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ORIGINAL  
FILE COPY

October 2, 1996

Ms. Blanca S. Bayo  
Director, Records & Reporting  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, Florida 32399-0850

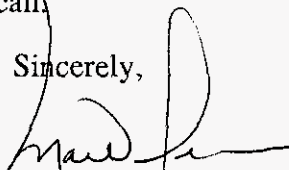
Re: Consolidated Docket Nos. 960833-TP/960844-TP

Dear Ms. Bayo:

On behalf of BellSouth Advertising & Publishing Corporation, enclosed for filing in the above docket is the original and 15 copies of the Bapco Supplemental Authority for Notice of request for Clarification of Issue Preclusion, Or, In the Alternative, Notice of Substantial Interest.

If you have any questions, please give me a call

Sincerely,



MARK HERRON  
E. GARY EARLY

cc: Parties of Record

- ACK  \_\_\_\_\_ MH/EGE/clt
- AFA \_\_\_\_\_ Enclosures
- APP \_\_\_\_\_
- CAF \_\_\_\_\_
- CMU Chase
- CTR \_\_\_\_\_
- EAG \_\_\_\_\_
- LEG 1
- LIN 5
- OPR \_\_\_\_\_
- RCH \_\_\_\_\_
- SEC 1
- WAS \_\_\_\_\_
- OTH \_\_\_\_\_

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EPSC-BUREAU OF RECORDS

DOCUMENT NUMBER-DATE

10550 OCT-2 96

FPSC-RECORDS/REPORTING

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Petition by AT&T Communications of the Southern States, Inc. for arbitration of certain terms and conditions of a proposed agreement with BellSouth Telecommunications, Inc. concerning interconnection and resale under the Telecommunications Act of 1996.

DOCKET NO. ~~960823-TP~~

In Re: Petition by MCI Telecommunications Corporation and MCI Metro Access Transmission Services, Inc. for arbitration of certain terms and conditions of a proposed agreement with BellSouth Telecommunications, Inc. concerning interconnection and resale under the Telecommunications Act of 1996.

DOCKET NO. 960846-TP

Filed: October 2, 1996

BAPCO SUPPLEMENTAL AUTHORITY FOR NOTICE OF REQUEST FOR CLARIFICATION OF ISSUE PRECLUSION, OR, IN THE ALTERNATIVE, NOTICE OF SUBSTANTIAL INTEREST

On Thursday, September 26, 1996, the hearing officer assigned by the Georgia Public Service Commission to preside over pre-arbitration conferences in the AT&T and MCI arbitrations involving BellSouth Telecommunications, Inc., set forth below, issued orders that directory issues are beyond the scope of Section 252 arbitration under the Federal Communications Act.

Accordingly the following is attached to this notice of supplemental authority:

1. First Pre-Arbitration Hearing Order by the Hearing Officer (September 26, 1996); *In Re: Petition by AT&T For Arbitration of Rates, Terms and Conditions with BellSouth Telecommunications, Inc. Under the Telecommunications Act of 1996, Docket No. 6801-U (Ga. PSC)*
2. First Pre-Arbitration Hearing Order by the Hearing Officer (September 26, 1996); *In Re: Petition by MCI For Arbitration of Certain Terms and Conditions of a Proposed Agreement with BellSouth Telecommunications, Inc. Concerning Interconnection and Resale Under the Telecommunications Act of 1996, Docket 6865-U (Ga. PSC)*

Copies of each of these orders are attached to this notice of supplemental authority.

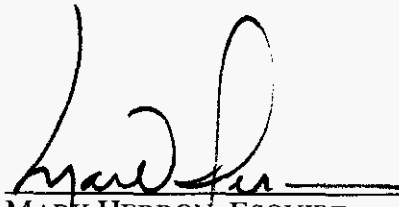
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FPSC-RECORDS/REPORTING

Dated this 22 day of October, 1996.



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MARK HERRON, ESQUIRE  
FLORIDA BAR NO. 199737  
E. GARY EARLY, ESQUIRE  
FLORIDA BAR NO. 325147  
AKERMAN, SENTERFITT & EIDSON, P.A.  
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TALLAHASSEE, FLORIDA 32301  
(904)222-3471

Attorneys for BellSouth Advertising &  
Publishing Corporation

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing was furnished to the following parties this 2d day of October, 1996:

By delivery to:

Donna Canzano  
Division of Legal Services  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, Florida 32399

Nancy White  
c/o Nancy Sims  
BellSouth Telecommunications  
150 South Monroe St., Suite 400  
Tallahassee, Florida 32301

