

State of Florida



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TO: DIRECTOR, DIVISION OF THE COMMISSION CLERK
ADMINISTRATIVE SERVICES (BAYÓ)

FROM: DIVISION OF COMPETITIVE MARKETS & ENFORCEMENT (GILCHRIST, *AG*
FULWOOD, SIMMONS) *SAS*
DIVISION OF ECONOMIC REGULATION (PLATT) *PL*
OFFICE OF THE GENERAL COUNSEL (TEITZMAN, CHRISTENSEN) *PK*

RE: DOCKET NO. 020129-TP - JOINT PETITION OF US LEC OF
FLORIDA, INC., TIME WARNER TELECOM OF FLORIDA, L.P., AND
ITC^DELTACOM COMMUNICATIONS OBJECTING TO AND REQUESTING
SUSPENSION OF PROPOSED CCS7 ACCESS ARRANGEMENT TARIFF
FILED BY BELLSOUTH TELECOMMUNICATIONS, INC. *PK*

AGENDA: 2/18/2003 - REGULAR AGENDA - POST-HEARING DECISION -
PARTICIPATION IS LIMITED TO COMMISSIONERS AND STAFF

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: NONE

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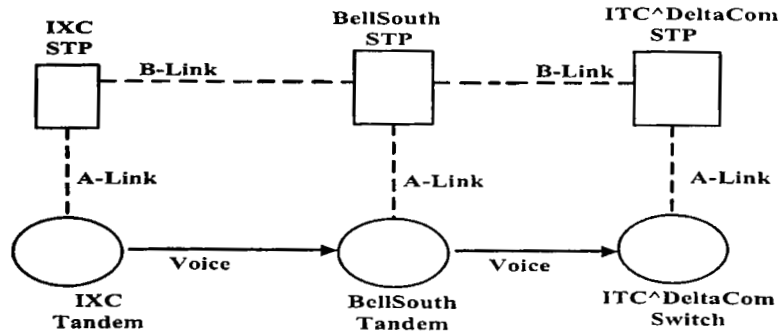
CASE BACKGROUND

On January 18, 2002, BellSouth Telecommunications, Inc. (BST) filed a tariff with this Commission introducing the CCS7 Access Arrangement. This tariff filing also restructured the offering for Commercial Mobile Radio Service (CMRS) providers, and directed them to the equivalent CCS7 Access Arrangement available in the Access Services Tariff. Further, as part of this filing, local switching rates were reduced to reflect the introduction of charges for intrastate CCS7 usage. The tariff filing went into effect on February 17, 2002.

On February 15, 2002, US LEC of Florida, Inc., Time Warner Telecom of Florida, L.P., and ITC^DeltaCom Communications (Petitioners) filed a Joint Petition objecting to and requesting suspension of the CCS7 Access Arrangement Tariff filed by BST, and requesting that the Commission schedule a formal administrative hearing to address the issues raised in their Petition. On March 22, 2002, BST filed its response to the Petition filed on February 15, 2002. On July 2, 2002, MCI WorldCom Communications, Inc., (MCI) and MCIMetro Access Transmission Services, LLC (MCIMetro) filed their petition to intervene in this docket. On July 16, 2002, by Order No. PSC-02-0964-PCO-TP, the Commission granted intervention to MCI and MCIMetro. This matter was set for an administrative hearing by this Commission by Order No. PSC-02-1179-PHO-TP.

Staff notes that this matter addresses the signaling necessary to connect (set up) and disconnect (tear down) calls, also referred to as Signaling System 7 (SS7) or Common Channel Signaling 7 (CCS7). SS7 is the industry standard signaling system that uses an out-of-band or overlay network for call routing and database access.

Modified by Staff
Exhibit GRF-1



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As shown in the diagram, the voice traffic flows between switches (tandems) while the signaling messages necessary for call set-up and tear-down flow between signaling transfer points (STPs). The messages used to perform call set-up and tear-down are known as Integrated Services Digital Network User Part (ISUP) messages. The SS7 network begins its functionality by sending an Initial Address Message (IAM) from the calling network to the called network. Through a series of additional sent and received messages, the SS7 network confirms the availability of facilities, terminating equipment, and whether the called party answered the phone. Once confirmed, the switches and trunks are actually engaged to complete the call. Similarly, when one of the parties hangs up the phone, messages are exchanged to release the facilities. (Montano TR 131-132)

Likewise, Transactional Capabilities Application Part (TCAP) messages provide non-circuit related information for transactions that require an exchange of information between networks, such as 800 services, credit card calling, and calling name database (CNAM) access. Staff notes that access links (A-Links) connect signaling end points, i.e., databases and switches (including subtending carrier's switches) to a STP, while bridge links (B-Links) interconnect STPs between networks. (Randklev TR 297)

This is staff's recommendation to address the 11 issues that were identified by the parties and heard at the administrative hearing held on September 21, 2002. The issues are somewhat unique in that certain ones address factual matters, others address policy matters, one is legal in nature, and some are a combination. While it would seem reasonable to assume that the parties could have reached settlement on the factual issues, staff notes that no stipulations have been forthcoming, although there is substantial agreement on those specific issues. At the beginning of each issue in this recommendation, staff has attempted to classify the issue, using terminology such as "factual," "policy," "factual/policy," or "legal." Finally, staff notes that ITC^DeltaCom Communications withdrew from this docket on January 10, 2003.

As discussed in the recommendation, staff believes that the evidence supports the following key conclusions:

- (A) the CCS7 access tariff applies to non-local intrastate traffic and to local traffic if the carrier does not have an approved interconnection agreement with BellSouth;

- (B) the CCS7 access tariff is not a new service, but a rate restructure;
- (C) the CCS7 access tariff is not revenue-neutral;
- (D) the CCS7 access tariff violates Section 364.163, Florida Statutes, because BellSouth's intrastate and interstate access rates must reach parity prior to increasing any specific network access rate;
- (E) the CCS7 access tariff would unnecessarily and unreasonably increase costs for competitive carriers that provision their own SS7 networks by requiring them to invest in a system to bill BellSouth;
- (F) the CCS7 access tariff should be canceled; and
- (G) BellSouth should be ordered to refund, on a customer-specific basis, any net increase resulting from applying the lower local switching rates and the CCS7 tariff rates, as compared to the higher local switching rates customers would have paid if the CCS7 tariff had not gone into effect.

The Commission is vested with jurisdiction over this matter pursuant to Sections 364.01(3) and 364.04, 364.051(5), and 364.163, Florida Statutes.

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List of Acronyms

A-Links	Access Links
ACM	Address Complete Message
ALEC	Alternative Local Exchange Carrier
AMA	Automatic Message Accounting
ANM	Answer Message
B-Links	Bridge Links
CLASS	Custom Local Area Signaling Services
CLEC	Competitive Local Exchange Carrier
CMRS	Commercial Mobile Radio Service
CNAM	Calling Name Database
CCS7	Common Channel Signaling 7
COT	Continuity Test Message
DPC	Destination Point Code
GSST	General Subscriber Services Tariff
IAM	Initial Address Message
ILEC	Incumbent Local Exchange Carrier
ISUP	Integrated Services Digital Network User Part
IXC	Interexchange Carrier
kbps	Kilobits Per Second
LATA	Local Access and Transport Area
LEC	Local Exchange Carrier
LMS	Link Monitoring System
MOU	Minutes of Use
OPC	Originating Point Code
PIU	Percentage Interstate Usage
PLU	Percentage Local Usage
REL	Release
RLC	Release Complete
SCP	Service Control Point
SS7	Signaling System 7
STP	Signal Transfer Point
TELRIC	Total Element Long-Run Incremental Cost
TCAP	Transactional Capabilities Application Part
UNE	Unbundled Network Element

DISCUSSION OF ISSUES

ISSUE 1: (Factual) To what kind of traffic does BellSouth's CCS7 Access Arrangement Tariff apply?

RECOMMENDATION: Staff recommends that the evidence supports a finding that BellSouth's CCS7 access tariff applies to non-local intrastate traffic and to local traffic if the carrier does not have an approved interconnection agreement with BellSouth.
(GILCHRIST)

POSITION OF THE PARTIES:

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: It is undisputed that BellSouth's CCS7 Tariff applies only to signaling associated with non-local intrastate calls.

STAFF ANALYSIS: This issue addresses the types of traffic to which the CCS7 Access Arrangement Tariff applies.

Analysis

According to ITC^DeltaCom Communications' (ITC^DeltaCom) witness Brownworth, BellSouth will bill on a per message basis for all SS7 messages that cross the SS7 Gateway to an IXC, ALEC, or wireless carrier that has a pair or a quad of SS7 links directly connected to one of BellSouth's SS7 Gateway Signal Transfer Points (STPs). Witness Brownworth also indicates that BellSouth will charge that IXC, ALEC or wireless carrier for all SS7 messages, regardless of whether those messages are associated with a local or long distance call or "whether they are non-call associated messages" (e.g., SS7 messages associated with pagers). BellSouth will charge for both those messages BellSouth originates, as well as for messages originated by the other carrier. Witness Brownworth indicates that BellSouth charges a per-message TCAP rate and a per-message ISUP rate, in addition to the normal recurring

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switched access charges applicable to interexchange calls. (TR 34-35)

BellSouth's witness Follensbee states that carriers choosing to obtain CCS7 service from BellSouth can use the service in relation to three types of calls: (1) interexchange calls between locations in the state of Florida and locations in other states ("interstate calls"); (2) local calls; and (3) interexchange calls between locations within the state of Florida ("non-local intrastate calls"). (TR 195) Witness Follensbee presents testimony that when carriers like the Petitioners use BellSouth's CCS7 service for interstate calls, they pay the rates set forth in BellSouth's federal tariff. He states that carriers pay a per-message TCAP rate as well as a per-message ISUP rate that apply to messages associated with interstate calls; they also pay monthly recurring charges for connections and terminations with interstate calls. The TCAP rates, the ISUP rates, and the monthly recurring charges for connections and terminations in the federal tariff are the same as those in the Florida intrastate CCS7 tariff that is the subject of this proceeding. (TR 196-197)

The BellSouth witness asserts that a carrier that uses BellSouth's CCS7 for local calls and does not have an approved interconnection agreement with BellSouth, will pay these tariffed rates for local calls. Witness Follensbee states that with respect to non-local intrastate calls, carriers pay the rates set forth in the Florida CCS7 tariff. (TR 197-198)

CONCLUSION:

ITC^DeltaCom witness Brownworth indicates that BellSouth will charge an IXC, ALEC or wireless carrier for all SS7 messages, regardless of whether those messages are associated with a local or long distance call or "whether they are non-call associated messages." BellSouth witness Follensbee clarifies in his testimony that the tariffed rates apply to any carrier that uses CCS7 service and does not have an approved interconnection agreement, as well as to any non-local intrastate calls. Therefore, staff recommends that BellSouth's CCS7 Access Arrangement Tariff applies to non-local intrastate traffic and to local traffic if the carrier does not have an approved interconnection agreement with BellSouth.

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

RECOMMENDATION: Staff recommends that the evidence supports a finding that BellSouth provided CCS7 access service to ALECs, IXC's, and other carriers prior to filing its CCS7 tariff. **(GILCHRIST)**

POSITION OF THE PARTIES:

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

BELLSOUTH: Yes, but until recently, BellSouth was unable to bill third parties for these services on a per-message basis.

STAFF ANALYSIS: This issue addresses whether BellSouth provided CCS7 access service to ALECs, IXC's, and other carriers prior to filing its CCS7 tariff.

