

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Notice by BellSouth Telecommunications, Inc. of adoption of an approved interconnection, unbundling, and resale agreement between BellSouth Telecommunications, Inc. and AT&T Communications of the Southern States, Inc. by Healthcare Liability Management Corporations d/b/a Fibre Channel Networks, Inc. and Health Management Systems, Inc.

DOCKET NO. 990959-TP
ORDER NO. PSC-99-1930-PAA-TP
ISSUED: September 29, 1999

The following Commissioners participated in the disposition of this matter:

JOE GARCIA, Chairman
J. TERRY DEASON
SUSAN F. CLARK
JULIA L. JOHNSON
E. LEON JACOBS, JR.

NOTICE OF PROPOSED AGENCY ACTION
ORDER DENYING REQUEST FOR APPROVAL OF ADOPTION OF
INTERCONNECTION, UNBUNDLING, AND RESALE AGREEMENT

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.

DOCUMENT NUMBER-DATE

11757 SEP 29 99

FPSC-RECORDS/REPORTING

By letter dated July 23, 1999, BellSouth Telecommunications, Inc. filed a Notice of the adoption by Health Liability Management Corporations d/b/a Fibre Channel Networks, Inc. and Health Management Systems, Inc. (HLMC or company) of the Interconnection, Unbundling, and Resale Agreement entered into by and between BellSouth Telecommunications, Inc. and AT&T Communications of the Southern States, Inc., which the Commission approved by Order No. PSC-97-0724-FOF-TP issued June 19, 1997.

HLMC is not a certificated telecommunications company. Although this Commission has approved Agreements prior to an Alternative Local Exchange Telecommunications (ALEC) company being certificated, the history of this particular company has demonstrated a pattern of disregard for Commission Orders and Rules. Further, HLMC is not registered with the Florida Department of State as a corporation operating in the State of Florida and doing business as either Fibre Channel Networks, Inc. or Health Management Systems, Inc., contrary to the representation in HLMC's petition.

Our concern with HLMC arose from its 1996 Interexchange Telecommunications (IXC) application. On July 8, 1996, HLMC filed an application for a certificate of Public Convenience and Necessity to provide statewide IXC services (Docket No. 960811-TI). The application lacked the information to support a finding of financial capability as required by Section 364.337(3), Florida Statutes. HLMC also failed to furnish documentation of registration with the Secretary of State, Division of Corporations, to conduct business within the State of Florida as required in Form PSC/CMU 31 (3/96), incorporated by reference in Rule 25-24.471(1), Florida Administrative Code. As a result, in Proposed Agency Action Order No. PSC-97-0741-FOF-TI, issued June 25, 1997, we found that it was not in the public interest to grant HLMC an IXC certificate of Public Convenience and Necessity.

On July 21, 1997, HLMC filed a petition for a formal proceeding pursuant to Rule 25-22.029, Florida Administrative Code. On November 20, 1997, the Commission issued Order No. PSC-97-1465-FOF-TI dismissing the petition for Administrative Hearing pursuant to Rule 25-22.042, Florida Administrative Code, on the grounds that

the company had shown a willful disregard for the Commission's Orders and Rules. Order No. PSC-97-0741-FOF-TI became final and effective as of November 4, 1997, and that docket was closed. Since then HLMC has had ample time to address this Commission's concerns and to correct the deficiencies in its application for IXC certification, but has failed to do so.

Section 252(i) of the Act is silent on a state's authority to reject an adoption. However, the Act does contemplate rejection of an agreement by a state commission, such as in Section 252(e)(2), where it references the rejection of the terms of an agreement. We believe that this Commission has the authority to reject HLMC's adoption of the BellSouth/AT&T Agreement as not being consistent with the public interest. We conclude that we have the authority to reject an adoption as not being in the public interest based on the prior inappropriate conduct and actions of one of the parties.

As noted above, we denied HLMC a certificate because HLMC failed to complete its application and failed to establish that it had the technical, financial or managerial capability to operate a telecommunications company. Because HLMC has failed to obtain a Certificate of Public Convenience and Necessity pursuant to Section 364.337, Florida Statutes, HLMC cannot provide telecommunications services in Florida, and therefore, does not meet the statutory definition of a "telecommunications carrier" under Section 47 USC 153 (44), nor can it operate as an interexchange carrier in Florida. Although Section 252(i) of the Act mandates that BellSouth make available its interconnection agreement with AT&T to any requesting "telecommunications carrier," we do not believe BellSouth is obligated to provide such an agreement to HLMC because it is not currently a "telecommunications carrier."

Therefore, until such time as HLMC submits a complete and accurate application for ALEC certification in accordance with Commission Rules, and is properly registered to operate as a corporation within the State of Florida, we find it appropriate to reject HLMC's adoption of the BellSouth/AT&T agreement as not being consistent with the public interest.

Based on the foregoing, it is

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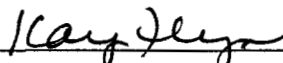
ORDERED by the Florida Public Service Commission that the Notice of Adoption of the BellSouth/AT&T Interconnection, Unbundling, and Resale Agreement by Healthcare Liability Management Corporations d/b/a Fibre Channel Networks, Inc., and Health Management Systems, Inc., filed by BellSouth Telecommunications, Inc. is hereby denied. It is further

ORDERED that the provisions of this Order, issued as proposed agency action, shall become final and effective upon the issuance of a Consummating Order unless an appropriate petition, in the form provided by Rule 28-106.201, Florida Administrative Code, is received by the Director, Division of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on the date set forth in the "Notice of Further Proceedings" attached hereto. It is further

ORDERED that in the event this Order becomes final, this Docket shall be closed.

By ORDER of the Florida Public Service Commission this 29th day of September, 1999.

BLANCA S. BAYÓ, Director
Division of Records and Reporting



Kay Flynn, Chief
Bureau of Records

(S E A L)

KMP

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 that is available under Section 120.57, 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 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.

The action proposed herein is preliminary in nature. Any person whose substantial interests are affected by the action proposed by this order may file a petition for a formal proceeding, in the form provided by Rule 28-106.201, 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 October 20, 1999.

In the absence of such a petition, this order shall become final and effective upon the issuance of a Consummating Order.

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.

M E M O R A N D U M

September 29, 1999

RECEIVED-FPSC

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RECORDS AND
REPORTING

TO: DIVISION OF RECORDS AND REPORTING

FROM: DIVISION OF LEGAL SERVICES (PEÑA) *KMP CB*

RE: DOCKET NO. 990959-TP - NOTICE BY BELLSOUTH
TELECOMMUNICATIONS, INC. OF ADOPTION OF AN APPROVED
INTERCONNECTION, UNBUNDLING, AND RESALE AGREEMENT BETWEEN
BELLSOUTH TELECOMMUNICATIONS, INC. AND AT&T
COMMUNICATIONS OF THE SOUTHERN STATES, INC. BY HEALTHCARE
LIABILITY MANAGEMENT CORPORATIONS D/B/A FIBRE CHANNEL
NETWORKS, INC. AND HEALTH MANAGEMENT SYSTEMS, INC.

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Attached is a NOTICE OF PROPOSED AGENCY ACTION ORDER DENYING
REQUEST FOR APPROVAL OF ADOPTION OF INTERCONNECTION, UNBUNDLING,
AND RESALE AGREEMENT, to be issued in the above-referenced docket.
(Number of pages in order - 5)

KMP/anc
Attachment
cc: Division of Communications
I: 990959.kmp

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