

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Investigation into
pricing of unbundled network
elements.

DOCKET NO. 990649-TP
ORDER NO. PSC-00-0479-PCO-TP
ISSUED: March 7, 2000

ORDER DENYING BELLSOUTH'S MOTION
TO INCLUDE ISSUES IN ISSUES LIST

A. BACKGROUND

On December 10, 1998, in Docket No. 981834-TP, the Florida Competitive Carriers Association (FCCA), the Telecommunications Resellers, Inc. (TRA), AT&T Communications of the Southern States, Inc. (AT&T), MCIMetro Access Transmission Services, LLC (MCIMetro), WorldCom Technologies, Inc. (WorldCom), the Competitive Telecommunications Association (Comptel), MGC Communications, Inc. (MGC), Intermedia Communications Inc. (Intermedia), Supra Telecommunications and Information Systems (Supra), Florida Digital Network, Inc. (Florida Digital Network), and Northpoint Communications, Inc. (Northpoint) (collectively, "Competitive Carriers") filed their Petition of Competitive Carriers for Commission Action to Support Local Competition in BellSouth's Service Territory. Among other matters, the Competitive Carriers' Petition asked that we set deaveraged unbundled network element (UNE) rates.

On May 26, 1999, we issued Order No. PSC-99-1078-PCO-TP, granting in part and denying in part the Competitive Carriers' petition. Specifically, we granted the request to open a generic UNE pricing docket for the three major incumbent local exchange providers in Florida, BellSouth Telecommunications, Inc. (BellSouth), Sprint-Florida, Incorporated (Sprint), and GTE Florida Incorporated (GTE). Accordingly, this docket was opened to address the deaveraged pricing of UNEs, as well as the pricing of UNE combinations and nonrecurring charges.

A prehearing conference was held in the matter on December 2, 1999. Subsequently, the parties presented a joint stipulation for approval, setting forth new time frames which would enhance our ability to develop a full and accurate record in this case, and which would provide the parties with the opportunity to refine the issues, as well as the information provided for our ultimate decision. Additionally, the revised schedule would allow more time to fully consider the FCC's recent Order No. 99-238. By Order No. PSC-99-2467-PCO-TP, issued December 17, 1999, the joint stipulation was approved, and the hearing, then scheduled for December 13-15,

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1999, was canceled. The Order also indicated that a revised Order on Procedure would be issued setting forth new filing dates to coincide with the hearing dates identified in the stipulation, and also the newly refined issues to be addressed in this proceeding.

On January 31 and February 7, 2000, our staff conducted issue identification meetings with all of the parties to determine which issues should be included in this docket. BellSouth proposed that we consider, among other things, collocation pricing issues, but our staff disagreed, indicating that collocation pricing issues should be addressed in a separate docket.

On February 4, 2000, BellSouth filed a Motion to Include Issues in Issue List. On February 16, 2000, GTE, Sprint, and FCCA filed responses to the Motion.

B. BELLSOUTH'S MOTION

In its motion, BellSouth requests that we consider in this docket the pricing of assembly point collocation, adjacent collocation, DSLAM collocation at the remote terminal, security access to enable alternative local exchange carriers (ALECs) access to the BellSouth premises housing the ALECs' collocated equipment, and fixed space preparation to replace individual case basis (ICB) prices. In support of this request, BellSouth states that a hearing was held in the generic collocation proceeding, consolidated Dockets Nos. 990321-TP/991834-TP, on January 12-14, 2000. It states that, at the hearing, ALECs presented testimony that they needed the above referenced collocation elements.

BellSouth argues that establishing a separate generic docket to consider pricing for these five collocation issues will unnecessarily delay their availability. Further, it maintains, while interim rates have already been established by the Commission for other collocation elements, these five collocation categories do not have applicable interim rates in effect.

BellSouth further asserts that the requested collocation pricing categories may be required for Section 271 relief. According to BellSouth, the FCC, at a minimum, requires that each collocation element have cost-based rates. Waiting for a separate generic collocation pricing docket, it argues, could result in delay of its authorization, pursuant to Section 271 of the Telecommunications Act, to provide interLATA service in Florida. It states that this result would be patently unfair, especially

given that the addition of these five collocation categories will not result in hardship to any party, nor affect in any way the hearing in this matter, which is currently scheduled for July 2000.

