

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Investigation into use) DOCKET NO. 950011-TL
of Contract Service Arrangements) ORDER NO. PSC-95-0926-FOF-TL
of BellSouth Telecommunications,) ISSUED: July 31, 1995
Inc. d/b/a Southern Bell)
Telephone and Telegraph Company)
in Monroe County.)

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

NOTICE OF PROPOSED AGENCY ACTION
ORDER REGARDING IMPROPER USE OF CONTRACT SERVICE ARRANGEMENT

BY THE COMMISSION:

NOTICE IS HEREBY GIVEN by the Florida Public Service Commission that the action discussed herein is preliminary in nature and will become final unless a person whose interests are substantially affected files a petition for a formal proceeding, pursuant to Rule 25-22.029, Florida Administrative Code.

I. BACKGROUND

This case involves an investigation by the Commission of certain Contract Service Arrangements (CSAs) between BellSouth Telecommunications, Inc. d/b/a Southern Bell Telephone and Telegraph Company (Southern Bell or the Company) and Monroe County. The investigation was prompted by an informal complaint from the Florida Cable Television alleging that Southern Bell was using CSA authority in an improper and anticompetitive fashion in the provision of telephone service to Monroe. In examining questions concerning CSAs it is useful to examine the history of CSAs.

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which specifically identified when CSA authority was available. The language now included in all LECs tariffs is as follows:

When economically practicable, customer specific contract service arrangements may be furnished in lieu of existing tariff offerings provided there is reasonable potential for uneconomic bypass of the Company's services. Uneconomic bypass occurs when an alternative service arrangement is utilized, in lieu of Company services, at prices below the Company's rate but above the Company's incremental costs.

Since the initial grant of CSA authority for the services noted above, CSA authority has been extended to other services such as Centrex/ESSX, Emergency Services and certain Miscellaneous Service Arrangements.¹ Of those LECs granted CSA authority, only Centel, United, GTEFL and Southern Bell have actually entered into CSA agreements. Table 1, Appendix A, provides a summary of the service(s) each LEC is authorized to provide under the contract service arrangement authority.

In Order to monitor the use of CSAs, each LEC is required to provide periodic reports that identify each instance in which CSA authority is used, the services provided under each CSA, and reasons for use of the CSA authority. A summary of the number of CSAs entered into by the four largest LECs is shown in Table 2, Appendix A.

B. Southern Bell's Use Of CSAs For Monroe County

Southern Bell, as the serving local exchange company, provides all types of telecommunications services to the Monroe County Commission (Monroe County). Within the last few years, the county appears to have shown more interest in its telecommunications needs and costs. In January 1992, Monroe County reserved funds for the development of a video based hearing arraignment system for the sheriff's office and the courts within the county. Later that year, Monroe County heard a presentation on the benefits that could be offered through a County-owned telecommunications network. On August 5, 1992, Monroe County approved soliciting a Request for

¹ CSA authority was granted to Southern Bell for Private Line, Special Access and WATS access lines pursuant to Order No. 13603, issued August 20, 1984. CSA authority for ESSX and Emergency Services was granted to Southern Bell pursuant to Orders Nos. 13871 and 22996, respectively.

Proposal (RFP) to determine the feasibility of Monroe County building a private fiber optic network. It appears that development of an arraignment system was placed on hold until after the evaluation of the private fiber network was completed. The RFP for the private network was issued on November 5, 1992. Several parties, including Southern Bell and Tele-Communications, Inc. (TCI), the local cable television operator, filed proposals for the entire fiber network or portions of the network.

On May 25, 1993, Southern Bell entered into two 60 month contracts (SF93-1570-01 and SF93-1576-02) with Monroe County to provide various services throughout the county. In the quarterly CSA reports filed July 21, 1993, Southern Bell supported the two CSAs as follows:

SF93-1570-01 - Competitive threat of uneconomic bypass for closed circuit television throughout the county.

SF93-1576-02 - Competitive threat of microwave bypass for local channels of SynchroNet and interoffice channels of MegaLink.