Arguments

ITC^DeltaCom's witness Brownworth testifies that BellSouth provided CCS7 access service to ALECs, IXC's, and other carriers prior to filing its intrastate CCS7 tariff. (TR 36) BellSouth witness Milner admits that BellSouth provided CCS7 access service to ALECs, IXC's, and other carriers for a number of years. (TR 330) Thus, both parties are in agreement that BellSouth provided CCS7 access service to ALECs, IXC's, and other carriers prior to filing its CCS7 tariff. The dispute is over whether the CCS7 tariff is a tariff restructure, as alleged by ITC^DeltaCom, or a "new" service as alleged by BellSouth. Witness Brownworth states that the service itself isn't new and that the effect of this tariff filing is to restructure charges for SS7 messages, rather than to provide and charge for a new service. (TR 36) Witness Brownworth further argues that while BellSouth has not charged on a per message basis, BellSouth has been charging carriers through various switched access elements. Further, he contends that it appears BellSouth has been billing an amount in annualized surrogate usage charges, in addition to the switched access elements, which indicates that BellSouth was recouping CCS7 costs on a fixed-cost basis as well as through its switched access elements. (TR 48-49) Moreover, witness Brownworth testifies that BellSouth billed ITC^DeltaCom

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some messages in 2001 as intrastate CCS7 messages prior to the time the CCS7 tariff went into effect. (TR 125)

MCI/MCI Metro (WorldCom) witness Argenbright argues that although BellSouth puts forth a good effort to present the CCS7 access arrangement as a new service, it simply is not so. He notes that the service has been in existence and charges have been applicable to its use; thus, it would appear that the only thing "new" about this service would be BellSouth's ability to bill for the service differently. The WorldCom witness states that BellSouth's revisions to its tariffs demonstrate that BellSouth's CCS7 network was already in existence and operational prior to BellSouth's January 2002 filing. He observes that the pre-January 2002 tariff sections addressing the application of rates also demonstrate the existence of access rates associated with the signaling service. Witness Argenbright states that the January 2002 tariff filing even moves the previously existing "Point Code Establishment Change" nonrecurring charges to the "new" section with the minor text change to indicate "CCS7 Point Code Establishment or Change"; the rates are moved unchanged. (TR 154, 156) Further, he argues that the CCS7 access arrangement that BellSouth characterizes as a new service has been in existence, used and offered by BellSouth to other carriers at a price long before the filing of this "new" service, which he contends is supported by BellSouth's own tariff. At best, according to the WorldCom witness, BellSouth's offering is a restructuring of an existing service, which results in an increase in rates. (TR 157)

On the other hand, BellSouth's witness Milner testifies that this tariff is simply a change in the method of charging for usage of BellSouth's CCS7 network by more accurately charging carriers based on their usage. He states that previously the per message charge for the service was zero; now, BellSouth is charging on a per message basis for this service that it is providing to third parties. (TR 330) In his rebuttal testimony, witness Milner asserts that the implementation of the CCS7 tariff provides for the appropriate billing of certain carriers' messages that are transported by BellSouth. Witness Milner notes that until recently, BellSouth was unable to count individual ISUP and TCAP messages transported by BellSouth for another carrier; until BellSouth developed the ability to count such messages, BellSouth was unable to bill customers on a per message basis for this service that it was providing them. (TR 335)

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BellSouth witness Follensbee contends that before the tariff that is the subject of this proceeding went into effect, ITC^DeltaCom was paying for its use of BellSouth's CCS7 network with regard to local and interstate calls. (TR 211)

BellSouth witness Follensbee testifies that BellSouth implemented this tariff to allow recovery of BellSouth's CCS7 costs in a manner that reflects more accurately the way in which those costs are incurred. He states that CCS7 services are no longer recovered through the provision of switched access services, but instead are recovered on a separate per message basis. (TR 218) Witness Follensbee testifies that this tariff allows BellSouth to change who is paying the cost of the signaling, and enables BellSouth to achieve a more logical rate/cost relationship, as opposed to presuming that the duration of a long distance call has anything to do with signaling cost. (TR 270) When asked whether the SS7 system itself was in place before BellSouth was able to capture the per message billing, BellSouth witness Follensbee responded "yes." (TR 226)

Analysis

BellSouth witness Milner admits that "BellSouth has provided CCS7 access service to ALECs, IXCs, and other carriers for a number of years." (TR 30) Therefore, there is no doubt that BellSouth provided CCS7 service to ALECs, IXCs, and other carriers prior to filing its CCS7 tariff. Staff thus agrees with the Petitioners' contention that the issue to be resolved is not whether BellSouth provided CCS7 service to ALECs, IXCs, and other carriers prior to filing its CCS7 tariff, but whether the CCS7 tariff is a rate restructure, as asserted by the Petitioners, or a new service as asserted by BellSouth. BellSouth witness Follensbee testified that BellSouth's CCS7 costs are no longer recovered through the provision of switched access services, but instead are recovered on a separate per message basis. Based on the evidence presented, staff believes the tariff constitutes a new method of billing for an existing service. (TR 218)

CONCLUSION:

The testimony presented by the Petitioners and BellSouth shows that BellSouth provided CCS7 access service to ALECs, IXCs, and other carriers prior to filing its CCS7 tariff filing. "More accurate recovery," "services no longer recovered through," and

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"not having the ability" are key phrases in witness Milner's testimony supporting staff's position that BellSouth provided CCS7 service to ALECs, IXC's, and other carriers prior to the implementation of the CCS7 tariff. (TR 330) The fact that BellSouth now has the ability to recoup its costs for CCS7 in a different way demonstrates that the service was already in existence and, thus, not "new."

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ISSUE 3: (Factual) Is BellSouth's CCS7 Access Arrangement Tariff revenue neutral? Why or why not?

RECOMMENDATION: Staff recommends that the evidence supports a finding that BellSouth's CCS7 Access Arrangement Tariff is not revenue neutral. Whether viewed in its current form or from the standpoint of the one future agreed upon adjustment, the tariff is not revenue neutral. **(PLATT)**

POSITIONS OF THE PARTIES:

PETITIONERS: No, BellSouth's CCS7 Access Arrangement Tariff is not revenue neutral. In fact, BellSouth concedes 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: BellSouth tried in good faith to make its CCS7 Access Arrangement Tariff revenue neutral. To date, the amount of revenue BellSouth has received for signaling messages associated with non-local intrastate calls has exceeded the amount of revenue BellSouth has foregone as a result of the reductions it implemented in this tariff filing. This is due, at least in part, to the fact that carriers have not provided BellSouth with signaling factors.

STAFF ANALYSIS: This issue addresses whether BellSouth's tariff is revenue neutral.

Arguments

WorldCom witness Argenbright states that while it is true that the rates for local switching were reduced and rates for CCS7 service were increased, there is no support in the filing demonstrating that the demand for each of these services, when applied to these rates, actually results in the same amount of revenue for BellSouth. Further, the witness states that there is no indication as to the demand trend for these services, which would be necessary in order to understand the revenue impact on a going-forward basis. The witness observes that Exhibit 11 illustrates the significant growth in CCS7 messages for which BellSouth is charging WorldCom, as compared to the relatively level quantity of local switching minutes for which WorldCom is being billed. Witness Argenbright believes "[t]his chart makes clear that the trend of increasing usage of CCS7 messages will continue

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to provide BellSouth with additional revenue at the expense of its competitors." (EXH 11; TR 149)

On the other hand, BellSouth witness Follensbee believes that "BellSouth should not be prohibited from amending its tariffs to require the cost causer of a network access service to pay for the network access service it receives from BellSouth merely because BellSouth's tariffs had not previously set forth a charge for that network access service." (TR 207)

US LEC of Florida, Inc. witness Montano opines that BellSouth first attempts to shift the charge for this service from the Mobile Services tariff, which applies to cellular mobile carriers, to carriers who purchase service from the switched access tariff. (TR 134) She alleges that this new form of charging will allow BellSouth to generate more revenue than under the previous flat-rate charge, which theoretically recovered BellSouth's costs. The witness asserts that BellSouth's restructuring of these charges is effectively an increase in its access rates and will increase the costs of its competitors - both ALECs and third-party hubbing vendors. (TR 134-135)

Witness Montano goes on to state that ". . . BellSouth has admitted in its Answer to ITC^DeltaCom's Interrogatory No. 1 that it does not charge other ILECs for its CCS7 services. BellSouth's tariff discriminates against the ALECs who are jointly providing services, because BellSouth does not charge other Florida ILECs that are jointly providing service with BellSouth." (TR 143)

To compound the alleged inequity, witness Montano believes BellSouth has implemented this new rate in a way that is difficult for carriers to audit. In order to identify the costs and incorporate those costs into end user rates, an ALEC must purchase call detail at \$30,000 per month, or \$360,000 per year. (TR 133-134) She further asserts, as does ITC^DeltaCom witness Brownworth, that the invoices BellSouth sends to the ALECs and IXC's for SS7 messages are so lacking in detail that the ILECs and IXC's are unable to pass these costs through to their end users. (TR 17,42-43,135) During redirect examination, witness Brownworth was asked if more detailed billing had been requested. He replied affirmatively, but said that BellSouth had not yet responded since the initial request was made in March of 2002. (TR 118-119)

ITC^DeltaCom witness Brownworth believes that the filing discriminates against his company and other carriers. He testifies that "[i]n review of confidential data, we found the demand studies were underestimated in the amount of messages. The tariff filed by BellSouth should be revised to reflect this new information on demand." (TR 61-62) Witness Brownworth believes that "BellSouth has spent a significant amount of capital to develop a billing system for a revenue neutral filing. This capital expenditure is so significant that few carriers would be able to match the capital incurred by BellSouth for the development of such a system." (TR 62) Further, witness Brownworth testifies that when a local ITC^DeltaCom customer calls an interexchange carrier to utilize their services, there is no BellSouth end office involved. In this call scenario, ITC^DeltaCom would be billed an interconnection fee for the use of BellSouth's tandem, but would not be charged a local switching fee, and hence would not realize the cost offset. (TR 98)

Analysis

The issue in contention is from what perspective should the Commission consider "revenue neutrality"? BellSouth takes the position that the tariff is revenue neutral because revenue projections for the CCS7 messaging service have been offset by reductions to local switching; it is revenue neutral in the aggregate. BellSouth witness Follensbee notes that "[w]hether a tariff filing is revenue neutral is not based on the impact on a specific customer (i.e., DeltaCom or WorldCom) or a class of customers (i.e., IXCs, Wireless, ALECs, etc.). Instead, neutrality is based on a comparison of the total projected revenue increases and decreases associated with the tariff filing." (TR 212-213)

In its filing, BellSouth asserts to the Commission that this tariff is revenue neutral. However, BellSouth's responses to ITC^DeltaCom's 1st Request for Production of Documents (EXH 4) indicate that the revenues generated by this tariff filing exceed the total worth of the reductions in local switching rates reflected in Section E6.8.2 and the reductions to interconnection rates for mobile service providers reflected in Section A35.1 of BellSouth's Florida General Subscriber Service Tariff. (EXH 4, p. 1) In addition, an interoffice e-mail requesting that monies for Agilent technical support be found "so that we [BellSouth] can begin to generate this significant additional revenue," suggests that BellSouth had a different motive. (EXH 4, p. 1)

An additional e-mail sent to BellSouth witness Randklev states that "figures used for these [demand] computations were very conservative." (EXH 4, p. 2) Yet, BellSouth's responses to ITC^DeltaCom's 1st Request for Production of Documents reveal that the demand level for ISUP and TCAP messages for the year 2000 was extraordinarily high. (EXH 4, p. 7) It is unclear which of two growth factors BellSouth used in its CCS7 message demand forecasts. (EXH 4, pp. 6,49) However, BellSouth witness Randklev states that to his knowledge, there should not have been a growth study or a growth number, and that growth was not incorporated into any of the studies regarding this filing. (TR 316-317) The witness agrees that, as of 2002, the tariff filing was not revenue neutral. (TR 318)

ITC^DeltaCom witness Brownworth opines that the aggregate effect is not an offset, but a net increase in costs to carriers above those incurred before this tariff went into effect (TR 99). BellSouth witness Follensbee explains that "[t]he reduction in local switching might go to somebody else, but it wouldn't go to an ALEC who doesn't purchase their local switching from BellSouth." (TR 227) The inability to benefit from the cost offsets proposed by BellSouth will be felt by carriers who serve as third-party STPs for other carriers, and hence are not being billed for local switching in certain call scenarios¹. Witness Brownworth further explains that "[w]hatever cost offsets there are to BellSouth implicate another carrier and not necessarily the first carrier." (TR 227)

WorldCom witness Argenbright alleges that "when the proposed rate increase involves an element that has a substantial rate of growth, any claim of neutrality should be tested against the effect of that growth in demand." (TR 160) Without such an analysis, staff believes that what may appear to be revenue neutrality today may well represent a significant increase in revenue tomorrow. BellSouth admits that at the time the tariff was filed at the FCC, systems were not in place that could count the associated ISUP and TCAP messages for the CCS7 Access Arrangement Tariff; thus, BellSouth witness Follensbee explains that "[i]f the tariff is allowed to remain in effect, BellSouth is willing to look at the actual [message] count it has had over the last six months and

¹ This scenario is depicted in EXH 7, Diagram A; Switched Access Feature Group D traffic.

lower local switching in order to even it out based on that six months of data." (TR 220-221) Staff notes that more than six months have elapsed from the date BellSouth filed and began billing under this tariff; BellSouth has not yet provided updated demand data, nor has BellSouth filed in this proceeding the amount by which it intends to lower local switching rates in Florida. (TR 241,267)

In response to questioning about BellSouth's intent to retain the revenue neutrality of this tariff by adjusting rates according to demand levels, witness Follensbee acknowledges that BellSouth is willing to make this adjustment after reviewing the next six months of data, and that BellSouth has no further intentions at this time to make future adjustments to preserve revenue neutrality. When asked if the offer stood on an on-going basis, witness Follensbee replied that if local switching rates are lowered based on demand data for the last six months, "that will be forever until that rate changes." (TR 268) In addition, witness Follensbee states that once this [CCS7] charge is introduced, BellSouth should be allowed to adjust the charge annually in compliance with Section 364.163, Florida Statutes. (TR 207) Staff infers that any level of revenue neutrality achieved by BellSouth through adjustments based on demand levels, will only exist temporarily.

When asked what rate reductions would be made to make the tariff filing revenue neutral for ALECs and IXC's, witness Follensbee clarifies that local switching charges would be lowered further to make the tariff revenue neutral for BellSouth. (TR 238) Witness Follensbee states that "[t]his willingness to reduce the rate stems from the fact that [BellSouth's] initial estimate of revenue neutrality has proven not to be totally accurate." (TR 240) The witness further concedes that, to date, based on what was presented to this Commission when the tariff was filed, the actual effect of the tariff is not revenue neutral. (TR 240)

CONCLUSION:

Staff does not believe that BellSouth's CCS7 Access Arrangement Tariff filing is revenue neutral. This tariff is not revenue neutral in its current form, when viewed in the aggregate nor in certain call scenarios. BellSouth proposes one future adjustment to make its tariff filing revenue neutral. Staff believes that any revenue neutrality achieved from this adjustment will be temporary, since future tariff revisions and demand changes may impact the revenue effect. Staff, therefore, does not recommend

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that this tariff filing be upheld solely on the basis of its alleged revenue neutrality.

