

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition by AT&T
Communications of the Southern
States, Inc. for arbitration of
certain terms and conditions of
a proposed agreement with
BellSouth Telecommunications,
Inc. concerning interconnection
and resale under the
Telecommunications Act of 1996.

DOCKET NO. 960833-TP

In re: Petition by MCI
Telecommunications Corporation
and MCI Metro Access
Transmission Services, Inc. for
arbitration of certain terms and
conditions of a proposed
agreement with BellSouth
Telecommunications, Inc.
concerning interconnection and
resale under the
Telecommunications Act of 1996.

DOCKET NO. 960846-TP

In re: Petition by Metropolitan
Fiber Systems of Florida, Inc.
for arbitration with BellSouth
Telecommunications, Inc.
concerning interconnection
rates, terms, and conditions,
pursuant to the Federal
Telecommunications Act of 1996.

DOCKET NO. 960757-TP

In re: Petition by MCI Metro
Access Transmission Services,
Inc. to set non-recurring
charges for combination of
network elements with BellSouth
Telecommunications, Inc.

DOCKET NO. 971140-TP
ORDER NO. PSC-98-0090-PCO-TP
ISSUED: January 14, 1998

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ORDER SEVERING DOCKET 971140-TP, ESTABLISHING PROCEDURE,
AND ESTABLISHING TENTATIVE LIST OF ISSUES

On June 28, 1996, MFS Communications Company, Inc., (MFS) filed a petition with this Commission requesting that it arbitrate various issues that were unresolved in its interconnection negotiations with BellSouth Telecommunications, Inc., (BellSouth) under the Telecommunications Act of 1996 (the Act). Docket No. 960757-TP was opened to address unresolved issues. On December 16, 1996, the Commission issued Order No. PSC-96-1531-FOF-TP, resolving the issues in dispute between MFS and BellSouth.

On July 17, 1996, AT&T Communications of the Southern States (AT&T) also filed a request for arbitration of issues that were unresolved in its interconnection negotiations with BellSouth under the Act. Docket No. 960833-TP was opened to address unresolved issues. On August 15, 1996, MCI Telecommunications Corporation and MCI Metro Access Transmission Services, Inc., (MCIIm) filed a request for arbitration of issues that were unresolved in its interconnection negotiations with BellSouth under the Act. Docket No. 960846-TP was opened to address those issues. The dockets were consolidated for hearing. On December 31, 1996, the Commission issued Order No. PSC-96-1579-FOF-TP, resolving the issues in AT&T's and MCIIm's petitions.

In Order No. PSC-96-1531-FOF-TP, the Commission ordered BellSouth to file Total Services Long-run Incremental Cost studies (TSLRIC) for 2-wire ADSL compatible and 2-wire and 4-wire HDSL compatible loops. In that order, the Commission had only set interim rates for those elements and for physical collocation. In Order No. PSC-96-1579-FOF-TP, the Commission set interim recurring rates for network interface devices, loop distribution, 4-wire analog ports, DA Transport-Switched Local Channel and DA Transport-Switched Dedicated Transport DS1 per mile and per facility. The Commission also set interim nonrecurring rates for 4-wire analog ports, first and additional, Dedicated Transport per facility termination, DA Transport-Switched Local Channel, first and additional, and DA Transport-Switched Dedicated Transport per facility termination. In that order, the Commission required BellSouth to file TSLRIC cost studies for these network elements, as well as TSLRIC cost studies for physical and virtual collocation. BellSouth timely filed the required cost studies on February 14, 1997, in Docket No. 960757-TP. It timely filed the required cost studies in Docket Nos. 960833-TP and 960846-TP on March 3, 1997.

On June 9, 1997, AT&T filed a Motion to Compel Compliance with Order Nos. PSC-96-1579-FOF-TP, the order on arbitration, PSC-97-0298-FOF-TP, the order on reconsideration, and PSC-97-0600-FOF-TP, the order on the agreement. On June 23, 1997, BellSouth timely filed a Response and Memorandum in Opposition to AT&T's Motion to Compel Compliance. On October 27, 1997, MCI filed a similar Motion to Compel Compliance. On November 3, 1997, BellSouth timely filed a Response and Memorandum in Opposition to MCI's Motion to Compel Compliance.¹

On August 28, 1997, MCI filed a Petition to Set Non-Recurring Charges for Combinations of Network Elements, with reference to Order No. PSC-96-1579-FOF-TP. That petition was docketed as Docket No. 971140-TP. BellSouth filed a timely response in opposition to MCI's motion on September 17, 1997.

By Order No. PSC-97-1303-PCO-TP, Docket Nos. 960833-TP, 960846-TP, and 960757-TP, as well as Docket No. 971140-TP, were consolidated pursuant to Section 252(g) of the Act, and the matters were set for hearing on January 26 through 28, 1998. In Order No. PSC-97-1583-PCO-TP, issued December 18, 1997, the Commission decided to address the issues raised by the motions to compel compliance in a separate hearing at the earliest feasible time. The Commission also decided that MCI's petition in Docket No. 971140-TP shall be addressed in the same hearing.

Accordingly, Docket No. 971140-TP shall be severed from Docket Nos. 960833-TP, 960846-TP, and 960757-TP, and restyled to reflect that the motions of AT&T and MCI to compel BellSouth's compliance will be addressed in Docket No. 971140-TP. The issues for hearing are set forth in Appendix A hereto and incorporated by reference herein.²

The Scope of the Proceeding in General

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

¹Subsequently, MCI filed a supplement to its motion to compel compliance on December 19, 1997. BellSouth filed its response on December 24, 1997.

