

BEFORE THE PUBLIC SERVICE COMMISSION

In re: Petition by DIECA Communications, Inc. d/b/a Covad Communications Company for arbitration of issue resulting from interconnection negotiations with BellSouth Telecommunications, Inc., and request for expedited processing.

DOCKET NO. 040601-TP
ORDER NO. PSC-04-1044-FOF-TP
ISSUED: October 26, 2004

The following Commissioners participated in the disposition of this matter:

BRAULIO L. BAEZ, Chairman
J. TERRY DEASON
LILA A. JABER
RUDOLPH "RUDY" BRADLEY
CHARLES M. DAVIDSON

ORDER REQUIRING PARTIES TO HONOR INTERCONNECTION AGREEMENT

BY THE COMMISSION:

Case Background

On August 21, 2003, the Federal Communications Commission (FCC) released its Triennial Review Order¹ (TRO) wherein the FCC determined that the high frequency portion of the loop (HFPL) was no longer required to be unbundled pursuant to section 251 of the Telecommunications Act of 1996² (the Act). However, the FCC did require a transition period in which section 251 line sharing³ will be available on a grandfathered basis for the next three years, with line sharing arrangements that existed before the effective date of the TRO remaining at the same rates until service is discontinued, while new arrangements added between October 2, 2003 and October 1, 2004 are subject to transitional rates. This determination was upheld by the D.C. Circuit Court in United States Telecommunications Association v. FCC, 359 F.3rd 554 (D.C. Cir. 2004)(USTA II).

¹ *In the Matter of Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, et al.*, CC Docket No. 01-338, et al., FCC 03-36. (rel. Aug. 21, 2003)

² TRO at ¶255-263

³ Line Sharing is the practice by which a CLEC and an ILEC share a local loop. The ILEC provides voice service over the low frequency portion of the loop, and a CLEC provides data services over the high frequency portion of the loop.

DOCUMENT NUMBER-DATE

11552 OCT 26 04

FPSC-COMMISSION CLERK

On June 23, 2004, DIECA Communications, Inc. d/b/a Covad Communications Company (Covad) filed its Petition for Arbitration and Request for Expedited Processing of an issue resulting from interconnection negotiations with BellSouth Telecommunications, Inc. (BellSouth). Covad is requesting we resolve the parties' dispute regarding line sharing rates, terms and conditions. On July 19, 2004, BellSouth filed its Response to Covad's Arbitration Petition in which it raised additional issues and requested this proceeding be treated as a change of law dispute rather than an arbitration.

On August 12, 2004, the parties filed a Joint Proposal letter. The parties stated that they had resolved Issue Nos. 2, 3, 6, 7, and 8 in their entirety and that discussions concerning Issue Nos. 4, 5, 9, and 10 are continuing. Additionally, the parties proposed a procedural schedule where each party would file a legal brief addressing the following issue:

1) Is BellSouth obligated to provide Covad access to line sharing after October 2004⁴?

The parties stated their intention in agreeing to limit the scope was to obtain a decision on the threshold legal question while still preserving all other arguments, including jurisdictional arguments, which each party expressly reserved. The joint proposed procedural schedule was approved by Order No. PSC-04-0833-PCO-TP, issued August 26, 2004. Both parties filed briefs on September 3, 2004.

On September 24, 2004, Covad requested official recognition of Order No. PSC-02-1304-FOF-TL (BellSouth 271 Consultative Order), issued September 24, 2002 in Docket 960786A-TL. On September 28, 2004, BellSouth requested official recognition of the FCC's brief filed in connection with the USTA II decision (FCC brief).

At the October 5, 2004, Agenda Conference we granted BellSouth's request for official recognition of the FCC's brief and denied Covad's request for official recognition of the BellSouth 271 Consultative Order. Further, we granted the parties ten minutes each to argue their positions before us. During the parties' arguments each side indicated they would continue to honor existing interconnection agreement obligations, including access to line sharing, through the term of the parties interconnection agreement ending December 19, 2004. Upon consideration thereof, we find it appropriate to require BellSouth to continue to provide access to line sharing pursuant to the parties' interconnection agreement until it expires on December 19, 2004. Additionally, we recognize that a true-up may be appropriate if the FCC affirmatively removes the section 271 line sharing obligation and shall revisit this matter if necessary.

⁴ Pursuant to the FCC's transitional plan, Covad cannot request new line sharing arrangements after October 1, 2004. TRO at ¶265 BellSouth agreed not to take any action until October 5, 2004.

ORDER NO. PSC-04-1044-FOF-TP
DOCKET NO. 040601-TP
PAGE 3

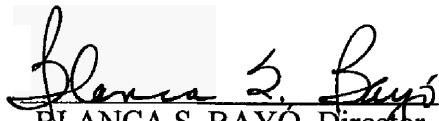
Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that BellSouth Telecommunications, Inc. will continue to provide DIECA Communications, Inc. d/b/a Covad Communications Company access to new line sharing arrangements pursuant to the parties' interconnection agreement through its term ending December 19, 2004. It is further

ORDERED that DIECA Communications, Inc. d/b/a Covad Communications Company's Request for Official Recognition is denied, and BellSouth Telecommunications, Inc.'s Request for Official Recognition is granted. It is further

ORDERED that this Docket shall remain open.

By ORDER of the Florida Public Service Commission this 26th day of October, 2004.



BLANCA S. BAYO, Director
Division of the Commission Clerk
and Administrative Services

(S E A L)

AJT

DISSENT

Commissioner J. Terry Deason

Commissioner Deason dissents without comment from the majority's decision.

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 the Commission Clerk and Administrative Services, 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 the Commission Clerk and Administrative Services 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.