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ISSUE 4: (Legal) Does BellSouth's CCS7 Access Arrangement Tariff violate Section 364.163 or any other provisions of Chapter 364, Florida Statutes?

RECOMMENDATION: Staff recommends that the evidence supports a finding that the tariff violates Section 364.163, Florida Statutes, because BellSouth's intrastate and interstate per minute access rates must reach parity before any specific network access rate may be increased. (TEITZMAN)

POSITION OF THE PARTIES

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.

BELLSOUTH: No. BellSouth's CCS7 Tariff complies with Section 364.051(5) because it constitutes a "new service" under Commission precedent. It also complies with Section 364.163 because BellSouth's intrastate access rates have already reached parity with BellSouth's interstate access rates. Finally, WorldCom's suggestion that such parity must exist each and every time BellSouth increases rates for network access services flies in the face of both plain language and the legislative intent of Section 364.163.

STAFF ANALYSIS: This issue addresses whether BellSouth's CCS7 Access Arrangement Tariff, as filed on January 28, 2002, complies with Florida law, specifically, whether the tariff is in compliance with the provisions of Chapter 364, Florida Statutes.

Arguments

The Petitioners assert in their brief that BellSouth's tariff filing violates Section 364.163(2), Florida Statutes, and must therefore be cancelled. Specifically, the Petitioners assert that BellSouth is prohibited from filing this tariff because the tariff constitutes an increase in a specific network access rate, and BellSouth's intrastate switched access rates have not reached

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parity with its interstate switched access rates as required under the statute. (Petitioners BR at 9)

Section 364.163(2), Florida Statutes provides:

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.

The fact that the caps imposed on BellSouth pursuant to Section 364.163(1), Florida Statutes, have terminated is not disputed by either party. However, the Petitioners assert that although the first requirement of Section 364.163(2), Florida Statutes, has been met, BellSouth's intrastate switched access rates must reach parity with its interstate access rates before BellSouth may lawfully increase any specific network access rate. (Petitioners BR at 10) In furtherance of their assertion that BellSouth's CCS7 Access Arrangement Tariff is unlawful, the Petitioners, citing James Talcott, Inc. v. Bank of Miami Beach, 143 So. 2d 657, 659 (Fla. 3rd DCA 1962), state that when a statute is clear and unambiguous, a court may not steer to a meaning which its plain wording does not supply. (Petitioners BR at 12)

BellSouth witness Follensbee states that "BellSouth's intrastate switched access rates reached parity with its December 31, 1994 interstate switched access rates in 1997, along with one other LEC." (TR 202) In its brief, BellSouth does not dispute that its current interstate and intrastate access rates are not at

parity; however, BellSouth argues that once the rates reached parity in 1997, the statutory requirement had been met on a going forward basis. In support of its position, BellSouth asserts in its brief that when Section 364.163(2), Florida Statutes, went into effect in 1996, it provided that after a company's intrastate switched access rates reached parity with its interstate switched access rates, the company could adjust its rates for network access services by no more than 3% annually. However, when Section 364.163, Florida Statutes was amended in 1998, which occurred subsequent to BellSouth's rates reaching parity, the Florida Legislature still provided that companies could increase network access rates "after" reaching parity. BellSouth argues that if the Legislature had intended a company to reach parity again, it would have explicitly stated so. Further, it is BellSouth's position, as stated in their brief, that since the Legislature did not explicitly state that a company must reach parity again, the Legislature must have intended to retain the original point of reference (1996) and not establish a new point of reference (1998) after which a company is required to reach parity in order to increase rates for network access services. (TR 202)

In support of this assertion, BellSouth cites in its brief the amendment the Florida Legislature made to Section 364.163(6), Florida Statutes, in 1998. Prior to the 1998 amendment, the statute required companies whose intrastate access rates were higher than their interstate access rates in effect on December 31, 1994, to reduce their intrastate rates by five percent annually until the rates were at parity. Section 364.163(6), Florida Statutes, was amended in 1998 to require that "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 percent on July 1, 1998 and by 10 percent on October 1, 1998." (BellSouth BR at 14) Witness Follensbee states that BellSouth had more than 3 million access lines in July of 1995. Further, witness Follensbee states that prior to the amendment, the Commission had reported to the Legislature that BellSouth's switched access rates had reached parity. (TR 202-203) In its brief, BellSouth asserts that if the Legislature had intended for BellSouth to reach parity again in the future, it would not have exempted BellSouth from a requirement to reduce its intrastate access rates in the future. (BellSouth BR at 14)

In contrast, the Petitioners argue in their brief, the fact that the Legislature exempted BellSouth from the requirements of subsection (6) without similarly amending subsection (2), clearly establishes that the Legislature did not intend to exempt BellSouth from the requirement that its switched access rates reach parity before any specific network access rate may be increased. Additionally, Petitioners' witness Argenbright cites the June 2, 1998 Final Bill Research and Economic Impact Statement (Research and Impact Statement) for HB 4785² as providing significant insight into the concerns the Legislature had with respect to the disparity between intrastate and interstate switched access rates.

Regulators traditionally have used revenues from the high intrastate switched access rates (and high rates for other services) to implicitly subsidize universal service and maintain basic residential local telecommunications rates at levels believed by many to be below the cost to provide local service. The implicit subsidy mechanism was left in place when Chapter 364, Florida Statutes, was revised in 1995 to open Florida's local telecommunications markets to competition. However, the pricing structure resulting from this historic regulatory policy appears to be a barrier to market entry for a telecommunications provider wishing to compete in local residential markets. As such, the policy may have contributed to the stalled development of local competition despite the gradual reductions in intrastate switched access charges required by section 364.163(6), Florida Statutes(1995).

Against this backdrop, witness Argenbright contends the Legislature in amending Section 364.163, Florida Statutes, intended to prohibit any further increases in switched network access rates, and this prohibition was made applicable to all companies subject to the section, including BellSouth. (TR 162-163)

²HB 4785 was 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.

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In addition to BellSouth's assertion that its CCS7 Access Arrangement Tariff is valid pursuant to Section 364.163, Florida Statutes, BellSouth further asserts in its brief that the CCS7 Access Arrangement Tariff constitutes a new service to which the restrictions of Section 364.051(5)(a), Florida Statutes, do not yet apply. BellSouth acknowledges that under Section 364.051(5)(a), Florida Statutes, BellSouth is prohibited from increasing the price of any non-basic service category by more than 6 percent within a 12-month period. However, pursuant to Order No. PSC-01-1869-FOF-TL, issued August 30, 2001, in Docket No. 000733-TL, In re: Investigation to determine whether BellSouth Telecommunications, Inc.'s tariff filing to restructure its late payment charge is violation of Section 364.051, Florida Statutes. (Late Payment Charge Order), revenues collected for a new non-basic service are excluded from the basket calculation for the first twelve (12) months that the service is offered. Further, BellSouth cites to the portion of the Late Payment Charge Order in which the Commission defined a "new service" under the price cap statute to mean a "'concern' or 'issue' that BellSouth has never addressed." Accordingly, BellSouth argues they have never addressed per-message charges for CCS7 service until implementation of its new monitoring system and therefore, the CCS7 Access Arrangement Tariff satisfies the Commission's definition of a new service. (BellSouth at BR at 12-13)

Analysis

In its brief, BellSouth characterizes its CCS7 service as both a non-basic service and a network access service. Section 364.02(8), Florida Statutes defines a "non-basic service" as "any telecommunication service provided by a local telecommunications company **other** than a basic local telecommunications service, a local interconnection arrangement in Section 364.16, or a network access service described in Section 364.163." Accordingly, under Florida law, BellSouth's CCS7 service cannot be construed as both a non-basic service subject to Section 364.051(5), Florida Statutes, and a Network Access Service subject to Section 364.163, Florida Statutes.

Additionally, BellSouth witness Follensbee asserts that BellSouth's tariff is consistent with Section 364.163, Florida Statutes concerning network access services. (TR 200) Furthermore, witness Follensbee asserts "BellSouth should be allowed to do what it has done in this filing; introduce a charge for a network access

service. . ." (TR 207) Staff observes that signaling is integral to the provision of network access. Therefore, staff believes CCS7 service is best characterized as a network access service, and thus it is not necessary to address whether the CCS7 Access Arrangement Tariff complies with Section 364.051(5), Florida Statutes, because that section is inapplicable to network access services.

Staff does note that in the Late Payment Charge Order, the Commission found that BellSouth had "merely introduced a new method of assessing a penalty on late payments" and therefore, this did not constitute a new service pursuant to Section 364.051(5)(a), Florida Statutes. Staff believes analysis of BellSouth's CCS7 Access Arrangement Tariff, in light of this decision, yields a similar conclusion.

In 1998, the Florida Legislature amended Section 364.163(6), Florida Statutes, which included a provision which effectively excluded BellSouth from the mandatory reductions to intrastate switched access rates by excluding carriers with more than 3 million basic local telecommunication service access lines. However, Section 364.163(2), Florida Statutes, was not amended to place similar limitations on applicability.

An administrative agency's construction of a statute must comport with and effectuate discerned legislative intent. State of Florida, Bd. of Optometry v. Florida Soc. of Ophthalmology, 538 So. 2d 878 (Fla. 1st DCA 1988) The June 2, 1998 Research & Economic Impact Statement for HB 4785³, provides key insight with regard to the focus of the Legislature at the time they approved the amendments to Section 364.163, Florida Statutes. The findings reported in the Research and Impact Statement indicate that the Legislature was concerned with charges for intrastate network access services that were priced far in excess of cost and substantially higher than comparable charges applicable to interstate calls. Staff notes this significant disparity is evident in BellSouth's current rates. Staff believes it is reasonable to conclude after reading the Research and Impact Statement that upon amending Section 364.163, Florida Statutes, parity between the intrastate switched access per minute rates and interstate switched access per minute rates of all carriers was a primary concern of the Legislature.

³ Signed into law as Chapter 98-277, Laws of Florida, effective May 28, 1998. Amended certain subsections of Section 364.163, Florida Statutes.

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If the Legislature had intended to exempt BellSouth or any other carrier from the requirements of Section 364.163(2), Florida Statutes, they clearly could have done so, as evidenced by the amendment to Section 364.163(6), which effectively exempted BellSouth from its requirements.

Staff believes the lack of any explicit exclusion of BellSouth from Section 364.163(2), Florida Statutes, in addition to BellSouth's assertion in its brief that the Legislature was aware when amending certain provisions of 364.163 in 1998 that BellSouth's intrastate switched access rates had reached parity in 1997 with the interstate switched access rates in effect on December 31, 1994, lead one to reasonably conclude, if the Legislature had intended to exempt BellSouth from the parity requirement on a going forward basis, it would have explicitly stated such intent.

Accordingly, staff believes the legislative intent behind and the plain meaning of Section 364.163(2), Florida Statutes, requires that the intrastate and interstate switched access rates of a local exchange telecommunications carrier subject to the statute, must reach parity prior to any lawful increase of a specific network access rate. At the time of BellSouth's CCS7 Access Arrangement Tariff filing, BellSouth's intrastate and interstate switched access per minute rates were not at parity, and thus staff believes the tariff filing does not comply with Florida law.

CONCLUSION:

Therefore, based on the preceding analysis, BellSouth's intrastate and interstate access per minute rates must reach parity before any specific network access rate may be increased.

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

RECOMMENDATION: Staff recommends that the evidence supports a finding that under the CCS7 Access Arrangement Tariff, BellSouth charges the following for the types of traffic identified in Issue 1:

Monthly (Recurring) Charges:

CCS7 Signaling Connection, per 56 kbps facility	\$155.00
CCS7 Signaling Termination, per STP port	\$337.05

One-time (Nonrecurring) Charges:

CCS7 Signaling Connection, per 56 kbps facility	\$150.00
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CCS7 Point Code Establishment or Change	<u>1st</u>	<u>Add'l</u>
Originating Point Code	\$40.00	\$ 8.00
Per Destination Point Code	\$ 8.00	\$ 8.00

Usage (Per Signaling Message) Charges:

Call Set Up, per message (ISUP)	\$.000035
TCAP, per message	\$.000123

(FULWOOD)

POSITION OF THE PARTIES:

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.

BELLSOUTH: There is no factual dispute that BellSouth charges the rates set forth in its tariff. The dispute is whether those rates are appropriate, and they are.

STAFF ANALYSIS:

BellSouth witness Follensbee testifies that BellSouth charges subscribers for a 2-way digital 56 kilobits per second (kbps) facility dedicated to a single provider. He asserts that the facility originates from the provider's signaling point of interconnection and terminates at a BellSouth determined signal transfer point (STP) in the local access and transport area (LATA).

