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-98-1169-FOF-TL ISSUED: August 28, 1998

The following Commissioners participated in the disposition of this matter:

JULIA L. JOHNSON, Chairman
J. TERRY DEASON
SUSAN F. CLARK
JOE GARCIA
E. LEON JACOBS, JR.

APPEARANCES:

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On behalf of BellSouth Telecommunications, Inc.

David B. Erwin, Esquire, 127 Riversink Road, Crawfordville, Florida 32327.
On behalf of GTC, Inc. d/b/a GT Com

Tracy Hatch, Esquire, 101 North Monroe Street, Suite 700, Tallahassee, Florida 32301.
On behalf of AT&T Communications of the Southern States, Inc.

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On behalf of Commission Staff.

**FINAL ORDER ON PETITION
TO REMOVE INTERLATA ACCESS SUBSIDY**

BY THE COMMISSION:

BACKGROUND

On July 1, 1997, BellSouth Telecommunications, Inc. (BellSouth) filed a Petition to Remove InterLATA Access Subsidy received by St. Joseph Telephone and Telegraph Company, which is now GTC, Inc. d/b/a GT Com (GTC). On July 22, 1997, BellSouth filed a revised Petition. On August 11, 1997, GTC filed an Answer in opposition to BellSouth's revised Petition. By Order No. PSC-98-0639-PHO-TL, issued May 7, 1998, AT&T's petition to intervene was granted. We conducted a hearing in this Docket on May 20, 1998. Our determinations on the issues presented at hearing are set forth herein.

In Section I, we address the origination, policy, and history behind the interLATA access subsidy. In that Section, we also consider whether the subsidy was intended to be implemented on a permanent basis. In Section II, we address our authority to terminate the subsidy. In Section III, we consider whether the subsidy payment to GTC should be terminated and, if so, whether it should be phased out, or completely terminated at one time. In Section IV, we consider termination of the subsidy mechanism and action that BellSouth must take to offset termination of the subsidy payments to GTC. In Section V, we address the appropriate date by which the subsidy payment should be terminated.

I. ORIGINATION, HISTORY, POLICY, TERM, AND CRITERIA FOR TERMINATION OF THE SUBSIDY

The interLATA access subsidy was established by us in Order No. 14452, issued on June 10, 1985, in Docket No. 820537-TP, to aid in the transition from a system of pooling of access revenues to a more appropriate means of addressing access revenue, whereby each company would keep the revenue it received for the use of its local facilities. In Order No. 14452, we recognized that our access plans, such as bill and keep of local exchange companies' (LEC) toll, could not be implemented at that time. We found that establishing a temporary subsidy pool was in the public interest. BellSouth witness Lohman asserted that the interLATA access subsidy plan was established so that there would be a "wash" on companies'

earnings. He also asserted that the access subsidy was never envisioned as a permanent payment.

BellSouth's witness Lohman also explained that under the original subsidy pool, six companies received subsidy payments: ALLTEL, Gulf, Indiantown, Northeast, GTC, and United. Witness Lohman outlined the history of the reduction or elimination of the subsidy receipts for the six original companies in an exhibit. Therein, he showed that we eliminated the subsidy for Gulf in 1988. See Order No. 19692, issued July 19, 1988, in Docket No. 820537-TP. In that Order we noted that at the same time Gulf was overearning, it was also receiving a subsidy from the interLATA subsidy pool. We found it inappropriate, therefore, for Gulf to continue to receive the subsidy payment. We therefore ordered termination of the subsidy payment to Gulf.

According to witness Lohman the next company to have the subsidy removed was Indiantown. The witness stated that by Order No. 21954, issued September 27, 1989, we terminated the subsidy payments to Indiantown and United because of the companies' current and anticipated earnings. We terminated the subsidy payment to Northeast based upon earnings and stimulation occurring with the $.25 ECS calling plan from MacClenny to Jacksonville by Order No. PSC-93-0228-FOF-TL, issued February 10, 1993.

