

1 **APPEARANCES:**

2 **RICHARD D. MELSON**, Hopping Green Sams and
3 Smith, Post Office Box 6526, Tallahassee, Florida
4 32314, and **DULANEY L. O'ROARK, III**, 780 Johnson Ferry
5 Road, Atlanta, Georgia 30346, appearing on behalf of
6 **MCImetro Access Transmission Services, Inc.**

7 **J. PHILLIP CARVER**, 675 West Peachtree
8 Street, Suite 4300, Atlanta, Georgia 30375, appearing
9 on behalf of **BellSouth Telecommunications, Inc.**

10 **CATHERINE BEDELL**, Florida Public Service
11 Commission, Division of Legal Services, 2540 Shumard
12 Oak Boulevard, Tallahassee, Florida 32399-0870,
13 appearing on behalf of the **Commission Staff.**

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P R O C E E D I N G S

(Hearing convened at 9:35 a.m.)

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3 **COMMISSIONER DEASON:** Call the prehearing
4 conference to order. Can I have the notice read,
5 please?

6 **MS. BEDELL:** Pursuant to notice this time
7 and place were set for prehearing conference in Docket
8 No. 980281-TP, complaint of MCI Metro Access
9 Transmission Services, Inc. against BellSouth
10 Telecommunications, Inc. for breach of approved
11 Interconnection Agreement.

12 **COMMISSIONER DEASON:** Appearances.

13 **MR. CARVER:** Good morning. Phillip Carver
14 for BellSouth, 675 West Peachtree Street, Atlanta,
15 Georgia 30375.

16 **MR. MELSON:** Richard Melson of Hopping Green
17 Sams & Smith on behalf of MCI Metro. With me is
18 Dulaney O'Roark, we call him D. O'Roark, from MCI in
19 Atlanta.

20 **MS. BEDELL:** Catherine Bedell with the
21 Commission Staff.

22 **COMMISSIONER DEASON:** Any preliminary
23 matters?

24 **MS. BEDELL:** I don't believe so.

25 **MR. MELSON:** No, sir.

1 **COMMISSIONER DEASON:** Very well. We will
2 proceed then into the draft Prehearing Order.

3 I anticipate this will go fairly rapidly, so
4 if I move along too rapidly, please interrupt me.
5 We'll go back and review anything anybody likes.

6 We'll begin with Section 1, the case
7 background. Any changes or corrections?

8 Section 2, standard language concerning
9 confidential information. Is it anticipated
10 confidential information will be presented in hearing?

11 **MR. MELSON:** No, sir.

12 **MR. CARVER:** No, sir.

13 **COMMISSIONER DEASON:** Section 3 addresses
14 prefiled testimony and exhibits.

15 Section 4 exhibits order of witnesses. Any
16 changes or questions concerning the order of
17 witnesses?

18 **MR. CARVER:** Yes, sir. One change to the
19 order of witnesses. As listed here Mr. Stacy is last
20 and we'd like him to be the first of the BellSouth
21 witnesses.

22 **COMMISSIONER DEASON:** Any objection?

23 **MR. MELSON:** No, sir.

24 **COMMISSIONER DEASON:** Very well, that change
25 is made. Show Mr. Stacy as being the first BellSouth

1 witness.

2 MS. BEDELL: Commissioner Deason, have we
3 established whether we're going to do direct and
4 rebuttal together?

5 MR. MELSON: That's fine with MCI.

6 MR. CARVER: That's fine with us also.

7 COMMISSIONER DEASON: Very well. This is
8 set for hearing when? When are the dates?

9 MS. BEDELL: The hearing date is August 5th.

10 COMMISSIONER DEASON: It's a one-day
11 hearing?

12 MS. BEDELL: It's a one-day hearing.

13 MR. MELSON: It's the day before you travel
14 south for the area code docket.

15 COMMISSIONER DEASON: So we're going to need
16 to conclude within that day, and hopefully at a
17 reasonable hour.

18 MR. MELSON: Hopefully.

19 COMMISSIONER DEASON: Does anyone anticipate
20 that's going to be a problem at this point? I know
21 it's kind of preliminary but --

22 MR. O'ROARK: Commissioner Deason,
23 D. O'Roark with MCI. We had a somewhat similar
24 hearing in Georgia a few months ago and we were able
25 to get that done in, actually, less than a day.

1 **COMMISSIONER DEASON:** Very well.

2 Mr. Carver, were you at that hearing?

3 **MR. CARVER:** No, sir, I was not. But if it
4 will be helpful, I could tell you I think BellSouth
5 could do all of its cross of both of the MCI witnesses
6 in probably two hours.