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Witness Follensbee testifies that BellSouth's associated rate elements are as follows:

◆ **Monthly (recurring) Charges:**

CCS7 Signaling Connection, per 56 kbps facility	\$155.00
CCS7 Signaling Termination, per STP port	\$337.05 ⁴

◆ **One-time (nonrecurring) Charges:**

CCS7 Signaling Connection, per 56 kbps facility	\$150.00
CCS7 Point Code Establishment or Change	<u>1st</u> <u>Add'l</u>
Originating Point Code	\$40.00 \$ 8.00
Per Destination Code	\$ 8.00 \$ 8.00

◆ **Usage (per signaling message) Charges:**

Call Set Up, per message (ISUP)	\$.000035
TCAP, per message	\$.000123

(TR 204-205)

ITC^DeltaCom witness Brownworth agrees that these are BellSouth's signaling related charges. (TR 37)

Analysis

Staff notes that there is no dispute on the issue as worded, because this issue simply queries the content of BellSouth's tariff. However, in its brief BellSouth asserts that there are several underlying disputes remaining in this issue. First, BellSouth points out the arguments as to whether it could charge the tariffed rates for signaling messages associated with non-local intrastate traffic. (BR at 22) However, staff believes that this dispute is beyond the scope of this issue, and notes that Issues 7 through 10 address whether BellSouth may charge the tariffed rates by determining whether BellSouth's tariff is appropriate and should it remain in effect.

⁴Modified from \$377.05 to \$337.05 (TR 189)

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Second, BellSouth points out that the Petitioners touched on BellSouth's rates not being based on its cost, and the relatively equal amount of messages that traverse each carrier's network resulting roughly in offsetting bills. (BR at 23-24) Staff notes that the Petitioners did not reference this testimony in their briefs on this issue, and believes that the testimony referenced by BellSouth leans more towards the impact of this filing, which staff addresses in Issue 8.

Third, BellSouth challenges the Petitioners' testimony that it provides discriminatory rates to its wireless affiliate. Staff notes that the Petitioners did not reference this testimony in their briefs on this issue, and believes that the testimony referenced by BellSouth was appropriately offered in the context of revenue neutrality and impact on subscribers, which staff addresses in Issue 3 and Issue 8.

CONCLUSION:

Monthly (Recurring) Charges:

CCS7 Signaling Connection, per 56 kbps facility	\$155.00
CCS7 Signaling Termination, per STP port	\$337.05

One-time (Nonrecurring) Charges:

CCS7 Signaling Connection, per 56 kbps facility	\$150.00
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CCS7 Point Code Establishment or Change	<u>1st</u>	<u>Add'l</u>
Originating Point Code	\$40.00	\$ 8.00
Per Destination Point Code	\$ 8.00	\$ 8.00

Usage (Per Signaling Message) Charges:

Call Set Up, per message (ISUP)	\$.000035
TCAP, per message	\$.000123

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ISSUE 6: (Factual/Policy) 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?

RECOMMENDATION: Staff recommends that the evidence supports a finding that pursuant to its tariff, BellSouth does not bill multiple carriers for the same message on any given segment of a call. Staff recommends that BellSouth's billing methodology, from a technical perspective, is accurate; however, staff believes that it is not possible for a carrier to report the appropriate jurisdictional factors without purchasing a message counting system. Consequently, without a message counting system, messages would be inappropriately billed under BellSouth's default jurisdictional factor, as discussed in Issue 8. **(FULWOOD)**

POSITION OF THE PARTIES:

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

BELLSOUTH: BellSouth does not charge more than one carrier for ISUP messages that are exchanged on any given segment of any given call.

STAFF ANALYSIS: This issue before the Commission is to determine whether more than one carrier is billed ISUP charges for the same segment of any call. At the crux of this issue is whether the initial address message (IAM) from the Petitioners' signaling transfer point (STP) to the IXC's STP via BellSouth's STP should be considered one and the same message or two different messages.

Arguments

ITC^DeltaCom witness Brownworth believes that BellSouth bills two carriers for ISUP messages when calls are routed from one carrier through BellSouth's signaling transfer point (STP) to an ITC^DeltaCom end user. (TR 37) Witness Brownworth offers that,

For a given call from an IXC to ITC^DeltaCom, when BellSouth provides the access tandem, BellSouth will bill the IXC carrier for the ISUP messages from the IXC STP to the BellSouth STP. The BellSouth STP will then take the message and transfer it to the ITC^DeltaCom STP and

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BellSouth will bill ITC^DeltaCom for the associated ISUP message. (TR 38)

Under the same call scenario, witness Brownworth asserts that if ITC^DeltaCom and other ALECs begin to bill IXCs for signaling messages, then the IXC will effectively be billed twice for each message it sends and receives. Therefore, if there are six messages sent and received by the IXC, the IXC would be billed for twelve messages: six messages by ITC^DeltaCom and six by BellSouth. He contends that although ITC^DeltaCom and the IXC are equally involved in the processing of the call, neither party bills BellSouth for signaling messages encountered by their STPs. (TR 39)

Witness Brownworth asserts that "BellSouth simply counts the number of SS7 messages sent and received from customer links and bills for each counted message." Thus, "BellSouth bills the carrier who originated the message and then bills the carrier who terminated the 'new message' that was supposedly created when the original message passed through a STP." (TR 49) However, he believes that there is no "new message." Witness Brownworth contends that it is one continuous message that should be billed to the carrier who originated it, not the carrier who receives it. In support, he references Exhibit 6, Telecordia document GR-905-CORE, which is an illustration of the call flow of SS7 messages on a single phone call. Witness Brownworth claims that Figure 4.1 in this document clearly shows an IAM flows from the originating network to the terminating network. (TR 50)

Under cross-examination, ITC^DeltaCom witness Brownworth responds to questions pertaining to Exhibit 8, which demonstrates signaling paths for ITC^DeltaCom as an IXC terminating calls to another ALEC via BellSouth's access tandem. He affirms that when BellSouth's network communicates with the ALEC receiving the call, BellSouth has to update the routing information in the message. (TR 77) Witness Brownworth affirms that BellSouth bills DeltaCom only for the messages traversing the B-Link, and that no other carrier has billed ITC^DeltaCom per message during the six-months interval BellSouth's tariff has been in effect. (TR 80) However, he believes that no ALEC has billing capabilities at this time. Witness Brownworth also affirms that BellSouth does not bill ITC^DeltaCom for any A-Link messages. (TR 90)

BellSouth witness Follensbee testifies that the Petitioners are "treating switched access and signaling in a similar manner";

however, they are separate and distinct networks. (TR 179) In rebuttal to ITC^DeltaCom witness Brownworth's testimony regarding double billing an IXC, BellSouth witness Milner contends that ITC^DeltaCom should not be billing the IXC in the example he set forth. Witness Milner states that "there is no **direct connection** between the IXC and DeltaCom." (TR 180) Referring to Exhibit 14, he explains:

First, the IXC STP sends messages to the BellSouth STP over a set of B-links between companies. BellSouth will bill the IXC usage for these messages. Once the messages get to the BellSouth STP, BellSouth's STP communicates with the BellSouth Tandem (no third party is billed for this communication), and routing information is added to the messages. These **changed** messages (which now include the added routing information) are then transmitted from the BellSouth STP to the DeltaCom STP over a set of B-Links between two companies. BellSouth bills DeltaCom for the usage between BellSouth's STP and DeltaCom['s] STP. When messages are sent in the opposite direction, the same process occurs - BellSouth charges DeltaCom usage for the messages its STP send to BellSouth's STP. BellSouth's STP adds routing information to the messages, sends the changed messages (which now include the added routing information) to the IXC's STP, and bills the IXC usage for these messages. (TR 181)

Witness Milner contends that BellSouth does not charge for all signaling messages. He asserts that there are many messages for which BellSouth neither monitors nor bills. (TR 185) Witness Milner testifies that BellSouth bills each carrier that makes direct use of its CCS7 network. While "multiple carriers may be involved in the set up of a call," he asserts that each carrier will be billed according to its usage. BellSouth may bill an IXC for some messages involved in a call and may bill an ALEC for other messages; however, an ALEC and IXC "will not be billed for the same message." (TR 331)

Analysis

Staff considered the Petitioners' argument that BellSouth bills both the IXC and the ALEC for ISUP messages pertaining to the same segment of a call. Staff notes that there is no dispute that BellSouth simply counts and bills carriers for signaling messages

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without regard to direction. (Petitioners TR 39; BellSouth TR 187) Accordingly, staff examined the content of the messages to determine whether BellSouth's STP simply passes along messages from the ALEC's STP to the IXC's STP and vice versa, or whether BellSouth's STP actually modifies the content of the message.

BellSouth provides diagrams in Exhibit 14 and describes the messages as they pass through its STP. (Follensbee TR 181) After reviewing the diagrams and BellSouth's testimony, staff is persuaded that the message between the IXC's STP and BellSouth's STP is not the same message as the message between BellSouth's STP and ITC^DeltaCom's STP. Although the Petitioners argue that it is the same segment of a call, staff believes that the call could not be completed to ITC^DeltaCom without BellSouth modifying the routing information, as was affirmed by ITC^DeltaCom's witness. (Brownworth TR 77) Therefore, staff agrees with BellSouth and considers the message that is sent by BellSouth a new message. Staff's perspective is that there are several messages traversing the B-Links between carriers, which are necessary to set up one call. Staff examined these messages on a content level, instead of the fact that it represents one call between carriers.

For a general understanding, staff believes that it is necessary to reduce the communications of the SS7 network into layman's terms as understood by staff. Staff references the diagram in Exhibit 14, which represents signaling paths from an IXC to an ITC^DeltaCom end user. An IXC has no local presence; however, it has a call that it needs to terminate to a local end user. The IXC's STP notifies BellSouth that it has a call to a local end user. After several communications (messages) between BellSouth's STP and the IXC's STP, routing information is established for the trunks between BellSouth and the IXC. Then, BellSouth's STP notifies ITC^DeltaCom's (or any other ALEC's) STP that it has a call for termination. Again, after several messages, the routing is established for the trunks between BellSouth and ITC^DeltaCom.

Staff observes that the content of each message is different. Although the Petitioners contend that based upon Figure 4.1 of Exhibit 6, an IAM message flows from the originating network to the terminating network, staff notes that the diagram has segments between each switch. (TR 50) Staff also notes:

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Initial Address Message (IAM): When a trunk is seized for a call, it is made busy and the IAM is sent in the forward direction to initiate trunk setup. The IAM carries information about that trunk, along with other information relating to the routing and handling of the call, to the next switch. (EXH 6, SB-5, p.1)

From the diagram and text, it is clear to staff that the IAM only flows in one direction; however, staff observes that the content of the message is modified as it progresses from switch to switch. Therefore, staff is persuaded the IAM message from the IXC to BellSouth is not the same message as the IAM message from BellSouth to ITC^DeltaCom. Staff notes that under cross-examination witness Brownworth concedes that when an IXC sends a message to BellSouth's access tandem, routing information is contained in the message; however, if the tandem has to send the call to another switch, BellSouth has to modify the routing information. He concedes that where BellSouth does not modify the routing information, the call will fail at the point of origination. (TR 107)

Hence, pursuant to its tariff, staff does not believe that BellSouth is billing multiple carriers for the same segment of a call. As discussed in Issue 8, staff believes that the methodology BellSouth employs for billing, from a technical perspective, is accurate; however, staff believes that it is not possible for a carrier to report the appropriate jurisdictional factors without purchasing a message counting system. Consequently, without a message counting system, messages would be improperly billed under BellSouth's default jurisdictional factor. Staff observes that BellSouth's methodology and position as an intermediate carrier between ALECs and IXCs provides it an opportunity to bill for twice the typical number of messages required for call set-up, but that is beyond the scope of this issue. Staff opines that this issue is not broad enough to examine the overall appropriateness of BellSouth's billing. Consequently, staff pondered only whether BellSouth bills multiple carriers for the same message. Staff reserves judgement on whether billing is appropriate for Issue 10, because staff believes that there are several significant aspects beyond the scope of this issue that should be considered in order to determine whether these charges are appropriate. Staff notes that these factors are addressed in Issues 7 through 9.

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CONCLUSION:

Pursuant to its tariff, staff believes that BellSouth does not bill multiple carriers for the same message on any given segment of a call. Staff recommends that BellSouth's billing methodology, from a technical perspective, is accurate; however, staff believes that it is not possible for a carrier to report the appropriate jurisdictional factors without purchasing a message counting system. Consequently, without a message counting system, messages would be inappropriately billed under BellSouth's default jurisdictional factor, as discussed in Issue 8.

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

RECOMMENDATION: Staff recommends that the evidence supports a finding that pursuant to its CCS7 tariff, BellSouth bills for ISUP and TCAP messages regardless of the originating party or the direction of the message. Staff believes that there are several significant factors beyond the scope of this issue that should be considered in order to determine whether these charges are appropriate, and thus reserves final judgement for Issue 10.
(FULWOOD)

POSITION OF THE PARTIES:

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: BellSouth charges for ISUP and TCAP messages associated with non-local intrastate calls regardless of the network upon which the call originates, and it is appropriate for BellSouth to do so.

STAFF ANALYSIS: This issue before the Commission is to determine whether it is appropriate for BellSouth to bill for SS7 messages for calls that originate on an ALEC's network and terminate on BellSouth's network.

