

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Petition by AT&T) DOCKET NO. 960833-TP
Communications of the Southern) ORDER NO. PSC-96-0933-PCO-TP
States, Inc., for arbitration) ISSUED: July 17, 1996
with BellSouth)
Telecommunications, Inc.)
concerning interconnection and)
resale under the)
Telecommunications Act of 1996.)
_____)

INITIAL ORDER ESTABLISHING PROCEDURE

Part II of the Federal Telecommunications Act of 1996 (Act) sets forth provisions regarding the development of competitive markets in the telecommunications industry. Section 251 of the Act regards interconnection with the incumbent local exchange carrier and Section 252 sets forth the procedures for negotiation, arbitration, and approval of agreements.

Section 252(b) addresses agreements arrived through compulsory arbitration. Specifically, Section 252(b)(1) states:

(1) Arbitration. - During the period from the 135th to 160th day (inclusive) after the date on which an incumbent local exchange carrier receives a request for negotiation under this section, the carrier or any other party to the negotiation may petition a State commission to arbitrate any open issues.

Section 252(b)(4)(C) states that the State commission shall resolve each issue set forth in the petition and response, if any, by imposing the appropriate conditions as required. This section requires this Commission to conclude the resolution of any unresolved issues not later than 9 months after the date on which the local exchange carrier received the request under this section.

By letter dated March 4, 1996, AT&T Communications of the Southern States (AT&T), on behalf of its subsidiaries providing telecommunications services in Florida, requested that BellSouth Telecommunications, Inc. (BellSouth) commence good faith negotiations under Section 251 of the Act. Thus, as early as July 17, 1996, AT&T may petition this Commission to arbitrate any unresolved issues with BellSouth. To assure that this Commission fulfills its 9-month requirement for resolution of unresolved issues, this docket is being opened at this time. To enable the

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Commission to make the required determinations within the congressionally mandated time frame, this docket shall be conducted as an expedited proceeding pursuant to Section 364.058, Florida Statutes.

Section 252(b)(4)(A) provides that this Commission shall limit its consideration of any petition to the issues set forth in the petition and in the response, if any. The hearing will be conducted according to the provisions of Chapter 120, Florida Statutes, and the rules of this Commission as limited by the Act.

Upon review of the Act, I find that intervention with full party status is not appropriate for purposes of the Commission conducting arbitration in this docket. Section 252 contemplates that only the party requesting interconnection and the incumbent local exchange company shall be parties to the arbitration proceeding. For example, Section 252(b)(1) of the Act states that the "carrier or any other party to the negotiation" may request arbitration (emphasis added). Similarly, Section 252(b)(3) says, "a non-petitioning party to a negotiation may respond to the other party's petition" within 25 days (emphasis added). Section 252(b)(4) requires this Commission to limit its consideration to the issues raised by the petition and the response. None of these statutory provisions provides for intervenor participation. Accordingly, only BellSouth and AT&T shall be granted full party status for purposes of arbitration of the issues set forth in AT&T's petition. It follows, therefore, that only AT&T and BellSouth shall be bound by the agreement resulting from the AT&T petition filed in this proceeding.

On July 16, 1996, AT&T sent a letter requesting a slight departure from the current policy that the direct testimony be filed with the petition. AT&T states that to give the Commission and the other parties the maximum time to prepare for and process an arbitration proceeding, the petition setting forth the scope of the proceeding should be filed as early as possible if negotiations prove fruitless. AT&T states that most of the subject matter experts that may be needed as witnesses in an arbitration proceeding are and will be the subject matter experts involved in the negotiations until a petition is filed. These persons could not in good faith cease the negotiating process to prepare testimony in anticipation of the potential of an early filing of a petition nor can they simultaneously do both.

To allow all parties the maximum time to conduct an arbitration proceeding and allow a reasonable time to prepare testimony, AT&T proposes that if a petition is filed between July 17, 1996 and July 31, 1996, the direct testimony and exhibits

should be filed on July 31, 1996. If the petition is filed on July 31, 1996 or later, the direct testimony and exhibits should be filed with the petition.

I understand that BellSouth has been informed regarding AT&T's request and indicates that it does not object to the procedure and time frame established below.

Upon review, I find AT&T's request to be reasonable. In addition, the Federal Communications Commission (FCC) is expected to issue its regulations pursuant to Section 251 and 252 of the Act by August 8, 1996. If AT&T files its direct testimony prior to that date, it may file revised prefiled direct testimony and exhibits, if necessary, on the date set forth below, to address the FCC's regulations. At that time it may also be appropriate to revisit the provisions of this Order based on the FCC's regulations.

