



Public Service Commission

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RECORDS AND REPORTING

DATE: AUGUST 3, 2000

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

FROM: DIVISION OF COMPETITIVE SERVICES (DOWDS)
DIVISION OF LEGAL SERVICES (B.KEATING) *pk msd*

RE: DOCKET NO. 991947-TP - PETITION BY BELLSOUTH TELECOMMUNICATIONS, INC. FOR SECTION 252(B) ARBITRATION SEEKING RESOLUTION OF CERTAIN ISSUES ARISING IN NEGOTIATION OF RESALE AGREEMENT WITH FLORIDA TELEPHONE SERVICES, LLC.

AGENDA: 08/15/00 - REGULAR AGENDA - POST-HEARING DECISION - PARTICIPATION IS LIMITED TO COMMISSIONERS AND STAFF

CRITICAL DATES: THE PARTIES HAVE AGREED TO WAIVE THE STATUTORY TIME LIMIT IN SECTION 252(b)(4)(C) OF THE TELECOMMUNICATIONS ACT OF 1996

SPECIAL INSTRUCTIONS: NONE

FILE NAME AND LOCATION: S:\PSC\CMP\WP\991947.RCM

CASE BACKGROUND

On July 14, 1999, BellSouth Telecommunications, Inc. (BellSouth) requested negotiations with Florida Telephone Services, LLC, (FTS) to establish a new resale agreement between the companies in accordance with Section 251 of the Telecommunications Act of 1996 (the Act). In the course of negotiations between the companies, one issue was not resolved: What are the appropriate rates to be charged by BellSouth for ALECs' access to and use of the electronic and manual interfaces to BellSouth's OSS and functions? Therefore, on December 17, 1999, BellSouth filed a Petition for Arbitration pursuant to Section 252(b) of the Act. This matter was set for an administrative hearing, which occurred on May 17, 2000. This is staff's recommendation on the unresolved issue.

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FPSC-RECORDS/REPORTING

DISCUSSION OF ISSUES

ISSUE 1: What are the appropriate rates to be charged by BellSouth for Florida Telephone Services' access to and use of the electronic and manual interfaces to BellSouth's OSS and functions?

RECOMMENDATION: No OSS cost recovery charges should be established in this proceeding. The determination of the appropriate charges that BellSouth may impose for OSS cost recovery should be dealt with in a generic proceeding

POSITION OF THE PARTIES

BELLSOUTH: The Commission should allow BellSouth to recover costs associated with developing, providing, and maintaining the electronic and manual interfaces to allow FTS to access BellSouth's OSS. BellSouth is proposing rates for electronic and manual access calculated consistent with the cost methodology previously adopted by the Commission.

FTS: The Commission should not allow BellSouth to charge for costs associated with developing, providing and maintaining the electronic and manual interfaces to allow FTS to access BellSouth's OSS. BellSouth is proposing rates for electronic and manual access with out [sic] first testing these interfaces. However any rates charged to FTS would be unfair as BellSouth gets paid activation fees for all orders processed. These activation fees are charged regardless if the order is sent manually or electronically.

STAFF ANALYSIS: BellSouth proposes to include in its new resale agreement with Florida Telephone Services, charges designed to recover costs it has incurred and will incur associated with the development and implementation of electronic interfaces that provide ALECs access to BellSouth's legacy operations support systems (OSS). The OSS in question are systems and databases used for pre-ordering, ordering, provisioning, maintenance and repair, and billing, of resold services and unbundled network elements purchased by ALECs. According to BellSouth witness Varner, the Act, FCC orders, and court decisions all support the company's contention that it is entitled ". . . to recover its costs associated with developing, providing, and maintaining the interfaces that make BellSouth's OSS accessible to ALECs, such as FTS." Moreover, witness Varner observes that at least one federal district court has concluded that it is appropriate to recover costs associated with providing access to BellSouth's OSS solely

from ALECs; the court stated: "Because the electronic interfaces will only benefit the CLECs, the ILECs, like BellSouth, should not have to subsidize them. . . . AT&T is the cost causer, and it should be the one bearing all the costs; there is absolutely nothing discriminatory about this concept." (TR 10-12)

