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May 15, 2002

Mrs. Blanca S. Bayó
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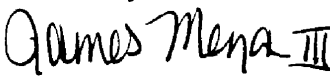
Re: **Docket No. 010963-TP Investigation into Telecommunications Rate
Center Consolidation in the State of Florida**

Dear Ms. Bayó:

Enclosed is an original and fifteen copies of BellSouth Telecommunications, Inc.'s Post Workshop Comments, which we ask that you file in the caption docket.

A copy of this letter is enclosed. Please mark it to indicate that the original was filed and return a copy to me. Copies have been served to the parties shown on the attached certificate of service.

Sincerely,


James Meza III (LA)

Enclosures

cc: All Parties of Record
Marshall M. Criser III
R. Douglas Lackey
Nancy B. White

DOCUMENT NUMBER DATE

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**CERTIFICATE OF SERVICE
Docket No. 010963-TP**

I HEREBY CERTIFY that a true and correct copy of the foregoing was served via Electronic Mail and U.S. Mail this 15th day of May, 2002 to the following:

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James Meza III
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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Investigation into Telecommunications) Docket No. 010963-TP
Rate Center Consolidation in the State of)
Florida)
_____) Filed: May 15, 2002

BELLSOUTH'S POST WORKSHOP COMMENTS

Pursuant to the Florida Public Service Commission's request at the workshop held on March 15, 2002 in this docket, BellSouth Telecommunications, Inc. ("BellSouth") submits the following post workshop comments regarding certain issues relating to the implementation of rate center consolidation ("RCC") in Florida.

INTRODUCTION

On March 15, 2002, the Commission held a workshop to discuss implementing RCC in Florida. BellSouth and Sprint made formal presentations at the workshop while Time Warner and Verizon provided comments as to whether the Commission could and/or should implement RCC. As a result of several questions raised at the workshop, the Commission requested that the parties file written comments addressing several specific issues by May 10, 2002.

On May 7, 2002, BellSouth filed an extension of time of five (5) days or until May 15, 2002 in which to file its comments due to the undersigned's participation in other legal matters, including the hearing in docket No. 000075-TP, and travel schedule. BellSouth's extension was not opposed by any party or by Staff. Pursuant to its request for an extension and in compliance with the Commission's request, BellSouth now files its written comments regarding RCC.

**NO AUTHORITY TO REQUIRE PRICE-REGULATED
LECS TO IMPLEMENT RCC**

Rate center consolidation involves “creating larger geographic areas in which individual NXX codes can be used by consolidating or combining existing rate centers.” In the Matter of Florida Public Service Commission Petition to Federal Communications Commission For Expedited Decision for Grant of Authority to Implement Number Conservation Measures, FCC 99-249, Docket No. 96-98, 14 FCC Rcd. 17506, September 15, 1999 (“Florida Ruling”) at ¶ 38. The Federal Communications Commission (“FCC”) has expressly determined that, because rate center consolidation “involves matters relating to local calling scopes and local call rating, it falls under state utility commissions’ rate-making authority.” Id. Accordingly, when the Commission asked the FCC for authority to order rate center consolidation in the Florida Ruling, the FCC reiterated that rate center consolidation is within the authority of the Commission, but granted the Commission whatever “additional authority it may need to consolidate rate centers” Id. at ¶ 1.

Under Florida law, however, the Commission cannot order rate center consolidation for price-regulated LECs. A brief example will illustrate this point. Assume that the Commission ordered the consolidation of Exchange A, which included local calling areas 1, 2, and 3 with Exchange B, which included local calling areas 2, 3, and 4. As a result of the consolidation, the customers in the newly consolidated rate center will have different local calling areas. Namely, the former customers of Exchange B could call area 4 toll-free but not area 1 and the former customers of Exchange A could call area 1 toll-free but not area 4.

In addition to being discriminatory, such a result would place an undue or unreasonable prejudice or disadvantage on the customers of the newly consolidated rate center because some customers would be required to make a toll call for the same call that another customer could make toll-free. This result violates Section 364.10(1), Florida Statutes, which provides:

A telecommunications company may not make or give any undue or unreasonable preference or advantage to any person or locality or subject a particular person or locality to any undue or unreasonable prejudice or disadvantage in any respect whatsoever.

Section 364.10(1), Florida Statutes.

The only possible solution would be for the Commission to order BellSouth or the other price-regulated LECs to implement extended area service (“EAS”) or extended calling service (“ECS”). Under this scenario, all of the customers in the newly consolidated rate center would have the ability to call the same local calling areas. However, absent a carrier voluntarily agreeing to implement EAS or ECS, such a scenario is impossible because the Commission cannot order a price-regulated carrier to implement EAS or ECS. See Order No. PSC-97-0971-FOF-TL.

