



Public Service Commission

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RECORDS AND REPORTING

-M-E-M-O-R-A-N-D-U-M-

DATE: MARCH 18, 1999

TO: DIRECTOR, DIVISION OF RECORDS AND REPORTING (BAYÓ)

FROM: DIVISION OF COMMUNICATIONS (SIMMONS, DOWDS) *SAS*
 DIVISION OF LEGAL SERVICES (COX, BROWN) *WPC MCB*

RE: DOCKET NO. 981834-TP - PETITION OF COMPETITIVE CARRIERS FOR COMMISSION ACTION TO SUPPORT LOCAL COMPETITION IN BELL SOUTH TELECOMMUNICATIONS, INC.'S SERVICE TERRITORY.

AGENDA: 3/30/99 - REGULAR AGENDA - DECISION PRIOR TO HEARING - INTERESTED PERSONS MAY PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: NONE

FILE NAME AND LOCATION: S:\PSC\CMU\WP\981834.RCM

CASE BACKGROUND

On December 10, 1998, the Florida Competitive Carriers Association (FCCA), the Telecommunications Resellers, Inc. (TRA), AT&T Communications of the Southern States, Inc. (AT&T), MCImetro Access Transmission Services, LLC (MCImetro), Worldcom Technologies, Inc. (Worldcom), the Competitive Telecommunications Association (Comptel), MGC Communications, Inc. (MGC), and Intermedia Communications Inc. (Intermedia) (collectively, "Competitive Carriers") filed their Petition of Competitive Carriers for Commission Action to Support Local Competition in BellSouth's Service Territory. In the Petition, the Competitive Carriers requested the following relief from the Commission:

- (a) Establishment of a generic BellSouth Unbundled Network Element (UNE) pricing docket to address issues affecting local competition;

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- (b) Establishment of a Competitive Forum to address BellSouth operations issues;
- (c) Establishment of third-party testing of BellSouth's Operation Support System (OSS);
- (d) Initiation of a rulemaking proceeding to establish expedited dispute resolution procedures applicable to all local exchange carriers (LECs); and
- (e) Provision of such other relief that the Commission deems just and proper.

On December 30, 1998, BellSouth Telecommunications, Inc. (BellSouth) filed a Motion to Dismiss the Petition of the Competitive Carriers for Commission Action to Support Local Competition in BellSouth Service Territory. BellSouth requested that the Commission dismiss the Competitive Carriers Petition with prejudice. On January 11, 1999, the Competitive Carriers filed their Response in Opposition to BellSouth's Motion to Dismiss. The Competitive Carriers request that the Commission deny BellSouth's Motion to Dismiss.

This recommendation will address the Competitive Carriers' Petition and BellSouth's Motion to Dismiss.

DISCUSSION OF ISSUES

ISSUE 1: Should the Commission grant BellSouth's Motion to Dismiss the Petition of the Competitive Carriers for Commission Action to Support Local Competition in BellSouth Service Territory?

RECOMMENDATION: No. The Commission should deny BellSouth's Motion to Dismiss.

STAFF ANALYSIS:

STANDARD OF REVIEW FOR MOTION TO DISMISS

The purpose of a motion to dismiss is to raise as a question of law the sufficiency of the facts alleged to state a cause of action or claim. See Augustine v. Southern Bell & Telegraph Co., 91 So. 2d 320 (Fla. 1956). In other words, the issue is whether the petition states a claim upon which the Commission can grant relief. In determining the sufficiency of the petition, consideration is confined to the petition and the grounds asserted

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in the motion to dismiss. See Flye v. Jeffords, 106 So. 2d 229 (1st DCA 1958). The Commission must take all material factual allegations of the petition as true. See Varnes v. Dawkins, 625 So. 2d 349, 350 (1st DCA 1993). The moving party must specify the grounds for the motion to dismiss. The Commission must construe all material allegations against the moving party in determining if the petitioner has stated the necessary allegations. See Matthews v. Matthews, 122 So. 2d 571 (2nd DCA 1960).

BELLSOUTH'S MOTION TO DISMISS

BellSouth requests that the Commission deny the FCCA's Petition in its entirety. BellSouth believes that the Petition violates the spirit and the letter of the Telecommunications Act of 1996 (the Act). BellSouth contends that the Commission has already addressed and resolved the issues presented in the Petition through the Commission's efforts to implement the Act using the procedures prescribed by the Act. Those efforts include the approval of arbitrated and negotiated agreements under Sections 251 and 252 of the Act and review of BellSouth's request to provide interLATA service under Section 271 of the Act. BellSouth argues that there is no justification for undoing these prior Commission actions and that the Commission has no legal authority to implement procedures other than those provided by the Act.

