

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Request for arbitration concerning complaint of MCImetro Access Transmission Services LLC and MCI WorldCom Communications, Inc. against BellSouth Telecommunications, Inc. for alleged breach of interconnection agreements with respect to rates charged for certain high-capacity circuits.

DOCKET NO. 030103-TP
ORDER NO. PSC-03-0703-PCO-TP
ISSUED: June 12, 2003

ORDER ESTABLISHING PROCEDURE AND GRANTING JOINT MOTION FOR PROCEDURE AND SCHEDULING

On January 29, 2003, MCImetro Access Transmission Services LLC and MCI WORLDCOM Communications, Inc. (collectively MCI) filed a complaint against BellSouth Telecommunications, Inc. (BellSouth) for breach of the parties' interconnection agreements with respect to rates charged for certain high-capacity circuits. On February 7, 2003, BellSouth filed an Unopposed Motion for Extension of Time in which to file its response to the complaint. The extension of time was granted by Order No. PSC-03-0284-PCO-TP, on February 28, 2003. BellSouth submitted its Answer to the Complaint on April 15, 2003. On May 5, 2003, the parties jointly filed a Motion for Procedural and Scheduling Order agreeing to certain discovery dates to coordinate discovery in this proceeding with contemporaneous proceedings in other states. The parties jointly filed motion is granted in part, and denied in part herein, in that the agreed upon dates are incorporated in this Order, to the extent procedurally possible.

This Order is issued pursuant to the authority granted by Rule 28-106.211, Florida Administrative Code. Rule 28-106.211 provides that the presiding officer before whom a case is pending may issue any orders necessary to effectuate discovery, prevent delay, and promote the just, speedy, and inexpensive determination of all aspects of the case.

DOCUMENT NUMBER DATE

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The scope of this proceeding shall be based upon the issues raised by the parties and Commission staff up to and during the prehearing conference, unless modified by the Commission.

Discovery

When discovery requests are served and the respondent intends to object to, or to request clarification of, the discovery request, such objection or request for clarification shall be made within ten days of service of the discovery request. This procedure is intended to reduce delay in resolving discovery disputes.

The hearing in this docket is set for February 23, 2004. Unless authorized by the Prehearing Officer for good cause shown, the following shall apply:

- (i) All discovery shall be completed by July 31, 2003;
- (ii) All interrogatories, requests for admissions, and requests for production of documents shall be numbered sequentially in order to facilitate their identification;
- (iii) The discovery requests will be numbered sequentially within a set; and
- (iv) Any subsequent discovery requests will continue the sequential numbering system.

Pursuant to Rule 28-106.206, Florida Administrative Code, unless subsequently modified by the Prehearing Officer, the following shall apply:

- (i) Interrogatories, including all subparts, shall be limited to 100; and
- (ii) Requests for production of documents, including all subparts, shall be limited to 75.

In response to discovery requests, parties may need to provide information that another party in this proceeding deems, or may deem, confidential. When the submitting party is aware that such information may be deemed confidential, the submitting party shall notify the other party prior to submitting the information. This procedure is to ensure conformance with this Commission's rules

regarding the handling and continued confidential treatment of such information pending a formal ruling by the Commission.

Any information provided pursuant to a discovery request for which proprietary confidential business information status is requested shall be treated by the Commission and the parties as confidential. The information shall be exempt from Section 119.07(1), Florida Statutes, pending: (i) a formal ruling on such request by the Commission; or (ii) return of the information to the person providing the information. Information that has not been made a part of the evidentiary record in the proceeding, shall be returned to the party providing it within (i) one week of the hearing where no determination of confidentiality has been made; or (ii) the time period set forth in Section 364.183(4), Florida Statutes, where a determination of confidentiality has been made.

Parties shall avail themselves of the liberal discovery allowed by this Order within the time frames set forth above. Unless authorized by the Presiding Officer for good cause shown, parties shall not conduct discovery during cross-examination at the hearing.

