

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Request for approval of) DOCKET NO. 950112-TL
tariff filing to introduce) ORDER NO. PSC-95-0877-FOF-TL
Contract Service Arrangements) ISSUED: July 19, 1995
for data transport and network)
management services by BellSouth)
Telecommunications, Inc. d/b/a)
Southern Bell Telephone and)
Telegraph Company. (T-95-023)
filed 1-12-95))
_____)

The following Commissioners participated in the disposition of this matter:

SUSAN F. CLARK, Chairman
J. TERRY DEASON
JOE GARCIA
JULIA L. JOHNSON
DIANE K. KIESLING

ORDER APPROVING TARIFF

BY THE COMMISSION:

I. CASE BACKGROUND

In Docket No. 820537-TP, the Commission discussed the setting of access charges that would adequately compensate the local exchange companies for the use of their local facilities for originating and terminating toll traffic and to provide incentives for competition, while maintaining universal telephone service. In the ensuing order, Order No. 12765, issued December 9, 1983, the Commission stated:

We believe that the ability to contract or use bulk rate discounts with customers will allow the LECs greater flexibility in dealing with market situations and should be permitted in order for LECs to remain viable in a competitive environment.

The Commission determined that contract pricing would be appropriate if it was determined that the loss of a customer would "result in a greater revenue loss than providing the service below embedded cost rates (See Order No. 12765, pg. 23)."

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FPSC-RECORDS/REPORTING

Contract Service Arrangements (CSAs) were introduced for the first time in August, 1984. By Order No. 13603, issued August 20, 1984, we granted BellSouth Telecommunications, Inc. d/b/a Southern Bell Telephone and Telegraph Company (Southern Bell or the Company) CSA authority for Private Line, Special Access facilities, and WATS access lines. Order 13830 allowed other local exchange companies to request CSA authority for their private line and WATS services. Since 1984, we have granted CSA authority to Southern Bell and other local exchange companies.

On January 12, 1995 Southern Bell filed a tariff requesting approval to provide certain data transport and network management services under contract service arrangements. This filing included most of the services contained in the Company's previous filing of March 1994, which was withdrawn by the Company prior to our vote. Southern Bell and our staff agreed during discussions that Derived Data Channel Service and Data Transport Access Channel Service should be omitted from Southern Bell's proposed tariff since there appeared to be no direct competition for these services. The Company has filed the appropriate revised tariff pages.

II. CRITERIA FOR GRANTING CONTRACT SERVICE ARRANGEMENTS

As noted earlier, the Commission expressed its concern that the criteria initially provided by staff were too strict and appeared to be more in line with the effective competition test described in Section 364.338, Florida Statutes.

The threshold for granting contract service arrangement authority should reflect the services' position on the "competitive continuum." This continuum ranges from pure monopoly services to effectively competitive services. Contract service arrangements should be used to prevent harm before harm occurs, not after. The criteria for granting contract service arrangements should fall more in the middle of the "competitive continuum" rather than using a test for effective competition described in Section 364.338, Florida Statutes. The test should disprove that the company is providing the service as a monopoly. In theory, this would mean that along the competitive continuum, the company is selling the service in one of two classic markets: the oligopoly market or the monopolistic competition market. Both markets fall between the pure monopoly and pure competition models. In actuality, the company is probably providing these services in a market that combines characteristics of the oligopoly and monopolistic competitive models. At a minimum, we find that the criteria for granting authority for contract service arrangements should be as follows:

- 1) An alternative provider can legally provide a service that is functionally similar or equivalent from the standpoint of the customer; and
- 2) There is the reasonable potential for economic harm without pricing flexibility. There is a constant threat from both potential and existing rivals.

III. THE COMPANY'S PROPOSAL

Southern Bell is requesting authority to provide the following services under contract service arrangement when the potential for uneconomic bypass is identified by the Company. The services are PulseLink Public Packet Switching Network Service (PPSN), FlexServ Service, and Native Mode LAN Interconnection (NMLI).

PulseLink Public Packet Switching Network Service provides switched packet data transport. The service is based on the Consultative Committee on International Telegraph and Telephony (CCITT) X.25 protocol and X.75 internetworking protocol. PPSN became effective in August 1987.

FlexServ Service provides customer monitoring and reconfiguration of a private line service. Monitoring consists of unsolicited signals of major and minor facility alarms. Reconfiguration provides the customer with the ability to direct the Company to connect or disconnect circuits equipped with FlexServ service options. FlexServ Service became effective in February 1993.

Native Mode LAN Interconnection is an intraLATA transport service that provides customers the ability to extend Ethernet or Token Ring Local Area Networks (LANs) across metropolitan areas by interconnecting two or more like LANs. This service provides three NMLI Port connections. They include a Token Ring port operating at 4 Mbps, an Ethernet port operating at 10 Mbps, and a Token Ring port operating at 16 Mbps. NMLI became effective in August 1994.

Uneconomic bypass occurs when an alternative service arrangement provided by such entities as an alternative access provider, non-regulated vendor, or IXC, is priced below the company's tariffed service rate but above the company's incremental cost for providing the service. An example of bypass could be the use of a T3 facility provided by an alternative access vendor for packet data transport versus a T3 facility provided by a local exchange company for the same purpose.

