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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In the Matter of: Petition of Sprint
Communications Company Limited
Partnership for Arbitration of Proposed
Interconnection Agreement with BellSouth
Telecommunications, Inc. Pursuant to the
Telecommunications Act of 1990.

Docket No. 96-1150-TP

Filed: October 15, 1996

**RESPONSE OF BAPCO TO THE SPRINT PETITION FOR
ARBITRATION AND MOTION TO DISMISS THOSE PORTIONS
OF THE SPRINT PETITION SEEKING ARBITRATION
OF DIRECTORY PUBLICATIONS ISSUES**

I. INTRODUCTION AND SUMMARY

BellSouth Advertising & Publishing Corporation ("BAPCO"), through undersigned counsel, responds to and moves to dismiss all portions of the September 20, 1996 "Petition for Arbitration of Interconnection With BellSouth Telecommunications, Inc. Under the Telecommunications Act of 1996" ("Petition") filed by Sprint Communications Company Limited Partnership ("Sprint") that seek to compel arbitration of directory publication matters.

The scope of compulsory arbitration under Section 252 of the Telecommunications Act of 1996 ("Federal Act") is confined to those duties of a LEC or ILEC that are identified in Section 251 of the Federal Act. The Federal Act and the Federal Communications Commission's ("FCC") recent orders implementing the Federal Act demonstrate and confirm that none of those duties include matters of directory publication.

Sprint seeks to use the compulsory arbitration provision of the Federal Act to impose upon BAPCO a set of terms and conditions for directory publication.¹ Although the

¹ Sprint intends that the compulsory arbitration process apply directly to BAPCO. Exhibit 2 of Sprint's Petition, at Section IX which identifies the host of directory publication matters included in the Petition under the heading "White/Yellow Page Directory Listing," states that for the purposes of Section IX the term "ILEC" means the directory publishing affiliate. For the purposes of this Motion to Dismiss, the set of directory publication matters identified by Sprint in its Petition and sought to be subject to arbitration under the Federal Act are collectively referred to as the Sprint "Directory Demands." See, the Petition, pp.

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arbitration provisions of the Federal Act apply to BST, BAPCO is not subject to the compulsory arbitration provisions of the Federal Act. BAPCO is neither a telecommunications carrier nor a local exchange carrier within the meaning of Section 251 or Section 252 of the Federal Act. Accordingly, BAPCO cannot be made to arbitrate any of the Directory Demands. Specifically, the Federal Act does not grant the Commission jurisdiction to arbitrate any of the Directory Demands. BAPCO is a company separate and distinct from BST. BAPCO is not under the control or ownership of BST. BAPCO is not a "Bell operating company" within the meaning of the Federal Act.

Sprint is well aware that it is BAPCO and not BST that provides directory publication services and has negotiated with BAPCO accordingly. Sprint has been involved in separate negotiations with BAPCO, which negotiations have resulted in the submission to Sprint of a complete directory publication agreement with BAPCO. Sprint has not responded to this proposed agreement other than through its Petition, although Sprint has apparently agreed to the terms of the proposed agreement, See, Exhibit 3 of the Petition, pp. 20-22.

Directory publication matters and BAPCO simply are not subject to compulsory arbitration under the Federal Act. Sprint has made no showing in its Petition that such matters or BAPCO are subject to compulsory arbitration under the Federal Act. In light of the demonstration made herein that neither directory issues nor BAPCO are subject to compulsory arbitration under Section 252 of the Federal Act, Sprint's Petition, as it relates to directory issues, should be dismissed.

36-38. See also, Exhibit 2 of the Petition, pp. 21-23; Exhibit 3 of the Petition, pp. 20-22; and Exhibit 4 of the Petition, pp. 23-26.

II. THE FEDERAL ACT DOES NOT PROVIDE A BASIS FOR COMPULSORY ARBITRATION OF BAPCO'S PUBLICATION OF DIRECTORIES

- A. The scope of compulsory arbitration under Section 252 is limited to the requirements of interconnection, resale of services or unbundling of elements defined in Section 251.

The scope of compulsory arbitration under the Federal Act is defined by the Federal Act itself. Compulsory arbitration under Section 252 of the Federal Act is confined to those subjects and matters identified in Section 251. Section 251(c)(1) provides as follows:

(c) ADDITIONAL OBLIGATIONS OF INCUMBENT LOCAL EXCHANGE CARRIERS.--In addition to the duties contained in subsection (b), each incumbent local exchange carrier has the following duties:

(1) DUTY TO NEGOTIATE.-- The duty to negotiate in good faith in accordance with Section 252 the particular terms and conditions of agreements to fulfill the duties described in paragraphs (1) through (5) of subsection (b) and this subsection....

47 U.S.C. § 251(c)(1). Thus, the scope of arbitration is the particular terms and conditions of agreements that fulfill the duties defined in Sections 251(b) and 251(c).²

On August 8, 1996, the FCC released its First Report and Order, which is designed to address matters raised by implementation of Sections 251 and 252 of the Federal Act.³ While certain aspects of the FCC's First Report and Order exceed the FCC's authority under or are inconsistent with the Federal Act,⁴ the FCC's First Report and Order does clearly

² Other provisions of the Federal Act confirm this point. Section 252(a)(1) provides that negotiations to reach voluntary agreements are triggered by "a request for interconnection, services, or network elements pursuant to Section 251." Section 252(c) states that in resolving an arbitration under Section 252(b), a State commission shall "ensure that such resolution and conditions meet the requirements of Section 251...."

³ See, In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, CC Docket No. 96-98, Interconnection between Local Exchange Carriers and Commercial Mobile Radio Service Providers, CC Docket No. 95-185, First Report and Order, FCC 96-325 (rel. August 8, 1996) (hereinafter "FCC's First Report and Order").

⁴ See, Petition For Review, Filed by Bell Atlantic Corporation, BellSouth Corporation and Pacific Telesis Group v. Federal Communications Commission and United States of America, Case No. 96-1318, D.C.Cir. (filed Friday, September 6, 1996); Motion For Expedited Consideration and For A Briefing Schedule, Bell Atlantic Corporation, BellSouth Corporation and Pacific Telesis Group v. Federal Communications Commission and United States of America, Case No. 96-1318, D.C.Cir. (filed Friday, September 6, 1996); See also, Joint Motion of GTE Corporation and Southern New England Telephone Company, for Stay Pending Judicial Review, CC Docket No. 96-98, (filed August 28, 1996).

indicate that the intended scope of arbitration under Section 252 is limited to interconnection to the local exchange carrier's network, access to unbundled network elements, and resale of telecommunications services as identified in Section 251. For example, the FCC's First Report and Order provides as follows:

133. ... We believe the negotiation/arbitration process pursuant to section 252 is likely to proceed as follows. Initially, the requesting carrier and incumbent LEC will seek to negotiate mutually agreeable rates, terms, and conditions governing the competing carrier's interconnection to the incumbent's network, access to the incumbent's unbundled network elements, or the provision of services at wholesale rates for resale by the requesting carrier. ...