Diskette Filings

See Rule 25-22.028(1), Florida Administrative Code, for the requirements of filing on diskette for certain utilities.

Prefiled Testimony and Exhibits

Each party shall prefile, in writing, all testimony that it intends to sponsor. Such testimony shall be typed on 8 ½ inch x 11 inch transcript-quality paper, double-spaced, with 25 numbered lines, on consecutively numbered pages, with left margins sufficient to allow for binding (1.25 inches).

Each party shall prefile, in writing, all testimony that it intends to sponsor. Such testimony shall be typed on 8 ½ inch x 11 inch transcript-quality paper, double-spaced, with 25 numbered lines, on consecutively numbered pages, with left margins sufficient to allow for binding (1.25 inches).

When a witness supports their prefiled testimony with one or more exhibits, each exhibit shall be: (i) attached to that witness' testimony when filed; (ii) identified by his or her initials; and (iii) consecutively numbered beginning with 1.

All other known exhibits shall be marked for identification at the prehearing conference. After an opportunity for opposing parties to object to introduction of the exhibits and to cross-examine the witness sponsoring them, exhibits may be offered into evidence at the hearing. Exhibits accepted into evidence at the hearing shall be numbered sequentially. The pages of each exhibit shall also be numbered sequentially prior to filing with the Commission.

An original and 15 copies of all testimony and exhibits shall be prefiled with the Director, Division of the Commission Clerk and Administrative Services, by 5:00 p.m., on the date due. A copy of all prefiled testimony and exhibits shall be served by mail or hand delivery to all other parties and staff no later than the date filed with the Commission. Failure of a party to timely prefile exhibits and testimony from any witness in accordance with the foregoing requirements may bar admission of such exhibits and testimony.

If a demonstrative exhibit or other demonstrative tools are to be used at hearing, they must be identified by the time of the Prehearing Conference.

Prehearing Statement

All parties in this docket and staff shall file a prehearing statement. The original and 15 copies of each prehearing statement shall be prefiled with the Director of the Division of the Commission Clerk and Administrative Services by 5:00 p.m., on the date due. A copy of the prehearing statement shall be served on all other parties and staff no later than the date it is filed with the Commission.

Failure of a party to timely file a prehearing statement shall be a waiver of any issue not raised by other parties or by the Commission. In addition, such failure shall preclude the party from presenting testimony in support of its position.

Prehearing statements shall set forth the following information in the sequence listed below:

- (a) The name of all known witnesses that may be called by the party, and the subject matter of their testimony;
- (b) a description of all known exhibits that may be used by the party, whether they may be identified on a composite basis, and the witness sponsoring each;
- (c) a statement of basic position in the proceeding;
- (d) a statement of each question of fact the party considers at issue, the party's position on each such issue, and which of the party's witnesses will address the issue;
- (e) a statement of each question of law the party considers at issue and the party's position on each such issue;
- (f) a statement of each policy question the party considers at issue, the party's position on each such issue, and which of the party's witnesses will address the issue;
- (g) a statement of issues that have been stipulated to by the parties;
- (h) a statement of all pending motions or other matters the party seeks action upon;
- (i) a statement identifying the party's pending requests or claims for confidentiality;
- (j) a statement as to any requirement set forth in this order that cannot be complied with, and the reasons therefore;
- (k) a statement identifying any decision or pending decision of the FCC or any court that has or may either preempt or otherwise impact the Commission's ability to resolve any of the issues presented or the relief requested in this matter; and
- (l) Any objections to a witness's qualifications as an expert must be identified in a party's Prehearing Statement. Failure to identify such objection may result in restriction of a party's ability to conduct voir dire.

Prehearing Conference

Pursuant to Rule 28-106.209, Florida Administrative Code, a prehearing conference will be held on February 4, 2004 at the Betty Easley Conference Center, 4075 Esplanade Way, Tallahassee, Florida. Any party who fails to attend the prehearing conference, unless excused by the Prehearing Officer, will have waived all issues and positions raised in that party's prehearing statement.

