

ORIGINAL

RUTLEDGE, ECENIA, PURNELL & HOFFMAN

PROFESSIONAL ASSOCIATION
ATTORNEYS AND COUNSELORS AT LAW

STEPHEN A. ECENIA
JOHN R. ELLIS
KENNETH A. HOFFMAN
THOMAS W. KONRAD
MICHAEL G. MAIDA
MARTIN P. McDONNELL

POST OFFICE BOX 551, 32302-0551
215 SOUTH MONROE STREET, SUITE 420
TALLAHASSEE, FLORIDA 32301-1841

TELEPHONE (850) 681-6788
TELECOPIER (850) 681-6515

J. STEPHEN MENTON
R. DAVID PRESCOTT
HAROLD F. X. PURNELL
GARY R. RUTLEDGE
GOVERNMENTAL CONSULTANTS
MARGARET A. MENDUNI
M. LANE STEPHENS

June 1, 2001

Ms. Blanca S. Bayo, Director
Division of Records and Reporting
Florida Public Service Commission
2540 Shumard Oak Boulevard
Betty Easley Conference Center, Room 110
Tallahassee, Florida 32399-0850

HAND DELIVERY

RECEIVED-FPSC
01 JUN - 1 PM 4:07
RECORDS AND REPORTING

Re: Docket No. 001810-TP

Dear Ms. Bayo:

Enclosed herewith for filing in the above-referenced docket on behalf of TCG South Florida and Teleport Communications Group ("TCG") are the original and fifteen copies of TCG's Supplemental Motion for Continuance.

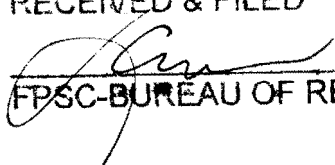
Please acknowledge receipt of these documents by stamping the extra copy of this letter "filed" and returning the copy to me.

Thank you for your assistance with this filing.

Sincerely,


Kenneth A. Hoffman

APP KAH/rl
CAF Enclosures
CMP cc: All Parties of Record
CTR _____
ECR _____
LEG 1
OPC _____
PAI _____
RGO _____
SEC 1
SER _____
OTH _____

RECEIVED & FILED

FPSC-BUREAU OF RECORDS

DOCUMENT NUMBER-DATE
06913 JUN-15
FPSC-RECORDS/REPORTING

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Complaint of TCG South Florida and)
Teleport Communications Group for)
Enforcement of Interconnection Agreement)
with BellSouth Telecommunications, Inc.)
_____ /

Docket No. 001810-TP

Filed: June 1, 2001

**TCG'S MOTION TO BIFURCATE AND
SUPPLEMENTAL MOTION FOR CONTINUANCE**

TCG South Florida and Teleport Communications Group ("TCG"), by and through undersigned counsel, and pursuant to Rules 28-106.204(1) and 28-106.210, Florida Administrative Code, respectfully moves to bifurcate the issues in this proceeding and for a continuance of the final hearing currently scheduled for June 22, 2001, as specifically set forth below. In support of these Motions, TCG states as follows:

1. On March 30, 2001, the Prehearing Officer issued the Order Establishing Procedure in this docket, Order No. PSC-01-0833-PCO-TP. Appendix A to the Order Establishing Procedure, a copy of which is attached hereto as Exhibit "A", lists the issues which have been identified in this proceeding. The final hearing in this case is currently scheduled for June 22, 2001.

2. On May 18, 2001, TCG filed a Motion for Continuance and Rescheduling of Controlling Dates for Prehearing Statements, Prehearing Conference and Final Hearing. On May 25, 2001, BellSouth filed its Response in Opposition to TCG's Motion for Continuance. On May 30, 2001, at the Prehearing Conference, the Prehearing Officer denied TCG's Motion for Continuance, but indicated that she would entertain a supplemental motion for continuance based on the additional grounds supporting the continuance articulated by TCG's counsel at the Prehearing Conference.

