

1 APPEARANCES:

2 MIKE TWOMEY, R. DOUGLAS LACKEY, and EARL
3 EDENFIELD, JR., 675 West Peachtree Street, #4300,
4 Atlanta, Georgia 30375, appearing on behalf of
5 BellSouth Telecommunications, Inc.

6 KENNETH A. HOFFMAN and JOHN ELLIS,
7 Rutledge, Ecenia, Purnell & Hoffman, P.A., P. O. Box
8 551, Tallahassee, Florida 32302; and RUSSELL M. BLAU
9 and MICHAEL L. SHOR, Swidler, Berlin, Shereff,
10 Friedman, LLP, 3000 K Street, N.W., Suite 300,
11 Washington, D.C. 20007; and SUMNER SMITH, U.S. LEC
12 Corporation, Three Morrocroft Centre, 6801 Morrison
13 Boulevard, Charlotte, North Carolina 28211,
14 appearing on behalf of US LEC of Florida, Inc.

15 DIANA W. CALDWELL, Florida Public Service
16 Commission, Division of Legal Services, 2540 Shumard
17 Oak Boulevard, Tallahassee, Florida 32399-0850,
18 appearing on behalf of the Commission Staff.

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P R O C E E D I N G S

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COMMISSIONER JABER: Ms. Caldwell, do you want to read the Notice?

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MS. CALDWELL: Yes. Notice was given in the October 20th, 2000, Florida Administrative Weekly, that a prehearing conference for docket number 000084-TP, petition by BellSouth Telecommunications, Inc. for arbitration of an interconnection agreement with U.S. LEC Florida pursuant to the Telecommunications Act of 1996 would be held at this time and place for the purposes as set forth in the Notice.

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COMMISSIONER JABER: Okay. Mr. Twomey, we'll take appearances.

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MR. TWOMEY: Mike Twomey on behalf of BellSouth. And Commissioner, I'm actually only appearing in this matter for purposes of this prehearing conference. I will not be participating in the hearing on the merits. Messrs. Doug Lackey and Earl Edenfield will be handling this matter on behalf of BellSouth.

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COMMISSIONER JABER: All right. Now, remind me, in this case, have you filed a request for qualified representative status?

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MR. TWOMEY: I have not filed one for myself, because I was only appearing here today for the conference, due to the scheduling of the other matter

1 earlier this morning.

2 COMMISSIONER JABER: I think, you should make an
3 oral request today for purposes of the prehearing order,
4 and I am sure that Mr. Hoffman will not be objecting.

5 MR. TWOMEY: I will, then, move for qualified
6 representative status for the purpose of appearing at this
7 prehearing conference.

8 COMMISSIONER JABER: Okay. And we'll go ahead
9 and grant that so we can go forward.

10 MR. TWOMEY: And, I believe, Mr. Lackey and
11 Mr. Edenfield have already filed whatever necessary
12 paperwork they needed to file to participate in the
13 hearing.

14 COMMISSIONER JABER: Okay.

15 MR. HOFFMAN: Good afternoon, Commissioner,
16 Kenneth Hoffman and John Ellis on behalf of U.S. LEC of
17 Florida, Inc. I'd also like to enter appearances for
18 Russell Blau and Michael Shor of the Swidler Berlin law
19 firm as well as Sumner Smith of U.S. LEC. All the
20 addresses of counsel are accurately stated on the draft
21 prehearing order.

22 COMMISSIONER JABER: Thank you.

23 MR. TWOMEY: In case the record is not clear,
24 Nancy White and Michael Goggin should remain as well on
25 the appearances.

1 COMMISSIONER JABER: Thank you.

2 MS. CALDWELL: And Diana W. Caldwell appearing
3 on behalf of Commission Staff.

4 COMMISSIONER JABER: Are there any preliminary
5 matters, Ms. Caldwell?

6 MS. CALDWELL: Yes, Commissioner. On October
7 31st, 2000, Staff filed a motion for extension of time to
8 file its prehearing statement. Staff believes no party
9 objects to their motion, and we recommend that the motion
10 be granted.

11 COMMISSIONER JABER: Let the record reflect that
12 there were no objections to Staff's filing a prehearing
13 statement late, and that will be granted. Anything else,
14 Ms. Caldwell?

15 MS. CALDWELL: There are no further preliminary
16 matters, Commissioner.

17 COMMISSIONER JABER: All right. It's my intent
18 to go page by page, and we'll talk about changes or
19 questions as we get to them. I'm looking at Page 2, and I
20 see, Staff, you have some strike through.

21 MS. CALDWELL: Yes, Commissioner. What we have
22 done is done a type and strike. For those additions, I
23 believe, the parties received a copy of this earlier, but
24 they had received a preliminary draft, and these are
25 additions to that preliminary draft.

1 And in the effort to avoid any kind of
2 confusion, we added, in underline, the new language that
3 went in and struck any deletions from this draft
4 prehearing order. And, I believe, that under the Conduct
5 of Proceedings, we were dealing with the opening
6 statements and put that in the Case Background. So, I
7 think, with that we'll just move forward.

