

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Petition and complaint) DOCKET NO. 951069-TL
of Harris Corporation against) ORDER NO. PSC-96-0974-PHO-TL
BellSouth Telecommunications,) ISSUED: July 30, 1996
Inc. concerning complex inside)
wiring.)
_____)

Pursuant to Notice, a Prehearing Conference was held on July 19, 1996, in Tallahassee, Florida, before Commissioner Diane K. Kiesling, as Prehearing Officer.

APPEARANCES:

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On behalf of Harris Corporation.

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On behalf of Harris Corporation.

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BellSouth Telecommunications, Inc.

Monica M. Barone, Esq., Florida Public Service
Commission, 2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850
On behalf of the Commission Staff.

PREHEARING ORDER

I. CASE BACKGROUND

The instant proceeding was initiated upon Harris Corporation's filing of a Petition and Complaint pursuant to Rule 25-22.036, Florida Administrative Code. Accordingly, this matter has been set for an administrative hearing.

DOCUMENT NUMBER-DATE

07922 JUL 30 96

FPSC-RECORDS/REPORTING

II. PROCEDURE FOR HANDLING CONFIDENTIAL INFORMATION

A. 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 used 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 periods set forth in Section 364.183(2), Florida Statutes.

B. It is the policy of the Florida Public Service 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.

In the event it becomes necessary to use confidential information during the hearing, the following procedures will be observed:

- 1) 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.
- 2) Failure of any party to comply with 1) above shall be grounds to deny the party the opportunity to present evidence which is proprietary confidential business information.
- 3) 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.

- 4) 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.
- 5) 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 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.

III. PREFILED TESTIMONY AND EXHIBITS

Testimony of all witnesses to be sponsored by the parties has been prefiled. All testimony which has been prefiled in this case

will be inserted into the record as though read after the witness has taken the stand and affirmed the correctness of the testimony and associated exhibits. All testimony remains subject to appropriate objections. Each witness will have the opportunity to orally summarize his or her testimony at the time he or she takes the stand. Upon insertion of a witness' testimony, exhibits appended thereto may be marked for identification. After all parties and Staff have had the opportunity to object and cross-examine, the exhibit may be moved into the record. All other exhibits may be similarly identified and entered into the record at the appropriate time during the hearing.

Witnesses are reminded that, on cross-examination, responses to questions calling for a simple yes or no answer shall be so answered first, after which the witness may explain his or her answer.

IV. ORDER OF WITNESSES

<u>Witness</u>	<u>Appearing For</u>	<u>Issues #</u>
Douglas S. Metcalf (Direct and Rebuttal)	Harris	1,2,3
Richard A. Marks (Direct)	Harris	1,2,3
C. Ned Johnston (Direct and Rebuttal)	BellSouth	1,2,3

V. BASIC POSITIONS

HARRIS:

BST's network and wire facilities terminate at Harris Corporation's Semiconductor division campus in Palm Bay, Florida, at a demarcation point in Building 53. All connections, wire maintenance, cross-connects, etc., of any sort for the wiring on the Harris side of the demarcation point are managed or accomplished by Harris personnel or contractors. The wire inside the demarcation point is complex inside wire, not mixed network/intrasystem facilities. Any charges for the complex inside wire are unlawful and have been since at least January 1, 1989. All revenues paid for the complex

inside wire and received by BST since at least January 1, 1989 should be returned to Harris Corporation along with interest and taxes.

BELLSOUTH:

The facilities in question constitute intrasystem cabling that belongs to BellSouth, and that has been booked to Account 242. This cabling has not been detariffed because it was already embedded and in use at the time of the Order that detariffed complex intrasystem cabling (Account 242), and also because it is not (Account 232) inside wire. There is no federal or state regulatory rule or order that would divest BellSouth of the ownership of this cable. This cabling is located on Harris' property at a point that is behind the demarcation between BellSouth's network facilities and the facilities/wiring that are the responsibility of Harris. In this particular instance, however, Harris has chosen to satisfy its wiring needs by subscribing to services that utilize the subject cable, which, again, belongs to BellSouth. Accordingly, BellSouth is appropriately charging Harris for the use of these facilities under an obsolete tariff. BellSouth is responsible for all maintenance on, and any necessary rearrangements of, this cable.

STAFF: No position at this time.

VI. ISSUES AND POSITIONS

ISSUE 1: What is the proper legal characterization of the facilities in question?

POSITIONS:

HARRIS: Complex inside wire.

BELLSOUTH:

Network intrasystem cabling booked to Account 242 is the proper "legal characterization."

STAFF: Staff is unable to take a position at this time due to conflicting interpretations of FCC and FPSC orders and rules.

ISSUE 2:

Does/has BST's treatment of these facilities violate(d) any FCC and/or FPSC rules or orders or any federal or Florida statutes?

