

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Investigation into
pricing of unbundled network
elements (Sprint/Verizon track).

DOCKET NO. 990649B-TP
ORDER NO. PSC-03-0797-FOF-TP
ISSUED: July 7, 2003

The following Commissioners participated in the disposition of this matter:

LILA A. JABER, Chairman
J. TERRY DEASON
BRAULIO L. BAEZ
RUDOLPH "RUDY" BRADLEY

ORDER ACKNOWLEDGING WITHDRAWAL OF AT&T AND WORLDCOM
MOTION FOR RECONSIDERATION OF ORDER NO. PSC-02-1574-FOF-TP

I. BACKGROUND

On December 10, 1998, a group of carriers (collectively the "Competitive Carriers") filed a Petition of Competitive Carriers for Commission Action to Support Local Competition in BellSouth's Service Territory pursuant to the federal Telecommunications Act of 1996 (Act). Among other matters, the Competitive Carriers' Petition asked that this Commission set deaveraged unbundled network element (UNE) rates.

On May 26, 1999, this Commission issued Order No. PSC-99-1078-PCO-TP, granting in part and denying in part the Competitive Carriers' petition. Specifically, this Commission 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). Accordingly, this docket was opened to address the deaveraged pricing of UNEs, as well as the pricing of UNE combinations and nonrecurring charges.

On November 2, 1999, the FCC released FCC Order 99-306 in CC Docket No. 96-45, which ordered the stay of the deaveraging rule to be lifted on May 1, 2000. The FCC had ordered the stay on May 7,

DOCUMENT NUMBER-DATE

05982 JUL-7 8

PSC COMMISSION CLERK

1999, after decisions by the U.S. Court of Appeals for the Eighth Circuit and the Supreme Court. The stay was ordered to allow the states to bring their rules into compliance. Order FCC 99-306 provided that "[b]y that date, states are required to establish different rates for interconnection and UNEs in at least three geographic areas pursuant to section 51.507(f) of the Commission's rules." FCC 99-306 at ¶ 120.

The original schedule established in Docket No. 990649-TP would not have resulted in permanent deaveraged UNE rates being in effect until after May 1, 2000. Accordingly, the parties were encouraged to develop and stipulate to interim deaveraged rates to avoid seeking a waiver of the deaveraging rule or conducting an accelerated proceeding. With our staff's assistance the parties agreed to interim deaveraged rates, and on December 7, 1999, the parties filed a Joint Stipulation Regarding Interim Deaveraging (Interim Rate Stipulation). In the Interim Rate Stipulation, the parties agreed that "this Stipulation is not intended to set a precedent for the resolution of any issue related to permanent deaveraged rates . . ." Order No. PSC-00-0380-S-TP at p.3.

An administrative hearing was held on July 17, 2000, on the Part One issues identified in Order No. PSC-00-2015-PCO-TP, issued June 8, 2000. Part Two issues, also identified in Order No. PSC-00-2015-PCO-TP, were heard in an administrative hearing on September 19 and 22, 2000. On August 18, 2000, Order No. PSC-00-1486-PCO-TP was issued granting Sprint's Motion to Bifurcate Proceedings, for a Continuance and Leave to Withdraw Cost Studies and Certain Testimony, as well as Verizon Florida Inc.'s (formerly GTEFL) Motion to Bifurcate and Suspend Proceedings.

By Order No. PSC-01-1592-PCO-TP, issued August 2, 2001, the controlling dates for Phase III were established. By Order No. PSC-01-2132-PCO-TP, issued October 29, 2001, the issues were established and the Docket was divided into 990649A-TP, in which filings directed towards the BellSouth track would be placed, and 990649B-TP, in which filings directed towards the Sprint/Verizon track would be placed. An administrative hearing was held on April 29 and 30, 2002.

This Order addresses AT&T Communications of the Southern States, LLC (AT&T) and WorldCom, Inc., MCI WorldCom Communications,

Inc., MCImetro Access Transmission Services LLC and Intermedia Communications, Inc. (collectively "WorldCom") withdrawal of their Motion for Reconsideration of Order No. PSC-02-1574-FOF-TP, filed December 2, 2002. We are vested with jurisdiction pursuant to Sections 364.01, and 364.051, Florida Statutes, as well as the Telecommunications Act of 1996.

II. WITHDRAWAL OF MOTION FOR RECONSIDERATION

By Order No. PSC-02-1574-FOF-TP, issued November 15, 2002, we rendered our final decision regarding UNE rates for Verizon. On December 2, 2002, AT&T and WorldCom filed their Motion for Reconsideration. Shortly thereafter, on December 16, 2002, Verizon filed a Notice of Appeal to the Florida Supreme Court, as well as a Response in Opposition to the Motion for Reconsideration. Verizon also filed a Motion for Mandatory Stay Pending Judicial Review. On December 30, 2002, AT&T, WorldCom, and FDN filed a joint Response in Opposition to the Motion for Stay, as well as a Request for Oral Argument.

On January 8, 2003, we filed a Motion to Dismiss or Abate with the Supreme Court, asking that the Court abate its proceedings regarding Verizon's appeal to allow us to address the pending Motion for Reconsideration. On January 23, 2003, Verizon filed its response with the Court, indicating that it did not oppose the request for abatement, as long as we granted its request for a mandatory stay pending appeal. On March 3, 2003, the Court stayed its proceedings to allow us to address the pending Motion for Reconsideration. At the April 9, 2003, Agenda Conference, we voted to grant Verizon's Motion for Stay pending appeal.

On May 16, 2003, AT&T and WorldCom filed their Notice of Withdrawal of their Motion for Reconsideration of Order No. PSC-02-1574-FOF-TP, issued November 15, 2002, the Order on the final UNE rates for Verizon. We acknowledge AT&T and WorldCom's withdrawal of their Motion for Reconsideration of Order No. PSC-02-1572-FOF-TP.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that AT&T Communications of the Southern States, LLC (AT&T) and WorldCom,

ORDER NO. PSC-03-0797-FOF-TP
DOCKET NO. 990649B-TP
PAGE 4

Inc., MCI WorldCom Communications, Inc., MCImetro Access Transmission Services LLC and Intermedia Communications, Inc. (collectively "WorldCom") withdrawal of their Motion for Reconsideration of Order No. PSC-02-1574-FOF-TP, filed December 2, 2002 is hereby acknowledged. It is further

ORDERED that since there is an appeal pending on the Verizon portion of this docket, this docket shall remain open for further proceedings in the Verizon portion.

By ORDER of the Florida Public Service Commission this 7th Day of July, 2003.

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

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

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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.

Any party adversely affected by the Commission's final action in this matter may request: 1) reconsideration of the decision by filing a motion for reconsideration with the Director, Division of the Commission Clerk and Administrative Services, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, within fifteen (15) days of the issuance of this order in the form prescribed by Rule 25-22.060, Florida Administrative Code; or 2) 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 and/or wastewater utility by filing a notice of appeal with the Director, Division of the Commission Clerk and Administrative Services and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days after the issuance of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900(a), Florida Rules of Appellate Procedure.