

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
ORDER NO. PSC-98-0123-PCO-TP
ISSUED: January 22, 1998

ORDER ON JOINT MOTION TO STRIKE

On December 31, 1996, the Commission issued Order No. PSC-96-1579-FOF-TP, in Docket Nos. 960833-TP and 960846-TP, its final order in the arbitration proceedings of AT&T Communications of the Southern States, Inc., (AT&T) and MCI Telecommunications Corporation and MCI Metro Access Transmission Services, Inc., (MCI) with BellSouth Telecommunications, Inc., (BellSouth) under the

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ORDER NO. PSC-98-0123-PCO-TP
DOCKETS NOS. 960757-TP, 960833-TP, 960846-TP
PAGE 2

Telecommunications Act of 1996 (the Act). On December 16, 1996, in Docket No. 960757-TP, the Commission issued Order No. PSC-96-1531-FOF-TP, its final order in the arbitration proceeding of MFS Communications Company Inc., (MFS) with BellSouth under the Act. In this proceeding, the Commission will set permanent rates for a number of network elements for which it set only interim rates in those arbitration orders.

On January 9, 1998, WorldCom, on behalf of itself, its subsidiary MFS, MCI, and AT&T (Petitioners), filed a Joint Motion to Strike Portions of Testimony and Exhibits regarding Operational Support Systems (OSS). On January 16, 1998, BellSouth responded to the Motion with a Memorandum in Opposition to Joint Motion to Strike Portions of Testimony and Exhibits. Oral argument on this Motion was heard on January 20, 1998.

In the Motion to Strike, the Petitioners request that portions of testimony and exhibits filed by BellSouth in these dockets relating to OSS be stricken. In support of the Motion, the Petitioners assert that the issues to be determined in this proceeding were addressed and refined in Orders Nos. PSC-96-1531-FOF-TP (WorldCom), PSC-96-1579-FOF-TP (AT&T/MCI) and PSC-97-1303-FOF-TP. (Order Consolidating Dockets and Establishing Procedure). The Petitioners assert that electronic interfaces for OSS were not identified in either of those orders as unbundled network elements for which permanent rates would be set in this proceeding. The Petitioners further assert that BellSouth has, however, submitted testimony and exhibits on this issue, particularly cost data regarding OSS interfaces that was only submitted with rebuttal testimony. The Petitioners argue that since rates for electronic access to OSS is not an issue in this proceeding in accordance with the pertinent orders, BellSouth should not be allowed to expand this proceeding by including testimony on this point.

In addition, the Petitioners note that in Order No. PSC-97-1301-PCO-TP an issue on geographic deaveraging of unbundled loop rates was excluded from this proceeding for the specific reason that the Commission did not order geographic deaveraging of unbundled loop rates in Order No. PSC-96-1531-FOF-TP, and because the Commission did not order BellSouth to provide cost studies regarding that issue in either Order No. PSC-96-1531-FOF-TP or Order No. PSC-96-1579-FOF-TP. Thus, the Petitioners request that BellSouth's testimony and exhibits relating to OSS be stricken because it also was not an issue identified to be addressed in this

proceeding and striking this testimony would be consistent with prior Commission orders.

In its response, BellSouth asserts that the Petitioners Motion ignores the relationship between OSS and the cost of the elements for which the Commission will be setting permanent rates. BellSouth argues that OSSs are integrally related to ordering and provisioning unbundled elements and services. Thus, BellSouth asserts that the costs associated with developing these systems should be addressed in this proceeding.

Specifically, BellSouth states that its OSSs fall into two categories: 1) Electronic Interfaces for ALEC access; and 2) BellSouth's Legacy Systems, systems that BellSouth historically maintained prior to competition. BellSouth argues that its cost studies address costs for both categories of OSS systems. BellSouth also states that it seeks to recover shared and common costs for its Legacy Systems through the rates that it has proposed for the unbundled elements, while it seeks to recover the costs for the Electronic Interfaces through a per order charge. BellSouth asserts that MCI and AT&T have both submitted testimony and exhibits regarding OSSs in this proceeding and neither have disputed that BellSouth should be allowed to recover certain OSS costs. BellSouth notes, however, that AT&T and MCI witnesses have indicated that OSS costs should be recovered in BellSouth's recurring rates.

