



Public Service Commission

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RECORDS AND REPORTING
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PSC

DATE: AUGUST 26, 1999

TO: DIRECTOR, DIVISION OF RECORDS AND REPORTING (BAYÓ)

FROM: DIVISION OF COMMUNICATIONS (HINTON) *CH RNT*
DIVISION OF LEGAL SERVICES (BEDELL) *CB*

RE: DOCKET NO. 990959-TP - REQUEST BY BELLSOUTH TELECOMMUNICATIONS, INC. FOR APPROVAL OF INTERCONNECTION, UNBUNDLING, AND RESALE AGREEMENT WITH HEALTHCARE LIABILITY MANAGEMENT CORPORATIONS D/B/A FIBRE CHANNEL NETWORKS, INC. AND HEALTH MANAGEMENT SYSTEMS, INC.

AGENDA: 09/07/99 - REGULAR AGENDA - PROPOSED AGENCY ACTION - COMMISSION DECISION ON INTERCONNECTION AGREEMENT

CRITICAL DATES: INTERCONNECTION AGREEMENT - COMMISSION MUST APPROVE OR DENY BY OCTOBER 23, 1999

SPECIAL INSTRUCTIONS: NONE

FILE NAME AND LOCATION: S:\PSC\CMU\WP\990959.RCM

DOCUMENT NUMBER-DATE

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PSC-RECORDS/REPORTING

CASE BACKGROUND

On July 8, 1996, Health Liability Management Corporations (HLMC) filed an application for a certificate of Public Convenience and Necessity to provide statewide interexchange telecommunications service (Docket No. 960811-TI). The application lacked information to support a finding of financial capability as required by Section 364.337(3), Florida Statutes. HLMC also failed to furnish documentation of registration with the Secretary of State, Division of Corporations, to conduct business within the State of Florida as required in Form PSC/CMU 31 (3/96), incorporated by reference in Rule 25-24.471(1), Florida Administrative Code. As a result, in Proposed Agency Action Order No. PSC-97-0741-FOF-TI, issued June 25, 1997, HLMC's application to provide statewide interexchange telecommunications service was denied as not in the public interest.

On July 21, 1997, HLMC filed a petition for a formal proceeding pursuant to Rule 25-22.029, Florida Administrative Code. On November 20, 1997, the Commission issued Order No. PSC-97-1465-FOF-TI dismissing the petition for Administrative Hearing on the grounds that the company had shown a willful disregard for the Commission's Orders and rules pursuant to Rule 25-22.042, Florida Administrative Code. Order No. PSC-97-0741-FOF-TI became final and effective as of November 4, 1997, and the docket was closed.

By letter dated July 23, 1999, BellSouth Telecommunications, Inc. filed a Notice of the adoption by HLMC of the Interconnection, Unbundling, and Resale Agreement entered into by and between BellSouth Telecommunications, Inc. and AT&T Communications of the Southern States, Inc., which the Commission approved by Order No. PSC-97-0724-FOF-TP issued June 19, 1997.

DISCUSSION OF ISSUES

ISSUE 1: Should the Commission deny the Notice of Adoption of the BellSouth/AT&T Interconnection, Unbundling, and Resale Agreement by Healthcare Liability Management Corporations d/b/a Fibre Channel Networks, Inc., and Health Management Systems, Inc., filed by BellSouth Telecommunications, Inc.

RECOMMENDATION: Yes. The Commission should deny the Notice of Adoption of the BellSouth/AT&T Interconnection, Unbundling, and Resale Agreement by Healthcare Liability Management Corporations d/b/a Fibre Channel Networks, Inc. and Health Management Systems, Inc., filed by BellSouth Telecommunications, Inc. (**HINTON**)

STAFF ANALYSIS:

As stated in the Case Background, on July 8, 1996, Health Liability Management Corporation (HLMC) filed an application for a certificate of Public Convenience and Necessity to provide statewide interexchange telecommunications service (Docket No. 960811-TI). The application lacked information to support a finding of financial capability as required by Section 364.337(3), Florida Statutes. HLMC also failed to furnish documentation of registration with the Secretary of State, Division of Corporations, to conduct business within the State of Florida as required in Form PSC/CMU 31 (3/96), incorporated by reference in Rule 25-24.471(1), Florida Administrative Code. As a result, in Proposed Agency Action Order No. PSC-97-0741-FOF-TI, issued June 25, 1997, HLMC's application was denied stating, "it is not in the public interest to grant a certificate to provide interexchange telecommunications service to HLMC." (Order at p.2)

On July 21, 1997, HLMC filed a petition for a formal proceeding pursuant to Rule 25-22.029, Florida Administrative Code. Accordingly, the matter was set for a formal administrative hearing on October 22, 1997. The Prehearing Officer issued Order No. PSC-97-0979-FOF-TI on August 14, 1997, establishing the procedure for the case.

