

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Complaint of Teleport
Communications Group, Inc./TCG
South Florida against BellSouth
Telecommunications, Inc. for
breach of terms of
interconnection agreement under
Section 252 of the
Telecommunications Act of 1996,
and request for relief.

DOCKET NO. 980184-TP
ORDER NO. PSC-98-0477-PCO-TP
ISSUED: April 2, 1998

ORDER DENYING INTERVENTION

On March 23, 1998, GTE Florida Incorporated (GTEFL) filed a petition to intervene in Docket No. 980184-TP. No party filed an objection to this petition. In this docket, Teleport Communications Group, Inc./TCG South Florida (TCG) has asked this Commission to resolve a dispute under its interconnection agreement with BellSouth Telecommunications, Inc., concerning reciprocal compensation for transport and termination of local traffic.

GTEFL argues that it is entitled to intervene in this proceeding because its interests will be substantially and directly affected by the Commission's decision. It recognizes the Commission's policy to deny intervention to third parties concerning the interpretation of a provision in an interconnection agreement between two other parties, but it asserts that this is not a proceeding for that purpose. GTEFL argues that the Commission's decision in this proceeding will go beyond contract interpretation and will address policy.

GTEFL argues further that it has reciprocal compensation provisions for termination of local traffic in its interconnection agreements with, for example, AT&T Communications of the Southern States, Inc., and MCI Telecommunications Corporation and MCI Metro Access Transmission Services, Inc., that were established in arbitration proceedings before this Commission.¹ Now, GTEFL asserts, the Commission is called upon to interpret its reciprocal compensation policy and to determine whether Internet Service Provider (ISP) traffic is jurisdictionally local or interstate.

¹Docket Nos. 960847-TP and 960980-TP, respectively.

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FPSC-RECORDS/REPORTING

GTEFL argues that it, as well as others who have submitted the local traffic termination compensation issue to the Commission for arbitration, is entitled to participate in this proceeding, because the Commission's decision will set a precedent for the treatment of ISP traffic in GTEFL's interconnection agreements.

GTEFL contends that the Commission has granted intervention to third parties in disputes between two other parties raising policy or otherwise complex issues. It argues that this encourages a thorough exposition of the issues before the Commission with the result that the Commission's decisions can be based upon a more complete evidentiary record.

GTEFL designates its petition to intervene in this proceeding as "limited." It does not seek to participate in contract interpretation issues concerning only BellSouth and TCG. It believes nonetheless that it must be permitted to intervene because this proceeding cannot practically be confined to BellSouth/TCG-specific issues and will unavoidably determine policy concerning the nature of ISP traffic.

Accordingly, GTEFL asks this Commission to allow it to intervene in this proceeding to the extent necessary to protect its interests.

This Commission has on numerous occasions denied third party petitions to intervene in arbitration proceedings or in proceedings brought seeking performance under interconnection agreements arising from arbitration proceedings. See Order Nos. PSC-96-0933-PCO-TP; PSC-98-0007-PCO-TP; PSC-98-0008-FOF-TP; PSC-98-0226-FOF-TP; PSC-98-0227-FOF-TP; and PSC-98-0454-FOF-TP. GTEFL does not raise any considerations in the instant petition that have not already been carefully examined in deciding the propriety of limiting participation in these kinds of proceedings to the parties to the negotiations or to the parties to the interconnection agreements resulting from arbitration proceedings. This Commission stated most recently that:

We acknowledge Intermedia's argument that our resolution of the present dispute between WorldCom and BellSouth may have an effect on Intermedia. In the new competitive paradigm,

however, that argument cannot be joined to sustain intervention in arbitration and contract dispute proceedings. It is hardly surprising that business relationships and commercial terms to which certain market players agree influence, sometimes strongly, the nature of subsequent relationships and terms sought by others. This is not justification to return to the old regulatory routine where all interested persons could participate in matters involving regulated utility providers. Under the Act, the rules of the road are different. This is a contract dispute between the parties to the specific contract, and only those parties may participate in this case.

Order No. PSC-980454-FOF-TP, page 5.

Moreover, the Commission has further described the nature of these proceedings as follows:

We find that the issue that WorldCom's Complaint presents to us should be set directly for hearing. At the same time, we recognize that what is before us is a complaint arising from a disputed interpretation of a provision in the interconnection agreement of WorldCom and BellSouth. We will not impose prior restraints on the admissibility of evidence; but we will limit participation in the hearing to WorldCom and BellSouth. Moreover, we believe that we must resolve the dispute between the parties by determining the state of the law concerning the jurisdictional nature of ISP traffic at the time the parties executed their agreement and by applying principles of contract construction.

Id., page 8.

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Therefore, upon review of the orders cited above, and in consideration of the Commission's policy to preclude intervention in arbitration and complaint proceedings under the Telecommunications Act of 1996, GTEFL's petition to intervene in Docket No. 980184-TP is denied.

Based on the foregoing, it is, therefore,

ORDERED by Susan F. Clark, as Prehearing Officer, that the petition of GTE Florida Incorporated to intervene in Docket No. 980184-TP is hereby denied.

By ORDER of Commissioner Susan F. Clark, as Prehearing Officer, this 2nd day of April, 1998.



SUSAN F. CLARK, Commissioner and
Prehearing Officer

(S E A L)

CJP

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.

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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 25-22.0376, 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.