ORIGINAL

Matilda Sanders

From: Barclay, Lynn [Lynn.Barclay@BellSouth.com]
Sent: Friday, January 13, 2006 10:21 AM
To: Filings@psc.state.fl.us
Cc: Fatool, Vicki; Linda Hobbs; Nancy Sims; Holland, Robyn P; Bixler, Micheale; Slaughter, Brenda ; Mays, Meredith
Subject: 020507-TL BellSouth's Motion to Close Docket
Attachments: 020507 BST Motion to Close Docket.pdf

CMP _____
COM 5
CTR _____
ECR _____
GCL _____
OPC _____
RCA _____
SCR _____
SGA _____
SEC 1
OTH Kim P.

A. Lynn Barclay
Legal Secretary to Meredith Mays
BellSouth Telecommunications, Inc.
150 South Monroe Street
Suite 400
Tallahassee, Florida 32301
(404) 335-0788
lynn.barclay@bellsouth.com

B. Docket No. 020507-TL: FCCA Complaint

C. BellSouth Telecommunications, Inc.
on behalf of Meredith Mays

D. 21 pages total

E. BellSouth Telecommunications, Inc.'s Motion to Close Docket.

<<020507 BST Motion to Close Docket.pdf>>

Lynn Barclay
Legal Department
675 West Peachtree Street
Suite 4300
Atlanta, GA 30375
404 335-0788

*****

162

ORIGINAL

Legal Department

Meredith Mays
Senior Regulatory Counsel

BellSouth Telecommunications, Inc.
150 South Monroe Street
Room 400
Tallahassee, Florida 32301
(404) 335-0750

January 13, 2006

Mrs. Blanca S. Bayó
Division of the Commission Clerk and
Administrative Services
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

Re: Docket No. 020507-TL (FCCA Complaint)

Dear Ms. Bayó:

Enclosed is BellSouth Telecommunications, Inc.'s Motion to Close Docket.

A copy of this letter is enclosed. Please mark it to indicate that the original was filed and return the copy to me. Copies have been served to the parties shown on the attached Certificate of Service.

Sincerely,

Meredith Mays

cc: All Parties of Record
Jerry D. Hendrix
R. Douglas Lackey
Nancy B. White

CERTIFICATE OF SERVICE
DOCKET NO. 020507-TL

I HEREBY CERTIFY that a true and correct copy of the foregoing was served via Electronic Mail and U.S. Mail this 13th day of January, 2006 to the following:

Dovie Rockette-Gray
Adam Teitzman
Staff Counsel
Florida Public Service Commission
Division of Legal Services
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850
ateitzman@psc.state.fl.us

Vicki Gordon Kaufman
Moyle Flanigan Katz Raymond & Sheehan, PA
118 North Gadsden Street
Tallahassee, FL 32301
Tel. No. (850) 681-3828
Fax. No. (850) 681-8788
vkaufman@moylelaw.com
Attys. for AIN

Tony Mastando, Esq. (+)
Director - Regulatory
ITC^DeltaCom
4092 S. Memorial Parkway
Huntsville, AL 35802
Tel. No. (256) 382-3856
Fax. No. (256) 382-3936
tony.mastando@itcdeltacom.com

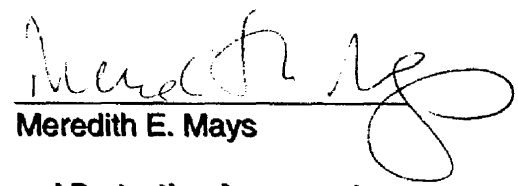
Floyd Self, Esq. (+)
Messer, Caparello & Self
215 S. Monroe Street
Suite 701
P.O. Box 1876
Tallahassee, FL 32302
Represents ITC^DeltaCom
fself@lawfla.com

Donna Canzano McNaulty (+)
MCI WorldCom Communications, Inc.
1203 Governors Square Boulevard,
Suite 201
Tallahassee, Florida 32301
Tel. No. (850) 422-1254
Fax. No. (850) 422-2586
donna.mcnulty@mci.com

