

BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

In the Matter of

American Communications
Services, Inc., and its local
exchange operating subsidiaries,
for Arbitration with GTE
Florida, Inc. pursuant to the
Telecommunications Act of 1996.

:
: DOCKET NO. 961537-TP
:



PROCEEDINGS: PREHEARING CONFERENCE

BEFORE: COMMISSIONER JOE GARCIA
 Prehearing Officer

DATE: Monday, March 3, 1997

TIME: Commenced at 12:00 noon
 Concluded at 12:10 p.m.

PLACE: Betty Easley Conference Center
 Room 152
 4075 Esplanade Way
 Tallahassee, Florida

REPORTED BY: ROWENA NASH
 Official Commission Reporter

DOCUMENT NUMBER-DATE

02296 MAR -4 6

FPSC-RECORDS/REPORTING

1 APPEARANCES:

2 NORMAN H. HORTON, JR, Messer, Caparello, &
3 Self, 215 South Monroe Street, Post Office Box 1876,
4 Tallahassee, Florida 32302-1876, appearing on behalf
5 of American Communications Services, Inc., American
6 Communications Services of Jacksonville, Inc., and
7 American Communications Services of Tampa, Inc.

8 KIMBERLY CASWELL, Post Office Box 110,
9 FLTC0007, Tampa, Florida 33601-0110, appearing on
10 behalf of GTE Florida.

11 WILLIAM COX and BETH CULPEPPER, Florida
12 Public Service Commission, Division of Legal Services,
13 2540 Shumard Oak Boulevard, Tallahassee, Florida
14 32399-0870, appearing on behalf of the Commission
15 Staff.

16
17
18
19
20
21
22
23
24
25

P R O C E E D I N G S

(Hearing convened at 12:00 p.m.)

1
2
3 COMMISSIONER GARCIA: Counsel, will you read
4 the notice?

5 MR. COX: Pursuant to notice, Docket
6 No. 961537-TP, this time and place have been set for a
7 hearing.

8 COMMISSIONER GARCIA: Okay. I'll take
9 appearances.

10 MS. CASWELL: Kim Caswell with GTE, 101
11 Tampa City Center, Tampa, Florida 33601.

12 MR. HORTON: Norman H. Horton, Jr., and
13 Floyd R. Self of Messer Caparello & Self; together
14 with Brad Mutschelknaus of Kelly Drye & Warren; and
15 Jim Falvey of American Communications on behalf ACSI,
16 Inc.

17 MR. COX: Will Cox and Beth Culpepper on
18 behalf of Commission Staff.

19 COMMISSIONER GARCIA: Okay. Are there any
20 preliminary matters?

21 MR. COX: Yes, there are. I believe the
22 parties have some corrections first off to make to the
23 Prehearing Order.

24 COMMISSIONER GARCIA: Okay.

25 MR. HORTON: Commissioner, on Page 5, on the

1 rebuttal witnesses for ACSI, we didn't put the issue
2 numbers in there; but for Mr. Robertson, he will be
3 addressing Issue 4, 5, 6 and 8.

4 Mr. Stipe will be addressing Issue 5.

5 COMMISSIONER GARCIA: Hang on, I do have
6 issues on them.

7 MR. HORTON: This is for rebuttal down at
8 the bottom of the page.

9 COMMISSIONER GARCIA: Oh, I'm sorry. Okay.
10 Go again.

11 MR. HORTON: Mr. Robertson, Issues 4, 5, 6,
12 and 8. Mr. Stipe, Issue 5. And Dr. Kahn, Issues 1, 2
13 and 3.

14 COMMISSIONER GARCIA: Okay. Is that it?

15 MR. HORTON: Yes, sir.

16 COMMISSIONER GARCIA: Ms. Caswell, do you
17 have anything?

18 MS. CASWELL: Yeah, a couple of minor
19 clerical errors. On Page 10, Issue 7, the GTE Florida
20 position, the third line up from the bottom after
21 "explicit in the Act's," after the word "Act's" there
22 should be "legislative" before the word "history" and
23 then a dash after "history."

24 COMMISSIONER GARCIA: I'm sorry, I have lost
25 you completely. Page 10?

1 MS. CASWELL: Yeah, Page 10, Issue 7, the
2 GTE Florida position.

3 COMMISSIONER GARCIA: Three lines up, you
4 said?

5 MS. CASWELL: Yeah, three lines up starting
6 the line with "unambiguous." At the end of the line
7 there should be the word "legislative" before the word
8 "history" in the next line.

9 COMMISSIONER GARCIA: Okay.

10 MS. CASWELL: And then a dash after history.
11 Then one other one on Page 11. Nine lines
12 down. The line beginning with "pursuant to."

13 COMMISSIONER GARCIA: Right.

14 MS. CASWELL: We should insert "the Act,"
15 comma. And then the next line after the word
16 "should," the word "not" should be inserted. So it
17 should be "should not be any different."

18 COMMISSIONER GARCIA: Okay.

19 MS. CASWELL: And that's all I've got.

20 COMMISSIONER GARCIA: Okay.

21 MR. COX: Staff has one correction also to
22 make. We'd like to combine the direct and rebuttal
23 testimony for purposes of the hearing.

24 COMMISSIONER GARCIA: Okay.

25 MR. COX: And there is one issue that -- as

1 of the issue idea workshop, we decided that you would
2 decide at this prehearing conference whether or not
3 Issue 8, as included in the Staff's order determining
4 issues, would, in fact, be an issue in this
5 proceeding. The issue involves the most favored
6 nations issue, Section 252(I) of the Act.

