Legal Department

NANCY B. WHITE
Assistant General Counsel-Florida

BellSouth Telecommunications, Inc.
150 South Monroe Street
Room 400
Tallahassee, Florida 32301
(305) 347-5558

ORIGINAL

June 10, 1998

Mrs. Blanca S. Bayó
Director, Division of Records and Reporting
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

Re: 970808-TL (St. Joseph) InterLATA Access Subsidy

Dear Ms. Bayó:

Enclosed is an original and fifteen copies of BellSouth Telecommunications, Inc.'s Brief of the Evidence, which we ask that you file in the captioned docket.

A copy of this letter is enclosed. Please mark it to indicate that the original was filed and return the copy to me. Copies have been served to the parties shown on the attached Certificate of Service.

Sincerely,

Nancy B. White (KR)

Nancy B. White

Enclosures

cc: All parties of record
A. M. Lombardo
R. G. Beatty
William J. Ellenberg II

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CERTIFICATE OF SERVICE
Docket No. 970808-TL

I HEREBY CERTIFY that a true and correct copy of the foregoing was served via Federal Express this 10th day of June, 1998 to the following:

Beth Keating
Legal Counsel
Florida Public Service Commission
Division of Legal Services
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850
Tel. No. (850) 413-6199
Fax. No. (850) 413-6250

Mr. David B. Erwin
127 Riversink Road
Crawfordville, FL 32327
Tel. No. (850) 926-9331
Fax. No. (850) 926-8448

Mark R. Ellmer
502 Fifth Street
Suite 400
Port St. Joe, FL 32456

Charles J. Beck
Deputy Public Counsel
Office of Public Counsel
c/o The Florida Legislature
111 W. Madison Street
Suite 812
Tallahassee, FL 32399-1400
Tel. No. (850) 488-9330
Fax. No. (850) 488-4491

Tracy Hatch, Esq.
AT&T
101 North Monroe Street
Suite 700
Tallahassee, FL 32301
Tel. No. (850) 425-6364
Fax. No. (850) 425-6361

GTC, Inc.
%St. Joe Communications, Inc.
Mr. Bill Thomas
P.O. Box 220
Port St. Joe, FL 32456-0220
Tel. No. (850) 229-7324
Fax. No. (850) 227-7366

Nancy B. White (KR)
Nancy B. White

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition of BellSouth Telecommunications, Inc., for removal of St. Joseph Telephone and Telegraph Company's interLATA access subsidy	)))	Docket No.: 970808-TL Filed: June 10, 1998

BELLSOUTH TELECOMMUNICATIONS, INC.
BRIEF OF THE EVIDENCE

ROBERT G. BEATTY
NANCY B. WHITE
150 West Flagler Street
Suite 1910
Miami, Florida 33130
(305) 347-5558

WILLIAM J. ELLENBERG II
675 West Peachtree Street
Suite 4300
Atlanta, Georgia 30375
(404) 335-0711

ATTORNEYS FOR BELLSOUTH
TELECOMMUNICATIONS, INC.

FOR COUNSEL:
Margaret H. Greene
Vice President & General Counsel
BellSouth Telecommunications, Inc.
675 West Peachtree Street, NE
Room 4504
Atlanta, GA 30375

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STATEMENT OF THE CASE

On June 10, 1985, the Florida Public Service Commission ("Commission") established payment of interLATA access subsidies to various local exchange companies in Order No. 14452. Over the years, the number of local exchange companies receiving such a payment has dwindled to one, St. Joseph Telephone Company (now known as "GTC, Inc."). On July 22, 1997, BellSouth filed its Revised Petition to Remove the InterLATA Access Subsidy received by GTC.

The formal hearing on this matter took place on May 20, 1998. BellSouth submitted the direct, rebuttal, and surrebuttal testimony of T. F. Lohman. The hearing produced a transcript of 136 pages and two exhibits.

This Brief of Evidence is submitted in accordance with the post-hearing procedures of Rule 25-22.056, Florida Administrative Code. A summary of BellSouth's positions on each of the issues to be resolved in this docket is delineated in the following pages and marked with an asterisk.

