

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition by MediaOne
Florida Telecommunications, Inc.
for arbitration of an
interconnection agreement with
BellSouth Telecommunications,
Inc. pursuant to Section 252(b)
of the Telecommunications Act of
1996.

DOCKET NO. 990149-TP
ORDER NO. PSC-99-1309-PHO-TP
ISSUED: July 8, 1999

Pursuant to Notice and in accordance with Rule 28-106.209,
Florida Administrative Code, a Prehearing Conference was held on
Tuesday, June 22, 1999, in Tallahassee, Florida, before
Commissioner E. Leon Jacobs, Jr., as Prehearing Officer.

APPEARANCES:

J. Phillip Carver, Esquire, 675 West Peachtree Street,
#4300, Atlanta, Georgia 30375
On behalf of BellSouth Telecommunications, Inc.

William B. Graham, Esquire, 101 North Gadsden Street,
Tallahassee, Florida 32301
On behalf of MediaOne Florida Telecommunications, Inc.

Susan Keeson, Esquire, 188 Inverness Drive West, 6th
Floor, Englewood, Colorado 80112
On behalf of MediaOne Florida Telecommunications, Inc.

DICK KARRE, Esquire, 188 Inverness Drive West, 6th
Floor, Englewood, Colorado 80112
On behalf of MediaOne Florida Telecommunications, Inc.

C. Lee Fordham, Esquire, Florida Public Service
Commission, 2540 Shumard Oak Boulevard, Tallahassee,
Florida 32399-0850
On behalf of the Commission Staff.

DOCUMENT NUMBER-DATE

08157 JUL-89

FPCD-RECORDS/REPORTING

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 December 1, 1995, this Commission approved a stipulated agreement between MediaOne Florida Telecommunications, Inc., and BellSouth Telecommunications, Inc., providing for interconnection services from BellSouth to MediaOne. That agreement expired on January 1, 1998, but the parties mutually agreed to extend it pending finalization of a successor agreement. Negotiations for a successor agreement failed, and on February 9, 1999, MediaOne filed a Petition for Arbitration, seeking the assistance of the Commission in resolving the remaining unresolved issues.

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, DIRECT AND REBUTTAL

<u>Witness</u>	<u>Proffered By</u>	<u>Issues #</u>
<u>Direct and Rebuttal</u>		
Greg Beveridge	MediaOne	all
Gary Lane	MediaOne	all
Alphonso J. Varner	BellSouth	2,3,4,7
Daonne Caldwell	BellSouth	7
W. Keith Milner	BellSouth	2,5
Jim Maher	MediaOne	all

VII. BASIC POSITIONS

BELLSOUTH: Each of the individually numbered issues in this docket represent a specific dispute between BellSouth and MediaOne as to what should be included in the Interconnection Agreement between the parties. Some of these issues involve matters that are not properly within the scope of the Telecommunications Act and the jurisdiction of this Commission and should, therefore, not be part of an Arbitrated Agreement. As to all other issues, BellSouth's positions are the more consistent with the Act, the pertinent rulings of the FCC and the rules of this Commission. Therefore, each of BellSouth's positions should be sustained by this Commission.

MEDIAONE: MediaOne and BellSouth conducted a series of negotiations for interconnection. The purpose of the negotiations was to complete an interconnection agreement to replace the previous stipulation and agreement entered into by the parties. The parties did not reach agreement on all issues and MediaOne is seeking arbitration of the unresolved issues described below.

MediaOne believes that dial-up calls placed to Internet Service Providers ("ISPs") should be treated as "local traffic" for purposes of the interconnection agreement. They should be so classified because a call to an ISP is placed using a local telephone number and uses local network facilities in the same manner as a local call. Call which originate from or terminate to ISPs should be included in the reciprocal compensation arrangement contained in the interconnection agreement.

The Commission should determine that calling name ("CNAM") data base queries are unbundled network elements, the price of which must be based on cost, be non-discriminatory and may include a reasonable profit. The \$.01/query pricing being proposed by BellSouth is not cost based.

In order to allow MediaOne to have appropriate access to Network Terminating Wire ("NTW") in Multiple Dwelling Units ("MDU") BellSouth should be required to terminate its Network Distribution Facilities into an MDU on one cross-connect facility, and its NTW on a separate cross-connect facility accessible to all LECS serving the MDU. Because a telephone company cannot impose a charge for the use of inside wiring, BellSouth should not be permitted to charge MediaOne for access to NTW.

