

RUTLEDGE, ECENIA, PURNELL & HOFFMAN

PROFESSIONAL ASSOCIATION
ATTORNEYS AND COUNSELORS AT LAW

STEPHEN A. ECENIA
RICHARD M. ELLIS
KENNETH A. HOFFMAN
THOMAS W. KONRAD
MICHAEL G. MAIDA
MARTIN P. McDONNELL
J. STEPHEN MENTON

POST OFFICE BOX 551, 32302-0551
215 SOUTH MONROE STREET, SUITE 420
TALLAHASSEE, FLORIDA 32301-1841

TELEPHONE (850) 681-6788
TELECOPIER (850) 681-6515

R. DAVID PRESCOTT
HAROLD F. X. PURNELL
MARSHA E. RULE
GARY R. RUTLEDGE
GOVERNMENTAL CONSULTANTS
MARGARET A. MENDUNI
M. LANE STEPHENS

October 8, 2002

Ms. Blanca Bayo, Director
Commission Clerk and Administrative Services
Florida Public Service Commission
2540 Shumard Oak Boulevard, Room 110
Betty Easley Conference Center
Tallahassee, FL 32399-0850

VIA HAND DELIVERY

RECEIVED FPSC
02 OCT - 8 PM 4: 37
COMMISSION CLERK

Re: Docket No. 020129-TP

Dear Ms. Bayo:

Enclosed herewith for filing in the above-referenced docket on behalf of ITC^DeltaCom Communications, US LEC of Florida Inc., Time Warner Telecom of Florida, LP, MCI WorldCom Communications, Inc. and MCI Metro Access Transmission Services, LLC ("Petitioners"), are the following documents:

- 1. Original and fifteen copies of the Petitioners' Posthearing Brief; and
2. A disk in Word Perfect 6.0 containing a copy of the document.

Please acknowledge receipt of these documents by stamping the extra copy of this letter "filed" and returning the copy to me.

Thank you for your assistance with this filing.

Sincerely,

Martin P. McDonnell

Martin P. McDonnell

MPM/rl

Enclosures

cc: All Parties of Record

F:\USERS\ROXANNE\USLEC\ccs7-Bayo.10.8

RECEIVED & FILED

Handwritten initials

FPSC-BUREAU OF RECORDS

DOCUMENT NUMBER DATE

10911 OCT-8 02

Com-5

Sec-1

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Joint Petition of US LEC of Florida)
Inc., Time Warner Telecom of Florida, LP)
and ITC^DeltaCom Communications)
objecting to and requesting)
suspension of proposed CCS7)
Access Arrangement Tariff filed by)
BellSouth Telecommunications, Inc.)
)
)

Docket No. 020129-TP

Filed: October 8, 2002

**JOINT POST-HEARING BRIEF
OF ITC^DELTACOM COMMUNICATIONS,
US LEC OF FLORIDA INC.,
TIME WARNER TELECOM OF FLORIDA, LP,
MCI WORLDCOM COMMUNICATIONS, INC. AND
MCI METRO ACCESS TRANSMISSION SERVICES, LCC**

Comes Now ITC^DeltaCom Communications, US LEC of Florida Inc., Time Warner Telecom of Florida, LP, MCI WorldCom Communications, Inc. and MCI Metro Access Transmission Services, LLC¹ (collectively "Petitioners") pursuant to Rule 28-106.205, Florida Administrative Code and Order No. PSC-02-0853-PCO-TP, issued June 21, 2002, and by and through their undersigned counsel, hereby file this Joint Post-Hearing Brief.

STATEMENT OF BASIC POSITION

BellSouth Telecommunications, Inc.'s ("BellSouth") CCS7 tariff, filed with the Florida Public Service Commission ("Commission") on January 18, 2002, must be cancelled by the Commission as it violates state law, is discriminatory and, despite BellSouth's initial claims to the contrary, is not revenue neutral.

¹MCI WorldCom Communications, Inc. and MCI Metro Transmission Services intervened as parties on June 28, 2002.

DOCUMENT FILED

10911 OCT-8 2002

FPSC-COMMISSION CLERK

First, Section 364.163(2), Florida Statutes, precludes a local exchange telecommunications company from increasing its rates for any specific network access service until that company's intrastate switched access rates reach parity with its interstate switched access rates. BellSouth's CCS7 tariff violates Section 364.163(2), Florida Statutes, because it increases BellSouth's rates for specific network access service through the SS7 network, and BellSouth's intrastate switched access rates have not reached parity with its interstate switched access rates.

Second, BellSouth's CCS7 tariff is discriminatory, unjust and unreasonable to ALECs and IXCs. Prior to the implementation of the tariff, ALECs and IXCs paid BellSouth the port and link charges for the use of BellSouth's SS7 network. BellSouth's current CCS7 tariff now charges port, link, and usage charges for SS7. The usage charges include a per message transacting capability application part ("TCAP") charge of .0000123, and a per message integrated services digital network user part ("ISUP") charge of \$.000035, in addition to the normal recurring switched access charges applicable to interexchange calls. BellSouth's tariff is discriminatory and anti-competitive as BellSouth has unilaterally chosen through this tariff to only charge ALECs, IXCs, and wireless carriers usage charges for its SS7 network. BellSouth has unilaterally decided to not charge any per message charges to any ILECs for their use of BellSouth's SS7 network, even though the ILECs use the network in the same capacity as the ALECs and IXCs. ALECs and IXCs are direct competitors of BellSouth while the ILECs, for the most part are not. Such discriminatory treatment of carriers who compete against BellSouth violates the letter and the spirit of the federal Telecommunications Act (the "Act") and Chapter 364, Florida Statutes.

