BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition of BellSouth Telecommunications, Inc. to remove interLATA access subsidy received by Joseph Telephone and Telegraph Company.	)	DOCKET NO. 970808-TL FILED: 1-5-99

NOTICE OF ADMINISTRATIVE APPEAL

NOTICE IS GIVEN that GTC, Inc., Appellant, appeals to the Supreme Court of Florida, Order No. PSC-98-1169-FOF-TL of the Florida Public Service Commission, rendered December 7, 1998. A conformed copy of Order No. PSC-98-1169-FOF-TL is attached. The order appealed is a final order of a statewide agency relating to the rates and services of utilities providing telephone service.

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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:

Nancy B. White, Esquire, 150 South Monroe Street, Suite 400, Tallahassee, Florida 32301.
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.

Beth Keating, Esquire, 2540 Shumard Boulevard, Tallahassee, Florida 32399-0850.
On behalf of Commission Staff.

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.

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.

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.

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.

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

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 unifbrm 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

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.

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

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.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served by U.S. Mail this 5th day of January 1998, to the following:

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