



Public Service Commission
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DATE: JANUARY 23, 2003
TO: DIRECTOR, DIVISION OF THE COMMISSION ADMINISTRATIVE SERVICES (BAYÓ)
FROM: OFFICE OF THE GENERAL COUNSEL (TEITZMAN) DIVISION OF COMPETITIVE MARKETS & ENFORCEMENT (SIMMONS)
RE: DOCKET NO. 021069-TP - REQUEST FOR APPROVAL OF ADOPTION OF LANGUAGE IN EXISTING INTERCONNECTION AGREEMENT BETWEEN NUVOX COMMUNICATIONS, INC. (F/K/A TRIVERGENT COMMUNICATIONS, INC.) AND BELLSOUTH TELECOMMUNICATIONS, INC., TO SERVE AS AMENDMENT TO EXISTING INTERCONNECTION AGREEMENT BETWEEN SUPRA TELECOMMUNICATIONS AND INFORMATION SYSTEMS, INC. AND BELLSOUTH.
AGENDA: 02/04/03 - REGULAR AGENDA - FINAL AGENCY ACTION - INTERESTED PERSONS MAY PARTICIPATE
CRITICAL DATES: NONE
SPECIAL INSTRUCTIONS: NONE
FILE NAME AND LOCATION: S:\PSC\GCL\WP\021069.RCM

CASE BACKGROUND

On October 22, 2002, Supra Telecommunications & Information Systems, Inc. (Supra) filed a request for approval of an Adoption of Language to Serve as Amendment to its interconnection agreement¹ (existing agreement) with BellSouth Telecommunications, Inc. (BellSouth) pursuant to Sections 252(i) and 252(e)(1) of the Telecommunications Act of 1996 (Act). Specifically, Supra requested Commission approval to adopt Section 15 of Attachment 6 of the BellSouth and NuVox Communications, Inc. (f/k/a Trivergent

¹The parties' existing agreement was approved by this Commission by Order No. PSC-02-1140-FOF-TP, issued August 22, 2002, in Docket 001305-TP.

Communications Inc.) (NuVox) interconnection agreement for the State of Florida, dated June 30, 2000. Section 15 covers billing dispute resolution and is attached to this recommendation.

On October 25, 2002, BellSouth filed a letter opposing Supra's request for approval of the adoption. Although adoptions of agreements under Section 252(i) are usually handled administratively, staff brings this matter to the Commission's attention to resolve BellSouth's opposition.

DISCUSSION OF ISSUES

ISSUE 1: Should the Commission approve Supra Telecommunications and Information Systems, Inc.'s request to adopt Section 15 of Attachment 6 of the interconnection agreement entered into by BellSouth Telecommunications, Inc. and NuVox Communications, Inc. (f/k/a Trivergent Communications Inc.)? (TEITZMAN)

RECOMMENDATION: Yes. Consistent with Sections 252(e)(1) and 252(i) of the Telecommunications Act of 1996, the Commission should approve Supra's request to adopt Section 15 of Attachment 6 of the interconnection agreement entered into by BellSouth and NuVox.

STAFF ANALYSIS: BellSouth asserts three objections in its letter of opposition to Supra's request for approval. First, BellSouth states it has not agreed to execute the adoption agreement. BellSouth asserts Supra has attempted to unilaterally amend the interconnection agreement by "forging" BellSouth's signature in violation of Sections 24.7.1 and 5.2 of the interconnection agreement, and therefore, the proposed agreement has no force and effect. Second, BellSouth states pursuant to Section 5.2 of the General Terms and Conditions of the parties' interconnection agreement and Section 252(i) of the Act, BellSouth is under no obligation to make available for adoption the identified billing dispute resolution language. Third, BellSouth states that Supra's request is an attempt to "use this inapplicable contract language in order to continue its pattern of nonpayment" and to "circumvent

the Commission's decision in the Final Order" in Docket 001305-TP which set forth the requirements for resolving billing disputes. BellSouth states further that such piecemeal adoption strategy is not authorized by the Act, and is contrary to the public interest.

Section 24.7.1 of the parties' existing agreement covers "Amendments or Waivers" and provides the following:

Except as otherwise provided in this Agreement, no amendment or waiver of any provision of this Agreement, and no consent to any default under this Agreement, shall be effective unless the same is in writing and signed by an officer of the Party against whom such amendment, waiver or consent is claimed. In addition no course of dealing or failure of a Party strictly to enforce any term, right or condition of this Agreement shall be construed as a waiver of such term, right or condition. By entering into this Agreement, neither Party waives any rights granted to them pursuant to the Act.

