



Public Service Commission

-M-E-M-O-R-A-N-D-U-M-

DATE: October 8, 1996
TO: SUSAN F. CLARK, CHAIRMAN
 J. TERRY DEASON, COMMISSIONER
 JOE GARCIA, COMMISSIONER
 JULIA J. JOHNSON, COMMISSIONER
 DIANE K. KIESLING, COMMISSIONER
FROM: CHARLES J. PELLEGRINI *CP*
RE: DOCKETS NOS. ~~960833~~ TP, 960846-TP, 960916-TP

BACKGROUND

On October 4, 1996, MCI Telecommunications Corporation and MCImetro Access Transmission Services, Inc. (collectively, MCI), filed a Motion for Reconsideration of Prehearing Officer's Ruling Striking Issue 9 As It Relates to MCI and Request for Oral Argument. At a prehearing conference on October 3, 1996, the Prehearing Officer found that Issues 8, 9, 22, 24 and 27 had been negotiated in the MCI and BellSouth Telecommunications, Inc. (Bell South) interconnection agreement approved by the Commission on August 13, 1996. The Prehearing Officer ruled that accordingly those issues would be excluded from arbitration in Docket No. 960846-TP. In Order No. PSC-96-1238-PHO-TP, issued on October 7, 1996, Issues 8, 9, 22, 24 and 27 were renumbered as Issues 20, 21, 22, 27 and 28. MCI asserted that, because the ruling amounts to the dismissal of an issue that MCI submitted for arbitration, the Commission must consider the matter *de novo*, not under the standards normally applicable to motions for reconsideration. On October 8, 1996, BellSouth filed its Response and Opposition to MCI's Motion for Reconsideration of Prehearing Officer's Ruling Striking Issue 9 As It Relates to MCI and Request for Oral Argument (response). BellSouth argued that the standard for reconsideration is that enunciated in Diamond Cab Co. of Miami v. King, 146 So.2d 889 (Fla. 1962), *i.e.*, whether the ruling below overlooked or failed to consider or overlooked some material and relevant point of fact or law.

DISCUSSION OF ISSUES

ISSUE 1: Should the Commission consider MCI's Motion for Reconsideration *de novo*?

RECOMMENDATION: No.

STAFF ANALYSIS: The appropriate standard for review for a motion for reconsideration is that which is set forth in Diamond Cab, supra. The purpose of a motion for reconsideration of an order of a Prehearing Officer is to bring to the attention of the Commission some material and relevant point of fact or law that the Prehearing officer overlooked or failed to consider in rendering the order in the first instance. See also, Pingree v. Quaintance, 394 So.2d 161 (Fla 1st DCA 1981). In its response, BellSouth notes

ACK _____
 AFA _____
 APP _____
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 CMU 1 _____
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 EAG _____
 LEG 1 _____
 LIT 5 _____
 CIP _____
 SEC 1 _____
 WAS _____
 OTH _____

that the Commission, in Order No. PSC-93-0812-FOF-TL, issued on May 26, 1993, in Dockets Nos. 920260-TL, 910727-TL, and 900960-TL, found that "the standard applied by the Commission when reviewing a Prehearing Officer's order is the same as that applied for any other matter on reconsideration: has the Prehearing Officer failed to consider some matter or made any mistake of fact or law." Further, BellSouth observes that in Notice of Rulemaking, Order No. PSC-95-0818-NOR-PU, issued on July 6, 1995, proposing new Rule 25-22.0376 and amended Rule 25-22.038, Florida Administrative Code, the Commission stated that its purpose was "to give parties only one opportunity to seek reconsideration of a prehearing officer's order and to clarify that the review standard is reconsideration and not de novo."

Staff recommends that MCI's request that the Commission consider its motion for reconsideration *de novo* should be denied. MCI sets forth no authority for its request. Furthermore, its request contravenes Rule 25-22.0376, Florida Administrative Code.

ISSUE 2: Should the Commission grant MCI's Request for Oral Argument?

RECOMMENDATION: Yes.

STAFF ANALYSIS: The Commission may in its discretion grant oral argument on any motion for reconsideration filed pursuant to Rule 25-22.0376, Florida Administrative Code. MCI fails to state why oral argument would be appropriate. BellSouth acknowledges the Commission's discretionary authority to permit oral argument, and, while stating that it does not believe oral argument to be necessary, maintains that it is prepared to make oral argument, should the Commission grant MCI's request. Staff recommends that MCI's request be granted and that MCI and BellSouth be permitted brief oral argument at the start of these hearings. Staff believes that since this matter arises under the new Telecommunications Act of 1996 (the Act), oral argument may assist the Commission in making its decision.

ISSUE 3: Should the Commission grant MCI's Motion for Reconsideration?

RECOMMENDATION: No.

STAFF ANALYSIS: In its motion, MCI argues that it has a federal statutory right to have the Commission resolve any interconnection issues that it properly submits for arbitration pursuant to the Act. MCI also argues that the interim agreement does not preclude MCI from seeking a different compensation mechanism than that contained in the interim agreement. BellSouth contends that MCI merely reiterates its earlier arguments and, thus, does not meet the standard for reconsideration.

