

BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

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In the Matter of : DOCKET NO. 991267-TP
:
Complaint and/or petition :
for arbitration by Global :
NAPS, Inc. for enforcement :
of Section VI(B) of its :
interconnection agreement :
with BellSouth :
Telecommunications, Inc., :
and request for relief. :

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PROCEEDINGS: PREHEARING CONFERENCE

BEFORE: COMMISSIONER E. LEON JACOBS, JR.
Prehearing Officer

DATE: Monday, January 10, 2000

TIME: Commenced at 9:30 a.m.
Concluded at 9:45 a.m.

PLACE: Betty Easley Conference Center
Room 152
4075 Esplanade Way
Tallahassee, Florida

REPORTED BY: KIMBERLY K. BERENS, CSR, RPR
FPSC Commission Reporter

1 APPEARANCES:

2 JON C. MOYLE, JR. and CATHY M. SELLERS,
3 Moyle, Flanigan, Katz, Kolins, Raymond & Sheehan, 118
4 North Gadsden Street, Tallahassee, Florida 32301;

5 MICHAEL P. GOGGIN c/o Nancy Sims, 150 South
6 Monroe Street, Suite 400, Tallahassee, Florida 32301,
7 appearing on behalf of BellSouth Telecommunications,
8 Inc.

9 BETH KEATING, Florida Public Service
10 Commission, Division of Legal Services, 2540 Shumard
11 Oak Boulevard, Tallahassee, Florida 32399-0870,
12 appearing on behalf of the Commission Staff.

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1 P R O C E E D I N G S

2 (Hearing convened at 9:30 a.m.)

3 COMMISSIONER JACOBS: Call the prehearing --
4 is everybody on? Call the prehearing conference to
5 order. Counsel, please read the Notice.

6 MS. KEATING: By Notice issued December 10,
7 1999, this time and place have been set for a
8 prehearing conference in Docket No. 991267-TP.
9 Purpose is as set forth in the Notice.

10 COMMISSIONER JACOBS: Take appearances.

11 MR. GOGGIN: Michael Goggin for BellSouth
12 Telecommunications.

13 MR. MOYLE: Jon Moyle, Jr. for Global NAPs.

14 MS. SELLERS: Cathy Sellers for Global NAPs.

15 MS. KEATING: Beth Keating for Commission
16 Staff.

17 COMMISSIONER JACOBS: Are there any
18 preliminary matters, counsel?

19 MS. KEATING: None, Commissioner, that I'm
20 aware of.

21 COMMISSIONER JACOBS: Any from the parties?

22 MR. GOGGIN: None from BellSouth.

23 MR. MOYLE: Not really. I think we're
24 moving along pretty well. We have some discovery
25 that's due in the next few days and I don't anticipate

1 any issues there in that BellSouth didn't object
2 within a 10 day time frame. To the extent that issues
3 arise then we may have a need to get to you on kind of
4 a short basis, but at this point the discovery is not
5 due until a few more days.

6 COMMISSIONER JACOBS: Okay.

7 MR. MOYLE: We're not aware of any right
8 now.

9 MR. GOGGIN: If I can just clarify,
10 BellSouth did file objections within the 10 day time
11 frame. They weren't specific to individual requests
12 because we hadn't gotten far enough along in our
13 rooting around for this information to match specific
14 objections to specific requests, but to the extent
15 that we could identify general areas to which we would
16 have objections, we did serve them and file them.

17 COMMISSIONER JACOBS: Okay. I'm sure your
18 esteemed counsel can work through those.

19 MR. GOGGIN: The only other preliminary
20 issue or potential preliminary issue, it's not really
21 ripe for anything today, is I believe the parties want
22 to conduct depositions and we're working together to
23 establish a schedule for those.

24 COMMISSIONER JACOBS: Okay. Great. That
25 being the case then, we can proceed on through the

1 prehearing order very quickly.

2 As is practice, all I'm going to do is just
3 cite the section and if there are any revisions that
4 you need in that section, you let me know. Otherwise
5 we'll go on.

6 Assume appearances are all well. We'll go
7 to Section 1, Conduct of Proceedings. Pretty much
8 boilerplate there. Any corrections on the case
9 background? Okay.

