

BEFORE THE PUBLIC SERVICE COMMISSION

In re: Petition to establish generic docket to consider amendments to interconnection agreements resulting from changes in law, by BellSouth Telecommunications, Inc.

DOCKET NO. 041269-TP
ORDER NO. PSC-05-0736-PCO-TP
ISSUED: July 11, 2005

ORDER ESTABLISHING PROCEDURE

On August 21, 2003, the Federal Communications Commission (FCC) released its *Triennial Review Order*¹, which contained revised unbundling rules and responded to the D.C. Circuit Court of Appeals' remand decision in *USTA I*.² The *TRO* eliminated enterprise switching as a UNE on a national basis. For other UNEs (e.g., mass market switching, high capacity loops, dedicated transport), the *TRO* provided for state review on a more granular basis to determine whether and where impairment existed, to be completed within nine months of the effective date of the order.

On March 2, 2004, the D.C. Circuit Court of Appeals released its decision in *United States Telecom Ass'n v. FCC*³, which vacated and remanded certain provisions of the *TRO*. In particular, the D.C. Circuit held that the FCC's delegation of authority to state commissions to make impairment findings was unlawful, and further found that the national findings of impairment for mass market switching and high-capacity transport were improper. Accordingly, the Court vacated the *TRO*'s subdelegation to the states for determining the existence of impairment with regard to mass market switching and high-capacity transport. The D.C. Circuit also vacated and remanded to the FCC the *TRO*'s national impairment findings with respect to these elements.

As a result of the Court's mandate, the FCC released an *Order and Notice*⁴ (Interim Order) on August 20, 2004, requiring ILECs to continue providing unbundled access to mass market local circuit switching, high capacity loops and dedicated transport until the earlier of the

¹ In the Matter of Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, Deployment of Wireline Services Offering Advanced Telecommunications Capability, CC Docket Nos. 01-338, 96-98, 98-147, Report and Order and Order on Remand and Further Notice of Proposed Rulemaking, rel. August 21, 2003 (*Triennial Review Order or TRO*).

² *United States Telecom Association v. FCC*, 290 F.3d 415 (D.C. Cir. 2002) (*USTA I*).

³ 359 F. 3d 554 (D.C. Cir. 2004) (*USTA II*), cert. denied, 160 L. Ed. 2d 223, 2004 U.S. LEXIS 671042 (October 12, 2004).

⁴ In the Matter of Unbundled Access to Network Elements, WC Docket No. 04-313; In the Matter of Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, CC Docket No. 01-338, Order and Notice of Proposed Rulemaking, FCC 04-179, rel. August 20, 2004 (*Interim Order*).

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effective date of final FCC unbundling rules or six months after Federal Register publication of the *Interim Order*. Additionally, the rates, terms, and conditions of these UNEs were required to be those that applied under ILEC/CLEC interconnection agreements as of June 15, 2004.⁵ In the event that the interim six months expired without final FCC unbundling rules, the *Interim Order* contemplated a second six-month period during which CLECs would retain access to these network elements for existing customers, at transitional rates.

On November 1, 2004, BellSouth Telecommunications, Inc. (BellSouth) filed its Petition to establish a generic docket to consider amendments to interconnection agreements resulting from changes of law. Specifically, BellSouth asked that we determine what changes are required in existing approved interconnection agreements between BellSouth and competitive local exchange carriers (CLECs) in Florida as a result of *USTA II* and the *Interim Order*.

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.⁶

Initial Filing

All parties shall be required to file their direct testimony and exhibits upon the filing of their initial petition.

Tentative Issues

Attached to this order as Attachment "A" is a tentative list of the issues which have been identified in this proceeding. Prefiled testimony and prehearing statements shall address the issues set forth in Attachment "A". Parties are encouraged to continue discussions in an effort to further eliminate issues in this proceeding.

⁵ Except to the extent the rates, terms, and conditions have been superseded by 1) voluntarily negotiated agreements, 2) an intervening FCC order affecting specific unbundling obligations (e.g., an order addressing a petition for reconsideration), or 3) a state commission order regarding rates.

⁶ BellSouth and CompSouth have notified our staff that they have agreed that neither party shall raise additional issues after June 29, 2005.

Discovery

On June 16, 2005, CompSouth and BellSouth filed a Joint Discovery Proposal. In their proposal, BellSouth and CompSouth state that because they are involved in similar proceedings in eight other states, they are proposing uniform discovery procedures across the states to avoid duplication and waste of resources. Although I encourage the parties to work together and conduct discovery as efficiently as possible, I find it is not appropriate to adopt the Joint Discovery Proposal for this proceeding because several parties have intervened in this proceeding and have not agreed to the joint proposal. As such, the provisions of the Joint Discovery Proposal are not adopted in this proceeding. Instead, the provisions set forth herein control.

The Requests for clarification of discovery requests shall be made within ten days of service. This procedure is intended to reduce delay in resolving discovery disputes.