Performance incentive payments are necessary under the arbitration agreement in order to motivate compliance with performance measurements. Monetary incentives are effective enforcement mechanisms and should be specific to each of the performance measures.

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.

VIII. ISSUES AND POSITIONS

ISSUE 1: Should the audit provisions in the parties' Interconnection Agreement include auditing of services other than billing?

This issue has been resolved by the parties.

ISSUE 2: Should calls originated from or terminated to Internet Service Providers ("ISPs") be defined as "local traffic" for purposes of the MediaOne/BellSouth Interconnection Agreement?

POSITIONS

BELLSOUTH: No. End users gain access to the Internet through an ISP. The ISP location, generally referred to as an ISP point of presence ("POP"), represents the edge of the Internet and usually consists of a bank of modems. ISPs can use the public switched network to collect their subscribers' calls to the Internet. This ISP traffic represents a continuous transmission from the end user to a distant Internet site. Also, the FCC has once again confirmed that ISP traffic is subject to interstate jurisdiction rather than local traffic. In its Declaratory Ruling, the FCC declared that Internet traffic is jurisdictionally mixed and appears to be largely interstate in nature. The FCC noted in its decision that it traditionally has determined the jurisdiction of calls by the end-to-end nature of the call. (See Declaratory Ruling in CC Docket Nos. 96-98 and 99-68, February 26, 1999). Once it is understood that Internet traffic "terminates" only at distant websites, which are nearly always in a different exchange than the end-user, it becomes evident that these calls are not local.

MEDIAONE: Dial-up calls to ISPs should be treated as local traffic, for purposes of reciprocal compensation, because a call to an ISP is placed using a local telephone number and such calls use local network facilities just as any local call. The functions

performed in terminating a local to an ISP are not different from those terminating to any other local call between an in user of BellSouth and an in user of MediaOne.

STAFF: Staff takes no position at this time.

ISSUE 3: Should calls that originate from or terminate to ISPs be included in the reciprocal compensation arrangements of the Interconnection Agreement?

POSITIONS

BELLSOUTH: No. As I discussed in response to Issue 2, calls utilizing ISPs to access information do not originate from or terminate to ISPs. The ISPs are intermediaries, which provide a portion of such calls. As such, it is not appropriate to include these calls in the reciprocal compensation arrangements of the Interconnection Agreement

MEDIAONE: Dial-up calls to ISPs should be treated as local traffic and should be included in the reciprocal compensation arrangement because a call to an ISP is placed using a local telephone number and utilizes local network facilities just as any local call. The functions performed in terminating a local call to an ISP are not different from those performed in terminating any other local call between an end user of BellSouth and an end user of MediaOne.

STAFF: Staff takes no position at this time.

ISSUE 4: What is the appropriate price for Calling Name ("CNAM") data base queries?

POSITIONS

BELLSOUTH: The appropriate price for CNAM is one cent per query. This is the rate charged to any company that shows their end user names in BellSouth's

calling name database. Because the CNAM agreement is not governed by the requirements of Section 251 or Section 252 of the Act, the rates BellSouth charges for its CNAM database service is not an issue appropriate for arbitration. In addition, MediaOne already has an agreement with BellSouth for this service and is inappropriately seeking to be relieved of its contractual obligations.

MEDIAONE: The Commission should determine that CNAM database queries are an unbundled network element. By law, pricing for unbundled network elements must be based on cost, be non-discriminatory, and may include a reasonable profit. MediaOne does not believe that the \$.016/query pricing being proposed by BellSouth is cost based and further believes that the Commission should require BellSouth to prove how this price was determined and that it is cost based.

STAFF: Staff takes no position at this time.

ISSUE 5: **What is the appropriate manner for MediaOne to have access to network terminating wire ("NTW") in multiple dwelling units ("MDU")?**

POSITIONS

BELLSOUTH: BellSouth offers a reasonable method of access to the NTW in BellSouth's garden terminal. Using BellSouth's proposed method, the ALEC installs its own terminal in proximity to the BellSouth garden terminal. BellSouth installs an access terminal that contains a cross-connect panel on which BellSouth will extend the ALEC requested NTW pairs from the garden terminal. The ALEC will then extend a tie cable from their terminal and connect to the pairs they have requested. The ALEC would then install its own Network Interface Device ("NID") within the end-user apartment and connect the ALEC requested pair(s) to this NID. At MediaOne's request, BellSouth will pre-wire NTW pairs, which would obviate the need to have a

BellSouth technician dispatched each time MediaOne wants access to a given end user customer.

