

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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 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  
ORDER NO. PSC-98-0226-FOF-TP  
ISSUED: February 5, 1998

The following Commissioners participated in the disposition of  
this matter:

JULIA L. JOHNSON, Chairman  
J. TERRY DEASON  
SUSAN F. CLARK  
JOE GARCIA  
E. LEON JACOBS, JR.

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ORDER DENYING PETITION FOR RECONSIDERATION

BY THE COMMISSION:

On December 16, 1996, in Docket No. 960757-TP, we issued Order No. PSC-96-1531-FOF-TP, our final order in the arbitration proceeding of MFS Communications Company Inc., (MFS) with BellSouth Telecommunications, Inc., (BellSouth) under the Telecommunications Act of 1996 (Act). On December 31, 1996, we issued Order No. PSC-96-1579-FOF-TP, our final order in the arbitration proceedings of AT&T Communications of the Southern States, Inc., (AT&T) and MCI Telecommunications Corporation and MCI Metro Access Transmission Services, Inc., (MCI) with BellSouth under the Act. (See Docket Nos. 960833-TP and 960846-TP). In this proceeding, we will set permanent rates for a number of network elements for which we set only interim rates in those arbitration orders.

By Order No. PSC-97-1399-PCO-TP, issued November 6, 1997, the prehearing officer in this proceeding granted American Communications Services, Inc., and American Communications Services of Jacksonville, Inc., (ACSI) party status in this proceeding. Following that Order, several other carriers filed petitions to intervene, arguing that they should also be accorded party status in this proceeding.

In Order No. PSC-97-1399-PCO-TP, the prehearing officer determined that even though we have limited participation in arbitration proceedings under the Act to the requesting carrier and the incumbent local exchange company, it was reasonable and appropriate to permit ACSI's participation. ACSI had argued that a number of the network elements at issue in this proceeding were also in ACSI's interconnection agreement with BellSouth and that those rates were also interim in nature. After reconsideration of the facts and the law, however, the prehearing officer determined that it was, in fact, inappropriate for ACSI to participate as a party in this proceeding. Therefore, by Order No. PSC-98-0007-PCO-TP, issued January 2, 1998, the prehearing officer reversed Order No. PSC 97-1399-PCO-TP granting intervention to ACSI.

On January 12, 1998, ACSI filed a Petition for Reconsideration and Request for Expedited Ruling. Therein, ACSI asked that we reconsider the prehearing officer's decision to reverse the order granting ACSI party status. ACSI argued that, in accordance with Rule 25-22.039, Florida Administrative Code, it established that its substantial interests will be affected by our final decision in

this proceeding. ACSI asserted, therefore, that it should not have been arbitrarily dismissed from this case once it had been granted party status.

Specifically, ACSI argued that it had previously set forth in its Petition to Intervene and Supplement to Petition to Intervene that this Commission will be establishing permanent rates for several network elements for which interim rates were set in the arbitration proceedings. ACSI again asserted that some of those same rates are also in the ACSI/BellSouth agreement, and that those rates will be affected by our ultimate determination in this proceeding.

ACSI also argued that having been granted intervention, it had proceeded to participate in good faith, but then, without prior notice, its party status was revoked. ACSI stated that it is unaware of any other similar such occurrence. ACSI argued, therefore, that it should be allowed to continue to participate in this proceeding as a party.

Furthermore, in view of the approaching hearing dates, ACSI requested that we consider its Petition on an expedited basis at our January 20, 1998, Agenda Conference. Because of the limited amount of time prior to the hearing, we granted this request and considered ACSI's Petition at our January 20, 1998, Agenda Conference.

#### Determination

The proper standard of review for a motion for reconsideration is whether the motion identifies some point of fact or law which was overlooked or which the prehearing officer failed to consider in rendering her order. See Diamond Cab Co. v. King, 146 So. 2d 889 (Fla. 1962); Pingree v. Quaintance, 394 So. 2d 161 (Fla. 1st DCA 1981).

Upon consideration, we shall not reconsider the prehearing officer's decision to reverse the previous order granting ACSI intervention in this proceeding because the prehearing officer clearly expressed the reasons for reversing that Order and ACSI has not identified any mistake of fact or law contained within that Order. Furthermore, there is no prohibition against a prehearing officer reconsidering and reversing a previous order based upon a

reassessment of the facts, law, and pleadings presented. ACSI has, therefore, not met the standard for reconsideration set forth in Diamond Cab Co. V. King.

