

State of Florida



Public Service Commission

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD
TALLAHASSEE, FLORIDA 32399-0850

-M-E-M-O-R-A-N-D-U-M-

DATE: JANUARY 6, 2000

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

FROM: DIVISION OF COMMUNICATIONS (HINTON, ^{PH}WOLFE) ^{DW}
DIVISION OF LEGAL SERVICES (KEATING, ^{JK}STERN) ^{MKS}

RE: DOCKET NO. 991685-TP - REQUEST FOR APPROVAL OF RESALE AGREEMENT BETWEEN BELLSOUTH TELECOMMUNICATIONS, INC. AND BELLSOUTH BSE, INC.

DOCKET NO. 991719-TP - REQUEST FOR APPROVAL OF AMENDMENT TO INTERCONNECTION, UNBUNDLING, AND RESALE AGREEMENT BETWEEN BELLSOUTH TELECOMMUNICATIONS, INC. AND NORTHPOINT COMMUNICATIONS, INC.

DOCKET NO. 991720-TP - REQUEST FOR APPROVAL OF AMENDMENT TO INTERCONNECTION, UNBUNDLING, AND RESALE AGREEMENT BETWEEN BELLSOUTH TELECOMMUNICATIONS, INC. AND PALM BEACH TELEPHONE COMPANY.

DOCKET NO. 991723-TP - REQUEST FOR APPROVAL OF AMENDMENT TO INTERCONNECTION, UNBUNDLING, AND RESALE AGREEMENT BETWEEN BELLSOUTH TELECOMMUNICATIONS, INC. AND ACCESS INTEGRATED NETWORKS, INC.

AGENDA: 01/18/2000 - REGULAR AGENDA - FINAL ACTION - NEGOTIATED AGREEMENTS; PARTICIPATION IS LIMITED TO COMMISSIONERS AND STAFF

CRITICAL DATES: DOCKET NO. 991685-TP - FEBRUARY 3, 2000
DOCKET NO. 991719-TP - FEBRUARY 10, 2000
DOCKET NO. 991720-TP - FEBRUARY 10, 2000
DOCKET NO. 991723-TP - FEBRUARY 10, 2000
90-DAY LIMIT PURSUANT TO SECTION 252(E)(4) OF THE TELECOMMUNICATIONS ACT OF 1996

SPECIAL INSTRUCTIONS: NONE

FILE NAME AND LOCATION: S:\PSC\CMU\WP\991719.RCM

DOCUMENT NO.
00175-00
1-6-00

CASE BACKGROUND

On November 5, 1999, BellSouth Telecommunications, Inc. (BellSouth) submitted a negotiated resale agreement with BellSouth BSE, Inc. for the Commission's approval under the Telecommunications Act of 1996 (the Act).

On November 12, 1999, BellSouth submitted a negotiated interconnection, unbundling, and resale agreement with Northpoint Communications, Inc. for the Commission's approval under the Act.

On November 12, 1999, BellSouth submitted a amendments to its Interconnection, Unbundling, and Resale Agreement with Palm Beach Telephone Company for the Commission's approval under the Act.

On November 12, 1999, BellSouth submitted a amendments to its Interconnection, Unbundling, and Resale Agreement with Acess Integrated Networks, Inc. for the Commission's approval under the Act.

DISCUSSION OF ISSUES

ISSUE 1: Should the Commission approve the negotiated agreement and amendments to agreements between BellSouth Telecommunications and BellSouth BSE, Inc., Northpoint Communications, Inc., Palm Beach Telephone Company, and Access Integrated Networks, Inc.?

RECOMMENDATION: The Commission should approve the negotiated agreement and amendments to agreements, except for those provisions set forth in staff's analysis below that discriminate against telecommunications carriers not a party to the agreements. Staff believes the implementation of the agreements as written is not consistent with the public interest and violates Section 252(i) of the Telecommunications Act of 1996. (KEATING, STERN, HINTON, WOLFE)

STAFF ANALYSIS: Staff recommends the Commission approve the agreement and amendments to agreements between BellSouth Telecommunications and BellSouth BSE, Inc., Northpoint Communications, Inc., Palm Beach Telephone Company, and Access Integrated Networks, Inc. with the exceptions of the provisions discussed below. The agreements are otherwise consistent with the Act.