Pursuant to the parties' existing agreement, no amendment is effective unless signed by an officer of the party against whom such amendment is claimed. However, this same provision provides that neither party waives any rights granted to them pursuant to the Act.

Section 252(i) of the Act states:

A local exchange carrier shall make available any interconnection, service, or network element provided under an agreement approved under this section to which it is a party to any other requesting telecommunications carrier upon the same terms and conditions as those provided in the agreement.

Pursuant to this section, BellSouth is required to make available to Supra the same terms and conditions set forth in its interconnection agreement with NuVox. Furthermore, staff believes pursuant to Section 24.7.1 of the parties' existing agreement, BellSouth's refusal to sign Supra's proposed amendment does not

strip Supra of its right to seek adoption of the Nuvox/BellSouth language under the Act.

Section 5.2 of the parties' existing agreement requires that in the event of a dispute regarding a requested adoption, the parties shall follow the dispute resolution process set forth in Section 16.1 of the existing agreement. Section 16.1 of the existing agreement states that the appropriate forum for resolution of disputes arising out of the agreement is this Commission.

Staff notes Supra's signing of the proposed adoption agreement on behalf of BellSouth was unnecessary; however, Supra did note on the proposed agreement that the signature was on behalf of BellSouth and not actually provided by BellSouth. Accordingly, staff does not believe Supra's actions rise to the level of forgery, and further, should be considered a non-issue by the Commission in resolving this dispute.

BellSouth's primary objection to Supra's proposed amendment is that the billing dispute resolution language Supra seeks to adopt does not come under the umbrella of "any interconnection, service, or network element" a local exchange carrier is required to make available under Section 252(i) of the Act. Accordingly, BellSouth contends it is not required to make available this specific portion of the NuVox agreement.

In FCC 02-276², the Federal Communications Commission found that "agreements addressing dispute resolution and escalation provisions relating to the obligations set forth in Sections 251(b) and (c) of the Act are appropriately deemed interconnection agreements." Sections 251(b) and (c) provide the obligations of LECs and competitive LECs under the Act. Accordingly, staff believes this finding by the FCC provides significant guidance in interpreting the requirements set forth in Section 252(i) of the Act.

²In the Matter of Qwest Communications International Inc. Petition for Declaratory Ruling on the Scope of the duty to File and Obtain Prior Approval of Negotiated Contractual Arrangement under Section 252(a)(1)., WC Docket No. 02-89, Memorandum and Order, FCC 02-276 (rel. October 4, 2002) (Qwest sought guidance about the types of negotiated contractual arrangements between incumbent local exchange carriers (LECs) and competitive LECs that should be subject to the filing requirements of §252(a)(1) of the Act.)

Pursuant to the FCC's findings in FCC 02-276, staff believes the language of Section 252(i) which requires a local exchange carrier to make available "any interconnection, service, or network element" would include the billing dispute resolution language Supra seeks to adopt in this docket. Furthermore, staff notes that there is no limiting or prohibitory language regarding "piecemeal" adoption of approved agreement provisions in the Act.³ Accordingly, staff believes the Commission should approve Supra's request to adopt Section 15 of Attachment 6 of the BellSouth and NuVox interconnection agreement. Upon approval, Section 15 shall serve as an amendment to the parties' existing agreement with BellSouth.

ISSUE 2: Should this docket be closed?

RECOMMENDATION: Yes. Whether the Commission approves or denies staff's recommendation in Issue 1, this docket should be closed.
(TEITZMAN)

STAFF ANALYSIS: Yes. Whether the Commission approves or denies staff's recommendation in Issue 1, this docket should be closed.

³ See also 47 C.F.R. §51.809(a) requiring provision of any approved individual interconnection, service or network element arrangement contained in any approved agreement to any requesting carrier. Often referred to as the "pick and choose" rule. (emphasis added)

**ADOPTION AGREEMENT BETWEEN
SUPRA TELECOMMUNICATIONS AND INFORMATION SYSTEMS, INC.
AND
BELLSOUTH TELECOMMUNICATIONS, INC.**

This Adoption Agreement ("Adoption Agreement"), which became effective, pursuant to Section 5 of the General Terms and Conditions of the Supra/BellSouth interconnection agreement ("Interconnection Agreement"), as of October 11, 2002 (the "Effective Date"), is entered into by and between Supra Telecommunications and Information Systems, Inc. ("Supra"), a Florida corporation, having an office at 2620 SW 27th Avenue, Miami, Florida 33133, on behalf of itself and its successors and assigns, and BellSouth Telecommunications, Inc. ("BellSouth"), a Georgia corporation, having an office at 675 Peachtree Street, Atlanta, Georgia 30375, on behalf of itself and its successors and assigns.

