

BEFORE THE PUBLIC SERVICE COMMISSION

In re: Petition by MCImetro Access Transmission Services LLC for arbitration of certain terms and conditions of proposed interconnection agreement with BellSouth Telecommunications, Inc.

DOCKET NO. 050419-TP
ORDER NO. PSC-05-0927-PCO-TP
ISSUED: September 19, 2005

ORDER ESTABLISHING PROCEDURE

Part II of the Federal Telecommunications Act of 1996 (Act) sets forth provisions regarding the development of competitive markets in the telecommunications industry. Section 251 of the Act regards interconnection with the incumbent local exchange carrier, and Section 252 sets forth the procedures for negotiation, arbitration, and approval of agreements.

Section 252(b) addresses agreements arrived through compulsory arbitration. Specifically, Section 252(b)(1) states:

(1) Arbitration. - During the period from the 135th to 160th day (inclusive) after the date on which an incumbent local exchange carrier receives a request for negotiation under this section, the carrier or any other party to the negotiation may petition a State commission to arbitrate any open issues.

Section 252(b)(4)(C) states that the State commission shall resolve each issue set forth in the petition and response, if any, by imposing the appropriate conditions as required. This section requires a State Commission to conclude the resolution of any unresolved issues not later than nine months after the date on which the local exchange carrier received the request under this section. The parties to this docket have waived the nine-month requirement of Section 252(b)(4)(C).

This Order is issued pursuant to the authority granted by Rule 28-106.211, Florida Administrative Code, which 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.

On June 20, 2005, MCImetro Access Transmission Services, LLC (MCI) filed its Petition for Arbitration of certain terms and conditions of a proposed interconnection agreement with BellSouth Telecommunications, Inc. (BellSouth). On July 15, 2005, BellSouth filed its response to MCI's Petition. Pursuant to MCI's request for arbitration, this matter has been scheduled for an administrative hearing.

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.

DOCUMENT NUMBER-DATE

08800 SEP 19 05

FPSC-COMMISSION CLERK

Tentative Issues

Attached to this order as Attachment "A" is a tentative list of the issues which have been identified in this proceeding. For purposes of clarity and simplification, the numbering of the issues attached hereto correspond to the numbering used in the petition and responses. Prefiled testimony and prehearing statements shall address the issues set forth in Attachment "A". Parties are encouraged to continue discussions in an effort to further eliminate the remaining issues in this proceeding.

Discovery

When discovery requests are served and the respondent intends to seek clarification of the discovery request, the 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 January 24 – 25, 2006. Unless authorized by the Prehearing Officer for good cause shown, all discovery shall be completed by January 12, 2006. All interrogatories, requests for admissions, and requests for production of documents shall be numbered sequentially in order to facilitate their identification. The discovery requests will be numbered sequentially within a set, and 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: interrogatories, including all subparts, shall be limited to 250, and requests for production of documents, including all subparts, shall be limited to 100. All discovery responses shall be due 20 days after service of the request, with no additional time for mailing. All discovery requests shall be served by e-mail, with a hard copy to follow by U.S. Mail or hand delivery. Responses to interrogatories, and to the extent possible requests for documents, shall also be served by e-mail, with a hard copy to follow by U.S. Mail or hand delivery. Commission staff shall be served with a copy of these and all other filings.

Any party intending to provide information pursuant to a discovery request, which it is aware is deemed, or might be deemed, confidential by another party in this proceeding, shall notify that party prior to submitting such information for the purpose of ensuring conformance with this Commission's rules regarding the handling of such information and continued confidential treatment 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 a formal ruling on such request by the Commission, or upon the return of the information to the person providing the information. If no determination of confidentiality has been made and the information has not been made a part of the evidentiary record in the proceeding, it shall be returned expeditiously to the person providing the information. If a determination of confidentiality has been made and the information was not entered into the record of the proceeding, it shall be returned to the person providing the information within the time period set forth in Section 364.183(4), Florida Statutes.

