

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition of BellSouth Telecommunications, Inc. to remove interLATA access subsidy received by St. Joseph Telephone & Telegraph Company.

DOCKET NO. 970808-TL  
ORDER NO. PSC-98-0300-PCO-TL  
ISSUED: February 18, 1998

ORDER ON DISPUTED ISSUES  
AND DISCOVERY DISPUTE

On July 1, 1997, BellSouth Telecommunications, Inc. (BellSouth) filed a Petition to Remove InterLATA Access Subsidy received by St. Joseph Telephone and Telegraph Company (St. Joseph). On July 22, 1997, BellSouth filed a revised Petition. On August 11, 1997, St. Joseph filed an Answer in opposition to BellSouth's revised Petition. This matter has been set for hearing on May 20, 1998. On February 16, 1998, the parties presented oral argument on the matters addressed in this Order.

On January 30, 1998, Commission staff conducted an issues identification meeting. The parties and the Office of Public Counsel attended the meeting. At that meeting, a dispute arose regarding the inclusion of certain issues suggested by St. Joseph (GTC). The issues suggested by GTC are attached to this Order as Attachment A.

I. Issues in Dispute

BellSouth argues that the issues proposed by GTC should not be included for resolution in this proceeding because: 1) they are subsumed by those identified by BellSouth and staff; 2) GTC's third Factual issue is irrelevant because it pertains to the propriety of all subsidies, while this proceeding involves BellSouth's request to remove only the interLATA bill and keep subsidy; and, 3) the issues relating to the source of the subsidy are inappropriate in view of the fact that the Commission abolished the access subsidy pooling system in 1985 and set up the current bill and keep subsidy to ease transition from the access pooling system to bill and keep. See Commission Order No. 14452, issued in Docket No. 820537-TP, on June 10, 1985.

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GTC argues that although the issues suggested by BellSouth and staff are acceptable, many more issues must be identified and included for resolution in this proceeding. GTC argues that its proposed issues are intended to have the Commission consider the background and intent behind the creation of the subsidy, the subsequent regulatory and statutory changes since the creation of that subsidy, and the impact on GTC if the subsidy is discontinued. GTC asserts that its issues will help the Commission dispose of this case properly and will ensure that GTC gets a fair hearing in this matter. GTC further argues that the issues already identified and BellSouth's petition assume that the Commission can and should end the subsidy. GTC asserts, however, that the Commission cannot and should not end the subsidy because GTC's rates are currently frozen, in accordance with Section 364.051(2), Florida Statutes. Thus, GTC argues, the issues that it has proposed are appropriate because they present important legal, policy, and public interest issues that the Commission should address in this proceeding.

#### Determination

Having reviewed BellSouth's Revised Petition, GTC's response, and the written submittals regarding the disputed issues, GTC's factual issues shall not be included for determination in this proceeding. These issues extend beyond the scope of the purpose of this proceeding, which is to determine whether it is appropriate to remove the interLATA bill and keep subsidy from GTC. The relevance to BellSouth's Petition of the source of the subsidy or other state or federal subsidies received by LECs is not apparent. An issue shall, however, be included regarding the history and evolution of the bill and keep subsidy. In so ruling, I note that I am not now determining whether the source of revenue that BellSouth uses to pay the subsidy is relevant to this proceeding. To the extent that GTC believes that the source is relevant, the issues identified are sufficient to allow GTC to present evidence regarding the source of the subsidy payments within the context of the issues to be resolved.

GTC's first and third legal issues, and first policy issue shall be included for resolution in this proceeding. This is the first time the Commission has reviewed removal of the bill and keep subsidy from a company that has elected price regulation and is subject to a price cap pursuant to Section 364.051(2), Florida Statutes. The intent and effect of removal of the subsidy are relevant to this proceeding. GTC's first legal issue shall, however, be modified slightly to replace the word "statutory" with

the word "legal." GTC's third legal issue shall also be modified as follows:

Considering that the basic rates of a small LEC electing price cap regulation may not be altered during the period basic rates are frozen, except as provided for in Section 364.051(5), Florida Statutes, may the subsidy in effect at the time price cap regulation was elected be discontinued during the period basic rates are frozen?

GTC's proposed second legal issue and second policy issue shall not be included as separate issues for resolution in this Docket. Argument regarding these issues may be adequately presented within the context of other issues.

