

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition by BellSouth Telecommunications, Inc. for Section 252(b) arbitration seeking resolution of certain issues arising in negotiation of resale agreement with Florida Telephone Services, LLC.

DOCKET NO. 991947-TP
ORDER NO. PSC-00-0873-PHO-TP
ISSUED: May 3, 2000

Pursuant to Notice and in accordance with Rule 28-106.209, Florida Administrative Code, a Prehearing Conference was held on April 26, 2000, in Tallahassee, Florida, before Commissioner E. Leon Jacobs, as Prehearing Officer.

APPEARANCES:

E. EARL EDENFIELD, JR., Esquire, BellSouth Telecommunications, Inc., 150 South Monroe Street, Room 400, Tallahassee, Florida
On behalf of BellSouth Telecommunications, Inc.

PAUL B. JOACHIM, President, Florida Telephone Services, LLC, 696 E. Altamonte Do., Suite 4, Altamonte Springs, FL 32701
On behalf of Florida Telephone Services, LLC

BETH KEATING, Esquire, Division of Legal Services, Florida Public Service Commission, 2540 Shumard Oak Boulevard, Tallahassee, Florida
On behalf of the Florida Public Service Commission

PREHEARING ORDER

I. CONDUCT OF PROCEEDINGS

Pursuant to Rule 28-106.211, Florida Administrative Code, this Order is issued to prevent delay and to promote the just, speedy, and inexpensive determination of all aspects of this case.

DOCUMENT NUMBER-DATE

05517 MAY-38

FPSC-RECORDS/REPORTING

II. CASE BACKGROUND

On July 14, 1999, BellSouth Telecommunications, Inc. (BellSouth) requested negotiations with Florida Telephone Services, LLC, (FTS) to establish a new resale agreement between the companies in accordance with Section 251 of the Telecommunications Act of 1996 (the Act). In the course of negotiations between the companies, one issue was not resolved. Therefore, on December 17, 1999, BellSouth filed a Petition for Arbitration pursuant to Section 252(b) of the Act. This matter has been set for an administrative hearing.

III. 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, 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.

1. Any party intending to utilize confidential documents at hearing for which no ruling has been made, must be prepared to present their justifications at hearing, so that a ruling can be made at hearing.

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

- a) 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.
- b) 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.
- c) 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.
- d) 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.
- e) 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.

IV. POST-HEARING PROCEDURES

Each party shall 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. For Issue 1, however, the 50 word limit may be exceeded. 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. If a party fails to file a post-hearing statement, that party shall have waived all issues and may be dismissed from the proceeding.

Pursuant to Rule 28-106.215, Florida Administrative Code, 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 40 pages, and shall be filed at the same time.

V. PREFILED TESTIMONY AND EXHIBITS; WITNESSES

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.

The Commission frequently administers the testimonial oath to more than one witness at a time. Therefore, when a witness takes the stand to testify, the attorney calling the witness is directed to ask the witness to affirm whether he or she has been sworn.

VI. ORDER OF WITNESSES

Direct

<u>Witness</u>	<u>Proffered By</u>	<u>Issues #</u>
Alphonso Varner	BellSouth	1
Daonne Caldwell	BellSouth	1
Paul B. Joachim (filed testimony styled as Direct, but on the date for Rebuttal)	FTS	1

VII. BASIC POSITIONS

BELLSOUTH: The issue in this docket represents a specific dispute between BellSouth and Florida Telephone Services, LLC ("FTS") as to what should be included in the Interconnection Agreement between the parties. BellSouth's position is more consistent with the 1996 Act, the pertinent rulings of the FCC and the rules of this Commission. Therefore, the Commission should sustain BellSouth's position.

FTS: The issue in this docket represents a specific dispute between BellSouth and FTS as to what should be included in the Interconnection Agreement between the parties. FTS's position is more consistent with the 1996 Act, the pertinent rulings of the FCC and the rules of this Commission. Therefore, the Commission should sustain FTS's position. (Filed April 18, 2000).

STAFF: Staff's positions are preliminary and based on materials filed by the parties and on discovery. The preliminary positions are offered to assist the parties in preparing for the hearing. Staff's final positions will be based upon all the evidence in the record and may differ from the preliminary positions stated herein.

VIII. ISSUES AND POSITIONS

ISSUE 1: What are the appropriate rates to be charged by BellSouth for Florida Telephone Services' access to and use of the electronic and manual interfaces to BellSouth's OSS and functions?

POSITIONS:

BELLSOUTH: The 1996 Act and the FCC's rules allow BellSouth to recover costs associated with developing, providing, and maintaining the electronic and manual interfaces to allow ALECs, such as FTS, to access BellSouth's OSS. Although the Florida Public Service Commission has not decided the issue, eight state commissions in BellSouth's region have recognized BellSouth's right to recover such costs. BellSouth is proposing rates for electronic and manual access calculated consistent with the cost methodology previously adopted by the Commission.

FTS: If BellSouth is allowed to charge for OSS, then BellSouth can come back with a host of other charges and this will keep raising the cost of doing business for resellers like FTS. Any charges that BellSouth wants to charge must be tariffs or in some way equal or balanced mechanisms that are also charged to BellSouth's own customers. A charge similar to the FCC charge that BellSouth presently collects and keeps may be a way for BellSouth to collect some extra revenue. If a monopoly like BellSouth is allowed to charge fees that are outside of the regulated rates and tariff rates as they apply to their own customers, then ultimately what will happen is that FTS will end up paying more to BellSouth to resell BellSouth's own services, than what BellSouth's own customers would pay. Is this what the Telecommunications Act of 1996 intended to do?

