

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Petitions by AT&T) DOCKET NO. 960833-TP
Communications of the Southern) DOCKET NO. 960846-TP
States, Inc., MCI) DOCKET NO. 960916-TP
Telecommunications Corporation,)
MCI Metro Access Transmission) ORDER NO. PSC-96-1138-PCO-TP
Services, Inc., American) ISSUED: September 10, 1996
Communications Services, Inc.)
and American Communications)
Services of Jacksonville, 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.)

ORDER CONSOLIDATING PROCEEDINGS

On August 19, 1996, American Communications Services, Inc. and American Communication Services of Jacksonville, Inc. (ACSI) requested that the Commission consolidate its arbitration proceeding with BellSouth Telecommunications, Inc. (BellSouth) with the petitions filed by AT&T in Docket 960833-TP and MCI Telecommunications Corporation and MCI Metro Access Transmission Services, Inc. (MCI) in Docket 960846-TP. ACSI filed its petition for arbitration under Section 252 of the Telecommunications Act of 1996 (Act) on August 13, 1996. In support of its motion to consolidate, ACSI argued that there are some common issues in all three proceedings and consolidation would increase efficiency by allowing simultaneous consideration of common issues and eliminating the need for the Commission to hear repetitive testimony. It would also allow the Commission to complete proceedings required pursuant to the Act even with the constraints imposed by the Commission's crowded calendar. MCI did not object to the request and AT&T did not file a response.

On August 26, 1996, BellSouth filed a response in opposition to ACSI's request. BellSouth argues that it will not have time to adequately prepare for a hearing set to begin on October 9, 1996. It further argues that the standard for allowing consolidation has not been met. BellSouth asserts that, in this case, consolidation should be allowed when the cases involve common issues of fact or law and consolidation will avoid the possibility of inconsistent

DOCUMENT NUMBER-DATE

09585 SEP 10 96

FPSC-RECORDS/REPORTING

decisions. It argues that since each negotiation and arbitration is different, the Commission need not reach the same decision in every case. BellSouth further argues that it is impossible to know at this time whether the common issues in this case outweigh the dissimilar questions that point against consolidation.

Upon consideration 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, MCI, and ASCI. Since the Commission's calendar during the statutory windows is extremely full, it is difficult to schedule separate hearings for each arbitrated request.

Order No. PSC-96-0933-PCO-TP, issued July 17, 1996, provides for no intervenors in the resolution of the AT&T 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 ASCI alleges that many of the unresolved issues should be those in common to those in the AT&T and MCI proceedings, 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.

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, the ASCI/BellSouth petition, and the MCI/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. The non-affected petitioner shall not present testimony, conduct cross-examination, or file a brief with respect to the issues that affect only another petitioner. The Commission's decision on the unique issues shall be binding only on the parties who litigated the issue.

Upon consideration, I approve the Motion for Consolidation.

Accordingly, Orders Nos. PSC-96-0933-PCO-TP and PSC-96-1039-PCO-TP shall be supplemented to include the following activities to govern the request for arbitration involving BellSouth, MCI, and ACSI:

- | | |
|---|---------------------|
| 1) Direct Testimony and Exhibits in the ACSI proceeding - BellSouth | September 9, 1996 |
| 2) Rebuttal testimony and exhibits - ASCI and BellSouth | September 16, 1996 |
| 3) Prehearing Statements | September 20, 1996 |
| 4) Prehearing Conference | October 3, 1996 |
| 5) Hearing | October 9 -11, 1996 |
| 6) Briefs | October 22, 1996 |

AT&T, MCI, and ACSI should note that the prehearing conference has been moved from October 2, 1996 to October 3, 1996.


ORDER NO. PSC-96-1138-PCO-TP
DOCKETS NOS. 960833-TP, 960846-TP, 960916-TP
PAGE 4

Based on the foregoing, it is

ORDERED by Commissioner J. Terry Deason, as Prehearing Officer, that Motion for Consolidation filed by American Communications Services, Inc. is 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, and Order No. PSC-96-1039-PCO-TP, issued August 9, 1996, have been supplemented as discussed in the body of this Order. These Orders are reaffirmed in all other respects.

By ORDER of Commissioner J. Terry Deason, as Prehearing Officer, this 10th day of September, 1996.


Cheryl R. Ball Asst To
J. TERRY DEASON, Commissioner and
Prehearing Officer

(S E A L)

LMB

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)

ORDER NO. PSC-96-1138-PCO-TP
DOCKETS NOS. 960833-TP, 960846-TP, 960916-TP
PAGE 5

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.