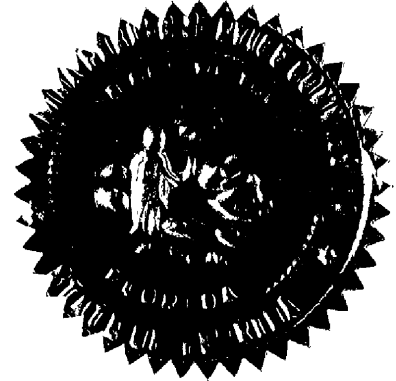


BEFORE THE  
FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 001810-TP

In the Matter of

REQUEST FOR ARBITRATION CONCERNING  
COMPLAINT OF TCG SOUTH FLORIDA  
AND TELEPORT COMMUNICATIONS GROUP  
AGAINST BELL SOUTH TELECOMMUNICATION,  
INC. FOR BREACH OF TERMS OF  
INTERCONNECTION AGREEMENT



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PROCEEDINGS: PREHEARING CONFERENCE

BEFORE: COMMISSIONER LILA A. JABER  
Prehearing Officer

DATE: Wednesday, May 30th, 2001

TIME: Commenced at 1:30 p.m.  
Concluded at 1:52 p.m.

PLACE: Betty Easley Conference Center  
Room 152  
4075 Esplanade Way  
Tallahassee, Florida

REPORTED BY: JANE FAUROT, RPR  
FPSC Division of Records & Reporting  
Chief, Bureau of Reporting

## 1 APPEARANCES:

2 JAMES MEZA, III, c/o Nancy Sims, 150 South  
3 Monroe Street, Suite 400, Tallahassee, Florida 32301,  
4 appearing on behalf of BellSouth Telecommunications, Inc.

5 KENNETH A. HOFFMAN, and MARTIN P.  
6 McDONNELL, Rutledge, Ecenia, Underwood, Purnell and  
7 Hoffman, P. O. Box 511, 215 South Monroe Street,  
8 Suite 420, Tallahassee, Florida 32302-0551,  
9 appearing on behalf of TCG/Teleport Communications  
10 Group.

11 PATTY CHRISTENSEN and JESSICA ELLIOTT,  
12 FPSC Division of Legal Services, 1540 Shumard Oak  
13 Boulevard, Tallahassee, Florida 32399-0850,  
14 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: Counsel, read the notice.

MS. CHRISTENSEN: By notice issued May 17th, 2001, this time and place have been set for a prehearing conference in Docket 001810-TP, the request for arbitration concerning the complaint of TCG South Florida and Teleport Communications Group against BellSouth Telecommunications, Inc. for breach of terms of interconnection agreement. The purpose of this prehearing conference is as set forth in the notice.

COMMISSIONER JABER: Let's take appearances.

BellSouth.

MR. MEZA: This is Jim Meza on behalf of BellSouth.

MR. HOFFMAN: Kenneth Hoffman and Mark McDonnell on behalf of TCG South Florida and Teleport Communications Group.

MS. CHRISTENSEN: Patty Christensen on behalf of the Staff.

MS. ELLIOTT: Jessica Elliott on behalf of Staff.

COMMISSIONER JABER: All right. I understand there are pending motions.

Ms. Christensen, how would you recommend that we go forward? Should we discuss the preliminary matters first?

MS. CHRISTENSEN: Commissioner, I would recommend going ahead and addressing the preliminary matters first, and address each of the motions individually. I would recommend starting with TCG's motion for continuance and rescheduling of

1 controlling dates for prehearing statement, prehearing  
2 conference, and final hearing that was filed on May 18th of  
3 2001.

4 COMMISSIONER JABER: Let me tell the parties, I know  
5 you all might want to address this orally, but to some degree I  
6 have already denied portions of this motion just by virtue of  
7 the fact that we are here. I have read the pleadings. I don't  
8 need any more argument on these particular motions. I want to  
9 go ahead and deny TCG's motion for a continuance and  
10 rescheduling of controlling dates for the prehearing  
11 statements, conference, and the final hearing. So show that  
12 motion denied.

13 What's next?

14 MS. CHRISTENSEN: Commissioner, the next outstanding  
15 motion is TCG's motion for partial summary final order that was  
16 filed on May 25th, 2001. BellSouth's response is due June 1st,  
17 2001. And I believe this is a matter that staff would be  
18 preparing a recommendation to be filed for the full panel  
19 assigned to this docket.

