

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Request for arbitration
concerning complaint of MCImetro
Access Transmission Services LLC
for enforcement of
interconnection agreement with
BellSouth Telecommunications,
Inc.

DOCKET NO. 981121-TP
ORDER NO. PSC-99-0097-PHO-TP
ISSUED: January 19, 1999

Pursuant to Notice and in accordance with Rule 28-106.209, Florida Administrative Code, a Prehearing Conference was held on Friday, January 15, 1999, in Tallahassee, Florida, before Commissioner E. Leon Jacobs, as Prehearing Officer.

APPEARANCES:

RICHARD MELSON, ESQUIRE, Hopping Green Sams & Smith,
P.A., P.O. Box 6526, Tallahassee, Florida 32314.
On behalf of MCImetro Access Transmission Services LLC.

J. PHILLIP CARVER, ESQUIRE, 675 West Peachtree Street,
#4300, Atlanta, Georgia 30375.
On behalf of BellSouth Telecommunications, Inc.

BETH KEATING, ESQUIRE, Florida Public Service Commission,
2540 Shumard Oak Boulevard, Tallahassee, Florida
32399-0850.
On behalf of the Commission Staff.

PREHEARING ORDER

I. CONDUCT OF PROCEEDINGS

Pursuant to Rule 28-106.211, Florida Administrative Code, this Order is issued to prevent delay and to promote the just, speedy, and inexpensive determination of all aspects of this case.

II. CASE BACKGROUND

On September 14, 1998, MCImetro Access Transmission Services LLC (MCIm) filed a complaint for enforcement of its Interconnection Agreement with BellSouth Telecommunications, Inc. (BellSouth).

69

DOCUMENT NUMBER-DATE

00650 JAN 19 99

FROM: [REDACTED] / DEPARTING

This complaint concerns provisioning of 4-wire DS1 loop and dedicated transport by BellSouth to MCIIm under the Interconnection Agreement. MCIIm requested an expedited hearing. This matter is currently set for administrative hearing on Wednesday, February 3, 1999.

III. PROCEDURE FOR HANDLING CONFIDENTIAL INFORMATION

A. Any information provided pursuant to a discovery request for which proprietary confidential business information status is requested shall be treated by the Commission and the parties as confidential. The information shall be exempt from Section 119.07(1), Florida Statutes, pending a formal ruling on such request by the Commission, or upon the return of the information to the person providing the information. If no determination of confidentiality has been made and the information has not been used in the proceeding, it shall be returned expeditiously to the person providing the information. If a determination of confidentiality has been made and the information was not entered into the record of the proceeding, it shall be returned to the person providing the information within the time periods set forth in Section 364.183, Florida Statutes.

B. It is the policy of the Florida Public Service Commission that all Commission hearings be open to the public at all times. The Commission also recognizes its obligation pursuant to Section 364.183, Florida Statutes, to protect proprietary confidential business information from disclosure outside the proceeding.

In the event it becomes necessary to use confidential information during the hearing, the following procedures will be observed:

- 1) Any party wishing to use any proprietary confidential business information, as that term is defined in Section 364.183, Florida Statutes, shall notify the Prehearing Officer and all parties of record by the time of the Prehearing Conference, or if not known at that time, no later than seven (7) days prior to the beginning of the hearing. The notice shall include a procedure to assure that the confidential nature of the information is preserved as required by statute.

- 2) Failure of any party to comply with 1) above shall be grounds to deny the party the opportunity to present evidence which is proprietary confidential business information.
- 3) When confidential information is used in the hearing, parties must have copies for the Commissioners, necessary staff, and the Court Reporter, in envelopes clearly marked with the nature of the contents. Any party wishing to examine the confidential material that is not subject to an order granting confidentiality shall be provided a copy in the same fashion as provided to the Commissioners, subject to execution of any appropriate protective agreement with the owner of the material.
- 4) Counsel and witnesses are cautioned to avoid verbalizing confidential information in such a way that would compromise the confidential information. Therefore, confidential information should be presented by written exhibit when reasonably possible to do so.
- 5) At the conclusion of that portion of the hearing that involves confidential information, all copies of confidential exhibits shall be returned to the proffering party. If a confidential exhibit has been admitted into evidence, the copy provided to the Court Reporter shall be retained in the Division of Records and Reporting's confidential files.

IV. POST-HEARING PROCEDURES

Each party shall file a post-hearing statement of issues and positions. A summary of each position of no more than 50 words, set off with asterisks, shall be included in that statement. If a party's position has not changed since the issuance of the prehearing order, the post-hearing statement may simply restate the prehearing position; however, if the prehearing position is longer than 50 words, it must be reduced to no more than 50 words. If a party fails to file a post-hearing statement, that party shall have waived all issues and may be dismissed from the proceeding.

