

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Petition by Sprint) DOCKET NO. 961150-TP
Communications Company Limited) ORDER NO. PSC-96-1460-PHO-TP
Partnership d/b/a Sprint for) ISSUED: December 2, 1996
arbitration with BellSouth)
Telecommunications, Inc.)
concerning interconnection)
rates, terms, and conditions,)
pursuant to the Federal)
Telecommunications Act of 1996.)

Pursuant to Notice, a Prehearing Conference was held on November 25, 1996, in Tallahassee, Florida, before Commissioner Diane K. Kiesling, as Prehearing Officer.

APPEARANCES:

C. Everett Boyd, Jr., Esquire, Ervin, Varn, Jacobs & Ervin, Post Office Drawer 1170, Tallahassee, Florida 32302; Benjamin Fincher, Esquire, 3100 Cumberland Circle, Atlanta, Georgia 30339
On behalf of Sprint Communications Company Limited Partnership.

J. Phillip Carver, Esquire, and Nancy White, Esquire, 4300 Southern Bell Center, 675 West Peachtree Street, Northeast, Atlanta, Georgia 30375-0001
On behalf of BellSouth Telecommunications, Inc..

Monica M. Barone, Esquire, Charles J. Pellegrini, Esquire, and William P. Cox, Esquire, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399
On behalf of the Commission Staff.

PREHEARING ORDER

I. CASE BACKGROUND

Part II of the Federal Telecommunications Act of 1996 (Act) sets forth provisions controlling 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.

DOCUMENT NUMBER-DATE

12759 DEC-2 96

FPSC-RECORDS/REPORTING

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 15, 1996, Sprint Communications Company, L.P. (Sprint), formally requested negotiations with BellSouth Telecommunications, Inc. (BellSouth), under Section 251 of the Act. On September 20, 1996, Sprint filed a Petition for Arbitration under the Telecommunications Act of 1996. Thereafter, the key procedural events were established and the hearing was set for December 3-4, 1996, by Order No. PSC-96-1282-PCO-TP issued October 15, 1996.

II. 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(2), 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.

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

- 1) 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.
- 2) 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.
- 3) 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.
- 4) 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.
- 5) 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 Records and Reporting confidential files.

Post-hearing procedures

Rule 25-22.056(3), Florida Administrative Code, requires each party to 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. The rule also provides that if a party fails to file a post-hearing statement in conformance with the rule, that party shall have waived all issues and may be dismissed from the proceeding.

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 60 pages, and shall be filed at the same time. The prehearing officer may modify the page limit for good cause shown. Please see Rule 25-22.056, Florida Administrative Code, for other requirements pertaining to post-hearing filings.

III. PREFILED TESTIMONY AND EXHIBITS

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. 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.

IV. ORDER OF WITNESSES

<u>WITNESS</u>	<u>APPEARING FOR</u>	<u>ISSUES #</u>
<u>DIRECT / REBUTTAL</u>		
Michael R. Hunsucker ¹ (Rebuttal)	Sprint	All
Robert C. Scheye ² (Direct & Rebuttal)	BellSouth	6, 7, 18, 27
Gloria Calhoun (Direct & Rebuttal)	BellSouth	11, 13
William V. Atherton (Direct)	BellSouth	18, 21

V. BASIC POSITIONS

SPRINT: Congress has created an historic opportunity for the Florida Public Service Commission by passing the Telecommunications act of 1996. The Act provides the framework for real local telephone service competition designed to benefit Florida consumers. This framework is intended to enable new entrants to effectively compete, not only with other new entrants, but with the incumbent LEC. The Act in conjunction with the FCC Order and Rules ensures that the incumbent LEC allows interconnection at any technically feasible point and at parity with itself; unbundle certain elements of the network; to price the elements based upon TELRIC; provide for the resale of retail services at wholesale rates that are absent avoidable costs; and make prices, terms and conditions available to all new entrants on a nondiscriminatory basis.

¹ Michael R. Hunsucker is also adopting the direct testimony of Tony Key.

² Robert C. Scheye is also adopting the direct and rebuttal testimony of A. J. Varner on Issue 27.

Effective competition can only be accomplished if the Commission implements the Act and FCC Rules to the furthest extent possible. New entrants must be enabled to compete on equal terms with the incumbent LEC in addition to other new entrants. In this regard, Sprint requests that the Commission adopt the contract in Sprint's Exhibit 4 to the Sprint Petition. This contract, once implemented, will allow the consumer to determine who is successful in the market.

BELLSOUTH:

BellSouth has negotiated in good faith with Sprint for several months in an effort to reach an interconnection agreement. BellSouth and Sprint have been successful in withdrawing a number of the issues in this arbitration. As a result, however, of the parties' inability to reach agreement on the few remaining issues, Sprint exercised its option under Section 252 of the Act and petitioned the Commission for arbitration of these issues. Some of the issues that Sprint has requested be arbitrated are beyond the scope of the Act and are not issues appropriate for the Commission to arbitrate.