Third, when BellSouth filed its CCS7 tariff on January 18, 2002, it advised the Commission that the tariff was "revenue neutral." At that time BellSouth's stated position was that in order to

make the tariff revenue neutral, it reduced its local switching rates from \$.008760 to \$.008661. By BellSouth's own recent admission, the tariff filing is not revenue neutral. Moreover, the evidence also establishes that, as a whole, carriers that interconnect with BellSouth are now paying significantly more in access charges than prior to the tariff filing.

BellSouth is therefore generating significantly more revenues after the tariff filing than it was prior to the tariff filing. In addition, it makes no economic sense for BellSouth to have spent a very significant amount of money on its Agilent Link Monitoring System ("Agilent LMS"), which measures the number of messages, if its filing would be revenue neutral. BellSouth would not recover its investment if that were the case. History has proven that this tariff filing is not revenue neutral, and the Commission must cancel the tariff because it does not meet the requirements of Section 364.163, Florida Statutes.

Issue A: What is the Commission's jurisdiction in this matter?

Petitioners: *The Commission has jurisdiction in this matter pursuant to Section 364.01 and Section 364.163, Florida Statutes.*

Section 364.01(4), Florida Statutes, grants the Florida Public Service Commission exclusive jurisdiction in order to:

(c) Protect public health, safety, and welfare by insuring that monopoly services provided by telecommunications companies continue to be subject to effective price, rate, and service regulation.

* * *

(g) Insure that all providers of telecommunications services are treated fairly, by preventing anti-competitive behavior and eliminating unnecessary regulatory restraint.

* * *

(i) Continue its historical role as a surrogate for competition for monopoly services provided by local exchange telecommunications companies.

These statutory grants of exclusive jurisdiction to the Commission encompass the Commission's authority to prevent anti-competitive behavior by BellSouth through the filing of a tariff.

Further, Section 364.163, Florida Statutes, in pertinent part, addresses a telecommunications company's ability to raise any specific network access service rate:

(1) Effective January 1, 1999, the rates for switched network access services of each company subject to this section shall be capped at the rates in effect on January 1, 1999, and shall remain capped until January 1, 2001. Upon the date of filing its election with the Commission, the network access service rates of a company that elects to become subject to this section shall be capped at the rates in effect on that date and shall remain capped for five years.

(2) After the termination of the caps imposed on rates by subsection (1) and after a local exchange telecommunications company's intrastate switched access rates reach parity with its interstate switched access rates, a company subject to this section may, on thirty days notice, annually adjust any specific network access service rate in an amount not to exceed the cumulative change in inflation experienced after the date of the last adjustment, provided, however, that no such adjustment shall ever exceed three percent annually of the then-current prices.

Section 364.163, Florida Statutes grants the Commission broad authority and continuing regulatory oversight of intrastate switched access charges, including the authority to review terms, conditions and rates for each of BellSouth's network access charges contained in its mandatory tariffs filed with the Commission, including the CCS7 tariff at issue in this docket.

Issue 1: To what kind of traffic does BellSouth's CCS7 Access Arrangement Tariff apply?

Petitioners: *BellSouth's CCS7 Access Arrangement Tariff applies to intrastate access related to SS7 service. The tariff adds a per message TCAP charge and a per message ISUP charge, in addition to the normal recurring switched access charges applicable to interexchange calls.*

BellSouth witness Milner testified that the tariff applies to intrastate non-local traffic (Tr. 341). Mr. Milner also conceded that the CCS7 access tariff does not apply to ILECs or independent telephone companies. (Tr. 340) Therefore, the tariff only applies to messages on intrastate non-local traffic exchanged between BellSouth and ALECs, IXC's and wireless carriers. BellSouth also concedes that the tariff applies to ISUP messages on telephone calls originated on BellSouth's network and for calls originated on the interconnecting carriers network. (Tr. 338) As a consequence of this tariff, ALECs, IXC's, and wireless carriers are responsible for their own costs for the use of their own CCS7 equipment *and* are required to reimburse BellSouth for BellSouth's SS7 equipment. Therefore, ALECs, IXC's and wireless carriers subsidize the entire SS7 signalling system on traffic exchanged with BellSouth. BellSouth ultimately pays nothing.

Issue 2: Did BellSouth provide CCS7 access service to ALECs, IXC's, and other carriers prior to filing its CCS7 Tariff?

Petitioners: *Yes. BellSouth provided CCS7 access service to ALECs, IXC's, and other carriers prior to filing its CCS7 tariff.*

BellSouth witness Follensbee admitted that BellSouth provided CCS7 access service to ALECs, IXC's, and other carriers prior to filing its CCS7 tariff (Tr. 226). SS7 is an inherent function of the telephone network in Florida and the entire country, and has been for many years. (Tr. 153-156) SS7 provides signaling functionality for call routing and completion as well as access to various data bases. SS7 messages are used for virtually every telephone call. In each telephone call as explained *infra*, there are typically a number of ISUP and TCAP messages.

Issue 3: Is BellSouth's CCS7 Access Arrangement Tariff revenue neutral? Why or why not?

