BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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| In re: Petition by Metropolitan Fiber Systems of Florida, Inc. for arbitration with BellSouth Telecommunications, Inc. concerning interconnection rates, terms, and conditions, pursuant to the Federal Telecommunications Act of 1996. | DOCKET NO. 960757-TP |
| In re: Petition by AT&T Communications of the Southern States, Inc. for arbitration of certain terms and conditions of a proposed agreement to the Federal Telecommunications Act of 1996. | DOCKET NO. 960833-TP |
| In re: Petition by MCI Telecommunications Corporation and MCI Metro Access Transmission Services, Inc. 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. | DOCKET NO. 960846-TP<br>ORDER NO. PSC-98-0227-FOF-TP<br>ISSUED: February 5, 1998 |

The following Commissioners participated in the disposition of this matter:

JULIA L. JOHNSON, Chairman
J. TERRY DEASON
SUSAN F. CLARK
JOE GARCIA
E. LEON JACOBS, JR.

ORDER DENYING PETITION FOR RECONSIDERATION

BY THE COMMISSION:

On December 16, 1996, in Docket No. 960757-TP, we issued Order No. PSC-96-1531-FOF-TP, our final order in the arbitration proceeding of MFS Communications Company Inc., (MFS) with BellSouth Telecommunications, Inc., (BellSouth) under the Telecommunications Act of 1996 (the Act). On December 31, 1996, we issued Order No. PSC-96-1579-FOF-TP, our final order in the arbitration proceedings of AT&T Communications of the Southern States, Inc., (AT&T) and MCI Telecommunications Corporation and MCI Metro Access Transmission Services, Inc., (MCI) with BellSouth under the Act. (See Docket Nos. 960833-TP and 960846-TP). In this proceeding, we will set permanent rates for a number of network elements for which we set only interim rates in those arbitration orders.

By Order No. PSC-97-1399-PCO-TP, issued November 6, 1997, the prehearing officer in this proceeding granted American Communications Services, Inc., and American Communications Services of Jacksonville, Inc., (ACSI) party status in this proceeding. In that Order, the prehearing officer determined that even though this Commission has limited participation in arbitration proceedings under the Act to the requesting carrier and the incumbent local exchange company, it was reasonable and appropriate to permit ACSI's participation. Following that Order, Intermedia Communications of Florida, Inc. (Intermedia), Time Warner AxS of Florida, L.P. (Time Warner), and Sprint Communications Limited Partnership (Sprint) filed petitions to intervene, arguing that they should also be accorded party status in this proceeding.

After reconsideration of the facts and the law, however, the prehearing officer determined that it was, in fact, inappropriate for ACSI to participate as a party in this proceeding. Therefore, by Order No. PSC-98-0007-PCO-TP, issued January 2, 1998, the prehearing officer reversed Order No. PSC 97-1399-PCO-TP granting intervention to ACSI. On that same day, the prehearing officer issued Order No. PSC-98-0008-PCO-TP denying Intermedia, Time Warner and Sprint intervenor status.

On January 14, 1998, Sprint filed a Petition for Reconsideration and Request for Expedited Ruling. Therein, Sprint asked that we reconsider the prehearing officer's decision to deny Sprint party status. Sprint argued that, in accordance with Rule

25-22.039, Florida Administrative Code, it established that its substantial interests will be affected by our final decision in this proceeding. Sprint asserted, therefore, that it should have been allowed to intervene in these proceedings.

Specifically, Sprint argued that we will be establishing permanent rates for several network elements for which interim rates were set in the arbitration proceedings. Sprint also asserted that the elements for which permanent rates will be set will be available to and may be used by Sprint and other ALECs. Sprint noted that in order to establish these permanent rates, we will review and analyze cost studies and other data filed by BellSouth. Sprint stated that this data will then form the basis for the Commission's determination of the permanent rates. Sprint, therefore, asserted that as a party to an Interconnection Agreement with BellSouth, it will be affected by our ultimate determination in this proceeding.

In addition, in view of the approaching hearing dates, Sprint asked that we address its Petition at the January 20, 1998, Agenda Conference. Because of the limited amount of time left prior to the hearing, we granted Sprint's request and considered this petition on an expedited basis at our January 20, 1998, Agenda Conference.

Determination

The proper standard of review for a motion for reconsideration is whether the motion identifies some point of fact or law which was overlooked or which the prehearing officer failed to consider in rendering her order. See Diamond Cab Co. v. King, 146 So. 2d 889 (Fla. 1962); Pingree v. Quaintance, 394 So. 2d 161 (Fla. 1st DCA 1981).