Prehearing Procedure: Waiver of Issues

Any issue not raised by a party prior to the issuance of the prehearing order shall be waived by that party, except for good cause shown. A party seeking to raise a new issue after the issuance of the prehearing order shall demonstrate that:

- (i) It was unable to identify the issue because of the complexity of the matter;
- (ii) Discovery or other prehearing procedures were not adequate to fully develop the issue;
- (iii) Due diligence was exercised to obtain facts touching on the issue;
- (iv) Information obtained subsequent to the issuance of the prehearing order was not previously available to enable the party to identify the issue; and
- (v) Introduction of the issue could not be to the prejudice or surprise of any party.

Specific reference shall be made to the information received, and how it enabled the party to identify the issue.

Unless a matter is not at issue for that party, each party shall diligently endeavor in good faith to take a position on each issue prior to issuance of the prehearing order. When a party is unable to take a position on an issue, it shall bring that fact to the attention of the Prehearing Officer. If the Prehearing Officer finds that the party has acted diligently and in good faith to take a position, and further finds that the party's failure to take a position will not prejudice other parties or confuse the proceeding, the party may maintain "no position at this time" prior to hearing and thereafter identify its position in a post-hearing statement of issues. In the absence of such a finding by the

Prehearing Officer, the party shall have waived the entire issue. When an issue and position have been properly identified, any party may adopt that issue and position in its post-hearing statement.

Document Identification

Each exhibit submitted shall have the following in the upper right-hand corner:

- (i) The docket number;
- (ii) The witness's name;
- (iii) The word "Exhibit" followed by a blank line for the exhibit number; and
- (iv) The title of the exhibit.

An example of the typical exhibit identification format is as follows:

Docket No. 12345-TL
J. Doe Exhibit No. _____
Cost Studies for Minutes of Use by Time of Day

Tentative Issues

Attached to this order as Appendix "A" is a tentative list of the issues which have been identified in this proceeding. Prefiled testimony and prehearing statements shall address the issues set forth in Appendix "A".

Controlling Dates

Taking into account the parties request in the joint Motion for Procedural and Scheduling Order, the following dates have been established to govern the key activities of this case.

- | | |
|--|--------------------|
| 1) Complainant's direct testimony and exhibits | August 21, 2003 |
| 3) Staff's direct testimony and exhibits, if any | September 1, 2003 |
| 4) Rebuttal testimony and exhibits | September 15, 2003 |

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|--------------------------|-------------------|
| 5) Prehearing Statements | January 26, 2004 |
| 6) Prehearing Conference | February 4, 2004 |
| 7) Hearing | February 23, 2004 |
| 8) Briefs | March 22, 2004 |

Use of Confidential Information At Hearing

It is the policy of this Commission that all Commission hearings be open to the public at all times. The Commission also recognizes its obligation pursuant to Section 364.183, Florida Statutes, to protect proprietary confidential business information from disclosure outside the proceeding. Any party wishing to use any proprietary confidential business information, as that term is defined in Section 364.183, Florida Statutes, shall notify the Prehearing Officer and all parties of record by the time of the Prehearing Conference, or if not known at that time, no later than seven (7) days prior to the beginning of the hearing. The notice shall include a procedure to assure that the confidential nature of the information is preserved as required by statute. Failure of any party to comply with the seven-day requirement described above shall be grounds to deny the party the opportunity to present evidence which is proprietary confidential business information.

When confidential information is used in the hearing, parties must have copies for the Commissioners, necessary staff, and the court reporter, in envelopes clearly marked with the nature of the contents. Any party wishing to examine the confidential material that is not subject to an order granting confidentiality shall be provided a copy in the same fashion as provided to the Commissioners, subject to execution of any appropriate protective agreement with the owner of the material. Counsel and witnesses are cautioned to avoid verbalizing confidential information in such a way that would compromise the confidential information. Therefore, confidential information should be presented by written exhibit when reasonably possible to do so. At the conclusion of that portion of the hearing that involves confidential information, all copies of confidential exhibits shall be returned to the proffering party. If a confidential exhibit has been admitted into evidence, the copy provided to the court reporter shall be retained

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in the Division of the Commission Clerk and Administrative Services' confidential files.

