

VOTE SHEET

DECEMBER 2, 2003

RE: Docket No. 020507-TL - Complaint of Florida Competitive Carriers Association against BellSouth Telecommunications, Inc. regarding BellSouth's practice of refusing to provide FastAccess Internet Service to customers who receive voice service from a competitive voice provider, and request for expedited relief.

ISSUE 1: Does the Commission have jurisdiction to grant the relief requested in the Complaint?

RECOMMENDATION: Yes.

**DEFERRED**

COMMISSIONERS ASSIGNED: Full Commission

COMMISSIONERS' SIGNATURES

MAJORITY

DISSENTING

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REMARKS/DISSENTING COMMENTS:

DOCUMENT NUMBER-DATE

12224 DEC-28

FPCO-COMMISSION CLERK

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ISSUE 2: What are BellSouth's practices regarding the provisioning of its FastAccess Internet service to:

- a. A FastAccess customer who migrates from BellSouth to a competitive voice service provider; and
- b. To all other ALEC customers?

RECOMMENDATIONS:

- a. BellSouth's current FastAccess policy related to customer migration is as follows: if a customer obtains both local voice service and FastAccess from BellSouth and migrates to a CLEC that provisions local service via UNE-P or UNE-L, the customer's FastAccess service will be disconnected. If the CLEC provides local voice service via BellSouth resale, the customer can retain BellSouth FastAccess service. Further, BellSouth will provide FastAccess service in compliance with prior Commission orders provided the parties have agreed upon contract language.
- b. BellSouth's current FastAccess policy related to customers currently served by a CLEC is as follows: if a customer is obtaining local voice service from a CLEC that provides local service via UNE-P or UNE-L, the customer will not be eligible for FastAccess service. If the CLEC provides local voice service via BellSouth resale, or if the customer migrates to BellSouth for local voice service, the customer would be eligible for FastAccess service. Further, BellSouth will provide FastAccess service in compliance with prior Commission orders provided the parties have agreed upon contract language.

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ISSUE 3: Do any of the practices identified in Issue 2 violate state or federal law?

RECOMMENDATION: Staff is presenting three options relating to whether BellSouth's disconnection practices identified in Issue 2 violate state or federal law. Staff recommends that either Option 1 or Option 2, presented below, be selected as those options are more fully supported by the evidence presented in this case.

Option 1: BellSouth's disconnection practice is anticompetitive because it prevents the CLECs from being treated fairly by erecting barriers to competition and because it impedes competition by limiting the range of consumer choice.

Option 2: BellSouth's disconnection practice is anticompetitive because it prevents the CLECs from being treated fairly by erecting barriers to competition and because it impedes competition by limiting the range of consumer choice. However, when applied to a new customer seeking service, BellSouth's practices do not limit customer choice since the customer can take into account whether he finds a DSL service or a competitive voice service more important.

Option 3: BellSouth's disconnection practice is not anticompetitive because it does not prevent the CLECs from being treated fairly and does not impede competition by limiting consumer choice.

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ISSUE 4: Should the Commission order that BellSouth may not disconnect the FastAccess Internet Service of an end user who migrates his voice service to an alternative voice provider?

RECOMMENDATION: Of the three viable options presented by staff, staff recommends that either Options 1 or 2 be selected, as they set forth the most appropriate course of action.

Option 1: In the interest of promoting competition in accordance with Section 364.01(4)(d) and (g), Florida Statutes, and the federal Telecommunications Act, BellSouth should be prohibited from disconnecting FastAccess service to an end user who migrates his voice service to a CLEC. However, the requirement to continue to provide FastAccess should be re-evaluated by December 31, 2006, to determine whether this provision continues to be necessary to promote local voice competition. Further, the requirement would be subject to the terms set forth in Issue 6A. If during the Commission's ongoing market monitoring process staff determines that the competitive conditions have changed in either the local voice market or the broadband market, staff would inform the Commission and seek guidance as to whether the re-evaluation process should be undertaken sooner.

