

BEFORE THE PUBLIC SERVICE COMMISSION

In re: Petition by MCImetro Access Transmission Services LLC d/b/a Verizon Access Transmission Services for arbitration of certain terms and conditions of proposed interconnection agreement with BellSouth Telecommunications, Inc.	DOCKET NO. 050419-TP ORDER NO. PSC-06-0437-PHO-TP ISSUED: May 22, 2006
---	--

Pursuant to Notice and in accordance with Rule 28-106.209, Florida Administrative Code, a Prehearing Conference was held on May 15, 2006, in Tallahassee, Florida, before Commissioner J. Terry Deason as Prehearing Officer.

APPEARANCES:

DULANEY L. O'ROARK, III, ESQUIRE, Six Concourse Parkway, Suite 600, Atlanta, Georgia 30328

On behalf of MCImetro Access Transmission Services LLC d/b/a Verizon Access Transmission Services ("VERIZON ACCESS")

ROBERT A. CULPEPPER, ESQUIRE, BellSouth Center – Suite 4300, 675 West Peachtree Street NE, Atlanta, Georgia 30375; MANUEL A. GURDIAN, ESQUIRE, 150 West Flagler Street, Suite 1910, Miami, Florida 33130

On behalf of BellSouth Telecommunications, Inc. ("BELLSOUTH")

KIRA SCOTT, 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 June 20, 2005, MCImetro Access Transmission Services LLC d/b/a Verizon Access Transmission Services (Verizon Access) filed its Petition for Arbitration of certain terms and

DOCUMENT NUMBER-DATE

04444 MAY 22 06

FPSC-COMMISSION CLERK

conditions of a proposed interconnection agreement with BellSouth Telecommunications, Inc. (BellSouth). On July 15, 2005, BellSouth filed its response to Verizon Access's Petition. Pursuant to Verizon Access's request for arbitration, this matter has been scheduled for an administrative hearing.

By Order No. PSC-05-0927-PCO-TP (Order Establishing Procedure), issued September 19, 2005, certain controlling dates for this Docket were established. On December 9, 2005, Order No. PSC-05-1212-PCO-TP was issued modifying the Order Establishing Procedure. On December 14, 2005, the parties filed a Joint Motion for Continuance of Hearing and Prehearing Deadlines (Joint Motion) due to the pending merger between MCI and Verizon. By Order No. PSC-05-1264-PCO-TP, issued December 27, 2005, we granted the parties' Joint Motion and further modified the procedural dates. Pursuant to that Order, on March 3, 2006, the parties filed a revised issues matrix in which certain issues were resolved and, in some instances, language was changed. Also, on March 24, 2006, the parties filed supplemental<sup>1</sup> testimony on 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.

1. Any party intending to utilize confidential documents at hearing for which no ruling has been made, must be prepared to present their justifications at hearing, so that a ruling can be made at hearing.

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

---

<sup>1</sup> On April 11, 2006, Verizon Access filed its Amended Supplemental Testimony for Don Price including line numbers and a correction on pg. 22.

- a) 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.
- b) 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.
- c) 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.
- d) 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.
- e) 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 Service'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.

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.

V. PREFILED TESTIMONY AND EXHIBITS; WITNESSES

Testimony of all witnesses to be sponsored by the parties has been prefiled. As discussed at the Prehearing Conference, the parties have agreed to stipulate to all witnesses and exhibits, as well as waive cross-examination at the hearing on the condition that the North Carolina hearing transcript and exhibits are entered into the record as an exhibit in this proceeding. Relevant portions of the pre-filed testimony that address the remaining unresolved issues will be inserted into the record as though read. All testimony remains subject to appropriate objections.

VI. ORDER OF WITNESSES

As a result of discussions at the Prehearing Conference, the following witnesses have been excused from this hearing. The testimony of excused witnesses will be inserted into the record as though read, and all exhibits submitted with those witnesses' testimony shall be identified as shown in Section IX of this Order and admitted into the record.

<u>WITNESS</u>	<u>PROFFERED BY</u>	<u>ISSUES</u>
Don Price (Amended Supplemental <sup>2</sup> )	Verizon Access	12, 26, and 34
Pam Tipton (Direct, Rebuttal, and Supplemental)	BellSouth	12, 26, and 34

VII. BASIC POSITIONS

**VERIZON ACCESS:** The parties have been able to resolve most of the issues raised in Verizon Access's arbitration petition, but three issues remain outstanding. Because Verizon Access's proposed resolution of these issues is consistent with the Telecommunications Act of 1996 and sound public policy, each of the issues below should be resolved in its favor.

**BELLSOUTH:** The Commission should adopt each of BellSouth's positions on the issues identified below. BellSouth's positions are consistent with applicable law, and are both technically feasible and reasonable.

**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

---

<sup>2</sup> In addition, on Issue 12, Mr. Price will adopt the Direct Testimony of Greg Darnell at p. 32, line 5 through p. 33, line 9, and the Rebuttal Testimony of Greg Darnell at p. 22, line 18 through p. 24, line 21. On Issue 34, Mr. Price will adopt the Direct Testimony of Greg Darnell at p. 50, line 11 through p. 52, line 8, and the Rebuttal Testimony of Greg Darnell at p. 28, line 12 through p. 30, line 11.

will be based upon all the evidence in the record and may differ from the preliminary positions.

VIII. ISSUES AND POSITIONS<sup>3</sup>

**ISSUE 12:** Should Verizon Access be required to indemnify BellSouth for BellSouth's own negligence for claims by third parties who are not Verizon Access customers in conjunction with BellSouth's provision of PBX Locate Service to Verizon Access?

