

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition by Rhythms Links  
Inc. for expedited arbitration  
award implementing line sharing  
with GTE Florida Incorporated.

DOCKET NO. 000500-TP

In re: Petition by Rhythms Links  
Inc. for expedited arbitration  
award implementing line sharing  
with BellSouth  
Telecommunications, Inc.

DOCKET NO. 000501-TP  
ORDER NO. PSC-00-0990-PCO-TP  
ISSUED: May 19, 2000

ORDER GRANTING MOTION TO CONSOLIDATE  
AND  
DENYING MOTION TO BIFURCATE AND EXPEDITE

On April 26, 2000, Rhythms Links, Inc. (Rhythms) filed petitions for expedited arbitration awards implementing line sharing with GTE Florida Incorporated (GTEFL) and BellSouth Telecommunications, Inc. (BST), pursuant to the Telecommunications Act of 1996 (Act). These petitions have been assigned Dockets Nos. 000500-TP and 000501-TP, respectively.

On May 1, 2000, Rhythms filed a Motion to Consolidate the two dockets. Rhythms also filed a Motion to Bifurcate and Expedite Proceedings.

I. Motion to Consolidate

Rhythms states the following:

1. The issues submitted for arbitration in Dockets Nos. 000500-TP and 000501-TP are identical, as are Rhythms' positions on the issues. The proceedings will thus involve common questions of law, fact, and policy;
2. Rule 28-106.211, Florida Administrative Code, gives the presiding officer broad discretion to issue any orders necessary "to prevent delay, and to promote the just, speedy and inexpensive determination of all aspects of the case. . . ." Rhythms submits that consolidation would promote the efficient resolution of the issues by

DOCUMENT NUMBER-DATE

06218 MAY 19 2000

FPSC-RECORDS/REPORTING

eliminating the necessity of repetitive testimony and cross-examination regarding common issues;

3. Given the tight federal statutory time frames that govern Section 252(d) proceedings, and the congested nature of the Commission's calendar, consolidation would assist the Commission in resolving these proceedings in a timely fashion;
4. Section 120.80(13)(d), Florida Statutes, authorizes the Commission to employ procedures consistent with the Act. Section 252(g) of the Act expressly permits consolidation of these types of proceedings to reduce administrative burdens on telecommunications carriers, other parties to the proceedings and the state commission in carrying out its responsibilities under the Act.

Rhythms proposes the following guidelines to govern in consolidating the proceedings:

1. The parties shall identify two categories of issues: (a) those issues which are common to both dockets; and (b) those issues, if any, which are unique to one of the dockets;
2. All parties will fully participate in the litigation of the common issues, and the Commission's decision on those issues will be binding on the parties;
3. Only Rhythms and the ILEC directly involved with issues unique to one docket will participate in the litigation of those issues. The Commission's decision on those issues will be binding only on the parties who litigated those issues.

On May 8, 2000, GTEFL filed a timely response indicating that it did not oppose Rhythms' motion. On May 8, 2000, BST timely responded to Rhythms' motion. BST indicated that it did not object to consolidating the two dockets to arbitrate the permanent rates, terms and conditions that will apply to line sharing. BST indicated that it opposed Rhythms' motion to bifurcate and expedite. BST stated that if this Commission were to grant Rhythms motion for an expedited proceeding with GTEFL, BST should not be a part of the proceeding.

I find that the grounds set forth by Rhythms support consolidation of these dockets. Therefore, Rhythms' motion to consolidate Dockets Nos. 000500-TP and 000501-TP is hereby granted with regard to the permanent rates, terms and conditions that will apply to line sharing. Rhythms' proposed guidelines regarding the parties' litigation of the issues are hereby adopted.

## II. Motion to Bifurcate and Expedite

Rhythms states that pursuant to the Federal Communications Commission's (FCC) *Deployment of Wireline Services Offering Advanced Telecommunications Capability*, Third Report and Order in CC Docket No. 98-147 and Fourth Report and Order in CC Docket No. 96-98 (FCC 99-355) (rel. Dec 9, 1999) ("Line Sharing Order"), ILECs are obligated to provide requesting carriers with line sharing by June 6, 2000. Because the nine month resolution window extends to August 18, 2000, Rhythms requests that this Commission divide the arbitration into two separate phases, and address the most critical and time sensitive issues prior to June 6, 2000.

Rhythms asserts that nothing in the Act restricts this Commission's discretion to grant Rhythms' request. Rhythms also states that its proposal is consistent with the line sharing Order's recognition that, unless handled on an expedited basis, arbitrations could delay the availability of line sharing by June 6, 2000. Citing the Line Sharing Order, Rhythms states that the FCC urged state commissions to grant petitions for an expedited arbitration within an accelerated time frame, and to included specific terms and conditions in the arbitration to allow for the immediate deployment of line sharing. *Id.* at paragraph 164.