Petitioners: *No, BellSouth's CCS7 access arrangement tariff is not revenue neutral. In fact, BellSouth recently conceded that its demand/cost study supporting the anticipated CCS7 revenues in Florida is wrong. BellSouth's actual billings under the CCS7 tariff far exceed BellSouth's estimated billings.*

BellSouth initially claimed that this tariff filing was revenue neutral. (See BellSouth's Answer to Joint Petition, pg. 12, BellSouth's Prehearing Statement, pg. 7). Subsequently, BellSouth filed rebuttal testimony of Mr. Ruscilli and admitted that BellSouth is earning more in revenue from SS7 charges than it had offset in its local switching revenue. (Tr. 213, 220)

BellSouth either knew or should have known that it would earn more in revenue from SS7 charges than it would offset in its local switching revenue. First, BellSouth started billing interstate and intrastate Florida SS7 messages on or about October 2001 for messages exchanged as early as August of 2001. (Tr. 259) BellSouth knew or should have known prior to February 19, 2002 from its interstate SS7 revenues, that it was earning more in SS7 revenue than originally estimated. (See Exhibit 2, Deposition of BellSouth employee Armstrong, pgs. 14, 39-40). Second, BellSouth's own employees who worked in *separate* departments raised concerns about the validity of BellSouth's claim that the interstate and intrastate tariff filings were revenue neutral. (Exhibit 4, BellSouth's response to ITC^DeltaCom's First Request for Production of Documents ("POD") No. 4). Specifically, Mr. Armstrong, Mr. Waddell, and Ms. Cathy Keugel each questioned the accuracy of the SS7 message demand. Yet, no BellSouth representative was able to articulate how these concerns were addressed or why the concerns were determined to be invalid. (Exhibit 2, Armstrong Deposition, pgs. 17-18, 30-32, Deposition of BellSouth employee Waddell, pg. 29, deposition of BellSouth employee Keugel, pgs. 16-17, 29). In fact, Ms. Keugel seemed particularly unable to

recall much, if any, of her work regarding the cost study she prepared and the demand factors she used for her cost study. (See Exhibit 2, Keugel deposition). There was no estimate of the SS7 demand for TCAP messages associated with LIDB, CNAM, or LNP. (Exhibit 4, BellSouth's response to ITC^DeltaCom's First Request for Production of Documents No. 4, Bates pgs. 13, 14). Yet, BellSouth charges for these TCAP messages and all of BellSouth's offices are now LNP capable. (Exhibit 2, Armstrong deposition, pgs. 23-24). BellSouth's efforts to estimate demand was woefully inadequate, because it did not even attempt to include estimates for TCAP messages it fully intended to charge.

BellSouth employees, Mr. Armstrong, Mr. James, and Mr. Waddell, each testified in pre-trial depositions that these CCS7 tariff filings had to be done quickly. (Exhibit 2, Armstrong deposition, pg. 13, Waddell deposition, pgs. 29-30, James deposition, pg. 39). The emails exchanged among the BellSouth employees provide a glimpse of BellSouth's true motivation in filing this CCS7 tariff and why the tariff filing had to be accomplished quickly. BellSouth employee Mr. Griffin's email in particular reveals that BellSouth's implementation of a per message billing was motivated by a desire to "generate this significant additional revenue." (Exhibit 4, Bates, pg. 2). Mr. Randklev also acknowledged that BellSouth anticipates billing for SS7 would in a 5 to 10 year window generate a return for BellSouth. (Exhibit 2, Randklev deposition pg. 122). Given that BellSouth has priced the ISUP rate and the TCAP rate significantly higher than its costs. (Exhibit 2, BellSouth Late-Filed Deposition Exhibit, pg. 1 dated April 17, 2001). at \$.000123 when the cost is \$0000XXX, it is clear that SS7 per message billing is profitable.

In fact, in comparing the additional costs incurred by WorldCom for ISUP and TCAP messages and the savings presented by the \$0.001 reduction in the local switching rate from part of

February, 2002 through the end of May, 2002, WorldCom has seen an increase in its costs. (Tr. 148, Confidential Exhibit 13). Of course, where WorldCom sees this as a cost increase, BellSouth enjoys a revenue increase. (Tr. 148-149).

With the revenue offset in local switching being less than the increase in SS7 revenue, this is a net positive for BellSouth. If the Petitioners had not filed this case with the Commission BellSouth would have enjoyed a net increase in access revenue even though it supposedly had made a revenue neutral tariff filing. In fact, the emails exchanged between BellSouth employees appear to indicate that BellSouth was more than willing to work with numbers that would enable BellSouth to avoid significant reductions in local switching revenue. (Exhibit 4, Bates pg. 15, BellSouth discussion of the reduced revenues from switching is less than that first estimated). When asked whether BellSouth would undertake any action to correct its “revenue neutral” tariff filings in other states or the FCC, BellSouth witness Follensbee indicated that BellSouth would not voluntarily undertake such action. (Tr. 261-262).

Further, Petitioners respectfully submit that even if the Commission requires BellSouth to reduce its rate for ISUP or TCAP messages or further reduce its local switching rate, the tariff filing will not be revenue neutral going forward. BellSouth’s own data indicates that it used a significantly high growth factor to determine 1999 annual message growth. (Exhibit 4, Bates pg. 6). If local switching only grows by 5%, then clearly SS7 message growth could far exceed that of local switching and the tariff filing would not be revenue neutral. BellSouth did not provide any other trend data that would show SS7 message growth.

