

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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 with
BellSouth Telecommunications,
Inc. concerning interconnection
and resale under the
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
ORDER NO. PSC-98-0595-PCO-TP
ISSUED: April 27, 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.

DOCUMENT NUMBER-DATE

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FPSC-BLDBOARD/REPORTING

ORDER DENYING REQUEST FOR APPROVAL OF INTERPRETATION

BY THE COMMISSION:

BACKGROUND

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). We conducted the arbitration pursuant to the provisions of 47 USC §252 of 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. (See Docket Nos. 960833-TP and 960846-TP). This proceeding is a continuation of these cases, in which we will set permanent rates for a number of network elements for which we set only interim rates in our initial arbitration orders. We conducted a hearing in this Docket on January 26 - 28, 1998.

On February 9, 1998, BellSouth filed a Notice and Request for Approval of Interpretation of Order No. PSC-96-1579-FOF-TP. By its Request, BellSouth asks that we approve its interpretation of the part of Order No. PSC-96-1579-FOF-TP that addresses the maximum time period for establishing physical collocation. See Order No. PSC-96-1579-FOF-TP at pgs. 101-102. On February 17, 1998, WorldCom filed its response to BellSouth's Request. On February 23, 1998, AT&T filed its response, and on February 25, 1998, MCI filed its response. None of the parties requested oral argument.

POSITIONS

BellSouth

In Order No. PSC-96-1579-FOF-TP, we stated that it was reasonable, under ordinary conditions, for a physical collocation request to be completed within three months and for a virtual collocation request to be completed within two months. In its Request for Approval of its Interpretation of Order No. PSC-96-1579-FOF-TP, BellSouth asks that we approve its interpretation of what "triggers" the beginning and end times of the three month period for the establishment of physical collocation. BellSouth

also asks that we approve its interpretation of the phrase "ordinary conditions."

With regard to the "triggers" for the three month interval, BellSouth asks that we agree that the interval begins when BellSouth receives a complete and accurate Firm Order for physical collocation from an ALEC. BellSouth adds that this would mean that the ALEC had actually completed the Application/Inquiry process, had decided to collocate, and had provided the necessary Firm Order information and fees to BellSouth.

BellSouth also asks that we agree that the three month interval would stop when BellSouth applies for a building permit and resume only when the permit has been received. BellSouth argues that the permitting process can take several months, particularly in some areas of the state. BellSouth asserts that there is no "typical" permitting period. BellSouth asks, therefore, that the permitting process be omitted from the three month interval.

In addition, BellSouth asks that the three month interval terminate on the date when all construction work for the collocation space is finished, a Certificate of Occupancy has been received, BellSouth has completed the installation of its equipment, and the collocator has been notified in writing that the collocation space is ready for equipment installation. BellSouth notes that sometimes municipal inspectors delay issuing a Certificate of Occupancy. In such circumstances, BellSouth asks that the situation be considered extraordinary.

As for the phrase "ordinary conditions," BellSouth asks that we approve its definition that "ordinary conditions" are those situations where space is available and only minor changes are necessary to the network or infrastructure. BellSouth states that it interprets our order to mean that when extraordinary conditions are present, BellSouth must negotiate with the collocator to establish an acceptable time period. BellSouth also states that it does not understand the requirement that it inform us when it cannot meet the three month interval to apply in situations where extraordinary events have intervened and where BellSouth is able to negotiate an acceptable time frame with the ALEC.

BellSouth included two attachments setting forth intervals and time lines for establishment of physical collocation in accordance with its interpretation of our Order.

WorldCom

In its Response, WorldCom first states that it does not believe that the provisions of Order No. PSC-96-1579-FOF-TP apply to it. WorldCom asserts that the Order was issued in a docket different from the one in which WorldCom's arbitration with BellSouth took place. WorldCom asks, therefore, that we not try to apply any additional interpretation of that Order to WorldCom. WorldCom adds that it does not believe that BellSouth intends to try to apply any interpretation of Order No. PSC-96-1579-FOF-TP to its relationship with WorldCom, but WorldCom states that it should be clarified that any attempt to do so would be improper.

WorldCom also states that it has already agreed with BellSouth on agreement provisions covering physical collocation. To the extent that BellSouth experiences problems meeting those agreed upon terms, WorldCom states that BellSouth is obligated to try to resolve those problems with WorldCom, in accordance with Section 33, of the parties' Florida Partial Interconnection Agreement. WorldCom asserts that any attempt by BellSouth to apply an interpretation of Order No. PSC-96-1579-FOF-TP to WorldCom without first contacting WorldCom would be a violation of the parties' agreement.

