

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Investigation into  
pricing of unbundled network  
elements.

DOCKET NO. 990649-TP  
ORDER NO. PSC-01-0551-PCO-TP  
ISSUED: March 12, 2001

ORDER GRANTING, IN PART, AND DENYING, IN PART,  
MOTIONS FOR EXTENSION OF TIME AND REVISING SCHEDULE

On December 10, 1998, in Docket No. 981834-TP, 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 and WorldCom Technologies, Inc. (MCI WorldCom), the Competitive Telecommunications Association (Comptel), MGC Communications, Inc. (MGC), Intermedia Communications Inc. (Intermedia), Supra Telecommunications and Information Systems (Supra), Florida Digital Network, Inc. (Florida Digital Network), and Northpoint Communications, Inc. (Northpoint) (collectively, "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, this Commission issued Order No. PSC-99-1078-PCO-TP, granting in part and denying in part the Competitive Carriers' petition. Specifically, the 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. 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 19-22, 2000. On August 18, 2000, Order No. PSC-00-1486-PCO-TP was issued granting Verizon Florida Inc.'s (formerly GTE Florida Incorporated) Motion to Bifurcate and Suspend Proceedings, as well as Sprint-Florida Incorporated's and Sprint Communications Company Limited

DOCUMENT NUMBER-DATE

03090 MAR 12 01

FPSC-RECORDS/REPORTING

Partnership's Motion to Bifurcate Proceedings, for a Continuance and Leave to Withdraw Cost Studies and Certain Testimony.

On January 5, 2001, Sprint filed a Petition to Amend Order Granting Motions to Bifurcate and Suspend Proceedings. Therein, Sprint requested that the dates for filing its testimony and cost studies be extended 90 days. On January 16, 2001, Verizon filed a Response to Sprint's Petition. Verizon agreed with Sprint that an extension was appropriate, but asked that the extension apply to its filings as well. Furthermore, Verizon asked that the extension be made indefinite. On January 29, 2001, WorldCom filed a response to Verizon's Response. WorldCom indicated that it believed that Verizon's filing should be treated like a motion, because Verizon has requested relief beyond that originally requested by Sprint. WorldCom also indicated that it did not oppose a 90-day extension for both Sprint and Verizon. However, Verizon does oppose the indefinite extension proposed by Verizon. In its response, also filed January 29, 2001, Z-Tel opposes Verizon's request for any extension of time. Z-Tel did not, however, respond to Sprint's request.

Specifically, Sprint believes that the extension is necessary so that it can fully comport with the direction that the studies "comport to the state of the law at that time." Citing Order No. PSC-00-1486-PCO-TP. Sprint contends that in view of the Eighth Circuit Court's stay of its decision in Iowa Utilities Board v. FCC, 219 F.3d 744 (8th Cir. July 18, 2000) and the pending petitions for review before the U.S. Supreme Court, it is not possible to predict what the state of the federal law will be at the time of the filing. If it were to be required to file a study under the state of the law as it is now, Sprint believes it would have to file a TELRIC-based study using a hypothetical network. However, Sprint maintains that the Supreme Court could grant certiorari, hear argument on the case, and issue a decision which could have an impact on the FCC's pricing rules upon which that study would be based. Thus, Sprint believes that the filings should be extended until the state of the federal law is clearer.

Furthermore, Sprint believes that issues raised in portions of this proceeding dealing with BellSouth's cost studies will have an impact on the Sprint cost studies. In particular, Sprint notes that the issue of whether deaveraging should be done based on a

rate-group basis or a common-cost-characteristic basis could have a significant impact on the way Sprint prepares its own cost study to address deaveraging. Similarly, Sprint believes the resolution of the issues addressing loadings, in-plant factors and assumptions, inflation, and the methodology for developing nonrecurring prices and DSL-related loop conditioning charges will have a significant impact on how Sprint develops its own study. Therefore, Sprint believes that it cannot reasonably comply with Order No. PSC-00-1486-PCO-TP until it understands what the state of the law in Florida is, based upon the Commission's decisions with regard to BellSouth's cost studies. Sprint adds that if the extension is granted, it will extend its commitment to honor the deaveraged UNE prices set forth in its Florida tariff until rates for Sprint can be set in this proceeding.

Verizon agrees with Sprint's conclusion that the Eighth Circuit's stay of its decision on the FCC's pricing rules warrants an extension of the filing dates. Verizon also agrees that in view of the posture of the case at the federal level, it is impossible to predict what law will be in effect when it is time to file the cost studies. Verizon adds that it would simply be practical to extend the time for filing the cost studies until the state of the federal law is clearer in order to avoid duplicative proceedings before this Commission if, in fact, the U.S. Supreme Court's decision upholds the Eighth Circuit's original decision vacating the FCC's pricing rules. Proceeding on the current schedule, Verizon contends, would put the Commission at risk of having to redo the entire proceeding for Sprint and Verizon. Furthermore, Verizon contends that granting an extension for Sprint, but not Verizon, would be inefficient. Therefore, Verizon asks that an indefinite extension be granted for it and Sprint to file their cost studies.

