

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition of BellSouth  
Telecommunications, Inc. for  
Section 252(b) arbitration of  
interconnection agreement with  
Intermedia Communications, Inc.

DOCKET NO. 991854-TP  
ORDER NO. PSC-00-0284-PCO-TP  
ISSUED: February 11, 2000

ORDER ESTABLISHING PROCEDURE

On December 7, 1999, BellSouth Telecommunications, Inc. (BellSouth) filed a petition for arbitration of an interconnection agreement with Intermedia Communications, Inc. (Intermedia) under Section 252(b) of the Federal Telecommunications Act of 1996 (Act). This matter has been set for an administrative hearing.

Part II of the Act sets forth provisions regarding the development of competitive markets in the telecommunications industry. Section 251 of the Act regards interconnection with the incumbent local exchange carrier and Section 252 sets forth the procedures for negotiation, arbitration, and approval of agreements.

Section 252(b) addresses agreements arrived through compulsory arbitration. Specifically, Section 252(b)(1) states:

(1) Arbitration. - During the period from the 135th to 160th day (inclusive) after the date on which an incumbent local exchange carrier receives a request for negotiation under this section, the carrier or any other party to the negotiation may petition a State commission to arbitrate any open issues.

Section 252(b)(4)(C) states that the State commission shall resolve each issue set forth in the petition and response, if any, by imposing the appropriate conditions as required. This section requires this Commission to conclude the resolution of any unresolved issues not later than nine months after the date on which the local exchange carrier received the request under this section. In this case, however, the parties have explicitly waived the nine-month requirement set forth in the Act.

This Order is issued pursuant to the authority granted by Rule 28-106.211, Florida Administrative Code, which provides that the presiding officer before whom a case is pending may issue any

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orders necessary to effectuate discovery, prevent delay, and promote the just, speedy, and inexpensive determination of all aspects of the case.

Section 252(b)(4)(A) provides that this Commission shall limit its consideration of any petition to the issues set forth in the petition and in the response, if any. The hearing will be conducted according to the provisions of Chapter 120, Florida Statutes, and all administrative rules applicable to this Commission.

The scope of this proceeding shall be based upon the issues raised by the parties up to and during the prehearing conference, unless modified by the Commission.

#### Discovery

Due to the expedited time schedule for this proceeding, all discovery responses shall be served within twenty (20) days of service of the discovery request. There shall be no extra time for mailing throughout this proceeding.

When discovery requests are served and the respondent intends to object to or ask for clarification of the discovery request, the objection or request for clarification shall be made within ten days of service of the discovery request. This procedure is intended to reduce delay in resolving discovery disputes.

The hearing in this docket is set for April 10 and 11, 2000. Unless authorized by the Prehearing Officer for good cause shown, all discovery shall be completed by April 3, 2000. All interrogatories, and requests for production of documents shall be numbered sequentially in order to facilitate their identification. The discovery requests will be numbered sequentially within a set and any subsequent discovery requests will continue the sequential numbering system. Pursuant to Rule 28-106.206, Florida Administrative Code, unless subsequently modified by the Prehearing Officer, the following shall apply: interrogatories, including all subparts, shall be limited to 75, and requests for production of documents, including all subparts, shall be limited to 75.

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

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confidentiality has been made and the information has not been made a part of the evidentiary record 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 period set forth in Section 364.183, Florida Statutes.

#### Diskette Filings

See Rule 25-22.028(1), Florida Administrative Code, for the requirements of filing on diskette for certain utilities.

#### Prefiled Testimony and Exhibits

Each party shall prefile, in writing, all testimony that it intends to sponsor. Such testimony shall be typed on 8 ½ inch x 11 inch transcript-quality paper, double spaced, with 25 numbered lines, on consecutively numbered pages, with left margins sufficient to allow for binding (1.25 inches).

Each exhibit intended to support a witness' prefiled testimony shall be attached to that witness' testimony when filed, identified by his or her initials, and consecutively numbered beginning with 1. All other known exhibits shall be marked for identification at the prehearing conference. After an opportunity for opposing parties to object to introduction of the exhibits and to cross-examine the witness sponsoring them, exhibits may be offered into evidence at the hearing. Exhibits accepted into evidence at the hearing shall be numbered sequentially. The pages of each exhibit shall also be numbered sequentially prior to filing with the Commission.