...

135. Under the statutory scheme in sections 251 and 252, state commissions may be asked by parties to define specific terms and conditions governing access to unbundled elements, interconnection, and resale of services beyond the rules the Commission established in this Report and Order. ...

...

137. ... State commissions will make critical decisions concerning a host of issues involving rates, terms, and conditions of interconnection and unbundling arrangements, and exemptions, suspension, or modification of the requirements in section 251. ...⁵

It is plain from the language of the relevant provisions of the Federal Act and the FCC's First Report and Order that the scope of a request for a voluntary agreement is limited to interconnection, resale of services or unbundling of network elements as identified in Section 251 of the Federal Act. Likewise, the issues to be resolved by compulsory arbitration are those matters of interconnection, resale of services or unbundling of network elements that are identified in Section 251.

Directory publication matters are mentioned nowhere in Section 251 of the Federal Act. Section 251 describes in detail multiple obligations of telecommunications carriers and local exchange carriers, but none of those descriptions includes directory publication matters. Careful attention to the definition of the matters that are included in Section 251,

⁵FCC's First Report and Order, ¶¶ 133-137 (emphasis supplied).

namely, interconnection, resale of services and unbundling of network elements, reinforces that directory publication is not a subject addressed anywhere in Section 251.

1. Interconnection

Section 251(c)(2) describes the duty of an incumbent local exchange carrier with respect to interconnection. That duty is to provide

interconnection with the local exchange carrier's network ...
for the transmission and routing of telephone exchange
service and exchange access.

Telephone exchange service and exchange access do not constitute or include directory publication and are not services otherwise provided by BAPCO.⁶ Moreover, the FCC has recently concluded that the requirements of interconnection is limited "only to the physical linking of two networks for the mutual exchange of traffic."⁷ It is plain that the interconnection requirements of Section 251 do not encompass directory publication.

2. Resale of Services

Sections 251(b)(1) and 251(c)(4) describe the obligations of a local exchange carrier with respect to resale. The resale obligations are limited to retail services which meet the statutory definition of "telecommunications services."⁸ The term "telecommunications service" is defined by the Federal Act as "the offering of telecommunications for a fee directly to the public..."⁹ "Telecommunications" is defined as

the transmission, between or among points specified by the
users, of information of the user's choosing, without change

⁶"Telephone exchange service" and "exchange access" are defined respectively by 47 U.S.C. §153(18) and 47 U.S.C. §153(40).

⁷ See, FCC's First Report and Order, ¶ 176.

⁸ See, FCC's First Report and Order, ¶ 871 and note 2088.

⁹47 U.S.C. §153(51).

in the form or content of the information as sent and received.¹⁰

BAPCO provides no telecommunications services within the meaning of the Federal Act and therefore the resale duties of a local exchange carrier as described in Section 251 do not describe the activities of and are not applicable to BAPCO.

3. Unbundled Access

Section 251(c)(3) defines the duty of an incumbent local exchange carrier with regard to unbundled access. That duty is to provide

nondiscriminatory access to network elements on an unbundled basis at any technically feasible point ... in a manner that allows requesting carriers to combine such elements in order to provide such telecommunications service.

As already shown, BAPCO neither owns nor possesses any network that is a component of the provision of telecommunications service, as that term is defined by the Federal Act. The definition of "network elements" as used in the Federal Act reinforces that conclusion.¹¹ The FCC's First Report and Order adopts a "concept of unbundled elements as physical facilities of the network, together with the features, functions and capabilities associated with those facilities" and concludes that the definition of a network element is limited to those elements "used in the provision of a telecommunications service."¹²

¹⁰47 U.S.C. §153(48).

¹¹A network is defined as a "facility or equipment used in the provision of a telecommunications service [including] features, functions, and capabilities that are provided by means of such facility or equipment, including subscriber numbers, databases, signalling systems, and information sufficient for billing and collection or used in the transmission, routing, or other provision of a telecommunications service." 47 U.S.C. §153(45).

¹² See, FCC First Report and Order, ¶¶ 258 and 261.

4. Dialing Parity

Section 251(b)(3) describes the duty of a LEC with respect to "dialing parity." That provision provides, in pertinent part, that a LEC has a duty to permit competing providers "to have nondiscriminatory access...to directory listing...." 47 U.S.C. § 251(b)(3) In its Second Report and Order and Memorandum Opinion and Order, the FCC addressed the meaning of that requirement. The FCC determined that the meaning of this provision is that the competing provider will have from the local exchange carrier nondiscriminatory access to subscriber list information.¹³ The FCC expressly declined to find that access to directory listing pursuant to Section 251(b)(3) means access to white pages, Yellow Pages, "customer guides" and informational pages.¹⁴

Although Section 251 identifies many duties and obligations of a LEC and an ILEC, none of those duties includes the duty to provide directory publication. BAPCO possesses no network elements and its directory publication is not a network element within the meaning of the Federal Act.

- B. The scope of compulsory arbitration under Section 252 does not encompass the requirement of Section 271(c)(2)(B)(viii) concerning customers' white page directory listings.

The Federal Act contains only one provision related to directory publication: Section 271(c)(2)(B)(viii) conditions in-region interLATA services on including competing carriers telephone exchange service customers in white pages directory listings. However, that directory publication requirement is not a duty of a telecommunications carrier or local exchange carrier as defined in Section 251 of the Federal Act. Rather, it is one of fourteen checklist items identified in Section 271 of the Federal Act that a Bell Operating Company (as defined in the Federal Act) must meet in order to be authorized to provide certain

¹³ See, Second Report and Order, generally ¶¶ 130-145, specifically ¶¶ 130, 133, 135 and 137.

¹⁴ See, Second Report and Order, ¶¶ 132, 137.

interLATA services.¹⁵ The checklist requirements contained in Section 271 are not subject to compulsory arbitration under Section 252.

- C. BAPCO is neither a telecommunications carrier nor a local exchange carrier within the meaning of Sections 251 and 252 of the Federal Act and therefore BAPCO cannot be compelled to arbitrate publication of directories.

The requirements of Section 251 respecting interconnection, resale of services and unbundling of network elements are the obligations of a telecommunications carrier and/or a local exchange carrier. The voluntary negotiations to be undertaken pursuant to Section 252(a)(1) and the compulsory arbitration procedure established by Section 252(b) are processes directed to a local exchange carrier. Only a cursory review of the Federal Act is needed to establish that BAPCO is neither a telecommunications carrier nor a local exchange carrier within the meaning of the Federal Act.