STATEMENT OF BASIC POSITION

Pursuant to Commission Order No. 14452, issued June 10, 1985, the pooling system of access subsidies was discontinued and bill and keep was instituted. To ease the transition from the pooling environment to the bill and keep environment, a temporary subsidy pool was established. The basic purpose of going to bill and keep was to eliminate the subsidies inherent in the pooling system. The subsidy pool was designed to keep local exchange companies whole in the transition from pooling to bill and keep. It was never envisioned that the access subsidy would be permanent. This

Commission has consistently followed this policy. All interLATA access subsidies have been eliminated except for GTC.

On June 25, 1996, GTC filed its notice of price regulation pursuant to Florida Statutes 364.051. By Commission Order No. 96-1108-FOF-TL, issued August 29, 1996, as amended in Order No. 96-1108A-FOF-TL, issued September 5, 1996, GTC's election of price regulation was approved. Accordingly, effective June 25, 1996, GTC became subject to the price regulation provisions set forth in Florida Statutes 364.051.

BellSouth believes that GTC's decision to move to price regulation constitutes a major change in circumstances that eliminates any need to continue to provide GTC with a subsidy. The Commission should eliminate the subsidy payment to GTC effective on the date GTC became price regulated.

STATEMENT OF POSITION ON THE ISSUES

Issue 1: What is the interLATA access subsidy and why was the interLATA access subsidy established?

**Position: The subsidy was established by Order No. 14452, issued on June 10, 1985, as a transition from the pooling of access revenues to bill and keep.

Issue 1(b): What is the history of the interLATA access subsidy and how has Commission policy regarding the subsidy evolved since the subsidy was established?

**Position: The subsidy was established as a temporary, transition related payment that would be eliminated as circumstances changed. Over the years, the Commission has been proactive in eliminating the subsidy payments.

The Subsidy payments were established by Order No. 14452, issued on June 10, 1985, as a transition from the pooling of access revenues to bill and keep. (Tr. pp. 12-13). The Commission established the 1984 access charge revenue target at $454,963,000. (Order No. 14452, p. 5). The Commission recognized that all of their access plans could not be implemented at the same time and that there would be a shortfall when implementing bill and keep for access charges. (Order No. 14452, p. 12). The Commission decided that the subsidy plan should be implemented in order to offset any shortfall and so that implementing bill and keep would be revenue neutral. (Id.). Thus, the Commission held that a "temporary subsidy is required and is in the public interest." (Id.).

The pool was funded by each local exchange company contributing a portion of the access revenue it received for use of its local network. (Id.). The subsidy was to be distributed monthly. (Order No. 14452, p. 13). As stated in Order No. 14452, "doing away with the pooling of access revenues is in the public interest in that the inequities inherent in pooling are being replaced with the more appropriate approach of each company keeping the revenue it receives for use of its local facilities." (Order No. 14452, p. 13).

The Commission's intent with the access subsidy plan was to keep the local exchange companies in the same financial position they would have been in if pooling had continued. (Id.). Over the years, the Commission has been proactive in eliminating the subsidy payments. (Tr. p. 16 and Exhibit 1). The original pool had six companies (ALLTEL, Gulf, Indiantown, Northeast, GTC, and United) receiving payments. All of these companies, except GTC, have had their interLATA access subsidies eliminated. The basis for the elimination will be discussed more fully in Issue 2. (Tr. p. 14). Regardless, the subsidy payment has outlived its need and the time has come to eliminate it.

Issue 2: Was the interLATA access subsidy pool intended to be a permanent subsidy?

**Position: No. The Commission has eliminated the subsidy payments when it appeared that the LEC receiving the payments no longer needed the payments.

There is no dispute between the parties that Order No. 14452 established the subsidy as a "temporary" mechanism. (Order, p. 12 and Prehearing Order). The subsidy was never intended to be permanent. (Tr. p. 14). Every Commission order dealing with the subsidy has reiterated the fact that the subsidy payments are "temporary". (Exhibit 1 and Tr. pp. 15-19). Indeed, as noted earlier, the Commission has eliminated the subsidy payment to all companies, except GTC. (Tr. p. 16).

