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June 10, 1998

Blanca Bayo  
Records and Reporting  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, FL 32399-0850

In re: Docket No. 970808-TL

Dear Ms. Bayo:

Enclosed please find the original and 15 copies of the Posthearing Statement and Brief of GTC, Inc., in Docket No. 970808-TL.

A copy has been provided to each party reflected on the certificate of service.

Thank you for your attention to this matter.

Sincerely,



David B. Erwin

ACK DBE:jm

AFA DBE:jm Enclosures

APP \_\_\_\_\_ Copy to: John H. Vaughan

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06196 JUN 10 88

FPSC-RECORDS/REPORTING

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition of BellSouth )  
Telecommunications, Inc. )  
to remove St. Joseph Telephone and )  
Telegraph Company's InterLATA )  
access subsidy. )  
\_\_\_\_\_ )

Docket No. 970808-TL

Filed: June 10, 1998

POSTHEARING STATEMENT  
and  
BRIEF  
of  
GTC, INC.  
\_\_\_\_\_

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FPSC-RECORDS/REPORTING

## POSTHEARING STATEMENT AND BRIEF

GTC, Inc. (formerly St. Joseph Telephone and Telegraph Company), through its attorney, and pursuant to Rule 25-22.056(3), F.A.C., files this Posthearing Statement and Brief.

### **BASIC POSITION OF GTC, INC. (GTC):**

\* The petition of BellSouth Telecommunications, Inc. (BellSouth) should be denied.\*

#### **Issue 1**

**What is the interLATA access subsidy and why was the interLATA access subsidy established?**

**GTC Position:** \*The interLATA Access subsidy was created to end access charge pooling, maintain uniform access charges and move to a bill and keep system while maintaining each company's pre-bill and keep financial position. From the beginning BellSouth, the designated administrator, has collected IXC access charge revenue and paid it to GTC.\*

#### **Discussion:**

All the witnesses, except for the witness for the Petitioner, BellSouth, agree that BellSouth, the interLATA access charge subsidy administrator, has been doing exactly what GTC alleges BellSouth has been doing. BellSouth has been collecting access charge revenue from IXCs and paying that access charge revenue to GTC.

Staff Witness, Dale Mailhot, describes the actions of BellSouth as follows:

In effect, BellSouth collects access charges which it passes on to GTC, Inc. as subsidy payments. (TR120)

Under cross-examination by AT&T, Dale Mailhot confirmed his analysis:

Q. Would it be your understanding that the funding of the access

mechanism, the access revenues that the LECs contributed into that process were derived from revenues that the IXCs paid through access charges?

A. Yes. I believe that's accurate. I believe that the funds for the subsidy payments come from access charges. (TR123-124)

AT&T's witness, Mike Guedel, describes the access subsidy payments in the same way in his direct testimony:

In other words, Interexchange carriers (payers of access charges) were the true funding agents of the pool. BellSouth and other contributing LECs merely performed a "clearinghouse" function. Thus, if the subsidy pool is to be eliminated, BellSouth should be required to reduce other charges - charges that have been and continue to be the real source of the subsidy revenues. (TR99)

The source of the subsidy is significant. Resolution of this proceeding must include recognition of the source of the funds at issue and the purpose for which they were intended, that is, to make the transition to bill and keep a revenue neutral event. The source of the subsidy makes it clear that this proceeding is an attempt by BellSouth to keep revenue supplied by IXCs for itself.

## Issue 1b

**What is the history of the interLATA access subsidy and how has Commission policy regarding the subsidy evolved since the subsidy was established?**

**GTC Position:** \*The interLATA access subsidy began in 1985. Before price regulation, the Commission considered rate base, rate of return over-earnings as the criteria for subsidy termination. The Commission has not developed criteria for terminating the subsidy of a price regulated company. Earnings would not be a lawful criteria under current law.\*

**Discussion:**

There really is not much of an argument between the parties about the history of the interLATA access subsidy or what the criteria was for individual company subsidy termination before the passage of the Florida Telecommunications Act of 1995. The Commission ended subsidy payments when companies were exceeding their authorized return on their established rate base. Subsequent to passage of the act, there have been no interLATA subsidy terminations, and the Commission has not developed criteria to use in the case of termination of the subsidy of a price regulated company. One thing is clear, however. The law has changed. The old criteria can no longer be applied. Price regulated companies are not regulated in the same way they were regulated under the old law. The new law is clear. Section 364.051(1)(c), Florida Statutes, states, as follows:

- c. Each company subject to this section shall be exempt from rate base, rate of return regulation and the requirements of ss. 364.03, 364.035, 364.037, 364.05, 364.055, 364.14, 364.17, and 364.18.

