

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition by National
Telecommunications, Inc. d/b/a
NationalTel for resolution of
dispute arising under resale
agreement with BellSouth
Telecommunications, Inc.

DOCKET NO. 971044-TP
ORDER NO. PSC-97-1579-PHO-TP
ISSUED: December 15, 1997

PREHEARING ORDER

Pursuant to Notice, a Prehearing Conference was held on December 12, 1997, in Tallahassee, Florida, before Commissioner Joe A. Garcia, as prehearing Officer.

APPEARANCES:

Nancy B. White, BellSouth Telecommunications, Inc., 150
South Monroe Street, Suite 400, Tallahassee, Florida
32301-1556
On behalf of BellSouth Telecommunications, Inc.

C. Everett Boyd, Esquire, Ervin, Varn, Jacobs & Ervin
305 South Gadsden Street, Tallahassee, Florida 32301
On behalf of National Telecommunications, Inc.

William P. Cox, Esquire, Florida Public Service
Commission, 2540 Shumard Oak Boulevard, Tallahassee,
Florida 32399-0850
On behalf of the Commission Staff.

PREHEARING ORDER

I. CASE BACKGROUND

On August 13, 1997, National Telecommunications, Inc. (National Tel) filed a petition with the Florida Public Service Commission requesting that the Commission resolve a dispute existing between National Tel and BellSouth Telecommunications, Inc. (BellSouth) that arose under the parties' Resale Agreement. Specifically, National Tel requests that the Commission find that the Processing Change Charge is not authorized under the parties' Resale Agreement. National Tel also requests that the Commission

DOCUMENT NUMBER-DATE

12784 DEC 15 97

FPSC-RECORDS/REPORTING

direct BellSouth to issue a credit to National Tel for all such charges previously assessed to National Tel.

On October 22, 1997, the key procedural events were established and the hearing was set for December 18, 1997, by Order No. PSC-97-1307-PCO-TP.

II. 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(2), 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.

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

- 1) 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.

- 2) 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.
- 3) 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.
- 4) 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.
- 5) 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 Records and Reporting confidential files.

Post-hearing procedures

Rule 25-22.056(3), Florida Administrative Code, requires each party to 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. The rule also provides that if a party fails to file a post-hearing statement in conformance with the rule, that party shall have waived all issues and may be dismissed from the proceeding.

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 60 pages, and shall be filed at the same time. The prehearing officer may modify the page limit for good cause shown. Please see Rule 25-22.056, Florida Administrative Code, for other requirements pertaining to post-hearing filings.

III. PREFILED TESTIMONY AND EXHIBITS

Testimony of all witnesses to be sponsored by the parties (and Staff) has been prefiled. All testimony which has been prefiled in this case will be inserted into the record as though read after the witness has taken the stand and affirmed the correctness of the testimony and associated exhibits. All testimony remains subject to appropriate objections. Each witness will have the opportunity to orally summarize his or her testimony at the time he or she takes the stand. Upon insertion of a witness' testimony, exhibits appended thereto may be marked for identification. After all parties and Staff have had the opportunity to object and cross-examine, the exhibit may be moved into the record. All other exhibits may be similarly identified and entered into the record at the appropriate time during the hearing.

Witnesses are reminded that, on cross-examination, responses to questions calling for a simple yes or no answer shall be so answered first, after which the witness may explain his or her answer.

IV. ORDER OF WITNESSES

<u>WITNESS</u>	<u>APPEARING FOR</u>	<u>ISSUE NO.</u>
Mark Mansour	National Tel	All- Direct and Rebuttal
Jerry D. Hendrix	BellSouth	All- Direct
Margaret K. Thompson	BellSouth	All- Direct

V. BASIC POSITIONS

NationalTel:

The "Processing Change Charge" imposed by BellSouth on NationalTel when an existing BellSouth customer initiates local service from NationalTel is not authorized by the parties' Resale Agreement or by BellSouth's tariff. The "switch as is" transaction is not a "transfer of responsibility" or other change in service as contemplated by Section A4.2.4C. of BellSouth's tariff, and there is no other tariff provision that authorizes such a "processing change charge".