20 COMMISSIONER JABER: Mr. Meza, do you agree your  
21 response is due June 1st?

22 MR. MEZA: Yes, ma'am, that is correct. We were  
23 served via fax last Friday. Prior to this hearing conference  
24 today, I have spoken with counsel for TCG and requested a  
25 two-week extension of time to file response through the

1 holiday, this past holiday, and they have come back and agreed  
2 to a one-week extension of time.

3 COMMISSIONER JABER: So your response would be due  
4 June 8th?

5 MR. MEZA: Correct.

6 MR. McDONNELL: Commissioner Jaber, Marty McDonnell.  
7 That was in response to Mr. Meza's agreement to withdraw his  
8 objection for our motion for continuance.

9 COMMISSIONER JABER: Let me tell you where --

10 MR. MEZA: Yes. It was a give and take situation.  
11 We were jammed up.

12 COMMISSIONER JABER: Let me tell you what I would  
13 like to do. And if we need to revisit an issue we can. I  
14 would like staff to file a recommendation on June 12th to  
15 address the motion for partial summary final order. And that  
16 might put a limitation on -- it might make it difficult for you  
17 to respond. I would hope not. The reason I would like staff  
18 to file a recommendation on June 12th, is I would like to go  
19 forward with the hearing on June 21st.

20 The decision the Commission would make on the motion  
21 may determine the scope of the proceeding. It may result in a  
22 continuance of the proceeding, I really don't know. I don't  
23 want to prejudge it, I have no idea. But at least that  
24 difference in time would give everyone an opportunity to  
25 regroup.

1 MR. MEZA: Okay.

2 MR. HOFFMAN: Commissioner, I know you have made your  
3 decision, but I do want to ask you to consider a couple of  
4 matters that perhaps you haven't considered from the face of  
5 the pleadings.

6 COMMISSIONER JABER: Uh-huh.

7 MR. HOFFMAN: The motion is a motion for a partial  
8 summary final order. And what it addresses is what I would  
9 call the liability issue on the ISP issue. If TCG were to  
10 prevail on that, that issue, that does not necessarily resolve  
11 the entire case. Where we could be is a situation where  
12 BellSouth is found to have breached the agreement on the local  
13 part of it, but a remaining -- but we would have a remaining  
14 dispute over the amount due.

15 What we are -- what I am suggesting to you now is  
16 that it might be a better use of everyone's resources, and I  
17 understand that you have a pretty strong opinion about moving  
18 forward on June 22, but it might be a better use of everyone's  
19 resources to postpone the hearing. Because if TCG were to  
20 prevail on the liability issue, then I think the sensible way  
21 to deal with this is to see what the PSC does on the tandem  
22 rate issue. Because that is going to direct how that, what I  
23 will call damages issue should be resolved.

24 Once sort of the rules of the road are laid out by  
25 the Commission in phase two of the generic docket on the tandem

1 rate issue, and I think Mr. Meza would agree -- he won't agree  
2 that they are liable, I understand that, but I think that Mr.  
3 Meza would agree that the damages dispute on the local traffic  
4 focuses only on the tandem rate issue.

5 COMMISSIONER JABER: Well, Mr. Hoffman, is that a new  
6 motion for continuance?

7 MR. HOFFMAN: No. No, no, no. What I'm trying to  
8 say, Commissioner Jaber, is perhaps -- implicitly I'm asking  
9 that perhaps you reconsider your ruling.

10 COMMISSIONER JABER: Let me tell you why I ruled  
11 quickly on the motions that we have. The basis of the motion  
12 for continuance was that you were going to file a motion for  
13 partial summary final order and that the prehearing statements  
14 had not been due and testimony had not been due. So on the  
15 face of that pleading, I am denying that motion. I don't think  
16 good cause has been shown. You have already filed testimony,  
17 you have already filed prehearing statements.

18 Now, if there are new grounds for a new motion for  
19 continuance, and if you want to orally make a motion for a  
20 continuance, that is a different matter. Would you agree?

21 MR. HOFFMAN: Yes. And that is what I will -- I will  
22 recharacterize my argument as a new ore tenus motion for  
23 continuance. And, again, Commissioner, I believe that the most  
24 efficient use of the Commission's and the parties' resources  
25 would be utilized by allowing Mr. Meza his one week, additional

1 week to respond to the motion giving the staff the time they  
2 need to address that motion.

3           And if that motion is resolved in favor of TCG, and  
4 I'm not here to say that it is, I don't think we need to argue  
5 the merits of that motion, I'm just saying hypothetically if it  
6 is, I think that result coupled with the outcome of the tandem  
7 rate issue may likely lead to the elimination of the hearing  
8 process for this docket.

