



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: DECEMBER 9, 1999

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

FROM: DIVISION OF COMMUNICATIONS (BROWN, HINTON, WILFE)
CORDIANO
DIVISION OF LEGAL SERVICES (CALDWELL, B. KEATING, PEÑA, STERN) mks

RE: DOCKET NO. 991099-TP - REQUEST BY BELLSOUTH TELECOMMUNICATIONS, INC. FOR APPROVAL OF RESALE AGREEMENT WITH GLOBAL INTERACTIVE COMMUNICATIONS CORPORATION.

DOCKET NO. 991429-TP - REQUEST BY BELLSOUTH TELECOMMUNICATIONS, INC. FOR APPROVAL OF RESALE AGREEMENT WITH PRIME TIME LONG DISTANCE SERVICES, INC.

DOCKET NO. 991479-TP - REQUEST BY BELLSOUTH TELECOMMUNICATIONS, INC. FOR APPROVAL OF AMENDMENT TO INTERCONNECTION, UNBUNDLING, RESALE, AND COLLOCATION AGREEMENT WITH MEBTEL INTEGRATED COMMUNICATIONS SOLUTIONS, LLC D/B/A INTEGRATED COMMUNICATIONS SOLUTIONS.

DOCKET NO. 991501-TP - REQUEST BY BELLSOUTH TELECOMMUNICATIONS, INC. FOR APPROVAL OF RESALE AGREEMENT WITH NETEL, INC. D/B/A TEL3.

DOCKET NO. 991506-TP - REQUEST FOR APPROVAL OF AMENDMENT TO EXISTING INTERCONNECTION, UNBUNDLING, AND RESALE AGREEMENT BETWEEN BELLSOUTH TELECOMMUNICATIONS, INC. AND KEXA CORP D/B/A CAPITAL EXPLORATION

DOCKET NO. 991521-TP - REQUEST BY BELLSOUTH TELECOMMUNICATIONS, INC. FOR APPROVAL OF A NEW NEGOTIATED RESALE AGREEMENT WITH THE OTHER PHONE COMPANY, INC. D/B/A ACCESS ONE COMMUNICATIONS, INC.

DOCKET NO. 991562-TP - REQUEST BY BELLSOUTH TELECOMMUNICATIONS, INC. FOR APPROVAL OF AMENDMENT TO INTERCONNECTION, UNBUNDLING, AND RESALE AGREEMENT WITH AMERICAN METROCOMM CORPORATION.

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RECORDS AND REPORTING #

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FPSC-RECORDS/REPORTING

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DOCKET NO. 991563-TP - REQUEST BY BELLSOUTH TELECOMMUNICATIONS, INC. FOR APPROVAL OF AMENDMENT TO RESALE AGREEMENT WITH CREDIT LOAN, INC. D/B/A LOAN STAR STATE TELEPHONE COMPANY.

DOCKET NO. 991590-TP - REQUEST BY BELLSOUTH TELECOMMUNICATIONS, INC. FOR APPROVAL OF RESALE AGREEMENT WITH PLANETLINK COMMUNICATIONS, INC.

AGENDA: DECEMBER 21, 1999 - REGULAR AGENDA - FINAL ACTION

CRITICAL DATES: DOCKET NO. 991429-TP - DECEMBER 21, 1999
DOCKET NO. 991479-TP - DECEMBER 28, 1999
DOCKET NO. 991501-TP - JANUARY 3, 2000
DOCKET NO. 991506-TP - JANUARY 4, 1999
DOCKET NO. 991521-TP - JANUARY 5, 2000
DOCKET NO. 991562-TP - JANUARY 9, 2000
DOCKET NO. 991563-TP - JANUARY 9, 1999
DOCKET NO. 991590-TP - JANUARY 11, 2000
90-DAY LIMIT PURSUANT TO SECTION 252(e)(4) OF THE TELECOMMUNICATIONS ACT OF 1996

SPECIAL INSTRUCTIONS: NONE

FILE NAME AND LOCATION: S:\PSC\CMU\WP\991099A.RCM

CASE BACKGROUND

On August 12, 1999, BellSouth Telecommunications, Inc. (BellSouth) submitted a negotiated resale agreement with Global Interactive Communications Corporation for the Commission's approval under the Telecommunications Act of 1996 (the Act). On October 14, 1999, BellSouth waived its right to a decision within 90-days.