POSITIONS:

HARRIS: Yes. At a minimum, BST has violated: (a) the FPSC's Order No. 20162 issued in Petitions of Southern Bell Telephone and Telegraph Company for Rate Stabilization and Implementation Orders and Other Relief, 88 FPSC 10:311 (1988), requiring SBT to fully amortize its complex inside wiring by December 31, 1988, and to eliminate the lease charges for that wiring on January 1, 1989. If BST is charging Harris for maintenance of these facilities, BST has violated the FPSC's Order No. 17040 issued in Investigation into Earnings of Southern Bell Tel. & Tel. Co., 87 FPSC 1:4 (1986), ordering BST to eliminate its maintenance charge for complex inside wiring by December 31, 1986; and (b) the FCC's Second Report and Order (Detariffing the Installation and Maintenance of Inside Wiring), 59 R.R.2d 1143 (1986), in which the FCC preempted the states from regulating the maintenance of complex inside wiring, and required the detariffing of maintenance of complex inside wiring after December 31, 1986. Harris should have had full and unencumbered use of the facilities at no charge since at least January 1, 1989 (if the charges were for leasing, as they appear to be), or by at least January 1, 1987 (if the FPSC were to determine that the charges were for maintenance). BST's treatment of these facilities also violates: (a) the FCC's First Report and Order (Amendment of Part 31), 85 FCC 2d 818 (1981), concerning the expensing and amortization of inside wire; (b) the FCC's Memorandum Opinion and Order (Detariffing the Installation and Maintenance of Inside Wiring), 1 FCC Rcd. 1190 (1986), precluding telephone companies from imposing a charge for the use of wiring after it is fully amortized; (c) the FCC's Third Report and Order (Detariffing the Installation and Maintenance of Inside Wiring), 7 FCC Rcd. 1334 (1992), in which the FCC preempted the states from setting rates, and regulating the terms and conditions for complex inside wiring services; (d) Sections 364.03, 364.04, 364.08, 364.10, 364.14 and 364.058 Florida Statutes; and (e) Sections 32.2321 to 32.2426 and related FCC rules (including the earlier versions of those sections that were in effect

from 1980 to date), 47 C.F.R. §§ 32.2321-.2426 (1995), concerning the accounting for complex inside wiring.

BELLSOUTH:

No. BellSouth charges for the use of these facilities under the appropriate obsolete tariff. This is the proper treatment of embedded facilities of this type that were in place prior to detariffing by the FCC.

STAFF: No position at this time.

ISSUE 3: Is the Petitioner entitled to relief? If so, what relief should be granted to the Petitioner?

POSITIONS:

HARRIS: Yes. At a minimum, Harris is entitled to the return of all of its payments to BST for the facilities, including its payments for Continuous Property Channels (USOC 1LVDE), since at least January 1, 1989. Further, all interest and taxes paid for these channels should be returned. Harris estimates that the refund should be at least \$172,080.14, plus interest and taxes.

BELLSOUTH:

No. The Petitioner is not entitled to relief.

STAFF: No position at this time.

VII. EXHIBIT LIST

<u>Witness</u>	<u>Proffered By</u>	<u>I.D. No.</u>	<u>Description</u>
Douglas S. Metcalf	Harris	_____ (DSM-1)	July 13, 1992 BST Memorandum
	Harris	_____ (DSM-2)	October 9, 1991 BST Memorandum
	Harris	_____ (DSM-3)	Harris' Campus Arrangement

<u>Witness</u>	<u>Proffered By</u>	<u>I.D. No.</u>	<u>Description</u>
Douglas S. Metcalf	Harris	<u> </u> (DSM-4)	SBT's Response to Harris' Document Request No. 14
Richard A. Marks	Harris	<u> </u> (RAM-1)	Letter dated January 1, 1993 from Marks to Donovan
	Harris	<u> </u> (RAM-2)	Letters between BST and Harris reflecting BST's offer to sell facilities to Harris

Parties and Staff reserve the right to identify additional exhibits for the purpose of cross-examination.

VIII. PROPOSED STIPULATIONS

The facilities in question run from the demarcation point in Building 53 to Buildings 51, 54, 58, 58A, 59, 60, 61, 62 and 63 of the Harris Corporation Semiconductor division campus on Palm Bay Road in Palm Bay, Florida.

BellSouth Telecommunications, Inc, owns the facilities in question.

IX. REPLY BRIEFS

Parties shall file Reply Briefs on September 6, 1996.

X. PENDING MOTIONS

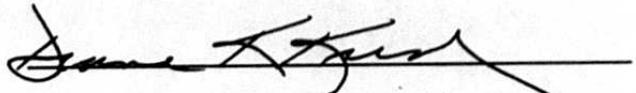
There are no pending motions at this time.

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It is, therefore,

ORDERED by Commissioner Diane K. Kiesling, as Prehearing Officer, that this Prehearing Order shall govern the conduct of these proceedings as set forth above unless modified by the Commission.

By ORDER of Commissioner Diane K. Kiesling, as Prehearing Officer, this 30th day of July, 1996.



Diane K. Kiesling, Commissioner
and Prehearing Officer

(S E A L)

MMB

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,

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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.