

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Petition for approval of) DOCKET NO. 960719-TP
interconnection agreement) ORDER NO. PSC-96-1092-PCO-TP
between BellSouth) ISSUED: August 23, 1996
Telecommunications, Inc., and)
Time Warner AxS of Florida, L.P.)
and Digital Media Partners.)
_____)

ORDER DENYING INTERVENTION

On June 11, 1996, BellSouth Telecommunications, Inc. (BellSouth) and Time Warner AxS of Florida, L.P. d/b/a Time Warner Communications and Digital Media Partners (Time Warner) submitted an interconnection agreement for approval pursuant to Section 252(e) of the Telecommunications Act of 1996 (Act). Section 252(e)(1) of the Act requires the parties to a negotiated interconnection agreement to submit it to the Commission for approval or rejection. The Commission shall, pursuant to Section 252(e)(2)(A), approve the agreement unless it finds the agreement discriminates against a telecommunications carrier not a party to the agreement or that the agreement is not in the public interest.

On July 10, 1996, the Florida Interexchange Carriers Association (FIXCA) filed a petition to intervene in this docket. FIXCA argues that it should be permitted to intervene in order to assure that the agreement does not discriminate against its members. FIXCA contends that, in order for the agreement to be nondiscriminatory, the terms and prices for which the parties intend to provide access service must be made available to all telecommunications providers.

On the same day, FIXCA also filed a motion asking that the Commission approve the agreement between Time Warner and BellSouth and simultaneously modify BellSouth's access tariff to reflect the terms of the agreement. FIXCA argues the provisions of the agreement differ markedly from those contained in BellSouth's tariff and that the tariff should be modified. BellSouth filed a response on July 23, 1996, one day late. BellSouth asked that its late-filed response be accepted and it argued that while it may be appropriate for FIXCA's members to enter into similar agreements with BellSouth, it is inappropriate to place a carrier-specific agreement in its access tariff.

FIXCA's petition to intervene is denied. In order to be granted intervention, FIXCA must show that its substantial interests may be affected by Commission action in this docket. FIXCA does not make that showing. The 1996 Act does not specifically provide for intervention in a Section 252(e) proceeding. The Commission has not permitted intervention in

DOCUMENT NUMBER-DATE

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FPSC-RECORDS/REPORTING

ORDER NO. PSC-96-1092-PCO-TP
DOCKET NO. 960719-TP
PAGE 2

Section 252 arbitration proceedings. See Orders Nos. PSC-96-0918-PCO-TP, issued July 16, 1996 and PSC-96-0964-PCO-TP, issued July 26, 1996. It would be inconsistent to disallow intervention in arbitration proceedings but allow intervention in Commission review of negotiated agreements.

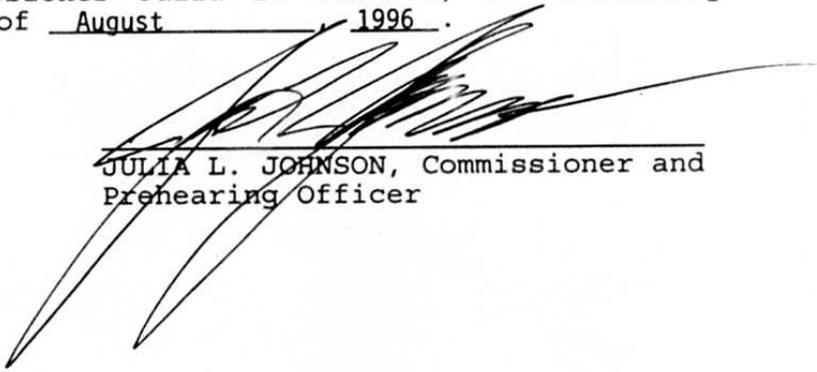
FIXCA claims that in order for the agreement to be nondiscriminatory, the terms and prices for which the parties intend to provide access service must be made available to all telecommunications providers. The Act, however, provides protection against discrimination without the need for intervenor participation in the agreement approval process, because Section 252(i) of the Act requires a local exchange carrier to make available any interconnection service or network element in an approved agreement available to any other requesting carrier under the same terms and conditions. FIXCA does not claim that its members are prevented from reaching the same agreement with BellSouth. It's claim of discrimination is simply speculative.

Since intervention is being denied, it is not necessary to rule on FIXCA's motion to modify BellSouth's access tariff or whether BellSouth's response should be accepted. If FIXCA believes Section 252(i) is inadequate to protect its members from discrimination, it may file a petition to modify the access tariff pursuant to Rule 25-22.036, Florida Administrative Code.

It is, therefore,

ORDERED by Commissioner Julia L. Johnson, as Prehearing Officer, that the Petition to Intervene by the Florida Interexchange Carriers Association is hereby denied.

By ORDER of Commissioner Julia L. Johnson, as Prehearing Officer, this 23rd day of August, 1996.



JULIA L. JOHNSON, Commissioner and
Prehearing Officer

(S E A L)

LMB

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 25-22.0376, 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.