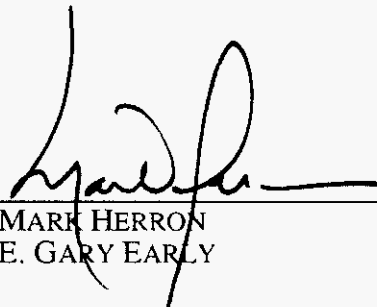
Tracy Hatch  
AT&T  
101 North Monroe St., Suite 700  
Tallahassee, Florida 32301

Richard D. Melson  
Hopping Green Sames & Smith  
123 South Calhoun Street  
Tallahassee, Florida 32314

and by Federal Express to:

Nancy White  
BellSouth Telecommunications  
675 West Peachtree St., Ste. 4300  
Atlanta, Georgia 30375

Martha McMillin  
MCI Telecommunications  
780 Johnson Ferry Rd., Suite 700  
Atlanta, Georgia 30342

  
\_\_\_\_\_  
MARK HERRON  
E. GARY EARLY

DOCKET# 6801  
DOCUMENT# 12657



**COMMISSIONERS:**

DAVID N. (DAVE) BAKER, CHAIRMAN  
ROBERT B. (BOBBY) BAKER  
MAC BARBER  
BOB BURDEN  
STAN WISE

DEBORAH K. FLANNAGAN  
EXECUTIVE DIRECTOR  
TERRI M. LYNDALE  
EXECUTIVE SECRETARY

**Georgia Public Service Commission**

244 WASHINGTON STREET, S.W.  
ATLANTA, GEORGIA 30334-5701  
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SEP 26 1996

**DOCKET NO. 6801-U**

EXECUTIVE SECRETARY  
G.P.S.C.

**FIRST PRE-ARBITRATION HEARING  
ORDER BY THE HEARING OFFICER**

In Re: Petition by AT&T for Arbitration of Rates, Terms and Conditions with BellSouth Telecommunications, Inc. Under the Telecommunications Act of 1996

This matter came before the Hearing Officer at the pre-arbitration conference held on September 23, 1996. AT&T Communications of the Southern States, Inc. ("AT&T") filed the above-referenced petition on July 17, 1996, seeking arbitration of rates, terms and conditions for a proposed agreement between it and BellSouth Telecommunications, Inc. ("BellSouth").

This arbitration is conducted pursuant to Section 252(b) of the Telecommunications Act of 1996 ("Act") (47 U.S.C. § 252(b)). The negotiations commenced when BellSouth received AT&T's formal request on March 4, 1996. Therefore, in accordance with Section 252(b)(4)(C) of the Act, the arbitration proceeding must be concluded by December 4, 1996. The schedule set forth below is adopted to meet this deadline.

AT&T shall provide public notice of this arbitration proceeding without delay, and in any event no later than October 23, 1996.

The Parties shall observe the requirements of the Commission's September 3, 1996 Procedural Order with respect to the filing and service of copies of all testimony and pleadings. All filings in this docket are to be filed to the Commission's Executive Secretary no later than 3:30 p.m. of the date on which such documents are due.

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Page 1 of 7

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## **Schedule**

### **October 21, 1996**

AT&T and BellSouth shall each file their direct testimony, together with any exhibits (including any cost studies) with the Commission's Executive Secretary by 3:30 p.m. on October 21, 1996.

### **October 28, 1996**

AT&T and BellSouth may each file any rebuttal testimony, together with any rebuttal exhibits, with the Commission's Executive Secretary by 3:30 p.m. on October 28, 1996.

### **November 12-14, 1996**

This arbitration will come before the Commission, acting as the arbitration panel, for hearing beginning at 1:00 p.m. on November 12, 1996 and continuing as necessary at 9:00 a.m. on November 13 and 14, 1996. The hearing will not be scheduled for continuation on November 15, 1996, but such date may be available if necessary.

### **November 20, 1996**

AT&T and BellSouth shall file their post-hearing pleadings, including briefs and any proposed orders, with the Commission's Executive Secretary by 3:30 p.m. on November 20, 1996. At the same time, any Participant may file written comments.

### **November 22, 1996**

Any Party or Participant may file reply briefs or reply comments with the Commission's Executive Secretary by 3:30 p.m. on November 22, 1996.

### **December 3, 1996**

The arbitration case will be presented for the Commission's ruling at the Commission's regularly scheduled Administrative Session on December 3, 1996.

## Substantive Issues

### Scope of the Unresolved Issues

BellSouth filed a Motion to Compel Compliance with the 1996 Act on August 12, 1996. BellSouth argued that AT&T's petition failed to list the unresolved, contested issues with sufficient specificity to comply with Section 252 of the federal Act. AT&T filed its response on September 19, 1996, stating that its filing was sufficient to put BellSouth on notice of the contested issues. At the pre-arbitration conference, AT&T stated that it would work with BellSouth to identify the "core issues" contested in the case, and include those with the Parties' "seven-day filing," i.e. the filing which the Procedural Order requires the Parties to submit seven days after the pre-arbitration conference.

