

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Investigation into
pricing of unbundled network
elements.

DOCKET NO. 990649-TP
ORDER NO. PSC-01-1904-PCO-TP
ISSUED: September 24, 2001

ORDER ON JOINT MOTION TO ACCEPT EXPEDITED HEARING SCHEDULE AND
ORDER ESTABLISHING PROCEDURE (BELLSOUTH'S 120-DAY FILING)

Case 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 and WorldCom Technologies, Inc. (MCI 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, we 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. An administrative hearing was held on July 17, 2000, on the Part One issues identified in Order No. PSC-00-2015-PCO-TP, issued June 8, 2000. Part Two issues, also identified in Order No. PSC-00-2015-PCO-TP, were heard in an administrative hearing on September 19-22, 2000. On August 18, 2000, Order No. PSC-00-1486-PCO-TP was issued granting Verizon Florida Inc.'s (formerly GTEFL) Motion to Bifurcate and Suspend Proceedings, as well as Sprint's Motion to Bifurcate Proceedings,

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for a Continuance and Leave to Withdraw Cost Studies and Certain Testimony.

Thereafter, on March 12, 2001, Order No. PSC-01-0551-PCO-TP was issued granting, in part, and denying, in part, motions for extensions of time, and revising the schedule. The dates for filings and discovery responses were adjusted to give the parties additional time, while adhering to the schedule for a final decision.

On May 25, 2001, this Commission issued its Final Order on Rates for Unbundled Network Elements Provided by BellSouth (Phases I and II), Order No. PSC-01-1181-FOF-TP. Within the Order, we addressed the appropriate methodology, assumptions, and inputs for establishing rates for unbundled network elements for BellSouth Telecommunications. We ordered that the identified elements and subloop elements be unbundled for the purpose of setting prices, and that access to those subloop elements shall be provided. We also determined that the inclusion of non-recurring costs in recurring rates should be considered where the resulting level of non-recurring charges would constitute a barrier to entry. In addition, we defined xDSL-capable loops, and found that a cost study addressing such loops may make distinctions based upon loop length. We then set forth the UNE rates, and held that they shall become effective when existing interconnection agreements are amended to incorporate the approved rates, and those agreements become effective. Furthermore, we ordered BellSouth to refile, within 120 days of the issuance of the Order, revisions to its cost study addressing xDSL-capable loops, network interface devices, and cable engineering and installation. The parties to the proceeding were also ordered to refile within 120 days of the issuance of the Order, proposals addressing network reliability and security concerns as they pertain to access to subloop elements.

On June 11, 2001, BellSouth filed its Motion for Reconsideration, requesting that we reconsider our decision in six respects. Also on June 11, 2001, MCI WorldCom, AT&T, Covad, and Z-Tel (Movants) filed a Motion for Reconsideration and Clarification of certain decisions in the Order. On June 18, 2001, BellSouth timely filed its Memorandum in Opposition to the Movant's Motion for Reconsideration and Clarification. On June 25, 2001, AT&T, MCI WorldCom, Covad, and Rhythms Links Inc. (ALECs) timely submitted their Response in Opposition to BellSouth's Motion for

Reconsideration. Sprint also filed a Response to BellSouth's Motion for Reconsideration that same day.

On June 18, 2001, MCI/WorldCom and AT&T filed a Joint Motion to Accept Expedited Hearing Schedule. On June 26, 2001, BellSouth filed its Opposition to the Joint Motion.

Although the Motions for Reconsideration remain pending as of the issuance date of this Order, the Commission's decision on those motions will not affect whether or not additional proceedings will be had to address BellSouth's 120-day filing. Rather, our decision on the Motions will affect what will be addressed in these further proceedings. Therefore, this Order addresses the Joint Motion to Accept Expedited Hearing Schedule, as well as the procedure and filing dates for BellSouth's 120-day filing.

This Order is issued pursuant to the authority granted by Rule 28-106.211, Florida Administrative Code, which provides that the presiding officer before whom a case is pending may issue any orders necessary to effectuate discovery, prevent delay, and promote the just, speedy, and inexpensive determination of all aspects of the case.

The scope of this proceeding shall be based upon the issues raised by the parties and Commission staff up to and during the prehearing conference, unless modified by the Commission.