Dulaney L. O'Roark III (+)
WorldCom, Inc.
Six Concourse Parkway
Suite 3200
Atlanta, GA 30328
Tel. No. (770) 284-5498
Fax. No. (770) 284-5488
De.ORoark@mci.com

Tracy W. Hatch
AT&T
101 N. Monroe Street
Suite 700
Tallahassee, FL 32301
Tel. No. (850) 425-6360
Fax. No. (850) 425-6361
thatch@att.com

Sonia Daniels
AT&T
1230 Peachtree Street, #400
Atlanta, GA 30309
Tel. No. (404) 810-8488
Fax. No. (281) 664-9791
soniadaniels@att.com



Meredith E. Mays

(+) Signed Protective Agreement

ORIGINAL

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Complaint of the Florida Competitive Carriers Association Against BellSouth Telecommunications, Inc. And Request for Expedited Relief	))))	Docket No. 020507-TL Filed: January 13, 2006

BELLSOUTH TELECOMMUNICATIONS, INC.'S MOTION TO CLOSE DOCKET

1.

On June 12, 2002, the Florida Competitive Carriers Association ("FCCA") filed its complaint against BellSouth Telecommunications, Inc. ("BellSouth"), seeking to expand prior Commission decisions (Order Nos. PSC-02-0765-FOF-TP ("FDN Order") and Order No. PSC-02-0878-FOF-TP ("Supra Order")) by requesting that BellSouth be required to provide its retail wireline broadband service, BellSouth FastAccess® DSL ("FastAccess®"), to any voice customers served by the CLECs.

2.

BellSouth responded timely to the FCCA's complaint, and following pre-hearing proceedings the Commission conducted a hearing on July 21-22, 2003. After the hearing, parties submitted post-hearing briefs, and the staff of the Florida Public Service Commission issued its recommendation on November 20, 2003.

3.

At the Commission's December 2, 2003 Agenda Session, the Commission voted to defer ruling on the staff recommendation in light of pending appeals of the FDN and Supra Orders.

4.

On March 25, 2005, the Federal Communications Commission issued a Memorandum Opinion and Order in *BellSouth Telecommunications, Inc. Request for Declaratory Ruling that State Commissions May Not Regulate Broadband Internet Access Services by Requiring BellSouth to Provide Wholesale or Retail Broadband Services to Competitive LEC UNE Voice Customers.*[1] On June 14, 2005, the United States District Court, Northern District of Florida, Tallahassee Division issued its Order and Judgment vacating the portion of the Commission's FDN Order requiring BellSouth to provide digital subscriber line service to customers who do not subscribe to BellSouth's telephone service. (Attached as Exhibit A). On July 18, 2005, the United States District Court, Northern District of Florida, Tallahassee Division issued its Final Order and Judgment vacating the portion of the Commission's Supra Order requiring BellSouth to provide digital subscriber line service to customers who do not subscribe to BellSouth's telephone service. (Attached as Exhibit B).

5.

In light of the FCC's decision, and the orders and judgments attached hereto, BellSouth files this motion asking the Commission to enter an order closing this docket and dismissing any outstanding CLEC claims.

6.

BellSouth has notified parties of record of its intent to file this motion but has not heard whether the parties of record object or consent to requested relief.

[1] WC Docket No. 03-251, FCC 05-78, 20 FCC Rcd 6830.

Respectfully submitted this 13th day of January, 2006.

BELLSOUTH TELECOMMUNICATIONS, INC.

