

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition of Competitive Carriers for Commission action to support local competition in BellSouth Telecommunications, Inc.'s service territory.

DOCKET NO. 981834-TP
ORDER NO. PSC-99-1078-PCO-TP
ISSUED: May 26, 1999

The following Commissioners participated in the disposition of this matter:

JOE GARCIA, Chairman
J. TERRY DEASON
SUSAN F. CLARK
JULIA L. JOHNSON
E. LEON JACOBS, JR.

SECOND ORDER ON PETITION OF COMPETITIVE CARRIERS FOR COMMISSION ACTION TO SUPPORT LOCAL COMPETITION IN BELL SOUTH TELECOMMUNICATIONS, INC.'S SERVICE TERRITORY

BY THE COMMISSION:

I. BACKGROUND

On December 10, 1998, the Florida Competitive Carriers Association (FCCA), the Telecommunications Resellers, Inc. (TRA), AT&T Communications of the Southern States, Inc. (AT&T), MCImetro Access Transmission Services, LLC (MCImetro), Worldcom Technologies, Inc. (Worldcom), the Competitive Telecommunications Association (Comptel), MGC Communications, Inc. (MGC), and Intermedia Communications Inc. (Intermedia) (collectively, "Competitive Carriers") filed their Petition of Competitive Carriers for Commission Action to Support Local Competition in BellSouth's Service Territory. In the Petition, the Competitive Carriers requested the following relief from the Commission:

- (a) Establishment of a generic BellSouth Unbundled Network Element (UNE) pricing docket to address issues affecting local competition;

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- (b) Establishment of a Competitive Forum to address BellSouth operations issues;
- (c) Establishment of third-party testing of BellSouth's Operations Support Systems (OSS);
- (d) Initiation of a rulemaking proceeding to establish expedited dispute resolution procedures applicable to all local exchange carriers (LECs); and
- (e) Provision of such other relief that the Commission deems just and proper.

On December 30, 1998, BellSouth Telecommunications, Inc. (BellSouth) filed a Motion to Dismiss the Competitive Carriers' Petition. On January 11, 1999, the Competitive Carriers filed their Response in Opposition to BellSouth's Motion to Dismiss. The Competitive Carriers requested that we deny BellSouth's Motion to Dismiss.

At the March 30, 1999, Agenda Conference, we denied BellSouth's Motion to Dismiss. In addition, the Commission denied the Competitive Carriers' request to initiate a rulemaking proceeding to establish expedited dispute resolution procedures for resolving interconnection agreement disputes. See Order No. PSC-99-0769-FOF-TP, issued April 21, 1999. This Order addresses the remainder of the Competitive Carriers' Petition.

II. DISCUSSION

A. GENERIC UNBUNDLED NETWORK ELEMENT (UNE) PRICING DOCKET

The Competitive Carriers request that the Commission initiate a docket and conduct a hearing to address key pricing issues and the availability of end-to-end UNEs. Specifically, the Competitive Carriers request that the Commission determine cost-based pricing for UNE combinations, unbundled switching costs, non-recurring costs, and geographically deaveraged pricing for local loops. The Competitive Carriers believe that a UNE pricing docket is necessary to allow all competitive carriers and BellSouth the opportunity to address issues that are critical to all parties' survival in the marketplace. Such a proceeding will dispel uncertainty and correct pricing problems in order to encourage investment by competitive carriers in the Florida local market.

The Competitive Carriers argue that the Commission has a responsibility to establish cost-based rates for UNEs. The Competitive Carriers contend that their inability to enter the local market in Florida is evidence that BellSouth's rates are not truly cost-based. Specifically, the Competitive Carriers believe that Commission action is necessary to set rates for the loop-port UNE combination. The Competitive Carriers note that the Commission directed the parties to negotiate this type of UNE combination in Order No. PSC-98-0810-FOF-TP at pp. 24-25 and 44-45, issued June 12, 1998 (Florida UNE Combination Order). The Competitive Carriers allege that these negotiations have been unfruitful and have left them in a state of uncertainty.

Further, the Competitive Carriers argue that the Commission should review unbundled switching costs because Florida currently has the highest local switching rates in the Southeast, and some of the highest rates in the country. Next, the Competitive Carriers argue similarly that nonrecurring charges are very high and should be reviewed. Finally, the Competitive Carriers request a determination of deaveraged prices for unbundled loops. The Competitive Carriers contend that while the economic cost for BellSouth to provide loops varies greatly depending on population, terrain, and other factors, the rates or prices charged to new entrants do not. The Commission therefore should address this apparent inequity through the establishment of deaveraged pricing of local loops.