A telecommunications carrier is "any provider of telecommunications services." 47 U.S.C. §153(49)¹⁶. A "telecommunications service" is "the offering of telecommunications for a fee directly to the public."¹⁷ BAPCO does not provide "telecommunications services" within the meaning of the Federal Act and therefore is not a telecommunications carrier within the meaning of the Federal Act.

The Federal Act defines a local exchange carrier as

any person that is engaged in the provision of telephone exchange service or exchange access.¹⁸

¹⁵ The requirements of Section 271 of the Federal Act are imposed only upon a Bell Operating Company, such as BST, and do not apply to an affiliate of BST such as BAPCO that does not provide wireline telephone exchange services. See 47 U.S.C. §§ 153(33) and (35) (defining "affiliate" and "Bell Operating Company"). As demonstrated in Section II.C herein, the Federal Act provides other distinctions that exclude a BAPCO and its activity of directory publication from the reach of the Federal Act. The obligations of Sections 251 and 252 apply to "telecommunications carriers" and "local exchange carriers," the essential characteristic of which is the provision of telephone exchange service and exchange access.

¹⁶47 U.S.C. § 153(149).

¹⁷ 47 U.S.C. § 153(51).

¹⁸47 U.S.C. § 153(44).

Telephone exchange and exchange access are defined respectively as

(A) service within a telephone exchange, or within a connected system of telephone exchanges within the same exchange area operated to furnish to subscribers intercommunicating service of the character ordinarily furnished by a single exchange, and which is covered by the exchange service charge, or (B) comparable service provided through a system of switches, transmission equipment, or other facilities (or combination thereof) by which a subscriber can originate and terminate a telecommunications service.¹⁹

and

the offering of access to telephone exchange services or facilities for the purpose of the origination or termination of telephone toll services.²⁰

BAPCO provides neither telephone exchange services nor exchange access. It therefore is not a local exchange carrier within the meaning of Sections 251 and 252 of the Federal Act.

Inasmuch as BAPCO is neither a telecommunications carrier nor a local exchange carrier, the requirements of Section 251 do not apply to it and the compulsory arbitration provisions of Section 252 do not apply to it. A corollary to this conclusion is that the Directory Demands cannot be arbitrated in a Section 252 proceeding between BST and AT&T and between BST and MCI. The Georgia Public Service Commission, in a series of prehearing orders, has ruled that directory publication matters are not arbitrable under the Federal Act and that BAPCO is not subject to compulsory arbitration under the Federal Act.²¹ On October 15, 1996 by a vote of 4-0, the Georgia Public Service Commission sustained the ruling of its prehearing officer that directory publication matters are not arbitrable under the Federal Act. A similar result has been reached by the Tennessee Regulatory Authority.

¹⁹47 U.S.C. §153(18).

²⁰47 U.S.C. §153(41).

²¹ See, First Pre-Arbitration Hearing Order by the Hearing Officer, Docket No. 6801-U (September 26, 1996) and Docket No. 6865-U (September 26, 1996), copies of which are attached to this Response and Motion.

III. THERE ARE NO DIRECTORY ISSUES REMAINING BETWEEN BAPCO AND SPRINT

This Commission has determined that it is not appropriate to litigate in an arbitration proceeding matters which have been resolved through negotiation. See, Order No. PSC-96-1238-PHO-TP, at p. 61. In support of this conclusion, it was stated that:

Section 252(b)(1) of the Act authorizes parties to the negotiation to petition a state commission to arbitrate any open or unresolved issues. Thus, those issues for which the parties reached an accord in the agreement are not "open" or "unresolved" issues that the parties may now submit to this Commission for arbitration. To accede to MCI's position that ... it is free to relitigate in this proceeding any items covered by the agreement would be to render the agreement meaningless, undermine thoroughly our recent approval of the agreement, and strongly discourage parties from negotiating interconnection agreements, contrary to the spirit and intent of the Act and this Commission's policy to encourage negotiated settlements.

Id.

In its Petition Sprint lists a wide range of directory issues. See, the Petition, pp. 36-38; Exhibit 2 of the Petition, pp. 21-23; and Exhibit 4 of the Petition, pp. 23-26. In Exhibit 3, which outlines the status of those issues between Sprint and BST, Sprint appears to indicate that all directory issues have been resolved and agreed. See, Exhibit 3 of the Petition, pp. 20-22. BAPCO is confused by and does not agree with Sprint's presentation of the directory issues in its matrix-Sprint and BAPCO have no executed agreement with respect to the directory services.

Consistent with the Commission's prior order and its policy to encourage negotiated settlements, those portions of Sprint's Petition setting forth directory issues agreed to between Sprint and BAPCO should be dismissed.

IV. CONCLUSION: MOTION TO DISMISS SHOULD BE GRANTED

Based on the foregoing, the Commission should recognize that Sprint's attempt to compel arbitration of its Directory Demands extends beyond the scope of arbitration provided by Section 252 of the Federal Act. Directory publication is not encompassed

within any of the duties imposed upon a LEC or an ILEC by Section 251 of the Federal Act. Accordingly, directory publication matters are not subject to compulsory arbitration. In addition, it is BAPCO and not BST which publishes directories. BAPCO is not an entity subject to compulsory arbitration under Section 252. All matters relating to directory publication have been negotiated between BAPCO and Sprint but have not yet been reduced to an executed agreement. The Commission should therefore grant BAPCO's motion to dismiss all parties of the Petition that include Sprint's Directory Demands.

Respectfully submitted this 15th day of October, 1996, by:



MARK HERRON, ESQUIRE
FLORIDA BAR NO. 199737
E. GARY EARLY, ESQUIRE
FLORIDA BAR NO. 325147
AKERMAN, SENTERFITT & EIDSON, P.A.
216 SOUTH MONROE STREET, SUITE 200
TALLAHASSEE, FLORIDA 32301
(904)222-3471
Attorneys for BellSouth Advertising &
Publishing Corporation

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing was furnished to the following parties this ~~25~~ 24 day of October, 1996:

By delivery to:

Donna Canzano
Division of Legal Services
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399

Nancy White
c/o Nancy Sims
BellSouth Telecommunications
150 South Monroe St., Suite 400
Tallahassee, Florida 32301

C. Everett Boyd, Jr.
Ervin, Varn Jacobs & Ervin
305 South Gadsden Street
Tallahassee, Florida 32301

and by Federal Express to:

Nancy White
BellSouth Telecommunications
675 West Peachtree St., Ste. 4300
Atlanta, Georgia 30375

Benjamin W. Fincher
Sprint Communications Company
Limited Partnership
3100 Cumberland Circle
Atlanta, Georgia 30339



MARK HERRON
E. GARY EARLY

DOCKET# 6801
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COMMISSIONERS.

