

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Investigation into
pricing of unbundled network
elements.

DOCKET NO. 990649-TP
ORDER NO. PSC-00-2015-PCO-TP
ISSUED: June 8, 2000

ORDER ON MOTION FOR EXTENSION OF TESTIMONY FILING DATES, MOTION
FOR CONTINUANCE, AND MODIFICATION OF SECOND REVISED
ORDER ON PROCEDURE

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 this Commission set deaveraged unbundled network element (UNE) rates.

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

By Order No. PSC-99-1397-PCO-TP, issued July 20, 1999, the procedures for this docket were established and the controlling dates set. By Order No. PSC-99-2237-PCO-TP, issued November 12,

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1999, the order establishing procedure was supplemented and revised to change the date of the prehearing conference to December 2, 1999, and to provide the parties with the opportunity to file supplemental direct testimony addressing FCC Order No. 99-238.

A prehearing conference was held 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, 1999, was canceled. The Second Revised Order on Procedure, Order No. PSC-00-0540-PCO-TP, was issued on March 16, 2000. Which set forth new filing dates and also the newly refined issues to be addressed in this proceeding.

Pursuant to Order No. PSC-00-0540-PCO-TP, alternative local exchange telecommunications companies (ALEC) rebuttal testimony and exhibits are due to be filed on June 1, 2000, and incumbent local exchange telecommunications companies (ILEC) rebuttal testimony is due to be filed on June 26, 2000. On May 17, 2000, AT&T, MCI/WorldCom, and the FCCA, (Joint Movants) filed a Motion for Extension of Time for Filing Testimony. BellSouth responded on May 19, 2000. GTEFL responded on May 22, 2000. Florida Cable Telecommunications Association, Inc. (FCTA), and Time Warner Telecom of Florida, L.P. responded in support of the motion on May 23, 2000. Counsel for Z-Tel and ALLTEL indicated that they would not be filing a response because they agree with the Motion.

On May 25, 2000, AT&T filed a Motion for Continuance of Hearing directed to the July 17-21, 2000 hearing. BellSouth responded on June 1, 2000. All other responses to this motion have been in support of AT&T's position, with the exception of GTEFL.

On May 26, 2000, the parties were notified that a Commission workshop would be held on June 2, 2000, to discuss outstanding issues regarding the BellSouth cost model. Following the workshop, an Oral Argument was convened to address the Joint Motion for Extension of Time and the Motion for Continuance.

B. JOINT MOTION FOR EXTENSION OF TIME

In the Motion for Extension of Filing Dates, the Joint Movants ask that the date for filing ALEC rebuttal testimony be extended to June 15, 2000, and that the date for ILEC rebuttal testimony be extended to June 29, 2000. The Joint Movants argue that this extension is necessary due to the complexity of the issues to be addressed, and certain complications relating to BellSouth's cost model. The Joint Movants assert that they have had difficulties accessing, using, and evaluating BellSouth's new model, which has had a detrimental impact on their ability to prepare testimony. The Joint Movants note that they participated in the May 15, 2000, workshop in which BellSouth explained to parties how to run the model and responded to questions about the model. The Joint Movants state that the information gathered as a result of the workshop should be sufficient to enable the ALECs to file testimony on June 15, 2000. Otherwise, the Joint Movants believe that they will be prejudiced if required to file on June 1, 2000, because they will be unable to present testimony that includes the information necessary for this Commission to make an informed decision in this proceeding.

1. OTHER PARTIES' POSITIONS

a) BellSouth's Position

In response, BellSouth argues that if the ALECs intend to present their own cost models, they should be required to do so by June 1, 2000. If, however, they do not plan to introduce their own cost models, BellSouth states that it is not opposed to the requested extension to June 15, 2000. If the extension is granted, BellSouth further agrees that the ILECs should be allowed to file rebuttal testimony on June 29, 2000.

b) GTEFL's Position

GTEFL opposes the requested extension of time. GTEFL argues that under the current schedule, GTEFL has three weeks to prepare its rebuttal testimony, and under the proposed extension, that time period would be reduced to two weeks. GTEFL maintains that it is very ambitious to expect GTEFL to analyze and prepare testimony rebutting the ALECs' testimony and any cost studies filed by the ALECs under the currently scheduled three weeks, and that two weeks simply would be unmanageable. GTEFL adds that its ability to

conduct discovery relating to any ALEC cost studies filed would be impaired.