7 The issue as proposed in this proceeding
8 requests more or less an interpretation of this
9 section by the Commission. In previous dockets we'll
10 note that the Commission decided this was not an
11 arbitrable issue. However, Staff recommends that this
12 issue be included for the reason that no party has
13 ever been given an opportunity to argue to the
14 Commission whether or not this issue should be, in
15 fact, arbitrable. It was only posthearing that the
16 Commission decided that it was not an arbitrable
17 issue.

18 **COMMISSIONER GARCIA:** Okay. Do the parties
19 want an opportunity to discuss this?

20 **MS. CASWELL:** Yeah. We could probably say a
21 few words on it.

22 **COMMISSIONER GARCIA:** Okay.

23 **MS. CASWELL:** I think probably the most
24 efficient approach here, we're trying to discuss
25 whether this is an arbitrable issue, is look what

1 you've done in the past, in the BellSouth and Sprint
2 arbitration also, and the GTE/Sprint arbitration. And
3 I think the time for the decision on whether it's
4 arbitrable is now, rather than going through the
5 hearing, hearing all the substantive testimony and
6 argument, and then having to make the decision again.
7 And you'll recall you didn't consider any of that
8 evidence or argument in the other cases.

9 And this is just a strict legal issue, the
10 Commission's interpretation of the Act. And I don't
11 think we need to go to hearing on the issue. And, you
12 know, the decision should be made now.

13 MR. HORTON: Commissioner, our position is
14 very simple; and that is, it was an issue that was
15 identified in our position -- petition. And under the
16 Act we are entitled to have that issue resolved or
17 addressed, at least addressed, by the Commission. We
18 think it should be disposed of by the Commission.

19 I understand that it may have been decided
20 or presented to you and decided in some other
21 proceedings, but we've not been a party to those
22 proceedings. And, in fact, by the procedural orders
23 of the Commission, we are precluded from being a party
24 to any other proceedings. So this is the first
25 opportunity for us to address it.

1 The decision in this case should be based on
2 what's presented to you in this case, and we think
3 we're entitled to have the opportunity to present to
4 you our arguments with respect to that particular
5 issue. So we think that it's appropriately in this
6 proceeding.

7 **COMMISSIONER GARCIA:** Staff, how would you
8 respond to Ms. Caswell's argument that we haven't done
9 it before, it's a waste of this Commission's time,
10 and -- based on the other proceedings that we've had
11 before us?

12 **MR. COX:** Our response probably would be
13 similar to what I said earlier, was that it's
14 basically -- the decision was made by the Commission
15 without any input from the parties. These arbitration
16 proceedings are between and are limited to those
17 parties who are the official parties to the
18 arbitration proceeding. And, therefore, we felt with
19 regard to this arbitration proceeding that it seemed
20 most equitable to allow the parties to address this
21 issue.

22 **MS. CASWELL:** Commissioner Garcia, may I
23 just make one brief statement?

24 **COMMISSIONER GARCIA:** Go ahead.

25 **MS. CASWELL:** This isn't an issue like the

1 price of an unbundled loop, something where we're got
2 to take facts and information, it's strictly a legal
3 interpretation of the Act. And I don't think anything
4 you are going to hear is going to be relevant to your
5 decision under the Act. Just as before you didn't
6 consider any of the substantive evidence or arguments
7 to make your decisions, it's not going to be relevant
8 here. So --

9
10 COMMISSIONER GARCIA: Well, Ms. Caswell, if
11 it is a legal argument, I don't think it will be that
12 difficult to have it presented before us. So let's go
13 ahead and then hear it. I don't think that binds this
14 Commission to decide that. And clearly the history of
15 it is probably in your favor in terms of the outcome,
16 but let's look at it when we go through this.

17 I will go through each of the case
18 backgrounds unless -- each of the sections unless it
19 might be easier to ask you if you have anything you
20 want to add to the Prehearing Order.

21 No?

22 MR. HORTON: No, none.

23 MS. CASWELL: We have nothing.

24 COMMISSIONER GARCIA: Staff.

25 MR. COX: We have nothing.

COMMISSIONER GARCIA: Okay, great. Well,

1 then, that being the case -- do we have the times on
2 this and everything? Everyone is aware --

3 MR. COX: The hearing is scheduled for March
4 20th, 9:30 in Room 148.

5 COMMISSIONER GARCIA: Very good. All right.
6 Thank you very much. Appreciate it.

7 (Thereupon, the hearing concluded at
8 12:10 p.m.)

9 - - - - -

10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

1 STATE OF FLORIDA)
2 COUNTY OF LEON)

CERTIFICATE OF REPORTER

3 I, ROWENA NASH Official Commission Reporter,

4 DO HEREBY CERTIFY that the Prehearing
5 Conference in Docket No. 961537-TP was heard by the
6 Florida Public Service Commission at the time and
place herein stated; it is further

7 CERTIFIED that I stenographically reported
the said proceedings; that the same has been
8 transcribed under my direct supervision; and that this
transcript, consisting of 10 pages, constitutes a true
9 transcription of my notes of said proceedings

10
11 DATED this 3rd day of March, 1997.

12 

13 ROWENA NASH
14 Official Commission Reporter
15 (904) 413-6736

16
17
18
19
20
21
22
23
24
25