On August 8, 1996, the Federal Communications Commission ("FCC") released its First Report and Order in Docket No. 96-98 (the "Order") concerning interconnection issues. The pricing provision and the "pick and choose" portion of the Order were stayed by the Eighth Circuit Court of Appeals on October 5, 1996. The Commission is free to continue to exercise its authority to carry out its responsibilities in implementing Congress' intent.

BellSouth believes its positions on the individual issues remaining in the case are reasonable, nondiscriminatory and will lead to local competition in the state of Florida. Moreover, BellSouth's recommendations will allow BellSouth to remain a viable local exchange company, providing quality telecommunications services at affordable rates to consumers in Florida. Overall, BellSouth's recommendations are in the public interest, comport with the provisions of Section 251 and 252 of the Act, and form the basis for a full interconnection agreement between BellSouth and Sprint.

STAFF: No position at this time.

VI. ISSUES AND POSITIONS

Issues 1 through 5; 8 through 10; 12; 14 through 17; 19 and 20; and 22 through 26 have been withdrawn.

ISSUE 6: What are the appropriate standards, if any, for performance metrics, service restoration, and quality assurance related to services provided by BellSouth for resale and for network elements provided to Sprint by BellSouth.

SPRINT: Sprint and ILEC must agree upon a mechanism whereby ILEC will improve performance when it is in breach of commission imposed or agreed upon quality-of-service standards. ILEC shall indemnify Sprint for any forfeitures or civil penalties or other regulator-imposed fines caused by ILEC failure to meet commission imposed service standards or agreed to service standards.

BELLSOUTH:

BellSouth will provide the same quality for services provided to Sprint that BellSouth provides to its own customers for comparable services.

STAFF: No position at this time.

ISSUE 7: What is the appropriate remedy for breach of the standards identified in Issue 6?

SPRINT: Sprint and ILEC must agree upon a mechanism whereby ILEC will improve performance when it is in breach of commission imposed or agreed upon quality-of-service standards. ILEC shall indemnify Sprint for any forfeitures or civil penalties or other regulator-imposed fines caused by ILEC failure to meet commission imposed service standards or agreed to service standards.

BELLSOUTH:

This is not an issue subject to arbitration under the Act.

STAFF: No position at this time.

ISSUE 11: Is it appropriate for BellSouth to provide customer service records to Sprint for preordering purposes?

SPRINT: ILEC shall provide confirmation of the installation/change activity to Sprint via an initial Firm Order Confirmation ("FOC") and positive completion of order activity. Sprint requires an "As Is" process when customers are migrating from the ILEC to Sprint at the same location. On migration type orders the FOC should contain all services/features currently being provided by the ILEC and those services/features being migrated to Sprint. On new installation/change orders the FOC should verify all services/features ordered by Sprint. A positive completion delineating all the services installed and those not installed should be sent to Sprint upon actual completion within 24 hours of Order completion. This will ensure proper billing to end-user customers for services provided.

Once Sprint has obtained a customer, the ILEC shall provide in pre-ordering and ordering phases of processing the Sprint order, the ILEC regulated local features/products/services/elements/combinations that were previously provisioned by the ILEC for all affected Sprint local customers. This applies to all types of local service orders and all elements. Sprint requires that the ILEC provide any customer status which qualifies the customer for a special service (e.g. DA exempt, lifeline, etc.)

BELLSOUTH:

BellSouth will provide such records with the permission of the customer, but will not provide direct on-line access to these records.

STAFF: No position at this time.

ISSUE 13: How should misdirected service calls be handled by BellSouth?

SPRINT: ILEC and Sprint shall develop a process for the management of misdirected service calls, to be used to refer/transfer calls from customers to Sprint for action. N11 dialing to ILEC repair centers should be discontinued, or N11 call routing to the appropriate carrier should be available.

BELLSOUTH:

BellSouth's service representatives should refer the customer to Sprint and provide the customer with a contact number.

STAFF: No position at this time.

ISSUE 18: How many points of interconnection are appropriate and where should they be located?

SPRINT: POINT OF INTERCONNECTION. Sprint may designate at least one POI on the ILEC's network within an ILEC calling area for the purpose of routing local traffic.

As required by the 96-98 Order, Sprint's POIs may be at any technically feasible point within the ILEC network, including, but not limited to: tandem switches, end office switches or other wire centers. Collocation is not a requirement for establishing a POI. POIs can be established via meetpoint, collocation or other mutually agreed to methods, subject only to the limitation of technical feasibility.

BELLSOUTH:

ALECs should establish a point of interconnection at each tandem. Mid-span or mid-air meets are not appropriate.

STAFF: No position at this time.