Furthermore, BellSouth disagrees with the Competitive Carriers that local competition is impossible with the current regulatory tools that are available. BellSouth does not believe that the Commission should effectively overturn its previous arbitration decisions through a generic UNE pricing proceeding. Similarly, BellSouth contends that the requests for a Competitive Forum and third party OSS testing are contrary to the procedures prescribed by the Act. More importantly, BellSouth views the Petition as a request for a "collaborative approach" to the Section 271 application process. BellSouth argues that such an approach would result in an open-ended process designed merely to delay the Section 271 application process. In addition, BellSouth does not believe that an expedited dispute resolution process is necessary. BellSouth notes that carriers can already request expedited treatment of complaints filed with the Commission. Moreover, as a result of the use of an expedited dispute resolution process for telecommunications companies, the Commission's discretion, time, and resources in handling these disputes, as well as other matters that come before the Commission, would be greatly reduced. These disputes would effectively be given priority over all other matters before the Commission.

COMPETITIVE CARRIERS' RESPONSE IN OPPOSITION TO BELL SOUTH'S MOTION TO DISMISS

The Competitive Carriers request that the Commission deny BellSouth's Motion to Dismiss for several reasons. First, the Commission should not be forced to wait on BellSouth's 271 filing before the Commission provides the rules for local competition. The Competitive Carriers contend that BellSouth's suggested approach would allow BellSouth to dictate the pace of local competition. Moreover, the Competitive Carriers note that the Commission has directed the parties to attempt to resolve specific disputes outside the context of a Section 271 proceeding. See Order No. PSC-97-1459-FOF-TL at 12.

Second, the Competitive Carriers contend that the Commission does have authority to grant the relief the Competitive Carriers have requested. Under the Act, the Commission has authority under Sections 251(d)(3) and Section 261(b) and (c). Under state law, the Commission has authority under Section 120.54(7) and 364.01(4)(d) and (g), Florida Statutes. As to the rulemaking request for rules on expedited dispute resolution, the request is authorized under Section 120.54(7), Florida Statutes, and Rule 28-103.006, Florida Administrative Code. The Competitive Carriers strongly disagree with BellSouth's contention that the requests for relief violate the letter and spirit of the Act. They note that BellSouth fails to cite any specific provision or purpose that their requests violate.

Third and most importantly, the Competitive Carriers contend that BellSouth's arguments are factual in nature. A Motion to Dismiss should only be granted as a matter of law, assuming all facts alleged to be true. (See Connolly v. Sebeco, Inc., 89 So. 2d 482, 484 (Fla. 1956)). The Competitive Carriers argue that BellSouth's arguments regarding the need (or lack thereof) for a UNE pricing docket are largely factual in nature and do not persuasively dispute the Commission's legal authority to conduct such a proceeding. The Competitive Carriers make a similar argument regarding their requests for the establishment of a Competitive Forum, third party OSS testing, and an expedited dispute resolution process. The Competitive Carriers contend that these proceedings and processes are necessary to jump start competition in the local market in BellSouth's territory.

CONCLUSION

Taking all of the facts alleged in the Competitive Carriers' Petition to be true, staff recommends that the Commission deny

BellSouth's Motion to Dismiss the Competitive Carriers' Petition. The Petition alleges sufficient facts for the Commission to grant the Competitive Carriers the specific relief requested. Furthermore, staff agrees with the Competitive Carriers that the Commission has the necessary legal authority under federal and state law to grant the relief requested. Specifically, the Commission is not restricted by federal law (the Act and related FCC orders) from initiating the processes requested and is given express authority under state law to implement the Act through appropriate procedures under Section 120.80(13)(d), Florida Statutes. Section 120.80(13)(d), Florida Statutes, states in pertinent part:

- (d) Notwithstanding the provisions of this chapter, in implementing the Telecommunications Act of 1996, Pub. L. No. 104-104, the Public Service Commission is authorized to employ procedures consistent with the Act.

Put simply, processes designed to further open the local market to competition are entirely consistent with the purposes and procedures of the Act. If the Commission finds that the requested relief (proceedings) is designed to achieve that goal and do not undermine the procedures prescribed by the Act, then the relief is well within the legal authority of the Commission.

