

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition by ALLTEL
Communications, Inc. for
arbitration of certain open
issues in existing
interconnection agreement with
BellSouth Telecommunications,
Inc.

DOCKET NO. 010302-TP
ORDER NO. PSC-01-1810-PHO-TP
ISSUED: September 7, 2001

PREHEARING ORDER

I. CONDUCT OF PROCEEDINGS

Pursuant to Rule 28-106.211, Florida Administrative Code, this Order is issued to prevent delay and to promote the just, speedy, and inexpensive determination of all aspects of this case.

II. CASE BACKGROUND

Pursuant to a petition by ALLTEL Communications, Inc. (ALLTEL) for arbitration of unresolved issues in an agreement with BellSouth Telecommunications, Inc. (BellSouth), this matter is currently set for an administrative hearing.

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.

DOCUMENT NUMBER-DATE

11168 SEP-70

FPSC-COMMISSION CLERK

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 nine months after the date on which the local exchange carrier received the request under this section. The parties have, however, waived that requirement in this docket.

On August 31, 2001, ALLTEL and BellSouth filed a Joint Motion on Prehearing Conference and Other Procedural Issues. The parties indicated that they had agreed to adopt our staff's position on Issue 5 and that there was no need for a prehearing conference. Consequently, by Order No. PSC-01-1803-PCO-TP, issued September 6, 2001, the prehearing conference was cancelled.

Opening statements, if any, shall not exceed ten minutes per party.

III. PROCEDURE FOR HANDLING CONFIDENTIAL INFORMATION

A. 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 used 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 periods set forth in Section 364.183, Florida Statutes.

B. It is the policy of the Florida Public Service 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.

1. Any party intending to utilize confidential documents at hearing for which no ruling has been made, must be prepared to present their justifications at hearing, so that a ruling can be made at hearing.

2. In the event it becomes necessary to use confidential information during the hearing, the following procedures will be observed:

- a) Any party wishing to use any proprietary confidential business information, as that term is defined in Section 364.183, 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.
- b) Failure of any party to comply with 1) above shall be grounds to deny the party the opportunity to present evidence which is proprietary confidential business information.
- c) 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 Commissioners, subject to execution of any appropriate protective agreement with the owner of the material.
- d) 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.

- e) At the conclusion of that portion of the hearing that involves confidential information, all copies of confidential exhibits shall be returned to the proffering party. If a confidential exhibit has been admitted into evidence, the copy provided to the Court Reporter shall be retained in the Division of the Commission Clerk and Administrative Services's confidential files.

IV. POST-HEARING PROCEDURES

Each party shall file a post-hearing statement of issues and positions. A summary of each position of no more than 50 words, set off with asterisks, shall be included in that statement. If a party's position has not changed since the issuance of the prehearing order, the post-hearing statement may simply restate the prehearing position; however, if the prehearing position is longer than 50 words, it must be reduced to no more than 50 words. If a party fails to file a post-hearing statement, that party shall have waived all issues and may be dismissed from the proceeding.

Pursuant to Rule 28-106.215, Florida Administrative Code, a party's proposed findings of fact and conclusions of law, if any, statement of issues and positions, and brief, shall together total no more than 40 pages, and shall be filed at the same time.

V. PREFILED TESTIMONY AND EXHIBITS; WITNESSES

Testimony of all witnesses to be sponsored by the parties has been prefiled. All testimony which has been prefiled in this case will be inserted into the record as though read after the witness has taken the stand and affirmed the correctness of the testimony and associated exhibits. All testimony remains subject to appropriate objections. Each witness will have the opportunity to orally summarize his or her testimony at the time he or she takes the stand. Summaries of testimony shall be limited to five minutes. Upon insertion of a witness' testimony, exhibits appended thereto may be marked for identification. After all parties and Staff have had the opportunity to object and cross-examine, the

exhibit may be moved into the record. All other exhibits may be similarly identified and entered into the record at the appropriate time during the hearing.

Witnesses are reminded that, on cross-examination, responses to questions calling for a simple yes or no answer shall be so answered first, after which the witness may explain his or her answer.