For example, in Order No. PSC-97-0971-FOF-TL, the Commission addressed the Hamilton County Board of County Commissioners’ request for EAS from Hamilton County to all exchanges within Columbia County, Suwannee County, and Madison County. Order No. PSC-97-0971-FOF-TL at 1. The Commission denied the request and held that it cannot order a price-regulated

LEC to implement post-July 1, 1995 requests for EAS or ECS. Specifically, the Commission stated:

BellSouth and Sprint opted for price regulation, effective January 1, 1996, and January 2, 1996, respectively, in accordance with Section 364.051, Florida Statutes. Pursuant to Section 364.385, Florida Statutes, any requests for EAS or extended calling service (ECS) filed after July 1, 1995, and subsequently implemented in a price-regulated LEC's territory, become a non-basic service. **We cannot order a price-regulated LEC to implement a non-basic service; thus, we are without jurisdiction to require the price-regulated LECs to implement post-July 1, 1995, requests for EAS or ECS.**

Order No. PSC-97-0971-FOF-TL at 3 (emph. added).

Therefore, because any order requiring the implementation of EAS or ECS would be post-July 1, 1995, the Commission cannot require BellSouth or any other price-regulated carrier to implement EAS or ECS. Consequently, without the authority to order EAS or ECS, the Commission cannot remedy any violation of Section 364.10(1) that will result with the implementation of rate center consolidation. Without a remedy to this violation and the discriminatory and burdensome effect of rate center consolidation on Florida consumers, the Commission cannot order rate center consolidation for price-regulated LECs.

Moreover, the FCC has not given the Commission the authority to circumvent Florida law in order to implement RCC. As a general matter, the FCC has exclusive jurisdiction over numbering issues but can delegate certain authority to state commissions. See 47 U.S.C. § 251(e)(1). At this point, the FCC has only delegated the following limited authority regarding numbering issues to the Commission: (1) pursuant to the FCC's Local Competition Report

and Order, FCC 98-224, the Commission has the authority to implement area code relief; and (2) pursuant to the Florida Ruling, FCC Order 99-249, the Commission has the authority to implement certain numbering conservation measures. Id.

In the Florida Ruling, this Commission asked the FCC for the authority to implement RCC. The FCC, however, expressly determined that RCC was essentially a ratemaking issue and thus already within the Commission's jurisdiction. FCC 99-249 at ¶ 38. Nevertheless, the FCC provided the Commission with whatever additional authority it needed to implement RCC as it relates to numbering issues. Id.

This "additional" grant of authority should not be read as a license for the Commission to avoid the requirements of Chapter 364 and the price cap statute as it relates to price regulated LECs. Indeed, the FCC's grant of authority in the Florida Ruling did not give the Commission any different authority than the Commission already has under Florida law. As stated above, the legal issue is not whether the Commission has the authority under Florida law to implement RCC; rather, the issue is whether the Commission can require price-regulated LECs to implement RCC in light of the limitations set forth in the price regulation statute.

Further, whatever authority the FCC delegated to the Commission, that authority is limited to numbering issues, which is within the FCC's exclusive jurisdiction, and not to the establishment of local calling scopes, which is within the jurisdiction of the Commission. The FCC recognized this fact in the Florida

Ruling as it found that RCC and the establishment of local calling rates and local calling scopes fell within the Commission's rate-making authority. Accordingly, the FCC has no substantive authority to delegate to the Commission regarding the implementation of RCC.

For all of these reasons, the Commission does not have the authority to require price-regulated LECs to implement RCC.

CHANGE IN CIRCUMSTANCE EXCEPTION

The price cap statute provides for a "change in circumstance" exception to the price cap statute. Specifically, Section 364.051(4) provides:

Notwithstanding the provisions of subsection (2) , any local exchange telecommunications company that believes circumstances have changed substantially to justify an increase in the rates for basic local telecommunications service may petition the Commission for a rate increase, but the Commission shall grant such petition only after an opportunity for a hearing and a compelling showing of changed circumstances. . . The Commission shall act upon any such petition within 120 days of its filing.

At the workshop, the Commission inquired as to whether this provision would alleviate the price regulated LECs' concerns about recovering the lost revenue and costs associated with implementing RCC. While BellSouth recognizes the "change in circumstance" exception in the price cap statute, there is no guidance on how the Commission would address such a petition because no party has ever requested this type of relief. As a result, there is a tremendous risk that BellSouth's invoking of a "change in circumstances" in order to increase basic rates to offset the revenue loss and costs associated with RCC would turn

into a “full-blown” rate case, which would be inconsistent with the Florida Legislature’s price regulation scheme.