9           COMMISSIONER JABER: Mr. Meza, your response.

10           MR. MEZA: Yes. First, I don't believe the rate  
11 issue is before the Commission on a summary judgment motion.  
12 So we will still need to go to hearing on that issue. So  
13 regardless of what happens with this summary judgment motion,  
14 there is still going to be a hearing.

15           My original position regarding this motion somewhat  
16 remains the same, is that I feel uncomfortable granting or  
17 consenting to a continuance just to allow them to have their  
18 summary judgment heard. I think that is rather presumptuous,  
19 and they have had a lot of time to bring this motion. In fact,  
20 they still have discovery outstanding. And in their motion to  
21 compel they indicate they are going to depose our witnesses.  
22 So to me there is a primary question of whether summary  
23 judgment is even proper with all of these questions of fact out  
24 there.

25           Regardless of that, if this Commission wishes to



1 grant a continuance, we would not object as long as we have an  
2 extension of time in which to file a response to the summary  
3 judgment. If the Commission is not inclined to grant us that  
4 one-week extension, or even two, which we really need, then we  
5 would oppose a continuance.

6 COMMISSIONER JABER: Let me ask you this, Mr. Meza.  
7 It seems to me it hinges on whether you can file a response by  
8 June 1st to the motion for summary final order. Can you do  
9 that?

10 MR. MEZA: Yes, we can. It would be extremely  
11 difficult due to the fact that I am scheduled to be in  
12 Tallahassee until Friday morning; and my co-counsel, Mr.  
13 Edenfield, is in Miami. So we are both out of the office, but  
14 we could get it done. We would, of course, like more time.  
15 But if this Commission wishes to go forward on the 22nd, we  
16 will get it done.

17 COMMISSIONER JABER: Here is what I would like to do.  
18 This is a new ground for a motion for a continuance. I would  
19 like Mr. Hoffman to put this in a written motion, file it as  
20 soon as you can. I would like for you to endeavor to meet the  
21 June 1st time frame to respond. I want staff to try to put  
22 this on the June 12th agenda, understanding that you might have  
23 to come back to me and say it's not possible, Ms. Christensen,  
24 because of all of these elements. But I am not foreclosing  
25 that staff will also add an issue related to a motion for a

1 continuance.

2 I don't think we have all the answers today to rule  
3 on a motion for continuance. I also don't think we have to.  
4 So endeavor to respond, endeavor to write your recommendation,  
5 Patty. If you feel like you have to renew a motion for a  
6 continuance, do it in writing, that will allow staff to add it  
7 to the recommendation.

8 Ms. Christensen, motion to compel?

9 MS. CHRISTENSEN: Yes, Commissioner, the last  
10 outstanding motion is TCG's motion to compel and request for  
11 expedited order filed on May 25th.

12 COMMISSIONER JABER: And BellSouth's response is due  
13 when?

14 MS. CHRISTENSEN: I believe BellSouth's response  
15 would be due the same date that the response is due on the  
16 partial summary judgment, which is June 1st. I believe that  
17 motion to compel was hand-delivered, thus that would only  
18 provide seven days for a response.

19 MR. MEZA: That is correct. We were served via fax,  
20 I believe, and I don't know if by hand.

21 COMMISSIONER JABER: Mr. Hoffman, on a Friday before  
22 a Memorial Day weekend.

23 MR. MEZA: Which we had our legal conference and no  
24 one was in the office, so --

25 MR. HOFFMAN: Just a simple courtesy to BellSouth in

1 exchange for some of their courtesies.

2 COMMISSIONER JABER: Obviously we can't rule on this  
3 one today, but here is what I do want you all to do. I heard  
4 you say you will be in Tallahassee through Friday. That gives  
5 you all plenty of time to sit down and analyze every single  
6 request and when responses could be made.

7 I have to tell you, Mr. Meza, that if any of these  
8 responses should be made, that I am going to adhere to a June  
9 15th discovery cut-off period, so that will shorten your time  
10 considerably. And I would encourage you to try to work this  
11 out. In any event, if it doesn't work out, make sure that  
12 Patty knows, Ms. Christensen knows which items are outstanding  
13 and we will issue an order subsequently.

14 MR. MEZA: And, Commissioner Jaber, I would like to  
15 point out that our responses are due today to the actual  
16 discovery. So I believe that once Mr. Hoffman takes a look at  
17 what we have produced that most of these issues will go away.

18 COMMISSIONER JABER: Great. Some sort of  
19 supplemental filing letting us know which ones are outstanding,  
20 I think, is appropriate.