The Commission frequently administers the testimonial oath to more than one witness at a time. Therefore, when a witness takes the stand to testify, the attorney calling the witness is directed to ask the witness to affirm whether he or she has been sworn.

VI. ORDER OF WITNESSES

<u>Witness</u>	<u>Proffered By</u>	<u>Issues #</u>
<u>Direct</u>		
Jane Eve	Alltel	All
Cynthia Cox	BST	All
<u>Rebuttal</u>		
Cynthia Cox	BST	All

VII. BASIC POSITIONS

ALLTEL: Issues 1, 2 and 6 have been resolved by the Parties. ALLTEL's positions are consistent with the Telecommunications Act of 1996 and will promote local exchange competition. Therefore, the Commission should resolve Issues 3, 4 and 5 in favor of ALLTEL's position.

BST: The Commission's goal in this proceeding is to resolve each issue that is appropriately before the Commission in this arbitration consistent with the requirements of Section 251 of the Telecommunications Act of 1996 ("1996 Act"), including the regulations prescribed by the Federal Communications Commission ("FCC"). BellSouth and ALLTEL Communications, Inc. ("Alltel") have continued to

negotiate in good faith, and have resolved many issues since Alltel filed its request for arbitration with this Commission. Nevertheless, there remain three issues for which the parties have not been able to reach a solution. BellSouth submits that Alltel's positions on these issues will not withstand close scrutiny. BellSouth believes that its positions are both reasonable and fair. Accordingly, the Commission should adopt BellSouth's position on these issues.

STAFF: Staff's positions are preliminary and based on materials filed by the parties and on discovery. The preliminary positions are offered to assist the parties in preparing for the hearing. Staff's final positions will be based upon all the evidence in the record and may differ from the preliminary positions.

VIII. ISSUES AND POSITIONS

LEGAL ISSUE: What is the Commission's jurisdiction in this matter?

POSITIONS

ALLTEL: Pursuant to Section 252(b)(1) of the Telecommunications Act of 1996, the Commission has jurisdiction to arbitrate open issues in an interconnection agreement.

BST: Pursuant to Section 252(b)(1) of the Telecommunications Act of 1996, the Commission has jurisdiction to arbitrate open issues in an interconnection agreement.

STAFF: Section 252 of the Federal Telecommunications Act of 1996 (Act) sets forth the procedures for negotiation, arbitration, and approval of agreements. 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. In this case, however, the parties have explicitly waived

the 9-month requirement set forth in the Act. Furthermore, this Commission has jurisdiction pursuant to Chapter 364, Florida Statutes, and Section 252 of the Federal Telecommunication Act of 1996 (Act) to arbitrate interconnection agreements, and may implement the processes and procedures necessary to do so in accordance with Section 120.80(13)(d), Florida Statutes. However, pursuant to Section 252(e)(5) of the Act, if a state commission refuses to act, then the FCC shall issue an order preempting the Commission's jurisdiction in the matter, and shall assume jurisdiction of the proceeding.

ISSUE 1: Should BellSouth be forced to forego the non-recurring charge for Order Coordination -- Time Specific service orders if the parties reschedule the conversion because BellSouth is unable to perform the conversion within one hour of the time specified on the order?

POSITIONS

This issue has been resolved.

ISSUE 2: What terms and conditions should govern BellSouth's provisioning of enhanced extended loops ("EELs") and other combinations of network elements to ALLTEL?

POSITIONS

This issue has been resolved.

ISSUE 3: Can ALLTEL petition this Commission for a waiver when it seeks to convert tariffed special access services to UNEs of UNE combinations that do not qualify under any of the three safe harbor options set forth in the agreement?

POSITIONS

ALLTEL: The FCC has provided that a waiver might be appropriate when a CLEC seeks to convert an existing BellSouth special access service facility to a UNE combination, even though the CLEC does not meet any of the three safe-harbor circumstances. ALLTEL proposes being able to

petition either the FCC or this Commission for such a waiver because the primary issue involved is the amount and nature of local exchange traffic. This approach will provide an alternative and expedited way for ALLTEL to be able to convert special access facilities to UNE combinations.

