

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Petition by AT&T Communications of the Southern States, Inc. for arbitration of certain terms and conditions of a proposed agreement with BellSouth Telecommunications, Inc. concerning interconnection and resale under the Telecommunications Act of 1996.)	DOCKET NO. 960833-TP
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In Re: Petition by MCI Metro Access Transmission Services, Inc. for arbitration of certain terms and conditions of a proposed agreement with BellSouth Telecommunications, Inc. concerning interconnection and resale under the Telecommunications Act of 1996.)	DOCKET NO. 960846-TP ORDER NO. PSC-96-1039-PCO-TP ISSUED: August 9, 1996

ORDER ON CONSOLIDATION AND PROCEDURE

On July 17, 1996, by Order No. PSC-96-0933-PCO-TP, in Docket No. 960833-TP, the Initial Order Establishing Procedure set forth the key activities governing the request for arbitration by AT&T Communications of the Southern States, Inc. (AT&T) involving BellSouth Telecommunications, Inc. (BellSouth). MCI Metro Access Transmission Services, Inc. (MCI metro) requested BellSouth to begin good faith negotiations by letter dated March 26, 1996. Docket No. 960846-TP was established in the event that MCI metro filed a petition for arbitration of the unresolved issues.

On July 30, 1996, AT&T and MCI metro filed a Joint Motion for Consolidation to consolidate the arbitration proceedings involving BellSouth filed by AT&T and expected to be filed by MCI metro pursuant to Section 252(b) of the Telecommunications Act of 1996 (Act). MCI metro states that although the negotiations between BellSouth and MCI metro are still ongoing, there are still a number of unresolved issues, and it expects to file its petition on or after August 9, 1996, requesting that the Commission arbitrate various open issues.

DOCUMENT NUMBER-DATE

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FPSC-RECORDS/REPORTING

AT&T and MCImetro assert that the proceedings in the two dockets will involve many common questions of law, fact, and policy. In addition, they suggest that each proceeding may involve some limited issues that are unique to each proceeding.

On August 6, 1996, BellSouth filed its response objecting to the joint motion to consolidate. In addition to the provisions of the Act, BellSouth also cites to the state's standards for consolidation for guidance in interpreting the Act. Specifically, BellSouth objects to consolidation for the following reasons: 1) the resulting truncated schedule would unduly prejudice BellSouth; 2) the requirements for consolidation have not been met; and 3) it would accomplish the same result as intervention, which has been denied.

Upon consideration of the pleadings and the short time frames imposed by the Act, I find it appropriate at this time to look to the federal provisions for guidance. 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 the State commission may consolidate requests for arbitration to reduce administrative burdens on the parties and the State commission itself. Under the Act, the Commission has a limited time to arbitrate the unresolved issues between companies. The dates by which the Commission must decide the unresolved issues for arbitration requests involving BellSouth are less than four weeks apart for AT&T and MCImetro. Since the Commission's calendar during the statutory windows is extremely full, it is difficult to schedule separate hearings for each arbitrated request.

The Initial Order Establishing Procedure issued in the AT&T arbitration request provides for no intervenors in the resolution of AT&T's petition. This is, however, distinguished from consolidation where specific companies will be bound by the Commission's decision for the issues they litigate. Also, the Commission is acting as a federally designated arbitrator to resolve the parties' specific disputes.

Since MCImetro and AT&T allege that many of the unresolved issues should be those in common to both companies, it appears at this time that consolidation of the proceedings would reduce the administrative burdens on the Commission and the parties. Because the Commission must decide the unresolved issues in a relatively short time, it appears that it is best from the Commission's perspective to consolidate these proceedings and hold one hearing rather than two. However, I have several concerns. First, since MCImetro's petition has not been filed, it is not certain that there are a number of common issues with AT&T. Second, if MCImetro files its petition and testimony outside the dates set forth in this Order, then it may be difficult for the parties to conduct adequate discovery to prepare for hearing. Third, the Commission has not had the opportunity to review the Federal Communication Commission's rules regarding Sections 251 and 252.

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 AT&T/BellSouth petition and the MCImetro/BellSouth petition; 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. For example, BellSouth and AT&T may participate with respect to the AT&T petition, and BellSouth and MCImetro may participate with respect to the MCImetro petition. 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 the issue.

Once MCImetro files its petition, I may find it appropriate to meet with the parties to determine whether further procedural conditions are necessary to preserve the purposes of arbitration and address any issues of undue prejudice.

Upon consideration, I approve the Joint Motion to Consolidate. However, the following conditions must be met or I will revisit the decision to consolidate:

- 1) When MCImetro files its petition and proposed list of issues, there must be a significant proportion of common issues;
- 2) To allow adequate time to prepare for hearing, MCImetro shall file its petition, proposed list of issues and supporting documentation by August 15, 1996;
- 3) MCImetro shall file its prefiled direct testimony and exhibits by August 21, 1996.

Accordingly, Order No. PSC-96-0933-PCO-TP shall be supplemented to include the following activities to govern the request for arbitration involving BellSouth and MCImetro:

- 1) By August 15, 1996, MCImetro shall file with the petition a clear description of the provisions that have been agreed upon, the issues that are unresolved, and all relevant documentation. MCImetro shall also file a proposed issue list for this proceeding and the position of MCImetro and BellSouth with respect to those issues. MCImetro shall also file any other issues discussed and resolved by MCImetro and BellSouth.
- 2) Within 25 days of the filing of the petition, BellSouth shall file a clear description of the provisions that have been agreed upon and the issues that are unresolved. BellSouth shall also file a proposed issue list for this proceeding and may file additional information as it wishes.
- 3) Direct Testimony and Exhibits - MCImetro By August 21, 1996
- 4) Direct testimony and exhibits of BellSouth shall be filed no later than 25 days after the filing of MCImetro's petition.
- 5) Rebuttal testimony and exhibits MCImetro and BellSouth September 16, 1996
- 6) Prehearing Statements September 20, 1996
- 7) Prehearing Conference October 2, 1996
- 8) Hearing October 9 -11, 1996
- 9) Briefs October 22, 1996

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Based on the foregoing, it is

ORDERED by Commissioner J. Terry Deason, as Prehearing Officer, that the Joint Motion to Consolidate filed by AT&T Communications of the Southern States, Inc. and MCI Metro Access Transmission Services, Inc. has been granted under the conditions discussed in the body of this Order. It is further

ORDERED that Order No. PSC-96-0933-PCO-TP, issued July 17, 1996, has been supplemented as discussed in the body of this Order. Order No. PSC-96-0933-PCO-TP is reaffirmed in all other respects.

By ORDER of Commissioner J. Terry Deason, as Prehearing Officer, this 9th day of August, 1996.


J. TERRY DEASON, Commissioner and
Prehearing Officer

(S E A L)

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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 25-22.0376, Florida Administrative Code, if issued by a Prehearing Officer; (2) reconsideration within 15 days pursuant to Rule 25-22.060, Florida

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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.