

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Petition for Arbitration) DOCKET NO. 961346-TP
of Dispute with BellSouth) ORDER NO. PSC-97-0041-PCO-TP
Telecommunications, Inc.,) ISSUED: January 9, 1997
Regarding Call Forwarding, by)
Telenet of South Florida, Inc.)
_____)

ORDER ESTABLISHING PROCEDURE

On November 12, 1996, Telenet of South Florida, Inc., (Telenet) filed a petition for arbitration pursuant to Section 364.161(1), Florida Statutes, of its dispute with BellSouth Telecommunications, Inc., (BellSouth) concerning the provisioning of call forwarding. BellSouth has declined to continue selling call forwarding to Telenet, alleging that Telenet was using the service in violation of section A13.9.1.A.1 of BellSouth's General Subscriber Service Tariff. Telenet alleges that the tariff provision is an anticompetitive restriction and that it has not been able to reach a resale agreement with BellSouth. Although Section 364.161(1), Florida Statutes, requires that the Commission arbitrate the dispute within 120 days, the parties have stated that they do not object in this case to the Commission's rendering its decision on April 1, 1997.

Discovery

A. All discovery requests and responses shall be served either by next-day express or hand delivery. All discovery responses shall be served within ten (10) days of receipt of the discovery request. There shall be no extra time for mailing.

B. When discovery requests are served and the respondent intends to object to or ask for clarification of the request, the objection or request for clarification shall be made within five (5) days of service of the discovery request. This procedure is intended to reduce delay in resolving discovery disputes.

C. All interrogatories, requests for admissions, and requests for production of documents shall be numbered sequentially in order to facilitate their identification. Unless subsequently modified by the Prehearing Officer, interrogatories, requests for production of documents, and requests for admissions shall each be limited to 50, including all subparts.

D. 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 made a

DOCUMENT NO.
00220-97
1/9/97

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 made a part of the evidentiary record 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 period set forth in Section 364.183(2), Florida Statutes.

E. The hearing in this docket is set for February 12, 1997. Unless authorized by the Prehearing Officer for good cause shown, all discovery shall be completed by February 5, 1997.

Diskette Filings

See Rule 25-22.028(1), Florida Administrative Code, for the requirements of filing on diskette.

Prefiled Testimony and Exhibits

Pursuant to Rule 25-22.048, Florida Administrative Code, each party shall prefile, in writing, all testimony that it intends to sponsor. Such testimony shall be typed on 8 1/2 inch x 11 inch transcript-quality paper, double spaced, with 25 numbered lines, on consecutively numbered pages, with left margins sufficient to allow for binding (1.25 inches).

Each exhibit intended to support a witness' prefiled testimony shall be attached to that witness' testimony when filed, identified by his or her initials, and consecutive numbers beginning with 1. All other known exhibits shall be marked for identification at the prehearing conference. After an opportunity for opposing parties to object to introduction of the exhibits and to cross-examine the witness sponsoring them, exhibits may be offered into evidence at the hearing. Exhibits accepted into evidence at the hearing shall be numbered sequentially. The pages of each exhibit shall also be numbered sequentially prior to filing with the Commission.

An original and fifteen copies of all testimony and exhibits shall be filed with the Director, Division of Records and Reporting by the close of business, which is 5:00 p.m., on the date due. A copy of all prefiled testimony and exhibits shall be served by next-day express or hand delivery to all other parties and staff no later than the date filed with the Commission. Failure of a party to timely file exhibits and testimony of any witness in accordance

with the foregoing requirements may bar admission of such exhibits and testimony.

Prehearing Statement

Pursuant to Rule 25-22.038(3), Florida Administrative Code, each party and staff shall file a prehearing statement. Prehearing statements shall include the following information in the following sequence:

- (a) the name of all known witnesses that may be called by the party, and the subject matter of their testimony;
- (b) a description of all known exhibits that may be used by the party, whether they may be identified on a composite basis, and the witness sponsoring each;
- (c) a statement of basic position in the proceeding;
- (d) a statement of each question of fact the petitioner or respondent considers at issue, the party's position on each such issue, and which of the party's witnesses will address the issue;
- (e) a statement of each question of law the petitioner or respondent considers at issue and the party's position on each such issue;
- (f) a statement of each policy question the petitioner or respondent considers at issue, the party's position on each such issue, and which of the party's witnesses will address the issue;
- (g) a statement of issues that have been stipulated to by the parties;
- (h) a statement of all pending motions or other matters the party seeks action upon; and
- (i) a statement as to any requirement set forth in this order that cannot be complied with, and the reasons therefore.

An original and fifteen copies of each prehearing statement shall be filed with the Director of the Division of Records and Reporting by the close of business, which is 5:00 p.m., on the date due. A copy of the prehearing statement shall be served on all

other parties and staff, by next day express or hand delivery, no later than the date it is filed with the Commission. Failure of a party to timely file a prehearing statement shall constitute 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.

