

State of Florida



Public Service Commission
CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD
TALLAHASSEE, FLORIDA 32399-0850

-M-E-M-O-R-A-N-D-U-M-

RECEIVED-FPSC
01 NOV -7 AM 11:25
COMMISSION CLERK

DATE: NOVEMBER 7, 2001

TO: DIRECTOR, DIVISION OF THE COMMISSION CLERK &
ADMINISTRATIVE SERVICES (BAYÓ)

FROM: DIVISION OF COMPETITIVE SERVICES (CATER, WRIGHT) *SAC RW*
DIVISION OF LEGAL SERVICES (FUDGE) *of b/c*

RE: DOCKET NO. 010302-TP - PETITION BY ALLTEL COMMUNICATIONS,
INC. FOR ARBITRATION OF CERTAIN OPEN ISSUES IN EXISTING
INTERCONNECTION AGREEMENT WITH BELLSOUTH
TELECOMMUNICATIONS, INC.

AGENDA: 11/19/01 - REGULAR AGENDA - POST HEARING DECISION -
PARTICIPATION LIMITED TO COMMISSIONERS AND STAFF

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: NONE

FILE NAME AND LOCATION: S:\PSC\CMP\WP\010302.RCM

CASE BACKGROUND

On March 8, 2001, ALLTEL Communications, Inc. (ALLTEL) filed a Petition for Arbitration pursuant to 47 U.S.C. Section 252(b) of the Telecommunications Act of 1996 (Act), seeking arbitration of certain unresolved issues in the interconnection negotiations between ALLTEL and BellSouth Telecommunications Inc. (BellSouth). On April 2, 2001, BellSouth filed its response to the petition.

At the issue identification meeting, six unresolved issues were identified by the parties. Prior to the hearing, the parties resolved or agreed to stipulate to a number of those issues, resulting in all but two issues being resolved. The hearing was held on September 24, 2001. After the hearing, one of the two remaining issues was resolved. This recommendation addresses the one remaining issue.

DOCUMENT NUMBER-DATE

14138 NOV-70

FPSC-COMMISSION CLERK

DISCUSSION OF ISSUES

ISSUE 1: Should BellSouth's Products and Services Interval Guide be incorporated into the interconnection agreement?

RECOMMENDATION: No. BellSouth's Products and Services Interval Guide should not be incorporated into the interconnection agreement. However, whenever BellSouth lengthens a products and services interval it should notify ALLTEL 30 days prior to the effective date of the change so that ALLTEL can change its internal processes. In addition, the new intervals should only apply to orders placed with BellSouth on or after the effective date of the revised intervals. (CATER)

POSITION OF THE PARTIES

ALLTEL: Yes. Under ALLTEL's proposal, BellSouth's current ordering interval "guides" would be incorporated into the Interconnection Agreement. Thereafter, they may be shortened by BellSouth, unilaterally, but may only be lengthened with ALLTEL's concurrence. ALLTEL's proposal would provide certainty and fairness for business planning purposes and meeting customer commitments.

BellSouth: No. The target provisioning intervals set forth in the Guide are not the standard to determine whether BellSouth is providing ALLTEL nondiscriminatory access to BellSouth's network. ALLTEL's claim that BellSouth would otherwise lengthen intervals without notice to ALLTEL is unfounded and contrary to the notice requirements in the agreement.

STAFF ANALYSIS: In her direct testimony, ALLTEL witness Eve states ALLTEL's proposed language relating to provisioning intervals. It states:

Provisioning Intervals. The Parties have agreed to the provisioning intervals for Resale and Unbundled Network Elements as shown in Attachment 6, Exhibit A-BellSouth Products & Services Interval Guide, Issue 3, July 2000, as stated or any shorter intervals as BellSouth may provide. The FOC interval would be as stated or as required by Attachment 9 Performance Measurements. (TR 12-13)

DOCKET NO. 010302-TP
DATE: November 7, 2001

Witness Eve states that "BellSouth objects to the inclusion of this language in the final agreement. The issue in dispute here is not the final resolution of performance measurement intervals or enforcement, which will be addressed and resolved in the Commission's ongoing generic docket on performance measures." (TR 13) This issue deals with the fact that BellSouth can change these intervals at anytime that it likes without any input from ALLTEL. ALLTEL believes that BellSouth can shorten the intervals without its approval, but if BellSouth lengthen the intervals, ALLTEL would like the opportunity to negotiate. (TR 13) ALLTEL believes that these intervals will keep getting longer if BellSouth is allowed to extend these intervals without ALLTEL having the opportunity to negotiate. (TR 13-14) ALLTEL argues that it relies on these intervals in developing its own internal processes and its conversion dates that it gives its customers are based on these intervals. (TR 14)

