

State of Florida



Public Service Commission

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD
TALLAHASSEE, FLORIDA 32399-0850

-M-E-M-O-R-A-N-D-U-M-

DATE: June 24, 2004

TO: Director, Division of the Commission Clerk & Administrative Services (Bayó)

FROM: Division of Competitive Markets & Enforcement (Gilchrist, Simmons)
Office of the General Counsel (Teitzman, Christensen)

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.

AGENDA: 07/06/04 – Regular Agenda – Posthearing Decision- Participation is Limited to Commissioners and Staff.

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

FILE NAME AND LOCATION: S:\PSC\CMP\WP\020129.RCM.DOC

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 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 MCI Metro Access

Transmission Services, LLC (MCI Metro) 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 MCI Metro. This matter was set for an administrative hearing by this Commission by Order No. PSC-02-1179-PHO-TP. Staff notes that ITC^DeltaCom Communications and Time Warner Telecom L.P. have withdrawn from this docket.

Staff presented its post-hearing recommendation to the Commission at the February 18, 2003 Agenda Conference. At that time, the Commission voted on nine of the issues raised in the joint petition and, on its own motion, the Commission scheduled oral argument on the remaining three issues in the docket. Oral argument was held on August 19, 2003. On October 7, 2003, staff presented its post-hearing recommendation addressing the three issues that were deferred from the February 18, 2003 Agenda Conference and addressed by the parties in oral argument (Issues 8, 10, and 11).

At the October 7, 2003 Agenda Conference, it became apparent after much discussion that the remaining issues could possibly be resolved, so staff suggested the Commission defer Issues 8, 10, and 11 to allow the parties additional time to reach a resolution. The parties continued to negotiate and on December 23, 2003, BellSouth filed a revised tariff and a refund/adjustment plan. After reviewing BellSouth's revised tariff and refund/adjustment plan, staff had concerns which we asked BellSouth to address. While in the process of addressing staff's concerns, the parties negotiated a settlement. On June 7, 2004, the parties filed a Joint Motion seeking Commission approval of their Stipulation and Agreement. If approved, staff recommends that the Stipulation and Agreement renders all issues previously voted on by the Commission and the remaining three issues moot. The purpose of this recommendation is to address the Joint Motion filed by the parties.

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

Discussion of Issues

Issue 1: Should the Commission grant the Joint Motion filed by BellSouth Telecommunications, Inc, US LEC of Florida, Inc., MCI WorldCom Communications, Inc., and MCI Metro Access Transmission Services, LLC, (the “Parties”) for approval of their Stipulation and Agreement?

Recommendation: Yes, the Commission should grant the Joint Motion filed by BellSouth Telecommunications, Inc, US LEC of Florida, Inc., MCI WorldCom Communications, Inc., and MCI Metro Access Transmission Services, LLC, for approval of their Stipulation and Agreement. If approved, staff recommends that the Stipulation and Agreement renders all issues previously voted on by the Commission and the remaining three issues moot. **(Gilchrist, Simmons, Teitzman)**

Staff Analysis: On December 23, 2003, BellSouth filed a revised tariff and a refund/adjustment plan. After reviewing BellSouth’s revised tariff and refund/adjustment plan, staff had concerns which staff asked BellSouth to address. While in the process of addressing staff’s concerns, the Parties negotiated a settlement. Staff’s concerns with the refund/adjustment plan were adequately addressed in the Stipulation and Agreement filed on June 7, 2004. On June 23, 2004, BellSouth withdrew the December 23, 2003 tariff filing; a revised tariff will be filed within 15 days of the Commission order approving the Stipulation and Agreement. Below is a synopsis of the Stipulation and Agreement:

- BellSouth and the Parties agree that this Stipulation and Agreement settles all outstanding issues in Docket No. 020129-TP.
- Within 15 days of the Commission order approving this Stipulation and Agreement, BellSouth will modify its CCS7 tariff to (1) delete the provisions allowing it to bill carriers for signaling messages, and (2) increase the rate for local switching to the pre-January 18, 2002 level.
- BellSouth will not back bill customers for its decision to return to the higher local switching rate.
- BellSouth will refund to the Parties, in the form of a bill credit, the net difference between the CCS7 Signaling Usage charge and the local switching rate as it existed pre-January 18, 2002.
- The credit will occur within 60 days of Commission approval of this Stipulation and Agreement.

Staff understands that the Parties have agreed to the refund amounts, which were developed by comparing the pre- and post-January 18, 2002 signaling and local switching rates. Further, staff agrees with the Parties’ assertion that it is in the best interest of their customers to amicably resolve the remaining issues in this proceeding without the expenditure of additional time, money, and other resources in further litigation. Therefore, staff recommends that the Commission grant the Joint Motion filed by BellSouth Telecommunications, Inc, US LEC of Florida, Inc., MCI WorldCom Communications, Inc., and MCI Metro Access Transmission Services, LLC, for approval of their Stipulation and Agreement. If approved, staff recommends that the Stipulation and Agreement renders all issues previously voted on by the Commission and the remaining three issues moot.

Issue 2: Should the docket be closed?

Recommendation: If the Commission approves staff's recommendation on Issue 1, a Final Order will be issued. The docket should remain open to process the refunds. When BellSouth completes the refunds, this docket should be closed administratively. **(Teitzman)**

Staff Analysis: Upon the Commission's approval of Issue 1, a Final Order will be issued, and the docket should remain open to process the refunds. When BellSouth notifies the Commission in writing that it has completed the refunds, this docket should be closed administratively.