

BEFORE THE  
FLORIDA PUBLIC SERVICE COMMISSION

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In the Matter of : DOCKET NO. 000636-TP

REQUEST FOR ARBITRATION CONCERNING :  
 COMPLAINT OF SPRINT COMMUNICATIONS :  
 COMPANY LIMITED PARTNERSHIP AGAINST :  
 BELLSOUTH TELECOMMUNICATIONS, INC. :  
 REGARDING FAILURE TO COMPLY WITH :  
 INTERCONNECTION AGREEMENT. :

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PROCEEDINGS: PREHEARING CONFERENCE

BEFORE: COMMISSIONER LILA A. JABER  
Prehearing Officer

DATE: Monday, October 23, 2000

TIME: Commenced at 10:15 a.m.  
Concluded at 10:27 a.m.

PLACE: Betty Easley Conference Center  
Room 148  
4075 Esplanade Way  
Tallahassee, Florida

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



DOCUMENT NUMBER-DATE

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## 1 APPEARANCES:

2 CHARLES REHWINKEL, and SUSAN S. MASTERTON  
3 Sprint-Florida, 1313 Blair Stone Road, Tallahassee,  
4 Florida 32316, appearing on behalf of  
5 Sprint-Florida.

6 MICHAEL GOGGIN and E. EARL EDENFIELD, JR.,  
7 BellSouth Telecommunications, Inc., C/o Nancy Sims,  
8 150 South Monroe Street, Suite 400, Tallahassee,  
9 Florida 32301, appearing on behalf of BellSouth  
10 Telecommunications, Inc.

11 TIM VACCARO, Florida Public Service  
12 Commission, Division of Legal Services, 2540  
13 Shumard Oak Boulevard, Tallahassee, Florida  
14 32399-0850, appearing on behalf of the Commission  
15 Staff.

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## P R O C E E D I N G S

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2 COMMISSIONER JABER: Mr. Vaccaro, do you want to  
3 read the notice.

4 MR. VACCARO: Pursuant to notice, this time and  
5 place have been designated for prehearing conference in  
6 Docket Number 000636-TP, for the purposes set forth within  
7 the notice.

8 COMMISSIONER JABER: Let's take appearances.

9 MR. REHWINKEL: Charles Rehwinkel and Susan  
10 Masterton appearing on behalf of Sprint Communications  
11 Company, Limited Partnership.

12 MR. GOGGIN: Michael Goggin and Kip Edenfield  
13 appearing on behalf of BellSouth Telecommunications,  
14 Incorporated.

15 MR. VACCARO: Tim Vaccaro on behalf of  
16 Commission staff.

17 COMMISSIONER JABER: All right. Usually I like  
18 to go forward by asking if there are any changes to each  
19 page of the draft prehearing order. But since there is  
20 only one issue and this is a relatively short prehearing  
21 order, I thought I would just ask you if you had any  
22 changes to the draft.

23 MR. GOGGIN: BellSouth has no changes to the  
24 draft prehearing order.

25 MR. REHWINKEL: Madam Chairman, if I could just

1 ask for a minute to review. I have just received this,  
2 the draft.

3 COMMISSIONER JABER: That's fine.

4 (Pause.)

5 MR. REHWINKEL: Having reviewed the draft, I  
6 don't see any problems with it from Sprint's standpoint.

7 COMMISSIONER JABER: All right. I will just  
8 bring to your attention that on Page 4, staff has inserted  
9 something at my direction, which is to limit oral  
10 summaries of testimony to five minutes. No objection to  
11 that, right?