The Commission has used various criteria to eliminate the subsidy payment, however, the basis for this criteria is that the LEC receiving the payment no longer needs the payment. (Tr. p. 19). Several companies had the subsidy eliminated upon a Commission finding that they were overearning. (Exhibit 1 and Tr. pp. 16-18). Even GTC had its subsidy reduced in 1989 by $300,000 as the result of overearnings. (Tr. p. 19). Other companies have asked to be relieved from participating in the pool as a result of changed circumstances. (Tr. p. 21). For example, Frontier Communications of the South, Inc. recognized that election of price regulation was a changed circumstance and that it must generate revenue that would be lost by eliminating its intraLATA access subsidy. (Tr. pp. 21 and 75).

As noted by this Commission, it was never envisioned that the access subsidy would be permanent. It was intended to last only until the Commission was presented with an opportunity to address each company's particular circumstances in a rate case or other proceeding. (Order No. PSC-92-0028-FOF-TL, p. 3 and Tr. pp. 21-22). Earnings are not the only criteria that can be used to eliminate the subsidy. (Tr. p. 125).

Issue 3: What is the legal authority for BellSouth Telecommunications, Inc.'s proposal to eliminate the interLATA access subsidy of GTC, Inc.?

**Position: The Commission had the authority to impose the subsidy; it has the authority to eliminate the subsidy.

By Order No. 11551, issued January 26, 1983, the Commission initiated Docket No. 820537 to explore and implement an intrastate access charge structure that would compensate local exchange companies for the use of their local facilities to terminate and originate toll telephone traffic within Florida. By Order Nos. 12765 and 12765-A, the Commission established intrastate access charges to be effective January 1, 1984. The authority upon which the Commission took these actions arose from the Modified Final Judgment (US v. ATT, 552 F. Supp. 131 (D.D.C. 1982) and concurrent action on interstate access charges by the Federal Communications Commission in Docket 78-72 Phase 1 MTS and WATS Market Structure. These actions reserved to the state

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regulatory commission the obligation and authority for setting intrastate access charges. (Order No. 12765, p. 4).

As noted above, the Commission's goal was to set access charges that would adequately compensate the LECs for the use of their local facilities for originating and terminating IXC traffic. The Commission wanted the LECs to have an opportunity to maintain reasonable earning levels without increasing local rates. (Order No. 14452, p. 3). The Commission recognized that all of their goals could not be implemented immediately and, thus, the interLATA access subsidy payment was born.

The Commission, as discussed earlier, recognized that the subsidy was temporary and that various factors could be considered in the elimination of the subsidy. GTC appears to argue that, because it voluntarily chose to adopt price regulation, it should be immune from elimination of the subsidy. This should not be allowed.

BellSouth believes that GTC's choice of price regulation is a factor that can and should be considered by this Commission in deciding whether the subsidy should be eliminated. BellSouth is not requesting this Commission to change any rates that GTC is charging its customers. (Tr. p. 23). BellSouth is not asking the Commission to re-regulate GTC's earnings. BellSouth is not seeking to do anything in conflict with the Florida Telecommunications Act of 1995.

BellSouth does not believe that the mere election by GTC of price regulation affects the Commission's authority to eliminate the subsidy. (Tr. p.

83). If, however, the argument is accepted that this Commission no longer has authority over the subsidy payment to GTC, then the Commission has no authority to order BellSouth to continue making the payment. (Tr. pp. 83-84).

Issue 4: Considering that the rates of a small LEC electing price 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?

**Position: Yes. Section 364.051(5), Florida Statutes is applicable to the situation.

Florida Statutes, Section 364.051(5) states that, "any local exchange telecommunications company that believes circumstances have changed substantially to justify any increase in the rates for basic local telecommunications services may petition the Commission for a rate increase." (Tr. p. 24).

As noted earlier, Frontier Communications of the South, Inc., in electing price regulation, noted that, before becoming competitors with BellSouth, Frontier must eliminate its reliance upon revenue from BellSouth by rearranging its rate relationships to generate the revenue that would be lost by eliminating its intraLATA access subsidy. (Tr. p. 21). Frontier is essentially phasing out the subsidy payments. (Tr. p. 75).