The Hearing Officer ruled at the pre-arbitration conference that all the unresolved issues should be listed in specific detail, and therefore that the Parties' seven-day filing must include both the list of unresolved core issues, and a list of all sub-issues that remain unresolved. Subsequently, the Parties met in informal conference with the Hearing Officer on September 24, 1996, to express their joint concern regarding the listing of sub-issues. The Parties stated that they wish to place before the Commission for resolution only the core issues. They intend to work out the sub-issues after the Commission has issued its arbitration ruling resolving the core issues. They further stated that they could not guarantee that they will be able to reach agreement on all the sub-issues after the Commission's arbitration ruling, especially within the 10-day time period established by the Procedural Order, but that they will endeavor to do so.

Therefore, the Hearing Officer clarifies the ruling regarding scope of issues as follows: As a part of their seven-day filing, the Parties shall identify and concisely state their positions on each of the core issues, and any other issues including sub-issues, which they ask the Commission to decide in this arbitration docket which has a statutory deadline of December 4, 1996. Pursuant to the Commission's Procedural Order, the seven-day filing should be a joint statement if possible, although separate statements will be allowed. The Parties may use the format of a matrix, of a contractual document displaying items in dispute, or any other format that clearly identifies the issues to be decided by the Commission. Any issues that the Parties do not expressly state on the list(s) accompanying the seven-day filing shall not be considered a part of AT&T's petition in this arbitration docket.

### BellSouth's Response on BAPCO Issues, and BAPCO's Petition to Intervene and Motion to Dismiss

The issues which the Commission's Procedural Order directed be addressed at this pre-arbitration conference included the filing on August 12, 1996 of BellSouth's Response to AT&T's Petition, and of the BellSouth Advertising & Publishing Corp. ("BAPCO") Petition to Intervene, and Response to AT&T and Motion to Dismiss Portions Seeking Arbitration of Directory Publication

**Issues.** BellSouth argued in its Response that the only directory obligation imposed on BellSouth under the federal Act appears in Section 271 rather than 251 or 252, and that obligation is to provide non-discriminatory access to "white page directory listings" for AT&T's customers, citing 47 U.S.C. § 271(c)(2)(B)(viii). BellSouth asserted that any other directory issues, such as the inclusion of AT&T's logo on the cover of directories, are outside the scope of the federal Act, go to matters and entities outside the jurisdiction of the Commission, and therefore may not be addressed in this arbitration. (BellSouth Response at 4.)

BAPCO's petition essentially interposed a special appearance for the purpose of arguing that either the directory publication issues were not arbitrable, or that if directory publication issues are arbitrable, then BAPCO must be allowed to intervene as a Party to protect its interests.

The Parties and BAPCO stated at the pre-arbitration conference that almost all of the "BAPCO-directory publication" issues which AT&T raised in its Petition have been resolved by a written agreement between AT&T and BAPCO. This was also reflected in AT&T's September 12, 1996 letter advising the Commission of its agreement with BAPCO. Subsequently, on September 20, 1996 BAPCO filed a supplement to its Response to and Motion to Dismiss AT&T's Petition for Arbitration. BAPCO pointed out that there is one directory publication issue remaining between it and AT&T, pertaining to the covers of telephone directories. BAPCO argued that the issue is not arbitrable under Section 251 or 252 of the federal Act. Oral argument was taken at the pre-arbitration conference regarding whether this issue is properly within the scope of this arbitration docket.

On the basis of the written pleadings and the oral arguments at the pre-arbitration conference, the Hearing Officer finds and concludes that BellSouth and BAPCO have correctly argued that the remaining directory publication issue is not arbitrable in this docket under Sections 251 and 252 of the federal Act. BAPCO is not a "local exchange company" ("LEC") or an "incumbent local exchange company" ("ILEC") within the meaning of those two statutory sections; it provides telephone directories and directory publication services, not local exchange telecommunications services. Therefore BAPCO is not itself subject to the obligations imposed upon LECs and ILECs by Sections 251 and 252 of the Act, nor is BAPCO subject to the arbitration procedures prescribed by Section 252 of the Act. Moreover, the issues in a Section 252 arbitration are stated within Sections 251 and 252 of the federal Act, and those provisions do not include the BAPCO-directory publication issue still argued by AT&T.

AT&T should amend its Petition as necessary to remove this issue. Since this directory publication issue is not arbitrable and therefore is ruled to be not within the scope of this arbitration docket, BAPCO may not claim the status of intervenor. Hence the Hearing Officer further concludes that BAPCO shall have the status of Participant rather than intervenor (unless BAPCO chooses, by written pleading, to withdraw its participation entirely).