WHEREAS, the Telecommunications Act of 1996 (the "1996 Act") was signed into law on February 8, 1996; and

WHEREAS, Section 252(i) of the 1996 Act requires that a local exchange carrier shall make available any interconnection, service, or network element provided under an agreement approved under this Section to which it is a party to any other requesting telecommunications carrier upon the same terms and conditions as those provided in the agreement; and

WHEREAS, Section 51.809 of Title 47 of the Code of Federal Regulations sets forth the Federal Communications Commission's ("FCC") rule governing the availability of provisions of agreements to other telecommunications carriers under Section 252(i) of the 1996 Act; and

WHEREAS, the U.S. Supreme Court, in *AT&T Corp. v. Iowa Utilities Board*, 525 U.S. 366, 395 (1999), upheld the validity of the FCC's requirement that an incumbent LEC can require a requesting carrier to accept all terms that it can prove are "legitimately related" to the desired term; and

WHEREAS, Supra has requested, pursuant to Section 252(i) of the 1996 Act and Section 51.809 of Title 47 of the Code of Federal Regulations, that BellSouth make available certain provisions, as identified herein, from approved agreements;

NOW, THEREFORE, in consideration of the promises and mutual covenants of this Adoption Agreement, Supra and BellSouth hereby agree as follows:

1. The term of this Adoption Agreement shall be from the Effective Date as set forth herein and shall expire as set forth in the General Terms and Conditions of the Interconnection Agreement as approved pursuant to 252(e) of the 1996 Act.
2. Supra and BellSouth shall strike Section 15 of Attachment 6 of the Interconnection Agreement in its entirety and replace it with the following language:

15. Billing Disputes

- 15.1 Each Party agrees to notify the other Party upon the discovery of a billing dispute. In the event of a billing dispute, the Parties will endeavor to resolve the dispute within sixty (60) calendar days of the Bill Date on which such disputed charges appear, provided however that failure to raise a billing dispute within 60 days of the bill date shall not operate to waive such dispute. Resolution of the dispute is expected to occur at the first level of management resulting in a recommendation for settlement of the dispute and closure of a specific billing period. If the issues are not resolved within the allotted time frame, the following resolution procedure will begin:
- 15.1.2 If the dispute is not resolved within sixty (60) days of the Bill Date, the dispute will be escalated to the second level of management for each of the respective Parties for resolution.
- 15.1.3 If the dispute is not resolved within ninety (90) days of the Bill Date, the dispute will be escalated to the third level of management for each of the respective Parties for resolution.
- 15.1.4 If the dispute is not resolved within one hundred and twenty (120) days of the Bill Date, or within such other time as the parties may agree, either Party may file a complaint with the Commission or with a court of competent jurisdiction. The parties will comply with decisions of the court of Commission, subject to the appropriate rights to appeal.
- 15.2 If a Party disputes a charge and does not pay such charge by the payment due date, such charges shall be subject to late payment charges as set forth in the Late Payment Charges provision of this Attachment. If a Party disputes a charge and does pay such charge by the payment due date, that Party will be entitled to a credit with interest if the dispute is resolved in favor of that Party. If a Party disputes charges and the dispute is resolved in favor of such Party, the other Party shall credit the bill of the disputing Party for the amount of the disputed charges along with any late payment charges assessed no later than the second Bill Date after the resolution of the dispute. Accordingly, if a Party disputes charges and the dispute is resolved in favor of the other Party, the disputing Party shall pay the other Party the amount of the disputed charges and any associated late payment charges assessed no later than the second bill payment due date after the resolution of the dispute. BellSouth shall only assess interest on previously assessed late payment charges in a state where it has authority pursuant to its tariffs.

IN WITNESS WHEREOF, the Parties hereto have caused this Adoption Agreement to be executed by their respective duly authorized representatives on the date indicated below.

Supra Telecommunications and
Information Systems, Inc.

BellSouth Telecommunications, Inc.

By: [Signature]

By: Greg follensbee *

Name: DAVID A. NIXON

(By supra Telecom)
Name: _____

Title: VP-TECHNOLOGY

Senior Director
Title: Interconnection Services

Date: 10/21/2002

Date: 10/21/2002

* This adoption is being executed by supra Telecom on behalf of BellSouth Telecommunications, Inc. under the authority of section 5.2 of the General Terms & Conditions. In particular BellSouth has failed to respond within 30 days of the initial request or otherwise object to the amendment