GTC, on the other hand, apparently made the decision to elect price regulation on the misguided assumption that the interLATA access subsidy payments would continue forever. In essence, GTC wants BellSouth to fund GTC's election of price regulation. BellSouth does not believe it is required to do so. By electing price regulation, GTC has declared changed circumstances substantial enough to warrant elimination of the subsidy payments. If, because of elimination of the subsidy payments, GTC believes rate increases are required, GTC can petition the Commission under Section 364.051(5), Florida Statutes.

Issue 5: Should the interLATA access subsidy received by GTC, Inc. be removed?

**Position: Yes. GTC's election of price regulation constitutes a changed circumstance sufficient to warrant elimination of the subsidy.

BellSouth should be allowed to eliminate the subsidy payments to GTC now that GTC is a price regulated company. Although GTC did not respond to BellSouth's discovery, there is sufficient information in the record to warrant the elimination of the subsidy.

First, it is intuitively obvious that GTC believes their earnings are more than sufficient to expose the voluntary opening of their market to competition. (Tr. p. 25). Second, GTC overearned in 1989 and their subsidy receipt was reduced by $300,000. (Id.). Third, GTC has consistently had from 3.42% to 11.02% annual growth since January 1, 1990. GTC exceeded the State of Florida average for five out of seven years. (Id. and Exhibit 2).

Even if this Commission does not determine that GTC is earning quite well, the Commission has consistently held that the subsidy is temporary and should be removed as each company's circumstances change. (Tr. p. 27).

GTC's election of price regulation is a substantial change from rate base rate of return regulation and warrants elimination of the subsidy. (Tr. p. 27).

Issue 6: If the access subsidy being paid to GTC, Inc. is eliminated, should BST, 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?

**Position: *BellSouth has completely eliminated any surplus by reducing access charges well over $2.7 million since 1985. Because BellSouth was under a sharing requirement through 1997, BellSouth will refund to its customers any refund received from GTC for any year subject to the sharing requirement.*

When Order Nos. 14452, 15821, and 17321 were issued, BellSouth was a contributor to the pool of $2.391 million and had a surplus of $2.534 million. (Tr. p. 34). The Commission set uniform, statewide access rates at that time and established the subsidy payments to make revenue charges a "wash". (Tr. p. 35).

BellSouth's "surplus" was based on 1987 revenues and recognition of previous Commission actions. The calculation led to BellSouth's making subsidy payments of $2.391 million that were passed on to other companies based on the uniform access rates and financial effect on each company at that point in time. "Collecting and passing on" of access revenues ceased as a valid description once the commission stopped requiring uniform statewide rates. Beginning in 1988, access rates were no longer uniform, varying from company to company. (Tr. p. 35).

Moreover, BellSouth no longer has an access revenue "surplus" from moving to bill and keep for access charges. (Id.). BellSouth has completely eliminated any "surplus" by reducing access charges by well over this amount since 1985. (Tr. p. 28). Since August of 1995, BellSouth has reduced switched access rates by over $130 million. The surplus of $2.7 million has not existed for many years. (Id.). The payment is merely a subsidy from BellSouth to GTC. (Id.). BellSouth is no longer collecting access revenues for GTC. (Tr. pp. 35-36).

Elimination of the subsidy payment by BellSouth to GTC will not be a windfall for BellSouth. BellSouth will merely be returned to the revenue neutral position it lost when LECs specific rates were implemented and BellSouth reduced access rates. (Tr. p. 44). In determining how the elimination of subsidy payments affected each company, the Commission has consistently looked at other Commission actions and how they affected the companies. (Tr. pp. 49-50). For example, the Commission ordered some companies to use any surplus to lower depreciation reserves and for others used ordered rate reductions to consider whether companies needed to continue contributing to the pool. (Tr. p. 50).

