

STATE OF FLORIDA

COMMISSIONERS:
LILA A. JABER, CHAIRMAN
J. TERRY DEASON
BRAULIO L. BAEZ
RUDOLPH "RUDY" BRADLEY
CHARLES M. DAVIDSON



DIVISION OF EXTERNAL AFFAIRS
CHARLES H. HILL
DIRECTOR
(850) 413-6800

Public Service Commission

September 18, 2003

VIA ELECTRONIC FILING

Honorable Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, SW - Portals II, TW-A325
Washington, DC 20554

Re: CC Docket No. 03-189, Joint Petition for Expedited Forbearance From the Commission's Current Pricing Rules for the Unbundled Network Element Platform

Dear Ms. Dortch:

Forwarded herewith are Comments of the Florida Public Service Commission, and the concurring statement of Commissioner Charles M. Davidson, in the above docket with regard to the Petition of Qwest Corporation, BellSouth Telecommunications, Inc., and SBC Communications, Inc. for expedited forbearance from current TELRIC pricing rules for the Unbundled Network Element Platform (UNE-P).

Should you have additional questions, you may contact Greg Shafer, the primary staff person in this docket, at (850) 413-6958.

Sincerely,

/ s /

Cynthia B. Miller, Esquire
Office of Federal and Legislative Liaison

CBM:tf

cc: Brad Ramsay, NARUC

**Before the
Federal Communications Commission
Washington, D.C. 20554**

| | | |
|--|---|----------------------|
| In the Matter of |) | |
| |) | |
| Joint Petition for Expedited Forbearance From |) | WC Docket No. 03-189 |
| the Commission's Current Pricing Rules for the |) | |
| Unbundled Network Element Platform |) | |

**COMMENTS OF THE FLORIDA PUBLIC SERVICE COMMISSION
ON THE PETITION OF QWEST CORPORATION, BELLSOUTH
TELECOMMUNICATIONS, INC., AND SBC COMMUNICATIONS, INC.
FOR EXPEDITED FORBEARANCE**

The petition by Qwest Corporation, BellSouth Telecommunications, Inc. and SBC Communications, Inc. (Joint Petitioners) seeks relief identical to that requested by Verizon¹ in its petition. That request is to: (1) grant expedited forbearance, pursuant to section 10 of the Telecommunications Act of 1996, 47 U.S.C. § 160, from its decision permitting carriers to collect per-minute access charges from long distance carriers; and (2) forbear from applying its current TELRIC pricing rules to the Unbundled Network Element Platform (UNE-P). Further, the petition recommends the FCC move expeditiously to reform its current TELRIC pricing rules that are a product of “. . . internally inconsistent and unrealistic assumptions that often result from TELRIC's reliance on hypothetical rather than actual forward-looking costs.”

The Florida Public Service Commission supports the notion that a comprehensive national review of the TELRIC pricing methodology is appropriate and that the collection of access charges by UNE-P carriers is an issue worthy of further analysis and review. However, on purely procedural grounds we oppose the requested relief as not well-suited for a forbearance petition. We do not believe

¹*Petition of the Verizon Telephone Companies for Forbearance From the Current Pricing Rules for the Unbundled Network Element Platform* (July 1, 2003), WC Docket No. 03-157.

that a forbearance petition is the appropriate vehicle to address the broader issues of TELRIC pricing reform nor is it appropriate to address the disparate issue of access charges collected by UNE-P carriers.

The TELRIC Pricing Standard

On Monday September 15, 2003, the FCC released a Notice of Proposed Rulemaking on a comprehensive review of the TELRIC pricing standard. FCC staff has indicated that it intends to complete this review by the summer of 2004. This is a timetable that would result in completion within the statutory deadline of both the Verizon Forbearance Petition and the Joint Petition for Forbearance. If the FCC adheres to this timetable it will moot a portion of the requested relief of both petitions. In addition, the Triennial Review Order may lead to the removal of certain UNEs, in some locales, from the national list and may render a portion of the requested relief moot, if for example, Florida were to determine that no impairment existed for a UNE component of UNE-P. For these reasons the FPSC would oppose the request for forbearance of the TELRIC pricing rules as being procedurally moot.