The hearing in this docket is set for November 2-4, 2005. Unless authorized by the Prehearing Officer for good cause shown, all discovery shall be completed by October 21, 2005. 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 75. All discovery responses shall be due 20 days after service of the request, with no additional time for mailing. 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, and to the extent possible requests for documents, 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.

BellSouth and CompSouth state that they intend to conduct discovery in other states and enter the responses as stipulated hearing exhibits in this proceeding. All parties who intend to enter discovery responses from similar state proceedings as hearing exhibits in this proceeding shall serve such discovery requests and responses upon Commission staff and all parties to this proceeding to facilitate the efficient use of the discovery process.

Any party intending to provide information pursuant to a discovery request, which it is aware is deemed, or might be deemed, confidential by another party in this proceeding, shall notify that party prior to submitting such information for the purpose of ensuring conformance with this Commission's rules and continued confidential treatment pending a formal ruling by the Commission. 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(4), Florida Statutes.

Parties shall avail themselves of the liberal discovery allowed by this Order within the time frames set forth above. Parties are cautioned against conducting discovery during cross-examination at the hearing.

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 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. Each party is required to provide copies of its identified exhibits for the hearing absent good cause shown. The number of copies required of each hearing exhibit will be determined no later than 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 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 party's pending requests or claims for confidentiality;
- (j) a statement as to why a party cannot comply with any requirement set forth in this order, 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; and

- (1) Any objections to a witness' 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 on October 19, 2005, 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 would 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) Direct testimony and exhibits (All) | August 16, 2005 |
| 2) Rebuttal testimony and exhibits (All) | September 22, 2005 |
| 3) Prehearing Statements | September 29, 2005 |
| 4) Prehearing Conference | October 19, 2005 |
| 5) Hearing | November 2-4, 2005 |
| 6) Briefs | December 2, 2005 |

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' 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 Commissioner Lisa Polak Edgar, as Prehearing Officer, that the provisions of this Order shall govern this proceeding unless modified by the Commission.

By ORDER of Commissioner Lisa Polak Edgar, as Prehearing Officer, this 11th day of July, 2005.


LISA POLAK EDGAR
Commissioner and Prehearing Officer

(SEAL)

AJT

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; 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 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.

JOINT ISSUES MATRIX

NO.	ISSUE DESCRIPTION
1	TRRO / FINAL RULES: What is the appropriate language to implement the FCC’s transition plan for (1) switching, (2) high capacity loops and (3) dedicated transport as detailed in the FCC’s Triennial Review Remand Order (“TRRO”), issued February 4, 2005?
2	TRRO / FINAL RULES: a) How should existing ICAs be modified to address BellSouth’s obligation to provide network elements that the FCC has found are no longer Section 251(c)(3) obligations? b) What is the appropriate way to implement in new agreements pending in arbitration any modifications to BellSouth’s obligations to provide network elements that the FCC has found are no longer Section 251(c)(3) obligations?
3	TRRO / FINAL RULES: What is the appropriate language to implement BellSouth’s obligation to provide Section 251 unbundled access to high capacity loops and dedicated transport and how should the following terms be defined? (i) Business Line (ii) Fiber-Based Collocation (iii) Building (iv) Route
4	TRRO / FINAL RULES: a) Does the Commission have the authority to determine whether or not BellSouth’s application of the FCC’s Section 251 non-impairment criteria for high-capacity loops and transport is appropriate? b) What procedures should be used to identify those wire centers that satisfy the FCC’s Section 251 non-impairment criteria for high-capacity loops and transport? c) What language should be included in agreements to reflect the procedures identified in (b)?
5	TRRO / FINAL RULES: Are HDSL-capable copper loops the equivalent of DS1 loops for the purpose of evaluating impairment?
6	TRRO / FINAL RULES: Once a determination is made that CLECs are not impaired without access to high capacity loops or dedicated transport pursuant to the FCC’s rules, can changed circumstances reverse that conclusion, and if so, what process should be included in Interconnection Agreements to implement such changes?