The services provided by Southern Bell pursuant to the contract with Monroe County include typical private line services such as MegaLink and SynchroNet, and more importantly, what essentially are PBX trunks provided via a channelized MegaLink service. MegaLink service channelizes a 1.544 Megabits per second (Mbps) high capacity private line into a maximum of 24 voice equivalent channels. This channelization allows MegaLink to offer economies of scale for large customers that want to aggregate their traffic at a specific location. A customer can pay less for a quantity of channels of the same type on this channelized system than if the customer had ordered individual channels from Southern Bell. SynchroNet is similar to MegaLink except it is a single private line service which operates at various transmission speeds.

On May 26, 1993, Monroe County rejected all proposals submitted for the County-owned fiber network. In June of 1993, Monroe County authorized the Sheriff's office to proceed to acquire the necessary video equipment for the hearing arraignment system. The county utilizes the facilities provided under Contract No. SF93-1570-01 to provide the transmission facilities for the hearing arraignment system.

On December 17, 1993, the FCTA contacted the Commission's Division of Communications and alleged that Southern Bell gave Monroe County a substantial discount of approximately forty percent (40%) on monopoly service rates on or about the same time that Southern Bell negotiated and secured an agreement from the Monroe County Sheriff's Department for the provision of video services. Based on these allegations, our staff began an investigation into the provision of services pursuant to the contracts referenced above. The savings realized by the county for the life of the contract are approximately \$90,000 which is the difference between the tariff and contract rates.

The focus of the investigation was to determine whether Southern Bell appropriately used its CSA authority in its contracts with Monroe County. As discussed in greater detail below, certain of the circuits provided pursuant to contract SF93-1576-02 appear to have been inappropriately priced below the tariff rates. The remainder of the circuits provided to Monroe County under contract SF93-1570-01 appear to have been handled appropriately.

On April 19, 1995, Southern Bell, in apparent response to the results of the investigation, notified the Commission that it would increase the rates for the Megalink circuits transporting PBX trunks to the current tariff rates and reduce the rates of other circuits so as to be revenue neutral to Monroe County.

II. ANALYSIS OF THE CSAS FOR MONROE COUNTY

Staff has investigated FCTA's claim and believes Southern Bell has in fact discounted monopoly services approximately 34% through its use of its CSA authority.

On May 25, 1993, Southern Bell entered into two (2) 60 month contracts with Monroe County. The contract identified as SF93-1570-01 provides Monroe County with a video transmission network throughout the county which provides the county's video-based hearing arraignment system. It appears from the information reviewed during the investigation that Southern Bell provides only the transmission facilities between the video locations while Monroe County provides the actual video equipment. There are several entities that can provide this type of transmission facilities. Accordingly, in this instance Southern Bell can appropriately utilize a CSA as long as the contract price for these circuits covers the incremental cost.

The second contract is identified as SF93-1576-02. CSA quarterly reports identify the reason for this contract as, "Competitive threat of Microwave bypass for local channels of Synchronet and interoffice channels of Megalink." From the information reviewed, it appears that Southern Bell is providing approximately 40 private line type circuits to Monroe County pursuant to SF93-1576-02. Of the 40 circuits, Southern Bell is providing 9 MegaLink circuits for use as PBX trunks at rates below those specified in Southern Bell's tariff for such trunks. The difference between the tariff and contract rates is approximately \$1,500 per month.

The provision of the 9 MegaLink circuits for use as PBX trunks pursuant to a CSA violates this Commission's policy regarding the use of CSAs, is contrary to our intent in granting this type of pricing flexibility, and violates the Company's own tariff provisions for CSAs. The intended use of CSAs is to provide the ability to negotiate individual contracts for telephone service at rates other than those contained in its tariffs in those instances where the Company faces the threat of uneconomic bypass.

As was noted above, we originally granted CSA authority to Southern Bell for Private Line, Special Access and WATS services in Order No. 13603. In that same order, we specifically denied Southern Bell's request for CSA authority on PBX trunks. As we stated:

We do not believe that it would be appropriate to include PBX Trunks in the Contract Service Arrangements since they constitute a link to the local network and as such are not facilities directly associated with the bypass threat. (emphasis added)

Southern Bell's provision of the 9 circuits functioning as PBX trunks clearly violates the terms and intent of this Order. The order indicates also that links to the local network should not be provided through a CSA. This is exactly what Southern Bell is providing through a channelized MegaLink circuit to Monroe County.