21 Any other pending motions?

22 MS. CHRISTENSEN: No, Commissioner. Staff is not  
23 aware of any further pending motions.

24 COMMISSIONER JABER: Preliminary matters?

25 MS. CHRISTENSEN: Staff is not aware of any further

1 preliminary matters.

2           COMMISSIONER JABER: All right. Then let's turn to  
3 the draft prehearing order. Unless any party has a change to  
4 specific pages of the prehearing order, I don't intend to go  
5 page-by-page.

6           MR. HOFFMAN: Commissioner, before you do, let me go  
7 back to the pending motions. We will be -- today is Wednesday.  
8 We will be filing a renewed, or a new, or second motion for  
9 continuance. It may be appropriate to shorten BellSouth's  
10 response time in order to move this process along in the way  
11 that you want to move it along. I don't want to make the  
12 suggestion as to what that should be, because he has got enough  
13 to do right now, but --

14           COMMISSIONER JABER: He has made an oral motion, you  
15 know what the basis of the motion is. I think really having  
16 him put it in writing is for staff's benefit.

17           MR. MEZA: Yes. I mean, I would ask that my comments  
18 here today be considered my response. I mean, if that is not  
19 appropriate, then I will put something in writing.

20           MR. HOFFMAN: And I can represent that we will put it  
21 in writing, but it will reflect the arguments that I have made  
22 today.

23           COMMISSIONER JABER: Okay. Ms. Christensen, you will  
24 have the transcript for BellSouth's response, and you will have  
25 a written motion within -- when will you be filing your motion?

1 MR. HOFFMAN: No later than Friday.

2 MS. CHRISTENSEN: That should be sufficient. I'm not  
3 sure what the turn-around time on the transcript is, but I  
4 believe it is usually fairly quick, and then we can address it  
5 with that.

6 COMMISSIONER JABER: Great.

7 MR. MEZA: Excuse me, but I believe that if we are  
8 required -- well, that if we file our opposition on Friday to  
9 the summary judgment then we will fight the continuance.  
10 Because the only reason why we would agree to a continuance  
11 would be to get the extension, which I don't believe we would  
12 get today. So, take that to mean we oppose any continuance of  
13 the hearing date.

14 COMMISSIONER JABER: Understood. All right. Mr.  
15 Hoffman, any changes to the draft prehearing order?

16 MR. HOFFMAN: No, ma'am.

17 COMMISSIONER JABER: Mr. Meza?

18 MR. MEZA: No, ma'am.

19 COMMISSIONER JABER: Staff?

20 MS. CHRISTENSEN: No, ma'am. I believe we had -- and  
21 I have provided copies of the new draft order, which includes  
22 all of the pending motions here today with the correct filing  
23 dates reflected for the response, BellSouth's response to the  
24 motion to opposition. I think all of those should read the  
25 25th for all the other filed motions. Other than that, staff

1 has no changes at this time.

2 COMMISSIONER JABER: Mr. Hoffman, let me ask you,  
3 which issue do you believe will be resolved with the generic  
4 docket?

5 MR. HOFFMAN: 1, 2, 3, and 4 -- well, excuse me.

6 MR. McDONNELL: If I might, Commissioner, Marty  
7 McDonnell; 4B and 5B relate to the tandem interconnection rate  
8 which TCG feels it is entitled to and BellSouth does not. If  
9 the Commission in a generic docket resolves that issue,  
10 hopefully that will assist us in resolving it in this case.

11 COMMISSIONER JABER: Does it assist you in resolving  
12 it in the sense that you will negotiate those issues, or do you  
13 feel like the generic docket will automatically resolve these  
14 issues for you?

15 MR. HOFFMAN: Commissioner, our point is this; to  
16 this point there have been two, three, four arbitrations where  
17 this issue has come up. The purpose of the generic docket, as  
18 I understand it, is to establish sort of the rules of the road  
19 as to how that issue will be handled. My point was that it  
20 will not automatically resolve the docket, but that AT&T or TCG  
21 will look at what the Commission has ordered on that issue and  
22 know what its prospects of success are in terms of the tandem  
23 rate on the local traffic. Again, assuming that the Commission  
24 were to find BellSouth liable for the ISP calls. And I would  
25 suspect that we would be able to negotiate that issue.

1           COMMISSIONER JABER: But why do you need a  
2 continuance of the hearing if only portions of the issues are  
3 arguably effected?

4           MR. HOFFMAN: We need a continuance -- we don't need  
5 it. What my point is why go to hearing on an issue which may  
6 very well be resolved by summary final order on liability and  
7 then the remaining issues in the case will be settled out based  
8 on the generic ruling.