In her deposition, ALLTEL witness Eve states that ALLTEL has a problem "only when they change those intervals to our detriment that it causes problems in our order processing and delays customer service." (EXH 3, pp. 5-6) For example ALLTEL may have to go back to its customer and tell it that there will be a delay in getting its service with ALLTEL, including any orders that were pending at the time that the changes to the guide were made. (EXH 3, pp. 6-7)

Witness Eve did not know whether or not other interconnection agreements that ALLTEL has entered into contained a provisioning interval guide. (EXH 3, p. 7)

When asked how she envisioned negotiations of new performance intervals would take place, ALLTEL witness Eve replied that "BellSouth would notify us that they've got a particular provisioning interval that needs to change from, you know, from what it currently is to whatever the increased interval is, and we would have an opportunity to concur or if there's a problem with it or if its certainly significantly, negotiating with BellSouth is just some sort of compromise, if that is possible." She also states that ALLTEL would negotiate and concur with changes, if they were necessary due to business reasons. As to appropriate notice that ALLTEL would need before making any changes to the guide, she thought that 30 to 60 days would be appropriate. (EXH 3, pp. 7-8)

When asked whether or not she would consider it parity if BellSouth did not meet the requirements of its interval guide for

both itself and the alternative local exchange companies (ALECs), she replied that "the only intervals, provisioning UNEs and for resale, and it doesn't really-unlike the performance measure, it doesn't really indicate a retail analog benchmark in a provisioning interval guide. It just states the number of days in which they'll accept orders and process orders." (EXH 3, pp. 8-9)

Concerning whether or not ALLTEL has received notice concerning changes to its interval guides, ALLTEL Witness Eve states that while BellSouth has agreed to provide 30 days notice before changes to the interval guide are made, there have been cases where ALLTEL has not been provided with this notice. As a result, orders have been rejected for noncompliance with the interval guide. (EXH 3, p. 9)

In her direct testimony, BellSouth witness Cox states that she does not think that it is necessary or appropriate for this interval guide to be incorporated into the interconnection agreement. The guide is designed to provide ALECs with targets as to when to expect the service to be provided. BellSouth would also like the opportunity to change this guide in order to keep it up to date. She also states that notice is provided to ALECs when changes are made to the guide. (TR 29; EXH 4, p. 6)

Witness Cox stated that the target intervals in the Guide are not part of a performance measurement plan. She adds that the purpose of any performance measurement plan is to aid in the determination of whether or not BellSouth is meeting the requirements of the Act and FCC Rules regarding the provisioning of nondiscriminatory access to the ALECs. (TR 37)

Witness Cox defines parity as the requirement that service to the ALECs should be provided in substantially the same time and manner as is provided to BellSouth's retail customers. This means that provisioning intervals for BellSouth's retail customers and for all ALECs should be comparable. (TR 37)

Witness Cox continued by saying that whether or not BellSouth is providing service at parity is determined by taking its performance to the ALECs in the aggregate and comparing it either to BellSouth's performance to its own retail customers or to some benchmark. (TR 38) She continues by pointing out that "[B]ellSouth does not revise target intervals on a whim. An interval would be

DOCKET NO. 010302-TP
DATE: November 7, 2001

lengthened only if BellSouth determined that the target was generally not attainable." (TR 38)

In responding to witness Eve's testimony, witness Cox stated that:

Ms. Eve erroneously contends that BellSouth might change these target intervals with no prior notice to ALLTEL. To the contrary, if BellSouth plans to make a change to the Guide, BellSouth posts a carrier notification letter to the Interconnection website explaining the change 30 days prior to posting the new Guide. In fact, Section 36.3 of the General Terms and Conditions (which has been agreed to by the parties) in the proposed Interconnection Agreement includes the following language:

BellSouth will post changes to business processes and policies, and any other information of general applicability to CLECs [Competitive Local Exchange Companies] 30 calendar days prior to the effective date thereof. When an internet posting is made pursuant to this section or as described elsewhere in this Agreement, BellSouth shall send ALLTEL notification of such posting to any electronic mail address provided by ALLTEL for this purpose. (TR 38-39)

Witness Cox pointed out that to her knowledge interval guides are not incorporated into any interconnection agreement that BellSouth has with any competitive carrier and that target intervals have never been established in interconnection agreements, but "all interconnection agreements refer to the interval guide. (EXH 4, p. 6).

