

BEFORE THE PUBLIC SERVICE COMMISSION

In re: Petition to establish generic docket to consider amendments to interconnection agreements resulting from changes in law, by BellSouth Telecommunications, Inc.

DOCKET NO. 041269-TP  
ORDER NO. PSC-06-0237-FOF-TP  
ISSUED: March 20, 2006

The following Commissioners participated in the disposition of this matter:

LISA POLAK EDGAR, Chairman  
J. TERRY DEASON  
ISILIO ARRIAGA  
MATTHEW M. CARTER II  
KATRINA J. TEW

**ORDER VACATING ISSUES 5, 13, 16-18, AND 22(B)**

BY THE COMMISSION:

**I. Case Background**

On August 21, 2003, the FCC released its Triennial Review Order (TRO), which contained revised unbundling rules and responded to the D.C. Circuit Court of Appeals' remand decision in USTA I.

On March 2, 2004, the D.C. Circuit Court of Appeals released its decision in USTA II, which vacated and remanded certain provisions of the TRO. In particular, the D.C. Circuit held that the FCC's delegation of authority to state commissions to make impairment findings was unlawful, and further found that the national findings of impairment for mass market switching and high-capacity transport were improper.

The FCC released an Order and Notice (Interim Order) on August 20, 2004, requiring ILECs to continue providing unbundled access to mass market local circuit switching, high capacity loops, and dedicated transport until the earlier of the effective date of final FCC unbundling rules or six months after publication of the Interim Order in the Federal Register. On February 4, 2005, the FCC released the Triennial Review Remand Order (TRRO), wherein the FCC's final unbundling rules were adopted with an effective date of March 11, 2005.

In response to the decisions handed down in USTA II and the FCC's Orders, BellSouth Telecommunications, Inc. (BellSouth) filed on November 1, 2004, its Petition to establish a generic docket to consider amendments to interconnection agreements resulting from changes of law. Specifically, BellSouth asked that we determine what changes are required in existing, approved interconnection agreements between BellSouth and CLECs in Florida as a result of changes in law. Pursuant to Order No. PSC-05-0736-PCO-TP, Order Establishing Procedure, issued on July 11, 2005, 31 issues were identified.

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On May 5, 2005, we issued the No-New-Adds Order, finding that the TRRO is specific, as is the revised FCC rule, that CLECs are prohibited from adding new local switching as a UNE, effective March 11, 2005.

On July 15, 2005, BellSouth filed a Motion for Summary Final Order or, in the alternative, Motion for Declaratory Ruling. On July 22, 2005, CompSouth responded to the Motion and filed a Cross Motion for Summary Final Order or Declaratory Ruling.

On August 22, 2005, Supra Telecommunications and Information Systems, Inc. filed its Emergency Motion to Require BellSouth to Effectuate Orders for Supra's Embedded Customer Base. On November 8, 2005, the Embedded Base Order was issued denying Supra's motion and finding that the TRO prohibits CLECs from adding any new local switching UNE arrangements.

On September 29, 2005, the parties filed prehearing statements. The administrative hearing was conducted on November 2-4, 2005. At the commencement of the administrative hearing, we denied BellSouth's Motion for Summary Final Order or, in the alternative, Motion for Declaratory Ruling and CompSouth's Cross-Motion or Declaratory Ruling. Post-hearing briefs were filed on November 30, 2005.

On January 26, 2006, our staff filed its recommendation addressing the remaining unresolved issues. At the February 7, 2006 Agenda Conference, we considered and approved staff's recommendations on all remaining issues with the exception of Issue 13. Parties are currently scheduled to file their signed interconnection agreements and amendments on February 27, 2006, for Commission approval.

Subsequent to our consideration of staff's recommendation at the February 7, 2006 Agenda Conference, the Inspector General completed an investigation into alleged misconduct by a staff member, Ms. Doris Moss, who was assigned to this Docket. The Inspector General concluded that Ms. Moss had sent, under fictitious names, unauthorized e-mail communications to Commissioners and BellSouth, which constituted violations of Commission policy and State and Commission rules including conduct unbecoming a state employee (under Rule 60L-36.005(3)(f), F.A.C.) and improper communication between a Commission employee and a party (under Rule 25-22.033, F.A.C.) Ms. Moss' employment was promptly terminated following conclusion of the investigation.

On February 14, 2006, the Chairman's office received a letter from Covad Communications Company, Inc. (Covad) requesting that we, *sua sponte*, withdraw all portions of recommendations that were the responsibility of Ms. Moss, as well as those she discussed in her e-mails, assign new staff to those issues, and direct such staff to prepare an independent recommendation for our de novo consideration to ensure fair and impartial consideration of the affected issues. The affected issues are 5, 13, 16-18, and 22(b).