On September 22, 1999, BellSouth Telecommunications, Inc. (BellSouth) submitted a negotiated resale agreement with Prime Time Long Distance Services, Inc. for the Commission's approval under the Telecommunications Act of 1996 (the Act).

On September 29, 1999, BellSouth Telecommunications, Inc. (BellSouth) submitted amendments to its Interconnection, Unbundling, Resale, and Collocation Agreement with MebTel Integrated Communications Solutions, LLC d/b/a Integrated

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Communications Solutions for the Commission's approval under the Telecommunications Act of 1996 (the Act).

On October 5, 1999, BellSouth Telecommunications, Inc. (BellSouth) submitted a negotiated Resale Agreement with Netel, Inc. d/b/a TEL3 for the Commission's approval under the Telecommunications Act of 1996 (the Act).

On October 6, 1999, BellSouth Telecommunications, Inc. (BellSouth) submitted amendments to its Interconnection, Unbundling, and Resale Agreement with Kexa Corporation d/b/a Capital Exploration for the Commission's approval under the Telecommunications Act of 1996 (the Act).

On October 7, 1999, BellSouth Telecommunications, Inc. (BellSouth) submitted a new negotiated resale agreement with The Other Phone Company, Inc. d/b/a Access One Communications, Inc. For the Commission's approval under the Telecommunications Act of 1996 (the Act).

On October 11, 1999, BellSouth Telecommunications, Inc. (BellSouth) submitted amendments to its negotiated Interconnection, Unbundling, and Resale Agreement with American Metrocomm Corporation for the Commission's approval under the Telecommunications Act of 1996 (the Act).

On October 11, 1999, BellSouth Telecommunications, Inc. (BellSouth) submitted amendments to its Resale Agreement with Credit Loan, Inc. d/b/a Loan Star State Telephone Company for the Commission's approval under the Telecommunications Act of 1996 (the Act).

On October 13, 1999, BellSouth Telecommunications, Inc. (BellSouth) submitted a negotiated Resale Agreement with Planetlink Communications, Inc. for the Commission's approval under the Telecommunications Act of 1996 (the Act).

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DISCUSSION OF ISSUES

ISSUE 1: Should the Commission approve the negotiated agreements and amendments to agreements between BellSouth Telecommunications Inc. and Global Interactive Communications Corporation; Prime Time Long Distance Services, Inc.; Mebtel Integrated Communications Solutions, LLC d/b/a Integrated Communications Solutions; Netel, Inc. d/b/a TEL3; Kexa Corp. d/b/a Capital Exploration; The Other Phone Company, Inc. d/b/a Access One Communications, Inc.; American Metrocomm Corporation; Credit Loan, Inc. d/b/a Loan Star State Telephone Company; and Planetlink Communications, Inc.?

RECOMMENDATION: The Commission should approve the negotiated agreements and amendments to agreements, except for those provisions set forth in staff's analysis below that discriminate against telecommunications carriers not a party to the agreements. Staff believes the implementation of the agreements as written is not consistent with the public interest and violates Section 252(i) of the Telecommunications Act of 1996. (KEATING, CALDWELL, STERN, PENA, BROWN, HINTON, WOLFE, CORDIANO)

STAFF ANALYSIS: Staff recommends the Commission approve the agreements and amendments to agreements between BellSouth and Global Interactive Communications Corporation; Prime Time Long Distance Services, Inc.; Mebtel Integrated Communications Solutions, LLC d/b/a Integrated Communications Solutions; Netel, Inc. d/b/a TEL3; Kexa Corp. d/b/a Capital Exploration; The Other Phone Company, Inc. d/b/a Access One Communications, Inc.; American Metrocomm Corporation; Credit Loan, Inc. d/b/a Loan Star State Telephone Company; and Planetlink Communications, Inc., with the exception of the provisions discussed below. The agreements otherwise are consistent with the Telecommunications Act of 1996.