Discovery

a. Due to the expedited time schedule for this proceeding, all discovery requests and responses shall be served either by next-day express or hand delivery. All discovery responses shall be served within twenty (20) days of receipt of the discovery request. There shall be no extra time for mailing.

b. When discovery requests are served and the respondent intends to object to or ask for clarification of the request, the objection or request for clarification shall be made within ten days of service of the discovery request. This procedure is intended to reduce delay in resolving discovery disputes.

c. All interrogatories, requests for admissions, and requests for production of documents shall be numbered sequentially in order to facilitate their identification. Unless subsequently modified by the Prehearing Officer, interrogatories, requests for production of documents, and requests for admissions shall each be limited to 500, including all subparts.

d. Any information provided pursuant to a discovery request for which proprietary confidential business information status is requested shall be treated by the Commission and the parties as confidential. The information shall be exempt from Section 119.07(1), Florida Statutes, pending a formal ruling on such request by the Commission, or upon the return of the information to the person providing the information. If no determination of confidentiality has been made and the information has not been made a part of the evidentiary record in the proceeding, it shall be

returned expeditiously to the person providing the information. If a determination of confidentiality has been made and the information was not entered into the record of the proceeding, it shall be returned to the person providing the information within the time period set forth in Section 364.183(2), Florida Statutes.

Diskette Filings

See Rule 25-22.028(1), Florida Administrative Code, for the requirements of filing on diskette.

Prefiled Testimony and Exhibits

Pursuant to Rule 25-22.048, Florida Administrative Code, each party shall prefile, in writing, all testimony that it intends to sponsor. Such testimony shall be typed on 8 1/2 inch x 11 inch transcript-quality paper, double spaced, with 25 numbered lines, on consecutively numbered pages, with left margins sufficient to allow for binding (1.25 inches).

Each exhibit intended to support a witness' prefiled testimony shall be attached to that witness' testimony when filed, identified by his or her initials, and consecutive numbers beginning with 1. All other known exhibits shall be marked for identification at the prehearing conference. After an opportunity for opposing parties to object to introduction of the exhibits and to cross-examine the witness sponsoring them, exhibits may be offered into evidence at the hearing. Exhibits accepted into evidence at the hearing shall be numbered sequentially. The pages of each exhibit shall also be numbered sequentially prior to filing with the Commission.

An original and fifteen copies of all testimony and exhibits shall be filed with the Director, Division of Records and Reporting by the close of business, which is 5:00 p.m., on the date due. A copy of all prefiled testimony and exhibits shall be served by next-day express or hand delivery to all other parties and staff no later than the date filed with the Commission. Failure of a party to timely file exhibits and testimony of any witness in accordance with the foregoing requirements may bar admission of such exhibits and testimony.

Prehearing Statement

Pursuant to Rule 25-22.038(3), Florida Administrative Code, each party and staff shall file a prehearing statement. Prehearing statements shall include the following information in the following sequence:

- (a) the name of all known witnesses that may be called by the party, and the subject matter of their testimony;
- (b) a description of all known exhibits that may be used by the party, whether they may be identified on a composite basis, and the witness sponsoring each;
- (c) a statement of basic position in the proceeding;
- (d) a statement of each question of fact the petitioner or respondent considers at issue, the party's position on each such issue, and which of the party's witnesses will address the issue;
- (e) a statement of each question of law the petitioner or respondent considers at issue and the party's position on each such issue;
- (f) a statement of each policy question the petitioner or respondent considers at issue, the party's position on each such issue, and which of the party's witnesses will address the issue;
- (g) a statement of issues that have been stipulated to by the parties;
- (h) a statement of all pending motions or other matters the party seeks action upon; and
- (i) a statement as to any requirement set forth in this order that cannot be complied with, and the reasons therefor.

An original and fifteen copies of each prehearing statement shall be filed with the Director of the Division of Records and Reporting by the close of business, which is 5:00 p.m., on the date due. A copy of the prehearing statement shall be served on all other parties and staff, by next day express or hand delivery, no later than the date it is filed with the Commission. Failure of a party to timely file a prehearing statement shall constitute a waiver of any issue not raised by other parties or by the Commission. In addition, such failure shall preclude the party from presenting testimony in support of its position.

Prehearing Conference

A prehearing conference will be held in this docket at the Florida Public Service Commission, 4075 Esplanade Way, Betty Easley

Conference Center, Tallahassee, Florida 32399-0850. The conditions of Rule 25-22.038(5)(b), Florida Administrative Code, shall be observed. Any party who fails to attend the prehearing conference, unless excused by the Prehearing Officer, will have waived all issues and positions raised in that party's prehearing statement.

