

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition by MCI
Telecommunications Corporation
for arbitration with United
Telephone Company of Florida and
Central Telephone Company of
Florida concerning
interconnection rates, terms,
and conditions, pursuant to the
Federal Telecommunications Act
of 1996.

DOCKET NO. 961230-TP
ORDER NO. PSC-98-0393-PCO-TP
ISSUED: March 16, 1998

ORDER DENYING INTERVENTION

On February 6, 1998, Time Warner AxS of Florida, L.P. (Time Warner) filed a Petition for Leave to Intervene in this docket. Neither of the parties filed a response to Time Warner's petition.

In its Petition, Time Warner asserts that its interests will be directly and substantially affected by the action taken in this docket. Time Warner also asserts that the Commission's decisions here will impact future Commission decisions. Time Warner states that it is an Alternative Local Exchange Carrier (ALEC) and that it has an approved interconnection agreement with United Telephone Company of Florida (United). Time Warner argues that in this proceeding, the Commission will set recurring and non-recurring rates for several specified unbundled elements. Time Warner states that under the Time Warner/United agreement, if the rates set in this proceeding are more favorable than those in the Time Warner/United agreement, Time Warner can substitute the better rates, terms and conditions in its own agreement with United. Thus, Time Warner argues that the Commission's determination of the appropriate rates and pricing for elements in this proceeding will ultimately impact Time Warner. Time Warner asks, therefore, that it be allowed to intervene in this docket.

The Commission determined early in the arbitration proceedings brought before us under the Act, that only the party requesting interconnection and the incumbent local exchange company may be parties to arbitration proceedings. This reflects Congress's intent that interconnection agreements should be reached through negotiations between a requesting carrier and an incumbent local

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exchange company. If the negotiations fail, the parties may then petition the state commission to arbitrate the unresolved issues between the parties. 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 has been followed and affirmed in Commission Order Nos. PSC-98-0007-PCO-TP, PSC-98-0008-PCO-TP, PSC-98-0227-FOF-TP, and PSC-98-0226-FOF-TP, issued in Docket No. 960833-TP, as well as in Order No. PSC-98-0119-PCO-TP, issued in Docket No. 960847-TP. It is also affirmed here.


ORDER NO. PSC-98-0393-PCO-TP
DOCKET NO. 961230-TP
PAGE 3

This proceeding remains an arbitration proceeding for the purpose of establishing permanent rates to replace the interim rates set in the initial arbitration between United Telephone Company and Central Telephone Company, now Sprint Florida, Inc., (Sprint) and MCI Telecommunications Corporation (MCI). The decisions to be made here will become part of the ultimate interconnection agreement between the parties to the initial negotiation and will be binding only upon them. As stated in the numerous previous Commission Orders on this point, the presence of Time Warner or any other participant in this proceeding, which was not a party to the negotiations and will not be a party to the ultimate agreement, is at odds with the Act. The only proper parties are Sprint and MCI. Accordingly, Time Warner's Petition to Intervene in Docket No. 961230-TL is denied.

Based on the foregoing, it is, therefore,

ORDERED by Susan F. Clark, as Prehearing Officer, that the Petition to Intervene filed by Time Warner AxS of Florida, L.P. is hereby denied.

By ORDER of Commissioner Susan F. Clark, as Prehearing Officer, this 16th Day of March, 1998.



SUSAN F. CLARK
Commissioner and Prehearing Officer

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ORDER NO. PSC-98-0393-PCO-TP
DOCKET NO. 961230-TP
PAGE 4

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.