

State of Florida



Public Service Commission

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RECORDS AND REPORTING

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DATE: NOVEMBER 4, 1999

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

FROM: DIVISION OF LEGAL SERVICES (B. KEATING) *DK*
DIVISION OF COMMUNICATIONS (FAVORS) *CRF*

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

DOCKET NO. 990321-TP - PETITION OF ACI CORP. D/B/A ACCELERATED CONNECTIONS, INC. FOR GENERIC INVESTIGATION TO ENSURE THAT BELLSOUTH TELECOMMUNICATIONS, INC., SPRINT-FLORIDA, INCORPORATED, AND GTE FLORIDA INCORPORATED COMPLY WITH OBLIGATION TO PROVIDE ALTERNATIVE LOCAL EXCHANGE CARRIERS WITH FLEXIBLE, TIMELY, AND COST-EFFICIENT PHYSICAL COLLOCATION.

AGENDA: NOVEMBER 16, 1999 - DECISION PRIOR TO HEARING - REQUESTS FOR CLARIFICATION/PETITIONS ON PROPOSED AGENCY ACTION - APPROVAL OF STIPULATIONS/FINALIZATION OF CERTAIN COLLOCATION GUIDELINES - PARTIES MAY PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: NONE

FILE NAME AND LOCATION: S:\PSC\LEG\WP\990321RV.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), MCI metro

DOCUMENT NUMBER-DATE

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FPSC-RECORDS/REPORTING

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:

- (a) Establishment of a generic BellSouth Unbundled Network Element (UNE) pricing docket to address issues affecting local competition;
- (b) Establishment of a Competitive Forum to address BellSouth operations issues;
- (c) Establishment of third-party testing of BellSouth's Operations Support Systems (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 Competitive Carriers' Petition. On January 11, 1999, the Competitive Carriers filed their Response in Opposition to BellSouth's Motion to Dismiss.

At the March 30, 1999, Agenda Conference, the Commission denied BellSouth's Motion to Dismiss. See Order No. PSC-99-0769-FOF-TP, issued April 21, 1999. Subsequently, by Order No. PSC-99-1078-PCO-TP, issued May 26, 1999, the Commission indicated, among other things, that it would conduct a Section 120.57(1), Florida Statutes, formal administrative hearing to address collocation and access to loop issues as soon as possible following the UNE pricing and OSS operational proceedings.

On March 12, 1999, ACI Corp. d/b/a Accelerated Connections Inc., now known as Rhythms Links Inc., (Rhythms) filed a Petition for Generic Investigation into Terms and Conditions of Physical Collocation. On April 6, 1999, GTEFL and BellSouth filed responses to ACI's Petition. On April 7, 1999, Sprint filed its response to the Petition, along with a Motion to Accept Late-Filed Answer.

By Proposed Agency Action Order No. PSC-99-1744-PAA-TP, issued September 7, 1999, the Commission accepted Sprint's late-filed answer, consolidated Dockets Nos. 990321-TP and 981834-TP for purposes of conducting a generic proceeding on collocation issues, and adopted a set of procedures and guidelines for collocation, focused largely on those situations in which an ILEC believes there is no space for physical collocation. The guidelines addressed: A. initial response times to requests for collocation space; B. application fees; C. central office tours; D. petitions for waiver from the collocation requirements; E. post-tour reports; F. disposition of the petitions for waiver; G. extensions of time; and H. collocation provisioning time frames.

On September 28, 1999, BellSouth filed Protest/Request for Clarification of Proposed Agency Action. That same day, Rhythms filed a Motion to Conform Order to Commission Decision or, in the Alternative, Petition on Proposed Agency Action. Staff conducted a conference call on October 6, 1999, with all of the parties to discuss the motions filed by BellSouth and Rhythms, and to formulate additional issues for the generic proceeding to address the protested portions of Order No. PSC-99-1744-PAA-TP. This is staff's recommendation on the protests/motions for clarification.

DISCUSSION OF ISSUES

ISSUE 1: Should the Commission grant Rhythms' and BellSouth's requests for clarification and/or protests of Order No. PSC-99-1744-PAA-TP?

RECOMMENDATION: To the extent the motions request clarification of a proposed agency action order, the motions should be denied. Clarification of a proposed agency action order is not recognized under Commission rules, and reconsideration of a proposed agency action order is contrary to Rule 25-22.060(1)(a), Florida Administrative Code. The motions should be considered protests of the PAA Order.