WorldCom states that it did not address the merits of BellSouth's request because WorldCom does not believe that BellSouth intends to apply any interpretation of Order No. PSC-96-1579-FOF-TP to WorldCom. WorldCom reserves the right to do so, however, if BellSouth does intend to apply an interpretation of the Order to WorldCom.

MCI

In its Response, MCI states that we should deny BellSouth's request because the issues raised by BellSouth are covered by provisions in the MCI/BellSouth interconnection agreement. MCI argues that BellSouth cannot ignore the provisions in its approved agreement. MCI states that Attachment V of the MCI/BellSouth agreement contains specific provisions regarding space turnover for physical collocation. MCI adds that the agreement includes a three month period for completion and includes specific exceptions to that three month period.

MCI argues that the parties have already resolved the meaning of the phrase "ordinary conditions." MCI further asserts that

according to the parties' agreement, only the specific extraordinary condition of "abatement of an Environmental Hazard or Hazardous Materials" would extend the three month period. MCI states that BellSouth now wants to add more exceptions to the three month period. MCI argues that BellSouth should not be allowed to do so, particularly in this manner.

MCI states that BellSouth also would like us to determine that the permitting process does not count towards the three month period. MCI argues, however, that any delay caused by this process would be covered by Part A, Section 18, Force Majeure, of the parties' agreement. MCI argues that in light of the provisions in the parties' agreement, BellSouth should not be allowed to try to create additional exceptions or make changes to the parties' obligations under the agreement by asking us to approve its interpretation of Order No. PSC-96-1579-FOF-TP.

AT&T

In its Response and Objection to BellSouth's request, AT&T states that BellSouth's request raises questions regarding the amount of time that it would take to complete an actual request for physical collocation. First, AT&T argues that delaying the start date, as suggested by BellSouth, raises questions regarding what constitutes an acceptable application for collocation. AT&T notes that BellSouth's request does not include any guidelines that would help CLECs determine what would constitute an acceptable application. Thus, AT&T argues that BellSouth could control the start date just by finding any errors and rejecting an application.

AT&T also argues that many of the time lines set forth in Exhibit A to BellSouth's request appear to be too long. AT&T notes in particular the 30 days indicated that would be required to review an initial application.

In addition, AT&T argues that any problems that may occur due to delay in receiving building permits should be investigated before BellSouth's interpretation is applied. AT&T argues that it is not clear that building permits would necessarily apply to the types of activity involved with a physical collocation arrangement. AT&T also argues that any problems involved in receiving building permits in South Florida should not be applied to the rest of the state. AT&T argues, therefore, that a more thorough investigation of the permitting process should be done before BellSouth's position is approved.

Furthermore, AT&T argues that BellSouth's definition of "ordinary conditions" would exclude most of BellSouth approximately 193 central offices in Florida. AT&T adds that BellSouth has not included a time line proposal for central offices that do not fall within the definition of "ordinary conditions."

AT&T argues that BellSouth is simply attempting to add new conditions on the Commission's previously established time line for physical collocation. AT&T argues that these new conditions would cause CLECs additional delays in obtaining collocation. AT&T asks, therefore, that we conduct an investigation and hearing to determine the detailed time lines necessary for physical collocation that will be consistent with Order No. PSC-96-1579-FOF-TP.

DETERMINATION

In Order No. PSC-96-1579-FOF-TP, issued December 31, 1996, in Dockets Nos. 960833-TP, 960846-TP, and 960916-TP, we stated, in pertinent part:

Upon consideration we conclude that maximum time periods for the establishment of physical collocation of three months and virtual collocation of two months are reasonable for ordinary conditions. If MCI and BellSouth cannot agree to the required time for a particular collocation request, BellSouth must demonstrate why additional time is necessary.

Order No. PSC-96-1579-FOF-TP, at p. 102.

As set forth above, we clearly stated that three months is a reasonable amount of time for establishment of physical collocation under ordinary conditions. We further indicated that BellSouth may reach an agreement as to a required time for a particular collocation request. If BellSouth is unable to reach an agreement with the requesting party on the time for a particular collocation request, then the parties may seek our guidance. In seeking such guidance, we clearly stated that BellSouth must be prepared to demonstrate to us why more than three months is necessary.