Nancy B. White (RB)

NANCY B. WHITE
c/o Nancy Sims
150 South Monroe Street, #400
Tallahassee, Florida 32301
(305) 347-5558

Meredith Mays (RB)

R. DOUGLAS LACKEY
MEREDITH E. MAYS
675 West Peachtree Street, #4300
Atlanta, Georgia 30375
(404) 335-0750

616682

EXHIBIT A

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF FLORIDA TALLAHASSEE DIVISION

BELLSOUTH TELECOMMUNICATIONS, INC.,

Plaintiff,

v. CASE NO. 4:03cv212-RH

FLORIDA DIGITAL NETWORK, INC., et al.,

Defendants.

_____/

ORDER ON MERITS

Under the Telecommunications Act of 1996, incumbent local exchange carriers must make certain services and facilities available to competitive carriers. *See* 47 U.S.C. §251(c); *MCI Telecomms. Corp. v. BellSouth Telecomms., Inc.*, 2000 WL 1239840 (N.D. Fla. 2000) (describing these duties in detail), *aff'd*, 298 F.3d 1269 (11th Cir. 2002). If an incumbent and competitive carrier are unable to agree on which services and facilities will be made available and on what terms, the Act authorizes the appropriate state commission to resolve the dispute through an "arbitration" proceeding. *See* 47 U.S.C. §252(b)(1). Determinations of state

commissions are reviewable in actions filed in federal district court. *See* 47 U.S.C. §252(e)(6). This is such an action.

Plaintiff BellSouth Telecommunications, Inc. (an incumbent), and defendant Florida Digital Network, Inc. (a competitor), agreed on all terms under which BellSouth services and facilities would be made available to Florida Digital, with one exception. They disagreed with respect to digital subscriber line ("DSL") service. That issue went to arbitration before the defendant Florida Public Service Commission, which determined, over BellSouth's objections, that BellSouth must make BellSouth DSL service available to customers who choose Florida Digital as their local exchange carrier. BellSouth now challenges that decision in this court.

BellSouth ordinarily provides DSL service to a customer over the same loop BellSouth uses to provide local service to that same customer. The Federal Communications Commission has made clear, in response to a petition for declaratory ruling filed by BellSouth explicitly in response to the Florida Commission ruling now at issue (as well as similar rulings of other state commissions) that, at least to the extent based on an incumbent's obligation to provide services or facilities to a competitor under federal law, the Florida Commission's determination was wrong. The FCC said:

[A] state commission may not require an incumbent local exchange

> carrier (LEC) to provide digital subscriber line (DSL) service to an end user customer over the same unbundled network element (UNE) loop facility that a competitive LEC uses to provide voice services to that end user. . . . [W]e conclude that state decisions that impose such an obligation are inconsistent with and substantially prevent the implementation of the [1996] Act and the [FCC's rules and policies implementing the Act].
>
> . . . .
>
> We find that each of the state commission decisions at issue here – either expressly or implicitly – conditions the terms on which BellSouth must offer competitive LECs unbundled access to its local loops in a manner inconsistent with the 1996 Act and our implementing regulations.

In re BellSouth Telecomms., Inc. Request for Declaratory Ruling, WC Docket No. 03-251 at ¶¶1, 21 (FCC March 25, 2005).

Defendants do not deny that the FCC's ruling will be controlling on the issues it addresses, at least if ultimately upheld on appeal. I accept the FCC ruling as an accurate statement of federal law.[1]

Defendants assert, however, that the Florida Commission's determination is nonetheless sustainable under Florida law, separate and apart from any federal

---

[1] Reasonable arguments could be made on both sides of the issue of whether requiring an incumbent to provide DSL service over the same loop a competitor uses to provide local service to the same customer promotes or hinders overall competition for voice or broadband services. The FCC, whose views are entitled to deference, *see, e.g., Chevron U.S.A., Inc. v. Natural Resources Defense Counsel*, 467 U.S. 837, 104 S. Ct. 2778, 81 L. Ed. 2d 694 (1984), has resolved the issue in BellSouth's favor.

requirements. Thus, they say, the Florida Commission, which has authority to regulate BellSouth's provision of local telephone service, simply ruled that BellSouth cannot withhold DSL service from customers who choose not to obtain their local service from BellSouth. But beyond any question, DSL service—used primarily as broadband internet access—is jurisdictionally interstate, not intrastate, and thus is subject to regulation by the FCC, not by state commissions. BellSouth provides DSL service pursuant to a federal tariff. The Florida Commission cannot properly compel BellSouth to provide such service beyond the requirements of its federal tariff.