8 COMMISSIONER JABER: Are there any questions
9 about Staff's changes?

10 MR. HOFFMAN: No, ma'am.

11 MR. TWOMEY: No questions.

12 COMMISSIONER JABER: Mr. Twomey, I'm assuming
13 you'll make an opening statement at the beginning of the
14 hearing and, again, it's 10 minutes.

15 MR. TWOMEY: Yes, I believe, BellSouth will want
16 to make an opening statement.

17 COMMISSIONER JABER: Mr. Hoffman, is that
18 adequate?

19 MR. HOFFMAN: We will as well.

20 COMMISSIONER JABER: All right. Any changes to
21 Page 3? Page 4.

22 Page 5. Page 5, please note that it's my intent
23 to do direct and rebuttal together at the hearing.

24 Page 6.

25 Page 7. Staff, you added Issue A. I know that

1 was done at my request. Has anyone expressed any concern?

2 MR. HOFFMAN: No, Commissioner. Just for the
3 record, and I'll give the language to Ms. Caldwell, U.S.
4 LEC will take the same position that was articulated for
5 Level 3 in the prehearing conference this morning on the
6 same issue.

7 COMMISSIONER JABER: Ms. Caldwell, you'll just
8 reflect that in the new prehearing order.

9 MS. CALDWELL: That will be fine. And
10 BellSouth?

11 MR. TWOMEY: We have no objection to the
12 statement of the position.

13 MS. CALDWELL: And also, will BellSouth be
14 including their language as well from the Level 3?

15 MR. TWOMEY: Regarding the Commission's
16 jurisdiction?

17 MS. CALDWELL: That is correct.

18 MR. TWOMEY: Yes.

19 MS. CALDWELL: Okay.

20 COMMISSIONER JABER: Why don't you insert the
21 positions from this morning's prehearing conference and
22 contact the parties again and let them read it. And to
23 the degree there are changes, give the changes to
24 Ms. Caldwell by the close of business on Monday.

25 Issue 1. Issue 2. Page 9, Issue 3.

1 MR. TWOMEY: Let me back up for one second on 2,
2 Issue A. In the Level 3 arbitration, I believe, the
3 language we put about the Commission's jurisdiction was
4 that we believe the Commission had jurisdiction for all
5 those matters properly raised in the petition.

6 We have a -- we do not have any problem with the
7 Commission exercising jurisdiction over those matters
8 properly raised in this matter. That does not waive our
9 right to argue, for example, with issue one that we don't
10 think it's an appropriate subject of arbitration. It's
11 not really a jurisdictional question, it's more a question
12 of whether it belongs in this kind of an arbitration. I
13 just want to make sure when we borrow that language from
14 the Level 3 statement that it doesn't undermine what we've
15 said on Issue 1.

16 COMMISSIONER JABER: Right. I appreciate that
17 distinction, but that goes to the point that you need to
18 make sure when you read the position that it includes
19 everything you want it to. And to the degree you need to
20 add to it or take away from the position, please, do that
21 by Monday, close of business.

22 Issue A, the way it's worded, is limited to the
23 Commission's jurisdiction, but I appreciate your
24 distinction with respect to the next issue.

25 MR. TWOMEY: I just think the way I phrased my

1 response in the Level 3 case also acknowledged not only
2 the Commission's jurisdiction, but I also acknowledge in
3 that statement that I thought the matters raised in the
4 Level 3 petition were all appropriate for arbitration.
5 And that's not necessarily the case with all the issues in
6 this proceeding, so we will check that when we move the
7 language over.

8 COMMISSIONER JABER: Okay. Thank you.

9 Changes to Issue 2 or Issue 3?

10 Page 10, Issue 4. Page 11. Page 12. Page 13,
11 14, 15. Page 16. Okay, and on Page 17, Issue 9 or to the
12 Exhibit List.

13 Ms. Caldwell, I had asked you to talk to the
14 parties, also, about Provision K in this morning's order
15 on procedure. Was there any objection to adding some
16 language in the brief to address pending FCC decisions or
17 court decisions at the beginning of the hearing or in your
18 briefs that might affect this proceeding?

19 MR. TWOMEY: We have no objection of proceeding
20 in that way.

21 MS. CALDWELL: Commissioner, I do think what I
22 will do is for clarity in the ruling section, simply add
23 the language, "A statement identifying any decision or
24 pending decision of the FCC or any court that has or may
25 either preempt or otherwise impact the Commission's

1 ability to resolve any of the issues presented or the
2 relief requested in this matter shall be addressed in the
3 parties' briefs."

4 COMMISSIONER JABER: I think, that's a good
5 idea. That's a good idea.

6 All right. There are no proposed stipulations
7 at this time. We've ruled on Staff's motion for an
8 extension of time to file Staff's prehearing statement.
9 Is there anything else outstanding, Ms. Caldwell, that
10 you're aware of?