## Procedural Issues

### Participants

The following entities have filed to date for intervenor or participant status, and shall be treated as Participants in this docket: Consumers' Utility Counsel Division of the Governor's Office of Consumer Affairs ("CUC"), American Communications Services, Inc. and its subsidiary American Communications Services of Columbus, Inc. ("ACSI"), Cable Television Association of Georgia ("CTAG"), MCImetro Access Transmission Services, Inc. ("MCImetro") a wholly-owned subsidiary of MCI Telecommunications Corporation, Palmer Wireless, Inc. ("Palmer"), Southern Directory Company, Inc. ("Southern Directory"), and Sprint Communications Company L.P. ("Sprint"). In addition, BellSouth Advertising & Publishing Corp. ("BAPCO") filed a motion for intervention, and as discussed previously in this Order, shall be considered a Participant.

### Consolidation

The Commission directed that the matters addressed at this pre-arbitration conference include the question whether procedural consolidation will facilitate the management and administration of this arbitration proceeding. Any consolidation will not confer rights of intervention or otherwise affect upon any Party's substantive rights, duties or obligations. In addition, on September 3, 1996 ACSI filed a motion seeking consolidation of all four pending arbitration dockets. (The other three are Dockets No. 6759-U, MFS; 6854-U, ACSI; and 6865-U, MCI.)

At the pre-arbitration conference, AT&T and MCI supported consolidation of this docket with other arbitration dockets, and specifically with MCI's arbitration in Docket No. 6865-U. However, MCI did not file a motion in this docket seeking such consolidation. BellSouth indicated that it was neutral on the question of consolidation, and expressed concern regarding procedural safeguards that should be adopted in the event some cases are consolidated. ACSI, which is a Participant in this case, supported consolidation consistent with its motion seeking consolidation. Essentially, ACSI believes that consolidation will aid in addressing issues that overlap or are in common among more than one arbitration docket.

The Parties and Participants also referred to their previous positions regarding consolidation expressed at the pre-arbitration conference held on September 19, 1996 in the MFS case with BellSouth (Docket No. 6759-U), and the Hearing Officer takes notice of the transcript from that proceeding with respect to those positions and arguments. These include MFS' opposition to having its case consolidated with any other cases.

The Hearing Officer finds and concludes that consolidation of this docket with other arbitration dockets may not be appropriate. This is especially true where, as here, the issues have not been stated with concise clarity. Therefore, consolidation will not be ordered at this time. The Hearing Officer may revisit this issue after AT&T and BellSouth submit their seven-day filing that

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includes, among other things, a list of "core issues" and any other issues or sub-issues that the Commission is asked to decide. Without such a specific list of the issues, it will be difficult if not impossible to identify common issues which would support consolidation.

#### Discovery

No discovery issue was raised at the pre-arbitration conference, other than AT&T's July 17, 1996 motion for a protective order that apparently would apply to information both in discovery and potentially at the hearing in this case. BellSouth stated that it will work with AT&T to develop a non-disclosure agreement allowing AT&T access to requested information that is alleged confidential or trade secret. The Parties are encouraged to review the Commission's trade secret rules and ensure that any such agreement regarding discovery and/or use of information at the hearing comports with those rules. The Parties will submit their non-disclosure agreement with their seven-day filing.

In the event that any dispute arises regarding discovery, the Parties shall follow the procedures outlined in the Commission's Procedural Order by promptly initiating a request for resolution by the Hearing Officer. If a dispute arises concerning the alleged trade secret status of information requested during discovery, the same procedures will apply.

#### Use of "Best and Final Offer" Method for Arbitration

Both Parties at the pre-arbitration conference opposed the use of a "best and final offer" method of arbitration. The Hearing Officer finds that it would not be appropriate to limit the Commission by a requirement that the Commission's arbitration ruling merely adopt one Party's position in full. While the Parties may submit their position in post-hearing pleadings in any manner they find appropriate, including a "best and final offer," the Hearing Officer does not find it appropriate to attempt to limit the Commission's discretion. The Commission should be able to select either party's position, or to forge a resolution in the middle ground that the Commission may find best comports with the pricing standards of Sections 251 and 252 of the federal Act. Therefore, the Hearing Officer does not adopt the use of "best and final offer" arbitration.

#### Opening Statements

AT&T requested that Parties be allowed opening statements by counsel at the arbitration hearing. BellSouth was unopposed to this request. As the Hearing Officer ruled during the pre-arbitration conference, opening statements by counsel will be permitted but shall be limited to no more than 15 minutes per Party.