ISSUE 21: Should jurisdictionally mixed traffic be allowed on each trunk or trunk group? If so, what should be the terms and conditions?

SPRINT: TRUNKING. Trunking should be available to any switching center designated by either carrier including end offices, local tandems, access tandems, 911 routing switches, directory assistance/operator services switches, or any other feasible point in the network.

Local, intraLATA toll, interLATA access and other traffic should not be required to be separated across trunk groups without good technical reason. ILEC should accept percentage of use factors or Sprint traffic measurements of traffic delivered to ILEC. Sprint should accept ILEC

percentage of use factors or ILEC traffic measurements of traffic delivered to Sprint. Reasonable audit rights shall be granted each party.

BELLSOUTH:

No. Local and intraLATA toll traffic should be carried on one trunk group and interLATA access and other traffic should be carried on a separate trunk group.

STAFF: No position at this time.

ISSUE 27: Should BellSouth make available any interconnection, service or network element provided under an agreement approved under 47 U.S.C. § 252, to which it is a party, to Sprint under the same terms and conditions provided in the agreement?

SPRINT: As required by the FCC's Order in Docket No. 96-98 ("the 96-98 Order"), any price, term and/or condition offered to any carrier by ILEC shall be made available to Sprint Communications Company ("Sprint") on a most favored nation's ("MFN") basis and ILEC shall immediately notify Sprint of the existence of such better prices and/or terms and make the same available to Sprint effective on the date the better price and/or term became available to the other carrier. The MFN shall apply to any unbundled element or service (e.g. directory assistance, basic residential service, intraLATA toll, Centrex, call waiting). Exceptions to the general availability of MFN should be very limited and include only volume discounts that reflect only cost savings, term discounts, significant differences in operations support (e.g. unbundled loops with maintenance as compared to unbundled loops without maintenance or unbundled loops conditioned for data as compared to voice grade loops), and technical feasibility (e.g. local switching must be purchased to receive vertical features supported by the switch). If a state commission issues an Order setting price for all carriers, then this Agreement shall reflect this price as long as that is the only price offered by ILEC. If geographic zones are not uniform as applied to all carriers, Sprint may choose the lowest price available from the ILEC for the each specific area being served by Sprint.

BELLSOUTH:

A requesting carrier is not allowed to "pick and choose" individual rates, terms, and conditions for a given service or from a given agreement.

Staff: No position at this time.

NOTE: Issues 28 and 29 are procedural issues added after the Prehearing Conference.

ISSUE 28: Should the agreement be approved pursuant to Section 252(e)?

ISSUE 29: What are the appropriate post-hearing procedures for submission and approval of final arbitrated agreement?

VII. EXHIBIT LIST

<u>WITNESS</u>	<u>PROFFERED BY</u>	<u>I.D. NO.</u>	<u>DESCRIPTION</u>
Michael R. Hunsucker	Sprint	<u>MRH-1</u>	Sprint's Term Sheet
		<u>MRH-2</u>	Sprint's Proposed Resale and Inter-connection Agreement
		<u>MRH-3</u>	Sprint's Term Sheet Matrix
Robert C. Scheye	BellSouth	<u>RCS-1</u>	Issues Matrix
Gloria Calhoun	BellSouth	<u>GC-1</u>	Timeline and Costs
		<u>GC-2</u>	Comparison of Access to Resale Electronic Order Communications Process

<u>WITNESS</u>	<u>PROFFERED BY</u>	<u>I.D. NO.</u>	<u>DESCRIPTION</u>
Gloria Calhoun	BellSouth	<u>GC-3</u>	Pre-Ordering Interface for Reseller
William V. Atherton	BellSouth	<u>WVA-1</u>	Interoffice Inter- connection

VIII. PROPOSED STIPULATIONS

None.

IX. OTHER MATTERS

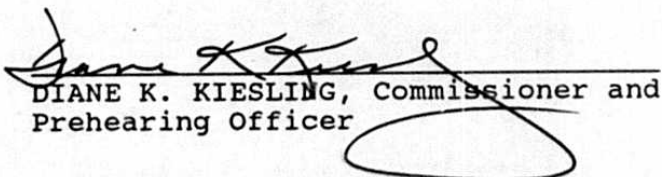
- 1) BellSouth withdrew its Notice of Order of the 8th Circuit and Request for Relief.
- 2) BellSouth Advertising & Publishing Corporation withdrew all of its pleadings from this proceeding.
- 3) The parties and staff have agreed to stipulate all testimony into the record and waive their right to cross-examine the witnesses.

It is, therefore,

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

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DOCKET NO. 961150-TP
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By ORDER of Commissioner Diane K. Kiesling, as Prehearing Officer, this 2nd day of December, 1996.


DIANE K. KIESLING, Commissioner and
Prehearing Officer

(S E A L)

MMB

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.

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