11 MS. CALDWELL: There are no outstanding motions
12 to Staff's understanding.

13 COMMISSIONER JABER: Mr. Twomey.

14 MR. TWOMEY: We have no other outstanding issues
15 at this time.

16 COMMISSIONER JABER: Mr. Hoffman.

17 MR. HOFFMAN: Commissioner Jaber, we have no
18 pending matters, but I will advise that I believe that
19 there may be a potential for stipulation on some of the
20 issues under Issue 7, concerning IP telephony and the
21 matter of the false traffic that was raised. And if that
22 occurs, obviously, the parties will advise Ms. Caldwell,
23 and we'll make the appropriate filing.

24 Secondly, Commissioner, we filed a notice of
25 intent to request confidential classification in

1 connection with a portion of Ms. Montano's rebuttal
2 testimony and exhibit. We'll be filing a request for
3 confidential classification. I believe that it's due a
4 week from this Friday, actually.

5 And similar to the situation with Level 3,
6 Commissioner, we will be filing a motion to strike
7 directed at the rebuttal testimony of Ms. Cox, which
8 addresses the lower reciprocal compensation rate for ISP
9 traffic. And, of course, we'll hand deliver and fax that
10 to the appropriate counsel for BellSouth.

11 COMMISSIONER JABER: Ms. Caldwell, when is the
12 hearing in this docket?

13 MS. CALDWELL: The hearing is scheduled, in this
14 docket, for December the -- I believe, it's December the
15 14th.

16 COMMISSIONER JABER: All right. With respect to
17 an anticipated request for confidential classification, it
18 would be my desire, Diana, to have the ruling on that
19 before the hearing. So, if it's filed in time for a
20 separate ruling, I'd like to do that.

21 MS. CALDWELL: That would be Staff's intent.

22 COMMISSIONER JABER: Okay. And with respect to
23 the motion to strike, we'll reserve ruling, obviously,
24 until we see the motion and have a response.

25 MR. TWOMEY: And I have conferred with

1 Mr. Edenfield regarding the possible stipulation of the
2 false traffic issue. And I can state that there are
3 discussions under way, but as of today, there is no
4 resolution of that matter.

5 COMMISSIONER JABER: What is the -- point out to
6 me, Mr. Hoffman, the issue that will be related to your
7 motion to strike.

8 MR. HOFFMAN: Commissioner, that is similar with
9 Level 3. It is contained within the rebuttal testimony of
10 BellSouth Witness Cox. And it is some discussion in her
11 testimony where she advocates an alternative proposal,
12 basically, saying that if the Commission orders reciprocal
13 compensation for the termination of ISP-bound traffic,
14 then, the reciprocal compensation rate ought to be a lower
15 rate than the reciprocal compensation rate, which would
16 apply to other local traffics.

17 And as I explained this morning, we believe that
18 there are a number of reasons why such testimony, which
19 has been raised for the first time on rebuttal, should be
20 stricken. We think it's properly within the scope of the
21 generic ISP proceeding, which is in a different docket.
22 We will get into all of that in the motion and, of course,
23 BellSouth will respond.

24 COMMISSIONER JABER: But which issue is that?
25 Is that Issue 7?

1 MR. HOFFMAN: Yes. In this docket it's 7, yes.

2 MR. TWOMEY: And, obviously, just for the
3 record, we believe it is within the scope of Issue 7 and
4 the proper subject of rebuttal testimony.

5 COMMISSIONER JABER: All right. Anything else,
6 Mr. Hoffman?

7 MR. HOFFMAN: No, ma'am.

8 COMMISSIONER JABER: All right. Well, with that
9 we'll adjourn the prehearing conference. Thank you, all.
10 I would ask that you get any changes to your positions
11 with respect to the legal issue to Diana by Monday, close
12 of business, so we can get the final prehearing order
13 issued. Thank you.

14 MR. HOFFMAN: Thank you.

15 MR. TWOMEY: Thank you.

16 (Prehearing concluded at 1:45 p.m.)

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1 STATE OF FLORIDA)

2 : CERTIFICATE OF REPORTER

3 COUNTY OF LEON)

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5 I, KORETTA E. STANFORD, RPR, Official FPSC Commission
6 Reporter, do hereby certify that the Prehearing Conference
7 in docket number 000084-TP was heard by the Florida Public
8 Service Commission at the time and place herein stated.

9 It is further certified that I stenographically
10 reported the said proceedings; that the same has been
11 transcribed under my direct supervision; and that this
12 transcript, consisting of 13 pages, constitutes a true
13 transcription of my notes of said proceedings.

14 I FURTHER CERTIFY that I am not a relative, employee,
15 attorney or counsel of any of the parties, nor am I a
16 relative or employee of any of the parties' attorney or
17 counsel connected with the action, nor am I financially
18 interested in the action.

19 DATED this 15th DAY OF NOVEMBER, 2000

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22 _____
23 KORETTA E. STANFORD, RPR
24 FPSC Official Commission Reporter
25 (850) 413-6734

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