12 MR. GOGGIN: No objection.

13 MR. REHWINKEL: Of all cases, that is probably  
14 very doable in this one.

15 COMMISSIONER JABER: On Page 5 there are no  
16 problems with the order of witnesses, correct?

17 MR. REHWINKEL: That's correct.

18 MR. GOGGIN: That's correct.

19 COMMISSIONER JABER: And we don't need opening  
20 statements on this proceeding, right?

21 MR. REHWINKEL: That is not something that we  
22 have asked for. I don't --

23 MR. GOGGIN: No. My guess is that all parties  
24 here are abundantly familiar with the positions.

25 COMMISSIONER JABER: Great. And on Page 9,

1 Mr. Vaccaro, I see there are no proposed stipulations and  
2 there are no pending matters.

3 MR. VACCARO: That is correct.

4 COMMISSIONER JABER: No requests for  
5 confidentiality pending at this time?

6 MR. VACCARO: Not at this time. They have all  
7 been ruled on.

8 COMMISSIONER JABER: Great. Well, is there  
9 anything further we need to discuss today?

10 MR. GOGGIN: Commissioner, there are two items,  
11 one small and one potentially a little larger. One is it  
12 has been brought to my attention that under the  
13 appearances section of the draft, we would like to have my  
14 name added to Mr. Edenfield's. And the other is that  
15 there are -- we are discussing with Sprint the possibility  
16 of deposing the corporation. We are still negotiating  
17 that. So there is a possibility that there may be a  
18 motion to be ruled on at some point between now and the  
19 time of the hearing.

20 COMMISSIONER JABER: Who will you be deposing?

21 MR. GOGGIN: We wish to depose a company  
22 witness.

23 COMMISSIONER JABER: And I would assume you will  
24 be sending a notice of deposition and --

25 MR. GOGGIN: Yes.

1           COMMISSIONER JABER:  -- Sprint will either  
2           comply or not.

3           MR. GOGGIN:  Sprint has indicated that it does  
4           not believe that the matter in which we want to inquire  
5           would be relevant.  And they have concerns also about  
6           whether it would be prejudicial to allow us to take  
7           testimony from one of their witnesses this late in the  
8           game.  We are still negotiating with them, and it hasn't  
9           been decided that we will serve a notice.  But if we do,  
10          we will do so in the next day or two.

11          COMMISSIONER JABER:  The order on procedure has  
12          the discovery cut-off period a, what, a week before the  
13          hearing.  So you still have time to do discovery.  If  
14          Sprint doesn't comply, I assume you will be filing a  
15          motion and I can rule on the motion at that time.

16          MR. GOGGIN:  Yes, Commissioner.

17          MR. REHWINKEL:  Commissioner Jaber, just so you  
18          understand a little bit of our perspective on this, it is  
19          -- if the notice goes to one of the two witnesses that  
20          have been identified, both of which are employees of the  
21          party to this case, and this is a complaint emanating from  
22          an arbitration between two separate parties.  If it goes  
23          to -- if it is a motion filed or a notice filed under Rule  
24          1.330(a)(2) of the Florida Rules of Civil Procedure, it  
25          will be our position -- and that is a deposition notice

1 directed to a corporation -- under the Rules of Civil  
2 Procedure and even the precedent of this Commission,  
3 depositions taken under that rule are essentially  
4 testimony of the adverse party.

5           So we believe that if that is the case, the  
6 relevant cut-off date will not be the discovery cut-off  
7 date, it will be the testimony cut-off date. So that, in  
8 addition to the relevancy issue, will be our concerns.

9           But as you are aware, Commission practice with  
10 regard to depositions has usually been -- if the  
11 deposition is taken, it gets dropped into the record. And  
12 that would be a concern if it was a deposition of one not  
13 a witness. Normally witness depositions are taken, and  
14 for whatever reasons of judicial economy they are inserted  
15 into the record. And that is usually not a problem,  
16 because parties are on notice that they can make their  
17 objections during the deposition, especially if they know  
18 it might go into the record.

19           But a deposition of the corporation is entirely  
20 a different animal. And so that is where our concern lies  
21 in this matter.

22           COMMISSIONER JABER: Even if the deposition was  
23 considered testimony, you would be able to object on the  
24 record at the deposition to any questions, correct?

25           MR. REHWINKEL: That's correct. But, again, if

1 it is in that nature, we believe that your prehearing  
2 order, the same one also cut the filing of testimony off  
3 on October 9th. So --

4 COMMISSIONER JABER: Are you saying that that  
5 deposition would be automatically considered testimony and  
6 would be inserted into the record of this proceeding as  
7 though read?

8 MR. REHWINKEL: Absent some -- under the Rules  
9 of Civil Procedure, Rule 1.330(c) does allow that  
10 testimony to be, that deposition to serve as direct  
11 testimony or direct evidence of the adverse party.