GTEFL further emphasizes that while the proposal would cut GTEFL's time for filing rebuttal to two weeks, it would extend the ALECs' time for filing rebuttal responsive to the ILECs' direct testimony filed on May 1, 2000, to a full six weeks. GTEFL contends that this is not fair, especially since the stated reason for the requested extension is not related to GTEFL, but to alleged difficulties with BellSouth's cost model. GTEFL also clarifies that while the Motion indicates that GTEFL only opposes an extension beyond one week, GTEFL, in fact, opposes any extension that would lengthen the time for ALECs to file their rebuttal testimony, while shortening the time for GTEFL to do so. GTEFL adds that the problems with BellSouth's model referenced by the Joint Movants has no impact on ALECs' ability to prepare their own cost models; thus, the filing date should not be moved. GTEFL concludes that any relief granted with respect to this request should be specifically tailored to any problems raised regarding BellSouth's cost model and should not affect GTEFL.

C. AT&T'S MOTION FOR CONTINUANCE OF HEARING

In its Motion for Continuance of Hearing, AT&T asks that the date of the hearing be moved from its starting date of July 17, 2000, to an unspecified future date. AT&T argues that the basis for its motion is its continuing inability to get BellSouth's cost model to run in such a manner that AT&T is able to replicate the output achieved by BellSouth. AT&T argues that the Stipulated Agreement entered into by the parties on December 6, 1999, assured AT&T that it would receive a working cost model, along with all supporting documentation, from BellSouth. Cost Studies were filed on May 1, 2000, and AT&T argues that had it been provided with a working model in a timely fashion, it would have been able to provide testimony on the cost model in time for the June 1, 2000, due date, and would have been prepared for a July 17, 2000, hearing.

1. OTHER PARTIES' POSITIONS

a) BellSouth's Position

In responding to AT&T's motion, BellSouth notes that it does not oppose AT&T's request for an extension. BellSouth does

however, believe AT&T's claims of possible prejudice are unfounded, as it did indeed provide AT&T with a working, reviewable cost model. BellSouth argues that the computer problems associated with running the models described by AT&T have not occurred in the manner described by AT&T, and that it has offered assistance to any party having problems running the model. BellSouth represents that some companies, such as MCI, Sprint, and Rhythms Links, have made inquiries into the workings of the model, but none have had issues with running the models or with it crashing. BellSouth believes that AT&T's problems stem from the method in which AT&T's consultant is running the model. On the other hand, BellSouth did find one omission of a cost input and one instance of a box not being checked when it should have been. However, BellSouth states that while the model will run without the corrected inputs, the results would not match that which was submitted to the Commission.

b) GTEFL's Position

GTEFL opposes the Motion for a Continuance of Hearing. As discussed regarding the motion for extension of time, GTEFL believes that it is being prejudiced if the ALECs are allowed more time to file testimony, while the time GTEFL has to review the ALECs' testimony and engage in discovery is curtailed. Moreover, GTEFL argues that AT&T and the other ALECs have in fact already received relief and an unfair advantage in that they did not have to file their testimony on June 1, 2000, the originally established filing date. As such, GTEFL urges that the advantage not be further expanded. Further expansion of the filing period, GTEFL argues, without a corresponding expansion of its time to file rebuttal to the ALEC's direct case, would run afoul of GTEFL's substantive and procedural due process rights.

c) Remaining Parties' Positions

Sprint, Rhythms Links Inc. (Rhythms), FCCA, MCI WorldCom, and the Florida Cable Telecommunications Association (FCTA) all submitted responses in support of AT&T's Motion for Continuance of Hearing. All argue that the inordinate amount of time required to understand and run the BellSouth model, coupled with the many and varied problems of that model, have limited their ability to prepare testimony for filing by the June 1 deadline, and to prepare for a hearing beginning July 17. Rhythms also notes that both Sprint and GTEFL have filed revisions or supplements to their models and testimony subsequent to their original filings. Rhythms, the FCCA, and MCIWorldCom, while supporting the motion, do urge

that final action on the docket be taken before the end of the 2000 calendar year.

D. DETERMINATION

The parties were provided notice of a Commission Workshop and an Emergency Oral Argument on June 2, 2000. The purpose of the workshop was to discuss any problems with the BellSouth cost models, to facilitate the dissemination of information regarding possible adjustments to allow the model to perform in the manner prescribed, and to discuss the motions for continuance and for extension of time. The parties attending included all the Movants and respondents previously noted. The objectives were accomplished, with BellSouth agreeing to give further direction on ways to remedy the problems with its cost models and to disseminate any updates through e-mail to the parties and staff.