The prehearing officer's reasons for reversing Order No. PSC-97-1399-PCO-TP are set forth on pages 2 through 5 of Order No. PSC-98-0007-PCO-TP. Therein, the prehearing officer stated that this Commission has consistently limited participation in arbitration proceedings under the Act to the requesting carrier and the incumbent local exchange company. Upon review of the Act, the prehearing officer determined that participation should remain limited to the requesting carrier and the incumbent local exchange company. Therefore, the prehearing officer reversed Order No. PSC-97-1399-PCO-TP in order to remain consistent with the provisions of the Act and with past Commission practice.

The prehearing officer's decision to revoke ACSI's party status is consistent with the conclusion reached by the Prehearing Officer at page 2 in Order No. PSC-96-0933-PCO-TP, which established the initial arbitration procedure in Docket No. 960833-TP:

Upon review of the Act, I find that intervention with full party status is not appropriate for purposes of the Commission conducting arbitration in this docket. Section 252 contemplates that only the party requesting interconnection and the incumbent local exchange company shall be parties to the arbitration proceeding. For example, Section 252(b)(1) of the Act states that the "carrier or any other party to the negotiation" may request arbitration. (emphasis added) Similarly Section 252(b)(3) says "a non-petitioning party to a negotiation may respond to the other party's petition" within 25 days. (emphasis added) Section 252(b)(4) requires this Commission to limit its consideration to the issues raised by the petition and the response. None of these statutory provisions provides for intervenor participation.

Furthermore, we believe that the prehearing officer's decision is clearly consistent with the intent of the Act. Section 252(b)(4)(A) of the Act provides that

The State commission shall limit its consideration of any petition under paragraph (1) (and any response thereto) to the issues set forth in the petition and in the response, if any, filed under paragraph (3).

It is noted that Paragraph (1) permits a requesting carrier to petition a State commission to arbitrate any issues still open after 135 days of negotiations. Paragraph (3) gives the incumbent local exchange company 25 days to respond to the petition for arbitration. We agree with the prehearing officer that this language reflects a Congressional intent that interconnection agreements should be reached either through negotiations between a requesting carrier and an incumbent local exchange company or through arbitration proceedings litigated before state commissions by the parties to the negotiations. We also agree that the outcome of arbitration proceedings is an agreement between those parties that is binding only on them. In this instance, ACSI will not be bound by the agreement that is ultimately implemented. Furthermore, the prehearing officer's assessment that the Act does not contemplate participation by other entities who are not parties to the negotiations and who will not be parties to the agreement that results is accurate. As stated by the prehearing officer at page 3 of Order No. PSC-98-0007-PCO-TP, "Entities not party to the negotiations are not proper parties in arbitration proceedings, even though they may, in some indirect way, be affected by a particular decision." ACSI was, therefore, not ever properly a party in this proceeding. As such, the prehearing officer's order reversing the prior mistaken decision to allow ACSI to intervene was correct and appropriate.

Clearly, the prehearing officer thoroughly analyzed and addressed the basis for ACSI's intervention in this proceeding. Upon that reassessment, the prehearing officer determined that ACSI should not be a party. ACSI has not identified any misapprehension or mistake of fact or law by the prehearing officer in that reassessment. Furthermore, the presence of ACSI, which was not a party to the arbitration proceeding, and will not be a party to the ultimate agreements, is at odds with the Act and with our past decisions. The only proper parties are AT&T, MCI, MFS (now

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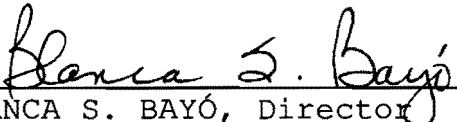
WorldCom, Inc.) and BellSouth.<sup>1</sup> Thus, we hereby deny ACSI's Petition for Reconsideration.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that the Petition for Reconsideration of Order No. PSC-98-0007-PCO-TP, filed by American Communications Services, Inc., and American Communications Services of Jacksonville, Inc., is denied. It is further

ORDERED that these Dockets shall remain open pending our final decision.

By ORDER of the Florida Public Service Commission this 5th day of February, 1998.

  
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BLANCA S. BAYÓ, Director  
Division of Records and Reporting

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<sup>1</sup>We note that ACSI withdrew from the initial arbitration proceeding before we issued our final arbitration order.

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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.

Any party adversely affected by the Commission's final action in this matter may request: 1) reconsideration of the decision by filing a motion for reconsideration with the Director, Division of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, within fifteen (15) days of the issuance of this order in the form prescribed by Rule 25-22.060, 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 of a water and/or wastewater utility by filing a notice of appeal with the Director, Division of Records and reporting and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days after the issuance of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900(a), Florida Rules of Appellate Procedure.