A party's proposed findings of fact and conclusions of law, if any, statement of issues and positions, and brief, shall together total no more than 40 pages, and shall be filed at the same time.

V. PREFILED TESTIMONY AND EXHIBITS; WITNESSES

Testimony of all witnesses to be sponsored by the parties has been prefiled. All testimony which has been prefiled in this case will be inserted into the record as though read after the witness has taken the stand and affirmed the correctness of the testimony and associated exhibits. All testimony remains subject to appropriate objections. Each witness will have the opportunity to orally summarize his or her testimony at the time he or she takes the stand. Upon insertion of a witness' testimony, exhibits appended thereto may be marked for identification. After all parties and Staff have had the opportunity to object and cross-examine, the exhibit may be moved into the record. All other exhibits may be similarly identified and entered into the record at the appropriate time during the hearing.

Witnesses are reminded that, on cross-examination, responses to questions calling for a simple yes or no answer shall be so answered first, after which the witness may explain his or her answer.

The Commission frequently administers the testimonial oath to more than one witness at a time. Therefore, when a witness takes the stand to testify, the attorney calling the witness is directed to ask the witness to affirm whether he or she has been sworn.

VI. ORDER OF WITNESSES

<u>Witness</u>	<u>Proffered By</u>	<u>Issues #</u>
<u>Direct and Rebuttal</u>		
Ron Martinez	MCImetro	All
Joseph Gillan	MCImetro	All
<u>Direct and Rebuttal</u>		
W. Keith Milner	BellSouth	All
Jerry D. Hendrix	BellSouth	All

VII. BASIC POSITIONS

MCI: MCImetro is entitled under its Interconnection Agreement with BellSouth to purchase a network element combination consisting of a DS1 local loop and DS1 dedicated transport at the sum of the price of the individual network elements. This combination of UNEs does not "recreate" any existing BellSouth retail service within the meaning of Order No. PSC-98-0810-FOF-TP.

BELLSOUTH: In Order No. PSC-98-0810-FOF-TP, this Commission directed BellSouth and MCI to "determine through negotiation" what combination of unbundled network elements "constitute[s] the recreation of a BellSouth retail service." (Order, p. 50). MCI has refused to do so. MCI has instead insisted upon attempting to order a combination of network elements that it admits technically recreates MegaLink service. In fact, this combination of elements recreates MegaLink service in every regard. There is no basis to distinguish between the combination of UNEs that MCI has attempted to order and MegaLink Service, and MCI's attempts to do so are without merit.

STAFF: Staff's positions are preliminary and based on materials filed by the parties and on discovery. The preliminary positions are offered to assist the parties in preparing for the hearing. Staff's final positions will be based upon all the evidence in the record and may differ from the preliminary positions. No position pending the hearing.

VIII. ISSUES AND POSITIONS

ISSUE 1: Does the combination of unbundled network elements consisting of 4-wire DS1 loops and DS-1 dedicated transport recreate an existing BellSouth retail service known as MegaLink? If not, what action, if any, should the Commission take?

POSITIONS

MCI: No. The combination of DS1 loops and DS1 dedicated transport are used to connect business customers to MCImetro's local switch to enable MCImetro to provide a competitive local service. This combination does not recreate any existing BellSouth retail service within the meaning of Order No. PSC-98-0810-FOF-TP. BellSouth's claim that this combination recreates MegaLink is inconsistent with its prior position that a recreated service exists when an ALEC provides service to an end user using only facilities provided by BellSouth. The Commission should direct BellSouth to provide the requested UNE combination to MCImetro on a going-forward basis at a price equal to the sum of the prices for the individual network elements, and should order BellSouth to refund MCImetro all overcharges with respect to these types of facilities since November, 1997.

BELLSOUTH:

Yes. The identified combination of elements does recreate MegaLink service. Further, if this Commission finds to the contrary, no refund should be given to MCI because it ordered T-1 Services, despite having other alternatives, and has received those services.

STAFF: No position pending the Hearing.