The list of issues approved for consideration in this Docket is attached to and incorporated in this Order as Attachment B.

II. BellSouth's Motion to Compel

On January 20, 1998, BellSouth served its First Set of Interrogatories and Request for Production of Documents (PODs) on GTC. On January 30, 1998, GTC filed objections to BellSouth's interrogatories and PODs. On February 5, 1998, BellSouth served GTC, Inc. with its Revised First Set of Interrogatories. On that same day, BellSouth also filed a Motion to Compel responses to its Revised Interrogatories. On February 13, 1998, GTC filed its Response to BellSouth's Motion to Compel.

In its Objections, GTC argues that BellSouth served it with 142 interrogatories and 59 PODs. The Order Establishing Procedure for this Docket, Order No. PSC-97-1548-PCO-TL, issued December 19, 1997, limits the number of interrogatories to 100, including all subparts, and also the limits the number of PODs to 100, including subparts. GTC argues that BellSouth's requests violate both limitations.

GTC also argues that these requests ask GTC to respond on behalf of affiliates or other parties that are not parties to this case. GTC argues, therefore, that the requests are too broad and are overly burdensome. GTC further objects to all requests that seek information outside of its Florida intrastate operations. GTC asserts that these requests are irrelevant, overly broad and

burdensome. In addition, GTC argues that these requests are not likely to lead to the discovery of admissible evidence.

GTC asserts that BellSouth is using the discovery process to harass GTC and that the requests are oppressive. GTC also asserts that the responses will be difficult and time consuming to retrieve and compile. As an example, GTC specifically notes BellSouth's POD No. 6 which seeks documents relating to GTC's previous two rate cases. GTC notes that its last rate case was over 25 years ago.

Finally, GTC argues that these interrogatories are intended to get information to calculate GTC's earnings on a traditional rate base/rate of return basis. GTC argues, however, that as a price capped LEC, it is exempt from rate of return regulation pursuant to Section 364.052(2), Florida Statutes. Thus, GTC asserts that the Commission cannot use this information to form the basis for its action in this proceeding. As such, GTC argues the requested information is irrelevant.

In its Motion to Compel, BellSouth states that it has revised its interrogatories to conform with the Order Establishing Procedure for this Docket. BellSouth also states that GTC may choose to respond to either the revised interrogatories or the first 100 of the original set. BellSouth notes that it limited the requested information to exclude all documentation prior to January 1, 1995; therefore, GTC could respond to POD No. 6 by stating that there are no documents responsive to the request. BellSouth adds that the rest of GTC's objections are merely "boilerplate" and contain no specific reasons for the objections.

BellSouth further asserts that GTC's earnings are relevant in this Docket because earnings have been one of the criteria used by the Commission in past years to determine whether the subsidy should be reduced or removed. BellSouth adds that it is not proposing that GTC's rates be changed in any way, only that the \$1.2 million "windfall" received by GTC each year be eliminated. BellSouth argues that the discovery it has propounded on GTC is, therefore, not excessive.

In its Response, GTC notes that BellSouth has stated that GTC may either respond to the first 100 of BellSouth's First Set of Interrogatories, or GTC may respond to all 69 of BellSouth's Revised Interrogatories. GTC notes that most of the interrogatories in the first 100 of the First Set of Interrogatories are not part of the 69 Revised Interrogatories. In

other words, GTC argues that by offering a choice of which set of interrogatories GTC may answer, BellSouth has indicated that it does not really care about the information to be provided. GTC argues that BellSouth has only propounded these interrogatories to harass, burden, and annoy GTC.

GTC also argues that the first 100 of the First Set of Interrogatories and the Revised Interrogatories violate the Order Establishing Procedure in that the total, including subparts, far exceeds 100. GTC notes that some interrogatories have as many as 14 subparts.

In addition, GTC argues that all of the interrogatories seek information useful in calculating the level of GTC's earnings on a traditional rate base, rate of return basis. GTC argues that such an inquiry is inappropriate because GTC is price capped and exempt from rate of return regulation by the Commission. GTC further asserts that none of the information that would be provided in response to the interrogatories could be the basis for Commission action in this proceeding. Specifically, GTC indicates that the following interrogatories seek earnings information that is inappropriate in this proceeding: 1, 2, 3, , 5, 6, 7, 8, 9, 10, 11, 12, 13, 4, 15, 16, 17, 18, 19, 20, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, and 68. GTC states that only Interrogatories 21 and 69 are not objectionable on this basis.