On February 16, 2006, the Chairman's office received a letter from BellSouth in response to Covad's letter and request. BellSouth states in its letter that although it does not believe reconsideration of the affected issues is necessary to ensure fairness and impartiality to the parties, BellSouth has no objection to *sua sponte* reconsideration of the affected issues.

BellSouth further requests that we neither withdraw nor suspend our rulings on the issues while additional review is being conducted.

On February 23, 2006, Nuvox and Xspedius filed a letter with this Commission requesting we vacate our rulings on Issues 25 and 26.

## **II. Analysis**

The Commission Code of Ethics requires that, consistent with their role as public servants of the State of Florida, Commissioners and Staff of the Commission shall aspire to “provide fair and impartial analyses, recommendations, and decisions regarding all Commission matters.” The Code of Ethics also clearly identifies that its purpose is “to communicate to the public that the Commissioners and Staff of the Florida Public Service Commission are dedicated to the highest standards of professional integrity and conduct and that, individually and collectively, we are fair and honest with all parties in all Commission-related business and professional activities.”

The conduct of Ms. Moss has created a perception of bias and raises reasonable concerns regarding the impartiality of her analyses and recommendations addressing Issues 5 and 16-18. Additionally, her actions raise concern regarding the handling of Issues 13 and 22(b) on which she improperly communicated with a party. The perception of bias in this case contravenes the purpose of the Commission Code of Ethics and we are taking aggressive action to ameliorate these concerns.

## **III. Decision**

In an abundance of caution and to promote public confidence in the impartiality of our consideration of Issues 5, 13, 16-18, and 22(b), we vacate our decisions on Issues 5, 13, 16-18, and 22(b), and direct that new staff members be assigned to review the record and prepare a new recommendation on these issues for our de novo consideration.

We do not find that these same concerns apply to Issues 25 and 26. Ms. Moss did not participate in the analysis or recommendation addressing Issues 25 and 26. Nor did her improper actions address these issues.

A Final Order on all non-vacated issues shall be issued immediately. Pursuant to the Prehearing Officer’s order issued on February 21, 2006, the deadline for the parties to file interconnection agreements or amendments incorporating our decisions in this Docket was extended, with the agreement of BellSouth and Covad, from February 27, 2006 to March 10, 2006.

Because it would be impractical for this Commission to grant administrative approval to these agreements before the March 11, 2006 date specified in the TRRO, agreements and amendments shall specify that they will take effect as of March 11, 2006.

This Docket shall remain open pending our consideration of Issues 5, 13, 16-18, and 22(b). Upon resolution of these issues, we shall set forth a time frame for the submission of signed amendments addressing these issues for approval.

Based upon the foregoing, it is

ORDERED by the Florida Public Service Commission that our decisions on Issues 5, 13, 16-18, and 22(b) are hereby vacated. It is further

ORDERED that new staff members shall be assigned to review the record and prepare new recommendations on the vacated issues for de novo consideration. It is further

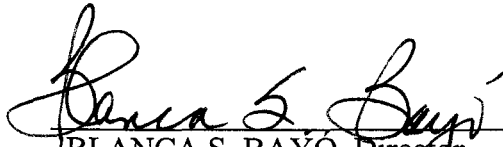
ORDERED that a Final Order on all non-vacated issues shall be issued immediately. It is further

ORDERED that the deadline for the parties to file interconnection agreements or amendments incorporating our decisions in this Docket is March 10, 2006. It is further

ORDERED that agreements and amendments shall include an effective date of March 11, 2006. It is further

ORDERED that this Docket shall remain open pending our consideration of Issues 5, 13, 16-18, and 22(b). Upon resolution of these issues, a time frame shall be set for the submission of signed amendments addressing these issues for approval.

By ORDER of the Florida Public Service Commission this 20th day of March, 2006.

  
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BLANCA S. BAYO, Director  
Division of the Commission Clerk  
and Administrative Services

( S E A L )

AT/KS

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Any party adversely affected by the Commission's final action in this matter may request: 1) reconsideration of the decision by filing a motion for reconsideration with the Director, Division of the Commission Clerk and Administrative Services, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, within fifteen (15) days of the issuance of this order in the form prescribed by Rule 25-22.060, Florida Administrative Code; or 2) judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or the First District Court of Appeal in the case of a water and/or wastewater utility by filing a notice of appeal with the Director, Division of the Commission Clerk and Administrative Services and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days after the issuance of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900(a), Florida Rules of Appellate Procedure.