A. PulseLink Public Packet Switching Network

1) Existence of Functionally Equivalent Alternative Service

We acknowledge that alternate access vendors (AAVs), in conjunction with IXC's, can provide an alternative packet switching service on an intraLATA interexchange basis. In this scenario, an AAV can provide special access facilities from a customer's premises to an IXC's packet switching network. This is known as facilities bypass. The intraLATA interexchange market would be the only relevant market since local exchange companies cannot provide interLATA service and AAVs and IXC's cannot provide switched intraexchange service. A customer that desires to transport packet data on an intraLATA interexchange basis has the option of using Southern Bell's PPSN service or the AAV-IXC service described above. Intermedia Communications, Inc. (ICI), for example, provides this type of service using its IXC and AAV certificates. We believe that IXC packet switching networks, when combined with AAV provided dedicated access facilities, provide a technical alternative for packet switching network service on an intraLATA interexchange basis. We note, however, that packet switching at the local level (intraLATA intraexchange) is still a LEC monopoly service.

2) Potential for Economic Harm without Pricing Flexibility

It is difficult to draw a definitive conclusion about the potential for economic harm without price information. We can make a qualitative assessment regarding economic harm. We believe that there is a potential for economic harm to Southern Bell because of the existence of alternative packet switching arrangements in the intraLATA interexchange market. IXC's market their packet switching services and would not be marketing these services if it were not their intent to garner a share of the packet switched market. Without pricing and market share information, we cannot address the level of competition in this market. However, because these services exist and are marketed, we conclude that Southern Bell faces the potential for economic harm due to bypass of its packet switched network. We reviewed specific data regarding a number of customers that opted for alternative arrangements. These arrangements included IXC packet switched services, very small aperture terminals (VSAT), and private line networks.

Accordingly, we find that functionally equivalent alternatives exist for Southern Bell's PulseLink Public Packet Switching

Network. The existence and marketing of these alternatives by non-LEC providers poses the potential for economic harm to the Company.

B. FlexServ

1) Existence of Functionally Equivalent Alternative Service

According to Southern Bell, competitive alternatives to FlexServ include direct competition from AT&T and LDDS, as well as customer configurable facility transport services provided by other interexchange carriers, and premises based T1 multiplexers sold by unregulated vendors. According to the Company, First Union opted for an alternative provided by AT&T while Winn-Dixie opted for VSAT. We acknowledge that Southern Bell's FlexServ service faces direct competition from vendor provided T1 multiplexers. Vendors such as the Black Box Corporation, Fujitsu, and Northern Telecom provide fractional T1 multiplexers that allow a customer to reconfigure private line channels as well as trouble shoot for problems in their private lines.

2) Potential for Economic Harm without Pricing Flexibility

We cannot address the level of competition in this market; however, because functionally equivalent services exist and are marketed, we conclude that Southern Bell faces the potential for economic harm.

Accordingly, we find that functionally equivalent alternatives exist to Southern Bell's FlexServ service. There are a number of non-LEC vendors that manufacture and sell customer premise equipment capable of reconfiguring and monitoring a customer's private line network. Because these alternatives exist and are marketed, we conclude that Southern Bell faces the potential for economic harm.

C. Native Mode LAN Interconnection Service

1) Existence of Functionally Equivalent Alternative Service

Southern Bell contends that AAVs such as ICI, TCG and AlterNet provide services similar to NMLI. TCG provides a similar service called LANLINK. ICI also indicated that it provided a service similar to Southern Bell's NMLI.

2) Potential for Economic Harm without Pricing Flexibility

The provision of tie channel services such as NMLI is among an AAV's primary services. AAVs market such private line services all the time and compete directly with LEC private line services.

AAVs provide and market functionally equivalent alternatives to Southern Bell's NMLI service. We therefore conclude that there is the potential of economic harm to the Company without pricing flexibility.

Upon review, we approve Southern Bell's proposed tariff to provide contract service arrangement authority for its PulseLink Public Packet Switching Network Service (PPSN), FlexServ Service, and Native Mode LAN Interconnection (NMLI). There appear to be functionally equivalent services for each of the services described in the Company's filing as well as the potential for economic harm.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that BellSouth Telecommunications, Inc. d/b/a Southern Bell Telephone and Telegraph Company's tariff to provide contract service arrangement authority for PulseLink Public Packet Switching Network Service, FlexServ Service, and Native Mode LAN Interconnection is hereby approved with an effective date of June 27, 1995. It is further

ORDERED that if a protest is filed in accordance with the requirements set forth below, the tariff shall remain in effect with any increase in revenues held subject to refund pending resolution of the protest. It is further

ORDERED that if no protest is filed in accordance with the requirements set forth below, this docket shall be closed.

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If this Order becomes final on the date described above, any party adversely affected may request judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or by the First District Court of Appeal in the case of a water or wastewater utility by filing a notice of appeal with the Director, Division of Records and Reporting 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 of the date this Order becomes final, 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.