While not advocating this approach at this time, BellSouth submits that, in order to be of any use, all parties involved – the Commission, Staff, the price regulated LEC, and any intervenors, including but not limited to OPC – would have to agree or the Commission would have to establish, from the outset, that the scope of the “change in circumstance” petition would be specifically limited to whether or not the proposed rate increase actually covers the price-regulated LEC’s costs and lost revenue associated with implementing RCC.¹ Without this assurance, BellSouth would not invoke its rights under Section 364.051(4). To do otherwise and become subject to an actual earnings review, would eviscerate and undermine the Legislature’s price regulation scheme.

Further, while BellSouth generally agrees with the principal of RCC for number conservation purposes, BellSouth cannot agree to RCC if it is not assured that the implementation of RCC will be revenue and cost neutral prior to its implementation. Indeed, BellSouth’s conservative estimate is that RCC could cost BellSouth over \$75 million a year in lost revenue.² Without a recognized recovery mechanism in place prior to implementation that would allow BellSouth to recover this money, BellSouth would not be able to support RCC.

¹ If the Commission established this limitation because the parties could not agree, the proper time period in which to proceed with a “change in circumstance” petition would be after the Supreme Court reviewed the Commission’s decision, assuming a party appealed it.

² The financial impact of RCC is dependent on the proposal developed. In the RCC proposal developed for the RCC Working Group report, BellSouth provided the revenue impact of the given proposal identified in the report. Since the time of submission of the report, the usage in Florida for those offerings has declined by approximately 35%. Therefore, the revenue impact as to BellSouth for the RCC proposal set forth in the report as of today would be approximately 65% of the revenue identified in the report or approximately \$75 million.

INCENTIVE BASED PROGRAMS

The Commission asked the parties to provide comments about whether an incentive based program could entice companies to implement RCC. While BellSouth is still considering this thought-provoking question, BellSouth suggests that an incentive program may not be needed if carriers were assured that (1) RCC would be implemented in only those areas where it is actually needed; and (2) the implementation of RCC would be revenue and cost neutral. As recognized by Chairman Jaber, BellSouth has historically supported and cooperated with the Commission on several number conservation issues. (Workshop Tr. At 41-42). BellSouth's position on RCC is no different as it would probably support RCC if it could be accomplished in a revenue and cost neutral manner.

NUMBERING ISSUES

A. FCC's Requirements

The FCC established new criteria for a carrier to receive additional numbering resources in Order No. FCC 00-104, issued on March 31, 2000 and Order No. FCC 00-429, issued on December 29, 2000. These Orders created two criteria in order to receive additional numbering resources. First, carriers must have less than 6 Months-To-Exhaust (MTE) of its current numbering inventory for a given rate center in order to receive additional numbering resources. See FCC 00-104 at ¶ 105. Second, carriers are required to have a certain utilization threshold for the given rate center. See FCC 00-429 at ¶ 26. The utilization threshold was initially set at 60%, but will increase to 75%. Id.

As the Commission is well aware, the FCC's rules have limited the ability of certain carriers to obtain additional numbering resources. Prior to the adoption of the rules, a carrier could obtain additional numbering resources when an individual switch met a specific MTE criteria. The change from a switch-based methodology to a rate center-based methodology adversely impacts carriers that have multi-switch rate centers. This is so because in multi-switch rate centers, the MTE and utilization is calculated on all switches in the rate center instead of a single switch.

Generally, the ILECs are the carriers that have been adversely impacted by the change in the FCC's rules because ILECs typically deploy multiple switches in a rate center. Unlike ILECs, most ALECs do not have multi-switch rates centers and therefore are generally not hindered by the FCC's rules in their quest for new numbers. Although the impact of the FCC's rules has been minimized to some extent with the implementation of number pooling, which provides the ability to move blocks between switches, and the Commission's expedited code denial process set forth in Order No. PSC-01-1873-PCO-TL, BellSouth has on several occasions had to appeal NANPA's and NeuStar's denial of a request for additional numbering resources to the Commission in order to serve customers.

B. What Can the FPSC Do to Help Carrier's Obtain Numbers?

The fundamental problem with RCC as it relates to numbering issues is that implementing RCC exacerbates the problems associated with obtaining additional numbering resources under the FCC's current rules. While the

Commission's implementation of the expedited code denial appeal process in Order No. PSC-01-1873-PCO-TL has minimized the adverse impact of the FCC's rules, the timeframe associated with that process places carriers with multi-switch rate centers in the position of potentially losing customers to other carriers solely due to the unavailability of numbering resources in a timely manner. Indeed, at a minimum, a carrier is faced with a 45-80 day delay before being able to provide a customer with the requested numbering resources after a denial by NANPA or NeuStar. In that time period, the customer could leave BellSouth and go to another carrier. By creating larger rate centers, thereby increasing the number of rate centers where BellSouth and other carriers will have multiple switches in a rate center, this problem is just compounded.