At Oral Argument, AT&T stated "I think we've kind of moved beyond arguing the motion to what we're going to do. . . ." BellSouth presented proposed alternative filing dates for testimony and shortened discovery periods, representing that most of the parties were in agreement. GTEFL, after noting its objections to the proposal, stated that so long as adequate and equal time was given the ILECs to review the testimony, it could live with the proposed schedule.

While cognizant of the myriad and complex issues in this docket, it appears that, with respect to the BellSouth cost model for loops, it is this model which appears to be the primary stumbling block in moving this docket forward. AT&T stated that it believes the BellSouth model appears fundamentally sound, and the other parties generally agreed. There also is no indication that BellSouth is overwhelmed with calls from ALECs with problems while attempting to run the model. Indeed, some ALECs admitted in the workshop that they simply do not have the resources to analyze the BellSouth cost model, and have deferred to AT&T for the analysis. AT&T points out, however, that the ALECs' reliance on AT&T may not be in their best interests, as the inputs and sensitivity analysis of interest to AT&T may be of little use to other ALECs.

On the other hand, it appears there have been very few problems in running the GTEFL and Sprint cost models. This begs the question of whether AT&T and the other ALECS have allocated

their time efficiently in order to submit their testimony in a timely manner. It is my determination that they have not. Therefore, it is imperative that testimony previously due on June 1, 2000, be filed on June 8, 2000, as set forth in this Order.

That being said, I agree with the emphasis placed by AT&T and the remaining ALECs on the loop cost model because of its importance in resolving many of the issues in this docket. I agree that many non-policy issues are intertwined with this model, and as such, those issues should be examined after the parties have had an opportunity to fully develop their analysis of the model. While all parties state that BellSouth has been helpful in assisting when parties have had questions regarding the loop model, the burden is on BellSouth to provide a working model, as set forth in the parties' stipulation approved in Order No. PSC-99-2467-PCO-TP, issued December 17, 1999. Thus, when an error is found by BellSouth, it is not the duty of BellSouth to provide the correcting information singularly to the party inquiring, but rather to all parties of record. When BellSouth discovers a problem independent of inquiry by a party, it is also BellSouth's duty to provide notice and the corrections necessary to all parties of record. BellSouth's representation that it will notify all parties on an ongoing basis of all problems and solutions should allow AT&T and the remaining ALECs to complete their analysis of the loop model in a timely fashion. I must, however, emphasize that should technical problems continue to arise with BellSouth's cost models, then concerns under Section 364.01(4)(g), Florida Statutes, will be raised in my mind, as well as issues under Section 271 of the Telecommunications Act relating to the importance of these issues in opening the local market to competition. Nevertheless, at this time, I do not believe BellSouth has been dilatory in its obligations. Therefore, based upon the foregoing, I find it reasonable to allow the ILECs an additional week to file rebuttal testimony.

Part 1 of the hearing is fast approaching, and I believe there are certain issues within this docket which can be effectively examined at this hearing, and which do not significantly hinge upon the BellSouth cost model for loops. As such, I find that the following issues will be addressed at the hearing beginning July 17, 2000; issues 5, 6, 7(b), 7(c), 7(d), 9(b), and 13, as set forth in the Second Revised Order on Procedure (Order No. PSC-00-0540-PCO-TP), and more particularly described as follows:

Issue 5: For which signaling networks and call-related databases should rates be set?

Issue 6: Under what circumstances, if any, is it appropriate to recover non-recurring costs through recurring rates?

Issue 7: What are the appropriate assumptions and inputs for the following items to be used in the forward-looking recurring UNE cost studies?

- b) depreciation;
- c) cost of capital;
- d) tax rates.

Issue 9(b): Subject to the standards of the FCC's Third Report and Order, should the Commission require ILECs to unbundle any other elements or combinations of elements? If so, what are they and how should they be priced?

Issue 13: When should the recurring and non-recurring rates and charges take effect?

In addition, ALEC objections to written discovery on these issues are due within five days of service and answers are due within 14 days of service. Discovery and responses can be served by electronic-mail, followed up by the original document.

Finally, upon consideration, I find it reasonable to bifurcate the hearing such that the above issues will be heard on July 17-21, 2000, and all remaining issues to be presented, as identified in the Second Revised Order on Procedure (Order No. PSC-00-0540-PCO-TP), will be addressed in Part 2 of the hearing.