As noted previously, the Commission denied BellSouth's Motion to Dismiss the Competitive Carriers' Petition. BellSouth did not file a subsequent responsive pleading, but we believe the arguments in BellSouth's Motion to Dismiss are responsive to the specific requests for reliefs. Since we believe that our consideration of BellSouth's arguments in its motion is helpful to us in making our decision, we will consider their arguments raised in the Motion to Dismiss in our determination on the Competitive Carriers' Petition.

In its Motion to Dismiss, BellSouth responds to this request by stating that AT&T and the other petitioners are making unreasonable demands through their Petition. BellSouth argues that the Commission should not reward the petitioners' recalcitrance in entering the local market by initiating a UNE pricing docket to set new prices. BellSouth contends that AT&T has intentionally failed to compete in the local market with the UNE prices already set by the Commission. BellSouth believes that the Competitive Carriers are simply trying to reargue pricing issues that already have been

resolved. BellSouth argues that the petitioners have not presented arguments regarding a change in circumstances that would warrant revisiting UNE prices, terms, and conditions.

B. A COMPETITIVE FORUM TO ADDRESS COLLOCATION AND OPERATIONAL ISSUES (OSS)

Even if the pricing issues discussed above are addressed by the Commission, the Competitive Carriers contend that any benefit derived will be lost unless carriers are able to obtain the necessary access to BellSouth's facilities (collocation), especially to local loops, and to order and provision service, bill customers, and ensure that customer lines are maintained and repaired properly. The Competitive Carriers note that the Commission's workshops on collocation and OSS are good first steps toward the issue identification and resolution necessary for local competition to advance. The Competitive Carriers believe that the Competitive Forum should address access to UNEs, including ADSL and HDSL loops, Operational Support Systems (OSS) and performance measures, including performance standards, self-executing enforcement mechanisms, and performance data and related reporting. The Competitive Carriers believe that these requests are consistent with guidance provided by the Department of Justice and the FCC in their review of BellSouth's Louisiana 271 filings.

For the Competitive Forum, the Competitive Carriers request that the Commission initiate a series of workshops moderated by Commissioners or staff on the OSS and related issues, utilizing the preliminary issues list attached to its petition. (See Attachment A.) Through these workshops, issues can be established, and proposed solutions raised. For those issues on which the parties are unable to agree, the Commission staff would recommend a solution or recommend that no further action is necessary. The Commission would hold an evidentiary hearing on those issues.

In its Motion to Dismiss, BellSouth argues that the demand for a Competitive Forum is contrary to the procedures of the Act. BellSouth believes that the Act prescribes the appropriate procedure for a review of BellSouth's OSS, the Commission's review of a BellSouth 271 application. BellSouth contends that nothing in the Act would authorize the Competitive Forum that the Competitive Carriers request. BellSouth believes that petitioners are attempting to add hurdles to the 271 application process through this "collaborative approach," thereby delaying BellSouth's effort

to compete in the long distance market. BellSouth denies the Competitive Carriers' contention that BellSouth has refused to make the operational changes necessary to allow new entrants to compete. BellSouth notes that it has spent millions of dollars to meet the OSS requirements imposed by the FCC.

C. THIRD-PARTY TESTING OF THE OPERATIONS SUPPORT SYSTEMS (OSS)

Following the resolution of OSS issues through the Competitive Forum, the Competitive Carriers believe that it is necessary to review BellSouth's performance under the resulting requirements and performance standards in real-world commercial conditions. The Competitive Carriers contend that third-party testing is the appropriate verification method, as it will eliminate the "he-said and she-said" debate found in every state proceeding on a BellSouth 271 filing on the issue of nondiscriminatory access to BellSouth's OSS. Third-party testing will provide an objective view of the OSS's functionality and enable the Commission to conclude whether BellSouth's OSS meets the FCC's requirements.

The Competitive Carriers propose an elaborate procedure for third-party testing. The Competitive Carriers stress that a technically skilled, independent third party must be involved in the development, testing, and monitoring process for third-party testing of BellSouth's OSS. This consultant should utilize the requirements and measurements established through the Competitive Forum. The testing should encompass both the existence of the electronic interface as required, as well as the BellSouth business processes that are supported by means of computer automation and manual processing that will provide nondiscriminatory support. Both the ALECs and BellSouth must have equal participation in all phases of the testing.

In its Motion to Dismiss, BellSouth contends that the third-party testing proposal is clearly designed to further delay the 271 application process. BellSouth believes that this motive is evidenced by the petitioners' request that there should be both third-party testing and commercial usage data as a prerequisite to approval of BellSouth's 271 application. BellSouth believes that the requirement of both third-party testing and commercial usage information is excessive and superfluous.