Joint Motion to Accept Proposed Expedited Hearing Schedule

As noted above, on June 18, 2001, MCI/WorldCom and AT&T filed a Joint Motion to Accept Proposed Expedited Hearing Schedule. Therein, they propose that we proceed to address BellSouth's 120-day filing under the following schedule:

September 25, 2001	BellSouth Direct Testimony and Exhibits, Inputs and Cost Model Run
November 30, 2001	ALEC Rebuttal Testimony, Exhibits, and Cost Model Run

December 20, 2001	BellSouth Rebuttal Testimony and Exhibits
December 20, 2001	Prehearing Statements
January 10-11, 2002	Hearing
January 31, 2002	Briefs
February 21, 2002	Staff Recommendation
March 5, 2002	Agenda Conference
March 25, 2002	Final Order

On June 26, 2001, BellSouth filed its Opposition to the Joint Motion. Therein, BellSouth objected to the proposed schedule. BellSouth contends that we did not require a hearing on all aspects identified to be addressed in their 120-day filing. BellSouth contends that to have a hearing on all matters to be addressed in their 120-day filing would be to essentially retry the entire case. BellSouth believes that the only issue to be addressed through a hearing is whether DSL rates we adopted in our Order should be revised. Furthermore, BellSouth contends that it opposes the Joint Motion because the schedule proposed is not expedited, but extends the time to address matters that it believes should be addressed in a much shorter time frame. BellSouth contends that our decision on its 120-day filing should be rendered by January 2002.

Upon consideration, the Joint Motion to Accept Proposed Expedited Hearing Schedule is granted, in part, and denied, in part. I agree that the schedule for this proceeding should be expedited; however, this Commission's calendar cannot accommodate the schedule as specifically proposed by MCI/WorldCom. Therefore, the approved schedule for this proceeding shall be as set forth in the Controlling Dates section of this Order. Furthermore, I note that an issues identification conference has not yet been conducted regarding BellSouth's 120-day filing. As such, my decision herein does not address which matters are appropriate for consideration in the hearing. If any dispute as to the appropriate issues remains following the issues identification conference, I will address those disputes by separate order.

Discovery

When discovery requests are served and the respondent intends to object to or ask for clarification of the discovery request, the objection or request for clarification shall be made within ten days of service of the discovery request. This procedure is intended to reduce delay in resolving discovery disputes.

The hearing in this docket is set for January 30-31, 2002. Unless authorized by the Prehearing Officer for good cause shown, all discovery shall be completed by January 23, 2002. All interrogatories, requests for admissions, and requests for production of documents shall be numbered sequentially in order to facilitate their identification. The discovery requests will be numbered sequentially within a set and any subsequent discovery requests will continue the sequential numbering system. Pursuant to Rule 28-106.206, Florida Administrative Code, unless subsequently modified by the Prehearing Officer, the following shall apply: interrogatories, including all subparts, shall be limited to 250, and requests for production of documents, including all subparts, shall be limited to 125. Furthermore, all discovery requests shall be served by e-mail, with a hard copy to follow by U.S. Mail or hand delivery. Responses to interrogatories shall also be served by e-mail, with a hard copy to follow by U.S. Mail or hand delivery. Commission staff shall be served with a copy of these and all other filings.

Any information provided pursuant to a discovery request for which proprietary confidential business information status is requested shall be treated by the Commission and the parties as confidential. The information shall be exempt from Section 119.07(1), Florida Statutes, pending a formal ruling on such request by the Commission, or upon the return of the information to the person providing the information. If no determination of confidentiality has been made and the information has not been made a part of the evidentiary record in the proceeding, it shall be returned expeditiously to the person providing the information. If a determination of confidentiality has been made and the information was not entered into the record of the proceeding, it shall be returned to the person providing the information within the time period set forth in Section 364.183, Florida Statutes.

Diskette Filings

See Rule 25-22.028(1), Florida Administrative Code, for the requirements of filing on diskette for certain utilities.

Prefiled Testimony and Exhibits

Each party shall prefile, in writing, all testimony that it intends to sponsor. Such testimony shall be typed on 8 ½ inch x 11 inch transcript-quality paper, double spaced, with 25 numbered lines, on consecutively numbered pages, with left margins sufficient to allow for binding (1.25 inches).