Section 252(e) of the Telecommunications Act of 1996 provides that any interconnection agreement adopted by negotiation or arbitration shall be submitted for approval to the State commission. The State commission is required to approve or reject the agreement, with written findings as to any deficiencies. Paragraph (2) of Section 252(e) provides criteria for rejecting an agreement. That paragraph provides in part that the State commission may only reject:

an agreement (or any portion thereof) adopted by negotiation under subsection (a) if it finds that (i) the agreement (or any portion

thereof) discriminates against a telecommunications carrier not a party to the agreement; or (ii) the implementation of such agreement or portion is not consistent with the public interest, convenience, and necessity

The provisions contained in these agreements and amendments to agreements that concern staff are as follows:

- 1) **The terms and conditions contained within this Part A & Part B were negotiated as a whole and each term and condition within this Part A & Part B is interdependent upon the other terms and conditions.** (emphasis in original)
- 2) . . . The parties shall adopt all rates, terms and conditions concerning such other interconnection, service or network element and any other rates, terms and conditions that are interrelated or were negotiated in exchange for or in conjunction with the interconnection, service or network element being adopted. . . .
- 3) **The rates, terms and conditions contained within this Attachment were negotiated as a whole and each rate, term and condition within the Attachment is interdependent upon the other rates, terms and conditions.** (emphasis original)

Some or all of these provisions are contained in each of the identified agreements and amendments, but are located in different sections depending upon the type of agreement or amendment.

In its First Report and Order, FCC Order 96-325, the Federal Communications Commission (FCC) interpreted Section 252 of the Act and explained the role of state commissions under the Act. Of particular relevance is the FCC's interpretation that, pursuant to Section 252(i), "[c]arriers may obtain any individual interconnection, service, or network element under the same terms and conditions as contained in any publicly filed interconnection agreement without having to agree to the entire agreement." (FCC Order 96-325, ¶ 40)

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In its Order, the FCC considered the issue of whether Section 252(i) allows requesting telecommunications carriers to choose among provisions of prior approved interconnection agreements or requires them to accept an entire agreement. (FCC Order 96-325, ¶1309) The FCC concluded that the text of Section 252(i) supports the requesting carrier's ability to choose among individual provisions contained in publicly filed interconnection agreements. (FCC Order 96-325, ¶1310) In support of its conclusion, the FCC stated that unbundled access to agreement provisions will enable smaller carriers who lack bargaining power to obtain favorable terms and conditions -- including rates -- negotiated by large interexchange carriers, and speed the emergence of robust competition. (FCC Order 96-325, ¶1313) The FCC further concluded that, ". . . the 'same terms and conditions' that an incumbent LEC may insist upon shall relate solely to the individual interconnection, service, or element being requested under Section 252(I)." (CC Order No. 96-325, ¶1315)

Staff notes that the U.S. Supreme Court found the FCC's interpretation of Section 252(i) reasonable, and upheld the FCC's rule implementing this provision, Rule 47 C.F.R. §51.809. AT&T Corp. v. Iowa Utils. Bd., 525 U.S. 366 (1999).

Staff is concerned that the provisions noted above appear to require other carriers to adopt entire sections of this agreement and not an individual interconnection, service, or element, as contemplated in Section 252(i), FCC Order 96-325, and 47 C.F.R. §51.809. Staff believes that this apparent requirement would deter potential carriers from adopting any particular rate, term or condition from any of the agreements as its own and further appears to require the entire agreements to be adopted as a whole. Staff believes that any provision that acts as a deterrent to selecting a particular rate, term or condition discriminates against potential carriers. Furthermore, staff believes that the appearance of the requirements could have a chilling effect on competition as a whole. This chilling effect is not consistent with the public interest or the clear intent of the Act.

Staff believes that the provisions violate Section 252(i) of the Act and are not consistent with FCC Order 96-325 and Rule 47 C.F.R. §51.809. Therefore, staff recommends that the Commission reject the provisions discussed above and approve the rest of the agreements and amendments.

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ISSUE 2: Should these dockets be closed?

RECOMMENDATION: Yes. If the Commission approves staff's recommendation in Issue 1, these dockets should be closed.
(KEATING, CALDWELL)

STAFF ANALYSIS: These dockets should be closed if the Commission approves staff's recommendation in Issue 1.