commission should acknowledge BellSouth's Notice of Withdrawal. (CLEMONS)

**STAFF ANALYSIS:** On December 15, 1999, BellSouth filed a Notice of Withdrawal of its Petition for Emergency Relief. By letter dated February 1, 2000, attached hereto as Exhibit A and incorporated herein by reference, Sprint advised staff that Sprint and BellSouth had resolved their dispute in Docket No. 990930-TL. Sprint further states that each company would use "its respective national database in part, to fulfill their obligations to provide directory assistance for the area in and around Orlando."

Based upon the foregoing, staff recommends that the Commission acknowledge BellSouth's Notice of Withdrawal.

ISSUE 3: Should the Commission acknowledge OTC's Withdrawal of Complaint?

RECOMMENDATION: Yes, the Commission should acknowledge OTC's Withdrawal of Complaint. (CLEMONS)

STAFF ANALYSIS: On January 31, 2000, OTC filed its Withdrawal of Complaint, which states that it received representations from BellSouth and Sprint which are acceptable to OTC as a satisfactory resolution of its problem. In Sprint's February 1, 2000, letter discussed in Issue 2 above, Sprint states:

It is not the intention of BellSouth or Sprint to harm or competitively disadvantage Orlando Telephone Company (OTC) by resolving their dispute in Docket No. 990930-TL in the manner chosen, and both parties believe that OTC's customers should be able to obtain directory assistance for numbers sought in either BellSouth's or Sprint's territory after implementation of the procedure using national data base.

If OTC should experience problems regarding directory assistance under the method chosen to be implemented by BellSouth and Sprint, each company agrees to work with OTC to try to resolve such problems and to seek a reasonably satisfactory solution for OTC. This may include participation in industry efforts to improve the speed and accuracy of national data base providers.

Accordingly, staff recommends that the Commission acknowledge OTC's Withdrawal of Complaint.

DOCKETS NOS. 990930-TL; 991037-TP  
DATE: FEBRUARY 17, 2000

ISSUE 4: Should the consolidated dockets be closed?

RECOMMENDATION: Yes, if Issues 2 and 3 are approved, the consolidated dockets should be closed. (CLEMONS)

STAFF ANALYSIS: If Issues 2 and 3 are approved, the consolidated dockets should be closed.

ATTACHMENT A



**Charles J. Rehwinkel**  
Senior Attorney

**VP Law/External Relations**  
P.O. Box 2214  
Tallahassee, FL 32316-2214  
Voice 850 847 0244  
Fax 850 878 0777  
charles.j.rehwinkel@mail.sprint.com

February 1, 2000

Donna Clemons  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, Florida 32399-0850

Re: Dockets Nos. 990930-TL and 991037-TP.

Dear Ms. Clemons:

BellSouth Telecommunications, Inc. (BellSouth) and Sprint-Florida, Incorporated (Sprint) have resolved their dispute in Docket No. 990930-TL. Each company will use its respective national database in part, to fulfill their obligations to provide directory assistance for the area in and around Orlando.

It is not the intention of BellSouth or Sprint to harm or competitively disadvantage Orlando Telephone Company (OTC) by resolving their dispute in Docket No. 990930-TL in the manner chosen, and both parties believe that OTC's customers should be able to obtain directory assistance for numbers sought in either BellSouth's or Sprint's territory after implementation of the procedure using national data base.

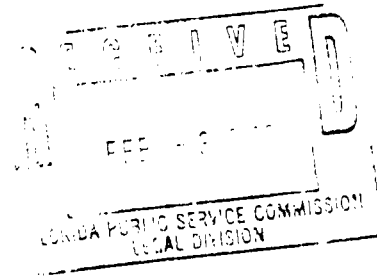
If OTC should experience problems regarding directory assistance under the method chosen to be implemented by BellSouth and Sprint, each company agrees to work with OTC to try to resolve such problems and to seek a reasonably satisfactory solution for OTC. This may include participation in industry efforts to improve the speed and accuracy of national data base providers.

I am authorized to represent that BellSouth concurs in the representations made this letter. Please call me at 850/847-0244 or Michael Goggin at 305/347-5561 if you have any questions.

Sincerely,

Charles Rehwinkel

cc: Michael Goggin (BellSouth)  
David Erwin (OTC)  
File: Docket No. 991037-TP



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