

State of Florida



Public Service Commission

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**DATE:** APRIL 8, 1999

**TO:** DIRECTOR, DIVISION OF RECORDS AND REPORTING (BAYB)

**FROM:** DIVISION OF COMMUNICATIONS (SIMMONS, DOWD) *SAS SAS for DLD*  
DIVISION OF LEGAL SERVICES (COX, BROWN) *WJ CMB*

**RE:** DOCKET NO. 981834-TP - PETITION OF COMPETITIVE CARRIERS FOR COMMISSION ACTION TO SUPPORT LOCAL COMPETITION IN BELL SOUTH TELECOMMUNICATIONS, INC.'S SERVICE TERRITORY.

**AGENDA:** 4/20/99 - REGULAR AGENDA - DECISION PRIOR TO HEARING - INTERESTED PERSONS MAY PARTICIPATE

**CRITICAL DATES:** NONE

**SPECIAL INSTRUCTIONS:** NONE

**FILE NAME AND LOCATION:** S:\PSC\CMU\WP\981834RE.RCM

CASE 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 Operation Support System (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 Petition of the Competitive Carriers for Commission Action to Support Local Competition in BellSouth Service Territory. BellSouth requested that the Commission dismiss the Competitive Carriers Petition with prejudice. On January 11, 1999, the Competitive Carriers filed their Response in Opposition to BellSouth's Motion to Dismiss. The Competitive Carriers request that the Commission deny BellSouth's Motion to Dismiss.

At the March 30, 1999, Agenda Conference, the Commission approved staff's recommendation to deny 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. The Commission also directed staff to provide more specific information and rationale for its recommendation on the remainder of the Competitive Carrier's Petition.

This recommendation will address the remainder of the Competitive Carriers' Petition as requested by the Commission.

#### **DISCUSSION OF ISSUES**

**ISSUE 1:** Should the Commission grant the Petition of Competitive Carriers for Commission Action to Support Local Competition in BellSouth's Service Territory?

**RECOMMENDATION:** The Commission should grant in part and deny in part the Competitive Carriers' Petition to the extent specified in the conclusion of this recommendation. **(COX, DOWDS)**

**STAFF ANALYSIS:**

The Petitioners have requested five items of relief as discussed above in the Case Background. Also, as noted above, the Commission has previously voted to deny the Competitive Carriers' request to initiate rulemaking on an expedited dispute resolution procedure for interconnection agreement disputes. Staff will provide a discussion of each of the four remaining items, followed by an overall recommendation on this remainder of the Competitive Carriers' petition.

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 to encourage investment 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). These negotiations have been unfruitful and have left the Competitive Carriers in their present 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 one 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

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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.

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 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, 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.

The Competitive Carriers propose the following procedural framework for a Competitive Forum. The Competitive Carriers request that the Commission initiate a series of workshops moderated by the 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 proposed solution or recommend that no further action is necessary. The Commission would hold an evidentiary hearing on such issues to determine whether to adopt the staff recommendation.

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 SYSTEM (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.

D. INITIATION OF A RULEMAKING PROCEEDING TO ESTABLISH EXPEDITED DISPUTE RESOLUTION PROCEDURES APPLICABLE TO ALL LECS

The Commission addressed this item at the March 30, 1999, Agenda Conference, as described in the Case Background.

E. OTHER JUST AND PROPER RELIEF

The Competitive Carriers do not suggest any other just or proper relief that the Commission should grant at this time. Likewise, BellSouth does not request any additional relief in the areas that are the subject of the Competitive Carriers' petition.

CONCLUSION

Staff has carefully reviewed the Competitive Carrier's Petition and BellSouth's response. As a result, staff believes that the Commission should grant in part and deny in part the Petition as follows. The Commission should initiate activities in this docket on the Competitive Carriers' Petition, Docket No. 981834-TP, in the following sequence. First, the Commission should initiate a UNE pricing proceeding, and move forward with its scheduled workshops on OSS issues. The Commission should 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, the Commission should 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 should be addressed and considered in the workshops. OSS costing and pricing issues should not be addressed in either of these initial proceedings.

Second, the Commission should initiate a Section 120.57(1) hearing processes to address collocation and access to loop issues, as well as OSS costing and pricing issues. The collocation proceeding and the OSS pricing proceeding should commence as soon

as feasible following the initial UNE pricing and OSS operational/workshop proceedings.

#### UNE Pricing and Deaveraging

These proceedings are appropriate for several reasons. First, staff believes 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. 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 FPSC proceedings that staff is recommending would enable the FPSC to be better positioned 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 may be more appropriate. The Competitive Carriers have raised several important issues, such as the loop-port UNE combination, that would best be addressed through the equal participation of all affected and interested carriers. Staff does not intend that the Commission thereby do away with all negotiation and arbitration processes prescribed by the Act. Staff simply believes that certain important pricing issues should be examined on a more generic basis in light of the experience in the marketplace with the Commission's previously ordered prices. Nothing in state or federal law would prohibit such a generic approach to addressing these issues.

In this same context, the Commission 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. The FPSC will likely need to establish geographically deaveraged rates for certain UNEs in the future. Staff believes 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 Commission 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. Once the FCC acts on these issues, the Commission will be in a better position to provide more specifics on the scope of this proceeding.

In addition, three years of Commission experience in handling arbitration and negotiation of interconnections 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, staff recommends that the Commission initiate a Section 120.57(1) formal administrative hearing process as the proper procedural vehicle for the UNE pricing proceeding. Staff has seen very little cooperation and agreement on these pricing issues since the passage of the 1995 state statute and the 1996 federal statute. Staff believes that the parties will be more candid and have less opportunity to filibuster through the formal hearing process; therefore, the Commission can more efficiently arrive at fair and equitable results. Staff does not believe a workshop process will be very fruitful given the contentious nature of the pricing issues.

#### OSS Issues

The Commission should continue to move forward on the 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 the Commission has adopted requirements and standards for these systems. The Commission should 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. OSS costing and pricing issues also will be an offshoot of these workshops. The OSS systems cannot be properly costed and priced until the Commission has established the substance of what functions are required by way of the OSS systems.



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, the Commission is presently in the midst of a formal hearing process to address six collocation waiver petitions filed by BellSouth. Accordingly, it would be the best use of the Commission's time and resources to initiate this generic proceeding some time after the waiver proceedings and UNE pricing proceeding have been concluded.

Other Relief

Item (e) of the relief requested in the Petition seeks any additional relief that the Commission deems 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 staff recommends. Furthermore, the deaveraged pricing of unbundled loops should be LEC-specific, taking into account the differences in each LEC's respective territory.

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**ISSUE 2:** Should this docket be closed?

**RECOMMENDATION:** No. This docket should remain open to address the relief required by the Commission in the Order issued on this staff recommendation. (COX)

**STAFF ANALYSIS:** The Order issued from this recommendation will be a procedural order. Commission proceedings that arise as a part of the ordered relief may take place in this docket at the Commission's pleasure. Therefore, the docket should remain open.

## EXHIBIT F

### 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

- ◆ 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

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