BellSouth witness Caldwell sponsors the cost studies that yield the company's proposed OSS cost recovery charges for use of the electronic interfaces. She states that these electronic interfaces enable ALECs to submit Local Service Requests (LSRs) electronically and use BellSouth's legacy systems. (TR 36-37) The OSS cost study documentation indicates that the pre-ordering activities provided via BellSouth's interfaces include telephone number reservation, address validation, switch feature and service verification, and due date calculation. The ordering processes allow for interactive service order entry and order status inquiry. As noted by BellSouth witness Varner, these electronic interfaces manage the transmission of data to and from BellSouth's legacy OSS. Telecommunications Access Gateway (TAG) and Local Exchange Navigation System (LENS) process pre-ordering transactions and LSRs, and pass the transactions to the legacy systems and the LSRs to Local Exchange Ordering (LEO), which is the database for ALEC service orders. Electronic Data Interchange (EDI) is a third interface that ALECs can use to submit orders directly to the Local Exchange Ordering database. LEO hands off LSRs to the Local Exchange Service Order Generator (LESOG) and the BellSouth Service Order Generator (BSOG), where mechanized service orders are generated and sent on to Service Order Communications System (SOCS) for processing. (EXH 2, pp. 23-24)

Two electronic interfaces were developed to facilitate trouble entry: Trouble Analysis Facilitation Interface (TAFI) and Electronic Communications Trouble Administration (ECTA). Use of these interfaces allows ALECs to access BellSouth's online maintenance and reporting systems. According to BellSouth, these interfaces afford ALECs the ability to process mechanically their customers' trouble reports with the same capabilities that are available to BellSouth's retail repair centers. (EXH 2, p. 24)

Witness Caldwell asserts that the electronic interface costs are of two types: development and implementation, and ongoing processing. The Development and Implementation rate element, \$.78 per LSR, is designed to recover the costs associated with specification of project requirements, computer program development, and system software costs. The Ongoing Processing element, \$1.93 per LSR, recovers costs related to dispensation of LSRs and maintaining the interfaces; this element also includes the

DATE: AUGUST 3, 2000

Local Carrier Service Center (LCSC) labor costs for processing a LSR that is submitted electronically but falls out (does not successfully transit through the interfaces). Since LSRs can initially be submitted either electronically or manually, BellSouth also proposes a manual processing charge. This charge, \$13.89 per LSR submitted manually, equates to an average 25 minutes of LCSC labor to process the LSR. (TR 36-37, 45-46; EXH 2, bates stamped p. 41)

BellSouth witness Varner states that this Commission has previously stated, in Order No. PSC-98-0604-FOF-TP in Docket No. 960833-TP, that manual and electronic OSS costs may be recoverable. While he acknowledges that the FPSC has previously asserted that OSS cost recovery should be dealt with in a generic proceeding, rather than an arbitration, witness Varner notes that no such proceeding has been established. Unless BellSouth successfully negotiates the inclusion of charges for OSS cost recovery with ALECs, the company is not recovering its costs for processing ALEC orders; consequently, witness Varner contends that BellSouth is caught between ". . . a rock and a hard place." (TR 13) Since this Commission has not established a generic OSS cost recovery docket, the witness proposes that the rates sponsored by BellSouth witness Caldwell be approved on an interim basis, subject to true-up at the conclusion of the generic proceeding. (TR 14-15, 28, 30-31) In its Brief BellSouth states in a footnote that it infers, based on cross-examination that occurred during the hearing, that staff apparently believes that Docket No. 981834-TP is the forum in which OSS pricing is to be conducted. BellSouth proceeds to request that a procedural order concerning the OSS pricing issues be entered by the commission. (BR at 4-5)

FTS witness Joachim adamantly opposes BellSouth imposing on FTS any OSS cost recovery charges. According to the witness, FTS should not be assessed OSS charges ". . . unless they are tariffed and therefore charged by BellSouth themselves towards their own customers." Witness Joachim asserts that if BellSouth is allowed to charge FTS OSS charges, this amounts to allowing BellSouth to regain monopoly status in its service territory because levying these charges would render them unable to compete successfully on price. (TR 55) The witness also notes that certain kinds of orders must be submitted manually and thus FTS would be assessed the higher, manual OSS charge on these orders. Witness Joachim alleges that "It is also a highly profitable stream of revenue for BellSouth when FTS is forced to submit orders manually." (TR 57)

Witness Joachim's fundamental concern appears to be that FTS would suffer an adverse economic impact if BellSouth is permitted to levy OSS charges on FTS.

