

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Complaint of WorldCom Technologies, Inc. against BellSouth Telecommunications, Inc. for breach of terms of Florida Partial Interconnection Agreement under Sections 251 and 252 of the Telecommunications Act of 1996, and request for relief.

DOCKET NO. 971478-TP
ORDER NO. PSC-98-0642-PCO-TP
ISSUED: May 7, 1998

ORDER DENYING INTERVENTION

On April 9, 1998, Time Warner AxS of Florida, L.P. (Time Warner) filed a petition to intervene in Docket No. 971478-TP. No party filed an objection to this petition. In that docket, which has been consolidated with Docket Nos. 980184-TP, 980495-TP and 980499-TP for purposes of hearing, WorldCom Technologies, Inc., (WorldCom) has asked this Commission to resolve a dispute under its interconnection agreement with BellSouth Telecommunications, Inc., (BellSouth) concerning reciprocal compensation for transport and termination of local traffic.

Time Warner states that it provides local telecommunications services pursuant to an interconnection agreement with BellSouth, one provision of which provides for reciprocal compensation for local call termination. Noting that WorldCom's complaint alleges BellSouth's breach of the WorldCom-BellSouth interconnection agreement in respect to reciprocal compensation for traffic terminated to Internet Service Providers (ISPs), Time Warner states that it "finds itself in much the same position[] [as WorldCom]."

Time Warner argues that it is entitled to intervene in this proceeding because its substantial interests, and those of its customers, will be directly affected by the Commission's decision in this proceeding. Time Warner argues further that by reason of its experience with the subject matter in issue, it would facilitate the development of the record if allowed to participate. It argues, moreover, that it should be permitted to intervene pursuant to Section 120.52(12)(c), Florida Statutes.

Time Warner also argues that the case to be resolved in the WorldCom proceeding is one of first impression having general

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applicability to all alternative local exchange carriers (ALECs) and is one, therefore, that should be decided in a generic proceeding.

Accordingly, Time Warner asks this Commission to allow it to intervene in this proceeding, or, in the alternative, to open a generic proceeding.

This Commission has on numerous occasions denied third party petitions to intervene in arbitration proceedings or in proceedings brought seeking performance under interconnection agreements arising from arbitration proceedings. See Order Nos. PSC-96-0933-PCO-TP; PSC-98-0007-PCO-TP; PSC-98-0008-PCO-TP; PSC-98-0226-FOF-TP; PSC-98-0227-FOF-TP; PSC-98-0454-PCO-TP; and PSC-98-0476-PCO-TP. Time Warner does not raise any considerations in the instant petition that have not already been carefully examined in deciding the propriety of limiting participation in these kinds of proceedings to the parties to the negotiations or to the parties to the interconnection agreements negotiated or arbitrated under the Act. This Commission stated recently in this docket that:

We acknowledge Intermedia's argument that our resolution of the present dispute between WorldCom and BellSouth may have an effect on Intermedia. In the new competitive paradigm, however, that argument cannot be joined to sustain intervention in arbitration and contract dispute proceedings. It is hardly surprising that business relationships and commercial terms to which certain market players agree influence, sometimes strongly, the nature of subsequent relationships and terms sought by others. This is not justification to return to the old regulatory routine where all interested persons could participate in matters involving regulated utility providers. Under the Act, the rules of the road are different. This is a contract dispute between the parties to the specific contract, and only those parties may participate in this case.

Order No. PSC-98-0454-FOF-TP at 5.

The Commission further described the nature of these proceedings as follows:

We find that the issue that WorldCom's Complaint presents to us should be set directly for hearing. At the same time, we recognize that what is before us is a complaint arising from a disputed interpretation of a provision in the interconnection agreement of WorldCom and BellSouth. We will not impose prior restraints on the admissibility of evidence; but we will limit participation in the hearing to WorldCom and BellSouth. Moreover, we believe that we must resolve the dispute between the parties by determining the state of the law concerning the jurisdictional nature of ISP traffic at the time the parties executed their agreement and by applying principles of contract construction.

Id. at 8.

Therefore, upon review of the orders cited above, and in consideration of the Commission's decisions to preclude intervention in arbitration and complaint proceedings under the Telecommunications Act of 1996, Time Warner's petition to intervene in Docket No. 971478-TP is denied.

It is to be noted that, in Order No. PSC-98-0604-FOF-TP, issued April 29, 1998, as amended by Order No. PSC-98-0604A-FOF-TP, issued May 7, 1998, the full Commission denied Time Warner's motion for reconsideration of Order No. PSC-98-0008-PCO-TP, which denied its petition to intervene in Docket No. 960833-TP. Time Warner's petition to intervene in Docket No. 961230-TP was denied as well in Order No. PSC-98-0393-PCO-TP, issued March 16, 1998.

It would be premature at this time to acknowledge Time Warner's request in the alternative that this Commission initiate a generic proceeding. All that is presently before the Commission in this proceeding is a responsibility to resolve a contract dispute.

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Based on the foregoing, it is, therefore,

ORDERED by J. Terry Deason, as Prehearing Officer, that the petition of Time Warner Axs of Florida, L.P., for leave to intervene in Docket No. 971478-TP is hereby denied.

By ORDER of Commissioner J. Terry Deason, as Prehearing Officer, this 7th day of May, 1998.


J. TERRY DEASON, Commissioner and
Prehearing Officer

(S E A L)

CJP

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

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review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.