Finally, it makes little economic sense for BellSouth to have spent a very significant amount of money on its Agilent Monitoring System, which measures the number of messages, if in the end,

its filing would be revenue neutral. (Exhibit 2, BellSouth Late-filed Deposition Exhibit study date September 20, 2000, page 7 of 14, lines 33, 43, 44). BellSouth would not recover its investment if that were the case.

In summary, BellSouth knew or should have known that its tariff is not revenue neutral, and the evidence suggests that BellSouth fully intends to use SS7 per message billing under this tariff as a way to “generate significant revenue.”

BellSouth provides signalling information used in connection with the provision of telephone exchange services or exchange access by a local exchange carrier across LATA boundaries pursuant to Section 271 (g)(5) and (6) of the Act. If this Commission determines that billing on a per message basis for SS7 for intrastate calls should be permitted, then “bill and keep,” with a reasonable definition of “traffic balance” should be the intercarrier compensation mechanism.

Issue 4: Does BellSouth’s CCS7 Access Arrangement Tariff violate Section 364.163 or any other provisions of Chapter 364, Florida Statutes?

Petitioners: *BellSouth’s CCS7 Access Arrangement Tariff violates Section 364.163, Florida Statutes, which prohibits increasing any specific network access rate until an ILEC’s intrastate switched access rates have reached parity with its interstate switched access rates. The amended statute became effective May 25, 1998, and since that time, BellSouth’s switched access rates have not reached parity.*

This tariff filing violates subsection 364.163(2), Florida Statutes and must therefore be cancelled. This position was adopted by Commission Staff in its recommendation issued to the Commission on April 11, 2002. BellSouth is prohibited from filing this tariff because the tariff constitutes an “increase” in “specific network access rate” and BellSouth’s intrastate switched access rates have not reached parity with interstate switched access rates as required.

Subsection 364.163 (2), states:

After the termination of the caps imposed on rates by subsection (1) **and after** a local exchange telecommunications company's intrastate switched access rates reach parity with its interstate switched access rates, a company subject to this section may, on 30 day's notice, annually adjust any specific network access service rate in an amount not to exceed the cumulative change in inflation experienced after the date of the last adjustment, provided, however, that no such adjustment shall ever exceed 3 percent annually of the then-current prices. Inflation shall be measured by the changes in Gross Domestic Product Fixed 1987 Weights Price Index, or successor fixed weight price index, published in the Survey of Current Business, or successor publication, by the United States Department of Commerce. [Emphasis added].

It is undisputed that BellSouth has satisfied the first requirement of s. 364.163(2) as the caps mandated in s. 364.163(1) for network access service have terminated. BellSouth, however, has failed to comply with the requirement in s. 364.163(2) that BellSouth's intrastate switched access rates reach parity with its interstate access rates prior to increasing a specific network access rate. Specifically, BellSouth's interstate rate as of May 15, 2001 for LS2 is \$.002158 and BellSouth's intrastate LS2 rate contained in this tariff filing is \$.008661. BellSouth does not dispute that its intrastate switched access rates are higher than its interstate switched access rates. (Tr. 153).

A. BellSouth's SS7 service for intrastate non-local calls constitutes a "network access service."

Section 364.163 defines "network access service" as follows:

[A]ny service provided by a local exchange telecommunications company to a telecommunications company certificated under this chapter or licensed by the Federal Communications Commission to access the local exchange telecommunications network, excluding the local interconnection arrangements in s. 364.16 and the resale arrangements in s. 364.161. Each local exchange telecommunications company subject to s. 364.051 shall maintain tariffs with the

commission containing the terms, conditions, and rates for each of its network access services.

BellSouth's SS7 network undeniably is part of its network access services. This tariff was filed by BellSouth in its intrastate access tariff. Additionally, BellSouth reduced its local switching rate for intrastate calls to offset the increase in its SS7 revenues. BellSouth's intrastate access rates also constitute a network access service as defined by Section 364.163. On the other hand, if BellSouth were to claim that its SS7 service is not a network access service, then BellSouth should be required to negotiate with each purchaser of the SS7 service rather than using its intrastate access tariff to unilaterally dictate rates, terms and conditions that petitioners rightfully claim discriminate against them and are punitive.

B. This tariff constitutes an increase in a specific network access rate.

There is no dispute that pursuant to this tariff, BellSouth is raising its rates for intrastate SS7 service. BellSouth does not dispute that its SS7 system was implemented prior to this tariff filing. (Tr. 226) Also, BellSouth admits that prior to this tariff, carriers were charged for the use of BellSouth's SS7 system on a monthly basis, in addition to one time setup charges. In fact, BellSouth witness Follensbee testified that BellSouth continues today to bill ILECs for SS7 services in the same manner that BellSouth billed ILECs prior to the implementation of its Agilent LMS billing system, and BellSouth's billing arrangements with the ILECs are just and reasonable. (Tr. 230) The tariff clearly increases BellSouth's rates for the ALECs' and IXC's' use of its SS7 network as, pursuant to the tariff, BellSouth now bills ALECs and IXCs a per message charge while maintaining its historical one time set-up charges and monthly rates. As BellSouth concedes, this increase is only applicable to ALECs, IXCs and wireless carriers. (Tr. 340) BellSouth readily admits that ALECs

are currently competitors with BellSouth in the local market and BellSouth is hopeful in the very near future it will be competing against IXCs. (Tr. 340-341).