Finally, GTC states that it objects to interrogatories that seek information regarding GTC affiliates or other persons or entities not parties to this case. Specifically, GTC objects to the following Interrogatories on this basis: 4, 5, 6, 7, 9, 11, 12, 13, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 34, 35, 36, 37, 42, 46, and 49. GTC notes that in Docket No. 970281-TL, BellSouth objected to interrogatories propounded by Commission Staff on the same basis that GTC now objects to these interrogatories. GTC states that BellSouth should not be allowed to now argue that it should have affiliate information from GTC when BellSouth has argued against providing it in other dockets.

GTC notes that it objects to BellSouth's Production of Documents requests on the same basis that it objects to the interrogatories.

Determination

Upon review, I find that BellSouth's Revised Interrogatories Nos. 1-69, and the original Requests for Production of Documents Nos. 1-59 fall within the limit set forth in the Order Establishing Procedure.

Furthermore, I find that BellSouth's requests for information regarding GTC's earnings are appropriate. Although GTC is no longer subject to rate of return regulation, earnings is a criterion that the Commission has used in the past to assess the propriety of reducing or eliminating the interLATA access subsidy. The Commission is not prohibited from reviewing evidence that may indicate what impact removal of the subsidy will have on GTC simply because GTC has elected to become price regulated. Also, GTC asserted in its Answer to BellSouth's Petition that removal of the subsidy will significantly impact the company, and that due to its frozen rates, its "ability to respond to a significant adverse regulatory event is curtailed." GTC further asserted that at the time St. Joseph (GTC) elected price cap regulation, the subsidy was "an integral part of its annual revenue, and its rates were based on the subsidy continuing in place." In view of the issues to be addressed and GTC's own statements regarding the impact that removing the subsidy will have on the company, I believe that BellSouth's requests for information regarding GTC's earnings are likely to lead to the discovery of admissible evidence.

GTC shall not, however, be required to provide information relating to affiliates, subsidiaries, and other related entities that do not transact business or have a direct financial influence on GTC. GTC shall only be required to provide information regarding its affiliates, subsidiaries, and other related entities that receive services from or provide services directly to GTC/St. Joseph.

Also, I note that I am concerned about the scope of one interrogatory in particular. Interrogatory No. 42 in BellSouth's Revised Set of Interrogatories asks GTC to list each cost cutting measure taken by the Company in the past three years. I believe that it would be excessive and unnecessary to require GTC to list each and every cost cutting measure that it has undertaken in the past three years. I shall, therefore, only require GTC to respond regarding cost cutting measures that saved \$5,000 or more.

ORDER NO. PSC-98-0300-PCO-TL  
DOCKET NO. 970808-TL  
PAGE 7

In making these determinations, I note that the scope of the discovery propounded may, as a whole, be burdensome to GTC. I am also concerned that there may be some unnecessary duplication between the information sought by certain interrogatories and PODs. I, therefore, encourage the parties to work together to ensure that the information sought is only that which will assist in resolving this case. To the extent, however, that the parties are unable to resolve their discovery dispute within the context of my decisions in this Order, I will allow GTC to submit specific objections to interrogatories or PODs regarding the scope or undue burden of the request. GTC shall provide its responses to BellSouth's Revised Set of Interrogatories and First Request for Production Documents by March 2, 1998.

III. Filing Dates

In view of the discovery dispute and the disputed issues, I shall extend the dates for filing testimony set forth in Order No. PSC-97-1584-PCO-TL, as follows:

	<u>Date Due</u>
Direct Testimony/Petitioner	3/9/98
Direct Testimony/Respondent and Staff	3/20/98
Rebuttal Testimony/All	4/13/98

Order No. PSC-97-1584-PCO-TP is reaffirmed in all other respects.