Witness Lohman explained that ALLTEL's subsidy was reduced several times in disposing of several years of overearnings, and then eliminated totally in 1995. ALLTEL's 1991 overearnings were disposed through a subsidy reduction, effective April 1, 1992, in Order No. PSC-92-0028-FOF-TL. In Orders No. PSC-93-0562-FOF-TL, issued April 13, 1993; PSC-93-1176-FOF-TL, issued August 10, 1993; and PSC-94-0383-FOF-TL, issued March 31, 1994, we further reduced ALLTEL's subsidy in view of its earnings. By Order No. PSC-95-0486-FOF-TL, issued April 13, 1995, we eliminated the subsidy payment to ALLTEL based upon ALLTEL's earnings.

Witness Lohman stated that by Order No. 22284, issued December 11, 1989, we accepted GTC's proposal to reduce its interLATA subsidy by $300,000. The witness explained that the company had proposed this reduction in the subsidy because lowering its authorized range of return on equity would have otherwise resulted in overearnings. We determined that GTC's earnings appeared sufficient to absorb the reduction in its subsidy, and GTC would still earn within its newly-authorized range of return on equity.

Witness Lohman testified that, in the past, when the subsidy was reduced or terminated, we required BellSouth to reduce charges in some area or to make some other type of reduction.

Regarding the criteria to be used to terminate the subsidy, BellSouth witness Lohman stated that he believes that earnings or other changes in circumstances should be the basis for terminating the subsidy. According to witness Lohman, in Order No. PSC-92-0028-FOF-TL the Commission explained that it intended the access subsidy to last only until it was presented with an opportunity to address each company's particular circumstances through a rate case or other proceeding. According to the witness, in Order No. PSC-95-0486-FOF-TL, the Commission also indicated that it intended to remove a LEC from the interLATA subsidy pool when the LEC appeared to no longer require the subsidy. Witness Lohman also explained that under Section 364.051(5), Florida Statutes, if a price regulated company still receives a subsidy, the company may use changed circumstances as the reason to restructure its rates to cover the subsidy elimination and petition us for a rate increase.

In its brief, AT&T argued that the interLATA access subsidy mechanism is a transitional system of subsidy payments to those LECs that would have experienced a shortfall in access revenues if bill and keep had been implemented on a "flashcut" basis. AT&T witness Guedel added that the payment was not intended to be permanent. In its brief, AT&T also stated that, beginning with Order No. 14452, nearly every order that we have issued regarding the access subsidy mechanism indicated that we would reduce or eliminate the subsidy as the earnings of the recipient LECs would allow. AT&T's witness Guedel also asserted that, when we removed a subsidy, we also reduced the rates of the payor to prevent a windfall profit.

As for the proper basis for terminating a subsidy payment, in its brief AT&T argued that any continuation of the access subsidy should be contingent on a clear showing of need by the LEC. AT&T argued that this would be consistent with our prior policies.

GTC stated in its brief that the interLATA access subsidy was created to end access charge pooling, maintain access charges, and move to a bill and keep system, while maintaining each company's pre-bill and keep financial position. In its brief, GTC also agreed that prior to price regulation, we considered rate base, rate of return overearnings as the criterion for subsidy termination. GTC further indicated that there is little argument

among the parties about the history of the subsidy, or what the criterion was for individual company subsidy termination before the passage of price cap regulation. GTC agreed that the subsidy pool was not intended to be permanent.

Regarding subsidy termination criteria, GTC argued that earnings would not be a lawful criterion to use for a price cap company under the current law. GTC further argued that the subsidy pool should end only in a manner that furthers our original intent to create a "wash" through the implementation of bill and keep. The company suggested that one criterion we could use would be whether a company could legally raise its rates to offset the loss of its subsidy revenue. GTC believes this is an important consideration, because the subsidy is one of the components of the revenue stream that has been frozen by price regulation.

The Commission staff's witness Mailhot agreed with the parties assessments regarding the origin, history, policy and term of the subsidy. He also noted that GTC has been the only company receiving an interLATA subsidy since the beginning of price cap regulation. Witness Mailhot further emphasized that in prior cases when we eliminated the payment of the subsidy to a company, we also ordered the payor of the subsidy to reduce some rate by an amount equal to the subsidy payment. Witness Mailhot explained that this was to keep the payor of the subsidy whole, but preclude a windfall.

Regarding the criteria that we should consider in terminating the subsidy, witness Mailhot testified that we could, in addition to earnings, examine whether the subsidy payments still help maintain uniform statewide access charges. He stated that maintenance of uniform charges was one of the primary reasons for establishing the subsidy payments when the interLATA access charge pooling arrangement ended. He asserted that uniform statewide access charges were believed to be necessary in order to prevent IXCs from only serving those parts of the state that had low access charges.