Post-Hearing Procedure

Each party shall file a post-hearing statement of issues and positions. A summary of each position of no more than 50 words, set off with asterisks, shall be included in that statement. If a party's position has not changed since the issuance of the prehearing order, the post-hearing statement may simply restate the prehearing position; however, if the prehearing position is longer than 50 words, it must be reduced to no more than 50 words. If a party fails to file a post-hearing statement in conformance with the rule, that party shall have waived all issues and may be dismissed from the proceeding.

Pursuant to Rule 28-106.215, Florida Administrative Code, a party's proposed findings of fact and conclusions of law, if any, statement of issues and positions, and brief, shall together total no more than 40 pages, and shall be filed at the same time.

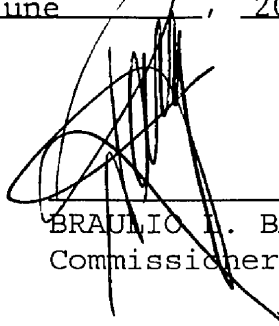
Based upon the foregoing, it is

ORDERED by Commissioner Braulio L. Baez, as Prehearing Officer, that the provisions of this Order shall govern this proceeding unless modified by the Commission.

ORDERED that the joint Motion for Procedural and Scheduling Order is granted.

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By ORDER of Commissioner Braulio L. Baez, as Prehearing Officer, this 12th day of June, 2003.

 for Commissioner Braulio Baez

BRAULIO L. BAEZ
Commissioner and Prehearing Officer

(S E A L)

LHD

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.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

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 25-22.0376, Florida Administrative Code; or (2) 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 the Commission Clerk and Administrative Services, in the form prescribed by Rule 25-22.060,

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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.

Attachment A
Tentative Issues List

Issue 1: Under the agreements, is MCI permitted to order DS3 transport UNEs using the ASR process or must it use the LSR process?

Issue 2: The parties agree that the terms, conditions and prices of the 2001 Agreements apply retroactively from the expiration date of the 1997 Agreement forward. How does this retroactivity affect DS1 combos that were ordered using ASRs between June 19, 2000 (the expiration date of the 1997 Agreement) and September 12, 2001 (the effective date of the 2001 Agreements)?

Issue 3: Has BellSouth breached any of the following agreements by charging access rates rather than lower interconnection rates for interconnection trunks obtained by MCI from BellSouth?

- a. The 1997 Agreement
- b. The MFS Agreement
- c. The 2001 Agreements
- d. Under the agreements, what price(s) apply to facilities that carry both local traffic, intrastate access traffic and interstate access traffic?

Issue 4: Has BellSouth breached any of the following agreements by charging access rates rather than lower UNE rates for DS3 transport facilities obtained by MCI from BellSouth?

- a. The 1997 Agreement
- b. The MFS Agreement
- c. The 2001 Agreements
- d. Under the agreements, what rates apply to DS3 transport facilities ordered by MCI prior to September 12, 2001 (the effective date of the 2001 Agreements)?

Issue 5: Has BellSouth breached the 1997 Agreement or violated the Commission's Order in Docket No. 981121-TP by charging access rates rather than lower UNE rates for DS1 combinations that were ordered by MCI from BellSouth?

Issue 6: If the answer to any part(s) of Issues 3, 4, or 5 is "yes," what action should the Commission take with respect to:

- a. Any past overcharges
- b. Any interest
- c. Any prior credits or discounts
- d. The effect of the bankruptcy stipulation

Issue 7: If the answer to any part(s) of Issues 3, 4, or 5 is "yes," what action should the Commission take to ensure that BellSouth properly bills MCI for existing and future DS1, DS3, and DS1 combination facilities on a going-forward basis?

Issue 8: Are the claims by MCI for breach of the 1997 Agreement and/or the MFS Agreement barred by the doctrines of laches, waiver, and/or estoppel?