DAVID N. (DAVE) BAKER, CHAIRMAN
ROBERT S. (BOBBY) BAKER
MAC BARBER
BOB DURDEN
STAN WISEDEBORAH K. FLANNAGAN
EXECUTIVE DIRECTOR
TERRI M. LINDALL
EXECUTIVE SECRETARY**Georgia Public Service Commission**244 WASHINGTON STREET, S.W.
ATLANTA, GEORGIA 30334-8701
(404) 656-4501 OR 1 (800) 282-8813**RECEIVED**

SEP 28 1996

DOCKET NO. 6801-U

EXECUTIVE SECRETARY
G.P.S.C.**FIRST PRE-ARBITRATION HEARING
ORDER BY THE HEARING OFFICER**

In Re: Petition by AT&T for Arbitration of Rates, Terms and Conditions with BellSouth Telecommunications, Inc. Under the Telecommunications Act of 1996

This matter came before the Hearing Officer at the pre-arbitration conference held on September 23, 1996. AT&T Communications of the Southern States, Inc. ("AT&T") filed the above-referenced petition on July 17, 1996, seeking arbitration of rates, terms and conditions for a proposed agreement between it and BellSouth Telecommunications, Inc. ("BellSouth").

This arbitration is conducted pursuant to Section 252(b) of the Telecommunications Act of 1996 ("Act") (47 U.S.C. § 252(b)). The negotiations commenced when BellSouth received AT&T's formal request on March 4, 1996. Therefore, in accordance with Section 252(b)(4)(C) of the Act, the arbitration proceeding must be concluded by December 4, 1996. The schedule set forth below is adopted to meet this deadline.

AT&T shall provide public notice of this arbitration proceeding without delay, and in any event no later than October 23, 1996.

The Parties shall observe the requirements of the Commission's September 3, 1996 Procedural Order with respect to the filing and service of copies of all testimony and pleadings. All filings in this docket are to be filed to the Commission's Executive Secretary no later than 3:30 p.m. of the date on which such documents are due.

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Schedule

October 21, 1996

AT&T and BellSouth shall each file their direct testimony, together with any exhibits (including any cost studies) with the Commission's Executive Secretary by 3:30 p.m. on October 21, 1996.

October 28, 1996

AT&T and BellSouth may each file any rebuttal testimony, together with any rebuttal exhibits, with the Commission's Executive Secretary by 3 30 p.m. on October 28, 1996.

November 12-14, 1996

This arbitration will come before the Commission, acting as the arbitration panel, for hearing beginning at 1:00 p.m. on November 12, 1996 and continuing as necessary at 9:00 a.m. on November 13 and 14, 1996. The hearing will not be scheduled for continuation on November 15, 1996, but such date may be available if necessary.

November 20, 1996

AT&T and BellSouth shall file their post-hearing pleadings, including briefs and any proposed orders, with the Commission's Executive Secretary by 3:30 p.m. on November 20, 1996. At the same time, any Participant may file written comments.

November 22, 1996

Any Party or Participant may file reply briefs or reply comments with the Commission's Executive Secretary by 3:30 p.m. on November 22, 1996.

December 3, 1996

The arbitration case will be presented for the Commission's ruling at the Commission's regularly scheduled Administrative Session on December 3, 1996.

Substantive Issues

Scope of the Unresolved Issues

BellSouth filed a Motion to Compel Compliance with the 1996 Act on August 12, 1996. BellSouth argued that AT&T's petition failed to list the unresolved, contested issues with sufficient specificity to comply with Section 252 of the federal Act. AT&T filed its response on September 19, 1996, stating that its filing was sufficient to put BellSouth on notice of the contested issues. At the pre-arbitration conference, AT&T stated that it would work with BellSouth to identify the "core issues" contested in the case, and include those with the Parties' "seven-day filing," i.e. the filing which the Procedural Order requires the Parties to submit seven days after the pre-arbitration conference.

The Hearing Officer ruled at the pre-arbitration conference that all the unresolved issues should be listed in specific detail, and therefore that the Parties' seven-day filing must include both the list of unresolved core issues, and a list of all sub-issues that remain unresolved. Subsequently, the Parties met in informal conference with the Hearing Officer on September 24, 1996, to express their joint concern regarding the listing of sub-issues. The Parties stated that they wish to place before the Commission for resolution only the core issues. They intend to work out the sub-issues after the Commission has issued its arbitration ruling resolving the core issues. They further stated that they could not guarantee that they will be able to reach agreement on all the sub-issues after the Commission's arbitration ruling, especially within the 10-day time period established by the Procedural Order, but that they will endeavor to do so.

Therefore, the Hearing Officer clarifies the ruling regarding scope of issues as follows: As a part of their seven-day filing, the Parties shall identify and concisely state their positions on each of the core issues, and any other issues including sub-issues, which they ask the Commission to decide in this arbitration docket which has a statutory deadline of December 4, 1996. Pursuant to the Commission's Procedural Order, the seven-day filing should be a joint statement if possible, although separate statements will be allowed. The Parties may use the format of a matrix, of a contractual document displaying items in dispute, or any other format that clearly identifies the issues to be decided by the Commission. Any issues that the Parties do not expressly state on the list(s) accompanying the seven-day filing shall not be considered a part of AT&T's petition in this arbitration docket.

BellSouth's Response on BAPCO Issues, and BAPCO's Petition to Intervene and Motion to Dismiss

The issues which the Commission's Procedural Order directed be addressed at this pre-arbitration conference included the filing on August 12, 1996 of BellSouth's Response to AT&T's Petition, and of the BellSouth Advertising & Publishing Corp. ("BAPCO") Petition to Intervene, and Response to AT&T and Motion to Dismiss Portions Seeking Arbitration of Directory Publication

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Issues. BellSouth argued in its Response that the only directory obligation imposed on BellSouth under the federal Act appears in Section 271 rather than 251 or 252, and that obligation is to provide non-discriminatory access to "white page directory listings" for AT&T's customers, citing 47 U.S.C. § 271(c)(2)(B)(viii). BellSouth asserted that any other directory issues, such as the inclusion of AT&T's logo on the cover of directories, are outside the scope of the federal Act, go to matters and entities outside the jurisdiction of the Commission, and therefore may not be addressed in this arbitration. (BellSouth Response at 4.)

BAPCO's petition essentially interposed a special appearance for the purpose of arguing that either the directory publication issues were not arbitrable, or that if directory publication issues are arbitrable, then BAPCO must be allowed to intervene as a Party to protect its interests.

