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ORIGINAL

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Sent: Thursday, August 25, 2005 11:06 AM

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Subject: E-filing Docket No. 041269-TP

Attachments: Request for Official Recognition 08.25.05.pdf

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Docket No and title: In Re: Petition to Establish Generic Docket to Consider Amendments to Interconnection Agreements Resulting from Changes of Law Docket 041269-TP

Filed on behalf of: Competitive Carriers of the South, Inc.

Number of pages: 7

Document attached: Request for Official Recognition

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ORIGINAL

BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

In the Matter of:	)	
Petition to Establish Generic Docket to Consider	)	Docket No. 041269-TP
Amendments to Interconnection	)	Filed: August 25, 2005
Agreements Resulting from Changes of Law	)	
	)	

REQUEST FOR OFFICIAL RECOGNITION

The Competitive Carriers of the South, Inc. (CompSouth), through its undersigned counsel, pursuant to rule 90.202, Florida Rules of Evidence, and section 120.569(2)(i), Florida Statutes, requests Official Recognition of the *Order on Motions for Summary Judgment or Declaratory Ruling*, issued by the Georgia Public Service Commission in Docket No. 19341-U, In Re: Generic Proceeding to Examine Issues Related to BellSouth's Obligations to Provide Unbundled Network Elements, on August 23, 2005.

s/ Vicki Gordon Kaufman

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Request for Official Recognition was served by electronic mail and U.S. Mail this 25th day of August, 2005 to the following:

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DOCKET NO. 19341-U

In Re: **Generic Proceeding to Examine Issues Related to BellSouth's Obligations to Provide Unbundled Network Elements**

ORDER ON MOTIONS FOR SUMMARY JUDGMENT OR DECLARATORY RULING

This matter comes before the Georgia Public Service Commission ("Commission") on a Motion for Summary Judgment, or in the Alternative Motion for Declaratory Ruling filed by BellSouth Telecommunications, Inc. ("BellSouth") and Cross-Motion for Summary Judgment or Declaratory Ruling filed by Competitive Carriers of the South[1] ("CompSouth"), Southeastern Competitive Carriers Association ("SECCA"), and XO Communications Services, Inc. ("XO") (collectively, "Joint CLECs").

Background

The Commission initiated this docket on August 24, 2004 in response to separately filed petitions for declaratory ruling. In its Order Initiating Docket, the Commission directed the parties to file Issues Lists for the Commission to consider in identifying what matters were appropriate to resolve in this proceeding. On October 25, 2004, numerous parties filed with the Commission proposed Issues Lists. Since the filing of the Issues Lists, the Federal Communications Commission ("FCC") released its *Triennial Review Remand Order* ("TRRO").

[1] CompSouth members include Access Integrated Networks, Inc., Access Point, Inc., AT&T., Birch Telecom, Cinergy Communications Company, DIECA Communications, Inc, d/b/a Covad Communications Company, IDS Telecom, LLC, InLine, ITC^DeltaCom, KMC Telecom, LecStar Telecom, Inc., MCI, Momentum Telecom, Inc., Navigator Communications, LLC, Network Telephone Corp., NuVox Communications, Inc., Supra Telecom, Talk America, Trinsic Communications, Inc., Xspedius Communications, LLC.

The TRRO likely will have had an impact on the issues that the parties wish to place before the Commission.

On May 23, 2005, CompSouth and BellSouth (collectively the "Parties") filed a Joint Motion to Adopt Schedule in this Proceeding. On June 1, 2005, BellSouth filed a Motion for Summary Judgment, or in the Alternative Motion for Declaratory Ruling. BellSouth's position is that a majority of the outstanding issues can be grouped into two categories: those that are purely legal and those that have mixed questions of law and fact (Motion, p. 6). For those issues that are purely legal matters, BellSouth requests that the Commission issue a summary judgment; for those issues that have mixed questions of law and fact, BellSouth requests that the Commission rule on what the law is either by granting partial summary judgment or issuing a declaratory ruling. According to BellSouth, this course of action would allow the factual disputes to be resolved in the proper context.