#### Implementation

Within seven days following this pre-arbitration conference, the Parties shall submit a written statement to the Commission pursuant to the Commission's Procedural Order, reporting on the

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outcome of this pre-arbitration conference. The statement shall incorporate both procedural and substantive matters as discussed and resolved at the pre-arbitration conference, including but not limited to: a list of the unresolved "core issues" and all other issues or sub-issues which the Commission is asked to resolve by this arbitration; a statement whether the Parties have resolved any issues; and a copy of the non-disclosure agreement they develop regarding discovery and, if applicable, information at the hearing. This should be a joint statement if possible, but separate statements will be permitted. If a Party takes exception to any decision by the Hearing Officer, that Party must simultaneously file a separate request with the Commission identifying the decision, stating the basis upon which the Party takes exception, and clearly stating the relief requested.

Any exceptions to the matters contained within this Pre-Arbitration Hearing Order are to be filed with the Commission's Executive Secretary by 12:00 noon on Monday, September 30, 1996.

So ordered this 26th day of September, 1996.



PHILIP J. SMITH  
SPECIALLY APPOINTED HEARING OFFICER  
GEORGIA PUBLIC SERVICE COMMISSION

**BEFORE THE GEORGIA PUBLIC SERVICE COMMISSION**

**Petition by AT&T for Arbitration of Rates,  
Terms and Conditions with BellSouth  
Telecommunications, Inc.** )  
) **Docket No. 6801-U**  
)

**CERTIFICATE OF SERVICE**

I hereby certify that the First Pre-arbitration Hearing Order in the above-referenced arbitration docket was filed with the Commission's Executive Secretary, and copies of same were served upon the Parties in each docket by first-class mail to all persons shown below, on September 26, 1996:

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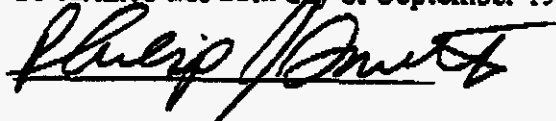
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Atlanta, GA 30339

So certified this 26th day of September 1996.

  
Philip J. Smith

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SEP 28 1996



EXECUTIVE SECRETARY  
G.P.S.C.

DEBORAH K. FLANNAGAN  
EXECUTIVE DIRECTOR  
TERRI M. LYNDALL  
EXECUTIVE SECRETARY

COMMISSIONERS:

DAVID N. (DAVE) BAKER, CHAIRMAN  
ROBERT S. (BOBBY) BAKER  
MAC BARBER  
BOB DURDEN  
STAN WISE

# Georgia Public Service Commission

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DOCKET NO. 6865-U

## FIRST PRE-ARBITRATION HEARING ORDER BY THE HEARING OFFICER

**In Re:** Petition by MCI for Arbitration of Certain Terms and Conditions of a Proposed Agreement with BellSouth Telecommunications, Inc. Concerning Interconnection and Resale Under the Telecommunications Act of 1996

This matter came before the Hearing Officer at the pre-arbitration conference held on September 24, 1996. MCI Telecommunications Corporation ("MCI") seeks arbitration of a proposed agreement between it and BellSouth Telecommunications ("BellSouth"), and filed the above-referenced petition with the Commission on August 19, 1996.

This arbitration is conducted pursuant to Section 252(b) of the Telecommunications Act of 1996 ("Act") (47 U.S.C. § 252(b)). The negotiations commenced when BellSouth received MCI's formal request on March 26, 1996. Therefore, in accordance with Section 252(b)(4)(C) of the Act, the arbitration proceeding must be concluded by December 26, 1996. The schedule set forth below is adopted to meet this deadline.

MCI shall provide public notice of this arbitration proceeding without delay, and in any event no later than October 24, 1996.

The Parties shall observe the requirements of the Commission's September 3, 1996 Procedural Order with respect to the filing and service of copies of all testimony and pleadings. All filings in this docket are to be filed to the Commission's Executive Secretary no later than 3:30 p.m. of the date on which such documents are due.

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## Schedule

### October 21, 1996

MCI and BellSouth shall each file their direct testimony, together with any exhibits (including any cost studies) with the Commission's Executive Secretary by 3:30 p.m. on October 21, 1996.

### October 28, 1996

MCI and BellSouth may each file any rebuttal testimony, together with any rebuttal exhibits, with the Commission's Executive Secretary by 3:30 p.m. on October 28, 1996.

### November 1 and 4-6, 1996

This arbitration will come before the Commission, acting as the arbitration panel, for hearing beginning at 10:00 a.m. on November 1, 1996 and continuing as necessary at 10:00 a.m. on November 4; following the Commission's regularly scheduled 10:00 a.m. Administrative Session on November 5; and at 9:00 a.m. on November 6, 1996.

The subsequent days of November 7 and 8 are not available for continuation of these hearings.

### November 22, 1996

MCI and BellSouth shall file their post-hearing pleadings, including briefs and any proposed orders, with the Commission's Executive Secretary by 3:30 p.m. on November 22, 1996. At the same time, any Participant may file written comments.