An original and 15 copies of all testimony and exhibits shall be prefiled with the Director, Division of Records and Reporting, by the close of business, which is 5:00 p.m., on the date due. A copy of all prefiled testimony and exhibits shall be served by mail or hand delivery to all other parties and staff no later than the date filed with the Commission. Failure of a party to timely prefile exhibits and testimony from any witness in accordance with the foregoing requirements may bar admission of such exhibits and testimony.

#### Prehearing Statement

All parties in this docket shall file a prehearing statement. Staff will also file a prehearing statement. The original and 15 copies of each prehearing statement shall be prefiled with the

Director of the Division of Records and Reporting by the close of business, which is 5:00 p.m., on the date due. A copy of the prehearing statement shall be served on all other parties and staff no later than the date it is filed with the Commission. Failure of a party to timely file a prehearing statement shall be a waiver of any issue not raised by other parties or by the Commission. In addition, such failure shall preclude the party from presenting testimony in support of its position. Such prehearing statements shall set forth the following information in the sequence listed below.

- (a) The name of all known witnesses that may be called by the party, and the subject matter of their testimony;
  - (b) a description of all known exhibits that may be used by the party, whether they may be identified on a composite basis, and the witness sponsoring each;
  - (c) a statement of basic position in the proceeding;
  - (d) a statement of each question of fact the party considers at issue, the party's position on each such issue, and which of the party's witnesses will address the issue;
  - (e) a statement of each question of law the party considers at issue and the party's position on each such issue;
  - (f) a statement of each policy question the party considers at issue, the party's position on each such issue, and which of the party's witnesses will address the issue;
  - (g) a statement of issues that have been stipulated to by the parties;
  - (h) a statement of all pending motions or other matters the party seeks action upon;
  - (i) a statement identifying the parties' pending requests or claims for confidentiality; and
  - (j) a statement as to any requirement set forth in this order that cannot be complied with, and the reasons therefore.
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Prehearing Conference

Pursuant to Rule 28-106.209, Florida Administrative Code, a prehearing conference will be held in this docket at the Betty Easley Conference Center, 4075 Esplanade Way, Tallahassee, Florida. Any party who fails to attend the prehearing conference, unless excused by the Prehearing Officer, will have waived all issues and positions raised in that party's prehearing statement.

Prehearing Procedure: Waiver of Issues

Any issue not raised by a party prior to the issuance of the prehearing order shall be waived by that party, except for good cause shown. A party seeking to raise a new issue after the issuance of the prehearing order shall demonstrate that: it was unable to identify the issue because of the complexity of the matter; discovery or other prehearing procedures were not adequate to fully develop the issue; due diligence was exercised to obtain facts touching on the issue; information obtained subsequent to the issuance of the prehearing order was not previously available to enable the party to identify the issue; and introduction of the issue could not be to the prejudice or surprise of any party. Specific reference shall be made to the information received, and how it enabled the party to identify the issue.

Unless a matter is not at issue for that party, each party shall diligently endeavor in good faith to take a position on each issue prior to issuance of the prehearing order. When a party is unable to take a position on an issue, it shall bring that fact to the attention of the Prehearing Officer. If the Prehearing Officer finds that the party has acted diligently and in good faith to take a position, and further finds that the party's failure to take a position will not prejudice other parties or confuse the proceeding, the party may maintain "no position at this time" prior to hearing and thereafter identify its position in a post-hearing statement of issues. In the absence of such a finding by the Prehearing Officer, the party shall have waived the entire issue. When an issue and position have been properly identified, any party may adopt that issue and position in its post-hearing statement.

Document Identification

To facilitate the management of documents in this docket, each exhibit submitted shall have the following in the upper right-hand corner: the docket number, the witness's name, the word "Exhibit" followed by a blank line for the exhibit number and the title of the exhibit.

An example of the typical exhibit identification format is as follows:

Docket No. 12345-TL  
J. Doe Exhibit No. \_\_\_\_\_  
Cost Studies for Minutes of Use by Time of Day

Tentative Issues

Attached to this order as Appendix "A" is a tentative list of the issues which have been identified in this proceeding. Prefiled testimony and prehearing statements shall address the issues set forth in Appendix "A".