9           COMMISSIONER JABER: Do you agree that the generic  
10 ruling applies prospectively?

11          MR. HOFFMAN: Yes.

12          COMMISSIONER JABER: Mr. Meza, how do you respond to  
13 all of that?

14          MR. MEZA: Well, again, I believe that Mr. Hoffman's  
15 assertion regarding the merits of the summary judgment is  
16 rather presumptuous and that this Commission will -- and you  
17 will hear it and decide it. And if it is, in fact, granted,  
18 that will necessarily take out a couple of issues that this  
19 Commission will have to hear at hearing. Kicking the rate  
20 issues to a generic docket, I don't feel will necessarily  
21 promote judicial economy.

22                 While it may very well be true that AT&T will know  
23 its position as to what rate it could charge, that is on a  
24 going-forward basis. And we are looking at an agreement here,  
25 an interpretation of an agreement. The agreement requires the

1 parties to use certain rates and that is what we were fighting  
2 over. We are fighting over a contract dispute. And, I mean, I  
3 think we need to go forward on the hearing. I don't believe  
4 that we should kick the rate issues or wait until that is  
5 resolved.

6 COMMISSIONER JABER: I don't think Mr. Hoffman is  
7 advocating that we kick the rate issues out. I think what he  
8 is stating is they are already in the generic docket. Would  
9 you disagree with that?

10 MR. MEZA: I am not at this time prepared to answer  
11 that.

12 COMMISSIONER JABER: The reason I ask these series of  
13 questions is you might want to think about stipulating that  
14 some of these issues could be resolved through the generic  
15 docket.

16 MR. HOFFMAN: Commissioner, if I might. I just want  
17 to make sure that we are clear. I think that that is a  
18 stipulation that we should give serious consideration to. But  
19 the point that you made is correct, the generic docket is a  
20 prospective forward-looking docket. The point that Mr. Meza  
21 makes is correct, this is a breach of contract case.

22 But with respect to the issues that are raised in  
23 this case on the damages, I think that there is certainly a  
24 very high degree of probability that we could agree that the  
25 rules, the prospective rules laid out by the Commission on the



1 tandem rate may very well turn out to be how the Commission  
2 would decide this issue and, therefore, we need to think  
3 seriously about settling the case based on that decision. So  
4 that is really all I'm trying to say.

5 MR. MEZA: From what I understand there have been  
6 settlement discussions between the parties. I don't know where  
7 they are.

8 COMMISSIONER JABER: Well, all of that information to  
9 include in a motion for continuance I think would be helpful.

10 Mr. Meza, if you feel like you need to file a written  
11 response, by all means do it.

12 I think we have enough in the transcript, Ms.  
13 Christensen, to help you write a recommendation.

14 I don't want to send a signal that I am opposed to a  
15 continuance. What I'm saying is based on the pleadings I had,  
16 I don't think that the continuance is warranted at this time.  
17 Saying all of that, there is plenty of room here for refining  
18 the case, refining the issues, and looking for settlement. I  
19 think that is what is really more efficient and more economic.  
20 Okay. This prehearing is adjourned.

21 MR. HOFFMAN: Before you adjourn, Commissioner, just  
22 so I know when Mr. McDonnell and I prepare this, is this --  
23 should this be framed as a request directed to you, again, as  
24 prehearing officer or to the full Commission?

25 COMMISSIONER JABER: We have changed the procedure of

1 late that a prehearing officer can actually continue the  
2 hearing. I think at this stage, though -- it doesn't matter,  
3 you might want to style it as an or. I think at this late  
4 stage going to an agenda is probably the quickest way to handle  
5 a motion for a continuance, but you can style it either way.

6 MR. HOFFMAN: Okay. Thank you.

7 COMMISSIONER JABER: Thank you. This prehearing is  
8 adjourned.

9 (The prehearing concluded at 1:52 p.m.)

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


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5             I, JANE FAUROT, RPR, Chief, FPSC Bureau of Reporting  
6             FPSC Commission Reporter, do hereby certify that the foregoing  
7             proceeding was heard at the time and place herein stated.

8             IT IS FURTHER CERTIFIED that I stenographically  
9             reported the said proceedings; that the same has been  
10            transcribed under my direct supervision; and that this  
11            transcript constitutes a true transcription of my notes of said  
12            proceedings.

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

18            DATED THIS 4TH DAY OF JUNE, 2001.

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JANE FAUROT, RPR  
FPSC Division of Records & Reporting  
Chief, Bureau of Reporting  
(850) 413-6732