7 **COMMISSIONER DEASON:** And I'm sure our Staff
8 will work to see we get out of here at a reasonable
9 hour.

10 **MS. BEDELL:** We will accommodate you.

11 **COMMISSIONER DEASON:** It appears that the
12 Commissioners' already full calendar is getting more
13 full all the time and we're having to do things one
14 right after the other -- especially when travel is
15 involved it gets difficult at times.

16 Okay. We will move then to Section 5, basic
17 positions. Any changes or corrections?

18 **MR. MELSON:** No.

19 **COMMISSIONER DEASON:** Section 6, issues and
20 positions. Issue 1? Issue 2? Let me, before we get
21 further into the issues, let me ask kind of a generic
22 question concerning the issues.

23 When reviewing this order last night, it
24 appears that the language of the issues is fairly
25 uniform. It addresses different subject matter but

1 the structure of the issue itself is fairly uniform.
2 And within that structure, part of the issue indicates
3 whether there is compliance with the Act. And I guess
4 I need some guidance from the parties as to why this
5 particular language is included in the issue when it
6 was my understanding that we're here to determine if
7 parties are in compliance with the agreement. And
8 that we're to pass judgment on that, but not
9 necessarily pass judgment as to whether the parties
10 are in compliance with the Act. This is not a 271
11 proceeding. And that's what my concern is. And I'd
12 like some -- I would like the parties' viewpoint on
13 that question.

14 **MR. MELSON:** I guess, Commissioner Deason,
15 it's MCI's view that in a number of places the
16 Interconnection Agreement establishes criteria for
17 standards that essentially look at what would be
18 parity under the Act. And to the extent the agreement
19 incorporates some of the standards of the Act, we may
20 end up looking at the Act and the pronouncements the
21 FCC has made under the Act for guidance as to how to
22 interpret particular provisions, if there's any
23 ambiguity in the provisions themselves.

24 **COMMISSIONER DEASON:** Mr. Carver.

25 **MR. CARVER:** Our position is that the

1 agreement complies with the Act, particularly to the
2 extent it was arbitrated. So I tend to have the same
3 take that you do, that the reference to the Act I
4 don't think is particularly necessary.

5 And I agree with Mr. Melson, certainly there
6 will be some citations to the Act and perhaps to FCC
7 orders. But I would still say that the bottom line
8 question here is whether the agreement has been
9 complied with or not. So given that, BellSouth,
10 although we don't necessarily advocate striking the
11 references to the Act, we certainly would have no
12 objection to it.

13 **COMMISSIONER DEASON:** Staff, what is your
14 viewpoint?

15 **MS. BEDELL:** If I understand what
16 Mr. Melson's comments were to you, in terms of trying
17 to examine whether what is being done gets to parity
18 under the Act, that's still interpreting the contract
19 and the terms of the contract and looking back towards
20 the Act, I believe, for perhaps some clarification.

21 This is Mr. Melson's complaint and we want
22 to give him appropriate deference, but we still don't
23 believe we'd be actually interpreting the Act.

24 **COMMISSIONER DEASON:** Mr. Melson, is that
25 your understanding?

1 **MR. MELSON:** We have -- our complaint
2 alleges both that BellSouth has violated the
3 Interconnection Agreement and that it has violated the
4 Act. And we believe the Commission's jurisdiction to
5 enforce the Interconnection Agreement also -- that you
6 also have jurisdiction to enforce the Act. And so
7 while I think the focus on the Act is probably a
8 secondary one in most of these issues, I think it is
9 an important part of our complaint and that it's
10 appropriate for you to hear how Bell is or is not
11 complying with the Act in various particulars.

12 **COMMISSIONER DEASON:** Do you have any
13 positions on any issues which are such that your --
14 it's not a contractual provision which you're saying
15 that BellSouth is not in compliance with. It is a
16 requirement within the Act that they are not in
17 compliance with, or are they always in conjunction?

18 **MR. MELSON:** I think they are always in
19 conjunction. I think it's always a breach of the
20 Interconnection Agreement which may also be a
21 violation of the Act.

22 **COMMISSIONER DEASON:** But there's nothing
23 here that you're indicating violates the Act, but
24 there's not also with that, in your viewpoint, a
25 violation of the agreement.

1 **MR. MELSON:** There may be one issue with
2 regard to directory listings -- not directory listings
3 -- I withdraw that.

4 Everything has at least one foot sitting in
5 the Interconnection Agreement.

6 **COMMISSIONER DEASON:** Well, with that
7 understanding then, my concern is to make sure that
8 this Prehearing Order is as clear as possible to those
9 individuals who are going to be reviewing it, not the
10 least of which will be the Commissioners. And I want
11 to make sure it's clear to them when they are
12 preparing for this hearing.