C. BellSouth's Intrastate Switched Access Rates Have Not Reached Parity with its Interstate Access Rates as Required in Section 364.163.

Section 364.163, as amended, became effective on May 28, 1998 and, in effect, capped BellSouth's and other ILECs' intrastate switched access rates at the rates in effect on January 1, 1999. BellSouth must comply with what s. 364.163(2) requires - - reduce its intrastate access rates to interstate levels before it may increase a component of its intrastate access rates.

Subsection 364.163(2) must be given its plain meaning and the Commission must require BellSouth to reduce its intrastate switched access charges to its interstate switched access charge rates prior to raising any specific component of its tariffed intrastate switched access charges. Where a statute is clear and unambiguous, a court may not steer to a meaning which its plain wording does not supply.² Nor are trial courts free to replace distinct and different terms in a statute in order to render a perceived preferred interpretation or what it deems to be a more reasonable construction.³

Accordingly, because BellSouth's CCS7 access arrangement tariff violates s. 364.163(2), Florida Statutes, the Commission must cancel it.

BellSouth witness Ruscilli testified (and petitioners assume that BellSouth will argue in its Posthearing Brief), that BellSouth's intrastate switched access rates reached parity with its interstate switched access rates in 1997, and therefore, BellSouth is no longer subject to the requirements of

² *James Talcott, Inc. v. Bank of Miami Beach*, 143 So.2d 657, 659 (Fla. 3rd DCA 1962).

³ *Horizon Hospital v. Williams*, 610 So.2d 692, 693 (Fla. 2nd DCA 1992); *Heredia v. Allstate Insurance Company*, 358 So.2d 1353, 1355 (Fla. 1978).

Section 364.163(2). (Tr. 200-203).

What BellSouth appears to be arguing, although not clearly stated by witness Roscelli, is that the 1998 amendments to s. 364.163(6) relieved BellSouth of the requirement of s. 364.163(2) to reduce its intrastate switched access rates to the interstate switched access rate level prior to increasing any specific network access service. There is no merit to that argument. Subsection 364.163(6) states:

any local exchange telecommunications company with more than 100,000 but fewer than 3 million, basic local telecommunications service access lines in service on July 1, 1995, shall reduce its intrastate switched access rates by 5% on July 1, 1998, and by 10% on October 1, 1998. Any interexchange telecommunications company whose intrastate switched access rate is reduced as a result of the rate decrease is made by a local exchange telecommunications company in accordance with this subsection shall decrease its intrastate long distance rates by the amount necessary to return the benefits of such reduction to its customers but shall not reduce per minute intraLATA toll rates by a percentage greater than the permitted intrastate switched access rate reductions required by this Act. The interexchange telecommunications carrier may determine the specific intrastate rates to be decreased, provided that residential and business customers benefit from the rate decreases.

In subsection (6), passed in 1995, the Legislature provided a mechanism for reducing intrastate switched access rates and passing those reductions through to retail long distance customers. The 1995 version of subsection (6) refers to local exchange companies whose intrastate rates were higher than their interstate switched access rates in effect on December 31, 1994; subsection (6) calls for an annual five percent reduction of the intrastate rates; and states that “upon reaching parity between intrastate and 1994 interstate switched access rates, no further reduction shall be required.” In 1998, the Legislature amended subsection (6) and repealed the two references to interstate switched access rates in effect on December 31, 1994, and amended the description of

local exchange companies subject to subsection (6) to exclude local exchange companies with more than 100,000 but fewer than 3 million basic local telecommunication service access lines in service on July 1, 1995.

By redefining local exchange companies to exclude companies with more than 100,000 but fewer than 3 million basic local telecommunications service lines in service on July 1, 1995, the Legislature excluded BellSouth from subsection (6). BellSouth's position that they are also exempt from the provisions of subsection 364.163(2) is flawed for a number of reasons. First, it is clear that in 1998, the Legislature exempted BellSouth from the provisions of subsection (6). It is equally clear, that in 1998, the Legislature did not amend subsection (2) to similarly provide that only local exchange companies with more than 100,000 and less than 3 million lines remain subject to the interstate parity requirement. Therefore, the Legislature clearly did not exempt BellSouth from the requirements of subsection (2). See, *e.g.*, *Sumner v. Board of Psychological Examiners*, 555 So.2d 919, 929 (Fla. 1st DCA 1990); *Department of Professional Regulation, Board of Medicine v. Durrani*, 455 So.2d 515 (Fla. 1st DCA 1984); *Radio Telephone Communications, Inc. v. Southeastern Telephone Company*, 177 So.2d 577, 582 (Fla. 1964).

The 1998 amendment to subsection (6) allowed BellSouth, which had lower intrastate rates at that time than other ILECs, to no longer be subject to the provisions of subsection (6). However, BellSouth remained, and remains today required by subsection (2) to reduce its intrastate switched access charges to its current interstate switched access charge level if it wishes to increase rates of components of its intrastate switched access charges.

It is important to note that the June 2, 1998 Final Bill Research & Economic Impact Statement for HB 4785⁴ found that “charges for intrastate network access services (intrastate switched access charges) are priced far in excess of cost and substantially higher than comparable charges applicable to interstate calls.” The Statement concluded that “the pricing structure resulting from this historic regulatory policy appears to be a barrier to market entry for telecommunications providers wishing to compete in local residential markets” despite the gradual reductions in intrastate switched access charges. (Tr. 161-162) Not surprisingly, the Legislature passed the bill amending Section 364.163 to establish new dates for such rate caps to expire. With this background, the Commission surely should not consider this tariff filing as compliant with Section 364.163. When BellSouth filed the tariff, its intrastate switched access charges were significantly greater than its interstate access charges. This tariff therefore violates the spirit and the letter of Section 364.163, Florida Statutes.