In addition to the express provisions of Order No. 13603, the tariff language approved in implementing Southern Bell's CSA authority pursuant to that Order specifically defined the conditions under which the CSA authority could be used. The tariff states:

When economically practicable, customer specific contract service arrangements may be furnished in lieu of existing tariff offerings provided there is reasonable potential

for uneconomic bypass of the Company's services. Uneconomic bypass occurs when an alternative service arrangement is utilized, in lieu of Company services, at prices below the Company's rate but above the Company's incremental costs. (emphasis added)

This tariff clearly requires the potential for bypass of the service for which the Commission has granted CSA authority. No entity other than the LEC has the lawful authority to provide PBX trunks to Monroe County no matter how the circuits are physically provided. Therefore, Southern Bell also violated its own tariff when it provided the 9 circuits through a CSA arrangement to the county.

Southern Bell argues that its provision of these circuits through a CSA arrangement is justified since TCI, the local cable television company, proposed to provide transmission facilities between Monroe County's switches within the county's private telecommunications network. These facilities would have carried voice, video and data traffic between the various locations of the county similar to what Southern Bell provides to Monroe County today. Southern Bell claims TCI's facilities could convert the normal switched local exchange access traffic to dedicated channel services between Monroe County's switches in their county network. Southern Bell believes this conversion could eliminate the requirement for some of the MegaLink circuits which provide PBX trunks to the county.

We agree with Southern Bell's analysis of the impact that deploying private line services might have on the need for the MegaLink circuits, but this analysis holds true regardless of whether TCI or Southern Bell provides the private line services between Monroe County's switches. The number of MegaLink circuits is not affected by competition, but by the most efficient and cost effective way to handle Monroe County's intra-county traffic. We do not agree with Southern Bell's argument that the loss of traffic warrants the use of CSA authority for the MegaLink circuits providing PBX trunks. To do so would allow virtually any circuit within Southern Bell's service area to be provided pursuant to a CSA using a channelized private line providing the transmission path regardless of whether it is switched or dedicated. This was not the intent of our ruling granting CSA authority to the LECs. Our policy is to provide LECs the ability to compete only where there is a threat of competition.

III. CONCLUSION

Order No. 13603, as well as Southern Bell's tariff, requires that there must be a direct potential of bypass prior to use of the CSA authority. Even Southern Bell concedes that TCI does not have the authority to provide local switched access, which is exactly what a PBX trunk provides. Based on the information before us, as discussed above, we find that Southern Bell has inappropriately provided 9 circuits to Monroe County in violation of the restrictions of its CSA authority.

On April 19, 1995, Southern Bell, in apparent response to the results of the investigation, notified the Commission that it intended to adjust the rates to the county for the MegaLink channels transporting PBX trunks to the current tariff rates. This is appropriate in view of the Company's duty to change only tariffed rates unless otherwise authorized. In addition, the company stated that it would keep the county whole by increasing other private line services for circuits which it has CSA authority. Because of the facts of this case, because Southern Bell has voluntarily remedied the violation and because the statutory climate regarding CSAs will be changing in the near future, we find that an order to show cause regarding a penalty shall not be issued. However, Southern Bell is hereby cautioned in the strongest possible terms that these types of violations will not be tolerated in the future.

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 violated the provisions of Order No. 13603 and the provisions of the Company's tariff regarding the use of contract service arrangements as set forth in the body of this Order. It is further

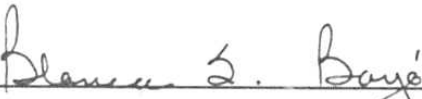
ORDERED that no order to show cause shall be issued in this case as set forth in the body of this Order. It is further

ORDERED that this Order shall become final and effective unless an appropriate petition is filed in accordance with the "Notice of Further Proceedings or Judicial Review" as set forth below. It is further

ORDERED that if this Order becomes final and effective on the date set forth below, this docket shall be closed.

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By ORDER of the Florida Public Service Commission, this 31st
day of July, 1995.



BLANCA S. BAYÓ, Director
Division of Records and Reporting

(S E A L)

TWH

Commissioner Diane K. Kiesling dissented from the Commission's decision to decline to require Southern Bell to show cause why a penalty should not be imposed for the violations of a Commission Order and the Company's tariff.