Application of Access Charges to UNE-P

Both Verizon and the Joint Petitioners have requested that the FCC forbear from its rule that permits access charges to be collected from interexchange carriers (IXCs) by competitive local exchange carriers (CLECs) using UNE-P under the exchange access service rules. The FPSC believes that this issue raises concerns that warrant investigation by the FCC. In a similar vein to the TELRIC review, the FPSC believes that a separate proceeding is merited to consider the various issues surrounding the existing rule and would suggest that a review be conducted in the ongoing Access

Reform Docket² or the Intercarrier Compensation³ docket. Once again, the FPSC is mindful that continually delaying consideration of such matters does little to address the concerns of the Joint Petitioners or to provide needed certainty to the market place, and we encourage a time frame for examining this issue that is similar to that required of the forbearance petition itself.

Conclusion

The FPSC opposes the petition on procedural grounds because we believe a forbearance petition is not the appropriate vehicle to further consider the issues raised by the petition. However, we believe a comprehensive national review of the TELRIC pricing standard as embodied in the recently released NPRM is appropriate and that the access charge issue raised by the petitioners is, at a minimum, worthy of further examination. In addition, we are sensitive to the time frame inherent in the petition and believe that the desire expressed by the FCC to complete the TELRIC review in an expeditious manner will accommodate that time frame. We urge the FCC to initiate consideration of the issue of access charges as raised by the petitioners as soon as possible. However, we believe that separate proceedings rather than a petition for forbearance are the proper vehicles and oppose the petition on that basis.

Respectfully submitted,

/ s /

Cynthia B. Miller, Esquire
Office of Federal and Legislative Liaison

DATED: September 18, 2003

²CC Docket 96-262, *Access Charge Reform*

³CC Docket 01-92, *Developing a Unified Intercarrier Compensation Regime*

CONCURRING STATEMENT OF
COMMISSIONER CHARLES M. DAVIDSON

I agree with and concur wholeheartedly in the comments filed by the Florida Public Service Commission regarding this matter. However, I would like to share some of my preliminary thoughts regarding collection of access fees by UNE-P providers.

Unlike CLECs that avail themselves of UNEs but also invest in their own facilities, UNE-P providers are, in many respects, like resellers. UNE-P provides the necessary components to provide end-user service (i.e., loop, local switching, interoffice transport, and tandem switching). It appears that a primary difference between UNE-P and resale is that UNE-P is priced at a wholesale cost that allows the UNE-P provider to achieve a higher gross margin than if they were pure resellers. While a CLEC may add some of its own services to UNE-P, repackage UNE-P, or market UNE-P in a different manner than the ILEC, UNE-P is akin to discounted resale.

The Telecommunications Act of 1996 provides for three entry strategies for competitors: (1) competitors can build their own facilities; (2) competitors may lease UNEs from the ILEC; and (3) competitors may resell ILEC facilities. UNE-P as a specific strategy is not expressly addressed in the statute. Still, UNE-P carriers are considered “facilities-based” for regulatory purposes. This characterization raises basic policy issues to be considered. First, to be “facilities-based” arguably implies that a provider is predominantly reliant on its own facilities (rather than on the facilities of another) in order to serve its customers. Second, UNE-P providers appear to be resellers with a twist – i.e., resale at TELRIC pricing.

Due to this regulatory treatment, UNE-P providers are allowed to collect access fees from long distance carriers – even though the network is another’s and even though the UNE-P provider may not have invested in its own facilities. Access charges, generally speaking, are intended to allow the facilities-based provider to recover the costs associated with the exchange access facilities that are used to originate and terminate long distance calls. In short, such charges are designed as a mechanism to help cover the costs associated with the underlying network infrastructure.

Where UNE-P providers have not invested in the facilities that are utilized to originate and terminate calls, it may not make economic sense to allow their collection of access charges that are designed to offset the costs of the facilities of another. This is an issue that should be addressed by the FCC. Further, by being permitted to collect access charges, UNE-P providers appear to enjoy a regulatory advantage over both (i) facilities-based CLECs (who have invested in facilities) and (ii) true resellers (who do not collect access charges and who do not benefit from the current TELRIC pricing).

Whether allowing the ILEC (i.e., the investor in the underlying facilities), rather than the UNE-P provider, to recover access charges would present a double recovery issue is a matter for further analysis. The FCC might consider the scenario where an ILEC would recover UNE charges (but not access charges) from the UNE-P providers and access charges from the IXCs. The FCC might also consider whether differences between competitors using a UNE-L strategy and competitors using a UNE-P strategy – one key difference being the level of investments in facilities – should result in different regulatory treatment.

I respectfully encourage the FCC to further consider this issue.