Under Section 252(b) of the Act, parties to the negotiations do have a right to submit "open" issues to state commissions for compulsory arbitration. However, in Order No. PSC-96-1238-PHO-TP, issued October 7, 1996, at pages 58-61, the Prehearing Officer found that Issue 9 (now Issue 21), asking what the compensation mechanism should be for exchange of local traffic between MCI and BellSouth, was negotiated in the interim or

MEMORANDUM

DOCKETS NOS. 960833-TP, 960846-TP, 960916-TP

PAGE 3

partial agreement of May 15, 1996. See Attachment A, Interim or Partial Agreement Excerpt, III. Local Interconnection. The Prehearing Officer also found that the agreement was submitted to the Commission by the parties jointly for approval pursuant to the Act and approved by the Commission expressly under the Act. Thus, Section II.B. of the agreement notwithstanding, the Prehearing Officer ruled that the issue was not an unresolved issue and that it be precluded from arbitration in Docket No. 960846-TP.

In its motion for reconsideration, MCI is required to bring to the Commission's attention a point or points that the Prehearing Officer failed to consider or overlooked when he rendered his ruling. Staff believes that MCI has failed to meet its burden. Thus, staff recommends that the Commission deny MCI's Motion for Reconsideration of Prehearing Officer's Ruling Striking Issue 9 As It Relates to MCI.

However, if the Commission elects to consider MCI's motion for reconsideration, staff recommends that it uphold the Prehearing Officer's ruling for the reasons set forth in Order No. PSC-96-1238-PHO-TP.

CJP

Attachments

ATTACHMENT A

Interim or Partial Agreement Excerpt

III. Local Interconnection

A. The parties agree for the purpose of this Agreement only that local interconnection is defined as the delivery of local traffic to be terminated on each party's local network so that customers of either party have the ability to reach customers of the other party, without the use of any access code or substantial delay in the processing of the call. The parties further agree that the exchange of traffic on BellSouth's Extended Area Service, Extended Calling Service, and other toll substitute calling routes shall be considered local traffic. The delivery of local traffic shall be reciprocal, and compensation shall be a flat per minute uniform and mutual rate based on BellSouth's local switching rates with averaged transport distances. The mutual rate shall not include the Carrier Common Line and interconnection charges, which charges will not be assessed by either party. The state specific local interconnection rates are as delineated on Attachment "A" incorporated herein by this reference.

B. The parties acknowledge that the quality, elements, and costs of local interconnection can vary, but that, for the purposes of this Agreement only, the parties will average the rates for both tandem and end office switching configurations and for transport distances in the development of the mutual and reciprocal rate described in subsection (A), above.

C. In order to mitigate the potential adverse impact on either party which might occur as a result of an imbalance of terminating local traffic between the parties, neither party shall be required to compensate the other for more than up to 105% of the total minutes of use of the party with the lower minutes of use in the same month. This cap shall apply to the total local minutes of use calculated on a company-wide basis for each state having an explicit traffic exchange rate covered by this Agreement.

D. Establishing POIs

(1) The parties shall designate points of interconnection ("POIs") on each other's networks. MCIm shall at a minimum designate a POI at each BellSouth access tandem serving the local calling area of the exchanges being served by MCIm. MCIm may designate additional POIs within a BellSouth local calling area and BellSouth will not unreasonably refuse to interconnect at each such designated POI. BellSouth may designate a POI at one or more of MCIm's local switching centers within each LATA in which MCIm is providing local service. If no MCIm local switching center is located within each LATA, the parties will arrange a POI at a

mutually agreed point within such LATA. MCIm will not unreasonably refuse to interconnect at a POI designated by BellSouth.

(2) Each party shall be responsible for routing calls to the POI for termination via the other's facilities. Each party shall bear its own costs related to installation at the POI. MCIm may establish POIs on the BellSouth network via a negotiated expanded interconnection arrangement or via leased transport between the MCIm network and the BellSouth access tandem. BellSouth may establish POIs on the MCIm network via an expanded interconnection arrangement at an MCIm local switching center or via leased transport between an MCIm expanded interconnect arrangement and an MCIm local switching center. The parties may charge their tariffed or other generally available rates for the expanded interconnection arrangements and leased transport they may acquire from one another in order to establish the POI.

(3) MCIm will compensate BellSouth for terminating local traffic which is delivered at the POI for termination on BellSouth's network or other subbanding networks in accordance with Sections III.A., III.B. and III.C., above. BellSouth will compensate MCIm for terminating local traffic which is delivered at the POI for termination on MCIm's network in accordance with Sections III.A., III.B. and III.C., above. Except as provided in Section IV, no rate elements other than those specified in Sections III.A., III.B. and III.C. shall apply to terminating local traffic. Neither carrier shall impose any charge for delivery of originating traffic to the POI (except that the parties will compensate each other for intralATA 800 service and similar called-party-pays services at their intrastate switched access rates).

(4) Either party may use the POI for the interconnection of other types of services, such as toll services, subject to the applicable rates for such interconnection.

E. Trunking and signaling

1) (a) The party receiving traffic for termination can elect to receive the traffic in one of two ways: (a) separate trunks for local and non-local; or (b) on combined trunks; provided that separate trunk groups shall be utilized where the delivering party is unable to furnish an auditable percent local usage ("PLU") factor to the party receiving the traffic on a quarterly basis.

(b) If direct end office trunking with combined trunks is used (see III.E.(3) below), the parties will cooperatively develop a procedure for

ATTACHMENT A

The state specific local interconnection rates are as follows:

STATE	RATE
Florida	00.011
Georgia	0.01
Tennessee*	0.010
Alabama	0.01
North Carolina	0.018

No additional charges for collection, entrance facilities or additional transport services will apply unless mutually agreed.

* If during the term of this Agreement the intrastate local switching rate is reduced in Tennessee from 00.0175 the interconnection rate for Tennessee will be reduced by the same dollar amount.