### November 27, 1996

Any Party or Participant may file reply briefs or reply comments with the Commission's Executive Secretary by 3:30 p.m. on November 27, 1996.

### December 17, 1996

The arbitration case will be presented for the Commission's ruling at the Commission's regularly scheduled Administrative Session on December 17, 1996.

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**Substantive Issues****Scope of the Unresolved Issues**

MCI's Petition listed all the issues which it asks the Commission to resolve by arbitration. MCI clustered these numerous issues under a series of categories, and showed both its position and BellSouth's position as to each issue. BellSouth responded that many of the issues MCI identified are covered by a May 14, 1996 written interconnection agreement between MCI and BellSouth, which was filed with the Commission and has been approved.

At the pre-arbitration conference, MCI acknowledged that some of the issues in its Petition overlap with matters covered under the two-year interconnection agreement. It stated that "caveats" regarding those issues are contained in its Petition. MCI further stated that as to those issues, it will not seek treatment that is different from what is in the agreement.

MCI also stated that there are some issues which are covered in its interconnection agreement with BellSouth, but which it claims are subject to re-open pursuant to a regulatory out type of provision in the agreement, following the FCC's recent orders implementing Section 251 of the federal Act. Therefore, MCI said, it has asked for Commission arbitration of those issues. BellSouth opposed the submission of such issues for arbitration by the Commission, however. For example, BellSouth pointed out, the FCC orders have not become final and unappealable; in fact, various motions for reconsideration, appeals, and motions for stay pending judicial review have been filed by a variety of parties with respect to both the FCC's First Report and Order, and its Second Report and Order, both released on August 8, 1996.

The Hearing Officer affirms the ruling made at the pre-arbitration conference, that disputes between the Parties as to the extent to which they are bound by the interconnection agreement on these issues shall be brought before the Commission as a part of the arbitration hearing. To aid in this process, the Hearing Officer directs the Parties to include with their "seven-day filing" a statement or list identifying these issues from MCI's Petition. The statement or list must clearly show which issues from the interconnection agreement MCI argues are subject to being re-opened and arbitrated, and BellSouth's position as to whether or not those same issues are subject to re-open and arbitration. In addition, the Parties shall clarify in their "seven-day filing" any other issues from MCI's Petition which BellSouth has questioned as having been resolved in their agreement.

**BellSouth's Response on BAPCO Issues and BAPCO's Petition to Intervene and Motion to Dismiss**

BellSouth filed its Response to MCI's Petition on September 13. Among the matters contained in its Response was BellSouth's argument that issues related to the marketing or sales practices of its affiliate, BellSouth Advertising & Publishing Corp. ("BAPCO"), are outside the jurisdiction of the Commission and outside the scope of this arbitration. (BellSouth Response ¶ 52,

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p. 19.) BellSouth also denied MCI's request for customized directory covers, and argued that directory cover issues are not appropriate for this arbitration because they involve issues outside the scope of the federal Act, and a company (BAPCO) which is not subject to the federal Act. (BellSouth Response ¶ 66, p. 22.)

BAPCO also filed a Petition to Intervene on September 6, 1996, and its own Response to the MCI Petition and Motion to Dismiss Those Portions of the MCI Petition Seeking Arbitration of Directory Publication Issues on September 17, 1996. As the Hearing Officer ruled at the pre-arbitration conference, BAPCO's petition interposed a special appearance for the purpose of arguing that either the directory publication issues were not arbitrable, or that if directory publication issues are arbitrable, then BAPCO must be allowed to intervene as a Party to protect its interests.

BAPCO argued in its Response and Motion to Dismiss that the directory publication issues raised by MCI's Petition are not subject to arbitration under Sections 251 and 252 of the federal Act. Section 271 of that Act does refer to directory publication, but BAPCO stated several matters on that score: The requirements of Section 271 deal only with the customers of a competing LEC receiving an alphabetical directory (white pages) listing; the Section 271 requirements are not subject to compulsory arbitration under Section 252; and MCI has already executed an agreement with BAPCO that ensures its customers will receive the listing referenced in Section 271. (BAPCO Response, p. 2.) Moreover, BAPCO argued, the scope of Section 252 arbitration is limited to issues identified in Section 251, and those requirements do not encompass BAPCO's directory publication services. (BAPCO Response, pp. 4-7.)

BAPCO also stated that the directory publication agreement between itself and MCI, executed on August 12, 1996, covers a wide range of directory publication services, but that MCI's subsequently filed Petition presents directory issues, almost all of which were resolved by the agreement. Therefore, argued BAPCO, even if those issues were subject to arbitration under the federal Act, they could not be presented in fact as unresolved issues for arbitration. (BAPCO Response, pp. 3-4.)