BellSouth's arguments rely primarily on questions of fact and policy and do not represent sufficient grounds for the granting of a Motion to Dismiss. In fact, the vast majority of BellSouth's Motion to Dismiss attempts to rebut factual allegations from the Competitive Carriers' Petition, more akin to a response than a motion to dismiss. BellSouth's factual and policy arguments will be discussed in later sections of this recommendation that address the Competitive Carriers' specific requests for relief.

Staff notes that the Competitive Carriers do not request specific, substantive relief, *e.g.*, certain rates or terms for collocation. Instead, they request the initiation of proceedings or processes that may or may not result in specific, substantive relief favorable to the Competitive Carriers. BellSouth will have the opportunity to make its factual and policy arguments in the appropriate proceedings should the Commission grant the relief (the establishment of proceedings or processes) requested.

ISSUE 2: Should the Commission grant the Petition of Competitive Carriers for Commission Action to Support Local Competition in BellSouth's Service Territory?

RECOMMENDATION: The Commission should grant in part and deny in part the Competitive Carriers' Petition to the extent specified in the conclusion of this recommendation.

STAFF ANALYSIS:

The Petitioners have requested five items of relief as discussed above in the Case Background. Staff will provide a discussion of each item, followed by an overall recommendation on the Competitive Carriers' petition.

A. GENERIC UNBUNDLED NETWORK ELEMENT (UNE) PRICING DOCKET

The Competitive Carriers request that the Commission initiate a docket and conduct a hearing to address key pricing issues and the availability of end-to-end UNEs. Specifically, the Competitive Carriers request that the Commission determine cost-based pricing for UNE combinations, unbundled switching costs, non-recurring costs, and geographically deaveraged pricing for local loops. The Competitive Carriers believe that a UNE pricing docket is necessary to allow all competitive carriers and BellSouth the opportunity to address issues that are critical to all parties' survival in the marketplace. Such a proceeding will dispel uncertainty and correct pricing problems to encourage investment in the Florida local market.

The Competitive Carriers argue that the Commission has a responsibility to establish cost-based rates for UNEs. The Competitive Carriers contend that their inability to enter the local market in Florida is evidence that BellSouth's rates are not truly cost-based. Specifically, the Competitive Carriers believe that Commission action is necessary to set rates for UNE combinations that do not recreate an existing BellSouth service. The Competitive Carriers note that the Commission directed the parties to negotiate this type of UNE combination in Order No. PSC-98-0810-FOF-TP at pp. 24-25 and 44-45, issued June 12, 1998 (Florida UNE Combination Order). These negotiations have been unfruitful and have left the Competitive Carriers in their present state of uncertainty.

Further, the Competitive Carriers argue that the Commission should review unbundled switching costs because Florida currently

has the highest local switching rates in the Southeast, and one of the highest rates in the country. Next, the Competitive Carriers argue similarly that nonrecurring charges are very high and should be reviewed. Finally, the Competitive Carriers request a determination of deaveraged prices for unbundled loops. The Competitive Carriers contend that while the economic cost for BellSouth to provide loops varies greatly depending on population, terrain, and other factors, the rates or prices charged to new entrants do not. The Commission therefore should address this apparent inequity through the establishment of deaveraged pricing of local loops.

In its Motion to Dismiss, BellSouth responds to this request by stating that AT&T and the other petitioners are making unreasonable demands through their Petition. BellSouth argues that the Commission should not reward the petitioners' recalcitrance in entering the local market by initiating a UNE pricing docket to set new prices. BellSouth contends that AT&T has intentionally failed to compete in the local market with the UNE prices already set by the Commission. BellSouth believes that the Competitive Carriers are simply trying to reargue pricing issues that already have been resolved. BellSouth argues that the petitioners have not presented arguments regarding a change in circumstances that would warrant revisiting UNE prices, terms, and conditions.

B. A COMPETITIVE FORUM TO ADDRESS OPERATIONAL ISSUES (OSS)

Even if the pricing issues discussed above are addressed by the Commission, the Competitive Carriers contend that any benefit derived will be lost unless carriers are able to obtain the necessary access to BellSouth's facilities, especially to local loops, and to order and provision service, bill customers, and ensure that customer lines are maintained and repaired properly. The Competitive Carriers note that the Commission's workshops on collocation and OSS are good first steps toward the issue identification and resolution necessary for local competition to advance. The Competitive Carriers believe that the Competitive Forum should address access to UNEs, including ADSL and HDSL loops, Operational Support Systems (OSS) and performance measures, including performance standards, self-executing enforcement mechanisms, and performance data and related reporting. The Competitive Carriers believe that these requests are consistent with guidance provided by the Department of Justice and the FCC in their review of BellSouth's Louisiana 271 filings.

