

MEMORANDUM

November 15, 1994

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FPSC-RECORDS/REPORTING

TO: DIVISION OF RECORDS AND REPORTING
FROM: DIVISION OF LEGAL SERVICES (CANZANO) *EH*
RE: DOCKET NO. 921074-TP - EXPANDED INTERCONNECTION PHASE II
AND LOCAL TRANSPORT RESTRUCTURE

Attached is an ORDER GRANTING MODIFICATION OF PAGE AND WORD LIMITS to be issued in the above-referenced docket. (Number of pages in Order - 4)

DLC/clp
Attachment
cc: Division of Communications
I:921074sb.dc

MUST GO TODAY

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Expanded Interconnection) DOCKET NO. 921074-TP
Phase II and Local Transport) DOCKET NO. 930955-TL
Restructure) DOCKET NO. 940014-TL
_____) DOCKET NO. 940020-TL
DOCKET NO. 931196-TL
DOCKET NO. 940190-TL
ORDER NO. PSC-94-1395-PCO-TP
ISSUED: November 15, 1994

ORDER GRANTING MODIFICATION OF PAGE AND WORD LIMITS

BY THE COMMISSION:

On October 12, 1994, BellSouth Telecommunications, Inc., d/b/a Southern Bell Telephone and Telegraph Company (Southern Bell) filed, in addition to its post-hearing brief, a Motion for Modification of Page and Word Limits of Rules 25-22.056(1)(d) and 25-22.056(3)(a), Florida Administrative Code. The post-hearing briefs were also due on October 12, 1994.

Rule 25-22.056(1)(d), Florida Administrative Code, states that a party's proposed findings of fact, conclusions of law, statement of issues and positions and brief shall together total no more than 60 pages. If the hearing has been conducted by a panel of Commissioners, the rule provides that the prehearing officer may modify the page limit for good cause shown.

Southern Bell requests that it be allowed to exceed the page limit requirement by 11 pages, because this docket involves the consolidation of two distinct set of issues, both of which are complex. Southern Bell states that it must brief twenty of the issues in this docket, some of which were the subject of extensive testimony, and some of which were legal issues involving a complicated constitutional analysis or analysis of applicable Florida law. In addition, Southern Bell states that because of the history of these dockets, the Statement of the Case was more complicated than in most dockets.

Rule 25-22.056(3)(a), Florida Administrative Code, states that each party to a proceeding shall file a post-hearing statement of issues and positions that includes a summary of each position of no more than 50 words. The 50-word limit may be modified for good cause shown.

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Regarding the post-hearing statement of positions, Southern Bell notes that it could state its position on each of these issues in less than fifty words. Given the complexity of these issues, however, Southern Bell asserts that a more succinct statement would simply not be adequate to fully set forth its position. Southern Bell requests that the fifty word limitation be modified so that it does not submit statements of its position that are incomplete in their summary of (or references to) the discussion that follows.

On October 20, 1994, Southern Bell filed an amendment to its motion stating that

no party to this docket has any objection to either of the requests in Southern Bell's motion, i.e., to exceed the page limit upon its Brief, and to exceed the word limit upon its various statements of position.

Also on October 20, 1994, Time Warner AxS of Florida, L.P. (Time Warner) filed a Memorandum in Response to Southern Bell's Motion for Modification of Page and Word Limits. Time Warner does not object to Southern Bell's brief exceeding the sixty page limit because Southern Bell had to address each issue in this proceeding. Neither does Time Warner object to Southern Bell exceeding the fifty word position summary.

The rules regarding post-hearing filings are to be taken seriously. Rule 25-22.056(3)(b) provides that

[i]n the event that a party fails to file a post-hearing statement in conformance with Rule (3)(a), and no other post-hearing memorandum is filed which conforms to this rule, that party shall have waived all issues and may be dismissed from the proceeding.

First, the complexity of this docket was known since February 16, 1994 when a workshop was held to establish the preliminary list of issues. Certainly the complexity of this docket was known at the time of the prehearing conference in August, including the new twists to the legal issues resulting from what was occurring at the federal level. Since this is the reason for requesting the waiver, Southern Bell should have requested waiver of these rules either at the prehearing conference or within a reasonable time so that all parties could have been granted the same opportunity. Instead, Southern Bell filed its motion the same day that all the parties filed their post-hearing briefs.

Second, Time Warner states that "[o]ther parties exceeding said limit without relief from the Commission, however, should not be permitted to do so." Because position summaries are incorporated directly into staff's post-hearing recommendation, and the parties are not allowed to address the Commission when it votes on the issues, Time Warner states that it is unfair for some parties to exceed the position summary rule without Commission approval while the remaining parties comply with the word limitation. As specifically noted in a footnote, Time Warner states that ". . . Centel and United have simply taken what Southern Bell has requested. That is, they have filed a brief which includes position summaries of seventy-five words or more."

In fact, several parties have exceeded the summary position requirement: Southern Bell, Intermedia, Teleport, United/Centel, and Sprint. Although Time Warner objects to other parties' not requesting relief of the rules, I find that all parties' post-hearing briefs are acceptable in this instance, even though they exceeded the limitations provided by the rules. No one objected to Southern Bell's motion which was filed concurrently with its brief. Although Time Warner takes exception with the fact that some parties exceeded the limits without requesting relief, the fairness issue remains the same. Because Southern Bell filed its motion at the eleventh hour, none of the other parties could have been granted the same relief within a reasonable time to file the brief. This time, no party shall be required to file amended summary positions nor will any party be dismissed from this proceeding because the post-hearing position summaries or number of pages were not in conformance with the rules. In the future, deviations from these rules without adequate notice and prior approval will not be tolerated.

It is therefore

ORDERED by Chairman J. Terry Deason, as Prehearing Officer, that BellSouth Telecommunications, Inc.'s Motion for Modification of Page and Word Limits of Rules 25-22.056(1)(d) and 25-22.056(3)(a), Florida Administrative Code is hereby granted.

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By ORDER of Chairman J. Terry Deason, as Prehearing Officer,
this 15th day of November, 1994.


J. TERRY DEASON, Chairman and
Prehearing Officer

(S E A L)

DLC

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 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.