Staff made several efforts to explain to HLMC the deficiencies in its application, and indicated that if these deficiencies were rectified, staff would reevaluate the company's application and possibly avoid a hearing. "The company denied that its application was deficient and expressed a desire to proceed to hearing." (Order No. PSC-97-1465-FOF-TI, p.2)

After repeated requests by staff and extensions of the deadline, HLMC failed to file its direct testimony and its proposed tariff in the manner required by Commission rule. Therefore, on November 20, 1997, the Commission issued Order No. PSC-97-1465-FOF-TI, dismissing HLMC's petition for administrative hearing, on the grounds that the company had shown a willful disregard for the Commission's Orders and Rules, pursuant to Rule 25-22.042, Florida Administrative Code.

The Commission's Order stated that:

As we have chronicled above, HLMC has demonstrated a persistent inability to comply with Commission Orders and rules. We find that the company's cumulative conduct amounts to a wilful disregard of or gross indifference to those Orders and rules. Accordingly, we find that it is appropriate to impose the sanction in this instance of dismissing the company's petition for a formal administrative hearing on its application for certification as an interexchange telecommunications carrier. (Order No. PSC-97-1465-FOF-TI, pp. 5-6)

Proposed Agency Action Order No. PSC-97-0741-FOF-TI, denying HLMC's application, was made final as of November 4, 1997, and the docket was closed.

By letter dated July 23, 1999, BellSouth Telecommunications, Inc. (BellSouth), filed a Notice of Adoption by HLMC of the Interconnection, Unbundling, and Resale Agreement entered into by and between BellSouth and AT&T Communications of the Southern

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States, Inc., approved by Commission Order No. PSC-97-0724-FOF-TP, issued June 19, 1997. HLMC remains uncertificated.

HLMC has had ample time to address the Commission's and staff's concerns and to correct the deficiencies in its application for IXC certification, but it has failed to do so. As of the date of this recommendation, HLMC has not applied for ALEC Certification either. While the Commission has approved Agreements prior to the ALEC being certificated, the history of this particular company has demonstrated a pattern of disregard for Commission Orders and Rules. Further, HLMC is not registered with the Department of State as a Corporation operating in the State of Florida and doing business as either Fibre Channel Networks, Inc. or Health Management Systems, Inc. contrary to the representation in this petition.

Staff believes that the Commission has the authority to reject HLMC's adoption of the BellSouth/AT&T agreement as not consistent with the public interest. Section 252(i) of the Act is silent on a state's authority to reject an adoption and where the Act does speak to rejection of an agreement by a state commission, such as in Section 252(e)(2), it speaks to rejecting terms of an agreement, not to the rejection of a particular company as a party to a contract. Therefore, we conclude that this Commission has the authority under Florida law to reject an adoption based on the prior conduct and actions of one of the parties being unacceptable. As noted in the Case Background, this Commission denied HLMC a certificate because HLMC failed to complete its application and failed to establish that it had the technical, financial or managerial capability to operate a telecommunications company. Because HLMC has failed to obtain a Certificate of Public Convenience and Necessity pursuant to Section 364.337, Florida Statutes, HLMC cannot provide telecommunications services in Florida, and therefore, does not meet the statutory definition of a "telecommunications carrier" under Section 47 USC 153 (44), nor can it operate as an interexchange carrier in Florida. Although Section 252(i) of the Act mandates that BellSouth make available its interconnection agreement with AT&T to any requesting "telecommunications carrier," staff does not believe BellSouth is

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obligated to provide such an agreement to HLMC because it is not currently a "telecommunications Carrier."

Therefore, until such time as HLMC submits a complete and accurate application for ALEC certification in accordance with Commission Rules, and is properly registered to operate as a corporation within the State of Florida, staff recommends that the adoption of an interconnection agreement by HLMC be denied. Staff believes that approval of this agreement is not consistent with the public interest, convenience and necessity, and accordingly, staff recommends that the adoption of the BellSouth/AT&T agreement by HLMC be denied pursuant to Section 252(e) of the Telecommunications Act of 1996.

ISSUE 2: Should this docket be closed?

RECOMMENDATION: Yes. Upon the approval of staff's recommendation by the Commission, the Interconnection Agreement between BellSouth and HMLC will be denied and the docket should be closed.

STAFF ANALYSIS:

Upon the approval of staff's recommendation by the Commission, the Interconnection Agreement between BellSouth and HMLC will be denied and the docket should be closed.