The Competitive Carriers propose the following procedural framework for a Competitive Forum. The Competitive Carriers request that the Commission initiate a series of workshops moderated by the commissioners or staff on the OSS and related issues, utilizing the preliminary issues list attached to its petition. (See Attachment A.) Through these workshops, issues can be established, and proposed solutions raised. For those issues on which the parties are unable to agree, the Commission staff would recommend a proposed solution or recommend that no further action is necessary. The Commission would hold an evidentiary hearing on such issues to determine whether to adopt the staff recommendation.

In its Motion to Dismiss, BellSouth argues that the demand for a Competitive Forum is contrary to the procedures of the Act. BellSouth believes that the Act prescribes the appropriate procedure for a review of BellSouth's OSS, the Commission's review of a BellSouth 271 application. BellSouth contends that nothing in the Act would authorize the Competitive Forum that the Competitive Carriers request. BellSouth believes that petitioners are attempting to add hurdles to the 271 application process through this "collaborative approach," thereby delaying BellSouth's effort to compete in the long distance market. BellSouth denies the Competitive Carriers contention that BellSouth has refused to make the operational changes necessary to allow new entrants to compete. BellSouth notes that it has spent millions of dollars to meet the OSS requirements imposed by the FCC.

C. THIRD-PARTY TESTING OF THE OPERATIONS SUPPORT SYSTEM (OSS)

Following the resolution of OSS issues through the Competitive Forum, the Competitive Carriers believe that it is necessary to review BellSouth's performance under the resulting requirements and performance standards in real-world commercial conditions. The Competitive Carriers contend that third-party testing is the appropriate verification method, as it will eliminate the "he-said and she-said" debate found in every state proceeding on a BellSouth 271 filing on the issue of nondiscriminatory access to BellSouth's OSS. Third-party testing will provide an objective view of the OSS's functionality and enable the Commission to conclude whether BellSouth's OSS meets the FCC's requirements.

The Competitive Carriers propose an elaborate procedure for third-party testing. The Competitive Carriers stress that a technically skilled, independent third party must be involved in the development, testing, and monitoring process for third-party testing of BellSouth's OSS. This consultant should utilize the

requirements and measurements established through the Competitive Forum. The testing should encompass both the existence of the electronic interface as required, as well as the BellSouth business processes that are supported by means of computer automation and manual processing that will provide nondiscriminatory support. Both the ALECs and BellSouth must have equal participation in all phases of the testing.

In its Motion to Dismiss, BellSouth contends that the third-party testing proposal is clearly designed to further delay the 271 application process. BellSouth believes that this motive is evidenced by the petitioners' request that there should be both third-party testing and commercial usage data as a prerequisite to approval of BellSouth's 271 application. BellSouth believes that the requirement of both third-party testing and commercial usage information is excessive and superfluous.

D. INITIATION OF A RULEMAKING PROCEEDING TO ESTABLISH EXPEDITED DISPUTE RESOLUTION PROCEDURES APPLICABLE TO ALL LECS

The Competitive Carriers argue that an expedited dispute resolution process is necessary for disputes related to interconnection agreements. First, the Competitive Carriers contend that BellSouth has little incentive to open its markets to its competitors. Second, the Commission's current dispute resolution processes take months to complete. The Competitive Carriers believe that undue delay in addressing disputes regarding interconnection agreements is inconsistent with the pro-competitive goals of that Act.

Accordingly, the Competitive Carriers suggest the following procedure: The Commission should initiate a formal rulemaking proceeding pursuant to Sections 120.54(7) and 120.80(13)(d), Florida Statutes, and Rule 28-103.006, Florida Administrative Code, for purposes of promulgating rules and regulations relating to post-interconnection dispute resolution. The procedure should begin with an informal settlement mediation with a Commission staff member and move to a formal dispute resolution proceeding should no resolution be achieved. The formal proceeding would require a hearing within sixty days, post-hearing submissions (briefs) by the parties within five days of availability of the hearing transcript, and a staff recommendation within 30 days of the filing of the briefs. Also, a complainant may request an expedited proceeding in which a decision must be rendered within thirty days. This decision would be interim in nature and effective until the formal dispute resolution procedure is completed. Attached to this recommendation is a draft of the proposed rules submitted by the

Competitive Carriers on February 2, 1999. (See Attachment B.)