12 COMMISSIONER JABER: Is that upon a motion made  
13 by the party seeking the deposition?

14 MR. REHWINKEL: It is unclear how that would be  
15 effectuated. But by the same token, if that is not the  
16 intent, then the question arises, why take it. So that is  
17 a concern. Certainly if the deposition is taken for the  
18 purpose of aiding cross-examination, that is another  
19 matter.

20 COMMISSIONER JABER: So perhaps in the notice of  
21 deposition BellSouth could be clear on what the intent of  
22 the deposition is, or even in your informal conversations.  
23 And I appreciate the heads up, but there is nothing before  
24 me that I need to rule on.

25 MR. REHWINKEL: That's correct. But, you know,



1 we -- this matter came up Wednesday of last week, so it  
2 seemed that would be prudent to discuss it since we had  
3 this opportunity together. And, you know, we certainly --  
4 part of the context was this is not, this is a case that  
5 is like six others that have gone before it. It is very,  
6 very similar. And we would like to, also, point out at  
7 this time, if you read the issue, the one issue that is in  
8 this case, matters extraneous to the contract wouldn't be  
9 relevant. So we would also have that type of objection,  
10 so --

11 COMMISSIONER JABER: Mr. Goggin, there is  
12 nothing before me to rule on. I would hope that you make  
13 clear in your notice of deposition the intent upon which  
14 you take the deposition. But even in your informal  
15 conversations that you work out some agreement. My only  
16 concern would be that if, in fact, that deposition becomes  
17 testimony, then I will be taking into account whether  
18 Sprint has the opportunity to file rebuttal testimony. So  
19 you need to think about that.

20 MR. GOGGIN: That is understood. And we have  
21 talked with Sprint about their objections. Our purpose in  
22 raising it today was merely to flag it to make sure that  
23 you were aware that there was an issue that might come up  
24 sometime between now and the hearing. One of the things  
25 that we have discussed is the possibility of doing the

1 deposition on written question, which we would hope would  
2 afford the other party a chance to, as a practical matter,  
3 object to questions as they were raised and to answer  
4 questions in a manner that might permit rebuttal, so to  
5 speak.

6           Of course discovery, and deposition is a  
7 discovery tool, is designed to gather information which  
8 may or may not be admissible as evidence. If, of course,  
9 we were to move its admission into the record, there would  
10 be the opportunity to object, and we would certainly  
11 express that intent as soon as possible if, in fact,  
12 Sprint wanted to propose that rebuttal testimony be filed.

13           COMMISSIONER JABER: Wonderful.

14           MR. REHWINKEL: And I want to say that BellSouth  
15 has been very professional about bringing this issue up in  
16 advance to us, so we appreciate that. But the hearing is  
17 scheduled for November 9th, so rebuttal opportunities may  
18 be --

19           COMMISSIONER JABER: Right. But those are also  
20 objections raised to allowing the deposition in the record  
21 as testimony. And, you know, I think there are -- there  
22 is plenty of room for you to work out something on the  
23 deposition. And certainly with respect to testimony, if  
24 that is what BellSouth is trying to do with the  
25 deposition. Anything further?

1 MR. VACCARO: Not that I am aware of.

2 COMMISSIONER JABER: Great. Thank you for the  
3 information. In the future with prehearings that I have  
4 in one issue cases or noncontroversial kind of  
5 proceedings, telephone conferences are something that I am  
6 amenable to. I know that we delayed this prehearing  
7 because of flight schedules. I have no problem conducting  
8 prehearing conferences via telephone as long as you let us  
9 know ahead of time and we can get an appropriate notice  
10 out. All right.

11 MR. GOGGIN: Thank you, Commissioner.

12 COMMISSIONER JABER: Thank you.

13 (The hearing concluded at 10:27 a.m.)  
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STATE OF FLORIDA)

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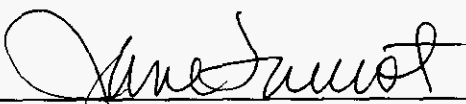
COUNTY OF LEON )

I, JANE FAUROT, RPR, Chief, FPSC Bureau of Reporting, Official Commission Reporter, do hereby certify that the Prehearing Conference in Docket No. 0006363-TP was heard by the Florida Public Service Commission at the time and place herein stated.

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

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

DATED THIS 30TH DAY OF OCTOBER, 2000.

  
\_\_\_\_\_  
JANE FAUROT, RPR  
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