The Parties and BAPCO stated at the pre-arbitration conference that almost all of the "BAPCO-directory publication" issues which AT&T raised in its Petition have been resolved by a written agreement between AT&T and BAPCO. This was also reflected in AT&T's September 12, 1996 letter advising the Commission of its agreement with BAPCO. Subsequently, on September 20, 1996 BAPCO filed a supplement to its Response to and Motion to Dismiss AT&T's Petition for Arbitration. BAPCO pointed out that there is one directory publication issue remaining between it and AT&T, pertaining to the covers of telephone directories. BAPCO argued that the issue is not arbitrable under Section 251 or 252 of the federal Act. Oral argument was taken at the pre-arbitration conference regarding whether this issue is properly within the scope of this arbitration docket.

On the basis of the written pleadings and the oral arguments at the pre-arbitration conference, the Hearing Officer finds and concludes that BellSouth and BAPCO have correctly argued that the remaining directory publication issue is not arbitrable in this docket under Sections 251 and 252 of the federal Act. BAPCO is not a "local exchange company" ("LEC") or an "incumbent local exchange company" ("ILEC") within the meaning of those two statutory sections; it provides telephone directories and directory publication services, not local exchange telecommunications services. Therefore BAPCO is not itself subject to the obligations imposed upon LECs and ILECs by Sections 251 and 252 of the Act; nor is BAPCO subject to the arbitration procedures prescribed by Section 252 of the Act. Moreover, the issues in a Section 252 arbitration are stated within Sections 251 and 252 of the federal Act, and those provisions do not include the BAPCO-directory publication issue still argued by AT&T.

AT&T should amend its Petition as necessary to remove this issue. Since this directory publication issue is not arbitrable and therefore is ruled to be not within the scope of this arbitration docket, BAPCO may not claim the status of intervenor. Hence the Hearing Officer further concludes that BAPCO shall have the status of Participant rather than intervenor (unless BAPCO chooses, by written pleading, to withdraw its participation entirely).

Procedural Issues

Participants

The following entities have filed to date for intervenor or participant status, and shall be treated as Participants in this docket: Consumers' Utility Counsel Division of the Governor's Office of Consumer Affairs ("CUC"), American Communications Services, Inc. and its subsidiary American Communications Services of Columbus, Inc. ("ACSI"), Cable Television Association of Georgia ("CTAG"), MCImetro Access Transmission Services, Inc. ("MCImetro") a wholly-owned subsidiary of MCI Telecommunications Corporation, Palmer Wireless, Inc. ("Palmer"), Southern Directory Company, Inc. ("Southern Directory"), and Sprint Communications Company L.P. ("Sprint"). In addition, BellSouth Advertising & Publishing Corp. ("BAPCO") filed a motion for intervention, and as discussed previously in this Order, shall be considered a Participant.

Consolidation

The Commission directed that the matters addressed at this pre-arbitration conference include the question whether procedural consolidation will facilitate the management and administration of this arbitration proceeding. Any consolidation will not confer rights of intervention or otherwise affect upon any Party's substantive rights, duties or obligations. In addition, on September 3, 1996 ACSI filed a motion seeking consolidation of all four pending arbitration dockets. (The other three are Dockets No. 6759-U, MFS; 6854-U, ACSI; and 6865-U, MCI.)

At the pre-arbitration conference, AT&T and MCI supported consolidation of this docket with other arbitration dockets, and specifically with MCI's arbitration in Docket No. 6865-U. However, MCI did not file a motion in this docket seeking such consolidation. BellSouth indicated that it was neutral on the question of consolidation, and expressed concern regarding procedural safeguards that should be adopted in the event some cases are consolidated. ACSI, which is a Participant in this case, supported consolidation consistent with its motion seeking consolidation. Essentially, ACSI believes that consolidation will aid in addressing issues that overlap or are in common among more than one arbitration docket.

The Parties and Participants also referred to their previous positions regarding consolidation expressed at the pre-arbitration conference held on September 19, 1996 in the MFS case with BellSouth (Docket No. 6759-U), and the Hearing Officer takes notice of the transcript from that proceeding with respect to those positions and arguments. These include MFS' opposition to having its case consolidated with any other cases.

The Hearing Officer finds and concludes that consolidation of this docket with other arbitration dockets may not be appropriate. This is especially true where, as here, the issues have not been stated with concise clarity. Therefore, consolidation will not be ordered at this time. The Hearing Officer may revisit this issue after AT&T and BellSouth submit their seven-day filing that

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includes, among other things, a list of "core issues" and any other issues or sub-issues that the Commission is asked to decide. Without such a specific list of the issues, it will be difficult if not impossible to identify common issues which would support consolidation.

Discovery

No discovery issue was raised at the pre-arbitration conference, other than AT&T's July 17, 1996 motion for a protective order that apparently would apply to information both in discovery and potentially at the hearing in this case. BellSouth stated that it will work with AT&T to develop a non-disclosure agreement allowing AT&T access to requested information that is alleged confidential or trade secret. The Parties are encouraged to review the Commission's trade secret rules and ensure that any such agreement regarding discovery and/or use of information at the hearing comports with those rules. The Parties will submit their non-disclosure agreement with their seven-day filing.

In the event that any dispute arises regarding discovery, the Parties shall follow the procedures outlined in the Commission's Procedural Order by promptly initiating a request for resolution by the Hearing Officer. If a dispute arises concerning the alleged trade secret status of information requested during discovery, the same procedures will apply.

Use of "Best and Final Offer" Method for Arbitration

Both Parties at the pre-arbitration conference opposed the use of a "best and final offer" method of arbitration. The Hearing Officer finds that it would not be appropriate to limit the Commission by a requirement that the Commission's arbitration ruling merely adopt one Party's position in full. While the Parties may submit their position in post-hearing pleadings in any manner they find appropriate, including a "best and final offer," the Hearing Officer does not find it appropriate to attempt to limit the Commission's discretion. The Commission should be able to select either party's position, or to forge a resolution in the middle ground that the Commission may find best comports with the pricing standards of Sections 251 and 252 of the federal Act. Therefore, the Hearing Officer does not adopt the use of "best and final offer" arbitration.

Opening Statements

AT&T requested that Parties be allowed opening statements by counsel at the arbitration hearing. BellSouth was unopposed to this request. As the Hearing Officer ruled during the pre-arbitration conference, opening statements by counsel will be permitted but shall be limited to no more than 15 minutes per Party.

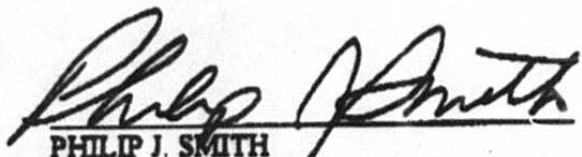
Implementation

Within seven days following this pre-arbitration conference, the Parties shall submit a written statement to the Commission pursuant to the Commission's Procedural Order, reporting on the

outcome of this pre-arbitration conference. The statement shall incorporate both procedural and substantive matters as discussed and resolved at the pre-arbitration conference, including but not limited to: a list of the unresolved "core issues" and all other issues or sub-issues which the Commission is asked to resolve by this arbitration, a statement whether the Parties have resolved any issues; and a copy of the non-disclosure agreement they develop regarding discovery and, if applicable, information at the hearing. This should be a joint statement if possible, but separate statements will be permitted. If a Party takes exception to any decision by the Hearing Officer, that Party must simultaneously file a separate request with the Commission identifying the decision, stating the basis upon which the Party takes exception, and clearly stating the relief requested.