²Issue 2 as identified in Appendix A of Order No. PSC-97-1303-PCO-TP is the issue raised in Docket No. 971140-TP. Therefore, it no longer is set for the hearing on January 26 through January 28, 1998.

hearing will be conducted according to the provisions of Chapter 120, Florida Statutes, and the rules of this Commission.

Discovery

a. When discovery requests are served and the respondent intends to object to or ask for clarification of the discovery request, the 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.

b. The hearing in this docket is set for February 24, 1998. Unless authorized by the Prehearing Officer for good cause shown, all discovery shall be completed by February 17, 1998. 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. Unless subsequently modified by the Prehearing Officer, the following shall apply: interrogatories, including all subparts, shall be limited to 100, and requests for production of documents, including all subparts, shall be limited to 100.

c. 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(2), Florida Statutes.

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

Pursuant to Rule 25-22.048, Florida Administrative Code, 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 fifteen copies of all testimony and exhibits shall be prefiled with the Director, Division of Records and Reporting 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.

Prehearing Statement

Pursuant to Rule 25-22.038(3), Florida Administrative Code, a prehearing statement shall be required of all parties in this docket. Staff will also file a prehearing statement. The original and fifteen copies of each prehearing statement shall be prefiled with the Director of the Division of Records and Reporting 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; and
- (I) a statement as to any requirement set forth in this order that cannot be complied with, and the reasons therefore.

Prehearing Conference

A prehearing conference will be held in this docket at the Florida Public Service Commission, 2540 Shumard Oak Boulevard Tallahassee, Florida 32399-0850. The conditions of Rule 25-22.038(5)(b), Florida Administrative Code, shall be observed. 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.

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 those issues.

Controlling Dates

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

- | | |
|------------------------------------|-------------------|
| 1) Direct testimony and exhibits | January 16, 1998 |
| 2) Rebuttal testimony and exhibits | February 5, 1998 |
| 3) Prehearing Statements | February 5, 1998 |
| 4) Prehearing Conference | February 11, 1998 |
| 5) Hearing | February 24, 1998 |
| 6) Briefs | March 17, 1998 |

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(4), 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 in the Division of Records and Reporting's confidential files.

Post-Hearing Procedures

Rule 25-22.056(3), Florida Administrative Code, requires each party to 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. The rule also provides that 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.

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 60 pages, and shall be filed at the same time. The prehearing officer may modify the page limit for good cause shown. Please see Rule 25-22.056, Florida Administrative Code, for other requirements pertaining to post-hearing filings.

Based upon the foregoing, it is

ORDERED by Commissioner Susan F. Clark, as Prehearing Officer, that the provisions of this Order shall govern this proceeding unless modified by the Commission. It is further

ORDERED that Docket No. 971140-TP shall be severed from Dockets Nos. 960833-TP, 960846-TP, and 960757-TP as set forth in the body of this Order.

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By ORDER of Commissioner Susan F. Clark, as Prehearing Officer, this 14th day of January, 1998.


Susan F. Clark, Commissioner
and Prehearing Officer

(S E A L)

CJP

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.59(4), 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.

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 25-22.038(2), Florida Administrative Code, if issued by a Prehearing Officer; 2) reconsideration within 15 days pursuant to Rule 25-22.060, Florida Administrative Code, if issued by the Commission; or 3) 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 Records and Reporting, 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.

APPENDIX A

LIST OF ISSUES

- ISSUE 1:** Does the BellSouth-MCI interconnection agreement specify how prices will be determined for combinations of unbundled network elements
- a) that do not recreate an existing BellSouth retail telecommunications service?
 - b) that do create an existing BellSouth retail telecommunications service?
- ISSUE 2:** If the answer to either part or both parts of Issue 1 is yes, how is the price(s) determined?
- ISSUE 3:** If the answer to either part or both parts of Issue 1 is no, how should the price(s) be determined?
- ISSUE 4:** Does the BellSouth-AT&T interconnection agreement specify how prices will be determined for combinations of unbundled network elements
- a) that do not recreate an existing BellSouth retail telecommunications service?
 - b) that do create an existing BellSouth retail telecommunications service?
- ISSUE 5:** If the answer to either part or both parts of Issue 4 is yes, how is the price(s) determined?
- ISSUE 6:** If the answer to either part or both parts of Issue 4 is no, how should the price(s) be determined?
- ISSUE 7:** What standard should be used to identify what combinations of unbundled network elements recreate existing BellSouth retail telecommunications services?

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ISSUE 8: What is the appropriate non-recurring charge for each of the following combinations of network elements for migration of an existing BellSouth customer:

- (a) 2-wire analog loop and port;
- (b) 2-wire ISDN loop and port;
- (c) 4-wire analog loop and port; and
- (d) 4-wire DS1 and port?

ISSUE 9: Does the BellSouth-MCIm interconnection agreement require BellSouth to record and provide MCIm with the switched access usage data necessary to bill interexchange carriers when MCIm provides service using unbundled local switching purchased from BellSouth either on a stand-alone basis or in combination with other unbundled network elements?

ISSUE 10: Does the AT&T-BellSouth interconnection agreement require BellSouth to record and provide AT&T with detail usage data for switched access service, local exchange service and long distance service necessary for AT&T to bill customers when AT&T provides service using unbundled network elements either alone or in combination?