III. CONCLUSION

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We have carefully reviewed the Competitive Carriers' Petition and BellSouth's response. As a result, we grant in part and deny in part the Petition as follows. We shall initiate activities on the Competitive Carriers' Petition as follows. We will conduct a Section 120.57(1), Florida Statutes, formal administrative hearing process to address UNE pricing, including UNE combinations and deaveraged pricing of unbundled loops; concomitantly, we will conduct OSS workshops, both Commissioner and staff workshops, in an effort to resolve OSS operational issues; the request for third-party testing of OSS systems will be addressed and considered in the workshops. OSS costing and pricing issues shall not be addressed in these initial proceedings.

We will also conduct a Section 120.57(1), Florida Statutes, formal administrative hearing to address collocation and access to loop issues, as well as OSS costing and pricing issues. The collocation proceeding and the OSS pricing proceeding will commence as soon as feasible following the UNE pricing and OSS operational/workshop proceedings. Below is our rationale for this decision on the Competitive Carriers' Petition.

UNE Pricing and Deaveraging

We conclude that the above described are appropriate for several reasons. First, we believe that a UNE pricing proceeding is necessary and prudent. The United States Supreme Court's decision in AT&T Corp. et al. v. Iowa Utilities Board et al., ___ U.S. ___, 119 S. Ct. 721 (1999), gives great deference to the FCC and its national pricing rules. At the time of this decision, we anticipate that the FCC soon will issue some form of a notice of proposed action in response to the Iowa Utilities Board decision. The FCC's notice may include proposals on which UNEs the LECs must provide to competitors, as well as a delayed time frame for implementing deaveraged pricing. The Commission proceedings that we are approving will enable the Commission to be better prepared to address any new FCC requirements.

Second, it appears that a movement from relying solely on arbitration and negotiation between specific individual parties to a generic proceeding where all parties participate is more appropriate. The Competitive Carriers have raised several important issues, such as pricing of the loop-port UNE combination, that are best addressed through the equal participation of all affected and interested carriers. We do not intend by this

decision to do away with all negotiation and arbitration processes prescribed by the Act. We agree with the Competitive Carriers that certain important pricing issues should be examined on a more generic basis in light of the experience in the marketplace with the our previously ordered prices. Nothing in state or federal law prohibits a generic approach to addressing these issues.

In this UNE pricing proceeding, we also must address the deaveraged pricing of local loops. In prior arbitration proceedings conducted by this Commission, deaveraged rates for unbundled network elements were generally not set. Although subject to further review on the merits, the FCC's pricing rules have been reinstated by the Supreme Court's decision. We will need to establish geographically deaveraged rates for certain UNES in the future. We find that the initiation of a proceeding that will address deaveraging is prudent given the concern that the FCC may require the implementation of deaveraged pricing in a very short time frame. While the FCC may delay the timeframe for implementing the requirement, the requirement of deaveraged prices appears inevitable. Thus, it would not be a waste of our resources to commence a proceeding to address these issues. Further, addressing geographic deaveraging in a generic proceeding, rather than in separate LEC-specific arbitrations, appears the most efficient and sensible approach.

In addition, three years of experience in handling the negotiation and arbitration of interconnection agreements under the Act point to the conclusion that there is little, if any, real negotiation between the parties. The parties informally have submitted repeated requests to conduct generic pricing proceedings. Moreover, it appears that the FCC's rules interpreting Section 252(I) of the Act ("the Pick and Choose Rules"), as affirmed by the Supreme Court, will not likely encourage further negotiation and may, in fact, chill the negotiation process. Carriers may be less likely to negotiate certain terms and conditions if other carriers can adopt ("pick and choose") terms from various agreements to assemble the optimal agreement for that carrier.

Finally, we believe that a Section 120.57(1) formal administrative hearing process is the proper procedural vehicle for the UNE pricing proceeding. We have seen very little cooperation and agreement on these pricing issues since the passage of the 1995 state statute and the 1996 federal statute (the Act). We believe the formal hearing process will afford parties the opportunity to arrive at fair and equitable results.

OSS Issues

We will schedule OSS workshops. All parties appear to be in favor of these workshops, and there is reasonable hope that good things for local competition will result. Third-party testing of the OSS systems may be appropriate once we have adopted requirements and standards for these systems. We will therefore reserve judgement on third-party testing of OSS systems until the workshop process has run its course, and OSS requirements and standards have been established. Further, the OSS systems cannot be properly costed and priced until we have established the substance of what functions are required by way of the OSS systems through the workshops.