13 I do not have a problem with the current
14 wording of the issues, with the understanding we have
15 had here today. I think the Order should clarify that
16 we're here to interpret the agreement and to see if
17 the parties are in compliance with the agreement. And
18 along with that there can be questions of the Act, but
19 the primary focus that we're going to have is the
20 interpretation of the agreement itself?

21 I think I'm trying to sum up what I've heard
22 here. And I think everyone is pretty much in
23 agreement with that. We can leave the wording of the
24 issue as they are. I just want to make sure that
25 we're not getting into a mini 271 hearing here.

1 **MR. MELSON:** We'll have time enough for one
2 of those later.

3 **COMMISSIONER DEASON:** Hopefully later, yes
4 at some point.

5 Okay. With that understanding, that generic
6 understanding, we can proceed then with specifics of
7 the issues.

8 Issue 1? Issue 2? Issue 3? Issue 4?
9 Issue 5? Issue 6? Issue 7? Issue 8? Issue 9?
10 Issue 10? Issue 11? Issue 12? And Issue 13? Very
11 well.

12 Section 7 addresses the exhibit list. Any
13 changes or corrections to that list?

14 **MR. CARVER:** Yes, sir. As to Mr. Stacy's
15 testimony, there are, I believe, 25 exhibits listed.
16 And there were actually four more exhibits attached to
17 his testimony. And those are identified in our
18 prehearing statement. So we'd just like to have those
19 exhibits numbered 26 through 29 added to the list.

20 **COMMISSIONER DEASON:** Okay. I'm sure that
21 can be incorporated into the order.

22 **MS. BEDELL:** Yes, sir.

23 **COMMISSIONER DEASON:** Very well. Section 8
24 addresses proposed stipulations. My understanding is
25 there are no stipulations. And Section 9 addresses

1 pending motions and it's my understanding there are no
2 pending motions. Okay.

3 Is there -- oh, one last question. Do the
4 parties anticipate providing opening statements?

5 **MR. MELSON:** If the Commission would like to
6 hear them we'll be happy to do them. We had not
7 planned to ask.

8 **MR. CARVER:** We hadn't planned to either.
9 My only thought is with five witnesses in one day we
10 may be pressed for time. I think our witnesses in
11 their summaries will pretty much -- I think their
12 summaries will suffice for what we have to say.

13 **COMMISSIONER DEASON:** I'm not inviting
14 opening statements, I'm just seeking verification.
15 Sometimes we get to hearing and one party has the
16 belief there's going to be opening statements and the
17 other party does not and it's always been my policy
18 that unless both parties are fully informed and
19 prepared, there will be no opening statements. And
20 what I've heard here is that parties are willing to,
21 for the benefit of time purposes, willing to let their
22 witnessing summarize their testimony and there will be
23 no opening statements.

24 Very well. Anything else at this time?

25 **MR. CARVER:** One other matter, and I

1 apologize because I missed it as we went past it.

2 On Page 4 at the beginning there's a
3 statement that briefs will be limited to 40 pages. I
4 hope we can cover all of the issues, but since there
5 are 13 of them, we might need a little bit more than
6 40 so I'd just like to request perhaps we get 50
7 pages.

8 COMMISSIONER DEASON: Any objection?

9 MR. MELSON: No objection.

10 COMMISSIONER DEASON: Staff.

11 MS. BEDELL: The 40 pages is part of the new
12 administrative code. Usually our orders reflect 60
13 pages, but 50 pages is not a problem for us.

14 COMMISSIONER DEASON: So there's no problem
15 making that modification?

16 MS. BEDELL: None at all.

17 COMMISSIONER DEASON: Show then that would
18 be change to do 50.

19 MR. CARVER: Thank you.

20 COMMISSIONER DEASON: Anything else.

21 Hearing none, thank you all for being so prepared.

22 Hopefully the hearing will go as smoothly. Thank you.

23 This hearing is adjourned.

24 (Thereupon, the hearing concluded at
25 9:50 a.m.)

1 STATE OF FLORIDA)
2 : CERTIFICATE OF REPORTER
3 COUNTY OF LEON)

4 I, JOY KELLY, CSR, RPR, Chief, Bureau of
5 Reporting, Official Commission Reporter,

6 DO HEREBY CERTIFY that the Prehearing
7 Conference in Docket No. 980281-TP was heard by the
8 Prehearing Officer at the time and place herein
9 stated; it is further

10 CERTIFIED that I stenographically reported
11 the said proceedings; that the same has been
12 transcribed by me; and that this transcript,
13 consisting of 13 pages, constitutes a true
14 transcription of my notes of said proceedings.

15 DATED this 23rd day of July, 1998.

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