BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Investigation into pricing of unbundled network elements (BellSouth track).	DOCKET NO. 990649A-TP ORDER NO. PSC-02-0841-PCO-TP ISSUED: June 19, 2002

The following Commissioners participated in the disposition of this matter:

LILA A. JABER, Chairman
J. TERRY DEASON
MICHAEL A. PALECKI

ORDER HOLDING PROCEEDINGS IN ABEYANCE FOR 60 DAYS

BY THE COMMISSION:

The federal Telecommunications Act of 1996 (Act) made sweeping changes to the regulation of telecommunications common carriers in this country. The Act envisioned that firms would use one of three entry strategies to enter the local exchange services market: (1) resale of the incumbent's services; (2) pure facilities-based offerings, thus necessitating that a competitor merely interconnect with the incumbent's network; and (3) the leasing of unbundled network elements (UNEs) of the incumbent's network facilities, typically in conjunction with network facilities owned by the entrant.

Subsequently, in its Local Competition Order, FCC Order 96-325, released August 8, 1996, the FCC established pricing rules, including Rule 51.507(f), the "deaveraging" rule, which requires that:

> State commissions shall establish different rates for elements in at least three defined geographic areas within the state to reflect geographic cost differences.

Our proceeding was initiated on December 10, 1998, when a group of carriers, collectively called the Competitive Carriers, filed their Petition of Competitive Carriers for Commission Action to Support Local Competition in BellSouth's Service Territory. Among other matters, the Competitive Carriers' Petition asked that

this Commission set deaveraged unbundled network element (UNE) rates.

On May 26, 1999, we issued Order No. PSC-99-1078-PCO-TP,. granting in part and denying in part the Competitive Carriers' petition. Specifically, we granted the request to open a generic UNE pricing docket for the three major incumbent local exchange providers, BellSouth Telecommunications, Inc. (BellSouth), Sprint-Florida, Incorporated (Sprint), and GTE Florida Incorporated (GTEFL, now Verizon). Accordingly, Docket No. 990649-TP was opened to address the deaveraged pricing of UNEs, as well as the pricing of UNE combinations and nonrecurring charges.

On May 25, 2001, we issued our Final Order on Rates for Unbundled Network Elements Provided by BellSouth (Phases I and II), Order No. PSC-01-1181-FOF-TP. Within the Order, we addressed the appropriate methodology, assumptions, and inputs for establishing rates for unbundled network elements for BellSouth Telecommunications, Inc. (BellSouth). We ordered that the identified elements and subloop elements be unbundled for the purpose of setting prices, and that access to those subloop elements shall be provided. We also determined that the inclusion of non-recurring costs in recurring rates should be considered where the resulting level of non-recurring charges would constitute a barrier to entry. In addition, we defined xDSL-capable loops, and found that a cost study addressing such loops may make distinctions based upon loop length. We then set forth the UNE rates, and held that they would become effective when existing interconnection agreements are amended to incorporate the approved rates, and those agreements become effective.

Furthermore, we ordered BellSouth to refile, within 120 days of the issuance of the Order, revisions to its cost study addressing hybrid copper/fiber xDSL-capable loops, network interface devices (NIDs), and cable and structure engineering and installation. The parties to the proceeding were also ordered to refile within 120 days of the issuance of the Order, proposals addressing network reliability and security concerns as they pertain to access to subloop elements. Later, BellSouth determined, through proceedings in other states, that changes were needed to the inputs for Daily Usage Files (DUF) and Unbundled Copper Loop/Non-Designed (UCL-ND) rates. As a result, that issue

has been incorporated into this proceeding as well. This proceeding has come to be referred to as "BellSouth's 120-day filing."

By Order No. PSC-01-2132-PCO-TP, this docket was divided into sub-dockets in an effort to alleviate confusion between the BellSouth track, Docket No. 990649A-TP, and the Sprint/Verizon track, Docket No. 990649B-TP.