Issue 5: What does BellSouth charge subscribers under the CCS7 Access Arrangement Tariff for the types of traffic identified in Issue 1?

Petitioners: *Under the CCS7 Access Arrangement Tariff, BellSouth adds a per message TCAP charge and an ISUP charge to its historical normal recurring switched access charges applicable to interexchange calls.*

⁴HB 4785 was ultimately signed into law as Chapter 98-277, Laws of Florida. It became effective May 28, 1998 and amended certain subsections of Section 364.163, Florida Statutes.

Pursuant to the tariff, there are three types of rates and charges that apply to BellSouth's CCS7 network:

- (1) monthly rates (CCS7 signalling connection, per 56 kbps facility at \$155; CCS7 signalling termination, per STP port at \$377.05;
- (2) one time charges (CCS7 signalling connection, per 56 kbps connection at \$150.00; CCS7 point code establishment or change - originating point code [\$40 first, \$8 additional], per destination point code [\$8 first, \$8 additional].
- (3) BellSouth's tariff, for the first time, imposes a per message TCAP charge of \$.000123, and per message ISUP charge of \$.000035.

Issue 6: Is more than one carrier billed for Integrated Services Digital Network User Part (ISUP), for the same segment of any given call, under the BellSouth CCS7 Access Arrangement Tariff? If so, is it appropriate?

Petitioners: *BellSouth inappropriately bills more than one carrier per ISUP under the CCS7 tariff.*

If BellSouth provides the access tandem to intraLATA non-local calls originated by an IXC to an ALEC, BellSouth will bill the IXC carrier for ISUP messages from the IXC STP to the BellSouth STP. BellSouth's STP will then take the message and transfer it to the ALEC's STP and BellSouth will bill the ALEC for the associated ISUP message.

Thus, BellSouth is inappropriately billing more than one carrier SS7 messages. When an IAM message (a type of ISUP message) is launched by the originating carrier, that IAM message may be updated with new routing information at the STP if the call goes through an access tandem switch, but that IAM/ISUP message contains the same set of instructions all the way through to the

terminating carrier. (Tr. 106-107; 114). BellSouth, asserts that an entirely new message is created each time the IAM message goes through another SCP or STP. (Tr. 331) However, for purposes of developing SS7 ISUP message demand, BellSouth only included 3 or 4 ISUP messages *per call*. (Exhibit 2, POD 4 Bates Pages 13-14). Telcordia GR-394, Appendix C, an industry standard document, states that there are generally 7 ISUP messages and 2 TCAP messages with a normal call. (Exhibit 2, POD 4 Bates Pages 26). Essentially, BellSouth is able to double the number of messages associated with a single telephone call. On average there should only be 6-7 ISUP messages and 2 TCAP messages on a single call, but under BellSouth's billing scheme, a total of 12-14 ISUP messages and 4 TCAP messages will be billed to the IXC and the ALEC for a *single call*. (Tr. 115).

Issue 7: Under BellSouth's CCS7 Access Arrangement Traffic, is BellSouth billing ISUP and Transactional Capabilities Application Part (TCAP) messages charges for calls that originate on an ALEC's network and terminate on BellSouth's network? If so, is it appropriate?

Petitioners: *Although BellSouth's tariff allows BellSouth to bill ISUP and TCAP message charges for calls that originate on an ALEC's network and terminate on BellSouth's network, it is inappropriate for BellSouth to impose charges for SS7 services that employ not only its own facilities but those of interconnected carriers.*

BellSouth's Florida Access Service Tariff states, (in BellSouth's Florida access tariff E6.1(E)2, fifth revised page 26), "ISUP usage charges are assessed per signaling messages delivered to or from the customer, regardless of direction, through its dedicated CCS7 port connection." Similarly, the tariff states (on second revised page 26.1), that "TCAP usage charges will be assessed for signaling messages delivered to the customer, regardless of direction." The tariff therefore allows BST inappropriately to impose charges for SS7 services that employ not only its own facilities, but also the facilities of interconnected carrier customers including ALECs, ICOs and

IXCs.

Additionally, BellSouth witness Follensbee testified that even if the IXC has its own SS7 network and pays for its SS7 facilities, BellSouth will not agree to pay the IXC for SS7 messages associated with intrastate interLATA calls. (Tr. 262-263). Yet, BellSouth provides signaling information used in connection with the provision of telephone exchange services or exchange access by a local exchange carrier *across LATA* boundaries pursuant to Section 271 (g)(5) and (6) of the Telecommunications Act of 1996. In those instances where the IXC/ALEC has its own STPs and facilities, this Commission should require that all SS7 messages (if roughly balanced) should be “bill and keep” rather than forcing carriers to purchase an expensive system to count SS7 messages.

In summary, BellSouth’s CCS7 tariff filing is not only discriminatory it is also unjust and unreasonable in that BellSouth proposes to charge ALECs and IXCs for both the messages that BellSouth originates and terminates as opposed to simply billing for the messages that the calling party originated.

Issue 8: What is the impact, if any, of BellSouth’s CCS7 Access Arrangement Tariff on subscribers? Does such impact, if any, affect whether BellSouth’s CCS7 Access Arrangement Tariff should remain in effect?

