

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition by BellSouth Telecommunications, Inc. for Section 252(b) arbitration seeking resolution of certain issues arising in negotiation of resale agreement with Florida Telephone Services, LLC.

DOCKET NO. 991947-TP
ORDER NO. PSC-00-1571-FOF-TP
ISSUED: August 31, 2000

The following Commissioners participated in the disposition of this matter:

E. LEON JACOBS, JR.
LILA A. JABER

APPEARANCES:

E. EARL EDENFIELD, JR., Esquire, BellSouth Telecommunications, Inc., 150 South Monroe Street, Room 400, Tallahassee, Florida
On behalf of BellSouth Telecommunications, Inc.

PAUL B. JOACHIM, President, Florida Telephone Services, LLC, 696 E. Altamonte Do., Suite 4, Altamonte Springs, FL 32701
On behalf of Florida Telephone Services, LLC

BETH KEATING, Esquire, Division of Legal Services, Florida Public Service Commission, 2540 Shumard Oak Boulevard, Tallahassee, Florida
On behalf of the Florida Public Service Commission

FINAL ORDER ON ARBITRATION

BY THE COMMISSION:

On July 14, 1999, BellSouth Telecommunications, Inc. (BellSouth) requested negotiations with Florida Telephone Services, LLC, (FTS) to establish a new resale agreement between the companies in accordance with Section 251 of the Telecommunications Act of 1996 (the Act). In the course of negotiations between the companies, one issue was not resolved: What are the appropriate rates to be charged by BellSouth for ALECs' access to and use of the electronic and manual interfaces to BellSouth's OSS and functions? Therefore, on December 17, 1999, BellSouth filed a

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Petition for Arbitration pursuant to Section 252(b) of the Act. This matter was set for an administrative hearing on May 17, 2000.

Part II of the Federal Telecommunications Act of 1996 (Act) sets forth provisions regarding the development of competitive markets in the telecommunications industry. Section 251 of the Act regards interconnection with the incumbent local exchange carrier and Section 252 sets forth the procedures for negotiation, arbitration, and approval of agreements.

Section 252(b) addresses agreements arrived through compulsory arbitration. Specifically, Section 252(b)(1) states:

(1) Arbitration. - During the period from the 135th to 160th day (inclusive) after the date on which an incumbent local exchange carrier receives a request for negotiation under this section, the carrier or any other party to the negotiation may petition a State commission to arbitrate any open issues.

Section 252(b)(4)(C) states that the State commission shall resolve each issue set forth in the petition and response, if any, by imposing the appropriate conditions as required. This section requires this Commission to conclude the resolution of any unresolved issues not later than nine months after the date on which the local exchange carrier received the request under this section. The nine-month requirement has, however, been waived by the parties in this case.

This is our decision based upon the evidence and arguments presented at hearing.

I. Rates for OSS

BellSouth proposes to include in its new resale agreement with Florida Telephone Services, charges designed to recover costs it has incurred and will incur associated with the development and implementation of electronic interfaces that provide ALECs access to BellSouth's legacy operations support systems (OSS). The OSS in question are systems and databases used for pre-ordering, ordering, provisioning, maintenance and repair, and billing, of resold services and unbundled network elements purchased by ALECs. According to BellSouth witness Varner, the Act, FCC orders, and court decisions all support the company's contention that it is

entitled ". . . to recover its costs associated with developing, providing, and maintaining the interfaces that make BellSouth's OSS accessible to ALECs, such as FTS." Moreover, witness Varner observes that at least one federal district court has concluded that it is appropriate to recover costs associated with providing access to BellSouth's OSS solely from ALECs; the court stated: "Because the electronic interfaces will only benefit the CLECs, the ILECs, like BellSouth, should not have to subsidize them. . . . AT&T is the cost causer, and it should be the one bearing all the costs; there is absolutely nothing discriminatory about this concept."