MCI acknowledged at the pre-arbitration conference that many of its BAPCO-directory publication issues were resolved by its written agreement with BAPCO, and that it will amend its Petition to reflect this fact. However, MCI argued that any remaining BAPCO-directory publication issues are subject to arbitration under the "directory listings" provision of Section 251(b)(3). MCI stated that "incumbent local exchange company" is not a defined term under Sections 251 and 252 of the Act, so BAPCO can be charged with any directory obligations imposed by those Sections. BAPCO countered that BAPCO is not a "local exchange company" ("LEC"), so it cannot be viewed as an incumbent LEC ("ILEC"); that Section 251(b)(3) pertains only to customers' access to subscriber list information; and that the FCC's Second Report and Order implementing Section 251, released August 8, 1996, ruled against the interexchange carriers' arguments which had claimed otherwise.

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BAPCO also stated that in the recent cases of AT&T, Docket No. 6352-U; MCI, Docket No. 6537-U; and MFS, Docket No. 6415-U, the Commission has ordered that new entrants be provided with a complete white pages listing, and has directed that any other directory requirements or issues must be negotiated by those companies directly with BAPCO. BAPCO noted that it did not waive its jurisdictional arguments in those cases.

On the basis of the written pleadings and the oral arguments at the pre-arbitration conference, the Hearing Officer finds and concludes that BellSouth and BAPCO have correctly argued that directory publication issues are not arbitrable in this docket under Sections 251 and 252 of the federal Act. BAPCO is not a LEC or an incumbent LEC within the meaning of those two statutory sections; it provides telephone directories and directory publication services, not local exchange telecommunications services. Therefore BAPCO is not itself subject to the obligations imposed upon LECs and ILECs by Sections 251 and 252 of the Act; nor is BAPCO subject to the arbitration procedures prescribed by Section 252 of the Act. Moreover, the issues in a Section 252 arbitration are expressly stated within Sections 251 and 252 of the federal Act, and those provisions do not include the BAPCO-directory publication issues.

MCI should amend its arbitration Petition as necessary to remove the BAPCO-directory publication issues, both those covered by its agreement with BAPCO and those which remain unresolved. Since the directory publication issues are not arbitrable and therefore are ruled to be not within the scope of this arbitration docket, BAPCO may not claim the status of intervenor. Hence the Hearing Officer further concludes that BAPCO shall have the status of Participant rather than intervenor (unless BAPCO chooses, by written pleading, to withdraw its participation entirely).

### Procedural Issues

#### Participants

The following entities have filed to date for intervenor or participant status, and shall be treated as Participants in this docket: Consumers' Utility Counsel Division of the Governor's Office of Consumer Affairs ("CUC"), American Communications Services, Inc. and its subsidiary American Communications Services of Columbus, Inc. ("ACSI"), Cable Television Association of Georgia ("CTAG"), and Sprint Communications Company L.P. ("Sprint"). In addition, BellSouth Advertising & Publishing Corp. ("BAPCO") filed a motion for intervention, and as discussed previously in this Order, shall be considered a Participant.

#### "Mediation Plus"

MCI requested in its Petition a novel process which it labeled "Mediation Plus." Essentially, MCI specified numerous issues as being relatively technical rather than "core" issues, and stated that a Commission-approved, Commission staff-supervised mediation process would facilitate resolution

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by the Parties of these technical issues. MCI asked that this mediation process be conducted concurrently with the litigation aspect of the arbitration. (MCI Petition, ¶¶ 19-25.)

BellSouth objected that a bifurcated process such as "Mediation Plus" would not lead to an efficient resolution of the unresolved issues; to the contrary, it would unnecessarily complicate the procedural schedule. BellSouth stated that the federal Act does not provide for such a process, and that other state commissions including those in Florida and North Carolina have declined to engage in MCI's requested "Mediation Plus." BellSouth added that it remains open to further negotiation on these and any other issues.

The Hearing Officer affirms the ruling made at the pre-arbitration, declining to adopt MCI's requested "Mediation Plus" process. However, both Parties are encouraged to continue negotiations to try to resolve as many issues as possible. The Parties are encouraged to avoid unnecessarily taking issues before the Commission which they can resolve between themselves.

### Consolidation

The Commission directed that the matters addressed at this pre-arbitration conference include the question whether procedural consolidation will facilitate the management and administration of this arbitration proceeding. Any consolidation will not confer rights of intervention or otherwise affect upon any Party's substantive rights, duties or obligations. In addition, on September 3, 1996 ACSI filed a motion seeking consolidation of all four pending arbitration dockets. (The other three are Dockets No. 6759-U, MFS; 6801-U, AT&T; and 6854-U, ACSI.)

