

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 Telecommunications Corporation and MCI Metro Access Transmission Service, 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-96-1107-PCO-TP ISSUED: August 29, 1996

ORDER REGARDING MOTIONS AND DENYING
ISSUE FOR ARBITRATION

On August 26, 1996, a status conference was held with the parties to hear positions regarding MCI Telecommunications Corporation and MCI Metro Access and Transmission Services, Inc.'s (collectively, MCI's) Motion for Two-Day Partial Extension of Time and BellSouth Telecommunication, Inc.'s (BellSouth's) Motion to Compel Compliance with the Telecommunications Act of 1996 (Act) and Florida Public Service Commission Order No. PSC-96-0933-PCO-TP. This Order addresses those motions as well as whether the issue regarding existing interconnection agreements raised by AT&T Telecommunications of the Southern States, Inc. (AT&T) is appropriate for arbitration in this proceeding.

I. MCI's Motion for Two-Day Partial Extension of Time

On August 21, 1996, MCI Telecommunications Corporation and MCI Metro Access and Transmission Services, Inc. (collectively, MCI) filed a Motion for Two-Day Partial Extension of Time to submit the prefiled direct testimony of four of its witnesses in this proceeding. Consolidation of MCI's and AT&T arbitration proceedings was granted on certain conditions specified in Order No. PSC-96-1039-PCO-TP, issued on August 9, 1996. One of the

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conditions of consolidation was that MCI files its prefiled direct testimony and exhibits by August 21, 1996.

MCI states that it is currently engaged, or will be engaged, in arbitration proceedings in numerous states. To support these arbitration proceedings, MCI assembled teams of witnesses to prepare "white papers" with respect to major categories of issues to be arbitrated. The "white papers" were designed to incorporate into testimony the effect of the Federal Communications Commission's Local Competition Order released on August 8, 1996, and were scheduled to be completed on August 23, 1996.

MCI asserts that it attempted to complete the "white papers" to meet the August 21, 1996 testimony filing dates. MCI filed the testimony of one witness and part of the testimony of another on August 21, 1996. However, the following day, MCI filed testimony of another witness and additional testimony for the witness of the preceding day. On August 22, 1996, MCI filed the testimony and exhibits of its remaining witnesses.

On August 23, 1996, BellSouth filed its response to MCI's motion. BellSouth states that forcing consolidation will put a strain on the parties and unfairly prejudice BellSouth. BellSouth requests that in the event that MCI's motion is granted, it seeks an equivalent extension to file responsive testimony.

I do not find compelling MCI's explanation for failing to meet the clearly established conditions for allowing consolidation. I am disappointed that MCI failed to meet the filing date set forth in the order granting MCI's request for consolidation. See Order No. PSC-96-1039-PCO-TP. Nevertheless, I find that my options are limited under the circumstances. BellSouth does not seek to strike MCI's late-filed testimony, because it recognizes that it would not serve anyone's purpose. Although striking the late-filed testimony is appealing and possibly a warranted result, I reluctantly grant MCI's motion.

Unfortunately, since this proceeding is on an accelerated schedule set forth by federal law, the Commission has precious little time in which to conduct this proceeding. Because of this and because I find that it is necessary to allow adequate time for discovery, no extension of time will be given for responsive testimony. Under ideal circumstances, equity would weigh on the side of BellSouth receiving an equal extension of time. Because I believe that they still have a minimally adequate opportunity for filing truly rebuttal testimony, I will not alter the schedule any more.

II. BellSouth's Motion to Compel Compliance

On August 9, 1996, BellSouth filed a Motion to Compel Compliance with the Telecommunications Act of 1996 (Act) and Florida Public Service Commission Order No. PSC-96-0933-PCO-TP. Specifically, BellSouth seeks to have AT&T comply with those provisions of 252(b), relating to the duties of a petitioner seeking arbitration under the Act and to those provisions of the procedural order requiring AT&T to provide a list of unresolved issues about which arbitration is sought and a list of issues discussed and resolved by the parties.

BellSouth admits that AT&T identified a number of unresolved issues in compliance with the Act that capture major issues that divide AT&T and BellSouth. However, BellSouth contends that AT&T violates the Act and the procedural order by attempting to shift the burden of identifying further issues about which there is disagreement to BellSouth. Specifically, BellSouth contends that in addition to AT&T filing all relevant documentation concerning issues that are unresolved and the position of each party regarding such issue, AT&T filed a "so called Interconnection Agreement" which BellSouth had not signed for the requirement of terms and conditions AT&T believes BellSouth has accepted. BellSouth contends that AT&T knew there were numerous other issues contained in its proposed agreement, some large and some small, which BellSouth had not accepted. Since AT&T knew that the items included in the proposed interconnection agreement were issues, resolved or not, BellSouth contends that AT&T was obligated to identify those issues and has not done so.

BellSouth requests that the Commission direct AT&T to prepare a complete list of issues identifying with specificity those that it claims are resolved and those that are unresolved, so that BellSouth will have a proper opportunity to respond to specific issues. BellSouth states that it is willing to work with AT&T, the Commission staff and the Prehearing Officer to achieve this result, but that it cannot be required to complete AT&T's obligations.