Petitioners: *BellSouth’s tariff effectively shifts the charge for its SS7 service from its mobile services tariff, which applies to cellular mobile carriers, to carriers who purchase service from the switched access tariff. Under the tariff, ALECs, IXCs and wireless carriers are charged a per message cost for the use of the SS7 network.*

BellSouth’s CCS7 access arrangement tariff significantly impacts ALECs and IXCs, and has several adverse consequences for Florida’s telephone customers. First, BellSouth has chosen to

restructure, and raise, its access rates in a manner that will increase the costs of its competitors; ALECs and third party vendors. These changes will require revisions to rates that customers pay. Either the ALECs and third party vendors will have to absorb these increased costs and become less competitive, or pass through the increased costs and impose rate increases to their end customers.

BellSouth spent a very significant amount of money on its Agilent LMS. (Exhibit 2 BellSouth Late Filed Deposition Exhibit study date September 20, 2000, page 7 of 14, lines 33, 43, 44). The amount is so substantial that Petitioners cannot afford to purchase such a system for the sole purpose of counting and billing SS7 messages BellSouth sends to the ALEC or IXC. (Tr. 124). BellSouth witness Milner testified that other carriers could purchase the necessary equipment and software to bill on a per message basis more cheaply than BellSouth, but he offered no definitive estimate as to what such a system would cost. (Tr. 357-358) When asked why BellSouth spent such a substantial amount of money to develop and implement the Agilent LMS. BellSouth witness Follensbee explained that BellSouth wanted to more properly allocate cost of SS7. (Tr. 271) Yet, Mr. Milner admitted that with rare exception the exchange of ISUP messages should roughly be equal between BellSouth and carriers with their own B-links. (Tr. 345) Clearly, it is economically irresponsible for Petitioners and other interconnecting carriers to purchase, build, and implement an expensive SS7 message counter such as the Agilent LMS when the number of messages exchanged between BellSouth and the interconnecting carriers may very well be equal.

BellSouth witness Randklev also testified that BellSouth is not currently capable of providing bill detail that would enable US LEC, Time Warner or DeltaCom to pass through these charges to carriers that use their SS7 network and that if Bellsouth were to “turn detailed billing on ... BellSouth would have additional costs as far as hardware, software, and capacity.” (Tr 284) Today

BellSouth simply provides the total number of ISUP and TCAP messages and the rate. BellSouth does not identify where the message truly originated and terminated (Origination Point Code and Destination Point Code) (Tr. 42).

Given that BellSouth cannot provide sufficient billing detail to enable petitioners and other to pass through the charges to those wireless, ALEC, and ILEC carriers that connect to petitioners' SS7 networks; and given that the exchange of these messages may be equal, the only logical method of compensation is bill and keep. If BellSouth can show that there is an imbalance of ISUP and/or TCAP messages greater than 10%, then charging on a per message basis would be reasonable but BellSouth should be required to provide a sufficient amount of billing detail such that the billed carrier can reasonably be assured that it was not double billed and such that the billing carrier can properly apportion costs among other users of the SS7 network.

Issue 9: Does BellSouth bill ILECs for the signaling associated with the types of traffic identified in Issue 1?

Petitioners: *No. BellSouth has conceded that it has designed its tariff so that ILECs will not be charged for the associated per message TCAP and ISUP signalling.* In its Answer to the Petition filed March 22, 2002, BellSouth stated on page 7, paragraph 7, "that its CCS7 Tariff applies to *all* telecommunications providers and third party hubbing vendors that purchase CCS7 capability with regard to non-local, intrastate calls from BellSouth." (Emphasis added.) In its Prehearing Statement, BellSouth asserted that many ILECs purchased A-links from BellSouth to get signalling on calls originated by or terminated to an end user of the ILEC, that the ALECs connect end office or data bases to STPs and that BellSouth has not offered ILECs a bill-and-keep arrangement for CCS7 messages and B-links in Florida."⁵ However, BellSouth admitted

⁵See Prehearing Statement of BellSouth filed August 7, 2002, at p. 7-8.

both in discovery responses and in testimony at the final hearing that ILECs do not pay the *per message TCAP and ISUP* signalling charges described in the tariff. (Tr. 223-224) In discovery, ITC^DeltaCom asked if BellSouth bills ILECS that have B-Links to BellSouth's STPs for SS7 messages, ports and/or links associated with local, intrastate and/or interstate calls? BellSouth's response was "no." (Exhibit No. 4 Response to Interrogatory 1, Page 1 of 1). BellSouth has not billed any ILEC in Florida for intrastate SS7 messages even though BellSouth originally stated in its Answer that *all* telecommunications carriers would be billed for SS7 messages for intrastate non-local calls. BellSouth has offered ILECs with B-Links in other states a bill and keep compensation structure for SS7 messages. [Tr. 246-247].

Initially, BellSouth claimed in the pre-filed testimony of Mr. Ruscilli that it provides CCS7 services to other ILECs through infrastructure sharing arrangements and Mr. Ruscilli explained how and why BellSouth can offer a different arrangement to ILECs as opposed to ALECs. (Tr. 216-217) However, in the hearing, BellSouth witness Follensbee testified that he did not believe that BellSouth had any infrastructure sharing arrangements with ILECs in Florida. (Tr. 248). Instead BellSouth bills ILECs in Florida a different local switching rate that is higher than the rate in its access tariff for ALECS and IXCs. (Tr. 224) When questioned as to whether BellSouth would allow ALECs/IXCs to opt for the higher local switching rate and thus avoid paying the SS7 message fees, Mr. Follensbee indicated that BellSouth instead wanted to move ILECs out of their current arrangement and require ILECs to start paying for SS7 messages. (Tr. 243).