Controlling Dates

Because specific issues are set to be addressed during Part 1 of the hearing and the testimony filing dates have been modified, I find it reasonable to modify the controlling dates for these proceedings. I note that the September hearing will be a continuation of the July hearing, and as such staff will file a recommendation at the conclusion of the September hearing only. In

addition, I note that all ILECs will now participate in both parts of the hearing. The modified controlling dates are as follows:

HEARING - Part 1

- | | | |
|----|--|-----------------|
| 1) | ILEC recurring cost studies for Hearing #1 | April 17, 2000 |
| 2) | ILEC non-recurring Cost studies and Direct testimony and exhibits for Hearing #1 | May 1, 2000 |
| 3) | ALEC Rebuttal testimony and exhibits for Hearing #1 | June 8, 2000 |
| 4) | ILEC Rebuttal testimony and exhibits for Hearing #1 | June 29, 2000 |
| 5) | Prehearing Statements | June 26, 2000 |
| 6) | Prehearing Conference | July 6, 2000 |
| 7) | Hearing | July 17-21,2000 |

HEARING - Part 2

- | | | |
|----|---|-----------------------|
| 1) | GTE cost studies for Hearing #2 | June 15, 2000 |
| 2) | GTE Cost studies and Direct testimony and exhibits for Hearing #2 | June 30, 2000 |
| 3) | ALEC Rebuttal testimony and exhibits for Hearing #2 | July 24, 2000 |
| 4) | ILEC Rebuttal testimony and exhibits for Hearing #2 | August 14, 2000 |
| 5) | Prehearing Statements | August 21, 2000 |
| 6) | Prehearing Conference | August 28, 2000 |
| 7) | Hearing | September 19-22, 2000 |
| 8) | Briefs on all issues | October 16, 2000 |

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Upon consideration, I find that the Motion for Extension of Time is approved in part to grant additional time to file testimony and denied in part to the extent that the specific amounts of time requested are not reasonable. Because the Motion for Extension of Time is granted in part and the parties have indicated that it is no longer necessary to continue the hearing in view of the bifurcation of the issues, I find it reasonable to deny the Motion for Continuance of Hearing.

Based upon the foregoing, it is therefore,

ORDERED by Commissioner E. Leon Jacobs, Jr., as Prehearing Officer, that the Motion for an Extension of Time, filed May 17, 2000, is granted in part and denied in part as set forth in the body of this Order. It is further

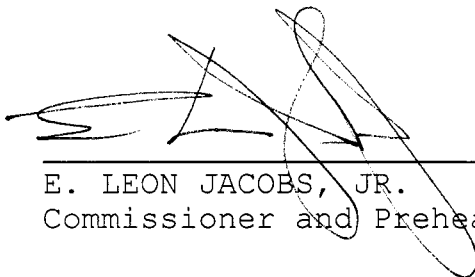
ORDERED that the Motion for a Continuance, filed May 25, 2000, is denied. It is further

ORDERED that the issues to be heard at the hearing beginning July 17, 2000, shall be limited to those identified within the body of this Order. It is further

ORDERED that the Second Revised Order on Procedure, Order No. PSC-00-0540-PCO-TP, is modified as set forth in the body of this Order. It is further

ORDERED that the Second Revised Order on Procedure, Order No. PSC-00-0540-PCO-TP, is reaffirmed in all other respects.

By ORDER of Commissioner E. Leon Jacobs, Jr. as Prehearing Officer, this 8th day of June, 2000.



E. LEON JACOBS, JR.
Commissioner and Prehearing Officer

(S E A L)

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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.

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.

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Notice of _____ For (Date) _____ In Docket No. _____
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TO: DIVISION OF RECORDS AND REPORTING

FROM: DIVISION OF LEGAL SERVICES (KNIGHT) *Wdk*

RE: DOCKET NO. 990649-TP - INVESTIGATION INTO PRICING OF
UNBUNDLED NETWORK ELEMENTS.

2015 - FCC

Attached is an ORDER ON MOTION FOR EXTENSION OF TESTIMONY
FILING DATES, MOTION FOR CONTINUANCE, AND MODIFICATION OF SECOND
REVISED ORDER ON PROCEDURE signed by Commissioner Jacobs, as
Prehearing Officer, which is ready for issuance. (Number of pages
in order - 11)

WDK/jmb

Attachment

cc: Division of Competitive Services

I: 990649jo.wdk

MUST GO TODAY

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