Determination

Based upon the evidence and the arguments presented, and in view of the general agreement between our staff and the parties, we find that the subsidy was established to make the transition from a pooling environment for interLATA access charges to a bill and keep environment easier for the LECs.

We also find that the history demonstrates that the main criterion we used in the past to reduce or eliminate the subsidy of a rate-base regulated company was earnings. We agree that Order No. 14552 is clear on this point. The evidence presented also clearly demonstrates that in all previous reductions or eliminations of the interLATA subsidy, the company involved was overearning. Thus, we determined that the LEC no longer needed the subsidy.

While the record clearly demonstrates that we used the earnings status of a company as the criterion when reducing or eliminating the subsidy, the five companies that have already had the subsidy eliminated were rate of return companies at the time we eliminated the subsidy. GTC, the only company still receiving the interLATA subsidy, had its subsidy amount reduced based upon its earnings when it was also still under rate of return regulation. GTC is now price regulated.

In addition, we find that the evidence is clear that when the subsidy payment was terminated to a LEC, the payor(s) of the subsidy were required to reduce some rate or the monies were set aside pending further action. The record shows that this policy was designed to keep all the subsidy participants revenue neutral.

The record also is clear that the interLATA subsidy pool that we established in Order No. 14452 was to be a temporary mechanism. The parties and Commission staff witness agree on this point. There is disagreement regarding the criteria that should be used to end the interLATA subsidy pool. The evidence does demonstrate, however, that the access subsidy was to last only until a company experienced some change in circumstances that we found justified terminating the subsidy. We believe that it is appropriate for changed circumstances to continue to be the criterion for determining if the subsidy should be eliminated.

II. AUTHORITY TO TERMINATE THE SUBSIDY

BellSouth argued that our authority to terminate the subsidy is clear. As BellSouth explained in its brief, by Order No. 12765, issued December 9, 1983, in Docket No. 820537-TP, we established the access charges that interexchange telecommunications companies pay local telecommunications companies for the use of the local network. BellSouth stated that we took this action in accordance with the Modified Final Judgment, U.S. v. ATT, 552 F.Supp. 131 (D.D.C. 1982) and action in FCC Docket 78-72. See BellSouth's

Brief at p. 5. See also Order 12765, p. 4. Thereafter, by Order No. 14452, we established the interLATA access subsidy to ensure that all LECs would be compensated for the use of their facilities without increases in local rates. Because we had the authority to implement the interLATA access subsidy, BellSouth argued, that we have the same authority to terminate it.

BellSouth claimed that we clearly recognized from the beginning that the subsidy was temporary and that we could terminate the subsidy. BellSouth asserted that GTC is attempting to use its election of price regulation as a shield to protect it from elimination of the subsidy payment. BellSouth argued that GTC should not be protected from elimination of the subsidy simply because GTC voluntarily elected to be price regulated. BellSouth further argued that GTC's election of price regulation is, in fact, a basis that we could consider for eliminating the subsidy for GTC. BellSouth added that if we determine that we do not have the authority to terminate the subsidy to GTC, then we must also determine that we have no authority to require BellSouth to continue the payment.

In contrast, GTC asserted that there is no specific statutory authority that permits us to terminate the interLATA subsidy payment to GTC. GTC stated that the subsidy and its history has only been addressed in our orders. GTC argued that we cannot rely on our prior orders terminating the subsidy for other LECs as authority to terminate the subsidy here, because those orders were issued prior to the Florida Telecommunications Act of 1995, which established price regulation. GTC further contended that we must not rely on rate of return regulation considerations in addressing BellSouth's petition, but must consider new approaches more appropriate for the current regulatory scheme.

Essentially, GTC argued that because it is now price regulated, and we have never eliminated the subsidy for a price-regulated LEC, we cannot now eliminate the subsidy for GTC, at least not based upon the criteria we have used in past cases. GTC asserted that in previous cases we have used earnings as the criteria for termination of the subsidy for rate of return regulated LECs. According to GTC, earnings is a meaningless criteria when applied to a price regulated LEC, which is exempt from rate base, rate of return regulation pursuant to Section 364.051(1)(c), Florida Statutes.