Option 2: In the interest of promoting competition in accordance with Chapter 364.01(4)(d) and (g), Florida Statutes, and the federal Telecommunications Act, BellSouth should be prohibited from disconnecting FastAccess service to an end user who migrates his voice service to a CLEC. However, the requirement to continue to provide FastAccess should terminate after three years from the date of the final order. Further, during the three-year period, the provision of FastAccess service would be subject to the terms set forth in Issue 6A.

Option 3: BellSouth's disconnection practices are neither anti-competitive or discriminatory. BellSouth should be allowed to continue its practice of disconnecting its FastAccess customers that migrate to a CLEC.

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ISSUE 5: Should the Commission order BellSouth to provide its FastAccess Internet Service, where feasible, to any ALEC end user that requests it?

RECOMMENDATION: Staff believes there are three viable options available to address this issue. The three options are set forth as follows:

- Option 1: BellSouth should not be ordered to provide FastAccess Internet Service, where feasible, to any CLEC end user that requests it.
- Option 2: BellSouth should be required to provide FastAccess service to CLEC customers that request it, but the requirement to provide FastAccess would be reevaluated by December 31, 2006, to determine whether the mandate is necessary to promote competition in the local exchange market. Further, the requirement would be subject to the terms set forth in Issue 6B. If during the Commission's ongoing market monitoring process staff determines that the competitive conditions have changed in either the local voice market or the broadband market, staff would inform the Commission and seek guidance as to whether the re-evaluation process should be undertaken sooner.
- Option 3: BellSouth should be required to provide FastAccess service to CLEC customers that request it, but the requirement to provide FastAccess would expire after three years from the date of the final order. Further, the requirement would be subject to the terms set forth in Issue 6B.

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ISSUE 6(a): If the Commission orders that BellSouth may not disconnect its FastAccess Internet service, where a customer migrates his voice service to an ALEC and wishes to retain his BellSouth FastAccess service, what changes to the rates, terms, and condition of his service, if any, may BellSouth make?

ISSUE 6(b): If the Commission orders BellSouth to provide its FastAccess service to any ALEC end user that requests it, where feasible, then what rates, terms, and conditions should apply?

RECOMMENDATION: Staff has identified two aspects that the Commission should consider in addressing Issues 6(a) and (b). As a result, staff is presenting options related to: (i) provisioning of FastAccess service, and (ii) the pricing of FastAccess service. The pricing options presented apply equally to Issues 6(a) and 6(b).

If the Commission votes to require BellSouth to provide FastAccess service in Issues 4 and/or 5, staff recommends that one of the following provisioning options be selected:

(1) Provisioning

- Option 1: BellSouth would be required to provision FastAccess on the high frequency portion of the loop for a customer migrating to a CLEC, provided the CLEC allows BellSouth access to the HFPL free of cost. With respect to those situations where a CLEC customer requests FastAccess, BellSouth may provision FastAccess on a stand-alone loop.
- Option 2: BellSouth may provision FastAccess via a stand-alone loop in the case of a BellSouth customer migrating to a CLEC or in the case where a current CLEC customer requests FastAccess.
- Option 3: BellSouth should be required to provision FastAccess via the high frequency portion of the loop regardless if the customer is migrating from BellSouth to a CLEC or if a CLEC customer is requesting FastAccess for the first time, provided the CLEC allows BellSouth access to the HFPL free of cost.

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With respect to pricing, if the Commission requires BellSouth to provide FastAccess service in Issues 4 or 5, staff recommends that the Commission select one of the following options:

(2) Pricing

- Option 1: BellSouth should be required to offer FastAccess service at a price that provides the same percentage contribution to the company as it derives from its customers receiving both local service and FastAccess service.
- Option 2: BellSouth should be required to offer FastAccess service to CLEC customers at the same price that it offers FastAccess to CLEC customers that are being provided local voice service via resale.
- Option 3: BellSouth should be free to price the service as whatever rate it chooses.

ISSUE 7: Should this docket be closed?

RECOMMENDATION: The docket should be closed after the time for filing an appeal has run.