The issues contained in Appendix "A" are not set forth in sequential order. The parties originally proposed 48 issues but have settled a number of these. The parties are still attempting to settle issues and have, therefore, requested that the numbering of the remaining issues remains the same to avoid confusion. For the time being, the numbering shall remain as the parties have requested.

Intermedia proposed the following issues which are not included in Appendix "A":

ISSUE 33: Should BellSouth and Intermedia be liable to each other for lost switched access revenues due to lost or damaged billing data?

ISSUE 48: Should the parties adopt the performance measures, standards, and penalties imposed by the Texas Public Utility Commission on Southwestern Bell Telephone?

At the Issue Identification Conference held on January 27, 2000, BellSouth indicated that it objected to the inclusion of these issues, stating they were inappropriate for review by the Commission. I agree with BellSouth, because both of these issues address liquidated damages.

The issue regarding the award of liquidated damages has been raised and rejected in numerous other dockets which have been arbitrated by this Commission. In Order No. PSC-96-1579-FOF-TP, issued on December 31, 1996 in consolidated Dockets Nos. 960833-TP, 960846-TP, and 960916-TP, we stated:

We should limit our consideration in this arbitration proceeding to the items enumerated

to be arbitrated in Sections 251 and 252 of the Act, and matters necessary to implement those items. A liquidated damages provision does not meet that standard. The Act does not require parties to include in their agreements any particular method to resolve disputes. Further, it is not appropriate for us to arbitrate a liquidated damages provision under state law. If we did, we would be, in effect, awarding damages to one party for a breach of contract. We lack the authority to award money damages . . . If we cannot award money damages directly, we cannot do so indirectly by imposing a liquidated damages arrangement on the parties.

(citing Southern Bell Telephone and Telegraph Company v. Mobile America Corporation, 291 So.2d 199, 202 (Fla. 1974)).

Accordingly, I find that the liquidated damages issues raised by Intermedia are inappropriate for arbitration by this Commission. Thus, proposed issues 33 and 48 shall not be included in this proceeding.

#### Controlling Dates

The following dates have been established to govern the key activities of this case.

- |   |                   |
|---|-------------------|
| 1) Direct testimony<br>and exhibits (all) | February 14, 2000 |
| 2) Prehearing Statements                  | March 6, 2000     |
| 3) Rebuttal testimony<br>and exhibits     | March 6, 2000     |
| 4) Prehearing Conference                  | March 17, 2000    |
| 5) Hearing                                | April 10-11, 2000 |
| 6) Briefs                                 | May 2, 2000       |

#### Use of Confidential Information At Hearing

It is the policy of this 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. Any party wishing to use any proprietary confidential business information, as that term is defined in Section 364.183(4), 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. Failure of any party to comply with the seven-day requirement described above shall be grounds to deny the party the opportunity to present evidence which is proprietary confidential business information.

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. 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. 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.

#### Post-Hearing Procedure

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 in conformance with the rule, that party shall have waived all issues and may be dismissed from the proceeding.

Pursuant to Rule 28-106.215, Florida Administrative Code, a party's proposed findings of fact and conclusions of law, if any,



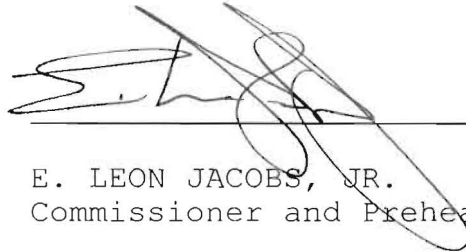
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statement of issues and positions, and brief, shall together total no more than 40 pages, and shall be filed at the same time.

Based upon the foregoing, it is

ORDERED by Commissioner E. Leon Jacobs, as Prehearing Officer, that the provisions of this Order shall govern this proceeding unless modified by the Commission.

By ORDER of Commissioner E. Leon Jacobs, Jr. as Prehearing Officer, this 11th day of February, 2000.



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E. LEON JACOBS, JR.  
Commissioner and Prehearing Officer

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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.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

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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 25-22.0376, 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.