As discussed at the workshop, the industry attempted to obtain a "safety valve" from the FCC to allow carriers that do not meet the utilization threshold in a given rate center to obtain additional numbering resources. FCC 01-362 at ¶ 57. Although these efforts were successful in getting the FCC to establish a "safety valve", the specific "safety valve" imposed by the FCC in Order FCC-01-362 did not address BellSouth's concerns. Essentially, the FCC's "safety valve" is limited to carriers who are experiencing rapid growth in a given market and only applies if the carrier will exhaust its numbering resources in a rate center within 3 months instead of the 6 MTE requirement currently allowed. FCC 01-362 at ¶ 63. The FCC also clarified that carriers could obtain additional numbering resources if they needed numbers to meet a specific customer needs. Id. at ¶ 64.

BellSouth believes a more appropriate "safety valve" would be one that allows a carrier to obtain numbering resources on a switch-basis rather than a rate center-basis if the utilization of the switch is above the utilization threshold for the rate center. Such a proposal, along with the implementation of number pooling in the top 100 MSAs, would maximize the utilization of a carrier's numbering inventory. Development of this type of "safety valve" would minimize BellSouth's concern with RCC as it relates to obtaining additional numbering resources in order to serve customers.

As the Commission pointed out in the workshop, there is strength in numbers. BellSouth believes it would be beneficial if the state commissions and other organizations, such as SEARUC and NARUC, would work with the industry to develop an appropriate "safety valve" and jointly propose it to the FCC. Until this issue is satisfactorily addressed, BellSouth is unable to support the implementation of RCC.

C. How Does Utilization Affect Florida's Competitive Market?

As discussed above, the FCC's requirements for receiving additional numbering resources adversely impacts the ILECs more than the ALECs because of the multi-switch issue. This is so because typically only ILECS deploy multiple switches in a rate center in order to meet customer demand for telephone service. Accordingly, the ILECs are the carriers routinely faced with appealing NeuStar's or NANPA's denial of a request for additional numbering resources.

This conclusion is evidenced by the fact that since 2001, BellSouth has filed 25 appeals with the Commission in order to provide service to customers in several Florida exchanges, including Daytona Beach, DeLand, Ft. Lauderdale, Gainesville, Jacksonville, Miami, North Dade, Orlando, Stuart, and West Palm. BellSouth is unaware of any ALEC filing a similar request. Further, BellSouth has in fact lost customers to a competitor solely because of the delay involved in appealing the initial denial of a request for additional numbering resources.³

Accordingly, the FCC's rules regarding the allocation of additional numbering resources have the effect of penalizing and discriminating against ILECs. Until this disparate treatment is adequately addressed, BellSouth cannot support RCC because RCC will only exacerbate the problem.

CONCLUSION

BellSouth would probably support the implementation of RCC if the numbering issues were resolved and it could be implemented on a revenue and cost neutral basis. Without mechanisms in place that would totally eliminate the ILECs' problems in obtaining additional numbering resources as well as to allow carriers the ability to recover the costs and revenue lost in implementing RCC, BellSouth would not be able to support RCC. As stated at the workshop, however, BellSouth remains committed to working with the Commission and the

³ The loss of customers occurred prior to the Commission's adoption of the expedited code denial process, which has greatly reduced the time period BellSouth must wait in order to obtain sufficient numbering resources. However, as stated above, even with the expedited process, there is a period of at least 45-80 days that BellSouth is unable to serve a customer due to a lack of numbers, thereby subjecting BellSouth to an unnecessary risk of losing that customer to a competitor. The range of days is dependent on which number administrator denied the request and whether the NPA is in jeopardy.

parties to find a way to implement RCC in a manner that would not negatively impact any party.

Furthermore, the impact of any given RCC proposal is dependent on the proposal itself. If the Commission determines that it has the authority to require RCC, BellSouth believes that the Commission should conduct a workshop to determine the specific RCC proposal to be implemented. As discussed in the workshop, the implementation of RCC is not as simple as it seems and it should be implemented via an industry effort. Moreover, any proposal developed should review all of the aspects identified in the RCC Working Group report, including but not limited to RCC's (1) impact on area code relief, (2) benefits to consumers, (3) impact on 911, and (4) impact on rural carriers.

Respectfully submitted this 15th day of May, 2002.

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