In its Motion to Dismiss, BellSouth argues that a rulemaking to develop an expedited dispute resolution procedure is unnecessary under the Commission's present rules. Any party can request that a complaint petition be given expedited treatment. Furthermore, the requirement of such an expedited process would effectively deprive the Commission of its discretion in exercising its jurisdiction on matters that come before it in the time and manner that the Commission sees fit. In addition, ALECs would become a special class entitled to unique expedited treatment that other consumers that come before the Commission, such as water or wastewater customers, would not have.

E. OTHER JUST AND PROPER RELIEF

The Competitive Carriers do not suggest any other just or proper relief that the Commission should grant at this time. Likewise, BellSouth does not request any additional relief in the areas that are the subject of the Competitive Carriers' petition.

CONCLUSION

Staff has carefully reviewed the Competitive Carrier's Petition and BellSouth's response. As a result, staff believes that the Commission should grant in part and deny in part the Petition as follows. The Commission should initiate activities in this docket on the Competitive Carriers' Petition, Docket No. 981834-TP, in two primary phases. First, the Commission should immediately initiate a UNE pricing proceeding, and move forward with its scheduled workshops on OSS issues. The Commission should conduct a Section 120.57(1), Florida Statutes, formal administrative hearing process to address UNE pricing, including UNE combinations and deaveraged pricing of unbundled loops. Concomitantly, the Commission should conduct OSS workshops, both Commissioner and staff workshops, in an effort to resolve OSS operational issues. The request for third-party testing of OSS systems should be addressed and considered in the workshops. OSS costing and pricing issues should not be addressed in either of these initial proceedings.

Second, the Commission should initiate Section 120.57(1) hearing processes to address collocation and access to loops issues, as well as OSS costing and pricing issues. The collocation proceeding and the OSS pricing proceeding should run concurrently

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as soon as feasible following the initial UNE pricing and OSS operational/workshop proceedings.

These proceedings are appropriate for several reasons. The United States Supreme Court's decision in AT&T Corp et al. v. Iowa Utilities Board et al., ___ U.S. ___, 119 S. Ct. 721 (1999), gives great deference to the FCC and its national pricing rules. Thus, it appears that a movement from relying solely on arbitration and negotiation between specific individual parties to a generic proceeding where all parties participate may be more appropriate. In prior arbitration proceedings conducted by this Commission, deaveraged rates for unbundled network elements were generally not set. Although subject to further review on the merits, the FCC's pricing rules have been reinstated by the Supreme Court's decision. The FPSC will likely need to establish geographically deaveraged rates for certain UNEs in the future. Addressing geographic deaveraging in a generic proceeding, rather than in separate LEC-specific arbitrations, appears the most efficient and sensible approach. Once the FCC acts on these issues, the Commission will be in a better position to provide more specifics on the scope of this docket.

In addition, three years of Commission experience in handling arbitration and negotiation of interconnections agreements under the Act point to the conclusion that there is little, if any, real negotiation between the parties. Furthermore, the parties informally have submitted repeated requests to conduct generic pricing proceedings. Moreover, it appears that the FCC's rules interpreting Section 252(i) of the Act ("the Pick and Choose Rules"), as affirmed by the Supreme Court, will not likely encourage further negotiation and may, in fact, chill the negotiation process. Carriers may be less likely to negotiate certain terms and conditions if other carriers can adopt ("pick and choose") terms from various agreements to assemble the optimal agreement for that carrier.

On the other hand, staff recommends that the Commission deny the Competitive Carriers' request to initiate rulemaking on an expedited dispute resolution process for interconnection agreement complaints. Staff agrees with BellSouth that the Commission's rules already permit the filing of petitions with requests for expedited treatment. Also, staff agrees that the expedited processes requested would deprive the Commission of discretion to exercise its jurisdiction as it sees fit and would entitle ALECS to special treatment that consumers and other interested persons who come before the Commission do not receive.

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Finally, item (e) of the relief requested in the Petition seeks any additional relief that the Commission deems just and proper. The Petition itself primarily addresses the requested relief as it relates to BellSouth's territory. The issues of local competition raised, however, are highly relevant and pertinent to competition in the service territories of other Florida LECs, notably those of Sprint-Florida, Incorporated and GTE Florida Incorporated. Therefore, UNE pricing, OSS operational and pricing, and collocation/access to loops issues relative to the three large LECs should all be reviewed and determined in the generic proceedings that staff recommends. Furthermore, the deaveraged pricing of unbundled loops should be LEC-specific, taking into account the differences in each LEC's respective territory.