Prehearing Conference

A prehearing conference will be held in this docket at the Florida Public Service Commission, 4075 Esplanade Way, Betty Easley Conference Center, Tallahassee, Florida 32399-0850. The conditions of Rule 25-22.038(5)(b), Florida Administrative Code, shall be observed. Any party who fails to attend the prehearing conference, unless excused by the Prehearing Officer, will have waived all issues and positions raised in that party's prehearing statement.

Prehearing Procedure: Waiver of Issues

Any issue not raised by a petitioner or respondent prior to the issuance of the prehearing order shall be waived by that party, except for good cause shown. A petitioning or responding party seeking to raise a new issue after the issuance of the prehearing order shall demonstrate that: it was unable to identify the issue because of the complexity of the matter; due diligence was exercised to obtain facts touching on the issue; and introduction of the issue could not be to the prejudice or surprise of any party. Specific reference shall be made to the information received, and how it enabled the party to identify the issue.

When a party is unable to take a position on an issue, it shall bring that fact to the attention of the Prehearing Officer. If the Prehearing Officer finds that the party has acted diligently and in good faith to take a position, and further finds that the party's failure to take a position will not prejudice other parties or confuse the proceeding, the party may maintain "no position at this time" prior to hearing and identify its position in a post-hearing statement of issues. In the absence of such a finding by the Prehearing Officer, the party shall have waived the entire issue. When an issue and position have been properly identified, any party may adopt that issue and position in its post-hearing statement.

Controlling Dates

The following dates have been established to govern the key activities of this case.

- | | | |
|----|--------------------------------|-------------------|
| 1) | Direct Testimony, petitioner | January 8, 1997 |
| 2) | Direct Testimony, respondent | January 15, 1997 |
| 3) | Rebuttal Testimony, petitioner | January 20, 1997 |
| 4) | Prehearing Statements | January 21, 1997 |
| 5) | Prehearing Conference | January 24, 1997 |
| 6) | Rebuttal Testimony, respondent | January 27, 1997 |
| 7) | Hearing | February 12, 1997 |
| 8) | Briefs | March 5, 1997 |

The parties shall transmit testimony to one another by facsimile or overnight mail.

Use of Confidential Information At Hearing

It is the policy of this 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. Any party wishing to use any proprietary confidential business information, as that term is defined in Section 364.183(4), 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. Failure of any party to comply with the seven day requirement described above shall be grounds to deny the party the opportunity to present evidence which is proprietary confidential business information.

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 Commission, subject to execution of any appropriate protective agreement with the owner of the material. Counsel and witnesses are cautioned to

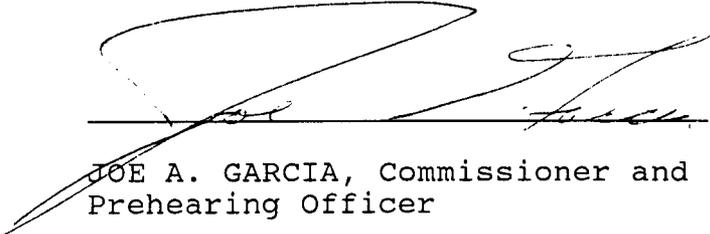
ORDER NO. PSC-97-0041-PCO-TP
DOCKET NO. 961346-TP
PAGE 6

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. At the conclusion of that portion of the hearing that involves confidential information, all copies of confidential exhibits shall be returned to the offering 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.

Based upon the foregoing, it is

ORDERED by Commissioner Joe A. Garcia, as Prehearing Officer, that the provisions of this Order shall govern this proceeding unless modified by the Commission.

By ORDER of Commissioner Joe A. Garcia, as Prehearing Officer, this 9th day of January, 1997.



JOE A. GARCIA, Commissioner and
Prehearing Officer

(S E A L)

CJP

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.59(4), 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 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.

M E M O R A N D U M

JANUARY 7, 1997

RECEIVED
JAN 08 1997

TO: DIVISION OF RECORDS AND REPORTING
FROM: DIVISION OF LEGAL SERVICES (PELLEGRINI)
RE: DOCKET NO. 961346-TP - PETITION FOR ARBITRATION OF
DISPUTE WITH BELLSOUTH TELECOMMUNICATIONS, INC.,
REGARDING CALL FORWARDING, BY TELENET OF SOUTH FLORIDA,
INC.

1:15
FPSC-RECORDS/REPORTING

& MCB

0041-PCO

Attached is an ORDER ESTABLISHING PROCEDURE, to be issued in the above-referenced docket. (Number of pages in Order - 7)

CJP/anr
Attachment
cc: Division of Communications (Greer)
I: 961346ep.cjp

7 boxes marked

MUST GO TODAY