For FTS to compete with BellSouth, FTS has to sell services very close to its cost because of the slim discounts given on BellSouth's tariff rates. Any increase in cost, that is not past [sic] on to BellSouth's own customer which can be then directly compared to the prices, would be grossly unfair and detrimental as the balance would be tipped in favor of BellSouth. Where BellSouth would be more competitive than FTS can ever hope to be. (TR 58-59)

The FTS witness further testifies that BellSouth charges them a service order fee and an activation fee on each order sent. Witness Joachim opines that these charges are adequate to cover any costs BellSouth incurred to develop electronic interfaces, "because these are the same interfaces that their own reps use." He believes it is unfair for BellSouth to charge his company for interfaces that BellSouth developed for their own services. (TR 60)

Recommendation

As discussed above, it appears that FTS witness Joachim's primary objection to paying BellSouth OSS cost recovery is that it would increase his firm's cost of doing business and thus would decrease its competitive position. He further alleges that since BellSouth uses these same interfaces in its retail operations, it should recover these costs from its retail customers. While it is evident that FTS' competitive margins likely would be reduced if it were required to pay BellSouth's proposed OSS cost recovery charges, staff believes that preserving FTS's competitiveness is irrelevant in arriving at a decision in this proceeding. Moreover, it appears from the record, contrary to witness Joachim's contention, that the electronic interfaces developed by BellSouth are not used for retail operations, but were only developed to provide ALECs access to BellSouth's legacy OSS. Consequently, as concluded by the US District Court for the Eastern District of Kentucky, it is appropriate to assess such charges solely to those who benefit -- ALECs. (20 F.Supp. 2d 1097; 1998 U.S. Dist. LEXIS 14558)

On several occasions, most recently in Docket No. 990750-TP, this Commission has concluded that OSS cost recovery should be addressed in a generic proceeding, not in an arbitration. In its order in Docket No. 990750-TP, the commission stated:

In conclusion, we find that BellSouth's OSS charges proposed in this proceeding should not be approved for inclusion in the new agreement. We find there are numerous issues related to OSS costs which cannot be adequately resolved based on the record in this proceeding. Further, based on the record from this proceeding, we are unable to determine whether the development, implementation, and ongoing costs associated with processing a LSR are reasonable. We believe that OSS cost recovery more appropriately should be dealt with in a generic proceeding, and not in this arbitration proceeding. If we were to establish OSS charges in this docket, such an action would be a basis for BellSouth including the same charges in all future negotiated agreements. Based upon the foregoing, we find that OSS cost recovery charges shall not be set at this time. (PSC-00-0537-FOF-TP, p. 48)

From the record in the instant proceeding, staff finds no compelling basis to recommend that the Commission deviate from its recent decision concerning OSS cost recovery in the ITC^DeltaCom arbitration. The record in the instant proceeding differs little from that in Docket No. 990750-TP, and the concerns raised in the docket remain. Although BellSouth witness Varner asserted that a proceeding to deal with OSS cost recovery had not been established, it was clarified during the hearing that Docket No. 981834-TP, in which collocation and third-party OSS testing are being conducted, was the intended forum for addressing OSS costs. This Commission has previously concluded that a proceeding for OSS cost recovery will be conducted after the conclusion of the generic UNE pricing docket and third-party OSS testing; since neither event has occurred, it is not timely to issue a procedural order on OSS cost recovery. (TR 28-30)

In conclusion, staff recommends that no OSS cost recovery charges should be established in this proceeding. The determination of the appropriate charges that BellSouth may impose for OSS cost recovery should be dealt with in a generic proceeding.

DOCKET NO. 991947-TP
DATE: AUGUST 3, 2000

ISSUE 2: Should this docket be closed?

RECOMMENDATION: The docket should be closed after the time for filing an appeal has run.

STAFF ANALYSIS: The docket should be closed 32 days after issuance of the order, to allow the time for filing an appeal to run.