10 We'll go on to Section 2. This is pretty
11 standard language as well. There it is. Case
12 background is Section 2.

13 Section 3. Hearing no revisions there.

14 Section 4, Post Hearing Procedures.

15 Standard language as well.

16 Section 5, procedures on prefiled testimony
17 and exhibits. No revisions there.

18 Then we'll go to Section 6, Order of
19 Witnesses.

20 MR. MOYLE: Global NAPs is going to call
21 Mr. Rooney first so he should be listed as --

22 COMMISSIONER JACOBS: Okay.

23 MR. MOYLE: -- number one.

24 COMMISSIONER JACOBS: And so there is
25 agreement that each witness will do direct and

1 rebuttal at the same time on the stand?

2 MR. MOYLE: Yeah. I need to --

3 COMMISSIONER JACOBS: Where they have both.

4 MR. MOYLE: I need to consult with a client
5 on that. Mr. -- Prehearing Officer on that.

6 COMMISSIONER JACOBS: Okay. We'll leave it
7 for now. If there is a need to revise that then I
8 don't think there's a big problem. If we can't get it
9 done before, we can do it at hearing.

10 MR. MOYLE: Okay.

11 MR. GOGGIN: I think it's also likely that
12 BellSouth would call Mr. Halprin first rather than
13 Mr. Scollard.

14 COMMISSIONER JACOBS: Okay.

15 MR. MOYLE: And our order will then be the
16 same; otherwise, Rooney first, Goldstein second,
17 Selwyn third.

18 COMMISSIONER JACOBS: Okay.

19 MR. GOGGIN: Our order would also stay the
20 same except Halprin would be first, then Scollard,
21 Shiroishi, Milner and Banerjee.

22 COMMISSIONER JACOBS: Very well. Very well.
23 Basic positions, Section 7.

24 MR. GOGGIN: Commissioner on Page 6 the
25 section on BellSouth's basic position, in the second

1 to last line, at the end of the line the word "be"
2 should be added so it should read, "and should be
3 sustained by the Commission."

4 COMMISSIONER JACOBS: Okay. No other
5 revisions? Great.

6 MR. MOYLE: Just for the record,
7 Mr. -- Commissioner Jacobs, it's our position that
8 there really is no factual dispute in this case, and I
9 think we've covered it in here, but just since we do
10 have a court reporter I want to make that abundantly
11 clear that this is a straight contractual
12 interpretation issue. The contract speaks for itself
13 and it's a matter that is to be interpreted, you know,
14 by the Commission. There are no really any questions
15 of fact involved in the case. So I think that's clear
16 but I wanted just to restate it.

17 COMMISSIONER JACOBS: Very well. The
18 witnesses are going to bring out facts, right?
19 They're not just legal position witnesses?

20 MR. MOYLE: Well, I think most of them are
21 policy.

22 COMMISSIONER JACOBS: Okay.

23 MR. MOYLE: Policy witnesses, I think to
24 provide guidance to the Commission on policy matters.
25 I think there may be a fact witness or two.

1 BellSouth, not to speak for them, but they take the
2 position that intent is somehow involved and we do not
3 take that position that intent is somehow involved
4 because the contract is clear on its face.

5 COMMISSIONER JACOBS: Okay.

6 MR. MOYLE: But given that you say, wait a
7 minute, it is -- intent does become relevant, we need
8 to have somebody to provide our intent. But we don't
9 concede that intent is an issue first and foremost.
10 First and foremost, I think the contract speaks for
11 itself. Only if you decide it's unclear do you need
12 to get to the intent.

13 COMMISSIONER JACOBS: Okay.

14 MR. GOGGIN: I guess, just to respond
15 briefly, BellSouth doesn't differ greatly from that
16 point of view. We believe the contract is plain on
17 its face, that it only includes local traffic, not
18 nonlocalized P-bound traffic. But given that in past
19 cases the Commission has considered evidence that went
20 beyond the four corners of the document, we believed
21 it was appropriate to file testimony in this case. If
22 Global NAPs were to have wanted this case to be
23 decided just on the four corners of the document, I
24 would think that an appropriate motion could have been
25 filed.

1 MR. MOYLE: Well, I think we did. We had
2 that prehearing conference and BellSouth, if I recall,
3 wouldn't agree to tee the issue up in that way and
4 wanted to have the right to put on policy witnesses.