Parties shall avail themselves of the liberal discovery allowed by this Order within the time frames set forth above. Parties are cautioned against conducting 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.

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 exhibit intended to support a witness' prefiled testimony shall be attached to that witness' testimony when filed, identified by his or her initials, and 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 the close of business, which is 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 shall file a prehearing statement. Staff will also 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 the close of business, which is 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. Such 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 January 5, 2006, 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: it was unable to identify the issue because of the complexity of the matter; discovery or other prehearing procedures were not adequate to fully develop the issue; due diligence was exercised to obtain facts touching on the issue; information obtained subsequent to the issuance of the prehearing order was not previously available to enable the party to identify the issue; and 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.

Prehearing Identification of Exhibits and Testimony

For the purposes of this proceeding, it is the intent that all discovery responses and deposition transcripts with related late-filed exhibits be entered as hearing exhibits. Each party's prehearing statement shall include an identification and list of all responding discovery responses served to parties and staff. Additionally, each party shall identify and list the transcript and related late-filed exhibits of each deposition called by that party.

Each party is required to provide copies of its identified exhibits for the hearing absent good cause shown. The number of copies required of each hearing exhibit will be determined no later than the prehearing conference. As discussed below in the section on Document Identification, each exhibit shall be Bates Stamped.

In order to facilitate the introduction at hearing of discovery exhibits, as well as prefiled testimony and exhibits, a sequentially-numbered, comprehensive list of exhibits identified by the parties in the prehearing statements shall be compiled and disseminated to the parties by Commission staff no later than December 21, 2005. Any objections to items on that list, along with a brief statement of the basis for such objection, shall be submitted to the Commission by the close of business on December 30, 2005. Objections, if any, will be addressed at the Prehearing. At the beginning of the hearing in this matter, all exhibits listed on the comprehensive list approved at the Prehearing will be moved into the record. In addition, the prefiled testimony of the parties will be moved into the record as though read. This will be done on a company-by-company basis, with the sponsoring party and the names of the witnesses who have offered testimony being clearly identified.

Document Identification

Unless modified by the Prehearing Officer for good cause shown, each page of every document produced pursuant to requests for production of documents shall be identified individually through the use of a Bates Stamp or other equivalent method of sequential identification. Parties should number their produced documents in an unbroken sequence through the final hearing. An example of the typical sequential identification format is as follows:

[company initials] 000001

Each exhibit submitted shall have the following in the upper right-hand corner: the docket number, the witness's name, the word "Exhibit" followed by a blank line for the exhibit number, and the title of the exhibit. An example of the typical exhibit identification format is as follows:

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

Controlling Dates

The following dates have been established to govern the key activities of this case.

- | | |
|--|-----------------------|
| 1) Direct testimony and exhibits (All) | October 14, 2005 |
| 2) Rebuttal testimony and exhibits (All) | December 1, 2005 |
| 3) Prehearing Statements | December 14, 2005 |
| 4) Prehearing Conference | January 5, 2006 |
| 5) Hearing | January 24 – 25, 2006 |

6) Briefs

February 24, 2006

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(3), 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 red 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 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 Lisa Polak Edgar, as Prehearing Officer, that the provisions of this Order shall govern this proceeding unless modified by the Commission.

By ORDER of Commissioner Lisa Polak Edgar, as Prehearing Officer, this 19th day of September, 2005.



LISA POLAK EDGAR

Commissioner and Prehearing Officer

(S E A L)

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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

ORDER NO. PSC-05-0927-PCO-TP

DOCKET NO. 050419-TP

PAGE 9

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, 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"

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

ISSUE 1 What language should be included in the Parties' Interconnection Agreement ("Agreement") to limit or eliminate (a) liability in general; (b) liability arising from tariffs or contracts with End Users; or (c) liability for indirect, incidental or consequential damages?

ISSUE 2 What terms or conditions, if any, should be included in the Agreement regarding the appropriate forum to address disputes?