Arguments

US LEC witness Montano asserts:

SS7, called CCS7 by BellSouth, is the industry standard signaling system that uses an overlay network for routing purposes and database access. This out-of-band network utilizes packet switching and is separate from the circuit-switched voice network. In performing its routing function, the SS7 network establishes transmission paths for telephone calls (known as call

set-up), and closes (or "tears down") those paths after a telephone call ends. The messages used to perform call set-up and tear down are known as Integrated Services Digital Network User Part ("ISUP") messages. The SS7 network begins its functionality by sending an Initial Address Message ("IAM") from the calling network to the called network. This message requests the use of interoffice facilities and contains addressing information. An additional ISUP message known as a Continuity Test Message ("COT") is sent to check facilities. The called network sends the Address Complete Message ("ACM") which confirms the availability of facilities and the terminating equipment of the subscriber. Further, the Answer Message ("ANM") is sent by the called network to confirm the called party answered the phone (gone off-hook) and the facilities are then "nailed up" and switch resources engaged. Once the call is completed and the called party hangs up the phone, a Release ("REL") message is sent by the called network, which requests the release of the interoffice facilities and the switch resources. The final ISUP message, Release Complete ("RLC"), is sent by the calling network to confirm that all facilities and switch resources have been released. This clearly indicates the interwoven nature of SS7 signaling and the joint provisioning of this service by all parties involved in the provisioning of the call to the subscriber. (TR 131-132)

Witness Montano contends that SS7 signaling employs the facilities of all interconnected carriers, not only BellSouth's. Therefore, she believes that it is not appropriate for BellSouth to charge for ISUP messages that flow in both directions. (TR 130-131)

Witness Montano expresses her concern with BellSouth charging for TCAP messages. She contends that "TCAP messages are charged to carriers on a 'per-dip' basis." In other words, when one network seeks information from the database owned by another network provider, the network providing the information charges a fee, which includes "dipping" into their database and providing the information. She asserts that US LEC "has not been able to find any corresponding reduction in the TCAP dip charges" to offset the increase in charges for TCAP messages. She maintains that there are approximately four TCAP messages per call that is dipped;

therefore, "the TCAP dip charge should be 4 times the rate for the TCAP SS7 message." (TR 130) Further, witness Montano asserts that there should be no charges for non-local intraLATA CCS7 signaling; however, she opines that BellSouth's proposed rates should be cost-based. She believes that BellSouth's proposed rates should be related to its cost of providing the signaling. (EXH 2, Montano Deposition, pp. 15-16) WorldCom witness Argenbright agrees with witness Montano, while maintaining that nothing in her testimony is designed to attack BellSouth's rates. (EXH 2, Argenbright Deposition, p. 11)

ITC^DeltaCom witness Brownworth testifies that BellSouth bills carriers per ISUP and TCAP messages employed in all calls, which includes local, long distance, wireless, and non-content calls such as pagers. He asserts that BellSouth's charges show no regard to the direction of these messages. Witness Brownworth contends that SS7 functionality is equally provided by all SS7 providers. BellSouth simply does not own or control all of the transmission facilities; therefore, BellSouth inappropriately bills carriers for signaling messages. Moreover, he states:

BellSouth is offering a "bill and keep" arrangement to ILECs and to our knowledge does not currently bill ILECs with STPs connected directly to BellSouth. (TR 40)

He believes that the "bill and keep" arrangement should be offered on a nondiscriminatory basis. (TR 40)

Witness Brownworth asserts that historically, access costs have been assessed to the IXC, which passes on these costs to its end users in the form of long distance rates. He believes that billing ALECs instead of IXCs effectively requires ALECs to raise local rates to offset their additional cost. Consequently, local carriers would be subsidizing long distance service. (TR 41) He contends that BellSouth does not provide call records with the "originating point code (OPC) and destination point code (DPC) information so that each SS7 message can be related (and billed) to the proper carrier." Thus, ITC^DeltaCom would have to require jurisdictional reporting from all their ALEC subscribers. (TR 42)

Witness Brownworth testifies that BellSouth indicated that it would charge "approximately \$300,000 per year per company" to provide the necessary billing detail for ITC^DeltaCom. (TR 46) Witness Brownworth asserts that BellSouth maintains billing records

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with the origination and termination phone numbers, minutes of use (MOU), and provides this bill detail at no extra cost to the access customer. (TR 45) However, he explains that BellSouth only provides ITC^DeltaCom with a message count, but does not provide ITC^DeltaCom with the billing detail necessary to pass these costs on to its customers.

Our customers use the ITC^DeltaCom STPs for messages that terminate to locations served by carriers other than BellSouth. These messages include calls to IXC's, ITC^DeltaCom switches, databases homed off of our STP for wireless transmissions, and other third-party providers' as well as calls between the customers' own switches. (TR 51)

Witness Brownworth asserts that billing its customers a per message charge to offset BellSouth's charge would result in customers being over-billed. He contends that as a joint provider of access from BellSouth's tandem to its end offices, ITC^DeltaCom must be able to pass on these costs. Accordingly, ITC^DeltaCom provided BellSouth with a sample format of information necessary for ITC^DeltaCom to bill its customers; BellSouth's response was that it has difficulties storing and processing the data records, and it has not defined a system or process for detail billing. (TR 50-51)

Witness Brownworth states that BellSouth has burdened ITC^DeltaCom to develop or purchase a system to perform a function that BellSouth has not developed for itself. Moreover, he contends that all carriers, regardless of size, will be required to gather, process, and store SS7 messages associated with its STP or switch. Witness Brownworth believes that the expense to other carriers is more than excessive, especially for a revenue neutral filing to BellSouth. (TR 52)

Although admitting he is not a cost expert, ITC^DeltaCom witness Brownworth suggests that BellSouth may already recover per message charges as part of its database dip charge; however, he is unsure. (TR 84-85)

BellSouth witness Milner concedes that BellSouth bills for CCS7 messages regardless of the direction. He believes that the use of BellSouth's CCS7 network should be the determining factor, as opposed to the direction of the message or the party originating the call. (TR 332)

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In response to US LEC's testimony regarding TCAP messages and their relationship to per dip charges, witness Milner argues that the per dip charge strictly covers the actual dip into the database, not the use of the signaling links, STPs, etcetera, to reach the database. (TR 336)

Further, not all TCAP messages reach databases in the traditional sense. Custom Local Area [Signaling] Services ("CLASS") related TCAP messages often simply pass between central offices and never reach a Service Control Point ("SCP") type database. In such a case there is no per dip charge applied because the capability to record that "dip" in the central office doesn't exist. Again, this charge for TCAP messages is simply for the use of the BellSouth CCS7 Network, not for the use of any database. (Milner TR 336)

In response to ITC^DeltaCom's testimony regarding lack of detailed information in BellSouth's billing, BellSouth witness Green testifies that currently BellSouth does not have the ability to monitor signaling messages that are not directly connected to its signaling link. Although it may be technically feasible to provide a greater level of detail to ALECs and third party providers, he states that "there would be a substantial cost for developing such a service in software, hardware, coding, and capacity for BellSouth." He adds that BellSouth would also need proprietary information from other carriers, which is not available at this time. (TR 277) However, BellSouth witness Green states that BellSouth does provide enough detail for verification and auditing of all services billed. He contends that BellSouth provides the OPC and DPC for all links attached to BellSouth's SS7 network. In a comparison between SS7 billing detail and the level of detail in carrier access billing, witness Green explains that carrier access billing requires more detail, because it is based upon the duration of the call, and BellSouth has an obligation to create and exchange billing records with other entities as a result of equal access. (TR 278)

BellSouth, therefore, maintains switched access AMA recordings in accordance with legal requirements of the State and Federal Tariffs and these records are subject to request in the settlement of disputes. BellSouth does not routinely provide the carriers with billing detail in the investigation of a dispute of access billing.

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Normally a comparison of summary information is adequate for the verification and/or audit of BellSouth's access billing. Access carriers generally prefer to make their own detail recordings that they use for the purpose of billing their end users. (TR 278)

Staff notes that BellSouth witness Follensbee adopts witness Ruscilli's testimony. (TR 175) Even though there is no contention that ALECs may bill BellSouth for SS7 messages, witness Follensbee believes that IXCs should not be allowed to bill BellSouth. He contends that he has "never known an IXC to have carrier charges in their tariff," only retail charges. (TR 262) He believes that IXCs recover their costs from end users. Further, witness Follensbee asserts that an IXC may not be able to acquire certification as an access provider. (TR 262) When asked why in some instances BellSouth seems to treat message compensation as switched access traffic and in other instances treats it as only usage-sensitive, witness Follensbee responds:

...the whole reason the tariff was created is to separate how signaling costs are incurred and recovered versus how other costs are incurred and recovered. (TR 262)

Although acknowledging IXCs would have additional costs to recover, he reiterates that they should recover their cost from end users, not BellSouth.

BellSouth witness Randklev acknowledges having previously discussed providing ITC^DeltaCom's proposed level of billing detail with witness Brownworth. However, he argues that the \$300,000 amount witness Brownworth testified to was a hypothetical figure. He maintains that his conversation contemplated if BellSouth could provide the level of billing detail to ITC^DeltaCom and it charged \$300,000 a month, it would be cheaper based upon the figure ITC^DeltaCom quoted they were losing each month. Witness Randklev disputes the claim that he provided any figure to ITC^DeltaCom in order for BellSouth to provide a greater level of billing detail. (TR 295-296)

BellSouth witness Randklev agrees that ALECs and other carriers may implement their own CCS7 tariff and bill per message in the same manner as BellSouth. However, he does not believe that carriers should be allowed to simply bill BellSouth the identical amounts BellSouth bills them. He explains:

For example, many carriers use BellSouth's databases (such as BellSouth's CNAM and 800 databases) instead of either maintaining their own databases or using a database maintained by a third-party provider. If an ALEC uses BellSouth's 800 database, BellSouth will charge TCAP messages to that ALEC each time BellSouth's 800 database is accessed on behalf of that ALEC. BellSouth, however, is not accessing that ALEC's 800 database (because the ALEC has no such database) and, therefore, BellSouth would not pay that ALEC any per-message TCAP charges. Even if one were to assume for the sake of argument that all other per-message signaling charges between BellSouth and that ALEC "canceled out" as Ms. Montano seems to suggest, that ALEC would still owe a net amount to BellSouth for TCAP charges. (TR 297)

Analysis

The Petitioners assert that BellSouth already recovers TCAP message charges in its "per dip charge," and should not be allowed to recover them again with an isolated charge, while BellSouth testifies that its "per dip charge" covers only the actual dip into the database, not the use of signaling links, STPs, etcetera. (Montano TR 130; Milner TR 336) The Petitioners presented no evidence that BellSouth incorporates TCAP message cost recovery in its "per dip charge," only an assertion. Accordingly, staff is not persuaded that BellSouth recovers TCAP message costs in multiple rate elements. Staff notes that BellSouth claims that its message charges are revenue-neutral, but not cost-based. BellSouth witness Follensbee asserts that pursuant to the Act, BellSouth is only obligated to charge TELRIC or cost-based rates for unbundled network elements (UNEs), and he contends that non-local CCS7 intrastate messages are not UNEs. (TR 213-214) Staff agrees; however, we note that BellSouth's tariff does bill carriers for local SS7 messages when a carrier does not have an interconnection agreement with BellSouth, such as would be the case with third-party hubbing vendors. (Follensbee TR 207)

While BellSouth claims that it provides OPC and DPC codes, the Petitioners claim they do not. Staff observes that BellSouth does provide the codes; however, they are not provided in a manner that a third-party or hubbing provider can use them to bill its end users. (Petitioners TR 42; BellSouth TR 277-278) The originating and destination codes BellSouth provides are the provider codes

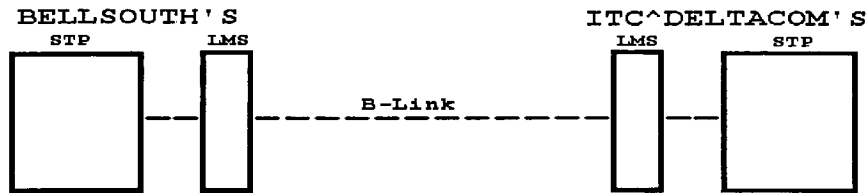
that are on the other end of the B-Link directly connected to BellSouth. Considering that a third-party provider requires that its bill reflects the OPCs and DPCs of the carrier that originated the call, staff believes that the billing information provided by BellSouth is insufficient for a third-party provider to bill the actual carrier that originates the call. Thus, staff believes that the circumstances deem it appropriate for the Petitioners to pass these charges on to the originating party.

The Petitioners assert that in order to pass along BellSouth's charges to the originating carrier, one of two events would have to occur. First, BellSouth would have to provide billing in greater detail, which basically relegates the Petitioners to being BellSouth's billing agents. (Brownworth TR 41) Staff does not believe that is appropriate. Second, the Petitioners would be required to purchase their own message counting system. (Brownworth TR 42) Staff notes that BellSouth provides testimony that it may be technically feasible to provide the level of detail the Petitioners require, but BellSouth would need proprietary information from other carriers and "there would be a substantial cost for developing such a service in software, hardware, coding, and capacity for BellSouth." (Green TR 277) Staff agrees with the Petitioners that BellSouth's tariff could require the Petitioners to incur a substantial investment in a similar message counting system. (Brownworth TR 52) Staff opines that if BellSouth considers the costs substantial, then the costs would likely be overly burdensome for a competitive provider.