In addition, GTC mentioned staff witness Mailhot's suggestion that we could allow GTC to increase its access charges and require BellSouth to decrease its access charges in an amount equal to the subsidy as an alternative to simply eliminating the subsidy. GTC asserted that witness Mailhot's proposal is a "workable solution" that would balance the interests of all parties.

AT&T argued in its brief that we have the authority to "oversee the continuing implementation of [our] orders." See AT&T's Brief at p. 8. AT&T also argued that our prior lawful actions were not repealed by the enactment of the Florida Telecommunications Act of 1995; therefore, our authority and oversight with regard to our prior orders is still in effect.

AT&T also argued in its brief and through the testimony of witness Guedel that Section 364.01(4)(g), Florida Statutes, requires us to ensure that all providers of telecommunications services are treated fairly. According to AT&T, it is unfair for IXCs to subsidize GTC's revenues through the payment of switched access charges to BellSouth. AT&T stated that receipt of the subsidy constitutes anticompetitive behavior. Thus, AT&T argued, the subsidy can and should be eliminated.

Determination

Based upon the evidence and the arguments presented, we find that we have the authority to eliminate the subsidy payment to GTC by virtue of our original authority to establish the subsidy. (See Order 14452 at p. 12 ("[W]e find that a temporary subsidy pool is required and is in the public interest.")). Elimination of the subsidy payment to GTC does not conflict in any way with Section 364.051, Florida Statutes. The evidence does not suggest that the enactment of the Florida Telecommunications Act of 1995 impaired our authority to implement and enforce our prior, lawfully enacted orders regarding the subsidy.

We agree with AT&T and BellSouth that we have continuing authority over our prior orders in this matter. The parties and the Commission staff agree that we lawfully implemented this subsidy. The fact that GTC is now price regulated does not alter our authority with regard to this subsidy, which was implemented prior to GTC's election of price regulation. In fact, we agree with BellSouth's witness Lohman that it seems quite appropriate that we should remove a revenue support instituted when a company

was under rate of return regulation once a company has become price regulated.

Again, we emphasize that each of the parties has agreed that the interLATA subsidy was clearly intended to be temporary. See Order No. 14452; BellSouth's Brief at p. 4; AT&T's Brief at p. 7; and GTC's Brief at p. 5. We have, in fact, eliminated the subsidy for each of the other original participants in the pool, except GTC. We have not eliminated a subsidy payment for a LEC after it has elected price regulation, nor have we been asked to do so, until now.

We also note that while we have in the past used earnings to determine whether a subsidy payment should be removed, earnings have never been identified as the sole criteria for terminating the subsidy. Based upon the evidence and the arguments presented, it appears that we could eliminate the subsidy if we were to find that the subsidy has fulfilled its stated purpose "to have a 'wash' when implementing bill and keep. . ." and if we determined that elimination of the subsidy is in the public interest. Order No. 14452 at 12. The record does not demonstrate that traditional, rate of return earnings information is the only evidence that may indicate a "wash" or public interest.

Finally, we note that while we do not agree with AT&T that receipt of the subsidy amounts to an "anticompetitive behavior" under 364.01(4)(g), Florida Statutes, we do agree that the continued subsidization of GTC's revenues is contrary to our statements in Order No. 14452 that:

> Doing away with 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. We recognize that discontinuance of the access pool is not complete because we have established a temporary subsidy pool. However, our implementation plan is an important first step in this complex process.

Order No. 14452 at p. 13.

For all of these reasons, we find that our authority to terminate the interLATA subsidy payment to GTC remains intact.

III. TERMINATION OF THE SUBSIDY PAYMENT TO GTC

BellSouth argued in its brief that we may terminate the subsidy payment to GTC even though GTC's basic rates are frozen, because Section 364.051(5), Florida Statutes, provides that GTC may petition us for a basic local service rate increase if it believes that circumstances have changed substantially to justify such an increase. Similarly, AT&T asserted that we can terminate the subsidy payment, because Section 364.051(5), Florida Statutes, allows GTC to petition for rate relief upon a showing of changed circumstances.