BellSouth:

BellSouth states that NationalTel is subject to the secondary service charge imposed upon NationalTel when it requests to be substituted for a BellSouth customer in a resale transaction. Such charge is validly imposed pursuant to Section A.4.2.4.C.1 of BellSouth's General Subscriber Service Tariff as well as Section IV.B. of the Agreement between BellSouth Telecommunications, Inc. and National Telecommunications, Inc. d/b/a NationalTel because responsibility for payment of the service has been changed from the end user to the new customer, NationalTel.

STAFF: None pending review of record.

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

VI. ISSUES AND POSITIONS

ISSUE 1: Is it appropriate for BellSouth to apply the charge known, variously, as the "processing change charge" or the "Secondary Service Charge" to NationalTel when an existing BellSouth customer initiates local service from National Tel as a resale customer?

POSITION:

NationalTel:

The "Processing Change Charge" imposed by BellSouth on NationalTel when an existing BellSouth customer initiates local service from NationalTel is not authorized by the parties' Resale Agreement or by BellSouth's tariff. The "switch as is" transaction is not a "transfer of responsibility" or other change in service as contemplated by Section A4.2.4C. of BellSouth's tariff, and there is no other tariff provision that authorizes such a "processing change charge".

BellSouth:

Yes. The charge is valid under Section A.4.2.4.C.1 of BellSouth's General Subscriber Service Tariff as well as under Section IV.B. of the Agreement between BellSouth Telecommunications, Inc. and National Telecommunications, Inc. d/b/a NationalTel.

STAFF:

Staff has no position at this time.

ISSUE 2: What further action if any should the Commission take?

POSITION:

NationalTel:

The Commission should direct BellSouth to immediately cease billing NationalTel for the "Charge For Processing Change in Service" and to refund to NationalTel, with interest at the legal rate of interest, all amounts paid for such a charge.

BellSouth:

The Commission should find the Charge for Processing Change in Service to be proper, and that BellSouth has authority to charge NationalTel a secondary service charge when it requests to be substituted for a BellSouth customer in a resale transaction.

STAFF:

Staff has no position at this time.

VII. EXHIBIT LIST

<u>WITNESS</u>	<u>PROFFERED BY</u>	<u>I.D. NUMBER</u>	<u>DESCRIPTION</u>
Mark Mansour	National Tel	(MAM-1)	Resale Agreement between BellSouth and National Tel
Mark Mansour	National Tel	(MAM-2)	6/4/97 BellSouth letter to National Tel
Mark Mansour	National Tel	(MAM-3)	5/10/97 BellSouth Billing Statement to National Tel
Jerry D. Hendrix	BellSouth	(JDH-1)	Resale Agreement between BellSouth and National Tel
Jerry D. Hendrix	BellSouth	(JDH-2)	General Subscriber Service Tariff, Section A4
Margaret K. Thompson	BellSouth	(MKT-1)	Florida, Inputs and Calculation of Costs, Secondary Service Order Study

Parties and Staff reserve the right to identify additional exhibits for the purpose of cross-examination.

VIII. PROPOSED STIPULATIONS

None at this time.

IX. PENDING MOTIONS

None at this time.

X. RULINGS

- A. Direct and rebuttal testimony will be combined for the hearing.
- B. Parties will be permitted an opening statement, five minutes per side.

It is therefore,

ORDERED by Commissioner Joe A. Garcia, 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 Joe A. Garcia, as prehearing Officer, this 15th day of December, 1997.



Joe A. Garcia, Commissioner
and Prehearing Officer

(S E A L)

WPC

ORDER NO. PSC-97-1579-PHO-TP
DOCKET NO. 971044-TP
PAGE 9

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.