Staff notes that in the context of addressing this issue, the parties also offered somewhat expanded arguments addressing whether and how ALECs should be allowed to bill BellSouth for SS7 messages. While BellSouth does not object to ALECs billing BellSouth for SS7 messages, BellSouth objects to an IXC billing BellSouth for SS7 messages because BellSouth believes that IXCs should recover their costs from retail end users. (Follensbee TR 262, Randklev TR 297) Staff believes that BellSouth's testimony straddles the fence. Staff agrees with BellSouth regarding IXCs recovering their costs from end users, but under the same reasoning, we struggle to find justification for BellSouth billing a local carrier for messages associated with intraLATA toll traffic. (Brownworth TR 41) Although BellSouth contends that its tariff simply separates how signaling costs are incurred and recovered, staff believes that because IXCs would not be allowed to bill BellSouth and the tariff is not revenue neutral to an IXC on an on-going basis, IXCs would

experience increased billing from BellSouth. Staff notes that Issue 8 discusses this matter in greater detail as it contemplates the impact on carriers.

Although BellSouth does not object to ALECs billing BellSouth for SS7 messages, BellSouth is opposed to an ALEC merely submitting an identical bill to BellSouth. BellSouth contends that even assuming the billing for ISUP messages would offset between carriers, TCAP messages would not because ALECs and other carriers may use BellSouth's database, but BellSouth does not use the databases of other carriers. Therefore, the ALEC would owe BellSouth a net amount. (Randklev TR 297) Staff disagrees with BellSouth on this point, since the signaling and database access are discrete functions. As shown in the diagram below, there is not a separate link for messages sent and received; SS7 messages between BellSouth and ITC^DeltaCom traverse one continuous link.



Staff observes that BellSouth's tariff establishes charges for SS7 messages regardless of the direction of the message, which includes both messages sent and received. (Milner TR 332) Assuming ALECs billed BellSouth in a reciprocal manner, staff believes that when an ALEC sends a message to gain access to BellSouth's database, it would bill BellSouth for the sent message while BellSouth would bill the ALEC for the received message. Each party would still bill for one message. Therefore, it is clear to staff that the number of messages billed between carriers would "off-set" one another even if the number of messages sent differs from those received or vice versa. Staff believes this remains true for two of the three scenarios BellSouth introduced as examples where the bills may not be balanced: unacknowledged messages, which are messages that are sent with no response; and asynchronous arrangements, which is an unusual situation where there are three different carriers and STPs involved. (Milner TR 354-355) The third scenario introduced by BellSouth is message failures, which are messages that were sent but failed to reach the destination STP. BellSouth witness Milner contends that a legitimate message was sent; therefore, the count would be out of balance. (TR 354) Staff

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acknowledges that the count would differ between carriers where there is message failure, but staff believes messages that do not reach their destination due to technical failure should not be billed in any case. Accordingly, staff believes that it would be plausible for an ALEC providing its own SS7, or a third-party hubbing vendor, to bill BellSouth for the identical amount billed by BellSouth without employing a message counting system.

CONCLUSION:

Pursuant to BellSouth's CCS7 tariff, staff believes that BellSouth does bill for ISUP and TCAP messages regardless of the originating party or the direction of the message. Staff believes that there are several significant factors beyond the scope of this issue that should be considered in order to determine whether these charges are appropriate, and thus reserves final judgement for Issue 10.

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ISSUE 8: (Policy) 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?

RECOMMENDATION: Staff recommends that the evidence supports a finding that BellSouth's CCS7 Access Arrangement Tariff would unnecessarily and unreasonably increase costs for competitive carriers that provision their own SS7 networks by requiring that they invest in a system simply to reciprocal bill BellSouth. Staff notes that the Commission determined that ALECs are precluded from providing access in BellSouth's territory for themselves or any other entity where interconnection trunks are employed with BellSouth. Therefore, carriers are practically forced to interconnect with BellSouth's SS7 network. Additionally, staff believes that BellSouth's tariff effectively increases access charges for IXCs. Staff believes that Section 364.163, Florida Statutes, precludes BellSouth from increasing intraLATA access charges in this manner. Staff recommends that this impact should be considered in determining whether BellSouth's tariff should remain in effect. (FULWOOD)

POSITION OF THE PARTIES:

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: BellSouth's tariff has no improper impact on subscribers and, therefore, it should remain in effect.

STAFF ANALYSIS: This issue before the Commission is to determine the impact BellSouth's tariff will have on ALECs and third-party SS7 providers, including a carrier's ability to compete.

Arguments

US LEC witness Montano asserts that BellSouth's tariff would have several adverse consequences in Florida. First, BellSouth has restructured and raised access rates in a manner that increases cost to competitive providers. She contends that competitors will

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either have to absorb the cost increase, or pass through these costs to end users. Second, she asserts that the new rate structure makes it difficult to audit BellSouth's charges. (TR 135) Third, she testifies that ISUP messages flow in both directions during the life of a call without regard to the originating party; therefore, BellSouth's methodology imposes a charge without regard to who actually is the "cost causer." (TR 140) When a BellSouth customer originates a call, witness Montano believes that BellSouth's customer is the cost causer; however, BellSouth's tariff offers no distinction as to the cost-causing carrier. Regardless, she contends that B-Links are jointly provided, and thus US LEC encounters the same usage at its STP as BellSouth. (TR 141)

ITC^DeltaCom witness Brownworth testifies that BellSouth's tariff would force third-party providers to become BellSouth's billing agent or to absorb unreasonable expenses, which ultimately increases prices to DeltaCom's customers. (TR 41) He explains that the information BellSouth provides is insufficient to pass costs through to other carriers.

In order for us to properly pass through BellSouth's CCS7 charges, we would first need SS7 call records with OPC (Originating Point Code) and DPC (Destination Point Code) information so that each SS7 message can be related (and billed) to the proper carrier. Next, in addition to billing messages to the third-party customers, ITC^DeltaCom would have to require all of our customers to report jurisdictional reporting of the messages for local and interLATA usage. (TR 42)

Witness Brownworth contends that ITC^DeltaCom's system would have to be more sophisticated than the system BellSouth employs. As a third-party provider, ITC^DeltaCom's system would have to identify and store carriers via OPC and DPC combinations, apply a jurisdictional percentage, and generate bills for these charges. (TR 42) He contends that BellSouth does not have a mechanism for an ALEC or third-party provider to submit jurisdictional reporting. Moreover, witness Brownworth maintains that BellSouth has not provided proper instructions on SS7 traffic reporting. (TR 43)

In response to BellSouth's tariff filing, witness Brownworth claims that ITC^DeltaCom is reviewing its position as a third-party provider, and thus has not added any new customers. He continues that currently ITC^DeltaCom is working with other companies to seek

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ways of possibly routing SS7 around BellSouth. However, since BellSouth is the sole provider of access in its territory, carriers cannot avoid BellSouth's ISUP charges. (TR 43-44)

Regarding jurisdictional factors, witness Brownworth contends that BellSouth's methodology for calculating percentage local usage (PLU) and percentage interstate usage (PIU) provided in its testimony is not consistent with BellSouth's jurisdictional factor guideline published on its website. (TR 52) He explains:

Both Mr. Ruscilli's statements in his direct testimony and the intrastate tariff imply that PIU and PLU will be determined by the number of messages rather than the number of switched access minutes. The BellSouth Jurisdictional Factor Guideline, however, directs CLECs and IXCs to report minutes of use rather than number of messages for the signaling PIU. (TR 53)

He adds that neither BellSouth's intrastate tariff filing nor its Jurisdictional Factor Guideline define local traffic. Witness Brownworth suggests that BellSouth's definition of local calls applies only to carriers with an approved interconnection agreement with BellSouth. Therefore, he believes that ITC^DeltaCom would also be required to ascertain and maintain records of whether its customers have an interconnection agreement with BellSouth. (TR 54)

For example, it is not clear whether a wireless carrier ordering type-two service from the GSST (General Subscriber Services Tariff) or an independent local exchange carrier that has a settlement agreement with BellSouth would be considered to have an agreement for local service. (TR 54)

Witness Brownworth points out that BellSouth's tariff does include default language; however, it does not address the local contribution from carriers with an interconnection agreement. He claims the tariff only states that "50% of the messages will be billed at the intrastate rate and the other 50% of the messages billed [at] the interstate rate." He contends that if a carrier refuses or is incapable of reporting SS7 messages, BellSouth's tariff does not address this issue. (TR 54-55)

As a third-party provider, witness Brownworth asserts that ITC^DeltaCom would be required to ask carriers employing its SS7 to

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provide PLU and PIU information, which is very sensitive data to request from competitors. In order to bill appropriately, he maintains that ITC^DeltaCom would require the originating and terminating destination per carrier for each message, not just a message count. (TR 54) Alternatively, witness Brownworth offers that until BellSouth or a third-party provider has the capability to report jurisdiction of SS7 messages, ITC^DeltaCom should be allowed to use their own PLUs/PIUs versus requiring an ALEC to acquire and maintain a record of these messages. (TR 55)

BellSouth witness Follensbee testifies that the PIU and PLU factors provided by carriers are applied to the total number of TCAP and ISUP messages. Then, the rates from the Federal tariff are applied to interstate messages, the CCS7 tariff rates would apply to non-local intrastate messages, and the rates from any local interconnection agreement would apply for local messages. However, if the carrier does not have an interconnection agreement with BellSouth, i.e., third-party hubbing vendors, the CCS7 tariff rate applies for local as well. (Follensbee TR 98) He contends:

BellSouth requires that any interconnecting companies provide a PIU (percentage interstate usage) factor when ordering and provisioning signaling links. Further, companies entering into local interconnection agreements for local service/signaling must also provide a PLU (percentage local usage) factor when ordering and provisioning signaling links. (TR 186)

He maintains that the tariff more accurately bills carriers that use BellSouth's SS7 network. (TR 227-228) Witness Follensbee explains that in the past, BellSouth presumed that signaling costs were higher if call duration was longer, but that is not true. Basically, the signaling typically occurs only when setting up and tearing down calls. (TR 270-271) BellSouth witness Milner clarifies that the jurisdictional factor for voice and signaling messages could be different; therefore, an ALEC is not required to derive a factor for signaling from its voice factor if it has an accurate way of differentiating between them. (TR 360-361)

Witness Follensbee contends that although ALECs argue that increasing their costs will directly impact the rates of their business customers who purchase the service, the possibility always exists that charges to customers may increase when their provider or supplier experiences an increase in costs for goods and

services. He testifies that price changes are the characteristics of a free market; however, it "is not a valid basis for denying a proposed rate change." (TR 205-206)

Witness Follensbee admits that prior to the implementation of the Link Monitoring System (LMS), the SS7 network was already in place. He contends that BellSouth's SS7 system costs were recovered by higher local switching rates. (TR 226) He also concedes that for carriers that do not use BellSouth's local switching, the reduction in the local switching rate would not offset BellSouth's SS7 charges. (TR 227)

Analysis

Staff reviewed the testimony several times looking for any testimony that reflected a positive impact on subscribers; however, staff did not observe any. BellSouth witness Follensbee testifies that price changes are the characteristics of a free market, and should not be considered in determining whether its tariff should remain valid. (TR 205-206) However, the Petitioners assert that BellSouth is the sole provider of access in its territory. (TR 43-44) Staff cites the BellSouth/WorldCom Order, Order No. PSC-01-0824-FOF-TP, issued March 30, 2001:

We firmly believe that BellSouth's ability to bill subtending companies in an accurate manner is in doubt if the local and switched access traffic were delivered on the same trunk group. In this case, we find that BellSouth's established process of routing access traffic on access trunks should be continued. Therefore, we find that WorldCom shall not be permitted to commingle local and access traffic on a single trunk and route access traffic directly to BellSouth end offices. WorldCom shall route its access traffic to BellSouth access tandem switches via access trunks. (pp. 97-98)

Staff notes that WorldCom was also denied reconsideration of its attempt to provide access to BellSouth's end offices in its territory. (Order No. PSC-01-1784-FOF-TP) Reviewing the basis for the decision, staff notes that at the time of the decision, BellSouth did not provision multi-jurisdictional trunks. Subsequent to that decision, the Commission required BellSouth to provision multi-jurisdictional trunks.

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Upon consideration, we find that the parties' agreement shall contain language providing Sprint with the ability to transport multi-jurisdictional traffic over a single trunk group, including an access trunk group. . . . (Order No. PSC-01-1095-FOF-TP, issued May 8, 2001, pp. 37-38)

To the extent that ALECs operating in BellSouth's territory are not allowed to commingle switched access with other traffic types over a single trunk group, due to an inability to successfully resolve billing issues, they presumably are unable to achieve the same economies of scale and scope that BellSouth can. As such, it appears to staff that the switched access market is less competitive than BellSouth would have one believe.

Although staff recommends that BellSouth's tariff is not revenue neutral in Issue 3, for the sake of analysis, staff assumes that it is in order to examine the impact of this tariff. BellSouth witness Follensbee asserts that BellSouth's tariff filing creates SS7 message charges while reducing local switching rates. (TR 200) He adds that revenue neutrality is not based on the impact on a specific customer or class of customers. (TR 212) He acknowledges that some carriers are negatively impacted, but also points out that some carriers are positively impacted. He maintains that the tariff more accurately bills carriers that use BellSouth's SS7 network. (TR 227-228) On the other hand, the Petitioners believe that BellSouth assesses its message charge in a manner that disadvantages competitors, specifically carriers with their own SS7 networks and third-party hubbing vendors.