In his testimony, BellSouth's witness Lohman argued that we have generally reduced or eliminated the interLATA access subsidy either because companies asked to be relieved from participating in the pool or companies experienced changed circumstances, such as overearnings. Witness Lohman further argued that these criteria are appropriate reasons for discontinuing the subsidy, and should be the criteria used in this proceeding. Witness Lohman asserted that our acknowledgment of GTC's election of price regulation is an action that provides the impetus to eliminate this temporary payment to GTC. Witness Lohman contended that GTC's election of price regulation is a significant change in circumstances that justifies the elimination of the subsidy payment to GTC. The BellSouth witness also asserted that the subsidy payment was intended to be a temporary relief measure and was to be removed as each company's circumstances changed. Witness Lohman argued, therefore, that GTC's election of price regulation is a substantial change from rate base, rate of return regulation and warrants elimination of the subsidy from the point at which GTC elected price regulation. Witness Lohman also stated that the subsidy should be eliminated entirely at one time, as it was with both Gulf and Indiantown.

AT&T's witness Guedel argued that GTC should not be allowed to use its election of price regulation to protect and prolong the continuation of the subsidy. Witness Guedel argued that the subsidy was intended to render support only during a transitional phase to bill and keep. In addition, AT&T stated in its brief that the subsidy should be eliminated immediately, because GTC has received an access subsidy for over a decade.

Staff's witness Mailhot argued that the interLATA toll bill and keep subsidy should be removed if we find that it is appropriate to rely upon GTC's earnings as a criterion, and GTC's earnings support the elimination of the subsidy. Witness Mailhot asserted that using GTC's earnings as a criterion for removal of the subsidy is consistent with our prior decisions. He also suggested that an alternative may be to terminate the subsidy, allow GTC to increase its access charges, and require BellSouth to reduce its access charges by the amount of the subsidy. As witness Mailhot stated, when the subsidy pool was established, the payments made into the pool by each company, including BellSouth, came from its access charges. The witness asserted that, in effect, BellSouth collects access charges for GTC and then passes this revenue on to GTC in the form of subsidy payments. The witness stated that we could have adjusted each company's access charges to eliminate the subsidy system in a generic proceeding, once access charges became nonuniform, but did not. Witness Mailhot recommended, therefore, that we terminate the subsidy to GTC, and allow GTC to increase its access charges, and require BellSouth to reduce its access charges.

GTC argued, however, that Section 364.051, Florida Statutes, creates a balance between rate of return regulation and no regulation by freezing rates for a certain time, and then allowing rates to increase a limited amount over time. GTC asserted in its brief that termination of the subsidy payment would significantly alter the approach set forth in Section 364.051, Florida Statutes, because it would eliminate a component of GTC's revenues during a period when the company's rates are frozen. GTC claimed that it would be unable to recover the lost revenue and would be forced into a "lose-lose" situation. GTC contended that if the subsidy payment is terminated, it will be the only LEC to have its access charges reduced simply because it elected price regulation. GTC argued that termination of the subsidy would be ". . . an adjustment which is either an unlawful rate of return calculation or an arbitrary determination based upon nothing put forth in evidence in this docket." See GTC's Brief at p. 9.

In its brief, GTC also argued for the same alternative approach that staff's witness Mailhot suggested. GTC further argued that requiring GTC to collect access charges directly from the IXCs will create a "wash," and, thus, further our original intent in creating the bill and keep subsidy mechanism. GTC further argued that implementation of this alternative will maintain GTC in the same position as the other LECs that have

chosen price regulation. In addition, GTC state that if staff witness Mailhot's alternative approach is adopted, then the subsidy could be eliminated at once, in conjunction with redirection of IXC access charge revenue directly to GTC. If the subsidy is simply terminated, however, GTC stated that the subsidy payments should be gradually decreased over the period of time that it would take GTC to offset the loss of the subsidy.

Determination

Upon consideration of the arguments presented, we agree with the assessments of BellSouth and AT&T that the fact that GTC's basic rates are currently frozen does not alter our ability to terminate the subsidy payment as explained in Section II of this Order. Section 364.051(5), Florida Statutes, states, in pertinent part:

> Notwithstanding the provisions of subsection (2), 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, but the commission shall grant such petition only after an opportunity for a hearing and a compelling showing of changed circumstances.

If GTC believes that termination of the subsidy payment to GTC amounts to a changed circumstance that justifies a rate increase, GTC may seek relief pursuant to Section 364.051(5), Florida Statutes.