C. OTHER PARTIES' POSITIONS

1) Sprint's position

Sprint states that it is not opposed to including the subject collocation issues in this proceeding, but would urge that we set them as separate issues with applicability only to BellSouth. It argues that any incumbent local exchange company with an approved collocation tariff on file, such as Sprint, should be exempt from having to respond to the BellSouth specific issues or run the risk of having new prices imposed in this proceeding.

By way of explanation, Sprint states that, although the FCC's Third Report and Order, setting forth the FCC-mandated list of unbundled network elements (UNEs) and UNE combinations, does not address collocation, it is clear that collocation is an element that needs to be provided to new entrants in accordance with the 1996 Federal Act and the FCC's rules. It also states that the appropriate manner in which to comply with the 1996 Federal Act and the FCC's rules is by filing a Florida-specific intrastate collocation tariff which includes the requisite terms, conditions, and prices. Sprint maintains that it has filed such a collocation tariff; however, it argues, it would serve no purpose for it to cost and price new collocation arrangements until we set the policy for such arrangements.

Sprint maintains that at this time it has received no requests for such new collocation arrangements. Therefore, it argues, if we agree to allow the inclusion of BellSouth's collocation issues in this proceeding, it should be exempted from having to respond to them. Moreover, it asserts, we should not in that event set collocation prices for Sprint, for it will revise its tariff once we set policy for new arrangements not currently covered by its tariff.

2) GTE's position

GTE states that it opposes BellSouth's motion. It argues that, without knowing what collocation requirements will apply, it would be infeasible to try to resolve collocation pricing in this docket. Additionally, GTE states that BellSouth is incorrect in

stating that adding its five proposed collocation issues will not result in hardship to any party. According to GTE, it has a collocation tariff, which includes a pricing structure for collocation elements, that took effect last month. Therefore, it argues, consideration of a collocation pricing structure in this proceeding would be at odds with GTE's specific tariff filing.

GTE further argues that it would be prejudiced by the addition of the proposed issues because such action would require it to complete yet additional cost studies on an expedited basis. It asserts that this is already a very complex proceeding, requiring numerous, detailed cost studies; therefore, it states, requiring it to complete additional studies, which it had no reason to anticipate would be included in this docket, will unduly tax its already burdened resources.

Finally, GTE states that it believes BellSouth wishes to add collocation pricing issues to this proceeding in part because the collocation elements at issue may be required for BellSouth to obtain Section 271 relief. Therefore, it suggests, a BellSouth-specific docket is a better place for resolution of the issues BellSouth raises, and BellSouth will not be prejudiced by consideration of the issues in a docket separate from this one.

3) FCCA's position

The FCCA argues that BellSouth's motion should be denied, but that we should move directly and expeditiously to schedule consideration of standardized collocation terms, conditions, and pricing in a second phase of the collocation proceeding already under way. It states that we should attach a high priority to the standardization of collocation terms, conditions, and pricing, and that there is no question regarding whether to undertake the task, or even when. It maintains that the only question to be decided is the choice of forum that provides both needed context and administrative efficiency.

The FCCA asserts that, through its motion, BellSouth seems intent on incorporating for decision in this proceeding, only the pricing considerations associated with collocation issues. To divorce pricing from terms and conditions, it argues, would risk creating ambiguity concerning the very arrangements to which ALECs are entitled. Moreover, the FCCA states, pricing for collocation fits more logically and flows more directly from the existing collocation proceeding. By creating a second phase of the

collocation proceeding, it states, we could maintain the clarity and focus of that proceeding while moving quickly to resolve the pricing issues.

The FCCA clarifies that BellSouth's assertion that the ALECs requested, among other things, assembly point collocation is incorrect. It argues that the ALECs did not request any arrangement by that name, which is apparently a term coined by BellSouth to connote a concept whereby BellSouth delivers UNEs to the ALECs and the ALECs combine them.