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ISSUE 3: Should this docket be closed?

RECOMMENDATION: No. This docket should remain open to address the relief required by the Commission in the Order issued on this staff recommendation.

STAFF ANALYSIS: The Order issued from this recommendation will be a procedural order. Commission proceedings that arise as a part of the ordered relief will all take place in this docket. Therefore, the docket should remain open.

EXHIBIT F

ISSUE LIST

1. Interconnection
 - ◆ Delay in providing trunks
 - ◆ Shutting down networks arbitrarily
2. Combinations of unbundled network elements (UNEs)
 - ◆ Combinations that BellSouth must provide
 - ◆ Whether BellSouth must provide combinations that "recreate" an existing BellSouth retail service
 - ◆ Process for enabling ALECs to combine UNEs
 - ◆ Permissibility of taking apart UNEs that already have been combined
 - ◆ Recurring and nonrecurring prices for UNE combinations
3. Physical collocation and alternatives
 - ◆ Terms on which BellSouth will provide collocation
 - ◆ Ordering difficulties
 - ◆ Alternatives to collocation
4. Selective call routing
 - ◆ Availability and adequacy of line class code method
 - ◆ Availability and adequacy of branding of operator services
5. Terms on which BellSouth will provide switching unbundled from local transport
6. OSS
 - ◆ Integration of ordering and pre-ordering functions
 - ◆ Pre-ordering issues
 - ◆ street address validation
 - ◆ provision of customer service records
 - ◆ access to product and service information
 - ◆ ability to reserve telephone numbers and obtain related information
 - ◆ access to due date information

- ◆ Ordering and Provisioning issues
 - ◆ Order flow through and manual processing of orders generally
 - ◆ Ability to order LNP
 - ◆ Ability to order split accounts electronically
 - ◆ Ability to place complex orders electronically
 - ◆ Ability to order complex directory listings electronically
 - ◆ Ability to order UNEs and UNE combinations electronically
 - ◆ Ability to check status of pending orders
 - ◆ Provision of electronic notices for service jeopardies, rejects, clarifications, competitive disconnects, etc.
 - ◆ Provision of timely FOCs
 - ◆ Provision of FOCs that take into account facility availability
- ◆ Maintenance and repair issues
- Billing issues
 - ◆ Billing for shared transport
 - ◆ Provision of terminating usage detail
- ◆ Change management
- ◆ Provision of business rules
- 7. Performance measures
 - ◆ Measurements to be reported
 - ◆ Disaggregation of measurement reporting
 - ◆ Performance standards
 - ◆ Parity assessment model
 - ◆ Verification and auditing of data
 - ◆ Self-executing enforcement mechanisms
 - ◆ Measurements for 911
- 8. Poles, ducts, conduits and rights of way
 - ◆ Methods
 - ◆ Procedures
- 9. Unbundled loops
 - ◆ Provision of loops, including XDSL loops
 - Due date intervals

10. Unbundled switching
 - ◆ Vertical features
 - ◆ AIN
11. White pages
12. Dialing parity
13. Reciprocal compensation
14. Resale
 - ◆ Aggregation
 - ◆ Terms on which ALECs may resell BellSouth Customer Service Arrangements

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ATTACHMENT B

MCWHIRTER REEVES
ATTORNEYS AT LAW

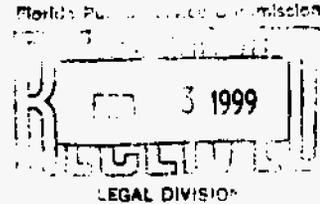
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February 2, 1999

Martha Brown
William Cox
Division of Legal Services
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850



RE: Petition of Competitive Carriers for Commission Action to Support Local Competition in BellSouth's Service Territory - Docket No. 981834-TP

Dear Martha and Will:

The Petition for Commission Action to Support Local Competition in BellSouth's Service Territory was filed in the above docket on December 10, 1998. In the petition, FCCA and the other Petitioners asked the Commission, *inter alia*, to adopt rules providing for the expeditious processing of complaints arising from approved interconnection agreements. Petitioners since have drafted rule language that illustrates the provisions described in the Petition. I am enclosing the draft for the Staff's information.