AT&T's states in its response, filed on August 21, 1996, that its petition clearly meets the requirements of the Act and the procedural order. It clearly sets forth the issues it seeks the Commission to arbitrate. AT&T points out that there are several hundred sub-issues that the parties have been negotiating under the Act, some of which AT&T believes are resolved and some are unresolved. AT&T requests that BellSouth's motion be denied.

The Commission staff has conducted two staff issue identification workshops with the parties. As a result, a number of issues have been identified. As I understand it, the parties agree to all except the wording of several issues and the inclusion of the issue regarding existing interconnection agreements. After the parties finalize the issue list, a subsequent order indicating the issues to be arbitrated, along with any implementational issues, shall be issued.

After hearing the positions of the parties at the status conference held on August 26, 1996, I find that BellSouth's motion need not be granted to achieve the goal of arbitrating under the Act, and, therefore, is denied. This proceeding has been triggered by the Act and the filing of AT&T's petition, and the issues should have been identified at the time that the petition was filed. This proceeding will go forward with the broad issues that have been clearly identified as required by the Act and the Order on Procedure and as refined by the two issues identification conferences. This will be the extent of the Commission's decision regarding unresolved issues.

Also, as discussed initially at the status conference, I am requesting that the parties comment on a proposed post-decision procedure for approval of the arbitrated agreement that incorporates the Commission's decision on the unresolved issues. If a party objects to the legality or another aspect of this procedure, the party should propose a plausible alternative procedure. Comments should be filed as part of the prehearing statement.

I hope that the Commission's decision on the unresolved issues will be of enough specificity that the parties can take those broad issues and design an agreement to bring to the Commission for approval under Section 252(e) of the Act. I realize, however, that there are many operational and technical issues that may surface. It is incumbent upon the parties to resolve that type of detail themselves. Therefore, in the prehearing statements, the parties should also suggest a specified time frame in which the Commission should receive the arbitrated agreement incorporating the Commission's decision.

In the event the parties can not reach a written agreement implementing and complying with the Commission's decision, then each party shall file, on the date established for submitting an agreement in compliance with the arbitration determination, a proposed agreement that comports with the Commission's decision. In that case, the Commission would choose the agreement that best comports with its decision.

III. AT&T'S proposed issue regarding existing interconnection agreements

AT&T has raised the following issue for inclusion in its arbitration proceeding with BellSouth:

Should BellSouth be required to be filed all interconnection agreements entered into between BellSouth and other carriers, including other LECs and those agreements entered into before the Act was enacted?

AT&T asserts that existing interconnection agreements are an important element of any arbitration proceeding. AT&T argues that Section 252(a)(1) of the Act requires all interconnection agreements be filed. AT&T also states that the Act's mandate for interconnection and resale demands that BellSouth be required to file all interconnection agreements in AT&T's arbitration proceeding.

AT&T acknowledges that the Commission has initially interpreted this provision as being limited to competing carriers in Docket No. 960290-TP. However, the Commission's decision, in Order No. PSC-96-0959-FOF-TP, issued as proposed agency action, has been protested.

Since the time of the Commission's decision, the Federal Communications Commission (FCC) addressed the issue presented by AT&T. AT&T asserts that the FCC's focus was the effect that existing interconnection agreements could have on the requesting carriers quest for interconnection and resale. Also, AT&T argues that because of the importance of the agreements and their relationship to negotiation and arbitration process, the issue of the availability of these agreements to requesting carriers should not be relegated to a proceeding in Docket No. 960290-TP that cannot be heard by the Commission prior to the hearings scheduled in this proceeding.

BellSouth contends that AT&T is merely attempting to get another "bite at the apple," and that the appropriate docket to revisit this issue is in Docket No. 960290-TP. BellSouth also contends that AT&T is not entitled to these agreements under Section 252(a)(1) of the Act.

AT&T's issue is the subject of another docket that has industry-wide application. Because of the generic ramifications, this issue is simply inappropriate in the context of arbitration between two parties. Furthermore, while I do not accept AT&T's

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premise that the FCC's order mandates the filing existing interconnection agreements in the context of this arbitration, assuming arguendo that it has some relevance, even the FCC would allow the incumbent LEC's time to renegotiate existing agreements prior to filing them and making their terms and conditions available. Clearly, this arbitration time frame will not allow meaningful renegotiation opportunity.

Based on the foregoing, it is


ORDERED by Commissioner J. Terry Deason, as Prehearing Officer, that MCI Telecommunications Corporation and MCImetro Access and Transmission Services, Inc.'s Motion for Two-Day Partial Extension of Time is granted as discussed in the body of this Order. It is further

ORDERED that BellSouth Telecommunications, Inc.'s Motion to Compel Compliance with the Telecommunications Act of 1996 and Florida Public Service Commission Order No. PSC-96-0933-PCO-TP is denied as discussed in the body of this Order. It is further

ORDERED that the parties shall file comments in their prehearing statements regarding the post-decision procedure for filing the arbitrated agreement to implement the Commission's decision of the unresolved issues in this proceeding. It is further

ORDERED that AT&T Communications of the Southern States, Inc.'s proposed issue regarding existing interconnection agreements shall not be an issue for arbitration in this proceeding, as discussed in the body of this Order.

By ORDER of Commissioner J. Terry Deason, as Prehearing Officer, this 29th day of August, 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 25-22.0376, 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 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.