

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 GTE  
Florida Incorporated concerning  
interconnection and resale under  
the Telecommunications Act of  
1996.

DOCKET NO. 960847-TP  
ORDER NO. PSC-98-0119-PCO-TP  
ISSUED: January 22, 1998

ORDER DENYING INTERVENTION

On December 11, 1997, American Communications Services, Inc., American Communications Services of Jacksonville, Inc., and American Communications Services of Tampa, Inc. (collectively "ACSI") filed a petition to intervene in Docket No. 960847-TP and 960980-TP. No party filed an objection to this petition.

ACSI argues that the outcome of this proceeding will have an effect on ACSI. ACSI is a party to an interconnection agreement with GTE Florida Incorporated (GTEFL). This agreement was approved by the Commission in Order No. PSC-97-1294-FOF-TP issued October 17, 1997, in Docket No. 970823-TP. ACSI asserts that this agreement is based on the MCI Communications Corporation (MCI)/GTEFL agreement and is subject to modification if the rates, terms, and conditions are modified by a commission of competent jurisdiction ( GTEFL/ACSI Agreement, Article XXI and LXII).

ACSI further contends that the Commission is going to determine the appropriate permanent recurring and non-recurring charges for several specified elements for MCI and AT&T Communications of the Southern States, Inc. (AT&T) in this proceeding. These permanent charges will replace interim charges set in the arbitration proceeding. ACSI asserts that similarly its interim charges are subject to change and that they are based on the MCI rates. Accordingly, ACSI argues that they have an interest in this proceeding.

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.

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This reflects a Congressional intent that interconnection agreements should be reached through negotiations between a 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 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 subsequently filed by GTEFL in these consolidated dockets. The decisions to be made here will become part of the ultimate

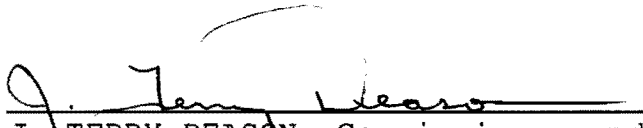
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interconnection agreements between the parties to the initial negotiations and will be binding only upon them. The presence, therefore, of ACSI in this proceeding, who was not a party to the negotiations, and will not be a party to the ultimate agreements, is at odds with the Act. The only proper parties are AT&T, MCI, and GTEFL. Accordingly, the petition for intervention in Docket No. 960847-TP and 960980-TP of ACSI is denied.

Based on the foregoing, it is, therefore,

ORDERED by J. Terry Deason, as Prehearing Officer, that the petition of American Communications Services, Inc., American Communications Services of Jacksonville, Inc., and American Communications Services of Tampa, Inc. (collectively "ACSI") to intervene in Docket Nos. 960847-TP and 960980-TP is hereby denied.

By ORDER of Commissioner J. Terry Deason, as Prehearing Officer, this 22nd day of January, 1998.

  
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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 120.569(1), 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.