ATTACHMENT A

**"ISSUES"**

- ISSUE 2: Should the definition of "Local Traffic" for purposes of the parties' reciprocal compensation obligations under Section 251(b)(5) of the 1996 Act include the following:
- a) ISP traffic?
  - b) False traffic deliberately generated for the sole purpose of obtaining increased reciprocal compensation (e.g., Router-Router traffic)?
- ISSUE 3: Should Intermedia be compensated for end office, tandem, and transport elements, for purposes of reciprocal compensation?
- ISSUE 4: Should BellSouth be required to pay for additional transport charges where Intermedia has configured its network in a way that its switch is in a different LATA than Intermedia's end user customer?
- ISSUE 7: What charges should Intermedia pay to BellSouth for space preparation for physical collocation?
- ISSUE 10: Are BellSouth's policies regarding conversion of virtual to physical collocation reasonable?
- ISSUE 12: What is the appropriate definition of "currently combines" pursuant to FCC Rule 51.315(b)?
- ISSUE 13: Should BellSouth be required to:
- a) provide access to enhanced extended links ("EELs") at UNE rates; and
  - b) allow Intermedia to convert existing special services to EELs at UNE rates?
- ISSUE 15: Should BellSouth be required to condition loops in accordance with the FCC's most recent ruling?
- ISSUE 17: Should BellSouth be required to offer subloop unbundling and access to BellSouth-owned inside wiring in accordance with the UNE Remand Order and FCC Rule 319(a)?
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- ISSUE 18: Should BellSouth be required to provide access on an unbundled basis in accordance with, and as defined in, the FCC's UNE Remand Order to packet switching capabilities?
- ISSUE 22: Should BellSouth be required to provide non-discriminatory access to interoffice transmission facilities in accordance with, and as defined in, the FCC's UNE Remand Order?
- ISSUE 25: Should BellSouth be required to furnish access to the following as UNEs: (i) User to Network Interface ("UNI"); (ii) Network-to-Network Interface ("NNI") and (iii) Data Link Control Identifiers ("DLCI"), at Intermedia-specified committed information rates ("CIR")?
- ISSUE 26: Should parties be allowed to establish their own local calling areas and assign numbers for local use anywhere within such areas, consistent with applicable law?
- ISSUE 27: Should Intermedia be permitted to establish Points of Presence ("POP") and Points of Interface ("POI") for delivery of its originated interLATA toll traffic?
- ISSUE 29: In the event Intermedia chooses multiple tandem access ("MTA"), must Intermedia establish points of interconnection at all BellSouth access tandems where Intermedia's NXXs are "homed"?
- ISSUE 30: Should Intermedia be require to:
- a) designate a "home" local tandem for each assigned NPA/NXX; and
  - b) establish points of interconnection to BellSouth access tandems within the LATA on which Intermedia has NPA/NXXs homed?
- ISSUE 31: For purposes of compensation, how should intraLATA Toll Traffic be defined?
- ISSUE 32: How should "Switched Access Traffic" be defined?
- ISSUE 35: How should Wireless Type I and/or Type 2A traffic be treated for purposes of the parties' interconnection agreement?

ISSUE 36: What should the appropriate compensation mechanism for transit traffic be for purposes of the parties' interconnection agreement?

ISSUE 37: Should all framed packet data transported within a Virtual Circuit that originate and terminate within a LATA be classified as local traffic?

ISSUE 38: If there are no Virtual Circuits on a frame relay interconnection facility when it is billed, should the parties deem the Percent Local Circuit Use to be zero?

ISSUE 39: What are the appropriate charges for the following:

- a) interconnection trunks between the parties' frame relay switches,
- b) frame relay network-to-network interface ("NNI") parts,
- c) permanent virtual circuit ("PVC") segment (i.e., Data Link Connection Identifier ("DLCI") and Committed Information Rates ("CIR")), and
- d) requests to change a PVC segment or PVC service order record.

ISSUE 45: Should the interconnection agreement specifically state that the agreement does not address or alter either party's provision of Exchange Access Frame Relay Service or interLATA Frame Relay Service?

ISSUE 46: Should Intermedia's obligation to identify and report quarterly to BellSouth the PLCU of the Frame Relay facilities it uses cease when BellSouth obtains authority to provide in-region interLATA service?