Upon consideration, we shall not reconsider the prehearing officer's decision to deny Sprint intervention in this proceeding because the prehearing officer clearly expressed the reasons for that decision and Sprint has not identified any mistake of fact or law contained within Order No. PSC-98-0008-PCO-TP. Sprint has, therefore, not met the standard for reconsideration set forth in Diamond Cab Co. V. King.

The prehearing officer's reasons for denying Sprint intervenor status are set forth on pages 2 and 4 of Order No. PSC-98-0008-PCO-TP. Therein, the prehearing officer stated that we have consistently limited participation in arbitration proceedings under

the Act to the requesting carrier and the incumbent local exchange company. Upon review of the Act, the prehearing officer determined that participation should remain limited to the requesting carriers and the incumbent local exchange company. Therefore, the prehearing officer denied Sprint, as well as Intermedia and Time Warner, intervenor status in order to remain consistent with the provisions of the Act and with past Commission practice.

We find that the prehearing officer's decision to deny the petitions to intervene is consistent with the conclusion reached by the Prehearing Officer at page 2 in Order No. PSC-96-0933-PCO-TP, which established the initial arbitration procedure in Docket No. 960833-TP:

> Upon review of the Act, I find that intervention with full party status is not appropriate for purposes of the Commission conducting arbitration in this docket. Section 252 contemplates that only the party requesting interconnection and the incumbent local exchange company shall be parties to the arbitration proceeding. For example, Section 252(b)(1) of the Act states that the "carrier or any other party to the negotiation" may request arbitration. (emphasis added) Similarly Section 252(b)(3) says "a non-petitioning party to a negotiation may respond to the other party's petition" within 25 days. (emphasis added) Section 252(b)(4) requires this Commission to limit its consideration to the issues raised by the petition and the response. None of these statutory provisions provides for intervenor participation.

Furthermore, the prehearing officer's decision is clearly consistent with the intent of the Act. Section 252(b)(4)(A) of the Act provides that

> The State commission shall limit its consideration of any petition under paragraph (1) (and any response thereto) to the issues set forth in the petition and in the response, if any, filed under paragraph (3).

It is noted that Paragraph (1) permits a requesting carrier to petition a State commission to arbitrate any issues still open

after 135 days of negotiations. Paragraph (3) gives the incumbent local exchange company 25 days to respond to the petition for arbitration. We agree that this language reflects a Congressional intent that interconnection agreements should be reached either through negotiations between a requesting carrier and an incumbent local exchange company or through arbitration proceedings litigated before state commissions by the parties to the negotiations. We also agree with the prehearing officer that the outcome of arbitration proceedings is an agreement between those parties that is binding only on them. Sprint will not be bound by the agreement that is ultimately implemented. Furthermore, the prehearing officer's statement that the Act does not contemplate participation by other entities who are not parties to the negotiations and who will not be parties to the agreement that results is accurate. As stated by the prehearing officer at page 3 or Order No. PSC-98-0008-PCO-TP, "Entities not party to the negotiations are not proper parties in arbitration proceedings, even though they may, in some indirect way, be affected by a particular decision." It is not, therefore, appropriate for Sprint to participate as a party in this proceeding. As such, the prehearing officer's order PSC-98-0008-PCO-TP denying Sprint's, Intermedia's and Time Warner's petitions to intervene was correct and appropriate.

Clearly, the prehearing officer thoroughly analyzed and addressed the basis for the petitioners's intervention in this proceeding. Upon that assessment, the prehearing officer determined that Sprint, as well as Intermedia and Time Warner, should not be parties. Sprint has not identified any misapprehension or mistake of fact or law by the prehearing officer in that assessment. Furthermore, the presence of Sprint, which was not a party to the original arbitration proceeding, and will not be a party to the ultimate agreements, is at odds with the Act and with our past decisions. The only proper parties are AT&T, MCI, MFS (now WorldCom, Inc.) and BellSouth. Thus, we hereby deny Sprint's Petition for Reconsideration.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that Sprint Communications Limited Partnership's Petition for Reconsideration of Order No. PSC-98-0008-PCO-TP is denied. It is further

ORDERED that these Dockets shall remain open pending our final decision.

By ORDER of the Florida Public Service Commission this 5th day of February, 1998.

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BLANCA S. BAYÓ, Director
Division of Records and Reporting

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NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Any party adversely affected by the Commission's final action in this matter may request: 1) reconsideration of the decision by filing a motion for reconsideration with the Director, Division of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, within fifteen (15) days of the issuance of this order in the form prescribed by Rule 25-22.060, Florida Administrative Code; or 2) judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or the First District Court of Appeal in the case of a water and/or wastewater utility by filing a notice of appeal with the Director, Division of Records and reporting and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days after the issuance of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900(a), Florida Rules of Appellate Procedure.