The Commission adopted a schedule for parties to respond to the Motion for Summary Judgment and for BellSouth to reply to any such responses. On July 1, 2005, the Joint CLECs filed their Response to BellSouth's Motion for Summary Judgment Or Declaratory Ruling ("Joint CLECs' Response") And Cross-Motion For Summary Judgment Or Declaratory Ruling ("Joint CLECs' Motion"). BellSouth filed its reply to the Joint CLECs' Motion on July 15, 2005 ("BellSouth Reply").

Responses to Motions

In its response to BellSouth's Motion, the Joint CLECs urge the Commission to deny BellSouth's Motion because granting it would "have the Commission rule on complex legal and policy issues raised by the TRO/TRRO in a vacuum – without consideration of the actual contractual disputes that give those issues substance in the real world." (Joint CLECs' Response, p. 3). The Joint CLECs further contend that the Commission's decision would be best informed if the Commission and its Staff have the opportunity to review the testimony of witnesses, consider responses to cross-examination, and ask questions of witnesses and counsel at hearing, because all of the issues involve mixed questions of policy, law, and fact. *Id.* The Joint CLECs note that they had not responded to BellSouth's Motion on Issues 7 ("High Capacity Loops and Transport – Changed Circumstances") and 14 ("DSL Over UNE-P"). *Id. at* 5. The Joint CLECs state that there is no dispute over those issues, and are therefore amenable to removing those issues from the Issues List prior to the filing of testimony. *Id.*

In its Reply to the Joint CLECs' Response and Motion, BellSouth contends that its Motion was intended to allow efficient resolution of the issues before the Commission. (BellSouth Reply, p. 1.) They also urge the Commission to deny the Joint CLECs' Cross-Motion because of the Joint CLECs' own request that the Commission not resolve any issues until after the hearing. *Id.* at 1-2. The only issues that BellSouth addressed in detail in its Reply were Issue 8 (regarding Section 271) and Issue 17 (regarding line sharing).

XO filed a letter ("Letter") on July 25, 2005, in which it stated that it did not object to the removal of Issue No. 7 from the Issues List at this time. XO notified the Commission, however,

that Issue No. 7, among other issues, is the subject of a Petition for Reconsideration filed by a number of CLECs, including XO, before the Federal Communications Commission ("FCC") in *Unbundled Access to Network Elements/Review of Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, WC Docket No. 04-313/CC Docket No. 01-338. Additionally, Issue No. 7, among others, is subject of a Petition for Forbearance filed at the FCC. While XO does not object to the removal of Issue No. 7 from the Issues List under the current status of the law, it wishes to reserve any and all rights to bring this issue, and any other issues, back before the Commission in this docket in the event a subsequent FCC ruling results in a further change of law.

Discussion

The Commission hereby denies without prejudice both BellSouth's Motion for Summary Judgment and the Cross Motion filed by the Joint CLECs. Given the complexity of the issues, it is not clear at this point that the issues are purely legal. The Commission will likely be in a better position to resolve these issues after it has had the benefit of an evidentiary hearing. Moreover, given that the hearings will be held regardless of the Commission's decision on these motions, and given that one round of testimony has already been filed, any efficiencies in addressing a portion of the issues would not be substantial. The Commission emphasizes that this decision should not limit or presuppose in any way its ultimate consideration of these issues in this docket.

The Commission also hereby removes Issues 7 and 14 from the proceeding. The Joint CLECs' Response identified these issues as no longer being in dispute and no party to the proceeding has objected to that characterization.

******

WHEREFORE IT IS ORDERED, that the Commission hereby denies the Motions of BellSouth and the Joint CLECs without merit.

ORDERED FURTHER, that the Commission hereby removes Issues 7 and 14 from the proceeding.

ORDERED FURTHER, that jurisdiction over this proceeding is expressly retained for the purpose of entering such further Order or Orders as this Commission may deem just and proper.

ORDERED FURTHER, that a motion for reconsideration, rehearing, or oral argument or any other motion does not stay the effective date of this Order, unless otherwise ordered by the Commission.

The above action of the Commission in Administrative Session on the 16th day of August, 2005.

REECE MCALISTER
EXECUTIVE SECRETARY

8.23.05
DATE

ANGELA ELIZABETH SPEER
CHAIRMAN

8/23/05
DATE