

Original

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Request for approval of amendment to interconnection, unbundling, and resale agreement between BellSouth Telecommunications, Inc. and NorthPoint Communications, Inc.

DOCKET NO. 991719-TP

In re: Request for approval of amendment to interconnection, unbundling, and resale agreement between BellSouth Telecommunications, Inc. and Palm Beach Telephone Company.

DOCKET NO. 991720-TP

In re: Request for approval of amendment to interconnection, unbundling, and resale agreement between BellSouth Telecommunications, Inc. and Access Integrated Networks, Inc.

DOCKET NO. 991723-TP
ORDER NO. PSC-00-0247-FOF-TP
ISSUED: February 7, 2000

The following Commissioners participated in the disposition of this matter:

- JOE GARCIA, Chairman
- J. TERRY DEASON
- SUSAN F. CLARK
- E. LEON JACOBS, JR.

ORDER ON AMENDMENT TO INTERCONNECTION, UNBUNDLING, AND RESALE AGREEMENT

BY THE COMMISSION:

On November 12, 1999, BellSouth submitted an amendment to its negotiated interconnection, unbundling, and resale agreement with Northpoint Communications, Inc. for the Commission's approval under the Act.

DOCUMENT NUMBER-DATE

01648 FEB-78

FPSC-RECORDS/REPORTING

On November 12, 1999, BellSouth submitted an amendment to its interconnection, unbundling, and resale agreement with Palm Beach Telephone Company for the Commission's approval under the Act.

On November 12, 1999, BellSouth submitted an amendment to its interconnection, unbundling, and resale agreement with Access Integrated Networks, Inc. for the Commission's approval under the Act.

Section 252(e) of the Telecommunications Act of 1996 provides that any interconnection agreement adopted by negotiation or arbitration shall be submitted for approval to the State commission. The State commission is required to approve or reject the agreement, with written findings as to any deficiencies. Paragraph (2) of Section 252(e) provides criteria for rejecting an agreement. That paragraph provides in part that the State commission may only reject:

an agreement (or any portion thereof) adopted by negotiation under subsection (a) if it finds that (i) the agreement (or any portion thereof) discriminates against a telecommunications carrier not a party to the agreement; or (ii) the implementation of such agreement or portion is not consistent with the public interest, convenience, and necessity

The provisions contained in these amendments to agreements that concern staff are as follows:

- 1) **The terms and conditions contained within this Part A & Part B were negotiated as a whole and each term and condition within this Part A & Part B is interdependent upon the other terms and conditions.**
(emphasis in original)
- 2) . . . The parties shall adopt all rates, terms and conditions concerning such other interconnection, service or network element and any other rates, terms and conditions that are interrelated or were negotiated in exchange for or in conjunction with the interconnection, service or network element being adopted. . . .

- 3) **The rates, terms and conditions contained within this Attachment were negotiated as a whole and each rate, term and condition within the Attachment is interdependent upon the other rates, terms and conditions.** (emphasis in original)

Some or all of these provisions are contained in the identified amendments, but are located in different sections depending upon the type of agreement or amendment.

In its First Report and Order, FCC Order 96-325, the Federal Communications Commission (FCC) interpreted Section 252 of the Act and explained the role of state commissions under the Act. Of particular relevance is the FCC's interpretation that, pursuant to Section 252(i), "[c]arriers may obtain any individual interconnection, service, or network element under the same terms and conditions as contained in any publicly filed interconnection agreement without having to agree to the entire agreement." (FCC Order 96-325, ¶ 40)

In its Order, the FCC considered the issue of whether Section 252(i) allows requesting telecommunications carriers to choose among provisions of prior approved interconnection agreements or requires them to accept an entire agreement. (FCC Order 96-325, ¶1309) The FCC concluded that the text of Section 252(i) supports the requesting carrier's ability to choose among individual provisions contained in publicly filed interconnection agreements. (FCC Order 96-325, ¶1310) In support of its conclusion, the FCC stated that unbundled access to agreement provisions will enable smaller carriers who lack bargaining power to obtain favorable terms and conditions -- including rates -- negotiated by large interexchange carriers, and speed the emergence of robust competition. (FCC Order 96-325, ¶1313) The FCC further concluded that, ". . . the 'same terms and conditions' that an incumbent LEC may insist upon shall relate solely to the individual interconnection, service, or element being requested under Section 252(i)." (CC Order No. 96-325, ¶1315)

We note that the U.S. Supreme Court found the FCC's interpretation of Section 252(i) reasonable, and upheld the FCC's rule implementing this provision, Rule 47 C.F.R. §51.809. AT&T Corp. v. Iowa Utils. Bd., 525 U.S. 366 (1999).

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We are concerned that the provisions noted above appear to require other carriers to adopt entire sections of agreements and not an individual interconnection, service, or element, as contemplated in Section 252(i), FCC Order 96-325, and 47 C.F.R. §51.809. We believe that this apparent requirement would deter potential carriers from adopting any particular rate, term or condition from any of the agreements as its own and further appears to require the entire agreements to be adopted as a whole. We believe that any provision that acts as a deterrent to selecting a particular rate, term or condition discriminates against potential carriers. Furthermore, we believe that the appearance of the requirements could have a chilling effect on competition as a whole. This chilling effect is not consistent with the public interest or the clear intent of the Act.

Based on the foregoing, we find that the provisions identified herein and contained in the agreements and amendments filed in these dockets violate Section 252(i) of the Act and are not consistent with FCC Order 96-325 and Rule 47 C.F.R. §51.809. Therefore, we reject the provisions discussed above but approve the remaining portions of the agreements and amendments filed in these dockets.

Therefore, it is

ORDERED by the Florida Public Service Commission that the amendments to agreements in Dockets Nos. 991719-TP, 991720-TP, and 991723-TP are approved except for the specific provisions addressed herein. It is further

ORDERED that Dockets Nos. 991719-TP, 991720-TP, and 991723-TP shall be closed.

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By ORDER of the Florida Public Service Commission this 7th
day of February, 2000.

BLANCA S. BAYÓ, Director
Division of Records and Reporting

By: Kay Flynn
Kay Flynn, Chief
Bureau of Records

(S E A L)

MKS

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 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.

Any party adversely affected by the Commission's final action in this matter may request: 1) reconsideration of the decision by filing a motion for reconsideration with the Director, Division of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, within fifteen (15) days of the issuance of this order in the form prescribed by Rule 25-22.060, Florida Administrative Code; or 2) judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or the First District Court of Appeal in the case of a water and/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 after the issuance 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.