**VERIZON ACCESS:** No. Verizon Access should not be required to provide such indemnification because it has no contractual relationship with such third parties and thus has no way to limit its liability.

**BELLSOUTH:** When BellSouth provides PBX Locate Service to Verizon Access, Verizon Access should be required to indemnify BellSouth for claims by third parties who are not Verizon Access customers. BellSouth's retail end users indemnify BellSouth when they purchase the equivalent retail service. Also, under the terms of Verizon Access's tariff, when Verizon Access sells its customers BellSouth's PBX locate service, Verizon Access's customers indemnify Verizon Access from third party liability. Thus, if Verizon Access prevails on this issue, BellSouth would be indemnified from third party claims when it provides PBX locate service to its retail customers; however, when Verizon Access sells the BellSouth service, Verizon Access would be indemnified from third party claims, but BellSouth would not be indemnified. BellSouth merely seeks the same level of protection from third party claims when Verizon Access sells its PBX locate service to its customers as it has when it sells the service to a BellSouth end user.

**STAFF:** Staff has no position at this time.

**ISSUE 26:** Is BellSouth obligated to act as a transit carrier? If so, what is the appropriate transit rate?

**VERIZON ACCESS:** BellSouth is obligated to act as a transit carrier because the parties have agreed to language requiring it to perform that function. The parties have attempted to negotiate a transit rate, but have been unable to agree, so determination of a rate by the Commission is required.

---

<sup>3</sup> The issues and positions shown are unresolved. All other issues have been resolved by the parties and as such are not listed in this Order.

Because BellSouth has not justified the transit rate it proposes to charge, the existing rate should remain in place.

**BELLSOUTH:** BellSouth is not required to provide the transit traffic function because this function is not a Section 251 obligation under the 1996 Act. The parties agree that providing transit service is not a Section 251 obligation. Therefore, the Commission can best resolve this issue by directing the parties to negotiate a rate, rather than setting an arbitrated rate. If, however, the Commission decides to set a rate, it should adopt the BellSouth proposed composite rate, which is a reasonable rate that is consistent with the rate other ILECs charge their customers for this function. Transit service is a value-added service for which BellSouth is entitled to be compensated at commercial rates.

**STAFF:** Staff has no position at this time.

**ISSUE 34: What process should be used for the discontinuing of service?**

**VERIZON ACCESS:** The principal dispute is whether, if Verizon Access fails to pay a bill for a BellSouth service, BellSouth may suspend, discontinue or terminate all services it provides to BellSouth region wide. BellSouth's proposed language that would permit it to take this action is unreasonable because it could result in all services to Verizon Access being suspended, discontinued or terminated in all BellSouth states because a small bill for a minor service in one state was mistakenly not paid.

**BELLSOUTH:** If Verizon Access receives a notice of suspension or termination from BellSouth as a result of Verizon Access's failure to timely pay, then Verizon Access should be required to pay all undisputed amounts that are past due as of the due date of the pending suspension or termination action. The Commission should reject Verizon Access's position that BellSouth should be required to conduct a separate suspension and termination process for each past due account.

**STAFF:** Staff has no position at this time.

IX. EXHIBIT LIST

<b>WITNESS</b>	<b>PROFFERED BY</b>	<b>I.D. NO.</b>	<b>DESCRIPTION</b>
Price	Verizon Access	DGP-1	Academic and Professional Qualifications of Don Price
Tipton	BellSouth	PAT-1	MCI General Service Agreement
Tipton		PAT-2	BellSouth/MCI Interconnection Agreement
Tipton		PAT-3	BellSouth Tariff for Pinpoint Service
Tipton		PAT-8	Response to Staff's Interrogatory No. 117 in Docket 040130-TP (Pgs. 5 — 83 are CONFIDENTIAL)
Tipton		PAT-9	Correspondence between BellSouth and MCI (CONFIDENTIAL)

X. PROPOSED STIPULATIONS

There are no proposed stipulations at this time.

XI. PENDING MOTIONS

There are no pending motions at this time.

XII. PENDING CONFIDENTIALITY MATTERS

There are no pending confidentiality matters at this time.

XIII. DECISIONS THAT MAY IMPACT COMMISSION'S RESOLUTION OF ISSUES

The parties have stated in their prehearing statements that the following decisions have a potential impact on our decision in this proceeding:

**VERIZON ACCESS:** The issue of the appropriate transit rate is being considered by the Commission in its generic transit traffic case in Docket Nos. 050119-TP and 050125-TP. The Commission's decision in those dockets thus may affect the outcome of Issue 26 in this Docket.

**BELLSOUTH:** In Docket No. 040130-TP, Order No. PSC-05-0975-FOF-TP, the Commission determined in the context of a Section 252 arbitration that transit service should not be priced at TELRIC. *Id.* at 52.

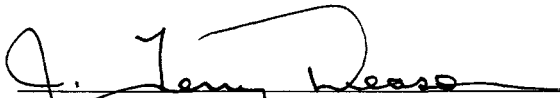
XIV. RULINGS

A. Opening statements, if any, shall not exceed ten minutes per party.

It is therefore,

ORDERED by Commissioner J. Terry Deason, 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 J. Terry Deason, as Prehearing Officer, this 22nd day of May, 2006.

  
J. TERRY DEASON  
Commissioner and Prehearing Officer

( S E A L )

KS



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.