BellSouth also argues that the Commission should decide whether to adopt nonrecurring rates reflecting any cost efficiencies in the way elements are ordered. BellSouth states that it has proposed rates based upon whether the element is ordered manually or electronically.

Furthermore, BellSouth asserts that because AT&T and MCI have submitted testimony regarding OSS cost recovery, if only BellSouth's testimony and exhibits are stricken, the Commission will hear only one point of view on this issue.

Upon review of the pleadings and after consideration of the arguments presented at the January 20, 1998, motion hearing, the Joint Motion to Strike Testimony and Exhibits shall be granted, in part, and denied, in part.

Specifically, the Motion shall be granted with respect to all testimony and exhibits relating to the costs of OSS functions, both

manual and electronic. Although the FCC and the Eighth Circuit have indicated that OSSs are considered unbundled network elements, OSSs were not identified in Order No. PSC-97-1303-PCO-TP, Order No. PSC-96-1579-TP, or Order No. PSC-96-1531-FOF-TP as network elements for which permanent rates would be set in this proceeding. In an abundance of caution, it is, however, noted that the fact that rates will not be set for OSSs or access to OSSs in this proceeding does not alter any BellSouth obligation to negotiate or arbitrate this issue when requested to do so by an ALEC.

The Motion shall, however, be denied with respect to testimony and exhibits addressing BellSouth's proposal to recover the shared and common costs associated with its Legacy Systems through the rates proposed for the unbundled elements at issue in this proceeding. Whether or not BellSouth should be allowed to recover the costs associated with its Legacy Systems through the rates established for the unbundled elements at issue here is a matter that can be addressed within the context of rate-setting for the specific elements.

It is, therefore, determined that BellSouth shall identify all BellSouth testimony and exhibits submitted in these dockets that pertains to establishing rates for OSSs. Testimony identified as relating to this issue shall be stricken. Remaining testimony and exhibits shall be revised accordingly. In order to maintain a balanced presentation of the evidence, the Petitioners shall be required to do the same with their respective testimony and exhibits. As it pertains to OSSs, only testimony regarding BellSouth's proposal to recover costs associated with its Legacy Systems shall be retained. With respect to certain witnesses' testimony, it is noted that it may not be possible to specifically identify what portion of the testimony relates only to BellSouth's proposal to recover shared and common costs associated with its Legacy Systems. To the extent that any party finds this to be the case, that party shall identify the area of difficulty and the reason for the difficulty. That testimony will then be considered only as it pertains to cost recovery for BellSouth's Legacy Systems. Each party shall compile a list identifying its respective testimony and exhibits to be stricken in accordance with this Order, as well as any problem areas. The parties shall be prepared to present these lists at the January 26-28, 1998, hearing.

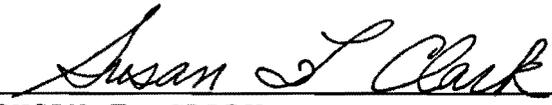
Based on the foregoing, it is therefore

ORDER NO. PSC-98-0123-PCO-TP
DOCKETS NOS. 960757-TP, 960833-TP, 960846-TP
PAGE 5

ORDERED by Susan F. Clark, as Prehearing Officer, that the Joint Motion to Strike Testimony and Exhibits is granted and denied as described in the body of this Order. It is further

ORDERED that each party shall prepare a list of its respective testimony and exhibits to be stricken in accordance with this Order, as well as identifying any problem areas. The parties shall be prepared to present these lists at the January 26-28, 1998, hearing.

By ORDER of Commissioner Susan F. Clark, as Prehearing Officer, this 22nd day of January, 1998.



SUSAN F. CLARK
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

ORDER NO. PSC-98-0123-PCO-TP
DOCKETS NOS. 960757-TP, 960833-TP, 960846-TP
PAGE 6

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.