Section 252(e) of the Telecommunications Act of 1996 provides that any interconnection agreement adopted by negotiation or arbitration shall be submitted for approval to the State commission. The State commission is required to approve or reject the agreement, with written findings as to any deficiencies. Paragraph (2) of Section 252(e) provides criteria for rejecting an agreement. That paragraph provides in part that the State commission may only reject:

an agreement (or any portion thereof) adopted by negotiation under subsection (a) if it finds that (i) the agreement (or any portion thereof) discriminates against a telecommunications carrier not a party to the agreement; or (ii) the implementation of such agreement or portion is not consistent with the public interest, convenience, and necessity

The provisions contained in these agreements and amendments to agreements that concern staff are as follows:

- 1) **The terms and conditions contained within this Part A & Part B were negotiated as a whole and each term and condition within this Part A & Part B is interdependent upon the other terms and conditions.**
(emphasis in original)
- 2) . . . The parties shall adopt all rates, terms and conditions concerning such other interconnection, service or network element and any other rates, terms and conditions that are interrelated or were negotiated in exchange for or in conjunction with the interconnection, service or network element being adopted. . . .
- 3) **The rates, terms and conditions contained within this Attachment were negotiated as a whole and each rate, term and condition within the Attachment is interdependent upon the other rates, terms and conditions.** (emphasis in original)

Some or all of these provisions are contained in the identified agreement or amendments, but are located in different sections depending upon the type of agreement or amendment.

In its First Report and Order, FCC Order 96-325, the Federal Communications Commission (FCC) interpreted Section 252 of the Act and explained the role of state commissions under the Act. Of particular relevance is the FCC's interpretation that, pursuant to Section 252(i), "[c]arriers may obtain any individual interconnection, service, or network element under the same terms and conditions as contained in any publicly filed interconnection agreement without having to agree to the entire agreement." (FCC Order 96-325, ¶ 40)

In its Order, the FCC considered the issue of whether Section 252(i) allows requesting telecommunications carriers to choose among provisions of prior approved interconnection agreements or requires them to accept an entire agreement. (FCC Order 96-325, ¶1309) The FCC concluded that the text of Section 252(i) supports the requesting carrier's ability to choose among individual provisions contained in publicly filed interconnection agreements.

(FCC Order 96-325, ¶1310) In support of its conclusion, the FCC stated that unbundled access to agreement provisions will enable smaller carriers who lack bargaining power to obtain favorable terms and conditions -- including rates -- negotiated by large interexchange carriers, and speed the emergence of robust competition. (FCC Order 96-325, ¶1313) The FCC further concluded that, ". . . the 'same terms and conditions' that an incumbent LEC may insist upon shall relate solely to the individual interconnection, service, or element being requested under Section 252(I)." (CC Order No. 96-325, ¶1315)

Staff notes that the U.S. Supreme Court found the FCC's interpretation of Section 252(i) reasonable, and upheld the FCC's rule implementing this provision, Rule 47 C.F.R. §51.809. AT&T Corp. v. Iowa Utils. Bd., 525 U.S. 366 (1999).

Staff is concerned that the provisions noted above appear to require other carriers to adopt entire sections of this agreement and not an individual interconnection, service, or element, as contemplated in Section 252(i), FCC Order 96-325, and 47 C.F.R. §51.809. Staff believes that this apparent requirement would deter potential carriers from adopting any particular rate, term or condition from any of the agreements as its own and further appears to require the entire agreements to be adopted as a whole. Staff believes that any provision that acts as a deterrent to selecting a particular rate, term or condition discriminates against potential carriers. Furthermore, staff believes that the appearance of the requirements could have a chilling effect on competition as a whole. This chilling effect is not consistent with the public interest or the clear intent of the Act.

Staff believes that the provisions violate Section 252(i) of the Act and are not consistent with FCC Order 96-325 and Rule 47 C.F.R. §51.809. Therefore, staff recommends that the Commission reject the provisions discussed above and approve the rest of the agreements and amendments.

ISSUE 2: Should this docket be closed?

RECOMMENDATION: If the Commission approves staff's recommendation in Issue 1, these dockets should be closed. (KEATING, STERN)

DOCKETS NOS. 991685-TP, 991719-TP, 991720-TP, 991723-TP
DATE: January 6, 2000

- . **STAFF ANALYSIS**: These dockets should be closed if the Commission approves staff's recommendation in Issue 1.