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.59(4), 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.

The action proposed herein is preliminary in nature and will not become effective or final, except as provided by Rule 25-22.029, Florida Administrative Code. Any person whose substantial interests are affected by the action proposed by this order may file a petition for a formal proceeding, as provided by Rule 25-22.029(4), Florida Administrative Code, in the form provided by Rule 25-22.036(7)(a) and (f), Florida Administrative Code. This petition must be received by the Director, Division of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on August 21, 1995.

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In the absence of such a petition, this order shall become effective on the day subsequent to the above date as provided by Rule 25-22.029(6), Florida Administrative Code.

Any objection or protest filed in this docket before the issuance date of this order is considered abandoned unless it satisfies the foregoing conditions and is renewed within the specified protest period.

If this order becomes final and effective on the date described above, any party substantially 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 effective date 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.

DIAGRAM 1

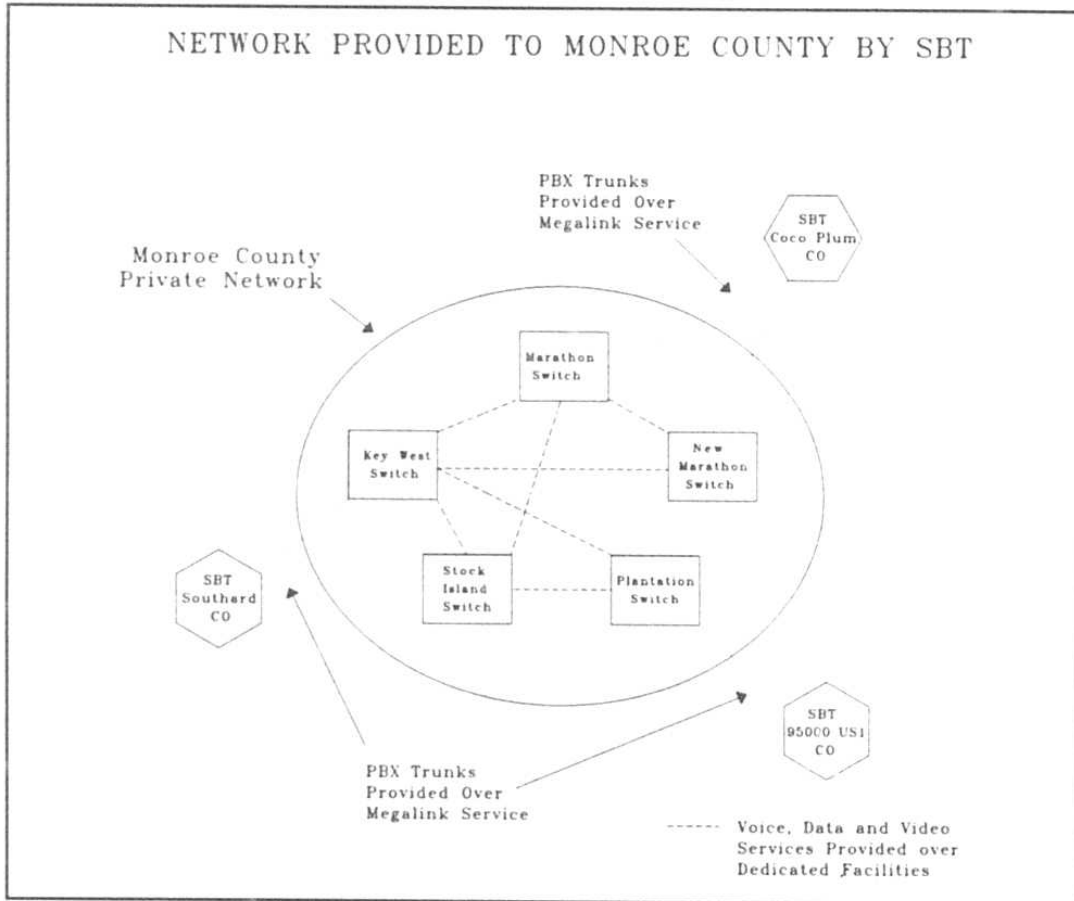


Diagram 1 provides a general depiction of the circuits provided to Monroe County by Southern Bell.