Concerning the notice given to CLECs, BellSouth witness Cox responded that a carrier notification letter could be used to provide CLECs with notice of changes to the interval guide being posted to the website and the effective date of such changes (EXH 4, pp. 6-7) She did not know whether the interval guide was one of the issues discussed in BellSouth's collaborative process with the CLECs. (EXH 4, p. 7)

BellSouth witness Cox, when asked about remedies available to the ALECs if BellSouth does not meet the intervals in the interval guide, said "I don't know of a remedy, per se, about our interval

guide. Obviously, to the extent that the Commission in their performance measures and enforcement mechanisms addresses the issue of intervals, there would be remedies there." (EXH 4, p. 7) She states that they are required to meet benchmarks set by state Commissions and generally those benchmarks are incorporated into the interval guide. (EXH 4, pp. 7-8)

Witness Cox stated that other ALECs would be allowed to opt into any terms of this interconnection agreement concerning the interval guides. She also did not know specifically how often the interval guide is revised or BellSouth's success rate in meeting the performance intervals set forth in the interval guide. (EXH 4, pp. 8-9)

BellSouth argues, in its brief, that "ALLTEL has not cited a single, concrete example of BellSouth lengthening an interval without notice to ALLTEL. Nor has it cited any instance where BellSouth's extension of an interval adversely impacted the level of service ALLTEL provides to its customers." (BR 3)

BellSouth concludes its brief by saying that:

ALLTEL points to no provision in the Act or any FCC rule or other authority that requires BellSouth to make the target intervals in its Guide part of an interconnection agreement. There is no basis in law or fact to incorporate the Product and Services Interval Guide into the party's interconnection agreement. ALLTEL arbitrated this issue with BellSouth in South Carolina, and the Public Service Commission of South Carolina determined that the Guide should not be part of the parties interconnection agreement. *Order on Arbitration*, Docket No. 2001-3 1-C, Order No. 2001-328 (April 16, 2001), at 51-52. (BR 3-4)

SUMMARY

The evidence demonstrates that while ALLTEL needs to be able to tell its customers when they should expect to have service; BellSouth also needs to be able to change its Interval Guide as conditions require. Both sides agree that this issue is not intended to be the final authority on performance measures which are being addressed in the generic performance measurements docket. Both sides also acknowledge that the Products and Services Interval

Guide is not, to their knowledge, incorporated into any interconnection agreement into which either party has entered. (EXH 3, p.7; EXH 4, p. 6)

The evidence indicates that ALLTEL desires some level of certainty that its orders will be provisioned when it tells its customers they will be. ALLTEL makes its case by saying that if BellSouth tries to lengthen any of these intervals, it may have to go back to customers and tell them that it will take longer to receive service. ALLTEL also points out that these new intervals also apply to orders that are being processed as of the effective date of the new interval. (EXH 3, p.6) While ALLTEL will allow intervals to be shortened by BellSouth, it would like the opportunity to negotiate any intervals that will be lengthened. (TR 13) ALLTEL points out that 30 to 60 days notice would be appropriate before BellSouth makes any changes to the guide. (EXH 3, p. 8) The record does not however, show a single instance where ALLTEL was harmed by the lengthening of any of these intervals.

BellSouth points out that 30-days notice is given to ALLTEL before any intervals are changed, and that ALLTEL has agreed to a provision in the agreement that would require this 30-days notice. (TR 38-39) ALLTEL, contends however, that the problem is that ALLTEL has not always received these notices and as a result the order gets rejected. (EXH 3, p. 9) There is also evidence that BellSouth applies the new intervals to orders that are pending when the interval guide is revised. (EXH 3, p. 9)

CONCLUSION

The record does not substantiate that BellSouth ever intended for its Products and Services Interval Guide to serve as anything more than what it is identified as, a guide. It was not designed to serve as contract terms. For this reason, the Product and Services Interval Guide should not be included in the Interconnection Agreement. However, Staff recommends that whenever BellSouth lengthens a products and services interval it should notify ALLTEL 30 days prior to the effective date of the change so that ALLTEL can change its internal processes. In addition, the new intervals should only apply to orders placed with BellSouth on or after the effective date of the revised intervals.

DOCKET NO. 010302-TP
DATE: November 7, 2001

ISSUE 2: Should this docket be closed?

RECOMMENDATION: No, the parties should be required to submit a signed agreement that complies with the Commission's decisions in this docket for approval within 30 days of the issuance of the Commission's Order. This docket should remain open pending the Commission approval of the final arbitration agreement in accordance with Section 252 of the Telecommunications Act of 1996.
(FUDGE)

STAFF ANALYSIS: The parties should be required to submit a signed agreement that complies with the Commission's decisions in this docket for approval within 30 days of the issuance of the Commission's Order. This docket should remain open pending the Commission approval of the final arbitration agreement in accordance with Section 252 of the Telecommunications Act of 1996.