Stipulations have, however, been reached on all issues raised by Rhythms and BellSouth with regard to Order No. PSC-99-1744-PAA-TP, except for issues raised regarding guideline A. Staff supports these stipulations, as set forth in the analysis portion of this recommendation, and recommends that they be approved by the Commission. If staff's recommendation is approved, guidelines C, D, E, as modified by stipulation, will become effective as final agency action.

Furthermore, the Commission should amend the order to correct a scrivener's error to reflect that all time frames contained therein are calendar days.

Finally, staff recommends that the portions of Order No. PSC-99-1744-PAA-TP that were not protested, guidelines B, F, G, and H, may go into effect by operation of law as final agency action, in accordance with Section 120.80(13)(b), Florida Statutes.

STAFF'S ANALYSIS:

Rhythms and BellSouth both requested clarification of Order No. PSC-99-1744-PAA-TP, to the extent allowed. To the extent that a protest is the more appropriate procedural vehicle, the parties requested that their motions be considered protests.

Clarification of a proposed agency action order is not recognized under Commission rules, and reconsideration of a proposed agency action order is contrary to Rule 25-22.060(1)(a), Florida Administrative Code. Therefore, staff recommends that the motions filed by Rhythms and BellSouth should be considered protests of portions Order No. PSC-99-1744-PAA-TP. Staff notes that Rhythms has also identified a scrivener's error in the order that may be corrected by amendment.

As stated in the Case Background, staff conducted a conference call on October 6, 1999, with all of the parties to this case. As a result of that call, a number of stipulations were reached regarding points raised by Rhythms and BellSouth in their protests. Staff supports these stipulations. If approved, the guidelines, as modified by stipulation, may become effective as final agency action. The unprotested portions of the Order may become effective and final by operation of law, in accordance with Section 120.80(13)(b), Florida Statutes, which states:

Notwithstanding ss. 120.569 and 120.57, a hearing on an objection to proposed action of the Florida Public Service Commission may only address the issues in dispute. Issues in the proposed action which are not in dispute are deemed stipulated.

RHYTHMS

In its motion, Rhythms asked that the Commission clarify its Order to reflect that all time periods set forth in the guidelines are calendar days, rather than business days. Rhythms noted that

most of the guidelines do specifically state that the time frames are in calendar days, but that there are some instances in guideline H that do not.

Rhythms also asked that the Commission clarify guideline A (Initial Response Time) to reflect that the ILEC must include in its initial 15-day response sufficient information to allow the applicant carrier to place a firm order for collocation space.

BELLSOUTH

BellSouth objected to guideline A to the extent that it requires the ILEC to provide a response that includes the engineering, technical details, and price quotes necessary for an ALEC to complete a firm order. BellSouth argued that it is unable to provide this type of information within 15 days.

BellSouth also sought modification of guideline D(4)(b), part of the Petition for Waiver guideline, to indicate that the Petition for Waiver should include information on space housing "obsolete or unused" equipment. The guideline as stated seeks information on space housing "obsolete or retired" equipment. BellSouth argued that the guideline should reflect the language contained in ¶60 of FCC Order 99-48.

Furthermore, BellSouth sought clarification of whether guidelines C (Tour of Central Office Premises), D (Petition for Waiver), and E (Post Tour Reports), apply in situations where an ILEC plans to deny collocation due to technical infeasibility. BellSouth also asked for clarification of whether the term "technically infeasible" includes conditions that exist within the central office that make collocation technically infeasible or situations in which the requested collocation arrangement itself is technically infeasible.

Finally, BellSouth asked that the Commission clarify or otherwise determine whether the 60-day and 90-day provisioning time frames in guideline H include the time necessary for obtaining permits or other extraordinary situations. BellSouth argued that the provisioning time frames should not include the time necessary to obtain permits because every project is different and every permitting office has different requirements. BellSouth added that other extraordinary situations may include environmental abatement or major upgrades for power or air conditioning.

ANALYSIS

Calendar Days

Staff recommends that the Commission amend Order No. PSC-99-1744-PAA-TP to reflect that all time frames set forth in the guidelines, including the provisioning time frames in guideline H, on page 17 of Order No. PSC-99-1744-PAA-TP, are calendar days. Staff notes that although all other time frames in the guidelines, including guideline H, clearly indicate that calendar days apply, due to a scrivener's oversight, the provisioning periods are not specifically stated in terms of calendar days. Therefore, staff recommends that this amendment be made to the Order.

Obsolete or Retired

During the October 6, 1999, conference call, the parties agreed that guideline D(4)(b) is not in dispute with the following modification to require information regarding:

- b. Space housing obsolete or unused equipment.