BellSouth witness Caldwell sponsors in this proceeding the cost studies that yield the company's proposed OSS cost recovery charges for use of the electronic interfaces. She states that these electronic interfaces enable ALECs to submit Local Service Requests (LSRs) electronically and use BellSouth's legacy systems. The OSS cost study documentation indicates that the pre-ordering activities provided via BellSouth's interfaces include telephone number reservation, address validation, switch feature and service verification, and due date calculation. The ordering processes allow for interactive service order entry and order status inquiry. As noted by BellSouth witness Varner, these electronic interfaces manage the transmission of data to and from BellSouth's legacy OSS. Telecommunications Access Gateway (TAG) and Local Exchange Navigation System (LENS) process pre-ordering transactions and LSRs, and pass the transactions to the legacy systems and the LSRs to Local Exchange Ordering (LEO), which is the database for ALEC service orders. Electronic Data Interchange (EDI) is a third interface that ALECs can use to submit orders directly to the Local Exchange Ordering database. LEO hands off LSRs to the Local Exchange Service Order Generator (LESOG) and the BellSouth Service Order Generator (BSOG), where mechanized service orders are generated and sent on to Service Order Communications System (SOCS) for processing.

Two electronic interfaces were developed to facilitate trouble entry: Trouble Analysis Facilitation Interface (TAFI) and Electronic Communications Trouble Administration (ECTA). Use of these interfaces allows ALECs to access BellSouth's online maintenance and reporting systems. According to BellSouth, these interfaces afford ALECs the ability to process mechanically their customers' trouble reports with the same capabilities that are available to BellSouth's retail repair centers.

Witness Caldwell asserts that the electronic interface costs are of two types: development and implementation, and ongoing processing. The Development and Implementation rate element, \$.78 per LSR, is designed to recover the costs associated with specification of project requirements, computer program development, and system software costs. The Ongoing Processing element, \$1.93 per LSR, recovers costs related to dispensation of LSRs and maintaining the interfaces; this element also includes the Local Carrier Service Center (LCSC) labor costs for processing a LSR that is submitted electronically but "falls out", which simply means that it does not successfully transit through the interfaces. Since LSRs can initially be submitted either electronically or manually, BellSouth also proposes a manual processing charge. This charge, \$13.89 per LSR submitted manually, equates to an average 25 minutes of LCSC labor to process the LSR.

BellSouth witness Varner states that this Commission has previously stated, in Order No. PSC-98-0604-FOF-TP in Docket No. 960833-TP, that manual and electronic OSS costs may be recoverable. While he acknowledges that we have stated previously that OSS cost recovery should be dealt with in a generic proceeding, rather than an arbitration, witness Varner notes that no such proceeding has been established. Unless BellSouth successfully negotiates the inclusion of charges for OSS cost recovery with ALECs, the company is not recovering its costs for processing ALEC orders; consequently, witness Varner contends that BellSouth is caught between ". . . a rock and a hard place." Since this Commission has not established a generic OSS cost recovery docket, the witness proposes that the rates sponsored by BellSouth witness Caldwell be approved on an interim basis, subject to true-up at the conclusion of the generic proceeding. In its brief, BellSouth states in a footnote that it infers, based on cross-examination that occurred during the hearing, that our staff apparently believes that Docket No. 981834-TP is the forum in which OSS pricing is to be conducted. Thus, BellSouth asks that a procedural order concerning the OSS pricing issues be entered by this Commission.

FTS witness Joachim adamantly opposes BellSouth imposing on FTS any OSS cost recovery charges. According to the witness, FTS should not be assessed OSS charges ". . . unless they are tariffed and therefore charged by BellSouth themselves towards their own customers." Witness Joachim asserts that if BellSouth is allowed to charge FTS OSS charges, this amounts to allowing BellSouth to regain monopoly status in its service territory, because levying these charges would render them unable to compete successfully on

price. The witness also notes that certain kinds of orders must be submitted manually, and thus, FTS would be assessed the higher, manual OSS charge on these orders. Witness Joachim alleges that "It is also a highly profitable stream of revenue for BellSouth when FTS is forced to submit orders manually."

Witness Joachim's fundamental concern appears to be that FTS would suffer an adverse economic impact if BellSouth is permitted to levy OSS charges on FTS.

For FTS to compete with BellSouth, FTS has to sell services very close to its cost because of the slim discounts given on BellSouth's tariff rates. Any increase in cost, that is not past [sic] on to BellSouth's own customer which can be then directly compared to the prices, would be grossly unfair and detrimental as the balance would be tipped in favor of BellSouth. Where BellSouth would be more competitive than FTS can ever hope to be.

