

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for arbitration of unresolved issues resulting from negotiations with Sprint-Florida, Incorporated for interconnection agreement, by AT&T Communications of the Southern States, LLC d/b/a AT&T and TCG South Florida.

DOCKET NO. 030296-TP
ORDER NO. PSC-03-0692-PCO-TP
ISSUED: June 9, 2003

ORDER ESTABLISHING PROCEDURE

On March 24, 2003, AT&T Communications of the Southern States, LLC and TCG South Florida (AT&T) filed a petition to arbitrate unresolved issues resulting from AT&T's negotiations with Sprint-Florida, Incorporated (Sprint) for an interconnection agreement pursuant to Section 252(b)(1) of the Telecommunications Act of 1996 (the Act). On April 21, Sprint filed its response. Pursuant to Section 252(b) of the Act, this matter was set for 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. On April 25, 2003, Sprint filed a letter waiving the applicable statutory timeframe to accommodate this Commission's hearing schedule. On May 8, 2003 AT&T also filed a waiver of the statutory timeframe.

DOCUMENT NUMBER-DATE

05094 JUN-9 8

FPSC-COMMISSION CLERK

This Order is issued pursuant to the authority granted by Rule 28-106.211, Florida Administrative Code. Rule 28-106.211 provides that the presiding officer before whom a case is pending may issue any 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) of the Act provides that this Commission shall limit its consideration of any petition for arbitration 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.

Discovery

Due to the compressed time schedule for this proceeding:

- a. All discovery requests shall be served by e-mail or fax, as well as by overnight mail;
- b. Discovery responses shall be served within 15 business days of receipt of the discovery request;
- c. There shall be no extra time for mailing throughout this proceeding; and
- d. All discovery requests and responses shall also be served on staff.

When discovery requests are served and the respondent intends to object to, or to request clarification of, the discovery request, such objection or request for clarification shall be made within five business 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 August 7 and 8, 2003. Unless authorized by the Prehearing Officer for good cause shown, the following shall apply:

- (i) All discovery shall be completed by July 31, 2003;
- (ii) All interrogatories, requests for admissions, and requests for production of documents shall be numbered sequentially in order to facilitate their identification;
- (iii) The discovery requests shall be numbered sequentially within a set; and
- (iv) Any subsequent discovery requests shall 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:

- (i) Interrogatories, including all subparts, shall be limited to 100; and
- (ii) Requests for production of documents, including all subparts, shall be limited to 75.

In response to discovery requests, parties may need to provide information that another party in this proceeding deems, or may deem, confidential. When the submitting party is aware that such information may be deemed confidential, the submitting party shall notify the other party prior to submitting the information. This procedure is to ensure conformance with this Commission's rules regarding the handling and continued confidential treatment of such information pending a formal ruling by the Commission.

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: (i) a formal ruling on such request by the Commission; or (ii) return of the information to the person providing the information. Information that has not been made a part of the evidentiary record in the proceeding, shall be returned to the party providing it within (i) one week of the hearing where no determination of confidentiality has been made; or (ii) the time period set forth in Section 364.183(4), Florida Statutes, where a determination of confidentiality has been made.

Unless authorized by the Presiding Officer for good cause shown, parties shall not conduct discovery during cross-examination at the hearing.

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).

When a witness supports their prefiled testimony with one or more exhibits, each exhibit shall be: (i) attached to that witness' testimony when filed; (ii) identified by his or her initials; and (iii) 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 the Commission Clerk and Administrative Services by 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.

If a demonstrative exhibit or other demonstrative tools are to be used at hearing, they must be identified by the time of the prehearing conference.

Prehearing Statement

All parties in this docket and staff shall file a prehearing statement. The original and 15 copies of each prehearing statement shall be prefiled with the Director of the Division of the Commission Clerk and Administrative Services by 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.

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 party's pending requests or claims for confidentiality;
- (j) a statement as to any requirement set forth in this order that cannot be complied with, and the reasons therefore;
- (k) a statement identifying any decision or pending decision of the FCC or any court that has or may either preempt or otherwise impact the Commission's ability to resolve any of the issues presented or the relief requested in this matter; and
- (l) any objections to a witness' qualifications as an expert. Failure to identify such objection may result in restriction of a party's ability to conduct voir dire.