The act of determining the earnings of a company and finding that those earnings are

excessive is an exercise in rate base, rate of return regulation; as such the act is an unlawful act when applied to a price regulated company, and GTC is such a price regulated company.

The unlawful nature of an attempt to indulge in rate base, rate of return regulation is particularly apparent when the provisions of Section 364.052(2), Florida Statutes, are considered.

That section states in part as follows:

After July 1, 1996, a company subject to this section, electing to be regulated pursuant to s. 364.051, will have any overearnings attributable to a period prior to the date on which the company makes the election subject to refund or other disposition by the commission.

The gist of the quoted section of the law is that the rates of a small LEC electing price regulation by July 1, 1996 are presumed just and reasonable. In the case of GTC this means the revenue generated by the rates in effect July 1, 1996 are just and reasonable. For the Commission to now reach back and selectively reduce one component of those rates effectively nullifies the law.

The Commission must establish new criteria for ending GTC's subsidy other than overearnings. There are surely such criteria available. One such criteria would be to undertake termination when a company can legally raise rates to offset the loss of its subsidy revenue. This would be a fair criteria, since the subsidy is one of the components of GTC's revenue stream that has been fundamentally affected by the frozen rate requirement of price regulation.

## Issue 2

**Was the interLATA access subsidy pool intended to be a permanent subsidy? If not, what criteria should be used for ending the interLATA access subsidy pool?**

**GTC Position:** \*The interLATA subsidy pool was not intended to be permanent, but it should end through means that do not depart from the essential requirements of law and in a manner that furthers the original intent of the Commission to create a “wash” through the implementation of bill and keep.\*

**Discussion:**

All the parties agree that the interLATA subsidy was not intended to be permanent. On the other hand there should not be immediate and precipatory regulatory adjustments to the revenue stream of GTC, since GTC’s rates were frozen by law on the date GTC elected price regulation.

The criteria which the Commission should use for ending the interLATA access subsidy system should not violate the law. Specifically, as previously stated in response to Issue 1b, Section 364.051(1)(c), Florida Statutes, should be considered, and the Commission should not attempt to adhere to its outmoded criteria that relied upon rate base, rate of return earnings regulatory principles. The interLATA access subsidy should be terminated only if GTC has the ability to implement a response to the regulatory event, that is, when GTC has the ability to adjust its rates.

### Issue 3

#### **What is the lawful authority for BellSouth Telecommunications Inc.'s proposal to eliminate the interLATA access subsidy of GTC, Inc.?**

**GTC position:** \*There is no statute specifically granting authority to eliminate the interLATA access subsidy of GTC. Subsidy creation and termination has only been addressed in Commission orders. All such orders relating to interLATA subsidies predate the Florida Telecommunications Act of 1995, which established price regulation.\*

**Discussion:**

No specific statutory provision grants authority to eliminate the interLATA access subsidy of GTC. Subsidy creation and termination has only been addressed in Commission orders. The problem with looking to those orders for subsidy termination criteria is that every one of the orders predates the Florida Telecommunications Act of 1995, which established price regulation and ended rate base, rate of return regulation for price regulated companies. Consequently, reliance on criteria established under an entirely different regulatory scheme is misplaced. "Overearning" is a meaningless term unless considered in the context of rate base, rate of return regulation, and such consideration is outside the jurisdiction of the Commission under the new law. The new law changed the way the Commission can regulate price regulated companies, and the approach to the BellSouth petition must take the new law into consideration. That is not to say that the Commission's hands are tied. GTC has suggested lawful ways to terminate the subsidy. The Commission staff witness has advanced a workable solution, and the staff's solution has the additional benefit of keeping all parties in the position they are in today. After all, the new law presumed that all LECs that chose price regulation quickly were not



overearning (because of the closeness in time to continuing surveillance reporting requirements and Commission earnings oversight), and there is nothing in this record to refute that presumption, even if the Commission were to reject GTC's interpretation of Section 364.051(1)(c), Florida Statutes, as eliminating the Commission's jurisdiction to regulate GTC in this instance, pursuant to rate base, rate of return regulation.

