

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition of Competitive Carriers for Commission action to support local competition in BellSouth Telecommunications, Inc.'s service territory.

DOCKET NO. 981834-TP

In re: 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.

DOCKET NO. 990321-TP
ORDER NO. PSC-99-2393-FOF-TP
ISSUED: December 7, 1999

The following Commissioners participated in the disposition of this matter:

J. TERRY DEASON
SUSAN F. CLARK
E. LEON JACOBS, JR.

FINAL ORDER APPROVING STIPULATED MODIFICATIONS
TO COLLOCATION GUIDELINES, AMENDATORY ORDER, AND
CONSUMMATING ORDER

BY THE COMMISSION:

I. 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

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FPSC-RECORDS/REPORTING

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, we 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, we indicated, among other things, that we 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, we 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. Our 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 Order addresses the results of our staff's discussions with the parties and the impact on our collocation guidelines.

II. MOTIONS FOR CLARIFICATION/PROTESTS

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 our rules, and reconsideration of a proposed agency action order is contrary to Rule 25-22.060(1)(a), Florida Administrative Code. Therefore, the motions filed by Rhythms and BellSouth shall be considered protests of portions of Order No. PSC-99-1744-PAA-TP. We note that Rhythms has also identified a scrivener's error in the Order that will simply be corrected by amendment.

As stated in the Case Background, our 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. Our staff has indicated that they support the stipulations.

A. Rhythms

In its motion, Rhythms asked that we clarify our 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 we 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.

B. 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 we 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.

III.

DECISION

A. Calendar Days

Upon consideration, we shall 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. We note that although we clearly indicated in all other time frames in the guidelines, including guideline H, that calendar days apply, due to a scrivener's oversight, the provisioning periods were not specifically stated in terms of calendar days. Therefore, this amendment shall be made to the Order.

B. 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.

BellSouth is correct that we indicated at our 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. Regardless, either version is acceptable and consistent with our decision at that Agenda Conference. During the October 6, 1999, conference call, no party indicated any objection to BellSouth's proposed modification. Therefore, we hereby approve guideline D(4)(b), as modified by stipulation of the parties.

C. 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, a stipulation has also been reached on these issues. We need not 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 parties reached a stipulation that the introductory language of guideline D, on page 12 of Order No. PSC-99-1744-PAA-TP, should be revised to state the following:

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).

We agree that this modification is appropriate; therefore, we hereby approve the stipulated change.

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, we approve guideline D, as modified and clarified by stipulation.

D. 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 our 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 that the following issue should be added to the list of issues to be addressed 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?

We note that this issue has already been included as a tentative issue in the Order Establishing Procedure for this case, Order No. PSC-99-1991-PCO-TP, issued October 12, 1999, as a result of the October 6, 1999, conference call. As such, guideline H is not in dispute and shall go into effect by operation of law, in accordance with Section 120.80(13)(b), Florida Statutes.

E. Initial Response Time - Guideline A

Finally, our 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 the 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.

IV.

CONCLUSION

Upon consideration, the motions shall be denied to the extent the motions request clarification of a proposed agency action order. Clarification of a proposed agency action order is not recognized under our rules, and reconsideration of a proposed agency action order is contrary to Rule 25-22.060(1)(a), Florida Administrative Code. Based on the foregoing, however, we hereby

ORDER NO. PSC-99-2393-FOF-TP
DOCKETS NOS. 981834-TP, 990321-TP
PAGE 8

amend Order No. PSC-99-1744-PAA-TP to reflect that all time frames contained therein are calendar days. We also approve the stipulated modifications to guidelines C, D, and E as final agency action. Guidelines B, F, G, and H, may also go into effect as final agency action 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.

Only guideline A in Order No. PSC-99-1744-PAA-TP has been specifically protested and rendered a nullity by Rhythms' and BellSouth's protests. The matter addressed by guideline A will now be included as part of our January 12-13, 2000, hearing on collocation.

Based on the foregoing, it is therefore

ORDERED by the Florida Public Service Commission that the September 28, 1999, Protest/Request for Clarification of Proposed Agency Action, filed by BellSouth Telecommunications, Inc., and the Motion to Conform Order to Commission Decision or, in the Alternative, Petition on Proposed Agency Action filed by Rhythms Links Inc. are granted, in part, and denied, in part, as set forth in the body of this Order. It is further

ORDERED that the collocation guidelines set forth in Order No. PSC-99-1744-PAA-TP are amended to reflect that all time frames contained therein are calendar days. It is further

ORDERED that the proposed stipulations to modify guidelines C, D, and E, originally set forth in Order No. PSC-99-1744-PAA-TP, are hereby approved as set forth in the body of this Order. It is further

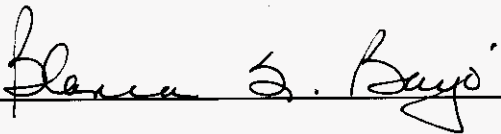
ORDERED that guidelines B, F, G, and H, shall go into effect as final agency action by operation of law, in accordance with Section 120.80(13)(b), Florida Statutes, and all portions of Order No. PSC-99-1744-PAA-TP that were not protested are hereby consummated as final agency action. It is further

ORDER NO. PSC-99-2393-FOF-TP
DOCKETS NOS. 981834-TP, 990321-TP
PAGE 9

ORDERED that the matter addressed by guideline A has been protested, and shall, therefore, be addressed as part of our collocation hearing. It is further

ORDERED that these Dockets shall remain open pending the outcome of the January 12-13, 2000, hearing.

By ORDER of the Florida Public Service Commission this 7th Day of December, 1999.



BLANCA S. BAYÓ, Director
Division of Records and Reporting

(S E A L)

BK

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 approving the stipulations identified herein, and amending and consummating the unprotested portions of Order No. PSC-99-1744-PAA-TP, 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

ORDER NO. PSC-99-2393-FOF-TP
DOCKETS NOS. 981834-TP, 990321-TP
PAGE 10

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.