

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Petition by American) DOCKET NO. 961169-TP
Communications Services, Inc.)
for arbitration with GTE Florida)
Incorporated concerning)
interconnection rates, terms,)
and conditions, pursuant to the)
Federal Telecommunications Act)
of 1996.)

In Re: Petition by Sprint d/b/a) DOCKET NO. 961173-TP
Sprint Communications Company) ORDER NO. PSC-96-1283-PCO-TP
Limited Partnership for) ISSUED: October 15, 1996
arbitration with GTE Florida)
Incorporated concerning)
interconnection rates, terms,)
and conditions, pursuant to the)
Federal Telecommunications Act)
of 1996.)

ORDER ESTABLISHING PROCEDURE
AND CONSOLIDATING DOCKETS

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 addresses 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 at 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.

On April 18, 1996, American Communications Services, Inc., American Communications Services of Jacksonville, Inc., and American Communications Services of Tampa, Inc. (collectively,

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ACSI), formally requested negotiations with GTE Florida, Inc. (GTEFL), under Section 251 of the Act. On September 26, 1996, ACSI filed a Petition for Arbitration. Accordingly, Docket No. 961169-TP was established.

On April 19, 1996, Sprint Communications Company, L.P. (Sprint), formally requested negotiations with GTEFL under Section 252 of the Act. On September 26, 1996, Sprint filed a Petition for Arbitration of Proposed Interconnection Agreement Under the Telecommunications Act of 1996. Accordingly, Docket No. 961173-TP was established.

To enable the Commission to make the required determinations within the Congressionally-mandated time frame, these dockets shall be conducted as expedited proceedings, 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.

Consolidation

These arbitration proceedings involve many common questions of law, fact, and policy. Section 252(g) of the Act provides:

(g) CONSOLIDATION OF STATE PROCEEDINGS.- Where not inconsistent with the requirements of this Act, a State commission may, to the extent practical, consolidate proceedings under sections 214(e), 251(f), 253, and this section in order to reduce administrative burdens on telecommunications carriers, other parties to the proceedings, and the State commission in carrying out its responsibilities under this Act.

The Act is clear that a state commission may consolidate requests for arbitration to reduce administrative burdens on the parties and the state commission itself. Under the Act, the state commission has a limited time frame in which to arbitrate unresolved issues. The dates by which all issues in these arbitration proceedings must be resolved are January 18, 1997, in Docket No. 961169-TP and January 19, 1997, in Docket No. 961173-TP. In light of these deadlines, it is impractical to conduct separate hearings for each request for arbitration.

Therefore, upon the approval of the Chairman and pursuant to Rule 25-22.035(2), Florida Administrative Code, I find consolidation of the proceedings in Dockets Nos. 961169-TP and 961173-TP to be appropriate. Accordingly, the following guidelines are established to govern these proceedings:

- 1) The parties shall identify two categories of issues: those that are common to the petitions; and, those that are unique to each petition.
- 2) All parties shall participate fully in the litigation of the issues that are common to both petitions. The Commission's decision on the common issues shall be binding on all parties.
- 3) Only the parties directly involved will participate in the litigation of the issues that are unique to only one of the petitions. The non-affected petitioner shall not present testimony, conduct cross-examination, or file a brief with respect to the issues that affect only the other petitioner. The Commission's decision on the unique issues shall be binding only on the parties who litigated those issues.

The hearing will be conducted according to the provisions of the Telecommunications Act, Chapter 120, Florida Statutes, and the rules of this Commission.

Discovery

a. Due to the expedited time schedule for these proceedings, all discovery requests and responses shall be served either by next-day express or hand delivery. All discovery responses shall be served within ten (10) days of receipt of the discovery request. Rules 1.340(a) and 1.350(b), Florida Rules of Civil Procedure.

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 five (5) 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 be limited to 100, 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.

e. The hearing in these dockets is set for December 5-6, 1996. Unless authorized by the Prehearing Officer for good cause shown, all discovery shall be completed by November 22, 1996.

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 therefore.

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 these dockets 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.

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| 1) | Direct testimony and exhibits of petitioner | October 7, 1996 |
| 2) | Response and direct testimony and exhibits of the respondent | October 21, 1996 |
| 3) | Rebuttal testimony and exhibits | October 28, 1996 |
| 4) | Prehearing Statements | November 13, 1996 |
| 5) | Prehearing Conference ¹ | November 25, 1996, 8:30-9:30 am;
November 26, 1996, 8:30-9:30 am;
November 27, 1996, Time to be noticed from the bench. |
| 6) | Hearing | December 5-6, 1996 |
| 7) | Briefs | December 27, 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 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

¹ The prehearing conference scheduled in Docket No. 961150-TP will begin at 8:30 a.m. on November 25, 1996, and will be suspended at 9:30 a.m. if not concluded. The prehearing conference scheduled in Dockets 961169-TP and 961173-TP will begin immediately upon the conclusion of the prehearing conference in Docket No. 961150-TP. The prehearing conferences will continue on November 26, 1996, at 8:30 a.m. and again will be suspended at 9:30 a.m. If necessary, they will resume on November 27, 1996, at a time to be noticed from the bench and will continue until finished.

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 Diane K. Kiesling, as Prehearing Officer, that the arbitration proceedings to be conducted in Dockets Nos. 961169-TP and 961173-TP are hereby consolidated. It is further

ORDERED that the provisions of this Order shall govern these proceedings unless modified by the Commission.

By ORDER of Commissioner Diane K. Kiesling, as Prehearing Officer, this 15th day of October, 1996.


Diane K. Kiesling, Commissioner
and Prehearing Officer

(S E A L)

CJP

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.