BellSouth's proposal penalizes carriers that have built their own networks and happened to acquire customers in competition with BellSouth. (Petitioners TR 167)

We have not added any new customers to our product line and are reviewing our position of being a third-party provider. (Petitioners TR 43)

The Petitioners contend that the tariff specifically increases rates for intraLATA toll providers, since the rate reduction is to the local switching rate, which is applied at BellSouth's end offices. The Petitioners contend that all intraLATA toll traffic is routed through BellSouth's access tandem and subject to tandem

switching rates. Therefore, the Petitioners assert that the tariff represents a pure increase in rates, because they do not employ BellSouth's end office switching. (Petitioners TR 97-98) Staff observes that BellSouth does not rebut the Petitioners' assertion that BellSouth's tariff directly increases costs to ALECs with their own SS7 networks and to competitive SS7 providers by requiring ALECs to either invest in their own message counting system simply to offset-bill BellSouth, or to absorb the per message charges and most likely pass them on to their subscribers as an aggregate fixed rate. (Brownworth TR 102, 123-124) As applied, it appears to staff that BellSouth's tariff increases costs to interconnecting competitors regardless of whether they provide their own SS7 or purchase SS7 from BellSouth.

As discussed in Issue 7, staff agrees with BellSouth that an IXC should not be allowed to bill local carriers for SS7 messages. (Randklev TR 297) Accordingly, staff believes that the tariff presents two billing scenarios that differ relative to the local carrier(s) of the end users. Staff observes that local carriers bill IXCs for the end office switching involved in call origination and termination. Therefore, when BellSouth originates or terminates the toll call, an IXC would be assessed BellSouth's lower end office switching rate. Under this scenario, staff believes that the tariff's impact on IXCs may lean towards revenue neutrality. While BellSouth's tariff sets forth a SS7 per message charge that is essentially not related to call duration, any savings encountered by the IXC relative to BellSouth's reduction in local switching rates depends upon the IXC's average call duration. (TR 270-271) Therefore, it is unclear whether BellSouth's tariff on balance benefits or harms IXCs when the call is terminated to, or originated from, a BellSouth end user. On the other hand, when an ALEC originates or terminates a call, staff observes that BellSouth's SS7 message charge would be applied; however, BellSouth's local switching rate reduction is not applicable. Therefore, BellSouth's tariff clearly increases the overall costs for IXCs to originate or terminate traffic to ALEC end users. For this reason, staff believes that in order for BellSouth's per message charge and subsequent rate reduction to appropriately impact all carriers indiscriminately, BellSouth should have reduced its tandem switching rate.

Staff considered the parties' testimony regarding jurisdictional reporting. ITC^DeltaCom witness Brownworth claims that ITC^DeltaCom does not know how to file a signaling

jurisdictional report. He contends that BellSouth has a conflict in methodology for reporting jurisdiction, and third-party providers would have an additional burden to ask for, differentiate, and apply competitors' jurisdictional data, "which is very sensitive company data." (TR 52-55, 105) BellSouth witness Brownworth contends that third-party SS7 providers such as ITC^DeltaCom could require their subscribers to report jurisdiction. He asserts that BellSouth requires all of its interconnecting carriers to provide PLU and PIU, which are referenced in both the FCC and intrastate tariffs. (TR 186) Staff agrees with BellSouth that a third-party SS7 provider should be able to request PLU and PIU information from its subscribers. However, BellSouth witness Follensbee also testifies that call duration and signaling are not linearly related, which means a five-minute call typically generates the same number of SS7 messages as an hour-long call. (TR 270-271) For this reason, staff believes that a carrier that does not employ a message counting system could not accurately know the jurisdictional percentages of its SS7 messages, nor could the Petitioners audit BellSouth's bills. (Petitioners TR 135) Accordingly, staff believes that BellSouth's tariff requires third-party SS7 providers to either invest in a similar message counting system, report jurisdiction without a sound methodology, or pay based on BellSouth's "50 percent interstate, 50 percent intrastate" default.

As noted in Issue 3, it appears to staff that BellSouth created this tariff to generate additional revenues. (EXH 4, p. 1) Ironically, staff observes that BellSouth's tariff could adversely impact BellSouth. A third-party hubbing vendor could invest in a message counting system and bill BellSouth per message, conceded as fair by BellSouth. (Randklev TR 297) However, the vendor could bill BellSouth at a higher rate. Staff perceives this as reasonable due to the validity of BellSouth's argument that intraLATA toll message charges are not required to be cost-based, because signaling for intraLATA toll is not a UNE. (Follensbee 213-214) Considering that logically the number of messages would be equal, with exception offered to message failure, BellSouth would always owe the vendor a net amount per billing interval. Staff opines that BellSouth would be back in front of this Commission advocating bill-and-keep. Intuitively, it is staff's opinion that the obvious negative impact on competitive carriers could very easily be re-directed against BellSouth. Because of this, staff believes that bill-and-keep between SS7 providers is more appropriate.

Staff agrees with the Petitioners that SS7 signaling employs the facilities of all interconnected carriers. (Montano TR 131) Staff is persuaded that it is a necessary function of interconnection, and each carrier must endure the cost to invest in its own system or purchase the service from BellSouth or an alternative SS7 provider. In view of this impact, staff believes that BellSouth should not be allowed to use its position as the dominant access provider to levy charges on competitive SS7 providers. Staff notes that the Petitioners bear the cost responsibility of installing the B-link to BellSouth's network for non-local traffic. (Follensbee TR 267)

Staff believes that it may be reasonable for BellSouth to pursue charging carriers on a per message basis when that carrier purchases BellSouth's SS7, because there are alternative SS7 providers available to those carriers. However, staff believes that imposing these charges on carriers that provide their own SS7 is inappropriate, and the impact is detrimental to competitive SS7 providers. Staff notes that due to BellSouth's tariff, ITC^DeltaCom has not added any new customers. (Petitioners TR 43) Staff believes that a carrier with its own SS7 network provides an **equal** functionality to complete calls; one carrier's network is not used disproportionately, because most messages solicit a response. Regardless, since BellSouth's tariff seeks compensation for usage, messages sent and received, staff believes that usage between SS7 providers networks is essentially **equal**, disregarding the atypical message failure. Staff notes that the SS7 network was in place before BellSouth deployed its message counting system and implemented its CCS7 tariff. (Milner TR 226) Staff believes that the overall impact of BellSouth's tariff is increased costs for competitors for a pre-existing network functionality with no apparent gain to BellSouth, assuming revenue neutrality. Therefore, staff believes that BellSouth's per message charge for carriers that provide their own SS7 is not appropriate.

CONCLUSION:

Staff believes that BellSouth's CCS7 Access Arrangement Tariff would unnecessarily and unreasonably increase costs for competitive carriers that provision their own SS7 networks by requiring that they invest in a system simply to reciprocal bill BellSouth. Staff notes that the Commission determined that ALECs are precluded from providing access in BellSouth's territory for itself or any other entity where interconnection trunks are employed with BellSouth.

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Therefore, carriers are practically forced to interconnect with BellSouth's SS7 network. Additionally, staff believes that BellSouth's tariff effectively increases access charges for IXCs. Staff believes that Section 364.163, Florida Statutes, precludes BellSouth from increasing intraLATA access charges in this manner. Staff recommends that this impact should be considered in determining whether BellSouth's tariff should remain in effect.

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

RECOMMENDATION: Staff recommends that the evidence supports a finding that BellSouth does not bill ILECs for the signaling associated with local or intrastate traffic. However, while BellSouth does not bill ILECs per message charges, it bills the higher local switching rate, pursuant to section E16 of BellSouth's tariff. (FULWOOD)

POSITION OF THE PARTIES:

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 signaling.

BELLSOUTH: BellSouth has a separate tariff that applies to services BellSouth provides to ILECs. While that tariff does not contain per-message signaling charges, the local switching charges in that tariff are the higher charges that applied to ALECs, IXC's, and wireless carriers before the CCS7 Tariff went into effect. BellSouth's tariff, therefore, does not unjustly or unreasonably discriminate against any group of carriers.

STAFF ANALYSIS: This issue before the Commission is to determine whether BellSouth bills ILECs for non-local intrastate traffic and local traffic where the carrier does not have an approved interconnection agreement with BellSouth.

Arguments

US LEC witness Montano believes that BellSouth implements its tariff in a manner such that an ILEC will not be billed for its use of BellSouth's CCS7. She believes that it is discriminatory, because BellSouth has not offered this bill-and-keep arrangement to US LEC. (TR 135) At a meeting between BellSouth and ALEC members of the Southeastern Competitive Carriers Association, witness Montano claims that BellSouth admitted that a bill-and-keep arrangement did exist with ILECs, and that ALECs could simply bill BellSouth the same amount BellSouth bills them. However, she contends that this is a poor use of resources, and imposes unnecessary costs to US LEC when a bill-and-keep arrangement would accomplish the same result. (TR 136)

ITC^DeltaCom witness Brownworth asserts that BellSouth does not bill ILECs for the signaling associated with non-local intrastate traffic or local traffic. He testifies that according to the copy of the proposed interconnection agreement between BellSouth and Sprint, the agreement provides that "there will be no charges for SS7 where the ILEC connects with BellSouth via a bridge link (B-Link) for SS7 messages or usage, ports or links so long as the ILEC uses the B-Link for public switched network traffic and the agreement applies to both local and intraLATA toll." (TR 44-45) (EXH 5, SB-4)

BellSouth witness Follensbee testifies that BellSouth does bill ILECs for signaling associated with their traffic.

Many ILECs purchase A-links from BellSouth to get signaling on calls originated by or terminated to an end user of the ILEC. The A-links connect end offices or databases (Signal Control Points or "SCPs") to STPs. The types of calls are either local or intraLATA toll calls, which would include Extended Area Service traffic ordered by this Commission. (TR 206)

He testifies that BellSouth does not offer ILECs bill-and-keep arrangements for CCS7 messages and B-links in Florida. BellSouth witness Follensbee concedes that BellSouth does not charge ILECs on a per message basis; however, he contends that ILECs pay BellSouth's higher local switching rate, because they are covered by section E16 of BellSouth's tariff. (TR 224)

Further, witness Follensbee asserts that BellSouth's obligations to ILECs are not the same as its obligations to ALECs. He claims that pursuant to Section 259(a) of the Act,

. . . . incumbent local exchange carriers (as defined in 47 U.S.C. section 251(h)) shall make available to any qualifying carrier such public switched network infrastructure, technology, information, and telecommunication facilities and functions as may be requested by such qualifying carrier for the purpose of enabling such qualifying carrier to provide telecommunications services, or to provide access to information services, in the service area in which such qualifying carrier has obtained designation as an

eligible telecommunications carrier under section 214(e).
[47 U.S.C. 259(a)]

He testifies that BellSouth provides CCS7 service to eligible ILECs pursuant to the FCC's Infrastructure Sharing Order, FCC 97-36, issued February 7, 1997. (TR 216) While section 251 of the Act applies to all carriers, witness Follensbee points out that ¶7 of the Infrastructure Sharing Order reads:

Thus, we conclude that while section 251 applies to all carriers in all situations -- including, but not limited to, new entrants competing with the incumbent LEC -- Section 259 only applies in narrow circumstances, i.e., for the benefit of those carriers that are eligible to receive universal service support but lack economies of scale or scope and only to the extent that the qualifying carriers do not use section 259-obtained infrastructure to compete with the providing incumbent LEC.... (FCC 97-36)

He asserts that the Petitioners obviously compete in BellSouth's territory; thus, BellSouth has no obligation to provide these facilities pursuant to Section 259. (TR 217) Under cross-examination, witness Follensbee admits, however, that according to the Infrastructure Sharing Order, ¶166, the FCC expects infrastructure sharing agreements to be made by carriers in predominantly rural and sparsely-populated areas. (TR 251) He also concedes that the FCC has concerns about the effect on competitive entry where there are infrastructure agreements between large companies. (TR 253)

Analysis

BellSouth admits that it does not bill ILECs for SS7 messages, ports, or links associated with local, intrastate, or interstate calls. (EXH 4, p. 1) Although BellSouth asserts that ILECs may purchase A-Links from BellSouth to get signaling on calls originated by or terminated to an end user of the ILEC, staff observes that the purchasing of the links is not at issue. BellSouth witness Follensbee concedes that typically competitors are responsible for the installation of links between themselves and BellSouth. (TR 267) Staff believes that the issue centers on the per message charge, which BellSouth clearly does not levy upon ILECs in Florida.