Yours truly,

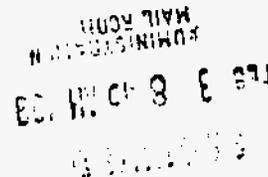
A handwritten signature in cursive script that reads "Joe McGlothlin".

Joseph A. McGlothlin

JAM/jg

Enclosure

cc: Parties of Record



MCWHIRTER, REEVES, MCGLOTHLIN, DAVIDSON, DECKER, KAUFMAN, ARNOLD & STEEN, P.A.

**DRAFT OF
PROPOSED RULES FOR
EXPEDITED HANDLING OF DISPUTES
ARISING UNDER COMMISSION-APPROVED INTERCONNECTION AGREEMENTS**

25-22.0325 Interconnection Agreement Disputes.

(1) This rule establishes procedures for Commission resolution of disputed issues arising under or pertaining to interconnection agreements approved by the Commission pursuant to its authority under the federal Telecommunications Act of 1996 and supplements the rules in Chapters 28-106 and 25-22, F.A.C. The disputed issues may include both express and implied terms of interconnection agreements and complaints brought under the federal Telecommunications Act of 1996. The following dispute resolution procedures are applicable to any proceeding in which the complaining party affirmatively elects to proceed under these rules rather than the procedural rules which would otherwise be applicable. The election must appear within the complaint. This rule is intended to resolve disputes concerning:

- (a) proper interpretation of terms and conditions in interconnection agreements;
- (b) implementation of activities explicitly provided for, or implicitly contemplated in, interconnection agreements; and
- (c) enforcement of terms and conditions in such interconnection agreements.

(2) **Informal Settlement Conferences.**

(a) For purposes of this rule, an informal settlement conference means one or more optional, informal meetings between designated Commission staff members and parties to an interconnection agreement. The purpose of the informal settlement conference is to provide a forum in which disputes may be resolved outside of a more formal hearing procedure.

(b) Any party to an interconnection agreement may request an informal settlement conference by filing a written request with the Commission and, on the same day, delivering a copy of the request either by hand delivery or by facsimile to the other party (respondent) to the interconnection agreement from which the dispute arises, to the General Counsel of the Commission, and to the Director of Communications. The written request should include:

- (1) the name, address, telephone number and facsimile number of each party to the interconnection agreement and the requesting party's designated representative;
- (2) a description of the parties' efforts to resolve their differences by negotiation;
- (3) a list of the discrete issues in dispute, with a cross-reference to the area or areas of the agreement applicable or pertaining to the issues in dispute; and

(4) the requesting party's proposed solution to the dispute.

(c) Within three business days after the request is filed, the General Counsel and Director of Communications shall each designate a staff member to conduct the informal settlement conference. The designated staff members shall notify the parties of the time, date, and location of the settlement conference, which shall be held no later than ten business days from the date the request was filed. The Commission staff may require the respondent to file a response to the request. The parties should provide the appropriate personnel with authority to discuss and to resolve the disputes at the settlement conference.

(d) The settlement conference shall be conducted as an informal meeting and will not be transcribed.

(e) The settlement conference may result in an agreement on the resolution of the dispute described in the request. If an agreement is reached, the agreement will be binding on the parties. In the event that the parties do not reach an agreement as a result of the settlement conference, either party may utilize other procedures for dispute resolution provided in this Rule.

(3) Formal Dispute Resolution Proceeding.

(a) A formal proceeding for dispute resolution will commence when a party (complainant) files a complaint with the Commission and, on the same day, delivers a copy of the complaint either by hand delivery or by facsimile to the other party (respondent) to the interconnection agreement from which the dispute arises. All subsequent pleadings shall likewise be served by hand delivery or facsimile on the same day they are filed with the Commission.

(b) The complaint shall include:

(1) the name, address, telephone number and facsimile number of each party to the interconnection agreement and the complainant's designated representative;

(2) a description of the parties' efforts to resolve their differences by negotiation;

(3) a detailed list of the discrete issues in dispute, with a cross-reference to the area or areas of the agreement applicable or pertaining to the issues in dispute;

(4) an identification of pertinent background facts, including any facts believed to be undisputed;

(5) an identification of the relevant law or rules applicable to each disputed issue; and

(6) the complainant's proposed solution to the dispute.

(c) To the extent applicable, the complainant may also include in the complaint a request for an expedited ruling under section (4) or a request for an interim ruling under section (5).