Prehearing Conference

Pursuant to Rule 28-106.209, Florida Administrative Code, a prehearing conference will be held on July 24, 2003 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:

- (i) it was unable to identify the issue because of the complexity of the matter;
- (ii) discovery or other prehearing procedures were not adequate to fully develop the issue;
- (iii) due diligence was exercised to obtain facts touching on the issue;
- (iv) information obtained subsequent to the issuance of the prehearing order was not previously available to enable the party to identify the issue; and
- (v) introduction of the issue was not 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

Each exhibit submitted shall have the following in the upper right-hand corner:

- (i) the docket number;
- (ii) the witness' name;
- (iii) the word "Exhibit" followed by a blank line for the exhibit number; and
- (iv) 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 that have been identified in this proceeding. Prefiled testimony and prehearing statements shall address the issues set forth in Appendix "A".

Controlling Dates

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

- | | |
|--------------------------------------|----------------------|
| 1) All direct testimony and exhibits | June 19, 2003 |
| 2) Rebuttal testimony and exhibits | July 10, 2003 |
| 3) Prehearing Statements | July 10, 2003 |
| 4) Prehearing Conference | July 24, 2003 |
| 5) Hearing | August 7 and 8, 2003 |
| 6) Briefs | September 12, 2003 |

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(2), Florida Statutes, to protect proprietary confidential business information from disclosure outside the proceeding. Therefore, any party wishing to use any proprietary confidential business information, as that term is defined in Section 364.183(3), 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 that 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 confidentiality. 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 the Commission Clerk and Administrative Services' confidential files.

Post-Hearing Procedure

If the Commission does not make a bench decision at the hearing, 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, the position must be reduced to no more than 50 words. If a post-hearing statement is required and 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.

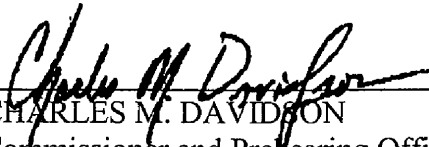
Pursuant to Rule 28-106.215, Florida Administrative Code, a party's proposed findings of fact and conclusions of law, if any, statement of issues and positions, and brief shall together total no more than 40 pages and shall be filed at the same time.

Based upon the foregoing, it is

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ORDERED by Commissioner Charles M. Davidson, as Prehearing Officer, that the provisions of this Order shall govern this proceeding unless modified by the Commission.

By ORDER of Commissioner Charles M. Davidson, as Prehearing Officer, this 9th day of June, 2003.



CHARLES M. DAVIDSON
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.

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; or (2) 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 the Commission Clerk and Administrative Services, 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

Tentative Issues List

- Issue 1: What are each Party's rights and obligations with respect to establishing a point of interconnection (POI) to the other Party's network and delivery of its originating traffic to such POI?
- Issue 2: May AT&T require the establishment of a Mid-Span Fiber Meet arrangement or is the establishment of a Mid-Span Fiber Meet arrangement conditional on the amount of traffic from one network to the other being roughly balanced?
- Issue 3: When establishing a Mid-Span Fiber Meet arrangement, should AT&T and Sprint equally share the reasonably incurred construction costs?
- Issue 4: Should certain traffic types be excluded from interconnection via a Mid-Span Fiber Meet arrangement?
- Issue 5: How should AT&T and Sprint define Local Calling Area for purposes of their interconnection agreement?
- Issue 6: How should AT&T and Sprint define Local Traffic for purposes of their interconnection agreement?
- Issue 7: How should traffic originated and terminated by telephone and exchanged by the parties and transported over internet protocol (in whole or in part, and including traffic exchanged between the parties originated and terminated to enhanced service providers) be compensated?
- Issue 8: Should ISP-Bound Traffic be limited to calls to an information service provider or internet service provider which are dialed by using a local call dialing pattern?
- Issue 9: (a) Should AT&T be required to compensate Sprint for the transport of ISP-Bound Traffic between Sprint's originating local calling area and a POI outside Sprint's local calling area?
- (b) Do the compensation obligations change when a virtual NXX is used?
- Issue 10: When should either AT&T or Sprint be required to install and retain direct end office trunking between an AT&T switching center and a Sprint end office?

- Issue 11: When should each Party be required to establish a direct interconnection for:
(a) Indirect Traffic?
(b) Transit Traffic?
- Issue 12: Should Sprint be required to continue to provide its DSL service when AT&T provides the voice service to the customer?
- Issue 13: What are the parties' rights and obligations following a Legally Binding Action (as defined by agreement of the parties in Section 1, Part B of the agreement) if such action is not stayed but still subject to review by the Commission, FCC or courts?
- Issue 14: Should the terms and conditions of the Performance Measures approved by the Commission be incorporated by reference into the agreement, or should separate terms and conditions be set forth in the agreement?