3. There are essentially three issues in this case:

DOCUMENT NUMBER- DATE

06913 JUN-18

FPSC RECORDS/REPORTING

a. Whether seven digit dialed or ten digit dialed local calls transported and terminated by TCG to Internet Service Providers (“ISPs”) constitutes “Local Traffic” subject to payment of reciprocal compensation under the Second TCG-BellSouth Agreement at issue in this proceeding.¹

b. If such ISP-bound traffic does constitute “Local Traffic”, what is the amount due from BellSouth to TCG under the Second TCG-BellSouth Agreement?²

c. Whether BellSouth has paid TCG in full for switched access charges due and payable to TCG for TCG’s transport and termination of intraLATA calls.³

4. On May 25, 2001, TCG filed a Motion for Partial Summary Final Order addressing the first issue outlined above - - the issue of whether BellSouth has breached the Second TCG-BellSouth Agreement by failing to pay TCG reciprocal compensation for TCG’s transport and termination of calls to ISPs. The predominant portion of the prefiled testimony and exhibits that have been filed in this proceeding address this issue. TCG believes that the time and resources of the parties and the Commission would be most efficiently utilized by first addressing TCG’s Motion for Partial Summary Final Order before embarking into a final hearing. If TCG’s Motion is granted, then the issues for final hearing will be significantly reduced and, as discussed below, may be eliminated. On the other hand, if TCG’s Motion is denied, then no party will be prejudiced.⁴

¹See Issue Nos. 2, 3 and 4(a).

²See Issue No. 4(b).

³See Issue Nos. 5(a) and 5(b).

⁴BellSouth, in opposing TCG’s May 18 Motion for Continuance, did not claim any prejudice would result from granting TCG’s Motion.

5. TCG believes that the time and resources of the parties and the Commission would be most efficiently utilized by bifurcating the issues for final hearing and rescheduling final hearing dates as suggested below. TCG's Motion for Partial Summary Final Order addresses Issue Nos. 1 through 4(a). The granting of TCG's Motion for Partial Summary Final Order would eliminate the need for a final hearing on these issues. Accordingly, TCG maintains that it would be appropriate to bifurcate Issue Nos. 1 through 4(a) into one hearing process and Issue Nos. 4(b) through 5(b) into a second hearing process. If TCG's Motion for Partial Summary Final Order is denied, TCG requests to proceed to final hearing on June 22 on Issue Nos. 1 through 4(a) as reflected in Appendix A to the Order Establishing Procedure. TCG would not object to rescheduling a final hearing date on Issue Nos. 1 through 4(a) if such final hearing date was rescheduled on a date no more than 60 days after June 22, 2001.

6. Bifurcation of the issues as outlined above and a continuance and rescheduling of a second final hearing date to address Issue Nos. 4(b), 5(a) and 5(b) would also enhance the prospect of a settlement and resolution of this docket *in toto*. If TCG's Motion for Partial Summary Final Order is granted, the only disputed issues remaining between the parties concern the amount of: (a) reciprocal compensation due TCG from BellSouth for "Local Traffic," including ISP calls; and (b) intrastate switched access charges due TCG from BellSouth. (Issue Nos. 4(b), 5(a) and 5(b)). The critical disputed issue is whether TCG is entitled to include the tandem interconnection rate in its claim for reciprocal compensation under the Second TCG-BellSouth Agreement. The Commission is currently undertaking a generic investigation in Docket No. 000075-TP where the Commission will establish general rules and criteria governing when an ALEC may recover the tandem rate as part of its reciprocal compensation for the transport and termination of local traffic. TCG believes

that the outcome of that issue in Docket No. 000075-TP may play a significant role in determining how the tandem rate issue is resolved in the instant case. Therefore, TCG believes that the prospects of settlement - - assuming both TCG and BellSouth take a reasonable approach to settlement - - should be enhanced once the Commission establishes the "rules of the road" for inclusion of the tandem rate in reciprocal compensation.