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Staff is persuaded that BellSouth does not offer ILECs in Florida a bill-and-keep arrangement; instead, the BellSouth/Sprint agreement maintains that Sprint will continue paying the higher local switching rate. (TR 224)(EXH 5, SB-4) Likewise, the Petitioners contend that they should be allowed to opt into the same arrangement; however, BellSouth objects, contending that its agreement with Sprint is an Infrastructure Sharing agreement, which it is not required to provide to competitors. (Montano TR 135; Follensbee TR 216) Staff agrees with BellSouth that it is not obligated to offer the terms and conditions of the agreement to its competitors pursuant to Section 259; however, staff notes that it is questionable whether Sprint meets the definition of an eligible carrier as referred to in Section 259. Considering that Sprint's eligibility is beyond the scope of this issue, staff is persuaded that BellSouth has no obligation to provide competitors use of facilities pursuant to Section 259.

CONCLUSION:

Staff believes that BellSouth does not bill ILECs for the signaling associated with local or intrastate traffic. However, while BellSouth does not bill ILECs per message charges, it bills the higher local switching rate, pursuant to section E16 of BellSouth's tariff.

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

RECOMMENDATION: Staff recommends that the evidence supports a finding that BellSouth's CCS7 Access Arrangement tariff should be canceled. BellSouth should be ordered to refund, on a customer-specific basis, any net increase resulting from applying the lower local switching rates and the CCS7 tariff rates, as compared to the higher local switching rates customers would have paid if the CCS7 tariff had not gone into effect. BellSouth should be required to submit a refund plan within 30 days of the Final Order from this recommendation. Further, any revised tariff should reflect the rates, terms, and conditions that existed before the CCS7 tariff went into effect. (GILCHRIST, TEITZMAN)

POSITION OF THE PARTIES:

PETITIONERS: No. BellSouth's CCS7 access arrangement tariff should not remain in effect. It violates Section 364.163, Florida Statutes, it is not revenue neutral, and it discriminates against ALECs, IXC's 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 Florida Statutes and federal law.

BELLSOUTH: BellSouth's tariff should remain in effect.

STAFF ANALYSIS: This issue addresses whether BellSouth's CCS7 access arrangement tariff should remain in effect, and the action(s) the Commission should take if the tariff does not remain in effect.

Arguments

ITC^DeltaCom witness Brownworth argues that the CCS7 tariff should not remain in effect because the tariff is not revenue neutral, the tariff and product lacks the billing detail necessary for customers to fully utilize the service, and the filing discriminates against ITC^DeltaCom and other carriers. (TR 61) On the first point, revenue neutrality, the message demand was underestimated, which led to BellSouth receiving more SS7 revenue than was offset by revenue deductions in local switching. Secondly, BellSouth's billing detail only shows total ISUP and TCAP messages

per STP. Finally, the tariff unfairly discriminates and places ITC^DeltaCom at a competitive disadvantage. (Brownworth TR 61,62)

Further, witness Brownworth explains that the CCS7 tariff is discriminatory in the following ways: (1) The independent telephone companies are provided SS7 message services from BellSouth at no charge; (2) BellSouth has spent a significant amount of capital to develop a billing system for a "revenue neutral" filing; and (3) ITC^DeltaCom believes it is being billed inappropriately for SS7 messages due to the reciprocal nature of BellSouth's and ITC^DeltaCom's networks. (TR 62)

Moreover, witness Brownworth contends that all intraLATA toll traffic is routed through BellSouth's access tandem and subject to tandem switching rates. Therefore, to the Petitioners, the tariff represents a pure increase in rates, because the Petitioners do not employ BellSouth's end office switching. (TR 97-98)

US LEC witness Montano supports the withdrawal of the tariff and does not believe that BellSouth should recover these charges from any carriers. Further, since ISUP messages flow in both directions during the life of a call without regard to whether the call originated on an ALEC's network or on an ILEC's network, and are jointly provided by the networks involved in the call, there should be a bill-and-keep arrangement. (TR 137) ITC^DeltaCom witness Brownworth also believes the bill-and-keep arrangement should be offered on a nondiscriminatory basis. (TR 40)

WorldCom witness Argenbright argues that the Commission should reject BellSouth's filing and return the monies billed to date under this tariff to the carriers that were charged. Witness Argenbright further argues that if the Commission does not reject this tariff filing, the Commission should reduce BellSouth's proposed rates to match those TELRIC rates established in Docket No. 990649-TP. (TR 168)

BellSouth witness Follensbee adopted the testimony of Mr. Ruscilli. Witness Follensbee argues that BellSouth's tariff should remain in effect because BellSouth is providing a service of value and is entitled to compensation. BellSouth should be compensated for the ALECs' use of BellSouth's CCS7 network for non-local intrastate calls. According to witness Follensbee, the CCS7 tariff will also enable BellSouth to be properly compensated for use of its CCS7 capability in relation to local calls by third-party

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hubbing vendors that do not have local interconnection agreements with BellSouth. Further, witness Follensbee states that BellSouth should not be prohibited from amending its tariffs to require the cost-causer of a network access service to pay for the network access service it receives from BellSouth merely because BellSouth's tariffs had not previously set forth a charge for that network access service. Instead, under such circumstances, BellSouth should be allowed to do what it has done in this tariff filing: introduce a charge for a network access service by making a filing that is revenue neutral in the aggregate. Once the charge is introduced in this fashion, BellSouth should be allowed to adjust the charge annually in compliance with Section 364.163, Florida Statutes. (TR 207)

Analysis

Based on the evidence presented in this proceeding, staff has reached the following conclusions: (1) the CCS7 access tariff is not a new service, but a rate restructure; (2) the CCS7 access tariff is not revenue-neutral; (3) the CCS7 tariff violates Section 364.163, Florida Statutes, because BellSouth's intrastate and interstate access rates must reach parity prior to increasing any specific network access rate; and (4) the CCS7 access tariff would unnecessarily and unreasonably increase costs for competitive carriers that provision their own SS7 networks by requiring them to invest in a system to bill BellSouth.

As previously discussed in Issues 2 and 4, BellSouth's witness Follensbee admitted that prior to the implementation of its LMS system, BellSouth was recovering the cost of CCS7 usage through the provision of switched access services instead of on a separate per message basis (TR 218); thus, staff does not believe the CCS7 access tariff is a new service as alleged by BellSouth.

As discussed in Issue 3, and by its own admission, BellSouth witness Follensbee states that it tried in good faith to make this tariff revenue neutral, but the revenues generated by this tariff filing exceed the worth of the reductions made in local switching rates. Further, BellSouth acknowledges that it is willing to make the adjustment necessary to obtain revenue neutrality after reviewing the next six months of data, and that it has no further intentions at this time to make future adjustments to preserve revenue neutrality.

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Staff is not persuaded by the arguments presented by BellSouth in Issue 4 that its CCS7 tariff complies with Section 364.051(5) and 364.163, Florida Statutes. As staff explained in Issue 4, BellSouth characterizes its CCS7 service as both a non-basic service and a network access service. Section 364.02 (8), Florida Statutes, defines a "non-basic service" as "any telecommunications service provided by a local telecommunications company **other** than a basic local telecommunications service, a local interconnection arrangement in Section 364.16, or a network access service described in Section 364.163." Accordingly, under Florida law, BellSouth's CCS7 service cannot be construed as both a non-basic service subject to Section 364.051(5), Florida Statutes, and a Network Access Service subject to Section 364.163, Florida Statutes. Staff believes CCS7 service is best characterized as a network access service, and thus it is not necessary to address whether the CCS7 Access Arrangement Tariff complies with Section 364.051(5), Florida Statutes.

Also, staff believes the legislative intent behind and the plain meaning of Section 364.163(2), Florida Statutes, require that the intrastate and interstate switched access rates of a local exchange telecommunications carrier subject to the statute, must reach parity prior to any lawful increase of a specific network access rate. At the time of BellSouth's CCS7 Access Arrangement Tariff filing, BellSouth's intrastate and interstate switched access per minute rates were not at parity, and thus staff believes the tariff filing does not comply with Florida law.

BellSouth witness Follensbee testifies that BellSouth implemented this tariff to allow recovery of BellSouth's CCS7 costs in a manner that reflects more accurately the way in which these costs are incurred. (TR 218) Although staff believes BellSouth's billing methodology, from a technical perspective, is accurate, staff does not believe it is possible for a carrier to report the appropriate jurisdictional factors without purchasing a message counting system. Consequently, messages would be inappropriately billed based on BellSouth's default jurisdictional factor.

As discussed in Issue 8, BellSouth's CCS7 access tariff would unnecessarily and unreasonably increase costs for competitive carriers that provide their own networks by effectively requiring that they invest in a system simply to bill BellSouth. Although staff is persuaded that BellSouth should be allowed to charge carriers on a per message basis when a carrier purchases

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BellSouth's CCS7 service, staff believes that imposing charges on carriers that provide their own CCS7 is inappropriate because the impact is detrimental to competitive CCS7 providers. Further, BellSouth should not be allowed to use its position as the dominant access provider to levy charges on a competitive provider.

WorldCom witness Argenbright contends that if the Commission does not reject this tariff filing, the Commission should reduce BellSouth's proposed rates to match those TELRIC rates established in Docket No. 990649-TP (TR 168). US LEC witness Montano asserts that there should be no charges for non-local intraLATA CCS7 signaling; however, she opines that BellSouth's proposed rates should be cost-based. She believes that BellSouth's proposed rates should be related to its cost of providing the signaling. (EXH 2, Montano Deposition pp. 15-16) BellSouth witness Follensbee asserts that pursuant to the Act, BellSouth is only obligated to charge TELRIC or cost-based rates for unbundled network elements (UNEs), and he contends that non-local CCS7 intrastate messages are not UNEs (TR 213-214). Although staff agrees with witness Follensbee's assertion, staff notes that under BellSouth's tariff, carriers are billed for local SS7 messages when a carrier does not have an interconnection agreement with BellSouth, such as would be the case with third-party hubbing vendors. (Follensbee TR 207)

BellSouth states in its brief that if the Commission orders BellSouth to withdraw its CCS7 tariff, the Commission should take at least two additional actions. First, the Commission should allow BellSouth to reinstate the higher local switching rates that existed before the CCS7 tariff went into effect. Second, the Commission should allow BellSouth to bill carriers for the difference between the lower local switching rates they have been enjoying since the CCS7 tariff went into effect and the higher local switching rates they would have paid if the CCS7 tariff had not gone into effect. If carriers are going to be placed in the same position they would have occupied had the CCS7 tariff never gone into effect, then fairness, equity, and the law dictate that BellSouth also must be placed in the same position it would have occupied had the CCS7 tariff never gone into effect. (BellSouth BR at 34-35)

CONCLUSION:

Staff believes BellSouth's CCS7 Access Arrangement tariff should be canceled. BellSouth should be ordered to refund, on a

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customer-specific basis, any net increase resulting from applying the lower local switching rates and the CCS7 tariff rates, as compared to the higher local switching rates customers would have paid if the CCS7 tariff had not gone into effect. BellSouth should be required to submit a refund plan within 30 days of the Final Order from this recommendation. Further, any revised tariff should reflect the rates, terms, and conditions that existed before the CCS7 tariff went into effect.

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ISSUE 11: (Policy/Legal) 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?

RECOMMENDATION: Given the limited nature of the record, staff believes there is insufficient support for a Commission decision. However, if the parties to this docket wish to explore alternatives, staff believes an informal staff workshop could be held for this purpose. (GILCHRIST, SIMMONS, TEITZMAN)

POSITION OF THE PARTIES:

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.

BELLSOUTH: BellSouth's tariff should not be withdrawn.

STAFF ANALYSIS: This issue addresses the alternatives, if any, that are available to BellSouth if its CCS7 tariff is withdrawn.

Arguments

While the Petitioners did not address this issue to any great extent, their limited testimony suggests that BellSouth should have reduced the tandem switching rate, rather than the end office switching rate. The Petitioners contend that all intraLATA toll traffic is routed through BellSouth's access tandem and subject to tandem switching rates. Therefore, to the Petitioners, the tariff represents a pure increase in rates, because the Petitioners do not employ BellSouth's end office switching. (Petitioners TR 97-98)

BellSouth witness Follensbee argues that BellSouth's CCS7 tariff should not be withdrawn. However, he asserts that if the Commission decides to the contrary, the Commission should establish appropriate procedures to be followed when introducing a charge for a network access service that is being provided but for which there is no tariffed rate. Further, BellSouth should not be prohibited from amending its tariffs to more accurately reflect the manner in which costs are incurred merely because its tariffs had not previously set forth a charge for that network access service. (TR 208)

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CONCLUSION:

Given the limited nature of the record, staff believes there is insufficient support for a Commission decision. However, if the parties to this docket wish to explore alternatives, staff believes an informal staff workshop could be held for this purpose.

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ISSUE 12: Should the docket be closed?

RECOMMENDATION: If the Commission approves staff's recommendation on Issue 10, then the docket should remain open to address the refunds. BellSouth should be required to file a report within 14 days of completion of its refund plan for staff review. If BellSouth satisfactorily completes the refunds in accordance with its plan, this docket should be closed administratively. However, if the Commission denies staff's recommendation on Issue 10, then the docket should be closed upon expiration of the appeals period.
(TEITZMAN)

STAFF ANALYSIS: If the Commission approves staff's recommendation on Issue 10, then the docket should remain open to process the refunds. BellSouth should be required to file a report within 14 days of completion of its refund plan for staff review. If BellSouth satisfactorily completes the refunds in accordance with its plan, this docket should be closed administratively. However, if the Commission denies staff's recommendation on Issue 10, then the docket should be closed upon expiration of the appeals period.