Any exceptions to the matters contained within this Pre-Arbitration Hearing Order are to be filed with the Commission's Executive Secretary by 12:00 noon on Monday, September 30, 1996.

So ordered this 26th day of September, 1996.



PHILIP J. SMITH
SPECIALLY APPOINTED HEARING OFFICER
GEORGIA PUBLIC SERVICE COMMISSION

BEFORE THE GEORGIA PUBLIC SERVICE COMMISSION

**Petition by AT&T for Arbitration of Rates,
Terms and Conditions with BellSouth
Telecommunications, Inc.**

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Docket No. 6801-U

CERTIFICATE OF SERVICE

I hereby certify that the First Pre-arbitration Hearing Order in the above-referenced arbitration docket was filed with the Commission's Executive Secretary, and copies of same were served upon the Parties in each docket by first-class mail to all persons shown below, on September 26, 1996:

Terri M. Lyndall, Esq.
Executive Secretary
Georgia Public Service Comm.
244 Washington St., SW
Atlanta, GA 30334-5701

Michael S. Bradley, Esq.
Hicks Maloof & Campbell
Marquis Two Tower Suite 2200
285 Peachtree Ctr. Ave. NE
Atlanta, GA 30303-1234

Tom Bond, Esq.
Assistant Attorney General
State Law Department
40 Capitol Square Suite 132
Atlanta, GA 30334

James D. Comerford, Esq.
Long Aldridge & Norman
One Peachtree Ctr. Suite 5300
303 Peachtree St.
Atlanta, GA 30308

Jim Hurt, Esq., Director
Consumers' Utility Counsel Div.
Governor's Office of
Consumer Affairs
2 MLK Jr. Drive, Plaza Level East
Atlanta, GA 30334-4600

William Rice, Esq.
Long Aldridge & Norman
One Peachtree Ctr., Suite 5300
303 Peachtree St.
Atlanta, GA 30308

Fred McCallum, Jr., Esq.
BellSouth Telecommunications
125 Perimeter Ctr. West Rm. 376
Atlanta, GA 30346

Charles F. Palmer
Troutman Sanders LLP
5200 NationsBank Plaza
600 Peachtree St., NE
Atlanta, GA 30308-2216

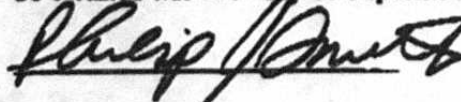
Roxanne Douglas, Esq.
AT&T Communications
of the Southern States, Inc.
1200 Peachtree St. NE, Rm 4048
Atlanta, GA 30309

Newton M. Galloway, Esq.
113 Concord Street
P. O. Box 632
Zebulon, Georgia 30295

David I. Adelman, Esq.
Sutherland Asbill & Brennan
999 Peachtree St. NE
Atlanta, GA 30309-3996

William R. Atkinson, Esq.
3100 Cumberland Circle - N0802
Atlanta, GA 30339

So certified this 26th day of September 1996.



Philip J. Smith

RECEIVED

SEP 26 1996

EXECUTIVE SECRETARY
G.P.S.C.DEBORAH K. FLANNAGAN
EXECUTIVE DIRECTOR
TERRI M. LYNDALL
EXECUTIVE SECRETARY

Georgia Public Service Commission

244 WASHINGTON STREET, S.W.
ATLANTA, GEORGIA 30334-5701
(404) 636-4501 OR 1 (600) 292-5613

DOCKET NO. 6865-U

FIRST PRE-ARBITRATION HEARING ORDER BY THE HEARING OFFICER

In Re: Petition by MCI for Arbitration of Certain Terms and Conditions of a Proposed Agreement with BellSouth Telecommunications, Inc. Concerning Interconnection and Resale Under the Telecommunications Act of 1996

This matter came before the Hearing Officer at the pre-arbitration conference held on September 24, 1996. MCI Telecommunications Corporation ("MCI") seeks arbitration of a proposed agreement between it and BellSouth Telecommunications ("BellSouth"), and filed the above-referenced petition with the Commission on August 19, 1996.

This arbitration is conducted pursuant to Section 252(b) of the Telecommunications Act of 1996 ("Act") (47 U.S.C. § 252(b)). The negotiations commenced when BellSouth received MCI's formal request on March 26, 1996. Therefore, in accordance with Section 252(b)(4)(C) of the Act, the arbitration proceeding must be concluded by December 26, 1996. The schedule set forth below is adopted to meet this deadline.

MCI shall provide public notice of this arbitration proceeding without delay, and in any event no later than October 24, 1996.

The Parties shall observe the requirements of the Commission's September 3, 1996 Procedural Order with respect to the filing and service of copies of all testimony and pleadings. All filings in this docket are to be filed to the Commission's Executive Secretary no later than 3:30 p.m. of the date on which such documents are due.

Docket No. 6865-U

Page 1 of 8

Schedule

October 21, 1996

MCI and BellSouth shall each file their direct testimony, together with any exhibits (including any cost studies) with the Commission's Executive Secretary by 3:30 p.m. on October 21, 1996.

October 28, 1996

MCI and BellSouth may each file any rebuttal testimony, together with any rebuttal exhibits, with the Commission's Executive Secretary by 3:30 p.m. on October 28, 1996.

November 1 and 4-6, 1996

This arbitration will come before the Commission, acting as the arbitration panel, for hearing beginning at 10:00 a.m. on November 1, 1996 and continuing as necessary at 10:00 a.m. on November 4; following the Commission's regularly scheduled 10:00 a.m. Administrative Session on November 5; and at 9:00 a.m. on November 6, 1996.

The subsequent days of November 7 and 8 are not available for continuation of these hearings.

November 22, 1996

MCI and BellSouth shall file their post-hearing pleadings, including briefs and any proposed orders, with the Commission's Executive Secretary by 3:30 p.m. on November 22, 1996. At the same time, any Participant may file written comments.

November 27, 1996

Any Party or Participant may file reply briefs or reply comments with the Commission's Executive Secretary by 3:30 p.m. on November 27, 1996.

December 17, 1996

The arbitration case will be presented for the Commission's ruling at the Commission's regularly scheduled Administrative Session on December 17, 1996.