(d) The respondent shall file a response to the complaint within ten business days after the filing of the complaint. The response shall specifically affirm or deny each allegation in the complaint. The response shall include the respondent's position on each issue in dispute, a cross-reference to the area or areas of the contract applicable or pertaining to the issue in dispute, and the respondent's proposed solution on each issue in dispute. In addition, the response also shall:

- (1) stipulate to any undisputed facts; and
- (2) identify relevant law or rules applicable to each disputed issue.

(e) The complainant may file a reply within five business days after the filing of the response to the complaint. The reply shall be limited solely to new issues raised in the response to the complaint.

(f) The hearing on the complaint shall commence no later than sixty days after filing of the complaint and transcripts shall be provided on a daily basis.

(g) The parties' post-hearing submissions shall be filed within five days after receipt of the transcript of the final hearing.

(h) The written recommendation of the Commission staff shall be filed in time for consideration no later than the first agenda conference scheduled thirty days or more after receipt of the parties' post-hearing submissions.

(4) Request for Expedited Ruling.

(a) This section establishes procedures pursuant to which a party who files a complaint to initiate a dispute resolution under this rule may request an expedited ruling when the dispute directly affects the ability of a party to provide uninterrupted service to its customers or, precludes the provisioning of any service, functionality, or network element. The presiding officer has the discretion to determine whether the resolution of the complaint may be expedited based on the complexity of the issues or other factors deemed relevant.

(b) A request for expedited ruling shall be filed at the same time and in the same document as the complaint filed pursuant to section (3). The complaint shall be entitled "Complaint and Request for Expedited Ruling." In addition to the requirements listed in section (3), the complaint shall also state the specific circumstances that make the dispute eligible for an expedited ruling and shall be accompanied by prefiled direct testimony in support of the complaint.

(c) The respondent shall file a response to the complaint within five business days after the filing of the complaint and shall file its prefiled rebuttal testimony within ten business days after the filing of the complaint. In addition to the requirements listed in section (3), the respondent shall state its position on the request for an expedited ruling.

(d) After reviewing the complaint and the response, the presiding officer will determine whether the complaint warrants an expedited ruling. If so, the hearing shall be scheduled to commence no later than thirty days after the filing of the complaint, and the notice of hearing shall preserve the option for a ruling from the bench at the conclusion of the hearing. If the presiding officer determines that the complaint is not eligible for an expedited ruling, the presiding officer shall so notify the parties within five days of the filing of the response.

(e) In the absence of a ruling from the bench at the conclusion of the hearing, the parties' post-hearing submissions shall be filed within three days after receipt of the transcript of the final hearing.

(f) In the absence of a ruling from the bench at the conclusion of the hearing, the written recommendation of the Commission staff shall be filed in time for consideration no later than the first agenda conference scheduled twenty days or more after receipt of the parties' post-hearing submissions.

(5) Request for Interim Ruling Pending Dispute Resolution.

(a) This section establishes procedures pursuant to which a party who files a complaint to initiate a dispute resolution under either section (3) or section (4) may also request an interim ruling on whether the party is entitled to relief pending the resolution of the merits of the dispute. This section is intended to provide an interim remedy when the dispute compromises the ability of a party to provide uninterrupted services or precludes the provisioning of scheduled service.

(b) Any request for an interim ruling shall be filed at the same time and in the same document as the complaint filed pursuant to section (3). The heading of the complaint shall include the phrase "Request for Interim Ruling." The complaint shall set forth the specific grounds supporting the request for interim relief pending the resolution of the dispute, as well as a statement of the potential harm that may result if interim relief is not provided. A complaint that includes a request for interim ruling shall be verified by affidavit. Such complaint must list the contact person, address, telephone number, and facsimile number for both the complainant and respondent.

(c) Within ten business days of the filing of a complaint and request for interim ruling, the presiding officer shall conduct a hearing to determine whether interim relief should be granted during the pendency of the dispute resolution process. The presiding officer will notify the parties of the date and time of the hearing by facsimile within five business days of the filing of a complaint and request for interim ruling. The parties should be prepared to present their

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ATTACHMENT B

positions and evidence on factors including but not limited to: the type of service requested; the economic and technical feasibilities of providing that service; and the potential harm in providing the service. The presiding officer will issue an interim ruling on the request based on the evidence provided at the hearing.

(d) The presiding officer shall issue a written ruling on the request within twenty-four hours of the close of the hearing and will notify the parties by facsimile of the ruling. The interim ruling will be effective throughout the dispute resolution proceeding until a final decision is issued pursuant to this rule.