Further, the FCCA asserts, BellSouth erroneously argues that addressing collocation pricing in any other proceeding than the instant would delay the provisioning of collocation requests. It states that this is not the case because BellSouth routinely makes UNEs available before a state commission acts to determine appropriate pricing. Additionally, it argues, it is disingenuous for BellSouth to suggest that it cannot respond to requests for collocation until the conclusion of a collocation pricing docket.

Finally, the FCCA asserts that the issue list for the UNE pricing docket is already necessarily extensive with 13 items, many with subparts. To incorporate collocation terms, conditions, and pricing, it states, would complicate an already crowded pricing docket to the point where it would be unmanageable.

D. DECISION

Upon consideration, I find that it is appropriate to deny BellSouth's motion to include the five proposed collocation pricing issues within this proceeding. I agree that it would be infeasible to attempt resolution of the collocation pricing issues without first clearly defining the forms of collocation requested and the associated terms and conditions. To illustrate, BellSouth states that the ALECs have requested "assembly point collocation," but the FCCA states that the ALECs did not request any arrangement by that name. Thus, while I agree that we need to move post haste to commence our consideration of the matter, I also agree that administrative efficiency would be better served by reserving that consideration to a collocation proceeding.

Additionally, I agree that the instant proceeding is already quite complex, requiring numerous, detailed cost studies. Therefore, I find that additional issues would unnecessarily overburden the parties. In addition, I note that Sprint and GTE

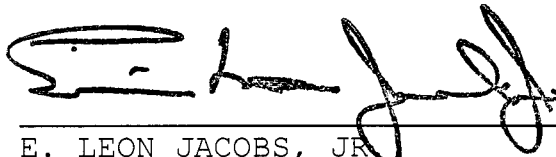
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have stated that they already have collocation tariffs in effect. If BellSouth believes that cost-based collocation rates are necessary for it to obtain Section 271 relief, and it further believes that such rates are required prior to our consideration of the matter in a generic proceeding, it could cost, price, and file a tariff for the desired collocation arrangements pending our decision.

Based upon the foregoing, it is

ORDERED by Commissioner E. Leon Jacobs, Jr., as Prehearing Officer, that BellSouth Telecommunications, Inc.'s Motion to Include Issues in Issue List is hereby denied as set forth in the body of this Order.

By ORDER of Commissioner E. Leon Jacobs, Jr. as Prehearing Officer, this 7th day of March, 2000.



E. LEON JACOBS, JR.
Commissioner and Prehearing Officer

(S E A L)

DMC

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.

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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.

Any party adversely affected by this order, which is preliminary, procedural or intermediate in nature, may request: (1) reconsideration within 10 days pursuant to Rule 25-22.0376, Florida Administrative Code, if issued by a Prehearing Officer; (2) reconsideration within 15 days pursuant to Rule 25-22.060, Florida Administrative Code, if issued by the Commission; or (3) 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 or wastewater utility. A motion for reconsideration shall be filed with the Director, Division of Records and Reporting, in the form prescribed by Rule 25-22.060, Florida Administrative Code. Judicial review of a preliminary, procedural or intermediate ruling or order is available if review of the final action will not provide an adequate remedy. Such review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.

001244

FLORIDA PUBLIC SERVICE COMMISSION - RECORDS AND REPORTING

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Date 3/8/00
Number of Originals 7 Copies Per Original 16
Requested By Ruth

Item Presented

Agenda For (Date) _____ Order No. 00479 In Docket No. 990649
Notice of _____ For (Date) _____ In Docket No. _____
Other _____

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March 6, 2000

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RECORDS AND
REPORTING

TO: DIVISION OF RECORDS AND REPORTING
FROM: DIVISION OF LEGAL SERVICES (CLEMONS) *DMC*
RE: DOCKET NO. 990649-TP - INVESTIGATION INTO PRICING OF
UNBUNDLED NETWORK ELEMENTS.

0479-PCO

Attached is an ORDER DENYING BELLSOUTH TELECOMMUNICATIONS, INC.'S MOTION TO INCLUDE ISSUES IN ISSUE LIST, to be issued in the above-referenced docket. (Number of pages in order - 7)

DMC/anc
Division of Communications
cc: Division of Communications (Ollila)
I: 990649o3.dmc

MUST GO TODAY

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