At the pre-arbitration conference, AT&T and MCI supported consolidation of this docket with other arbitration dockets, and specifically with AT&T's arbitration in Docket No. 6801-U. ACSI, which is a Participant in this case, supported consolidation consistent with its motion seeking consolidation. Essentially, ACSI as well as AT&T and MCI believe that consolidation will aid in addressing issues that overlap or are in common among more than one arbitration docket. BellSouth indicated that it was neutral on the question of consolidation, and expressed concern regarding procedural safeguards that should be adopted in the event some cases are consolidated.

MCI further argued that a factor supporting its request for consolidation with the AT&T arbitration is that MCI and AT&T plan to use one witness in common. In addition, MCI stated that much of the presentations to be made by the MCI and AT&T witnesses will cover the same ground.

The Parties and Participants also referred to their previous positions regarding consolidation expressed at the pre-arbitration conferences held on September 19, 23 and 24, 1996 in the MFS, AT&T and ACSI cases with BellSouth (Dockets No. 6759-U, 6801-U, and 6854-U), and the Hearing Officer takes notice of the relevant portions of those transcripts. These include MFS' strong opposition to having its case consolidated with any other cases.

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The Hearing Officer finds and concludes that consolidation of this docket with other arbitration dockets may not be appropriate. This is especially true where the other broad-based arbitration docket (that of AT&T) does not have its issues stated with specificity that approaches the level of detail in MCI's Petition. Therefore, consolidation will not be ordered at this time. The Hearing Officer may revisit this issue after AT&T and BellSouth submit their seven-day filing that includes, among other things, a list of "core issues" and any other issues or sub-issues that the Commission is asked to decide. Without such a specific list of the issues in the AT&T arbitration, it will be difficult if not impossible to identify common issues between that case and MCI's arbitration which would support consolidation.

If two petitioning parties are using the same witness, and there is otherwise close proximity between the issues in their cases, then such factors may favor consolidation. In the event that consolidation may appear appropriate, the Hearing Officer will re-convene the pre-arbitration conference for the purpose of addressing how to proceed. However, the Hearing Officer concludes that it is still appropriate to wait until the issues in AT&T's arbitration are listed with specificity before determining whether to alter the ruling against consolidation.

Discovery

No discovery issue was raised at the pre-arbitration conference. In the event that any dispute does arise regarding discovery, the Parties shall follow the procedures outlined in the Commission's Procedural Order by promptly initiating a request for resolution by the Hearing Officer. If a dispute arises concerning the alleged trade secret status of information requested during discovery, the same procedures will apply.

Use of "Best and Final Offer" Method for Arbitration

Both Parties at the pre-arbitration conference opposed the use of a "best and final offer" method of arbitration. The Hearing Officer finds that it would not be appropriate to limit the Commission by a requirement that the Commission's arbitration ruling merely adopt one Party's position in full. While the Parties may submit their position in post-hearing pleadings in any manner they find appropriate, including a "best and final offer," the Hearing Officer does not find it appropriate to attempt to limit the Commission's discretion. The Commission should be able to select either party's position, or to forge a resolution in the middle ground that the Commission may find best comports with the pricing standards of Sections 251 and 252 of the federal Act. Therefore, the Hearing Officer does not adopt the use of "best and final offer" arbitration.

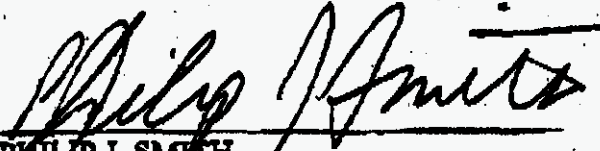
Implementation

Within seven days following this pre-arbitration conference, the Parties shall submit a written statement to the Commission pursuant to the Commission's Procedural Order, reporting on the outcome of this pre-arbitration conference. The statement shall incorporate both procedural and

substantive matters as discussed and resolved at the pre-arbitration conference, including but not limited to: a list of the unresolved "core issues" and all other issues or sub-issues which the Commission is asked to resolve by this arbitration; a statement whether the Parties have resolved any issues; and a copy of the non-disclosure agreement they develop regarding discovery and, if applicable, information at the hearing. This should be a joint statement if possible, but separate statements will be permitted. If a Party takes exception to any decision by the Hearing Officer, that Party must simultaneously file a separate request with the Commission identifying the decision, stating the basis upon which the Party takes exception, and clearly stating the relief requested.

Any exceptions to the matters contained within this Pre-Arbitration Hearing Order are to be filed with the Commission's Executive Secretary by 12:00 noon on Monday, September 30, 1996.

So ordered this 26th day of September, 1996.

  
PHILIP J. SMITH  
SPECIALLY APPOINTED HEARING OFFICER  
GEORGIA PUBLIC SERVICE COMMISSION

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