Specifically, we do not believe that we need to, or should, clarify the phrase "ordinary conditions," or indicate what would amount to extraordinary conditions, as BellSouth has requested. While we did hear testimony from MCI witness Caplan and BellSouth

witness Scheye regarding suggested time frames and potential problems associated with physical collocation, there was no testimony regarding the particularities that BellSouth would now have us address. Based on that limited testimony, we determined that three months was sufficient under "ordinary conditions" for establishment of physical collocation. BellSouth now asks that we approve its interpretation of the meaning of "ordinary conditions." BellSouth's interpretation is, however, beyond the scope of the testimony presented on this matter. We shall not, therefore, approve BellSouth's interpretation on this point because there is not a basis in the record for that interpretation.

We also do not believe that it is necessary for any further interpretation of our use of the phrase "ordinary conditions." Our Order states, "If MCI and BellSouth cannot agree to the required time for a particular collocation request, BellSouth must demonstrate why additional time is necessary." As stated in the Order, the parties may reach an agreement as to the time for a particular collocation request. The purpose of the three month time frame is to serve as a guideline of what we consider reasonable. We find that our Order is clear as to our intent that the parties to a request for collocation would attempt to resolve any problems with that time frame on a case by case basis, and would only come to us if they were unable to resolve their problems. Furthermore, if the parties have already agreed to a specific time period for completing collocation requests, we intended that BellSouth would be bound by the agreed upon term, not the three month guideline.

BellSouth also indicated that it believed that we required BellSouth to notify us whenever BellSouth is unable to meet the three month deadline. This was not, however, a requirement included in our Order. We only stated that if BellSouth is not able to reach an agreement for the time for completing a particular request, BellSouth must demonstrate to us why additional time is necessary. Clearly, this requirement that BellSouth provide reasons for requesting an extension of time does not include a requirement that BellSouth notify us every time it exceeds the three month guideline.

In addition, BellSouth's Exhibit B to its Request, Attachment A to this Recommendation, demonstrates that BellSouth has been able to negotiate extensions of the three month requirement with ALECs. It is noteworthy that both WorldCom and MCI have provisions in their agreements with BellSouth regarding collocation. Both

agreements also contemplate that the parties will first attempt to negotiate a resolution of any problems arising out of their agreement before bringing such disputes to us for resolution. While the AT&T/BellSouth agreement contains no provisions on collocation, Section 4., Good Faith Performance, requires the parties to further negotiate the resolution of new or open issues under the Agreement. Plainly, that is the intent that we expressed in our Order; that the parties first attempt to work out problems with the three month guideline between themselves on a case-by-case basis.

As for WorldCom's assertions that the three month time frame set forth in Order No. PSC-96-1579-FOF-TP does not apply to WorldCom, we agree. The Order was issued in Dockets Nos. 960833-TP, 960846-TP, and 960916-TP. WorldCom did not participate in that arbitration proceeding and did not have an opportunity to address the matter. Nonetheless, we do believe that, as a general guideline, the three month time frame set forth in Order No. PSC-96-1579-FOF-TP is reasonable.

Furthermore, with regard to AT&T's request for a hearing on BellSouth's request, we find that such a hearing is neither necessary nor prudent. As stated above, the purpose of the three month time frame is to serve as a guideline for collocation under ordinary conditions. We did not determine what would constitute an extraordinary condition, nor did we intend to do so. Instead, we indicated that the parties should try to agree to time periods for collocation requests on a case by case basis. Any unresolved disputes would then be resolved by us. As indicated by some of the problems and issues raised in AT&T's Response, there are far too many variables involved in fulfilling collocation requests to be able to make a finding of specific collocation time lines that would be applicable in every possible instance. It is more appropriate that problems with specific requests be addressed on a case by case basis, taking into consideration the specific circumstances surrounding the request. Thus, we shall not conduct a hearing on BellSouth's Request.

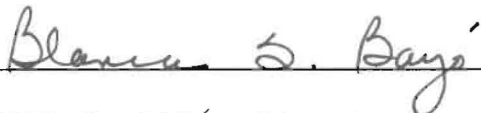
Based on the foregoing, it is therefore

ORDERED by the Florida Public Service Commission that BellSouth Telecommunications, Incorporated's Request for Approval of Interpretation of Order No. PSC-96-1579-FOF-TP is denied.

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ORDERED that these Dockets shall remain open pending our final determination in these Dockets.

By ORDER of the Florida Public Service Commission this 27th day of April, 1998.



BLANCA S. BAYÓ, Director
Division of Records and Reporting

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BK

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 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

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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.