While we agree with the parties that we have previously used overearnings as the criterion to eliminate a recipient's interLATA bill and keep subsidy payments, we also agree with BellSouth and AT&T that GTC's election of price regulation is a substantial change in GTC's circumstances. We agree with AT&T's assessment in its brief that GTC has demonstrated a desire to take on the opportunities of the competitive arena by electing price regulation.

As for the alternative approach suggested by staff's witness Mailhot and advocated by GTC, there is not sufficient record evidence to find that the alternative approach is necessary or

proper. There is also no evidence regarding the effects that implementation of the suggested alternative might have on the parties or any other companies. Furthermore, we are concerned that the access charge "adjustment" suggested by GTC and the Commission staff's witness appears to be contrary to Section 364.163, Florida Statutes, which caps each LEC's intrastate access rates.

Based on the record and the arguments presented, we find that GTC has experienced a changed circumstance, its election of price regulation. We find that this changed circumstance warrants termination of the subsidy to GTC. Furthermore, we find no support in the record for increasing GTC's access charges. Again, we emphasize that GTC may seek relief as provided in Section 364.051(5), Florida Statutes, if necessary.

Upon consideration, we also find that the subsidy shall be terminated entirely at one time. There is not sufficient evidence to support a gradual reduction in the subsidy payments, nor is there evidence to support leaving the subsidy in place until GTC's basic rates are no longer capped.

IV. THE INTERLATA SUBSIDY MECHANISM

In his testimony, BellSouth witness Lohman argued that his company has effectively eliminated collection of the original subsidy amount of $2.7 million by reducing access charges by well over that amount since 1985. Witness Lohman further argued that the original revenue surplus enabled BellSouth to make subsidy payments that were passed on to other companies based on the uniform access rates. Witness Lohman also argued that the $2.7 million surplus has not existed for many years; thus, there is no surplus for disposal. BellSouth's witness further contended that "collecting and passing on" the access revenues ceased when we stopped requiring uniform statewide access rates. Witness Lohman argued that BellSouth is no longer collecting access revenues for GTC; therefore, "the payment is just a subsidy from BellSouth to GTC." See Transcript at pgs. 28 and 36. In addition, witness Lohman asserted that terminating subsidy payments to GTC will not create a windfall that will benefit BellSouth; thus, BellSouth should be allowed to keep the full amount that it has been paying to GTC.

BellSouth witness Lohman also contended that the IXCs were not funding the subsidy pool; instead, the IXCs were paying for their access to the local network at the same level at which they made

payments prior to the implementation of bill and keep. The BellSouth witness argued that this revenue neutrality was, however, eliminated in 1988 as uniform access rates were replaced by LEC-specific rates. Witness Lohman asserted that the various access reductions made by BellSouth have changed the revenue neutrality of the access revenues established in the original bill and keep order.

As for whether BellSouth should be required to make a rate reduction upon the elimination of the subsidy payment to GTC, BellSouth witness Lohman conceded that in prior cases in which the subsidy payments to a LEC have been eliminated, we have either ordered BellSouth to reduce some rate or set aside the monies pending further action. Nevertheless, witness Lohman contended that BellSouth has reduced rates tremendously since the finalization of the bill and keep pool in 1987. The witness also noted that these reductions occurred while BellSouth was still under rate of return regulation, and that BellSouth is now price regulated.

AT&T's witness Guedel argued that BellSouth will enjoy a windfall profit if the subsidy payments to GTC are discontinued without accompanying rate reductions. Witness Guedel further argued that this reduction should be targeted at BellSouth's switched access charges, because switched access charges have historically supported the interLATA toll bill and keep access subsidy pool. Witness Guedel contended that switched access provides BellSouth a contribution in excess of cost of over one thousand percent. Thus, at their current levels, switched access charges deter competition by setting a price squeeze in favor of the incumbent LECs. Witness Guedel did, however, concede that it is possible for BellSouth to reduce a different service in order to eliminate any possible windfall profits resulting from the termination of the subsidy payments to GTC.