5 COMMISSIONER JACOBS: I haven't seen the
6 testimony, however, because there is no real
7 controversy over the scope of it amongst the parties.
8 I assume that it's going to be appropriate, but it
9 sounds like it ought to flow fairly narrowly.

10 MR. GOGGIN: Commissioner, with the
11 exception of policy witnesses who typically do not
12 flow narrowly, it should flow very narrowly.

13 COMMISSIONER JACOBS: Is Mr. Varner in this
14 list? I didn't see it.

15 MS. KEATING: There are only a couple of
16 issues.

17 COMMISSIONER JACOBS: Okay. Very well. If
18 there are no other revisions -- I take it that you
19 were just summarizing more so than revising,
20 Mr. Moyle, so, there is no revision to your basic
21 position?

22 MR. MOYLE: Just wanted it to be clear.

23 COMMISSIONER JACOBS: Okay. We'll move on
24 to the numbered issues in Section 8.

25 Issue 1. Any revision to the parties'

1 positions to Issue 1?

2 MR. GOGGIN: Commissioner, on Page 8 under
3 Issue 1, the second to last line, the last part of
4 that line should change to the word "were". There is
5 the word "wee", W-E-E, should read "were".

6 COMMISSIONER JACOBS: In the first
7 paragraph?

8 MR. GOGGIN: In the very last -- second to
9 last line on Page 8.

10 COMMISSIONER JACOBS: Okay.

11 MR. GOGGIN: That sentence should read, "in
12 support of its position, Global NAPs cites prior
13 decisions of the Commission that were based on
14 findings."

15 COMMISSIONER JACOBS: No other revisions on
16 Issue 1? Moving on to Issue 2.

17 MR. GOGGIN: Commissioner, on Issue 2,
18 Page 9, the first line of BellSouth's position should
19 read, "yes, the prevailing party is entitled to,"
20 insert the word "the", "recovery", and insert the word
21 "of". So "to the recovery of reasonable attorney's
22 fees under the provisions of the Interconnection
23 Agreement."

24 COMMISSIONER JACOBS: Okay. Got that. Any
25 other revisions? Okay.

1 The exhibit list, Section 9. Any revisions
2 there? Okay.

3 And then Section 10, Proposed Stipulations,
4 we don't have any, and no pending motions, correct?

5 Section 11.

6 MR. MOYLE: Just in light of the comment
7 made by BellSouth earlier, we may have a stipulation.
8 Did I understand BellSouth's position to be that there
9 is no question of fact and that the contract is clear
10 and it's simply a matter of contract interpretation in
11 this case?

12 MR. GOGGIN: We would not like to forego our
13 opportunity to present evidence in this case in light
14 of past cases involving similar issues where the
15 Commission and the parties have presented evidence and
16 made rulings based on evidence that went beyond the
17 four corners of the document. So, I guess the short
18 answer is, no, we would not --

19 COMMISSIONER JACOBS: Didn't sound like it.
20 Nice try, though. Are there any other matters to come
21 before the Prehearing Officer today?

22 MS. KEATING: None that I'm aware of.

23 COMMISSIONER JACOBS: Sounds like we're
24 going to have fun then. In that case, we will call
25 this -- adjourn this prehearing conference and look

1 forward to the hearing. We're adjourned.

2 MR. MOYLE: Thank you.

3 (Thereupon, the hearing concluded at
4 9:45 a.m.)

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1 STATE OF FLORIDA)
2 : CERTIFICATE OF REPORTER
3 COUNTY OF LEON)

4 I, KIMBERLY K. BERENS, CSR, RPR, Official
5 Commission Reporter,

6 DO HEREBY CERTIFY that the Prehearing
7 Conference in Docket No. 991267-TP was heard by the
8 Prehearing Officer at the time and place herein
9 stated; it is further

10 CERTIFIED that I stenographically reported
11 the said proceedings; that the same has been
12 transcribed by me; and that this transcript,
13 consisting of 12 pages, constitutes a true
14 transcription of my notes of said proceedings.

15 DATED this 10th of January, 2000.

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19 _____
20 KIMBERLY K. BERENS, CSR, RPR
21 Florida Public Service Commission
22 Official Commission Reporter

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