Each exhibit intended to support a witness' prefiled testimony shall be attached to that witness' testimony when filed, identified by his or her initials, and consecutively numbered beginning with 1. All other known exhibits shall be marked for identification at the prehearing conference. After an opportunity for opposing parties to object to introduction of the exhibits and to cross-examine the witness sponsoring them, exhibits may be offered into evidence at the hearing. Exhibits accepted into evidence at the hearing shall be numbered sequentially. The pages of each exhibit shall also be numbered sequentially prior to filing with the Commission.

An original and 15 copies of all testimony and exhibits shall be prefiled with the Director, Division of the Commission Clerk and Administrative Services, by the close of business, which is 5:00 p.m., on the date due. A copy of all prefiled testimony and exhibits shall be served by mail or hand delivery to all other parties and staff no later than the date filed with the Commission. Failure of a party to timely prefile exhibits and testimony from any witness in accordance with the foregoing requirements may bar admission of such exhibits and testimony.

If a demonstrative exhibit or other demonstrative tools are to be used at hearing, they must be identified by the time of the Prehearing Conference.

Prehearing Statement

All parties in this docket shall file a prehearing statement. Staff will also file a prehearing statement. The original and 15 copies of each prehearing statement shall be prefiled with the Director of the Division of the Commission Clerk and Administrative Services by the close of business, which is 5:00 p.m., on the date due. A copy of the prehearing statement shall be served on all other parties and staff no later than the date it is filed with the Commission. Failure of a party to timely file a prehearing statement shall be a waiver of any issue not raised by other parties or by the Commission. In addition, such failure shall preclude the party from presenting testimony in support of its position. Such prehearing statements shall set forth the following information in the sequence listed below.

- (a) The name of all known witnesses that may be called by the party, and the subject matter of their testimony;
- (b) a description of all known exhibits that may be used by the party, whether they may be identified on a composite basis, and the witness sponsoring each;
- (c) a statement of basic position in the proceeding;
- (d) a statement of each question of fact the party considers at issue, the party's position on each such issue, and which of the party's witnesses will address the issue;
- (e) a statement of each question of law the party considers at issue and the party's position on each such issue;
- (f) a statement of each policy question the party considers at issue, the party's position on each such issue, and which of the party's witnesses will address the issue;

- (g) a statement of issues that have been stipulated to by the parties;
- (h) a statement of all pending motions or other matters the party seeks action upon;
- (i) a statement identifying the parties' pending requests or claims for confidentiality; and
- (j) a statement as to any requirement set forth in this order that cannot be complied with, and the reasons therefore.
- (k) a statement identifying any decision or pending decision of the FCC or any court that has or may either preempt or otherwise impact the Commission's ability to resolve any of the issues presented or the relief requested in this matter.
- (l) Any objections to a witness's qualifications as an expert must be identified in a party's Prehearing Statement. Failure to identify such objection may result in restriction of a party's ability to conduct voir dire.

Prehearing Conference

Pursuant to Rule 28-106.209, Florida Administrative Code, a prehearing conference will be held January 17, 2002, at the Betty Easley Conference Center, 4075 Esplanade Way, Tallahassee, Florida. Any party who fails to attend the prehearing conference, unless excused by the Prehearing Officer, will have waived all issues and positions raised in that party's prehearing statement.

Prehearing Procedure: Waiver of Issues

Any issue not raised by a party prior to the issuance of the prehearing order shall be waived by that party, except for good cause shown. A party seeking to raise a new issue after the issuance of the prehearing order shall demonstrate that: it was unable to identify the issue because of the complexity of the matter; discovery or other prehearing procedures were not adequate

to fully develop the issue; due diligence was exercised to obtain facts touching on the issue; information obtained subsequent to the issuance of the prehearing order was not previously available to enable the party to identify the issue; and introduction of the issue could not be to the prejudice or surprise of any party. Specific reference shall be made to the information received, and how it enabled the party to identify the issue.

Unless a matter is not at issue for that party, each party shall diligently endeavor in good faith to take a position on each issue prior to issuance of the prehearing order. When a party is unable to take a position on an issue, it shall bring that fact to the attention of the Prehearing Officer. If the Prehearing Officer finds that the party has acted diligently and in good faith to take a position, and further finds that the party's failure to take a position will not prejudice other parties or confuse the proceeding, the party may maintain "no position at this time" prior to hearing and thereafter identify its position in a post-hearing statement of issues. In the absence of such a finding by the Prehearing Officer, the party shall have waived the entire issue. When an issue and position have been properly identified, any party may adopt that issue and position in its post-hearing statement.

