

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition by Metropolitan  
Fiber Systems of Florida, Inc.  
for arbitration with BellSouth  
Telecommunications, Inc.  
concerning interconnection  
rates, terms, and conditions,  
pursuant to the Federal  
Telecommunications Act of 1996.

DOCKET NO. 960757-TP

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

In re: Petition by MCI  
Telecommunications Corporation  
and 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

In re: Petition by MCI Metro  
Access Transmission Services,  
Inc. to set non-recurring  
charges for combination of  
network elements with BellSouth  
Telecommunications, Inc.

DOCKET NO. 971140-TP  
ORDER NO. PSC-98-0008-PCO-TP  
ISSUED: January 2, 1998

DOCUMENT NUMBER-DATE

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FPSC-RECORDS/REPORTING

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ORDER DENYING INTERVENTION

On December 3, 1997, Intermedia Communications of Florida, Inc., (Intermedia) filed a petition to intervene in Docket No. 960833-TP. On December 9, 1997, Time Warner AxS of Florida, L.P., (Time Warner) and on December 11, 1997, Sprint Communications Company, L.P., (Sprint) also filed petitions to intervene in Docket No. 960833-TP. No party filed an objection to these petitions.

Intermedia asserts that under the More Favorable Provisions section of its interconnection agreement with BellSouth Telecommunications, Inc., (BellSouth), it is entitled to elect rates, terms, and conditions in the AT&T Communications of the Southern States (AT&T)/BellSouth interconnection agreement that are more favorable than those in its own agreement. As a consequence, Intermedia states, the Commission's consideration of permanent rates in this proceeding will have an effect on it. Intermedia also observes that the Commission granted party status to American Communications Services, Inc., and American Communications Services of Jacksonville, Inc., (ACSI), in this proceeding. The Commission did so, Intermedia asserts, because, even though it decided initially that intervention in arbitration proceedings under the Telecommunications Act of 1996 (the Act) was inappropriate, circumstances have changed, making the Commission's decisions in this proceeding effective upon persons other than the parties to the arbitration. Intermedia asserts that its intervention is therefore appropriate.

Time Warner and Sprint advance the same arguments as Intermedia.

In Order No. PSC-97-1399-PCO-TP, issued November 6, 1997, ACSI was granted party status in this proceeding. However, in a companion order to be issued at the same time as this order, Order No. PSC-97-1399-PCO-TP has been reconsidered and further intervention to ACSI has been denied. Early in the arbitration proceedings brought before the Commission under the Act, it was determined that, pursuant to the Act, only the party requesting interconnection and the incumbent local exchange company may be parties to arbitration proceedings. As stated in the companion order, this reflects a Congressional intent that interconnection agreements should be reached through negotiations between a

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requesting carrier and an incumbent local exchange company; or, failing that, through arbitration proceedings litigated before state commissions by the parties to the negotiations. The arbitration proceedings are limited to the issues raised by the immediate parties to the particular negotiations. The outcome of arbitration proceedings is an agreement between those parties that is binding only on them. The Act does not contemplate participation by other entities who are not parties to the negotiations and who will not be parties to the ultimate interconnection agreement that results. Entities not party to the negotiations are not proper parties in arbitration proceedings, even though they may, in some indirect way, be affected by a particular decision. This conclusion is consistent with the conclusion reached by the Prehearing Officer at page 2 in Order No. PSC-96-0933-PCO-TP, which established procedure in Docket No. 960833-TP:

Upon review of the Act, I find that intervention with full party status is not appropriate for purposes of the Commission conducting arbitration in this docket. Section 252 contemplates that only the party requesting interconnection and the incumbent local exchange company shall be parties to the arbitration proceeding. For example, Section 252(b)(1) of the Act states that the "carrier or any other party to the negotiation" may request arbitration. (emphasis added) Similarly Section 252(b)(3) says "a non-petitioning party to a negotiation may respond to the other party's petition" within 25 days. (emphasis added) Section 252(b)(4) requires this Commission to limit its consideration to the issues raised by the petition and the response. None of these statutory provisions provides for intervenor participation.

That conclusion is affirmed in the companion order and here.

This proceeding remains an arbitration proceeding for the purpose of making permanent a number of interim rates established in the initial arbitrations on the basis of cost studies

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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.


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subsequently filed by BellSouth in these consolidated dockets. The decisions to be made here will become part of the ultimate interconnection agreements between the parties to the initial negotiations and will be binding only upon them. The presence, therefore, of Intermedia, Time Warner and Sprint in this proceeding, who were not parties to the negotiations, and will not be parties to the ultimate agreements, is at odds with the Act. The only proper parties are AT&T, MGI, MFS (now WorldCom, Inc.) and BellSouth. Accordingly, the petitions for intervention in Docket No. 960833-TP of Intermedia, Time Warner and Sprint are denied.

Based on the foregoing, it is, therefore,

ORDERED by Susan F. Clark, as Prehearing Officer, that the petitions of Intermedia Communications, Inc., Time Warner AxS of Florida, L.P., Sprint Communications Company, L.P., to intervene in Docket No. 960833-TP are hereby denied.

By ORDER of Commissioner Susan F. Clark, as Prehearing Officer, this 2nd day of January, 1998.

  
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SUSAN F. CLARK, Commissioner and  
Prehearing Officer

( S E A L )

GJP

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