ISSUE 3 What rates, terms, and conditions for the disputed rate elements in Attachment 2 should be incorporated into the Agreement?

ISSUE 4 Resolved

ISSUE 5 Resolved

ISSUE 6 Resolved

ISSUE 7 Resolved

ISSUE 8 Resolved

ISSUE 9 (A) What rate should be applicable for the Bulk Migration process?

(B) Should BellSouth be required to offer the Bulk Migration process for migrations of MCI customers to a third-party provided switching?

ISSUE 10 Resolved

ISSUE 11 (A1) Resolved

(A2) By when should MCI be required to identify those UNE services in its Embedded Base that it is required to disconnect or convert to other BellSouth services in an unimpaired wire center?

(A3) If MCI does not identify the subject services within the specified period of time identified in (A2), what rates, terms, and conditions apply?

(B) Resolved

ISSUE 12 Should MCI be required to indemnify BST for BST's own negligent act committed in conjunction with BST's provision of PBX Locate Service?

ISSUE 13 Resolved

ISSUE 14 Resolved

ISSUE 15 Should the parties pay each other for two-way interconnection facilities based on their proportionate share of originated traffic or on a 50-50 basis?

ISSUE 16 Should trunk groups for operator services, directory assistance and intercept be established pursuant to this Agreement or BellSouth tariffs?

ISSUE 17 (A) To what extent should the definition of local traffic allow for the origination and termination of traffic in two different LATAs?

(B) Should traffic be jurisdictional based on the actual physical location of the calling and called parties, or based on the originating and terminating NPANXXs?

(C) Should local traffic include optional extended calling plans as set forth in the originating party's tariff, or only non-optional extended calling plans (such as EAS)?

ISSUE 18 Should IP/PSTN and PSTN/IP/PSTN traffic be excluded from the definition of intraLATA toll traffic?

ISSUE 19 What intercarrier compensation regime should be used for IP/PSTN and PSTN/IP/PSTN traffic?

ISSUE 20 Should there be a cap on the volume of ISP bound traffic for which one party may bill the other party?

ISSUE 21 For intraLATA toll traffic originated by an ICO, carried over BellSouth's network and then terminated by MCI: A) what rate is MCI entitled to charge BellSouth, if at all and B) what records should be used to bill BellSouth?

ISSUE 22 How should FX-like or VNXX services offered by MCI to its customers be treated for intercarrier compensation purposes? If this traffic is not local, how should it be identified and what rates apply to it?

ISSUE 23 How should IP/PSTN and PSTN/IP/PSTN traffic be categorized for purposes of determining compensation for interconnection facilities and termination of traffic?

ISSUE 24 How will SS7 charges be imposed on the parties?

ISSUE 25 Should a transiting party have to pay the terminating party intercarrier compensation if the transiting party is unable to provide the terminating party the records necessary for the terminating party to bill the originating third party?

ISSUE 26 Is BellSouth obligated to act as a transit carrier? If so, what is the appropriate transit rate?

ISSUE 27 What terms and conditions apply when one party interferes with or impairs the other party's ability to provide service?

ISSUE 28 Georgia issue only.

ISSUE 29 What are the appropriate rates for collocation, including
(a) for conversion of virtual to physical collocation;
(b) Georgia issue only.

ISSUE 30 How should disputes over alleged unauthorized access to CSR information be handled under the Agreement?

ISSUE 31 Should BellSouth provide a download with daily updates to the directory assistance database (DADS) to MCI, at a nondiscriminatory price?

ISSUE 32 What charges, if any, should be imposed for records changes made by the Parties to reflect changes in corporate names or other LEC identifiers such as OCN, CC, CIC and ACNA?

ISSUE 33 How should the rate for the calculation of late payments be determined?

ISSUE 34 What terms and conditions apply to:

(A) nonpayment of past due billings and additional amounts that become past due during any suspension?

(B) nonpayment of a requested deposit?

ISSUE 35 North Carolina issue only.