Substantive Issues

Scope of the Unresolved Issues

MCI's Petition listed all the issues which it asks the Commission to resolve by arbitration. MCI clustered these numerous issues under a series of categories, and showed both its position and BellSouth's position as to each issue. BellSouth responded that many of the issues MCI identified are covered by a May 14, 1996 written interconnection agreement between MCI and BellSouth, which was filed with the Commission and has been approved.

At the pre-arbitration conference, MCI acknowledged that some of the issues in its Petition overlap with matters covered under the two-year interconnection agreement. It stated that "caveats" regarding those issues are contained in its Petition. MCI further stated that as to those issues, it will not seek treatment that is different from what is in the agreement.

MCI also stated that there are some issues which are covered in its interconnection agreement with BellSouth, but which it claims are subject to re-open pursuant to a regulatory out type of provision in the agreement, following the FCC's recent orders implementing Section 251 of the federal Act. Therefore, MCI said, it has asked for Commission arbitration of those issues. BellSouth opposed the submission of such issues for arbitration by the Commission, however. For example, BellSouth pointed out, the FCC orders have not become final and unappealable; in fact, various motions for reconsideration, appeals, and motions for stay pending judicial review have been filed by a variety of parties with respect to both the FCC's First Report and Order, and its Second Report and Order, both released on August 8, 1996.

The Hearing Officer affirms the ruling made at the pre-arbitration conference, that disputes between the Parties as to the extent to which they are bound by the interconnection agreement on these issues shall be brought before the Commission as a part of the arbitration hearing. To aid in this process, the Hearing Officer directs the Parties to include with their "seven-day filing" a statement or list identifying these issues from MCI's Petition. The statement or list must clearly show which issues from the interconnection agreement MCI argues are subject to being re-opened and arbitrated, and BellSouth's position as to whether or not those same issues are subject to re-open and arbitration. In addition, the Parties shall clarify in their "seven-day filing" any other issues from MCI's Petition which BellSouth has questioned as having been resolved in their agreement.

BellSouth's Response on BAPCO Issues, and BAPCO's Petition to Intervene and Motion to Dismiss

BellSouth filed its Response to MCI's Petition on September 13. Among the matters contained in its Response was BellSouth's argument that issues related to the marketing or sales practices of its affiliate, BellSouth Advertising & Publishing Corp. ("BAPCO"), are outside the jurisdiction of the Commission and outside the scope of this arbitration. (BellSouth Response ¶ 52,

p. 19.) BellSouth also denied MCI's request for customized directory covers, and argued that directory cover issues are not appropriate for this arbitration because they involve issues outside the scope of the federal Act, and a company (BAPCO) which is not subject to the federal Act. (BellSouth Response ¶ 66, p. 22.)

BAPCO also filed a Petition to Intervene on September 6, 1996, and its own Response to the MCI Petition and Motion to Dismiss Those Portions of the MCI Petition Seeking Arbitration of Directory Publication Issues on September 17, 1996. As the Hearing Officer ruled at the pre-arbitration conference, BAPCO's petition interposed a special appearance for the purpose of arguing that either the directory publication issues were not arbitrable, or that if directory publication issues are arbitrable, then BAPCO must be allowed to intervene as a Party to protect its interests.

BAPCO argued in its Response and Motion to Dismiss that the directory publication issues raised by MCI's Petition are not subject to arbitration under Sections 251 and 252 of the federal Act. Section 271 of that Act does refer to directory publication, but BAPCO stated several matters on that score: The requirements of Section 271 deal only with the customers of a competing LEC receiving an alphabetical directory (white pages) listing; the Section 271 requirements are not subject to compulsory arbitration under Section 252; and MCI has already executed an agreement with BAPCO that ensures its customers will receive the listing referenced in Section 271. (BAPCO Response, p. 2.) Moreover, BAPCO argued, the scope of Section 252 arbitration is limited to issues identified in Section 251, and those requirements do not encompass BAPCO's directory publication services. (BAPCO Response, pp. 4-7.)

BAPCO also stated that the directory publication agreement between itself and MCI, executed on August 12, 1996, covers a wide range of directory publication services, but that MCI's subsequently filed Petition presents directory issues, almost all of which were resolved by the agreement. Therefore, argued BAPCO, even if those issues were subject to arbitration under the federal Act, they could not be presented in fact as unresolved issues for arbitration. (BAPCO Response, pp. 3-4.)

MCI acknowledged at the pre-arbitration conference that many of its BAPCO-directory publication issues were resolved by its written agreement with BAPCO, and that it will amend its Petition to reflect this fact. However, MCI argued that any remaining BAPCO-directory publication issues are subject to arbitration under the "directory listings" provision of Section 251(b)(3). MCI stated that "incumbent local exchange company" is not a defined term under Sections 251 and 252 of the Act, so BAPCO can be charged with any directory obligations imposed by those Sections. BAPCO countered that BAPCO is not a "local exchange company" ("LEC"), so it cannot be viewed as an incumbent LEC ("ILEC"); that Section 251(b)(3) pertains only to customers' access to subscriber list information; and that the FCC's Second Report and Order implementing Section 251, released August 8, 1996, ruled against the interexchange carriers' arguments which had claimed otherwise.

BAPCO also stated that in the recent cases of AT&T, Docket No. 6352-U; MCI, Docket No. 6537-U; and MFS, Docket No. 6415-U, the Commission has ordered that new entrants be provided with a complete white pages listing, and has directed that any other directory requirements or issues must be negotiated by those companies directly with BAPCO. BAPCO noted that it did not waive its jurisdictional arguments in those cases.

On the basis of the written pleadings and the oral arguments at the pre-arbitration conference, the Hearing Officer finds and concludes that BellSouth and BAPCO have correctly argued that directory publication issues are not arbitrable in this docket under Sections 251 and 252 of the federal Act. BAPCO is not a LEC or an incumbent LEC within the meaning of those two statutory sections; it provides telephone directories and directory publication services, not local exchange telecommunications services. Therefore BAPCO is not itself subject to the obligations imposed upon LECs and ILECs by Sections 251 and 252 of the Act; nor is BAPCO subject to the arbitration procedures prescribed by Section 252 of the Act. Moreover, the issues in a Section 252 arbitration are expressly stated within Sections 251 and 252 of the federal Act, and those provisions do not include the BAPCO-directory publication issues.

MCI should amend its arbitration Petition as necessary to remove the BAPCO-directory publication issues, both those covered by its agreement with BAPCO and those which remain unresolved. Since the directory publication issues are not arbitrable and therefore are ruled to be not within the scope of this arbitration docket, BAPCO may not claim the status of intervenor. Hence the Hearing Officer further concludes that BAPCO shall have the status of Participant rather than intervenor (unless BAPCO chooses, by written pleading, to withdraw its participation entirely).