In addition, AT&T's witness Guedel argued that the bill and keep subsidy pool has been funded by a portion of BellSouth's access revenue, and that interexchange carriers were the parties paying those access charges. Witness Guedel contended that at the inception of the subsidy pool, BellSouth had a revenue surplus, which meant that access charges amounted to more than fair compensation for the use of BellSouth's local access service. Witness Guedel contended that it was this revenue surplus that funded the subsidy pool. Witness Guedel argued that we have the authority to eliminate the subsidy payments and channel the

resulting windfall profits to reduce rates for the payor companies. Witness Guedel further asserted that,

> [i]n in carrying out the elimination of the subsidy pool, the Commission would be doing exactly what it has done in the past with implementing that Order by removing part of the subsidy, and using that windfall profit to reduce rates for the payor company.

Transcript at p. 114.

Furthermore, AT&T argued in its brief that we cannot increase GTC's access charge rates, because we are barred from doing so by Section 364.163, Florida Statutes. AT&T does, however, believe that we can decrease BellSouth's access charges because of our past policy of precluding BellSouth from receiving a windfall when the subsidy payment to a LEC is terminated.

Staff's witness Mailhot argued that the access revenues that the LECs contributed into the subsidy pool were derived from revenues that the IXCs paid as access charges. Thus, if the subsidy payments to GTC are eliminated, the witness argued that it is consistent with our prior decisions to require BellSouth to implement a rate reduction by an amount equal to the subsidy BellSouth was paying to GTC. Witness Mailhot further argued that we have generally required the payor to reduce some rates whenever a subsidy was eliminated in order to avoid any windfall. Witness Mailhot did, however, concede that there may have been instances in which we set aside monies and applied those monies to depreciation pending a decision on a permanent rate reduction. Staff witness Mailhot suggested that it appears that we may have the authority to require BellSouth to implement a rate reduction if these subsidy payments are terminated.

In its brief, GTC argued that it has not been the recipient of BellSouth's "largesse;" instead, BellSouth has collected access revenues on behalf of GTC. GTC further argued that absent some rate reduction by BellSouth, termination of the subsidy to GTC will result in a windfall for BellSouth. GTC asserted that if we terminate the subsidy payment, allow GTC to increase its access charges, and require BellSouth to decrease its access charges, as suggested by staff witness Mailhot, then "the Commission will be carrying out the effect of its earlier decisions previously made in a lawful manner." See GTC's Brief at p. 13.

Determination

We do not agree with BellSouth's assertion that it has merely been subsidizing GTC by way of the access subsidy payments. We are persuaded by the arguments presented by AT&T, GTC, and the staff witness, that discontinuance of the access revenue streams to GTC, absent any rate reduction on the part of BellSouth, will create a windfall for BellSouth.

In our past Orders pertaining to termination of the subsidy, we have required BellSouth to recognize the subsidy reduction in some manner. For example, in Order No. PSC-92-0028-FOF-TL, issued in Docket No. 911108, on March 10, 1992, BellSouth's subsidy payment to ALLTEL was reduced by $334,000. The subsidy payment reduction was treated as an additional extended area service (EAS) set-aside amount for BellSouth. Order No. PSC-92-0368-FOF-TL, issued May 14, 1992, included a reduction in the amount of interLATA subsidies paid to Northeast Florida Telephone Company by Southern Bell (now BellSouth) and GTE Florida. By that Order, we required Southern Bell to set aside any reduction in the subsidy payments for EAS implementation in Docket 880069-TL. GTE Florida's portion of Northeast's interLATA subsidy reduction was placed into an unclassified depreciation reserve account until such time as rates were changed. By Order No. PSC-93-0228-FOF-TL, issued February 10, 1993, we required the reduced subsidy payment for BellSouth to be included as an additional set-aside amount to be disposed of in Docket No. 920260-TL. In Order No. PSC-93-1176-FOF-TL, issued August 10, 1993, we also required BellSouth to add the reduction in subsidy payments to their set-aside amount to be disposed in Docket No. 920260-TL. By Order No. PSC-94-0383-FOF-TL and Order No. PSC-95-0486-FOF-TL, we took similar action.

We agree with witness Lohman that BellSouth's original $2.7 million subsidy was disposed in previous dockets. The original subsidy amount of $2.7 million was, however, net of contributions. As previously discussed, we found it necessary to dispose of the additional amounts as BellSouth's contribution to the subsidy fund was reduced. Likewise, BellSouth shall be required to recognize the subsidy reduction.