The Florida Commission asserts, however, that the ruling at issue merely regulates local service, not (jurisdictionally interstate) DSL service. This is plainly wrong. The Florida Commission has required BellSouth to provide DSL to customers to whom BellSouth does *not* provide local service; that is the whole point of the Florida Commission's ruling. When the one and only service a carrier provides a customer is interstate, the regulator with jurisdiction is the FCC, not a state commission.

To be sure, the FCC, in conjunction with its declaratory ruling, gave notice of its initiation of an inquiry into whether a carrier should be allowed to deny DSL service to customers of other carriers. Reasonable arguments can be made on both

sides of that issue, and the FCC, in due course, presumably will address the matter. But this merely underscores the point. This is a federal issue, not an issue properly resolved in a §252 arbitration proceeding or by a state commission.

For these reasons,

IT IS ORDERED:

The clerk shall enter judgment stating, "The order of the Florida Public Service Commission requiring BellSouth Telecommunications, Inc. to provide digital subscriber line service to customers who do not subscribe to BellSouth's local telephone service is vacated. The provisions of the Interconnection Agreement between BellSouth and Florida Digital Network, Inc. relating to digital subscriber line service to customers who do not subscribe to BellSouth's local telephone service are declared invalid. The defendant Commissioners of the Florida Public Service Commission shall take such further action relating to the Interconnection Agreement as may be appropriate in light of the Court's Order on Merits and this judgment. All other claims in this action are dismissed. All claims

against the Florida Public Service Commission, in its name, are dismissed as redundant." The clerk shall close the file.

SO ORDERED this 14th day of June, 2005.

s/Robert L. Hinkle
Chief United States District Judge

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA
TALLAHASSEE DIVISION

BELLSOUTH COMMUNICATIONS, INC.,

VS

CASE NO. 4:03cv212-RH

FLORIDA DIGITAL NETWORK, INC., et al.,

JUDGMENT

This action came the Court with the Honorable Robert L. Hinkle presiding. The issues have been heard and a decision has been rendered.

"The order of the Florida Public Service Commission requiring BellSouth Telecommunications, Inc. to provide digital subscriber line service to customers who do not subscribe to BellSouth's local telephone service is vacated. The provisions of the Interconnection Agreement between BellSouth and Florida Digital Network, Inc. relating to digital subscriber line service to customers who do not subscribe to BellSouth's local telephone service are declared invalid. The defendant Commissioners of the Florida Public Commission shall take such further action relating to the Interconnection Agreement as may be appropriate in light of the Court's Order on Merits and this judgment. All other claims in this action are dismissed. All claims against the Florida Public Service Commission, in its name, are dismissed as redundant."

WILLIAM M. McCOOL, CLERK OF COURT

June 14, 2005
DATE

s/David L. Thomas
Deputy Clerk: David Thomas

EXHIBIT B

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF FLORIDA
TALLAHASSEE DIVISION

BELLSOUTH TELECOMMUNICATIONS, INC.,

Plaintiff,

vs. CASE NO. 4:02cv325-SPM

SUPRA TELECOMMUNICATIONS
AND INFORMATION SYSTEMS, INC., et al.,

Defendants.
_____/

FINAL ORDER

This case arises out of an arbitration proceeding conducted by the Florida Public Service Commission (Commission). The Commission issued an arbitration order that established terms for BellSouth Telecommunications, Inc. (BellSouth) to provide Supra Telecommunications and Information Systems, Inc. (Supra) access to BellSouth's local telephone network, as required under the Telecommunications Act of 1996. The issue presented is whether the Commission erred by requiring BellSouth, as a term of Supra's access to BellSouth's network, to continue providing digital subscriber line (DSL) Internet access service to telephone customers who no longer subscribe to BellSouth for local telephone service.