BST: No. The FCC has ruled that an ALEC may convert special access services to UNE combinations only if it is providing a significant amount of local exchange service to a particular customer, and that that standard is satisfied if it meets, one of three safe harbor options. The FCC also recognized that there might be circumstances where a requesting carrier is providing a significant amount of local exchange service but does not qualify under any of the three safe harbor options, and stated that in that event, the requesting carrier could petition the FCC for a waiver. Allowing only the FCC to address waiver petitions makes good sense since the issue is the subject of ongoing proceedings before the FCC.

STAFF: Staff has no position at this time.

ISSUE 4: Should BellSouth's Products and Services Interval Guide be incorporated into the interconnection agreement?

POSITIONS

ALLTEL: Yes. Under ALLTEL's proposal, BellSouth would be required to include its order interval "guides" or "targets" in the Interconnection Agreement and would be allowed to unilaterally shorten (but not lengthen) them without notice to ALLTEL. If BellSouth desires to lengthen them in a manner detrimental to ALLTEL, ALLTEL would then have the right and opportunity to negotiate for different intervals. ALLTEL's proposal will provide ALLTEL a level of certainty that will improve its business planning and ability to effectively and efficiently serve its customers.

BST: No. BellSouth is required to provision UNEs and interconnection to Alltel in a nondiscriminatory manner,

i.e., at parity with what BellSouth provides to its retail customers. The target intervals set forth in the Guide are not the standard for determining BellSouth's compliance with its legal obligations. Rather, they are intended only to enable an ALEC to establish a due date for its customer that BellSouth expects to be able to meet.

STAFF: Staff has no position at this time.

ISSUE 5: When should enforcement mechanisms for service quality measurements become effective?

POSITIONS

ALLTEL: Adopts staff's position.

BST: Adopts staff's position.

STAFF: The effective date for enforcement mechanisms should be the same as that which is ultimately determined in Docket No. 000121-TP.

ISSUE 6: What is the relevant period for determining whether penalties for failure to meet service quality measurements should be assessed?

POSITIONS

This issue has been resolved.

IX. EXHIBIT LIST

<u>Witness</u>	<u>Proffered By</u>	<u>I.D. No.</u>	<u>Description</u>
			<u>Direct</u>
Jane Eve	Alltel	JE-1	Existing Interconnection Agreement

<u>Witness</u>	<u>Proffered By</u>	<u>I.D. No.</u>	<u>Description</u>
		JE-2	Interim Agreement
		JE-3	Commencement Letter
		JE-4	Issues Matrix
		JE-5	Contract Language Proposals for Unresolved Issues
Cynthia Cox	BST	CKC-1	Issues Matrix
<u>Rebuttal</u>			
Cynthia Cox	BST	CKC-1	Revised Issues Matrix

Parties and Staff reserve the right to identify additional exhibits for the purpose of cross-examination.

X. PROPOSED STIPULATIONS

The parties have agreed to proceed without an evidentiary hearing, to waive cross-examination of each other's witness, and to submit this matter to the Commission for a determination based on the pre-filed testimony, prefiled exhibits, transcripts of depositions of the two witnesses (Jayne Eve and Cynthia Cox) and briefs to be filed in accordance with the Order Establishing Procedure in this Docket. Therefore, the hearing need only convene for purposes of receiving prefiled testimony and exhibits into the record.

XI. PENDING MOTIONS

There are no pending motions at this time.

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XII. RULINGS

Jayne Eve and Cynthia Cox are excused from attending the hearing and being subject to cross-examination.

It is therefore,

ORDERED by Commissioner Michael A. Palecki, as Prehearing Officer, that this Prehearing Order shall govern the conduct of these proceedings as set forth above unless modified by the Commission.

By ORDER of Commissioner Michael A. Palecki, as Prehearing Officer, this 7th day of September, 2001.



MICHAEL A. PALECKI
Commissioner and Prehearing Officer

(S E A L)

JKF

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.

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 the Commission Clerk and Administrative Services, 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.