Document Identification

Each exhibit submitted shall have the following in the upper right-hand corner: the docket number, the witness's name, the word "Exhibit" followed by a blank line for the exhibit number and the title of the exhibit.

An example of the typical exhibit identification format is as follows:

Docket No. 12345-TL
J. Doe Exhibit No. _____
Cost Studies for Minutes of Use by Time of Day

Controlling Dates

The following dates have been established to govern the key activities of this case.

- | | |
|--|------------------------|
| 1) BellSouth's 120-Day Cost Study Filing | September 24,
2001 |
| 2) Direct Testimony and Exhibits - ALL | November 8, 2001 |
| 3) Rebuttal Testimony and Exhibits - ALL | December 7, 2001 |
| 4) Prehearing Statements | January 3, 2002 |
| 5) Prehearing Conference | January 17, 2002 |
| 6) Hearing | January 30-31,
2002 |
| 7) Briefs | February 20, 2002 |

Use of Confidential Information At Hearing

It is the policy of this Commission that all Commission hearings be open to the public at all times. The Commission also recognizes its obligation pursuant to Section 364.183, Florida Statutes, to protect proprietary confidential business information from disclosure outside the proceeding. Any party wishing to use any proprietary confidential business information, as that term is defined in Section 364.183(3), Florida Statutes, shall notify the Prehearing Officer and all parties of record by the time of the Prehearing Conference, or if not known at that time, no later than seven (7) days prior to the beginning of the hearing. The notice shall include a procedure to assure that the confidential nature of the information is preserved as required by statute. Failure of any party to comply with the seven-day requirement described above shall be grounds to deny the party the opportunity to present evidence which is proprietary confidential business information.

When confidential information is used in the hearing, parties must have copies for the Commissioners, necessary staff, and the Court Reporter, in envelopes clearly marked with the nature of the contents. Any party wishing to examine the confidential material that is not subject to an order granting confidentiality shall be

provided a copy in the same fashion as provided to the Commissioners, subject to execution of any appropriate protective agreement with the owner of the material. Counsel and witnesses are cautioned to avoid verbalizing confidential information in such a way that would compromise the confidential information. Therefore, confidential information should be presented by written exhibit when reasonably possible to do so. At the conclusion of that portion of the hearing that involves confidential information, all copies of confidential exhibits shall be returned to the proffering party. If a confidential exhibit has been admitted into evidence, the copy provided to the Court Reporter shall be retained in the Division of the Commission Clerk and Administrative Services's confidential files.

Post-Hearing Procedure

Each party shall file a post-hearing statement of issues and positions. A summary of each position of no more than 50 words, set off with asterisks, shall be included in that statement. If a party's position has not changed since the issuance of the prehearing order, the post-hearing statement may simply restate the prehearing position; however, if the prehearing position is longer than 50 words, it must be reduced to no more than 50 words. If a party fails to file a post-hearing statement in conformance with the rule, that party shall have waived all issues and may be dismissed from the proceeding.

Pursuant to Rule 28-106.215, Florida Administrative Code, a party's proposed findings of fact and conclusions of law, if any, statement of issues and positions, and brief, shall together total no more than 40 pages, and shall be filed at the same time.

Based upon the foregoing, it is

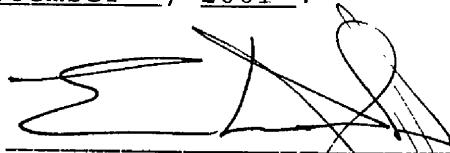
ORDERED by Chairman E. Leon Jacobs, Jr., as Prehearing Officer, that the Joint Motion to Accept Proposed Expedited Hearing Schedule filed by AT&T Communications of the Southern States, Inc. and MCIMetro Access Transmission Services, LLC and WorldCom Technologies, Inc. is hereby denied. It is further

ORDERED that the provisions of this Order shall govern this proceeding addressing BellSouth Telecommunications, Inc.'s 120-day

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filing in response to our Order No. PSC-01-1181-FOF-TP unless modified by the Commission.

By ORDER of Chairman E. Leon Jacobs, Jr. as Prehearing Officer, this 24th Day of September, 2001.



E. LEON JACOBS, JR.
Chairman and Prehearing Officer

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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

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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 the Commission Clerk and Administrative Services, 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.