In its response, WorldCom contends that while the Sprint proposal is acceptable, Verizon's request for an indefinite extension is not. WorldCom emphasizes that any extension beyond July 2, 2001, would make it unlikely that UNE rates would go into effect this year. WorldCom further explains that the FCC's pricing rules remain in effect due to the Eighth Circuit's stay of its decision. Those rules remain in effect if the Supreme Court reverses the Eighth Circuit's decision. If, however, the Supreme Court uphold or remands that Eighth Circuit's decision, WorldCom

argues that it could be over two years before a final decision is reached, which is simply too long. WorldCom adds that the ALECs would all be harmed by this delay, because it believes the results of the cost studies will show that Verizon's rates are too high. Thus, WorldCom asks that Verizon's request for an indefinite extension be denied.

Z-Tel also believes that an indefinite extension is inappropriate, because cost-based UNE rates are necessary to sustain competition. Z-Tel emphasizes that it would be impractical to wait until the federal issues are completely resolved, because it could result in a delay of over two years. Furthermore, Z-Tel believes that no extension should be granted to Verizon, because Verizon has already been granted one change in the schedule. Z-Tel believes that an additional extension would only delay competition in Verizon's territory.

Upon consideration, Sprint's Motion for Extension of Time and Verizon's request, as contained in its Response, shall be granted, in part, and denied, in part. Although, Sprint's and Verizon's concerns regarding the state of the law at the federal level are valid, the importance of establishing UNE rates in an effort to further competition in Florida outweighs those concerns. An indefinite extension as requested by Verizon could serve as an impediment to developing competition. As for Sprint's request for a limited extension, I believe this request is more reasonable. I do, nevertheless, believe that the extension should be somewhat shorter than the 90-day extension requested by Sprint in an effort to keep the date for our final decision within the currently set time frame. Therefore, a limited extension of time shall be granted and the schedule shall be revised as follows:

- 1) Verizon and Sprint cost studies, Direct Testimony and exhibits May 18, 2001
- 2) ALEC Testimony and exhibits June 18, 2001
- 3) ILEC Rebuttal testimony and exhibits July 2, 2001
- 4) Prehearing Statements July 2, 2001

- |                          |                                   |
|--------------------------|-----------------------------------|
| 5) Prehearing Conference | July 9, 2001                      |
| 6) Hearing               | July 30, 2001 -<br>August 1, 2001 |
| 7) Briefs                | August 15, 2001                   |

Furthermore, in view of this extension and the proximity of the testimony filing dates to the hearing, the party to whom a discovery request is served shall serve the answer within 15 days after service of the request, with no additional time for mailing. Parties and staff shall serve discovery requests and responses by either express mail, facsimile, e-mail, or hand delivery. In addition, all discovery shall be completed by July 23, 2001.

To the extent not superseded by this Order, the Order on Modification of Second Revised Order on Procedure (Order No. PSC-00-2015-PCO-TP), or the Order Granting Motions to Bifurcate and Suspend Proceedings (Order No. PSC-00-1486-PCO-TP), the procedural requirements of the Second Revised Order on Procedure (Order No. PSC-00-0540-PCO-TP), issued on March 16, 2000, shall remain in effect.

Based on the foregoing, it is

ORDERED by Chairman E. Leon Jacobs, Jr., as Prehearing Officer, that Sprint-Florida Incorporated's Petition to Amend Order Granting Motions to Bifurcate and Suspend Proceedings and Verizon Florida Inc.'s request for an extension as set forth in its Response are granted, in part, and denied, in part, as set forth in the body of this Order. It is further

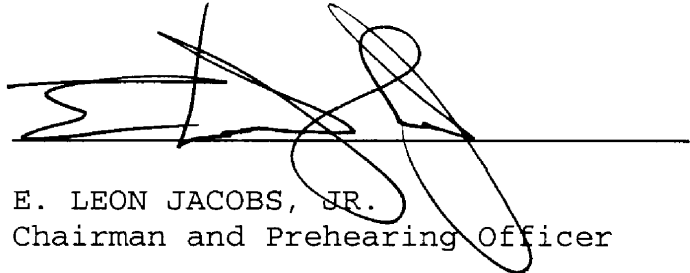
ORDERED that the schedule and provisions pertaining to discovery are modified as set forth in the body of this Order. It is further

ORDERED that to the extent not superseded by this Order, the Order on Modification of Second Revised Order on Procedure (Order No. PSC-00-2015-PCO-TP), or the Order Granting Motions to Bifurcate and Suspend Proceedings (Order No. PSC-00-1486-PCO-TP), the procedural requirements of the Second Revised Order on Procedure

ORDER NO. PSC-01-0551-PCO-TP  
DOCKET NO. 990649-TP  
PAGE 6

(Order No. PSC-00-0540-PCO-TP),. issued on March 16, 2000, are reaffirmed.

By ORDER of Chairman E. Leon Jacobs, Jr. as Prehearing Officer, this 12th Day of March, 2001.



E. LEON JACOBS, JR.  
Chairman and Prehearing Officer

( 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

ORDER NO. PSC-01-0551-PCO-TP

DOCKET NO. 990649-TP

PAGE 7

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 Records and Reporting, 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.