Based on the foregoing, it is therefore

ORDERED by Commissioner J. Terry Deason, as Prehearing Officer, that the issues identified in Attachment B to this Order are the issues approved for consideration in this Docket. This shall not preclude either party from identifying any new issues not addressed in this Order, in accordance with Rule 25-22.038, Florida Administrative Code. It is further

ORDERED that BellSouth Telecommunications, Inc.'s Motion To Compel is granted and denied as set forth in the body of this Order. It is further


ORDER NO. PSC-98-0300-PCO-TL  
DOCKET NO. 970808-TL  
PAGE 8

ORDERED that GTC, Inc. shall provide its responses by March 2, 1998. It is further

ORDERED that dates for filing testimony prescribed by Order No. PSC-97-1584-PCO-TP are extended as set forth in the body of this Order. It is further

ORDERED that Order No. PSC-97-1584-PCO-TP is reaffirmed in all other respects.

By ORDER of Commissioner J. Terry Deason, as Prehearing Officer, this 18th Day of February, 1998.

  
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J. TERRY DEASON  
Commissioner and Prehearing Officer

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ORDER NO. PSC-98-0300-PCO-TL  
DOCKET NO. 970808-TL  
PAGE 9

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.59(4), 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 this order, which is preliminary, procedural or intermediate in nature, may request: 1) reconsideration within 10 days pursuant to Rule 25-22.038(2), 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.

Attachment A

GTC, INC.'s PROPOSED ISSUES

FACTUAL

- Q. What is the source of the revenue to BellSouth Telecommunications, Inc. That is paid to GTC, Inc. as an interLATA access subsidy?
- Q. Has BellSouth Telecommunications, Inc. Ever specifically eliminated the source of the interLATA access subsidy revenue which BellSouth Telecommunications, Inc. currently pays to GTC, Inc.? If so, when and how?
- Q. Other than the interLATA access subsidy, what other subsidies can price regulated LECs receive, either state or federal?

LEGAL

- Q. What is the statutory authority for the BellSouth Telecommunications, Inc. proposal to eliminate the interLATA access subsidy of GTC, Inc.?
- Q. What adjustments, if any, may be made to the components of rates that are frozen for a time certain as a result of election of price regulation pursuant to Chapter 364, F.S.?
- Q. Considering that the rates of a small LEC electing price cap regulation may not be altered during the period rates are frozen, may the subsidy in effect at the time price cap regulation was elected be discontinued during the period rates are frozen?

POLICY

- Q. If the access subsidy being paid to GTC, Inc. is eliminated, should BellSouth Telecommunications, Inc. be directed to cease collection of the access subsidy funds? If the access subsidy being paid to GTC, Inc. is eliminated, and collection of the access subsidy funds is not terminated, what disposition should be made of the funds?

ORDER NO. PSC-98-0300-PCO-TL  
DOCKET NO. 970808-TL  
PAGE 11

- Q. Is it in the public interest to eliminate the interLATA access subsidy currently received by GTC., Inc.?

ATTACHMENT B

APPROVED ISSUES

1. What is the interLATA access subsidy and why was the interLATA access subsidy established?
- 1b. What is the history of the interLATA access subsidy and how has Commission policy regarding the subsidy evolved since the subsidy was established?
2. Was the interLATA access subsidy pool intended to be a permanent subsidy? If not, what criteria should be used for ending the interLATA access subsidy pool?
3. What is the statutory authority for the BellSouth Telecommunications, Inc.'s proposal to eliminate the interLATA access subsidy of GTC, Inc.?
4. Considering that the rates of a small LEC electing price cap regulation may not be altered during the period rates are frozen, except as provided for in Section 364.051(5), Florida Statutes, may the subsidy in effect at the time price cap regulation was elected be discontinued during the period rates are frozen?
5. Should the interLATA access subsidy received by GTC, Inc. be removed?
6. If the access subsidy being paid to GTC, Inc. is eliminated, should BellSouth Telecommunications, Inc. be directed to cease collection of the access subsidy funds? If the access subsidy being paid to GTC, Inc. is eliminated, and collection of the access subsidy funds is not terminated, what disposition should be made of the funds?
7. If the subsidy should be removed, should it be removed entirely at one time, or should the subsidy be phased out over a certain time period?
8. If the subsidy should be removed entirely at one time, on what date should the removal be effective?

ORDER NO. PSC-98-0300-PCO-TL  
DOCKET NO. 970808-TL  
PAGE 13

9. If the subsidy should be phased out, over what time period should the phase out take place and how much should the reduction of the subsidy be in each period?