Staff notes that we agree with BellSouth that the Commission indicated at its August 17, 1999, Agenda Conference, that this requirement should reflect the language in ¶60 of FCC Order 99-48. That paragraph, however, uses both phrases--"obsolete or retired" equipment and "obsolete or unused" equipment. Staff believes that either version is acceptable and consistent with the Commission's decision at the August 17, 1999, Agenda Conference. During the October 6, 1999, conference call, no party indicated any objection to this modification. Therefore, staff recommends that the Commission approve guideline D(4)(b), as modified by stipulation of the parties.

Technical Infeasibility

As for BellSouth's request to clarify/protest whether and what parts of guidelines C, D, and E, apply when the ILEC plans to deny space based on technical infeasibility, staff recommends that a stipulation has also been reached on these issues. There is apparently no need for the Commission to clarify whether guidelines C and E apply to situations where the ILEC is denying space because of technical infeasibility because guideline C clearly states that it only applies when an ILEC "contends that there is no space available for physical collocation." Thus, if C, the tour

requirement, only applies when the denial is based on lack of space, then E, the post-tour report, also applies only when the denial is based on lack of space.

As for guideline D, however, a stipulation has been reached to include language to indicate that the list of information that must be included with the Petition for Waiver need only be included with the Petition when lack of space is the basis for the request, instead of technical infeasibility. Thus, the introductory language of guideline D, on page 12 of Order No. PSC-99-1744-PAA-TP, would be revised to state:

The ILEC shall file with the Commission a Petition for Waiver of the Collocation Requirements within 20 calendar days of filing its Notice of Intent to request a waiver. *If the Petition for Waiver is based on lack of space, the Petition shall include the following information:*

(Emphasis added on new language).

Staff believes this modification is appropriate; therefore, staff recommends that this portion of guideline D, as modified by stipulation of the parties, be approved by the Commission.

BellSouth also asked that the term "technical infeasibility" be clarified. To the extent clarification may be necessary, the phrase "technical infeasibility" should be construed in the same way that the phrase "not practical for technical reasons" contained in Section 251(c)(6) of the Act is construed. There was no dispute from the parties on this issue. Therefore, staff recommends that the Commission approve guideline D, as modified by stipulation.

Provisioning Periods - Guideline H

Regarding BellSouth's request for clarification of whether the provisioning periods in guideline H include the time necessary for obtaining a permit or other extraordinary circumstances, a resolution of this request was reached during the October 6, 1999, conference call between staff and the parties. Rather than clarify this particular guideline at this time or treat BellSouth's request as a protest of guideline H, the parties have agreed to include the following issue in the generic hearing to address BellSouth's concerns:

16. For what reasons, if any, should the provisioning intervals be extended without the need for an agreement by the applicant ALEC or filing by the ILEC of a request for an extension of time?

This issue was included in the Order Establishing Procedure for this case, Order No. PSC-99-1991-PCO-TP, issued October 12, 1999. As such, staff recommends that guideline H is not in dispute and may go into effect by operation of law, in accordance with Section 120.80(13)(b), Florida Statutes.

Initial Response Time - Guideline A

Finally, staff reports that guideline A, Initial Response Time, remains in dispute. BellSouth has specifically stated that it protests this guideline to the extent that BellSouth must provide a response within 15 days that contains sufficient information for an ALEC to complete a firm order. This matter was discussed during staff's October 6, 1999, conference call with the parties. As a result of that call, this issue was included in the tentative list of issues for hearing set forth in the Order Establishing Procedure for this case, Order No. PSC-99-1991-PCO-TP, issued October 12, 1999.

Conclusion

Based on the foregoing, staff recommends that the Commission amend Order No. PSC-99-1744-PAA-TP to reflect that all time frames contained therein are calendar days. The Commission should also approve the stipulated modifications to guidelines C, D, and E. Staff further recommends that guidelines B, F, G, and H, may go into effect as final agency action by operation of law, in accordance with Section 120.80(13)(b), Florida Statutes.

Staff notes that only guideline A has been specifically protested and rendered a nullity by Rhythms' and BellSouth's protests.

DOCKETS NOS. 981834-TP, 990321-TP
DATE: NOVEMBER 4, 1999

ISSUE 2: Should these Dockets be closed?

RECOMMENDATION: No. These Dockets should remain open pending the outcome of the hearing, which is scheduled for January 12-13, 2000.

STAFF'S ANALYSIS: These Dockets should remain open pending the outcome of the hearing, which is scheduled for January 12-13, 2000.