I. BACKGROUND

The purpose of the Telecommunications Act of 1996 is to foster competitive markets for local telephone services, which previously had been provided on a monopoly basis by companies regulated under state law and by state public service commissions. Under the Act, Congress preempted all state laws restricting local competition. 47 U.S.C. § 253(a). Congress also imposed a comprehensive set of affirmative requirements to facilitate market entry by competitors. 47 U.S.C. § 251(c).

Among these, incumbent local exchange carriers (incumbent LECs or ILECs), like BellSouth, who previously enjoyed monopoly status, are required to provide competitors (competitive local exchange carriers or CLECs), like Supra, interconnection and access to the ILEC's network. 47 U.S.C. § 251(c). These local networks were constructed over the years under the monopoly system and include, among other things, switches and telephone lines (or loops) made of copper wire or fiber optics. A network connects virtually every home and business in a local service area.

The Telecommunication Act's interconnection requirement promotes competition by connecting the local network so that local customers of different carriers can call each other. Without the requirement of interconnection, competition among carriers of separate networks would be of limited value to customers because local calls could only be made between customers of the same carrier. Access to the ILEC's network is also needed to develop

meaningful competition since, as a practical matter, it is impossible for a competitor to rapidly build a new network given the high costs involved.

To these ends, ILEC's are required to negotiate terms for interconnection agreements and to provide access to their network elements to other carriers on a non-discriminatory basis. 47 U.S.C. § 251(c). A rate for access to each network element is separately priced as an unbundled network element (UNE). A UNE can be leased separately or combined with other leased UNEs. 47 U.S.C. § 251(c)(3).

State public service commissions are vested with the authority to approve or reject interconnection agreements reached by carriers. 47 U.S.C. § 252(a)(1) The commissions may also arbitrate disputes between the carriers about their interconnection agreements or arbitrate the terms and rates if no agreement is reached.[1] 47 U.S.C. § 252(b). In this way, the states' role in local telephone regulation is preserved and the public service commissions are free to act in accordance with state interests, so long as those interests are not contrary to the Telecommunications Act and Federal Communications Commission (FCC) regulations. 47 U.S.C. §§ 251(d)(3), 261. Federal district courts have exclusive appellate jurisdiction to review determinations made by the state public service commissions. 47 U.S.C. § 251(e)(6).

---

[1] The public service commissions may decline to act, in which case the FCC resumes the responsibility for arbitration and approval of interconnection agreements. 47 U.S.C. § 252(e)(5).

II. STANDARD OF REVIEW

De novo review applies to a state commission's interpretation of the meaning and import of the Telecommunications Act. AT&T Communications of Southern States v. GTE Florida, Inc., 123 F.Supp.2d 1318, 1322 (N.D. Fla. 2000). The arbitrary and capricious standard of review applies to a state commission's application of the Act. Id. Furthermore, to the extent the FCC has issued an interpretive decision implementing the Act, the FCC's decision is entitled to "Chevron" deference, which means that the decision is "given controlling weight unless [it is] arbitrary, capricious, or manifestly contrary to the statute." Chevron USA, Inc. v. Natural Resources Defense Council, Inc., 467 U.S. 837, 844 (1984); see also AT&T Corp. v. Iowa Utilities Bd., 525 U.S. 366, 384-87 (1999) (applying Chevron to FCC interpretations of the Telecommunications Act of Act of 1996).