Prehearing Procedure: Waiver of Issues

Any issue not raised by a petitioner or respondent prior to the issuance of the prehearing order shall be waived by that party, except for good cause shown. A petitioning or responding party seeking to raise a new issue after the issuance of the prehearing order shall demonstrate that: it was unable to identify the issue because of the complexity of the matter; due diligence was exercised to obtain facts touching on the issue; and introduction of the issue could not be to the prejudice or surprise of any party. Specific reference shall be made to the information received, and how it enabled the party to identify the issue.

When a party is unable to take a position on an issue, it shall bring that fact to the attention of the Prehearing Officer. If the Prehearing Officer finds that the party has acted diligently and in good faith to take a position, and further finds that the party's failure to take a position will not prejudice other parties or confuse the proceeding, the party may maintain "no position at this time" prior to hearing and identify its position in a post-hearing statement of issues. In the absence of such a finding by the Prehearing Officer, the party shall have waived the entire issue. When an issue and position have been properly identified, any party may adopt that issue and position in its post-hearing statement.

Controlling Dates

The following dates have been established to govern the key activities of this case.

1. Petitioner shall file with the petition a clear description of the provisions that have been agreed upon and the issues that are unresolved. The petitioner shall also file a proposed list of issues for this proceeding and the position of each of the parties with respect to those issues. The petitioner shall also file any other issues discussed and resolved by the petitioner and respondent.

- 2) Within 25 days of the filing of the petition, the respondent shall file a clear description of the provisions that have been agreed upon and the issues that are unresolved. The respondent shall also file a proposed list of issues for this proceeding and may file additional information as it wishes.
- 3) Direct Testimony - Petitioner
If AT&T files petition between July 17, 1996 and July 31, 1996 (inclusive), then prefiled direct testimony and exhibits July 31, 1996
If AT&T files petition after July 31, 1996, then prefiled direct testimony and exhibits Day Petition Filed
- 4) Direct testimony and exhibits of the respondent shall be filed no later than 25 days after the filing of the petition of the petitioner.
- 5) Supplemental Direct Testimony August 16, 1996
(All) if necessary, limited to FCC's regulations
- 6) Rebuttal testimony and exhibits
(All) shall be filed no later than 14 days after the respondent files direct testimony.
- 7) Supplemental Rebuttal August 30, 1996
(All) if necessary, limited to the FCC's regulations.
- 8) Prehearing Statements September 20, 1996
- 9) Prehearing Conference October 2, 1996
- 10) Hearing October 9 - 11, 1996
- 11) Briefs October 22, 1996

Use of Confidential Information At Hearing

It is the policy of this Commission that all Commission hearings be open to the public at all times. The Commission also recognizes its obligation pursuant to Section 364.183, Florida Statutes, to protect proprietary confidential business information

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from disclosure outside the proceeding. Any party wishing to use any proprietary confidential business information, as that term is defined in Section 364.183(4), Florida Statutes, shall notify the Prehearing Officer and all parties of record by the time of the Prehearing Conference, or if not known at that time, no later than seven (7) days prior to the beginning of the hearing. The notice shall include a procedure to assure that the confidential nature of the information is preserved as required by statute. Failure of any party to comply with the seven day requirement described above shall be grounds to deny the party the opportunity to present evidence which is proprietary confidential business information.

When confidential information is used in the hearing, parties must have copies for the Commissioners, necessary staff, and the Court Reporter, in envelopes clearly marked with the nature of the contents. Any party wishing to examine the confidential material that is not subject to an order granting confidentiality shall be provided a copy in the same fashion as provided to the Commission, subject to execution of any appropriate protective agreement with the owner of the material. Counsel and witnesses are cautioned to avoid verbalizing confidential information in such a way that would compromise the confidential information. Therefore, confidential information should be presented by written exhibit when reasonably possible to do so. At the conclusion of that portion of the hearing that involves confidential information, all copies of confidential exhibits shall be returned to the offering party. If a confidential exhibit has been admitted into evidence, the copy provided to the Court Reporter shall be retained in the Division of Records and Reporting's confidential files.

Based upon the foregoing, it is

ORDERED by Commissioner J. Terry Deason, as Prehearing Officer, that the provisions of this Order shall govern this proceeding unless modified by the Commission.

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By ORDER of Commissioner J. Terry Deason, as Prehearing Officer, this 17th day of July, 1996.



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 120.59(4), 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 this order, which is preliminary, procedural or intermediate in nature, may request: 1) reconsideration within 10 days pursuant to Rule 25-22.038(2), 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.