For these reasons, FTS respectfully asks that the Commission issue an order to BellSouth to waive all fees in connection with OSS and continue with BellSouth's Resale Agreement with FTS. This will maintain the competitiveness of the telecommunications industry ultimately giving the customer a choice and

preserving the integrity of the Telecommunications Act of 1996. (Filed April 18, 2000).

STAFF: Staff believes that this issue is not appropriate for resolution in an arbitration proceeding. Instead, staff believes that this issue should be resolved in a generic proceeding, after third-party testing of BellSouth's Operational Support Systems is completed in Dockets Nos. 981834-TP and 960786-TL.

IX. EXHIBIT LIST

<u>Witness</u>	<u>Proffered By</u>	<u>I.D. No.</u>	<u>Description</u>
Daonne D. Caldwell	BellSouth	DDC-1	OSS Cost Studies

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

XI. PENDING CONFIDENTIALITY MATTERS

BellSouth's Request for Confidential Classification, filed March 30, 2000. This request will be addressed prior to the May 17, 2000, hearing.

XII. RULINGS

On March 30, 2000, the date upon which rebuttal testimony and prehearing statements were due pursuant to the Order Establishing Procedure, Order No. PSC-00-0390-PCO-TP, issued February 23, 2000, FTS filed testimony styled as Direct Testimony, along with a pleading titled a Memorandum in Support of Motion for Summary Judgment. FTS did not file a Motion for Summary Judgment with the Memorandum.

Thereafter, on April 12, 2000, BellSouth filed a Motion to Strike and Response to Motion for Summary Judgment, asking that the Direct Testimony of FTS's witness Paul Joachim be

stricken because it was untimely filed and because FTS did not timely file a Prehearing Statement. BellSouth argues that accordance with the Order on Procedure:

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.

Order at p. 4.

Therefore, BellSouth asks that FTS's testimony should be stricken.

BellSouth also requests that the Memorandum in Support of Motion for Summary Judgment be stricken because it is not accompanied by a Motion requesting such relief. BellSouth adds that even if the Memorandum can be considered an acceptable Motion for Summary Judgment, it should not be granted, because FTS has failed to allege that there is no issue of material fact and that it is entitled to a judgment as a matter of law.

FTS did not respond to the Motion to Strike. However, on April 18, 2000, FTS filed a Prehearing Statement.

A. Memorandum in Support of Motion for Summary Judgment

With regard to the Memorandum, I agree with BellSouth that no motion accompanied this Memorandum. Therefore, this does not appear to be a proper request for relief, nor does it appear to be a proper prehearing statement, which is what Mr. Joachim indicated at the Prehearing Conference he intended. Thus, BellSouth's Motion to Strike shall be granted as it applies to the Memorandum.

B. FTS's Prehearing Statement

As for FTS's prehearing statement, FTS is hereby granted an extension of time to file its prehearing statement on April 18, 2000; therefore, FTS's late-filed prehearing statement is accepted.

C. FTS's Direct Testimony of Paul Joachim

Upon review of the testimony filed by FTS on March 30, 2000, the testimony does appear to be best characterized as direct testimony, instead of rebuttal. While it does address issues also addressed by BellSouth's witnesses, FTS's testimony makes no attempt to refer to such testimony, nor does it indicate points upon which FTS does not agree with BellSouth. Therefore, it cannot be considered proper rebuttal testimony. Nevertheless, BellSouth's Motion to Strike as it pertains to the Direct Testimony of Paul Joachim shall be denied. In view of the length of time prior to the hearing in this case, BellSouth shall, instead, be allowed additional time to respond to the testimony filed by FTS on March 30, 2000. BellSouth shall file its rebuttal testimony, if any, on or before May 8, 2000.

It is therefore,

ORDERED by Commissioner E. Leon Jacobs, Jr., as Prehearing Officer, that this Prehearing Order shall govern the conduct of these proceedings as set forth above unless modified by the Commission. It is further

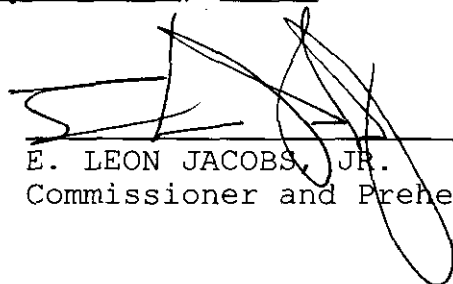
ORDERED that BellSouth Telecommunications, Inc.'s Motion to Strike and Response to Memorandum in Support of Motion for Summary Judgment is granted, in part, and denied, in part, as set forth in the body of this Order. It is further

ORDERED that BellSouth Telecommunications, Inc. shall file rebuttal testimony, if any, on or before May 8, 2000. It is further

ORDERED that Florida Telephone Services, LLC's late-filed prehearing statement is hereby accepted.

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By ORDER of Commissioner E. Leon Jacobs, Jr., as Prehearing Officer, this 3rd day of May, 2000.



E. LEON JACOBS, JR.
Commissioner and Prehearing Officer

(S E A L)

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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.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

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.