Procedural Issues

Participants

The following entities have filed to date for intervenor or participant status, and shall be treated as Participants in this docket: Consumers' Utility Counsel Division of the Governor's Office of Consumer Affairs ("CUC"), American Communications Services, Inc. and its subsidiary American Communications Services of Columbus, Inc. ("ACSI"), Cable Television Association of Georgia ("CTAG"), and Sprint Communications Company L.P. ("Sprint"). In addition, BellSouth Advertising & Publishing Corp. ("BAPCO") filed a motion for intervention, and as discussed previously in this Order, shall be considered a Participant.

"Mediation Plus"

MCI requested in its Petition a novel process which it labeled "Mediation Plus." Essentially, MCI specified numerous issues as being relatively technical rather than "core" issues, and stated that a Commission-approved, Commission staff-supervised mediation process would facilitate resolution

by the Parties of these technical issues. MCI asked that this mediation process be conducted concurrently with the litigation aspect of the arbitration. (MCI Petition, ¶¶ 19-25.)

BellSouth objected that a bifurcated process such as "Mediation Plus" would not lead to an efficient resolution of the unresolved issues; to the contrary, it would unnecessarily complicate the procedural schedule. BellSouth stated that the federal Act does not provide for such a process, and that other state commissions including those in Florida and North Carolina have declined to engage in MCI's requested "Mediation Plus." BellSouth added that it remains open to further negotiation on these and any other issues.

The Hearing Officer affirms the ruling made at the pre-arbitration, declining to adopt MCI's requested "Mediation Plus" process. However, both Parties are encouraged to continue negotiations to try to resolve as many issues as possible. The Parties are encouraged to avoid unnecessarily taking issues before the Commission which they can resolve between themselves.

Consolidation

The Commission directed that the matters addressed at this pre-arbitration conference include the question whether procedural consolidation will facilitate the management and administration of this arbitration proceeding. Any consolidation will not confer rights of intervention or otherwise affect upon any Party's substantive rights, duties or obligations. In addition, on September 3, 1996 ACSI filed a motion seeking consolidation of all four pending arbitration dockets. (The other three are Dockets No. 6759-U, MFS; 6801-U, AT&T; and 6854-U, ACSI.)

At the pre-arbitration conference, AT&T and MCI supported consolidation of this docket with other arbitration dockets, and specifically with AT&T's arbitration in Docket No. 6801-U. ACSI, which is a Participant in this case, supported consolidation consistent with its motion seeking consolidation. Essentially, ACSI as well as AT&T and MCI believe that consolidation will aid in addressing issues that overlap or are in common among more than one arbitration docket. BellSouth indicated that it was neutral on the question of consolidation, and expressed concern regarding procedural safeguards that should be adopted in the event some cases are consolidated.

MCI further argued that a factor supporting its request for consolidation with the AT&T arbitration is that MCI and AT&T plan to use one witness in common. In addition, MCI stated that much of the presentations to be made by the MCI and AT&T witnesses will cover the same ground.

The Parties and Participants also referred to their previous positions regarding consolidation expressed at the pre-arbitration conferences held on September 19, 23 and 24, 1996 in the MFS, AT&T and ACSI cases with BellSouth (Dockets No. 6759-U, 6801-U, and 6854-U), and the Hearing Officer takes notice of the relevant portions of those transcripts. These include MFS' strong opposition to having its case consolidated with any other cases.

Docket No. 6865-U

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The Hearing Officer finds and concludes that consolidation of this docket with other arbitration dockets may not be appropriate. This is especially true where the other broad-based arbitration docket (that of AT&T) does not have its issues stated with specificity that approaches the level of detail in MCI's Petition. Therefore, consolidation will not be ordered at this time. The Hearing Officer may revisit this issue after AT&T and BellSouth submit their seven-day filing that includes, among other things, a list of "core issues" and any other issues or sub-issues that the Commission is asked to decide. Without such a specific list of the issues in the AT&T arbitration, it will be difficult if not impossible to identify common issues between that case and MCI's arbitration which would support consolidation.

If two petitioning parties are using the same witness, and there is otherwise close proximity between the issues in their cases, then such factors may favor consolidation. In the event that consolidation may appear appropriate, the Hearing Officer will re-convene the pre-arbitration conference for the purpose of addressing how to proceed. However, the Hearing Officer concludes that it is still appropriate to wait until the issues in AT&T's arbitration are listed with specificity before determining whether to alter the ruling against consolidation.

Discovery

No discovery issue was raised at the pre-arbitration conference. In the event that any dispute does arise regarding discovery, the Parties shall follow the procedures outlined in the Commission's Procedural Order by promptly initiating a request for resolution by the Hearing Officer. If a dispute arises concerning the alleged trade secret status of information requested during discovery, the same procedures will apply.

Use of "Best and Final Offer" Method for Arbitration

Both Parties at the pre-arbitration conference opposed the use of a "best and final offer" method of arbitration. The Hearing Officer finds that it would not be appropriate to limit the Commission by a requirement that the Commission's arbitration ruling merely adopt one Party's position in full. While the Parties may submit their position in post-hearing pleadings in any manner they find appropriate, including a "best and final offer," the Hearing Officer does not find it appropriate to attempt to limit the Commission's discretion. The Commission should be able to select either party's position, or to forge a resolution in the middle ground that the Commission may find best comports with the pricing standards of Sections 251 and 252 of the federal Act. Therefore, the Hearing Officer does not adopt the use of "best and final offer" arbitration.

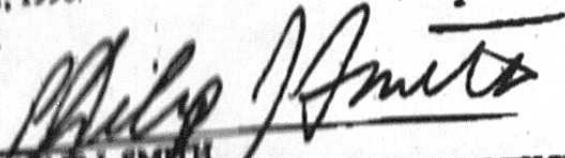
Implementation

Within seven days following this pre-arbitration conference, the Parties shall submit a written statement to the Commission pursuant to the Commission's Procedural Order, reporting on the outcome of this pre-arbitration conference. The statement shall incorporate both procedural and

substantive matters as discussed and resolved at the pre-arbitration conference, including but not limited to: a list of the unresolved "core issues" and all other issues or sub-issues which the Commission is asked to resolve by this arbitration; a statement whether the Parties have resolved any issues; and a copy of the non-disclosure agreement they develop regarding discovery and, if applicable, information at the hearing. This should be a joint statement if possible, but separate statements will be permitted. If a Party takes exception to any decision by the Hearing Officer, that Party must simultaneously file a separate request with the Commission identifying the decision, stating the basis upon which the Party takes exception, and clearly stating the relief requested.

Any exceptions to the matters contained within this Pre-Arbitration Hearing Order are to be filed with the Commission's Executive Secretary by 12:00 noon on Monday, September 30, 1996.

So ordered this 26th day of September, 1996.


PHILIP J. SMITH
SPECIALLY APPOINTED HEARING OFFICER
GEORGIA PUBLIC SERVICE COMMISSION