NO.	ISSUE DESCRIPTION
7	<p>TRRO / FINAL RULES:</p> <p>(a) Does the Commission have the authority to require BellSouth to include in its interconnection agreements entered into pursuant to Section 252, network elements under either state law, or pursuant to Section 271 or any other federal law other than Section 251?</p> <p>(b) If the answer to part (a) is affirmative in any respect, does the Commission have the authority to establish rates for such elements?</p> <p>(c) If the answer to part (a) or (b) is affirmative in any respect, (i) what language, if any, should be included in the ICA with regard to the rates for such elements, and (ii) what language, if any, should be included in the ICA with regard to the terms and conditions for such elements?</p>
8	<p>TRRO / FINAL RULES: What conditions, if any, should be imposed on moving, adding, or changing orders to a CLEC's respective embedded bases of switching, high-capacity loops and dedicated transport, and what is the appropriate language to implement such conditions, if any?</p>
9	<p>TRRO/FINAL RULES: What rates, terms, and conditions should govern the transition of existing network elements that BellSouth is no longer obligated to provide as Section 251 UNEs to non-Section 251 network elements and other services and (a) what is the proper treatment for such network elements at the end of the transition period; and (b) what is the appropriate transition period, and what are the appropriate rates, terms and conditions during such transition period, for unbundled high capacity loops, high capacity transport, and dark fiber transport in and between wire centers that do not meet the FCC's non-impairment standards at this time, but that meet such standards in the future?</p>
10	<p>TRRO / FINAL RULES: What rates, terms and conditions, if any, should apply to UNEs that are not converted on or before March 11, 2006, and what impact, if any, should the conduct of the parties have upon the determination of the applicable rates, terms and conditions that apply in such circumstances?</p>
11	<p>TRRO / FINAL RULES: Should identifiable orders properly placed that should have been provisioned before March 11, 2005, but were not provisioned due to BellSouth errors in order processing or provisioning, be included in the "embedded base?"</p>
12	<p>TRRO / FINAL RULES: Should network elements de-listed under Section 251(c) (3) be removed from the SQM/PMP/SEEM?</p>
13	<p>TRO - COMMINGLING: What is the scope of commingling allowed under the FCC's rules and orders and what language should be included in Interconnection Agreements to implement commingling (including rates)?</p>

NO.	ISSUE DESCRIPTION
14	TRO - CONVERSIONS: Is BellSouth required to provide conversion of special access circuits to UNE pricing, and, if so, at what rates, terms and conditions and during what timeframe should such new requests for such conversions be effectuated?
15	TRO – CONVERSIONS: What are the appropriate rates, terms, conditions and effective dates, if any, for conversion requests that were pending on the effective date of the TRO?
16	TRO – LINE SHARING: Is BellSouth obligated pursuant to the Telecommunications Act of 1996 and FCC Orders to provide line sharing to new CLEC customers after October 1, 2004?
17	TRO – LINE SHARING – TRANSITION: If the answer to foregoing issue is negative, what is the appropriate language for transitioning off a CLEC’s existing line sharing arrangements?
18	TRO – LINE SPLITTING: What is the appropriate ICA language to implement BellSouth’s obligations with regard to line splitting?
19	TRO – SUB-LOOP CONCENTRATION: a) What is the appropriate ICA language, if any, to address sub loop feeder or sub loop concentration? b) Do the FCC’s rules for sub loops for multi-unit premises limit CLEC access to copper facilities only or do they also include access to fiber facilities? c) What are the suitable points of access for sub-loops for multi-unit premises?
20	TRO – PACKET SWITCHING: What is the appropriate ICA language, if any, to address packet switching?
21	TRO – CALL-RELATED DATABASES: What is the appropriate ICA language, if any, to address access to call related databases?
22	TRO – GREENFIELD AREAS: a) What is the appropriate definition of minimum point of entry (“MPOE”)? b) What is the appropriate language to implement BellSouth’s obligation, if any, to offer unbundled access to newly-deployed or ‘greenfield’ fiber loops, including fiber loops deployed to the minimum point of entry (“MPOE”) of a multiple dwelling unit that is predominantly residential, and what, if any, impact does the ownership of the inside wiring from the MPOE to each end user have on this obligation?
23	TRO – HYBRID LOOPS: What is the appropriate ICA language to implement BellSouth’s obligation to provide unbundled access to hybrid loops?
24	TRO – END USER PREMISES: Under the FCC’s definition of a loop found in 47 C.F.R. §51.319(a), is a mobile switching center or cell site an “end user customer’s premises”?

NO.	ISSUE DESCRIPTION
25	TRO – ROUTINE NETWORK MODIFICATION: What is the appropriate ICA language to implement BellSouth’s obligation to provide routine network modifications?
26	TRO – ROUTINE NETWORK MODIFICATION: What is the appropriate process for establishing a rate, if any, to allow for the cost of a routine network modification that is not already recovered in Commission-approved recurring or non-recurring rates? What is the appropriate language, if any, to incorporate into the ICAs?
27	TRO – FIBER TO THE HOME: What is the appropriate language, if any, to address access to overbuild deployments of fiber to the home and fiber to the curb facilities?
28	TRO – EELS AUDITS: What is the appropriate ICA language to implement BellSouth’s EEL audit rights, if any, under the TRO?
29	252(i): What is the appropriate language to implement the FCC’s “entire agreement” rule under Section 252(i)?
30	ISP Remand Core Forbearance Order: What language should be used to incorporate the FCC’s <i>ISP Remand Core Forbearance Order</i> into interconnection agreements?
31	General Issue: How should the determinations made in this proceeding be incorporated into existing Section 252 interconnection agreements?