#### Issue 4

**Considering that the rates of a small LEC electing price cap regulation may not be altered during the period rates are frozen, except as provided for in Section 364.051(5), Florida Statutes, may the subsidy in effect at the time price cap regulation was elected be discontinued during the period rates are frozen?**

**GTC Position:** \*The Commission cannot, as a matter of law, and should not, as a matter of policy, selectively alter one component of rates during the period they are frozen.\*

**Discussion:**

The price cap regulation established in Section 364.051 is a series of checks and balances that are, in essence, a legislatively crafted compromise between traditional, pervasive rate base regulation and no regulation at all. Instead of rate of return regulation, rates are frozen for a long time. (Another year was added in the 1998 Legislative session.) After the price freeze, rate increases are allowed, but are limited to a statutory percentage amount. Section 364.051(4), Florida Statutes.

Obviously, like all carefully crafted schemes, this scheme should have a chance of working if it is allowed to work as designed. If altered significantly, however, the scheme may not work at all. Such is the case here, where BellSouth wants the Commission to make adjustments to one component of the revenue stream, based on traditional rate of return calculations. When rates are frozen, however, there is no possibility of recovering the lost revenue, and the carefully crafted scheme would become a lose-lose situation for the price regulated company.

If BellSouth is successful, GTC will perhaps be the only price regulated LEC that has

chosen price regulation to have a significant amount of the revenue it expected to enjoy when choosing price regulation taken from it. No other price regulated LEC has had its access charges reduced just because that LEC chose price regulation. Under price regulation there should not be on-going regulatory adjustments based on "overearnings." In this case BellSouth seeks an adjustment which is either an unlawful rate of return calculation or an arbitrary determination based upon nothing put forth in evidence in this docket.

## Issue 5

### Should the interLATA access subsidy received by GTC, Inc. be removed?

**GTC Position:** \*No, not as long as rates are frozen, but there is one alternative approach that would eliminate the access subsidy and further the original intent of the Commission to create a “wash.” BellSouth could cease collecting access charges for GTC, and IXCs could pay access charges directly to GTC.\*

**Discussion:**

The discussions in previous issues have addressed the reasons why the revenue components of frozen rates should not be adjusted. There is an alternative approach, however, that would eliminate the access subsidy and further the original intent of the Commission to create a “wash.” BellSouth could cease collecting access charges for GTC, and IXCs could pay access charges directly to GTC.

GTC submits that such an alternative approach would not constitute any increase in access charges paid by IXCs. According to staff witness, Dale Mailhot, under this alternative, “. . . there is no net increase in access charges on a statewide basis.” (TR121) Other than this analysis by Mr. Mailhot, there is no credible evidence of record on the issue; there is only a biased and self serving non-lawyer legal opinion from AT&T’s witness, Mike Guedel (TR115-116).

AT&T thinks that market share would have to be equal in the GTC and BellSouth territories to achieve revenue neutrality (TR124), but AT&T did not put any evidence into the record concerning market share. Common sense would suggest a netting effect, and that was the

impression left by questions from Commissioner Deason. (TR115).

If the alternative approach suggested by staff witness, Dale Mailhot, were adopted, GTC would then be in the position of all the other LECs that have chosen price regulation. Those LECs began their entrance into the competitive world without having their revenues gutted after their rates were frozen.

## Issue 6

**If the access subsidy being paid to GTC, Inc. is eliminated, should BellSouth Telecommunications, Inc. be directed to cease collection of the access subsidy funds? If the access subsidy being paid to GTC, Inc. is eliminated, and collection of the access subsidy funds is not terminated, what disposition should be made of the funds?**

**GTC Position:** \*Yes. The subsidy paid to GTC consists of access charge revenue from IXCs.

BellSouth is the subsidy administrator through which the revenue flows from the IXCs to GTC.

The money could just as well flow directly to GTC, but under no circumstances should BellSouth keep GTC's access revenue.\*

**Discussion:**

Under any scenario in which the access subsidy being paid to GTC is eliminated, the staff witness, Dale Mailhot, believes that BellSouth must reduce its rates. Mr. Mailhot testified as follows:

Q. If the access subsidy being paid to GTC, Inc. is eliminated, should BellSouth Telecommunications, Inc. be directed to cease collection of the access subsidy Funds (Issue 6)?