Collocation and Access to Loops

The Competitive Carriers and several other competitive providers have expressed much interest in a generic Collocation and Access to Loops proceeding. This generic proceeding would address issues such as pricing, provisioning intervals, efficient use of space, and alternative collocation methods. However, we are presently in the midst of a formal hearing process to address six collocation waiver petitions filed by BellSouth. Accordingly, we conclude that it would be the best use of our time and resources to initiate this generic proceeding after the waiver proceedings and UNE pricing proceeding have concluded.

Other Relief

Item (e) of the relief requested in the Petition seeks any additional relief that we may deem just and proper. The Petition itself primarily addresses the requested relief as it relates to BellSouth's territory. These issues of local competition, however, are highly relevant and pertinent to competition in the service territories of other Florida LECs, notably those of Sprint-Florida, Incorporated and GTE Florida Incorporated. Therefore, UNE pricing, OSS operational and pricing, and collocation/access to loops issues relative to the three large LECs should all be reviewed and determined in the generic proceedings that we initiate. Furthermore, the deaveraged pricing of unbundled loops shall be LEC-specific, taking into account the differences in each LEC's respective territory.

Based on the foregoing, it is

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ORDERED by the Florida Public Service Commission that the Petition of the Competitive Carriers for Commission Action to Support Local Competition in BellSouth's Service Territory is granted in part and denied in part to the extent specified in the body of this Order. It is further

ORDERED that this docket shall remain open to address the relief granted through this Order at the Commission's discretion.

By ORDER of the Florida Public Service Commission this 26th day of May, 1999.

BLANCA S. BAYÓ, Director
Division of Records and Reporting

By: Kay Flynn
Kay Flynn, Chief
Bureau of Records

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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.

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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.

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ISSUE LIST

1. Interconnection
 - ◆ Delay in providing trunks
 - ◆ Shutting down networks arbitrarily
2. Combinations of unbundled network elements (UNEs)
 - ◆ Combinations that BellSouth must provide
 - ◆ Whether BellSouth must provide combinations that "recreate" an existing BellSouth retail service
 - ◆ Process for enabling ALECs to combine UNEs
 - ◆ Permissibility of taking apart UNEs that already have been combined
 - ◆ Recurring and nonrecurring prices for UNE combinations
3. Physical collocation and alternatives
 - ◆ Terms on which BellSouth will provide collocation
 - ◆ Ordering difficulties
 - ◆ Alternatives to collocation
4. Selective call routing
 - ◆ Availability and adequacy of line class code method
 - ◆ Availability and adequacy of branding of operator services
5. Terms on which BellSouth will provide switching unbundled from local transport
6. OSS
 - ◆ Integration of ordering and pre-ordering functions
 - ◆ Pre-ordering issues
 - ◆ street address validation
 - ◆ provision of customer service records
 - ◆ access to product and service information
 - ◆ ability to reserve telephone numbers and obtain related information
 - ◆ access to due date information

ATTACHMENT A

- ◆ **Ordering and Provisioning issues**
 - ◆ Order flow through and manual processing of orders generally
 - ◆ Ability to order LNP
 - ◆ Ability to order split accounts electronically
 - ◆ Ability to place complex orders electronically
 - ◆ Ability to order complex directory listings electronically
 - ◆ Ability to order UNEs and UNE combinations electronically
 - ◆ Ability to check status of pending orders
 - ◆ Provision of electronic notices for service jeopardies, rejects, clarifications, competitive disconnects, etc.
 - ◆ Provision of timely FOCs
 - ◆ Provision of FOCs that take into account facility availability
- ◆ **Maintenance and repair issues**
- ◆ **Billing issues**
 - ◆ Billing for shared transport
 - ◆ Provision of terminating usage detail
- ◆ **Change management**
- ◆ **Provision of business rules**
- 7. **Performance measures**
 - ◆ Measurements to be reported
 - ◆ Disaggregation of measurement reporting
 - ◆ Performance standards
 - ◆ Parity assessment model
 - ◆ Verification and auditing of data
 - ◆ Self-executing enforcement mechanisms
 - ◆ Measurements for 911
- 8. **Poles, ducts, conduits and rights of way**
 - ◆ **Methods**
 - ◆ **Procedures**
- 9. **Unbundled loops**
 - ◆ Provision of loops, including XDSL loops
 - ◆ Due date intervals

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ATTACHMENT A

10. **Unbundled switching**
 - ♦ **Vertical features**
 - ♦ **AIN**
11. **White pages**
12. **Dialing parity**
13. **Reciprocal compensation**
14. **Resale**
 - ♦ **Aggregation**
 - ♦ **Terms on which ALECs may resale BellSouth Customer Service Arrangements**