MEDIAONE: The Commission should determine that, to the extent BellSouth retains ownership and control of NTW, it will be treated as an unbundled network element, which BellSouth must provide on a nondiscriminatory basis. To accomplish this, BellSouth should terminate its Network Distribution Facilities into a MDU on one cross-connect facility and its NTW on a separate cross-connect facility that would be accessible to all LECs serving the MDU. Each LEC, including BellSouth, would provision service to a specific unit by connecting its cross-connect to the NTW cross connect. This would enable all LECs to have identical access to NTW in accordance with state and federal law.

STAFF: Staff takes no position at this time.

ISSUE 6: **What is the appropriate demarcation point for BellSouth's network facilities serving multiple dwelling units?**

The parties agree that, for purposes of this proceeding, the appropriate demarcation point is set forth in Rule 25-4.0345(1)(b), Florida Administrative Code

ISSUE 7: **What, if anything, should BellSouth be permitted to charge MediaOne for access to NTW?**

POSITIONS

BELLSOUTH: BellSouth should be permitted to charge MediaOne for access to Network Terminating Line at the rates set forth in Exhibit AJV-3 to the testimony of Alphonso J. Varner.

MEDIAONE: So long as BellSouth retains ownership and control of NTW, MediaOne believes it should be priced as an unbundled network element; that is, it should be

priced at cost, as prescribed by the rules of the Commission and the FCC. If the Commission were to order BellSouth to move the demarcation point to the MPOE, NTW would become inside wire. At that point, MediaOne believes it would no longer be obligated to pay BellSouth anything for access to NTW. Telephone companies are precluded from imposing a charge for the use of inside wiring. Moving the demarcation point does not transfer ownership of inside wiring. There are already procedures in place under which carriers recover the costs of inside wiring. Carriers are not entitled to additional compensation for such wiring.

STAFF: Staff takes no position at this time.

ISSUE 8: How many call paths should BellSouth be required to provide to MediaOne, at no cost to MediaOne, for customers who are porting telephone numbers through interim number portability?

This issue has been resolved by the parties.

ISSUE 9: What rate, if any, should BellSouth be allowed to charge for additional call paths provided to MediaOne for customers who are porting telephone numbers through interim number portability?

This issue has been resolved by the parties.

ISSUE 10: In implementing Local Number Portability ("LNP"), should BellSouth and/or MediaOne be required to notify the Number Portability Administration Center ("NPAC") of the date upon which BellSouth will cut-over MediaOne customer numbers at the MediaOne requested time concurrent with BellSouth's return of a Firm Order Commitment ("FOC") to MediaOne?

This issue has been resolved by the parties.

ISSUE 11: Should BellSouth be required to provide a point of contact to intervene in the execution of LNP orders when changes or supplements are necessary for customer-related reasons, and, if so, what charge, if any, should apply?

This issue has been resolved by the parties.

ISSUE 12: The appropriate measurements for inclusion in the MediaOne agreement should be BellSouth's Service Quality Measurements. There is adequate product level detail in the existing BellSouth SQM to insure BellSouth is providing service in compliance with the 1996 Telecom Act (Act)

This issue has been resolved by the parties.

ISSUE 13: See Rulings Section.

IX. EXHIBIT LIST

<u>Witness</u>	<u>Proffered By</u>	<u>I.D. No.</u>	<u>Description</u>
Alphonso J. Varner (Direct)	BellSouth	_____	CNAM Agreement- Annex 314
		(AJV-1)	
Alphonso J. Varner (Direct)	BellSouth	_____	CNAM Product Information
		(AJV-2)	
Alphonso J. Varner (Direct)	BellSouth	_____	Network Terminating Wire Price List
		(AJV-3)	
Alphonso J. Varner (Rebuttal)	BellSouth	_____	Schedule for LNP Deployment
		(AJV-4)	
Alphonso J. Varner (Rebuttal)	BellSouth	_____	BellSouth's Comment in FCC Docket 99-68 NTW Cost Study
		(AJV-1)	
D. Daonne Caldwell	BellSouth	_____	
		(DDC-1)	

<u>Witness</u>	<u>Proffered By</u>	<u>I.D. No.</u>	<u>Description</u>
W. Keith Milner	BellSouth	_____ (WKM-1)	NTW: Schematic and Photographs
Greg Beveridge	MediaOne	_____ (GB-1)	Order approving interconnection, unbundling and resale agreement between BellSouth Telecommunications, Inc. and Comcast Telephony Communications of Florida, Inc. Docket No. 971407-TP, Order No. PSC-98-0209-FOF-TP, issued: February 4, 1998.
Greg Beveridge	MediaOne	_____ (GB-2)	Unbundled Network Terminating Wire: MediaOne information package
		_____ (GB-3)	Alternative contract language for NTW proposed by BellSouth.
		_____ (GB-4)	Wiring closet scenario proposed by BellSouth.
		_____ (GB-5)	MediaOne's UNTW proposal