The FTS witness further testifies that BellSouth charges FTS a service order fee and an activation fee on each order sent. Witness Joachim opines that these charges are adequate to cover any costs BellSouth incurred to develop electronic interfaces, "because these are the same interfaces that their own reps use." He believes it is unfair for BellSouth to charge his company for interfaces that BellSouth developed for their own services.

II. Determination

As set forth above, it appears that FTS witness Joachim's primary objection to paying BellSouth OSS cost recovery is that it would increase FTS's cost of doing business, and thus, would decrease its competitive position. He further alleges that since BellSouth uses these same interfaces in its retail operations, it should recover these costs from its retail customers. While it is evident that FTS' competitive margins likely would be reduced if it were required to pay BellSouth's proposed OSS cost recovery charges, we do not believe that is a sufficient basis for rendering a decision in this proceeding. Moreover, it appears from the record, contrary to witness Joachim's contention, that the electronic interfaces developed by BellSouth are not used for retail operations, but were only developed to provide ALECs access to BellSouth's legacy OSS. Consequently, as concluded by the US District Court for the Eastern District of Kentucky, it is

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appropriate to assess such charges solely to those who benefit -- ALECs. (20 F.Supp. 2d 1097; 1998 U.S. Dist. LEXIS 14558)

On several occasions, most recently in Docket No. 990750-TP, we have concluded that OSS cost recovery should be addressed in a generic proceeding, not in an arbitration. In our Order in Docket No. 990750-TP, we stated:

In conclusion, we find that BellSouth's OSS charges proposed in this proceeding should not be approved for inclusion in the new agreement. We find there are numerous issues related to OSS costs which cannot be adequately resolved based on the record in this proceeding. Further, based on the record from this proceeding, we are unable to determine whether the development, implementation, and ongoing costs associated with processing a LSR are reasonable. We believe that OSS cost recovery more appropriately should be dealt with in a generic proceeding, and not in this arbitration proceeding. If we were to establish OSS charges in this docket, such an action would be a basis for BellSouth including the same charges in all future negotiated agreements. Based upon the foregoing, we find that OSS cost recovery charges shall not be set at this time.

See PSC-00-0537-FOF-TP, p. 48.

Based on the record in the instant proceeding, we find no compelling basis to deviate from our recent decision concerning OSS cost recovery in the ITC^DeltaCom arbitration. The record in the instant proceeding differs little from that in Docket No. 990750-TP, and the concerns raised in the docket remain. Although BellSouth witness Varner asserted that a proceeding to deal with OSS cost recovery has not been established, it was clarified during the hearing that Docket No. 981834-TP, in which collocation and third-party OSS testing are being conducted, is the intended forum for addressing OSS costs. This Commission has previously concluded that a proceeding for OSS cost recovery will be conducted after the conclusion of the generic UNE pricing docket and third-party OSS

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testing; since neither event has occurred, it would not be timely to issue a procedural order on OSS cost recovery.

In conclusion, we find that no OSS cost recovery charges shall be established in this proceeding. The determination of the appropriate charges that BellSouth may impose for OSS cost recovery shall be dealt with in a generic proceeding.

III. CONCLUSION

We have conducted these proceedings pursuant to the directives and criteria of Sections 251 and 252 of the Act. We believe that our decision is consistent with the terms of Section 251, the provisions of the FCC's implementing Rules that have not been vacated, and the applicable provisions of Chapter 364, Florida Statutes.

Based on the foregoing, it is therefore

ORDERED by the Florida Public Service Commission that the issue presented for arbitration in this proceeding is resolved as set forth in the body of this Order. It is further

ORDERED that this Docket shall be closed.

By ORDER of the Florida Public Service Commission this 31st day of August, 2000.

BLANCA S. BAYÓ, Director
Division of Records and Reporting

By: Kay Flynn
Kay Flynn, Chief
Bureau of Records

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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.

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 in Federal district court pursuant to the Federal Telecommunications Act of 1996, 47 U.S.C. § 252(e)(6).