III. DISCUSSION

Prior to the Commission's arbitration decision, BellSouth was offering DSL Internet access service in connection with local telephone service so that only those who subscribed to BellSouth for local telephone service were eligible to subscribe to BellSouth's DSL Internet access service. BellSouth used the same loop to provide both services.[2] If a DSL customer changed local telephone

[2] A loop has a high frequency spectrum that can be used to provide DSL service and a low frequency spectrum that can be used to provide voice telephone service. In re BellSouth Telecommunications, Inc. Request for Declaratory Ruling, WC Docket No. 03-251 at ¶ 25, (FCC March 25, 2005).

service to another carrier, like Supra, BellSouth would discontinue the customer's subscription for DSL service. Viewing BellSouth's activity as an obstacle to competition in the local telephone market, the Commission issued an arbitration decision requiring BellSouth, as a term of Supra's access to BellSouth's network, to continuing providing DSL service when a customer changed to another carrier, like Supra, who leased loops from BellSouth to provide local telephone service. BellSouth objected to the requirement, arguing that the Commission had no basis under the Telecommunications Act, or otherwise, to require BellSouth to provide DSL service.

In response to a petition for declaratory ruling filed by BellSouth, the FCC issued a decision in favor of BellSouth. In re BellSouth Telecommunications, Inc. Request for Declaratory Ruling, WC Docket No. 03-251 (FCC March 25, 2005). The FCC ruled that state commission orders[3] requiring BellSouth to continue providing DSL service are inconsistent with the Telecommunications Act and FCC regulations. Id. at ¶ 1.

The FCC specifically found that since BellSouth used the same loop to provide both DSL service and local telephone service, requiring BellSouth to continue providing DSL when a competitor leased the loop for local telephone service, in effect, required BellSouth to unbundle the loop in a manner that is contrary to the requirements of the Telecommunications Act, as determined in a

---

[3] In addition to the Florida, state commissions in Kentucky, Louisiana, and Georgia issued similar orders regarding BellSouth's obligation to provide DSL service. Id. at ¶¶ 11-14.

recent FCC ruling. Id. at ¶¶ 25-27.

Keeping a loop as a single element, the FCC noted, created incentives for competing voice and data carriers to enter into innovative arrangements, to deploy new facilities, and to provide different products; thereby promoting competition. Id. at ¶¶ 28-30. With the focus on these aspects of competition, the FCC found that the state orders, which in effect unbundled the loops, were contrary to the Telecommunications Act and exceeded the authority reserved to the states under the Act. Id. ¶ 17. Pursuant to the FCC's ruling, to which this Court defers, the Commission's arbitration order in this case cannot be sustained because it is contrary to the Telecommunications Act. Based on the foregoing, it is

ORDERED AND ADJUDGED that the provisions of the Commission's order, PSC-02-0878-FOF-TP, requiring BellSouth to provide DSL service to customers who do not subscribe to BellSouth's local telephone service are vacated.

DONE AND ORDERED this 18th day of July, 2005.

s/ Stephan P. Mickle
Stephan P. Mickle
United States District Judge

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA
TALLAHASSEE DIVISION

BELLSOUTH TELECOMMUNICATIONS, INC.
Plaintiff,

VS

CASE NO. 4:02-cv-325 SPM

SUPRA TELECOMMUNICATIONS AND INFORMATION SYSTEMS, INC., FLORIDA PUBLIC SERVICE COMMISSION, LILA A. JABAR, J. TERRY DEASON, BRAULIO L BAEZ, MICHAEL A PALECKI, RUDOLPH BRADLEY, in his official capacity as Commissioner of the Florida Public Service Commission, and FLORIDA COMPETITIVE CARRIERS ASSOCIATION
Defendants.
_____/

JUDGMENT

This action came to trial or hearing before the Court with the Honorable Stephan P. Mickle presiding. The issues have been tried or heard and a decision has been rendered.

It is ORDERED AND ADJUDGED

that the provisions of the Commission's Order, PSC-02-0878-FOF-TP, requiring Bellsouth to provide DSL service to customers who do not subscribe to Bellsouth's local telephone service are VACATED.

WILLIAM M. McCOOL, CLERK OF COURT

s/ Ti Ann Stark

July 18, 2005
DATE

Deputy Clerk: