

FLORIDA PUBLIC SERVICE COMMISSION

VOTE SHEET

APRIL 5, 2005

RE: Docket No. 041269-TP - Petition to establish generic docket to consider amendments to interconnection agreements resulting from changes in law, by BellSouth Telecommunications, Inc.
Docket No. 050171-TP - Emergency petition of Ganoco, Inc. d/b/a American Dial Tone, Inc. for Commission order directing BellSouth Telecommunications, Inc. to continue to accept new unbundled network element orders pending completion of negotiations required by "change of law" provisions of interconnection agreement in order to address the FCC's recent Triennial Review Remand Order (TRRO).
Docket No. 050172-TP - Emergency petition of Ganoco, Inc. d/b/a American Dial Tone, Inc. for Commission order directing Verizon Florida Inc. to continue to accept new unbundled network element orders pending completion of negotiations required by "change of law" provisions of interconnection agreement in order to address the FCC's recent Triennial Review Remand Order (TRRO).

Issue 1: Should the Commission grant BellSouth's Motion to Consolidate Docket No. 050171-TP into Docket No. 041269-TP?

Recommendation: No. Staff does not believe it is necessary to consolidate these dockets. However, the petition of American Dial Tone is substantially similar to the petitions filed by MCI and Supra in Docket No. 041269-TP, and therefore, for purposes of this recommendation the petitions should be addressed together.

DENIED

The dockets will be consolidated.

APPROVED

Following the decision in Issues 1 and 2, and 3, the Commissioners, on their own motion, reconsidered the decision in Issue 1 and approved staff's recommendation.

COMMISSIONERS ASSIGNED: All Commissioners

COMMISSIONERS' SIGNATURES

MAJORITY

DISSENTING

Eric Edge
Kathy Brantley
Maureen
John
Charles M. Drost

REMARKS/DISSENTING COMMENTS:

DOCUMENT NUMBER-DATE

03321 APR-5 05

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Issue 2: Should the Commission find that BellSouth and Verizon are required to continue accepting "new add" orders for the delisted UNEs identified by the FCC in its Triennial Review Remand Order after March 11, 2005?

Recommendation: If a timely petition is filed with the FCC requesting reconsideration and/or clarification of the TRRO before March 28, 2005, staff believes it would then be appropriate for the Commission to require the ILECs to continue accepting "new adds" for delisted UNEs, pursuant to the rates, terms and conditions set forth in their interconnection agreements, and subject to a true-up to an appropriate rate if the FCC later clarifies that "new adds" were to stop on March 11, 2005. If, however, reconsideration or clarification is not timely requested prior to this Commission's consideration of this matter, staff recommends that the arguments of both the ILECs and the CLECs find support in the language of the TRRO and, thus, both arguments have significant merit. Staff believes that attempts to divine the FCC's intent in this instance could run afoul of the D.C. Circuit Court's admonitions in USTA II that sub-delegation by the FCC in this area is unlawful. As such, staff recommends that the Commission decline to make a finding as to the FCC's intent and require that the status quo be maintained, subject to a true-up to an appropriate rate, until either clarification from the FCC is obtained or the parties are otherwise able to reach a business solution of this dispute, but in no event beyond the term of the 12-month transition period contemplated in the TRRO.

DENIED

Staff's recommendation was denied as follows: With regard to high-capacity loops and transport, pending the outcome of BellSouth's appeal to the FCC, BellSouth will follow Mr. Lackey's outlined procedure that (1) the requesting CLEC will certify its order for loops and/or transport and (2) BellSouth will either provision the high-capacity loop or transport or will dispute such provisioning pursuant to the parties' existing dispute resolution process.

Issue 3: Should these dockets be closed?

Recommendation: No. Docket 041269-TL is currently set for hearing and should remain open to address the remaining open issues. Docket Nos. 050171-TP and 050172-TP should be held in abeyance pending clarification from the FCC or until the parties are otherwise able to reach a business solution of this dispute.

MODIFIED

Dockets 050171 and 050172 will be closed.

→ on switching, there shall be no new adds after March 11, 2005 (requesting carriers may not obtain new loop switching as an unbundled network element)