

State of Florida



Public Service Commission

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD
TALLAHASSEE, FLORIDA 32399-0850

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

DATE: MAY 6, 1999

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

FROM: DIVISION OF COMMUNICATIONS (ILERI) *ji*
DIVISION OF LEGAL SERVICES (WATTS) *CON* *CB*

RE: DOCKET NO. 990210-TP - REQUEST BY BELLSOUTH TELECOMMUNICATIONS, INC. FOR APPROVAL OF INTERCONNECTION, UNBUNDLING, AND RESALE AGREEMENT WITH THE OTHER PHONE COMPANY, INC. D/B/A ACCESS ONE COMMUNICATIONS.

AGENDA: 5/18/99 - REGULAR AGENDA - PROPOSED AGENCY ACTION - INTERESTED PERSONS MAY PARTICIPATE

CRITICAL DATES: 5/18/99

SPECIAL INSTRUCTIONS: NONE

FILE NAME AND LOCATION: S:\PSC\LEG\WP\990210.RCM

CASE BACKGROUND

On February 24, 1999, pursuant to Section 252(e) of the Telecommunications Act of 1996, BellSouth Telecommunications, Inc. and Access One Communications, Inc. submitted to the Florida Public Service Commission (FPSC) their negotiated agreement for the interconnection of their networks, the unbundling of specific network elements offered by BellSouth, and the resale of BellSouth telecommunications services to Access One Communications, Inc. This agreement was negotiated pursuant to Sections 251, 252, and 271 of the Act. The FPSC opened Docket No. 990210-TL to review this agreement.

On March 24, 1999, MCI WorldCom, Inc. filed a petition to intervene in Docket No. 990210-TP to object to approval of the interconnection agreement. On April 13, 1999, BellSouth filed its opposition to MCI WorldCom's intervention. The petition to intervene has not been ruled upon by the date of this filing.

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This recommendation addresses whether the negotiated agreement between BellSouth and Access One is discriminatory and against the public interest.

ISSUE 1: Should the Commission approve the negotiated agreement between BellSouth and Access One in Docket No. 990210-TL?

RECOMMENDATION: No, the Commission should not approve the negotiated agreement between BellSouth and Access One in Docket No. 990210-TL. Staff recommends rejection of the negotiated agreement on the grounds that a portion thereof discriminates against a telecommunications carrier not a party to the agreement and is not consistent with the public interest. (ILERI, WATTS)

STAFF ANALYSIS: On February 24, 1999, pursuant to Section 252(e) of the Telecommunications Act of 1996, BellSouth Telecommunications, Inc. and Access One Communications, Inc. submitted to the FPSC their negotiated agreement for the interconnection of their networks, the unbundling of specific network elements offered by BellSouth, and the resale of BellSouth Telecommunications services to Access One Communications, Inc. This agreement was negotiated pursuant to Sections 251, 252, and 271 of the Act. Attachment 2, Section 1.1.2 of the Agreement states:

Access One may purchase unbundled network elements from BellSouth for the purposes of combining such network elements in any manner Access One chooses to provide telecommunication services to its intended users, including recreating existing BellSouth services. With the exception of the sub-loop elements which are located outside of the central office, BellSouth shall deliver the unbundled network elements purchased by Access One for combining to the designated Access One collocation space. The unbundled network elements shall be provided as set forth in this Attachment. BellSouth is willing to provide as a discretionary offering and above and beyond its obligations under the act, the engineering and technical expertise necessary to combine certain unbundled Network Elements on behalf of Access One for the purpose of Access One providing an end to end telecommunications service over BellSouth's Network Elements. Such professional services shall be pursuant to a separate agreement. This offer to pursue a separate agreement is only valid under the condition that its

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inclusion by reference does not subject the separate contract to regulation by federal or state commissions. Any request by either party to a regulatory body to arbitrate conditions of the separate agreement will invalidate this offer.

Staff notes that Section 252(a) of the Act addresses agreements arrived at through negotiation. Subsection (a) provides, in part,

The agreement shall include a detailed schedule of itemized charges for interconnection and each service or network element included with agreement. The agreement ... shall be submitted to the State commission under subsection (e) of this section.

According to Section 252(e), a state commission may reject an interconnection agreement if the agreement discriminates against a carrier not a party to the agreement, or if the agreement is inconsistent with the public interest, convenience and necessity. Section 252(e)(1) also states:

Any interconnection agreement adopted by negotiation or arbitration shall be submitted for approval to the State commission. A State commission to which an agreement is submitted shall approve or reject the agreement with written findings as to any deficiencies.

Staff believes the nondisclosure of the separate agreement referenced in the BellSouth/Access One interconnection agreement would discriminate against a carrier not a party to the agreement. Under Section 252(I), the "pick and choose" provision, ALECs have the right to select provisions from another carrier's agreement and incorporate them into their own contracts.

Staff believes that this separate agreement may shield interconnection charges, services, or network elements from disclosure, therefore eliminating the right of ALECs to pick and choose effectively. Therefore, staff recommends rejection of the interconnection agreement between BellSouth and Access One in Docket No. 990210-TL on the grounds that the specified portion of the agreement discriminates against other telecommunications carriers not party to the agreement.

Further, staff believes the implementation of the interconnection agreement is not consistent with the public interest. Staff believes it is in the public interest to promote

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competition between telecommunications carriers. The referenced separate agreement would not make all disclosures necessary to promote a truly competitive telecommunications market. Therefore, staff believes the specified portion of the negotiated agreement is not consistent with the public interest.

Therefore, staff finds that this agreement discriminates against other carriers and is not consistent with public interest. In conclusion, staff recommends that the Commission should not approve the negotiated agreement between BellSouth and Access One.

ISSUE 2: Should this docket be closed?

RECOMMENDATION: Yes, upon approval of staff's recommendation in Issue 1, this docket should be closed if no person whose substantial interests are affected files a protest within 21 days of the issuance of this Order. If no timely protest is filed, the Order will become final upon issuance of a consummating order and this docket should be closed. (ILERI, WATTS)

STAFF ANALYSIS: Assuming staff's recommendation in Issue 1 is approved, this docket should be closed if no person whose substantial interests are affected files a protest within 21 days of the issuance of this Order. If no timely protest is filed, the Order will become final upon issuance of a consummating order and this docket should be closed.