<u>Witness</u>	<u>Proffered By</u>	<u>I.D. No.</u>	<u>Description</u>
Greg Beveridge	MediaOne	_____ (GB-6)	Composite photographic exhibit: Network Interface Device ("NID") with wall jack; telephone wall jack; wall jack exposed; customer access within the NID; NID exposed; tests access to Telco line; typical telephone equipment room (wiring closet); "66" cross connect block; punch down tool for placing and lifting wires on a cross connect block.
		_____ (GB-7)	Model: Network Interface Device ("NID") with wall jack.
		_____ (GB-8)	Model: Type "66" cross-connect blocks with wiring attached.
	MediaOne	_____ (GB-9)	First Report and Order in CC Docket No. 96-98 (August 8, 1996).
Gary Lane	MediaOne	_____ (GL-1)	Proposed interconnection agreement with attachments.

<u>Witness</u>	<u>Proffered By</u>	<u>I.D. No.</u>	<u>Description</u>
Jim Maher	MediaOne	_____	CC Docket No. 91-281, 10FCC Rcd. 11700, Para. 131.
		(JM-1)	
		_____	CC Docket No. 96-149, 11FCC Rcd. 21905, Para. 107.
		(JM-2)	

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

X. PROPOSED STIPULATIONS

Both parties stipulate that Issues numbers 1, 6, 8, 9, 10, 11 and 12 have been resolved.

XI. RULINGS

A. Ruling on whether issues 2 and 3 are purely legal issues is deferred until the hearing on this docket. The parties will be allowed 5-10 minutes to present argument for the purpose of determining whether this is a legal, factual, or policy determination.

B. Issue 13, filed by MediaOne, raised the following issue: Should the Florida Public Service Commission arbitrate performance incentive payments and/or liquidated damages for purposes of the MediaOne/BellSouth Interconnection Agreement? If so, what performance incentive payments and/or liquidated damage amounts are appropriate, and in what circumstances?

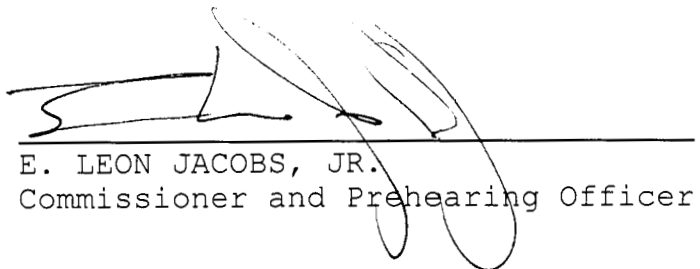
The issue regarding the award of liquidated damages has been raised and denied in other dockets which have been arbitrated by this Commission. Petition of DIECA Communications, Inc. D/b/a Covad Communications Company, Order No. PSC-99-01715-PHO-TP (April 15, 1999). Based on the prior rulings in those dockets, I find that the Commission is without jurisdiction to arbitrate issues on damages. Thus, Issue 13 shall not be arbitrated in this proceeding.

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It is therefore,

ORDERED by Commissioner E. Leon Jacobs, 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 8th day of July, 1999.



E. LEON JACOBS, JR.
Commissioner and Prehearing Officer

(S E A L)

CLF

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.

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

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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.

M E M O R A N D U M

July 8, 1999

RECEIVED-TPSC

99 JUL -8 PM 12:15

RECORDS AND
REPORTING

TO: DIVISION OF RECORDS AND REPORTING

FROM: DIVISION OF LEGAL SERVICES (FORDHAM) *Dr. for CLF*

RE: DOCKET NO. 990149-TP - PETITION BY MEDIAONE FLORIDA TELECOMMUNICATIONS, INC. FOR ARBITRATION OF AN INTERCONNECTION AGREEMENT WITH BELLSOUTH TELECOMMUNICATIONS, INC. PURSUANT TO SECTION 252(B) OF THE TELECOMMUNICATIONS ACT OF 1996.

99-1309-PHD

Attached is a PREHEARING ORDER, to be issued in the above-referenced docket. (Number of pages in order - 17)

MUST GO TODAY

CLF/anc
Attachment
cc: Division of Communications
I: 990149po.clf

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1m