BellSouth will refund to its customers any refund received from GTC for any year (through 1997) subject to the sharing requirement. (Tr. p. 28). The subsidy payment being made to GTC at this time cannot be tracked as being access revenue. (Tr. pp. 55-56). The intent of the Commission was to keep local rates stable. (Tr. p. 57). Therefore, the monies were used for various items, other than access rates.

Mr. Mailhot, on behalf of the Commission Staff, and Mr. Guedel, on behalf of AT&T, argue that, if the subsidy payment is eliminated, BellSouth should be required to lower its access charges. (Tr. pp. 99 and 122). Mr. Mailhot also argued that GTC should be allowed to increase its access charges if the subsidy was eliminated. (Tr. p. 126). Both of these witnesses overlook one important factor: the Commission has no authority to increase or decrease the level of access charges.

Section 364.163, Florida Statutes is a complete prescription of intrastate switched access rates. As such, the Commission's authority in this area is quite limited. This Commission recognized this limited authority in Order No. PSC-97-1370-FOF-TP, issued on October 29, 1997. In that case, MCI had requested that the Commission decrease GTE Florida's intrastate switched access charge rates. The Commission held that it did not have the statutory authority to reduce access charges beyond the reductions set forth in Section 364.163, Florida Statutes. (Order, p. 11). It follows, therefore, that the Commission does not have the authority to raise intrastate switched access charge rates beyond that set forth in Section 364.163, Florida Statutes.

Although Mr. Mailhot testified that he viewed his proposal as an "adjustment" rather than an actual increase or decrease to access charges, Mr. Mailhot is merely playing with semantics. (Tr. p. 129). Even Mr. Mailhot admitted that he had no evidence to show whether a reduction in BellSouth's access rates and an increase in GTC's access rates would be revenue neutral to AT&T. (Tr. p. 134).

Mr. Mailhot at one point testified that the Commission had required a rate reduction on the part of the contributor when subsidies were eliminated. (Tr. p. 124). However, Mr. Mailhot agreed that over the years the Commission has recognized that other Commission actions had been used to eliminate any potential surplus from the subsidy. (Tr. p. 128). Further, in Order No. 19692, eliminating Gulf's subsidy, the Commission made no statement as to what any contributor would do with the money. (Tr. p. 128). BellSouth, on several occasions, was ordered to set money aside as the result of subsidy eliminations. Most of these monies went into the settlement discussed in Docket No. 920260. (Tr. pp. 43-44 and 128).

Elimination of the subsidy payment by BellSouth to GTC, Inc. will not provide a windfall to BellSouth. BellSouth has previously reduced rates many times the amount of the subsidy to GTC. (Tr. p. 50).

Issue 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?

**Position: The subsidy should be eliminated entirely at one time.

The subsidy should be eliminated entirely at one time as was the case with Gulf and Indiantown. Since Order No. 14452 states that, "all subsidy pool contributions and receipts are subject to refund," GTC should refund to BellSouth all subsidies received from the date GTC first had overearnings or June 25, 1996 when GTC's election of price regulations was effective, whichever is earlier. (Tr. p. 29 and Order No. 14452, p. 14).

Issue 8: If the subsidy should be removed entirely at one time, on what date should the removal be effective?

**Position: June 25, 1996, when GTC's election of price regulation was effective or the date GTC first had overearnings, whichever is earlier.

Issue 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?

**Position: Equally over three years starting from the earlier of when GTC first overearned or when GTC's election of price regulation was effective.

CONCLUSION

For the reasons set forth herein, BellSouth requests the Commission to eliminate the subsidy payment from BellSouth to GTC and order the refund by GTC of all monies so paid from June 25, 1996 to date.

Respectfully submitted this 10th day of June, 1998.

BELLSOUTH TELECOMMUNICATIONS, INC.

Robert G. Beatty (KR)

ROBERT G. BEATTY
NANCY B. WHITE
c/o Nancy Sims
150 South Monroe Street, #400
Tallahassee, Florida 32301
(305) 347-5558

William J. Ellenberg II (KR)

WILLIAM J. ELLENBERG II
675 West Peachtree Street, #4300
Atlanta, Georgia 30375
(404) 335-0711