While we acknowledge that BellSouth has made substantial reductions in its switched access charges since the finalization of the bill and keep mechanism, BellSouth's witness Lohman did concede that most of BellSouth's switched access charge reductions were the result of settlement or sharing agreements. There is no evidence

that these agreements affected BellSouth's participation in the interLATA access subsidy pool. Rather, as argued by AT&T and staff's witness Mailhot, the evidence indicates that the IXCs funded the subsidy pool by their use of the local network, even though BellSouth's access charges were reduced. Thus, we find that upon elimination of the subsidy payments to GTC, it is also appropriate to require BellSouth to make adjustments in order to eliminate all aspects, including any windfall, associated with this subsidy, which was implemented when BellSouth and GTC were both under a different regulatory scheme. Furthermore, we are confident in our authority to require BellSouth to make a reduction to negate any windfall for the same reasons set forth in Section II of this Order.

Based on the arguments and the evidence presented, we find that the subsidy mechanism shall be terminated. Thus, we shall require BellSouth to make a reduction in order to eliminate a windfall. BellSouth has, however, substantially reduced its access charges through various settlement agreements and to a greater extent than these agreements required. Thus, we shall allow BellSouth to make the reduction in a specific rate, at BellSouth's discretion, that will benefit all of BellSouth's ratepayers to the extent possible. BellSouth shall file tariffs with us within sixty (60) days of the issuance of this Order to reflect this rate reduction.

V. SUBSIDY PAYMENT TERMINATION DATE

BellSouth's witness Lohman testified that GTC should refund to BellSouth all subsidies received from the date GTC first had overearnings or June 25, 1996, when GTC became price regulated, whichever is earlier. Witness Lohman noted that Order No. 14452 states that all subsidy pool contributions and receipts are subject to refund. AT&T argued that the effective date of the subsidy removal and the matching access reduction for BellSouth should be October 1, 1998, because the amount of the access reduction would not be a large amount. AT&T suggested that BellSouth's access charge reduction could be combined with access reductions scheduled to be made pursuant to the new legislation.

We do not agree with BellSouth that the subsidy payments should be eliminated effective from the date that GTC elected price regulation. BellSouth did not petition us to terminate the subsidy payments when GTC elected price regulation. Because the subsidy was implemented by us, it is appropriate for GTC to continue to

receive the subsidy payment until we make a decision to terminate the subsidy. See Order No. 14452. Although we did indicate in Order No. 14452 that the subsidy payments were subject to refund, the Order is clear that we would require a LEC receiving the subsidy to make a refund if we determined that the LEC was overearning. Order No. 14452 at p. 14. There is, however, no earnings information in the record for this case to allow us to determine if GTC has been overearning. Furthermore, it would be unduly burdensome to GTC to require it to refund the subsidy payments it has received since it elected price regulation. The payments shall, therefore, be terminated upon the filing of BellSouth's tariff reflecting its reduction as set forth in Section IV of this Order.

Based on the foregoing, it is therefore

ORDERED by the Florida Public Service Commission that the interLATA access subsidy to GTC, Inc. d/b/a GT Com shall be terminated. It is further

ORDERED that BellSouth Telecommunications, Inc. shall file tariffs reflecting a reduction in a specific rate, at BellSouth Telecommunications, Inc.'s discretion, that will offset the terminated access subsidy payments to GTC, Inc. d/b/a GT Com, and will benefit all of BellSouth's ratepayers, to the extent possible. It is further

ORDERED that BellSouth Telecommunications, Inc. shall file its tariffs reflecting the reduction within sixty (60) days of the issuance of this Order. It is further

ORDERED that the termination of the interLATA access subsidy to GTC, Inc. d/b/a GT Com shall be effective upon the filing of BellSouth Telecommunications, Inc.'s tariffs reflecting the reduction required by this Order. It is further

ORDERED that upon the filing of BellSouth Telecommunications, Inc.'s tariffs reflecting the reduction required by this Order, and the conclusion of the time for appeal set forth in the Notice of Further Proceedings or Judicial Review, this Docket shall be closed.

By ORDER of the Florida Public Service Commission this 28th Day of August, 1998.

BLANCA S. BAYÓ, Director
Division of Records and Reporting

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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.

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 Records and Reporting, 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 Records and reporting 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.