IX. EXHIBIT LIST

<u>Witness</u>	<u>Proffered By</u>	<u>I.D. No.</u>	<u>Description</u>
<u>Direct</u>			
Ron Martinez	MCIm	_____	Excerpts from Interconnection Agreement between MCImetro and BellSouth
		(RM-1)	
		_____	Excerpts from Order No. PSC-98-0810-FOF-TP
		(RM-2)	
		_____	Letter dated 6/1/98 from Schmidt (MCIm) to Lee (BST)
		(RM-3)	
		_____	Letter dated 6/4/98 from Hendrix (BST) to Schmidt (MCIm)
		(RM-4)	
		_____	Letter dated 7/14/98 from Schmidt (MCIm) to Hendrix (BST)
		(RM-5)	
		_____	Letter dated 7/21/98 from Hendrix (BST) to Schmidt (MCIm)
		(RM-6)	
		_____	Letter dated 7/24/98 from Schmidt (MCI) to Hendrix (BST)
		(RM-7)	
		_____	Letter dated 8/3/98 from Hendrix (BST) to Schmidt (MCIm)
		(RM-8)	
		_____	Letter dated 8/7/98 from Lapenta (MCIm) to Hendrix (BST)
		(RM-9)	
		_____	Excerpts from testimony of William Stacy in Docket No. 980281-TP
		(RM-10)	
		_____	Excerpts from Order No. PSC-98-1484-FOF-TP
		(RM-11)	

<u>Witness</u>	<u>Proffered By</u>	<u>I.D. No.</u>	<u>Description</u>
W. Keith Milner	BellSouth	(WKM-1)	Pages 1-8 of Section B7.1 of BellSouth Telecommunications, Inc. Private Line Services Tariff
		(WKM-2)	Schematics of Subject Network Facilities
Jerry D. Hendrix	BellSouth	(JDH-1)	Letter to Mr. Schmidt (MCI) from Mr. Hendrix (BellSouth), dated June 23, 1998
		(JDH-2)	Letter to Mr. Schmidt (MCI) from Mr. Hendrix (BellSouth), dated July 10, 1998
		(JDH-3)	Letter to Mr. Hendrix (BellSouth) from Mr. Schmidt (MCI), dated July 14, 1998
		(JDH-4)	Letter to Mr. Schmidt (MCI) from Mr. Hendrix (BellSouth), dated July 21, 1998
		(JDH-5)	Letter to Mr. Hendrix (BellSouth) from Mr. Schmidt (MCI), dated July 24, 1998
		(JDH-6)	Letter to Mr. Hendrix (BellSouth) from Mr. Schmidt (MCI) dated August 3, 1998
		(JDH-7)	Letter to Mr. Hendrix (BellSouth) from Mr. Schmidt (MCI), dated August 7, 1998

Parties and Staff reserve the right to identify additional exhibits for the purpose of cross-examination.

X. PROPOSED STIPULATIONS

MCIm: There are no stipulations between MCIm and any party at this time. MCIm's offers to BellSouth to stipulate to the facts -- which MCIm believes are not in dispute -- and to dispose of this case through briefs and oral argument have been rejected by BellSouth.


XI. RULINGS

The parties shall be allowed five minutes per side to present opening statements at the hearing.

It is therefore,

ORDERED by Commissioner E. Leon Jacobs, Jr., as Prehearing Officer, that this Prehearing Order shall govern the conduct of these proceedings as set forth above unless modified by the Commission.

By ORDER of Commissioner E. Leon Jacobs, Jr. as Prehearing Officer, this 19th day of January, 1999.



E. LEON JACOBS, JR.
Commissioner and Prehearing Officer

(S E A L)

CB/BK

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.59(4), 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.

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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 25-22.038(2), 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.

FLORIDA PUBLIC SERVICE COMMISSION - RECORDS AND REPORTING

Requisition for Photocopying and Mailing

Date 1/25/99

Number of Originals 10

Copies Per Original 14

Requested By Ruth King

Item Presented

Agenda For (Date) _____

Order No. 99-0097

In Docket No. 981121

Notice of _____

For (Date) _____

in Docket No. _____

Other _____

Special Handling Instructions

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Number 14

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Docket Mailing List - Mailed

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Print Shop Verification

Job Number 186

Verified By Michael

Date and Time Completed 1/25

Job Checked For Correctness and Quality (Initial) !!

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MEMORANDUM

January 19, 1999

RECEIVED-FPSC

99 JAN 19 PM 1:43

RECORDS AND
REPORTING

TO: DIVISION OF RECORDS AND REPORTING

FROM: DIVISION OF LEGAL SERVICES (KEATING) *AK CB MCB*

RE: DOCKET NO. 981121-TP - Request for arbitration concerning complaint of MCImetro Access Transmission Services LLC for enforcement of interconnection agreement with BellSouth Telecommunications, Inc.

99-0097-740-TP

Attached is a **Prehearing Order** to be issued in the above-referenced docket. (Number of pages in order - 10)

BK/slh
Attachment
cc: Division of Communications
I:981121po.cb

See - is okay

*Called
2/1 mailed
RAR.*