This Commission has jurisdiction to act in this proceeding pursuant to Sections 251 and 252 of the Telecommunications Act of 1996 and Sections 364.161 and 364.162, Florida Statutes. Thus, on March 11 and 12, 2002, we conducted an administrative hearing in this Docket, Docket No. 990649A-TP, to receive evidence regarding the issues addressed as part of BellSouth's 120-day filing.

We have now been presented with our staff's recommendation in this matter. At the outset, we note that our review of the recommendation and the record engenders a number of concerns. In Order No. PSC-01-1181-FOF-TP, we expressed concern with BellSouth's use of linear loading factors, and therefore, directed BellSouth not only to provide specific data and the assumptions that underlie the data, but to clearly identify its input values for the purposes of this proceeding. BellSouth, nevertheless, used some linear loading factors in its 120-day filing. Furthermore, the "bottoms-up" approach presented in this proceeding has produced results that, in many instances, appear counter-intuitive. The record also reflects that much of the information provided by the ALECs in this proceeding is by no means flawless. Of greatest concern to us, however, is that the resulting recommended rates, even incorporating input changes suggested by our staff, still appear to be too high to provide a meaningful incentive for local telecommunications competition in Florida, which we have been statutorily mandated by the Legislature to foster for the benefit of Florida consumers.[1]

Based on the foregoing, we hereby hold further consideration of this matter in abeyance for a period of 60 days from June 13, 2002, the date of our consideration of this matter. During this

---

[1]See, Section 364.01, Florida Statutes.

60-day period, the parties are required to discuss a negotiated resolution of UNE rates in Florida. We believe that a negotiated resolution is in the best interest of the parties and Florida consumers. Clearly, the parties are in the best position to determine the needs of their respective businesses. Thus, it is the parties that should be afforded the first opportunity to determine which elements are of greatest priority to them and in which areas some accommodations can be made. We further emphasize that a business solution should be preferable to the parties, since it is they that will be subject to the rates that are ultimately approved. We encourage the parties to use this 60-day period wisely and to concentrate on those areas of greatest importance. The parties have been very successful in the past in resolving difficult issues such as these, and we are confident that they can be similarly successful in this endeavor.

Traditionally, this Commission has offered to facilitate discussions by the parties where appropriate to assist in the resolution process. To that end, the parties may request the services of our Commission mediators. Finally, even if only a partial agreement is reached, the parties should expeditiously notify us of that agreement and identify the extent to which it may enable us to limit the number of issues and elements upon which we may ultimately have to render a decision. Similarly, if no resolution is reached, which we do not expect to be the case, we will reschedule our consideration of the issues addressed at hearing. Until then, the current, approved rates will remain in effect.

It is therefore

ORDERED by the Florida Public Service Commission that consideration of the issues addressed in Docket No. 990649A-TP shall be held in abeyance for a period of 60 days from the date of our June 13, 2002, Agenda Conference. It is further

ORDERED that the parties shall meet for purposes of negotiation as outlined in the body of this Order. It is further

ORDERED that consideration of the issues presented in this proceeding will be rescheduled as necessary at the conclusion of the 60-day negotiation period.

By ORDER of the Florida Public Service Commission this 19th Day of June, 2002.

BLANCA S. BAYÓ, Director
Division of the Commission Clerk
and Administrative Services

By: Kay Flynn
Kay Flynn, Chief
Bureau of Records and Hearing
Services

(S E A L)

BK

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

Any party adversely affected by this order, which is preliminary, procedural or intermediate in nature, may request: (1) reconsideration within 10 days pursuant to Rule 25-22.0376, Florida Administrative Code, if issued by a Prehearing Officer; (2) reconsideration within 15 days pursuant to Rule 25-22.060, Florida Administrative Code, if issued by the Commission; or (3) judicial review by the Florida Supreme Court, in the case of an electric, gas or telephone utility, or the First District Court of Appeal, in the case of a water or wastewater utility. A motion for reconsideration shall be filed with the Director, Division of the Commission Clerk and Administrative Services, in the form prescribed by Rule 25-22.060, Florida Administrative Code. Judicial review of a preliminary, procedural or intermediate ruling or order is available if review of the final action will not provide an adequate remedy. Such review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.