A. Yes. In prior cases when the Commission has eliminated the payment of the subsidy to a company due to the company's earnings, the Commission has ordered the payor of the subsidy to reduce some rate by an amount equal to the subsidy payment. In this way the payor of the subsidy was kept whole and not allowed any windfall, which was one of the original goals of the bill and keep docket. If the Commission reduces or eliminates the subsidy payment to GTC, Inc. due to GTC, Inc.'s earnings, based on consistency with prior Commission decisions, the Commission should also require BellSouth to reduce its rates by an amount equal to the reduced or eliminated subsidy payment.

If the Commission follows my alternative approach to eliminate the subsidy payment and allows GTC, Inc. to increase its access charges, then the Commission should require BellSouth to reduce its access charges so that there is no net increase in access charges on a statewide basis. (TR 121)

If BellSouth were to keep the access subsidy after payments to GTC had been eliminated, there would be a windfall to BellSouth, according to AT&T's witness. (TR 99, 100, 101, 105)

Of course, BellSouth wants the money for itself, and would share a portion of the recovery with subscribers. BellSouth believes that since it has reduced its own access rates by more than the surplus it originally had when interLATA bill and keep was started, BellSouth no longer needs to pay GTC. (TR 28) The flaw in this reasoning is that BellSouth never got permission from the Commission or GTC to reduce GTC's access charge revenue. BellSouth can reduce its own access charges, for its own reasons, all it wants, but it is presumptuous for BellSouth to believe it could reduce other companies' access charge revenue without even asking. And, as stated earlier by the witnesses for both staff and AT&T, BellSouth has been collecting IXC access charge revenue on behalf of GTC.

GTC has not been the recipient of BellSouth's largesse; instead, GTC has been receiving its own revenue through a source approved by the Commission. At any time, the Commission could have dictated other sources for GTC's revenue. The Commission could have rebalanced GTC's rates instead of allowing the access subsidy to continue, but the Commission chose not to do so. The Commission decided to keep GTC's local rates as some of the lowest in the state, and now that GTC can not raise those rates closer to their cost because of price regulation, the Commission should recognize that the combination of the new law and old style regulation would place GTC in a difficult bind.

The Commission could solve the problems in this case by choosing Dale Mailhot's alternate plan. Under that plan, the Commission will be carrying out the effect of its earlier decisions previously made in a lawful manner.

### **Issue 7**

**If the subsidy should be removed, should it be removed entirely at one time, or should the subsidy be phased out over a certain time period?**

### **Issue 8**

**If the subsidy should be removed entirely at one time, on what date should the removal be effective?**

### **Issue 9**

**If the subsidy should be phased out, over what time period should the phase out take place and how much should the reduction of the subsidy be in each period?**

#### **GTC Position (Issues 7, 8 and 9):**

\*If removed, the subsidy should be phased out, beginning at the time GTC can legally raise rates to offset the subsidy loss. If, however, there is a conversion to a direct payment of access charge revenue to GTC, the removal could be accomplished at one time.\*

#### **Discussion (Issues 7, 8 and 9):**

Issues 7, 8 and 9 address the mechanics of the subsidy removal. If Dale Mailhot's alternative approach is adopted, as GTC believes it should be, then the subsidy could be eliminated at once, in conjunction with redirection of IXC access charge revenue directly to GTC. If, on the other hand, GTC's access charge revenue is to be terminated, then consideration should be given to the position GTC has been placed in by price regulation. GTC can not raise rates now to offset the revenue adjustment that would be inflicted, but at some time in the future there will surely be some limited ability to raise rates. When that time arrives, it would be fair to phase out the subsidy over whatever period of time it would take GTC to offset the subsidy loss.



Respectfully submitted this 10<sup>th</sup> day of June, 1998



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**CERTIFICATE OF SERVICE**  
**DOCKET NO. 970808-TL**

I HEREBY CERTIFY that a true copy of the foregoing Posthearing Statement and Brief has been furnished by U.S. Mail or by hand delivery this 10<sup>th</sup> day of June, 1998 to the following:

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