Mr. Follensbee testified that BellSouth has not filed any infrastructure sharing arrangements with this Commission, but BellSouth may do so in the future. (Tr. 248) It is important to note that Section 259 of the Act has limited application and cannot be used for anticompetitive purposes. The

intent of Section 259 is to permit rural incumbent local exchange carriers that have universal service obligations but lack economies of scale or scope to take advantage of an RBOC's network infrastructure. Specifically, the ILEC must lack economies of scale or scope, have ETC status, agree to forbear from directly competing with the RBOC, and these sharing arrangements must be filed with either the state Commission or the FCC. Clearly any arrangement between ILECs not to compete must be subject to Commission scrutiny and should only be permitted in those narrow circumstances set forth in the FCC's *Infrastructure Sharing Order*.⁶

Since BellSouth has not submitted any Section 259 "sharing arrangements" to this Commission for its approval, BellSouth has no justification for treating ALECs differently than ILECs with regard to the billing of SS7 messages. Additionally, Bellsouth's witness Milner stated that "not billing all carriers appropriately for their usage would result in disparate treatment for some carriers ." (Tr. 347) Therefore, Petitioners, all of whom are ALECs, submit that they have been unfairly and unjustly discriminated against by BellSouth and that such discrimination cannot be permitted to continue.

Issue 10: Should BellSouth's CCS7 Access Arrangement Tariff remain in effect? If not, what action(s) should the Florida Public Service Commission take?

Petitioners: *No. BellSouth's CCS7 access arrangement tariff should not remain in effect. It violates Section 364.163, F.S., it is not revenue neutral, and it discriminates against ALECs, IXCs and wireless carriers to the advantage of BellSouth and the other Florida ILECs. If BellSouth seeks to impose new charges on carriers for its SS7 service, it must do so in compliance with

⁶ *In the Matter of Implementation of Infrastructure Sharing Provisions in the Telecommunications Act of 1996*, Report & Order, CC Docket 96-237 ¶ 164,166,167 (February 7, 1997). See also, 47 C.F.R. 59.2(f).

Florida Statutes and federal law.*

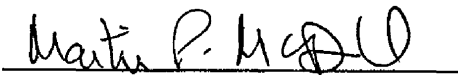
Issue 11: If the tariff is to be withdrawn, what alternatives, if any, are available to BellSouth to establish a charge for non-local CCS7 access service pursuant to Florida law?

Petitioners: *The purpose of this docket is to review the legality of BellSouth's CCS7 tariff as filed, not to offer BellSouth other opportunities to unlawfully and in a discriminatory manner, raise its rates to harm its competitors.*

CONCLUSION

BellSouth's CCS7 tariff, filed with the Commission on January 18, 2002, must be cancelled by the Commission as it violates state law, is discriminatory and is not revenue neutral.

Respectfully submitted,



Kenneth A. Hoffman, Esq.
Martin P. McDonnell, Esq.
Marsha E. Rule, Esq.
Rutledge, Ecenia, Purnell & Hoffman, P.A.
P. O. Box 551
Tallahassee, FL 32302
(850) 681-6788 (Telephone)
(850) 681-6515 (Telecopier)

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing Proposed Issues was furnished by U. S. Mail to the following this 8th day of October, 2002:

Jason Fudge, Esq.
Adam Teitzman, Esq.
Division of Legal Services
Florida Public Service Commission
2540 Shumard Oak Boulevard, Room 370
Tallahassee, FL 32399-0850

Karen Camechis, Esq.
Pennington Law Firm
P.O. Box 10095
Tallahassee, FL 32302-2095

Michael A. Gross, Esq.
Florida Cable Telecommunications Assoc., Inc.
246 East 6th Avenue, Suite 100
Tallahassee, FL 32303

Donna Canzano McNulty, Esq.
MCI WorldCom Communications, Inc.
325 John Knox Road
The Atrium, Suite 105
Tallahassee, FL 32303-4131

Ms. Carolyn Marek
Time Warner Telecom of Florida, L.P.
233 Bramerton Court
Franklin, TN 37069-4002

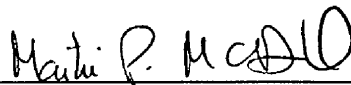
Nancy White, Esq.
James Meza, III, Esq.
c/o Ms. Nancy H. Sims
BellSouth Telecommunications, Inc.
150 South Monroe Street, Suite 400
Tallahassee, FL 32301-1556

Ms. Nanette S. Edwards
ITC^DeltaCom
4092 South Memorial Parkway
Huntsville, AL 35802-4343

Richard D. Melson, Esq.
Gary V. Perko, Esq.
Hopping Green & Sams, P.A.
P.O. Box 6526
Tallahassee, FL 32314

Brian Sulmonetti, Esq.
MCI WorldCom Communications, Inc.
Concourse Corporate Center Six
Six Concourse Parkway, Suite 3200
Atlanta, GA 30328

Mr. Greg Lunsford
US Lec of Florida, Inc.
6801 Morrison Boulevard
Charlotte, NC 28211-3599



Martin P. McDonnell, Esq.