Rhythms urges this Commission to use "Phase I" to address the core issues for implementing line sharing. The issues, identified as Issues 1 through 6 in Rhythms' petitions for arbitration address (i) the appropriate network architecture, including options for the ownership and location of the splitter and collocation augmentation intervals, (ii) recurring and nonrecurring rates for the necessary elements, and (iii) provisioning intervals for the line sharing unbundled network elements. Rhythms further urges this Commission to give this matter the highest possible priority given the importance of the issues, and the adverse impact upon customers resulting from the delay of line sharing

Rhythms proposed a hearing schedule which would have resulted in a final decision on Issues 1 through 6 by May 31, 2000. Rhythms

also proposed a "Phase II" schedule which would result in a final decision on the remaining issues by August, 2000.

On May 8, 2000, GTEFL filed a timely response indicating that it did not oppose bifurcation of the proceeding. GTEFL did indicate, however, that it opposed the accelerated schedule proposed by Rhythms.

On May 8, 2000, BST filed its Response in Opposition to Rhythms' Motion to Bifurcate and Expedite Proceedings. BST states that Rhythms' motion is based on the single premise that an expedited hearing is the only means to implement line sharing by June 6, 2000. BST asserts that Rhythms' motion should be denied, because there are other viable alternatives. BST states that on April 14, 2000, it proposed an agreement under which Rhythms could have obtained line sharing from BST by June 6, 2000. BST states that Rhythms rejected BST's offer. BST indicates that after Rhythms filed its petition for arbitration, BST entered into an amendment to its interconnection agreement with Covad that addresses line sharing. BST states that Rhythms requested adoption of the agreement for interim purposes, but subsequently indicated that it would not accept the agreement in lieu of an expedited hearing.

BST asserts that acceptance of the Covad agreement on an interim basis would not prejudice Rhythms, because Rhythms would retain the right to arbitrate every issue in its petition, including rate issues. BST states that granting Rhythms' motion would require this Commission to alter its schedule to accommodate a ruling in an extraordinarily compacted time frame. BST asserts that Rhythms is not entitled to an expedited proceeding as a matter of right. BST states that this Commission has always set arbitration proceedings according to a time frame it deems appropriate, and Rhythms should not be allowed to dictate the Commission's schedule.

On May 11, 2000, Commission staff held an informal conference in these dockets. All parties attended. The purpose of this conference was to explore options that would allow Rhythms to implement line sharing by June 6, 2000. Rhythms proposed a June 1-2, 2000 hearing resulting in a final decision by June 20, 2000. Our staff suggested that the parties explore interim measures pending conclusion of all issues within the nine month statutory window; however, the parties were unable to reach an agreement.

ORDER NO. PSC-00-0990-PCO-TP  
DOCKETS NOS. 000500-TP, 000501-TP  
PAGE 5

Based on the foregoing, I find it appropriate to conduct one hearing on all issues. Very little time would actually be gained by an expedited hearing in these dockets. Meanwhile, the parties and this Commission would be required to move forward on the remaining "Phase II" issues in order to comply with the nine month resolution window prescribed by the Act. This would create undue burden upon the parties and this Commission. Under the hearing schedule proposed by Rhythms, there would be insufficient time to adequately address the "Phase I" issues. Furthermore, Rhythms is not entitled to an expedited hearing as a matter of right.

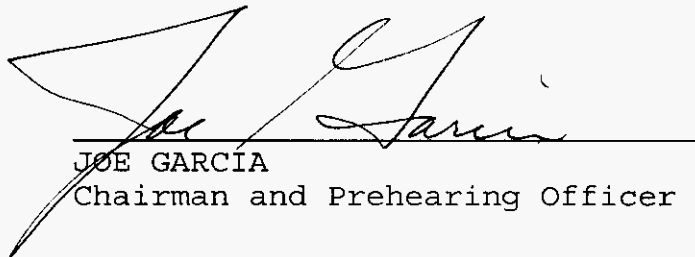
Based on the foregoing, Rhythms' Motion to Bifurcate and Expedite Proceedings is hereby denied. The parties are strongly encouraged to continue negotiations toward interim relief pending hearing.

Based on the foregoing, it is

ORDERED by Chairman Joe Garcia, as Prehearing Officer, that Rhythms Links, Inc.'s Motion to Consolidate is hereby approved as set forth in the body of this Order. It is further

ORDERED that Rhythms Links, Inc.'s Motion to Bifurcate and Expedite Proceedings is hereby denied.

By ORDER of Chairman Joe Garcia, as Prehearing Officer, this 19th day of May, 2000.

  
\_\_\_\_\_  
JOE GARCIA  
Chairman and Prehearing Officer

( S E A L )

TV

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.