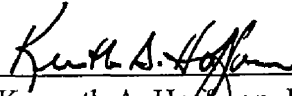
7. The Commission is currently scheduled to make a decision on the Phase II issues, including the tandem rate issue, in Docket No. 000075-TP, at the September 4, 2001 Agenda Conference. Accordingly, consistent with the above approach, TCG requests that the final hearing concerning the amounts of compensation TCG is owed for the tandem rate (Issue Nos. 4(a), 5(a) and 5(b)), be rescheduled on a date no later than thirty days after September 4, 2001, to give TCG and BellSouth thirty days to negotiate a settlement of the tandem rate amount due TCG in the event the Commission grants TCG's Motion for Partial Summary Final Order.

WHEREFORE, for the foregoing reasons, TCG respectfully requests that the Prehearing Officer grant these Motions, and order that:

A. Issue Nos. 1, 2, 3, and 4(a) be scheduled for hearing on June 22, 2001, as previously noticed, or on a date no more than 60 days after June 22, 2001, in the event a hearing on these issues is necessary after consideration of TCG's Motion for Partial Summary Final Order; and

B. Issue Nos. 4(b), 5(a) and 5(b) be scheduled for hearing no later than October 4, 2001.

Respectfully submitted,



Kenneth A. Hoffman, Esq.
Martin P. McDonnell, Esq.
Rutledge, Ecenia, Purnell & Hoffman, P.A.
P. O. Box 551
Tallahassee, FL 32302
(850) 681-6788 (Telephone)
(850) 681-6515 (Telecopier)

Marsha Rule, Esq.
AT&T
101 North Monroe Street, Suite 700
Tallahassee, FL 32301-1549

Co-counsel for TCG South Florida

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing was furnished by hand delivery this 1st day of June, 2001 to the following:

Nancy B. White, Esq.
James Meza, III, Esq.
c/o Nancy Sims
BellSouth Telecommunications, Inc.
150 N. Monroe Street, Suite 400
Tallahassee, FL 32301

Patricia Christensen, Esq.
Division of Legal Services
Florida Public Service Commission
2540 Shumard Oak Boulevard, Room 370
Tallahassee, FL 32399-0850

By: 
KENNETH A. HOFFMAN, ESQ.

AT&T/1810.2continue

ORDER NO. PSC-01-0833-PCO-TP
DOCKET NO. 001810-TP
PAGE 11

APPENDIX A

The tentative list of issues which have been identified in this proceeding are set forth below.

ISSUE 1: What is the Commission's jurisdiction in this matter?

ISSUE 2: Under the Second BellSouth/TCG Agreement, are the parties required to compensate each other for delivery of traffic to ISPs?

ISSUE 3: What is the effect, if any, of Order No. PSC-98-1216-FOF-TP, issued September 15, 1998, in Docket No. 980184-TP, (TCG Order), interpreting the First BellSouth/TCG Agreement requiring BellSouth to pay TCG for transport and termination of calls to ISPs, on the interpretation and application of the Second BellSouth/TCG Agreement?

ISSUE 4(a): Has BellSouth breached the Second BellSouth/TCG Agreement by failing to pay TCG reciprocal compensation for transport and termination of Local Traffic as defined in the Second BellSouth/TCG Agreement for calls originated by BellSouth's end-user customers and transported and terminated by TCG to ISPs?

ISSUE 4(b): If so, what rates under the Second BellSouth/TCG Agreement should apply for the purposes of reciprocal compensation?

ISSUE 5(a): Has BellSouth breached the Second BellSouth/TCG Agreement by failing to pay TCG switched access charges for telephone exchange service provided by TCG to BellSouth?

ISSUE 5(b): If so, what rates under the Second BellSouth/TCG Agreement should apply for purposes of originating and terminating switched access charges for intraLATA toll traffic?

