

State of Florida



Public Service Commission

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TALLAHASSEE, FLORIDA 32399-0850

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

DATE: October 20, 2005

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

FROM: Office of the General Counsel (Banks, Susac)
Division of Competitive Markets & Enforcement (Vinson, Dowds)

RE: Docket No. 041338-TP- Joint petition by ITC^DeltaCom Communications, Inc. d/b/a ITC^DeltaCom d/b/a Grapevine; Birch Telecom of the South, Inc. d/b/a Birch Telecom and d/b/a Birch; DIECA Communications, Inc. d/b/a Covad Communications Company; Florida Digital Network, Inc.; LecStar Telecom, Inc.; MCI Communications, Inc.; and Network Telephone Corporation ("Joint CLECs") for generic proceeding to set rates, terms, and conditions for hot cuts and batch hot cuts for UNE-P to UNE-L conversions and for retail to UNE-L conversions in BellSouth Telecommunications, Inc. service area.

Docket No. 040301-TP- Complaint of Supra Telecommunications and Information Systems, Inc. against BellSouth Telecommunications, Inc.

AGENDA: 11/01/05 – Regular Agenda – Proposed Agency Action – Interested Persons May Participate- Decision Prior to Hearing

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Bradley

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

FILE NAME AND LOCATION: S:\PSC\GCL\WP\041338.RCM.DOC

Case Background

On June 23, 2004, Supra Telecommunications and Information Systems, Inc. (Supra) filed its Amended Petition for Arbitration¹ with BellSouth Telecommunications, Inc. (BellSouth). The matter was eventually set a one-day hearing scheduled for December 2, 2004.

On November 23, 2004, ITC^DeltaCom Communications, Inc. d/b/a ITC^DeltaCom d/b/a Grapevine; Birch Telecom of the South, Inc. d/b/a Birch Telecom and d/b/a Birch; DIECA Communications, Inc. d/b/a Covad Communications Company; Florida Digital Network, Inc. d/b/a FDN Communications; LecStar Telecom, Inc.; MCI Communications, Inc.; and Network Telephone Corporation (Joint CLECs) filed a petition for a generic proceeding to set rates, terms and conditions for hot cuts and batch hot cuts for UNE-P (Unbundled Network Element-Platform) to UNE-L (Unbundled Network Element-Loop) conversions and for retail to UNE-L conversions in BellSouth Telecommunications, Inc.'s service area.

On November 29, 2004, BellSouth filed an Emergency Motion for Continuance of the hearing in Docket No. 040301-TP. In addition to asking the Commission for a continuance, BellSouth also requested that this docket be consolidated with Docket No. 041338-TP. BellSouth's Motion was granted in part, as to the request for continuance, by Order No. PSC-04-1180-PCO-TP, issued on November 30, 2004.

On February 8, 2005, Order No. PSC-05-0157-PCO-TP was issued. The Order, among other things, granted BellSouth's Emergency Motion for Continuance and consolidation of Docket Nos. 040301-TP and 041338-TP.

On April 20, 2005, the Order Establishing Procedure (OEP) was issued². The OEP provided that the hearing in this case would be bifurcated. Specifically, Issues 1-23, which address rates, terms and conditions for UNE-P to UNE-L conversions, were scheduled to be addressed in the October 2005 (Phase I) hearing. Because the parties advised Commission staff that Issues 24-26, which address rates, terms and conditions for line sharing and line splitting to UNE-L conversions, would likely be resolved informally, the OEP provided that the parties would have 60 days from the date of the OEP to negotiate Issues 24-26.

The parties have conducted negotiations in an attempt to resolve the issues in Phase I and Phase II of this proceeding. From July 20 to August 16, 2005, the parties filed several motions seeking continuance of this case and all were granted.

On September 30, 2005, on behalf of all parties, BellSouth filed a Joint Motion to Approve Stipulation. All issues in Phase I have been resolved by the parties with the exception of Issue 7. The parties are continuing to negotiate a resolution to Issue 7 as well as Phase II of this proceeding and will provide an update on the status of these items by October 31, 2005. The stipulation reached by the parties address the rates, terms and conditions for conversions, also

¹ Order No. PSC-04-0752-PCO-TP, issued August 4, 2004, determined that Supra's allegations arise from language in an existing agreement and therefore, as a procedural matter, will be processed as a complaint instead of an arbitration.

² The Order Establishing Procedure was amended by Order No. PSC-05-0433A-PCO-TP, which corrected the issues to be addressed in Phase I and Phase II of this proceeding.

Docket Nos. 041338-TP and 040301-TP

Date: October 20, 2005

known as hot cuts, of lines from one provider to another. The stipulation also addresses both single line conversions as well as multiple line conversions, which are known as batch hot cuts, or bulk migrations. This recommendation addresses whether the Joint Motion to Approve Stipulation should be approved.

Jurisdiction

The Commission is vested with jurisdiction in this matter pursuant to Sections 364.161 and 364.162, Florida Statutes, which authorize the Commission to arbitrate unbundling disputes, as well as disputes involving rates, terms and conditions within interconnection agreements.

Discussion of Issues

Issue 1: Should the Commission grant the Joint Motion Seeking Approval of Stipulation?

Recommendation: Yes. Staff recommends that the Commission grant the Joint Motion, thereby approving the Stipulation set forth in Attachment A to this recommendation. (BANKS, SUSAC, DOWDS, VINSON)

Analysis: Staff believes granting the Joint Motion and approving the Stipulation is in the best interest of the public because the rates, terms and conditions appear to be fair and reasonable.

Position of the Parties

In the Joint Motion, the parties request that the Commission adopt the resolutions contained in the stipulation as final Commission decisions on the issues as set forth in Attachment A. Key provisions of the stipulation include:

- The stipulation resolves all but one of the Phase I issues; however, the parties are continuing negotiations in an attempt to achieve resolution of the remaining issue.
- The hot cut processes allow Competitive Local Exchange Companies (CLECs) to order loops directly to a third party's collocation arrangement.
- BellSouth's CLEC-to-CLEC conversion processes now allow CLECs to convert from a UNE-P OCN (Operating Company Number) to a UNE-L OCN. The OCNs may be the same or different and may belong to a CLEC's affiliate or subsidiary.
- The parties have agreed that the maximum total number of hot cuts BellSouth should perform is limited to 200 conversions per day per central office, and hot cuts will be performed on a first-come, first-served basis.
- The parties have agreed on a set of non-recurring rates (contained in Appendix 3 to the stipulation) applicable to individual and batch hot cut scenarios. These rates will be available to any Florida CLEC, upon execution of an amendment to the CLEC's interconnection agreement. These rates will remain in effect for three years from their implementation.
- The parties have agreed that BellSouth maintains a list of first level edits that result in a bulk migration request being rejected back to the CLEC.
- The parties agree that no modifications to BellSouth's SEEMs or SQM need to be made due to actions in this docket.
- The Supra-specific issues originally raised in Docket No. 040301-TP have been voluntarily dismissed by BellSouth and Supra.

Discussion

Staff recommends granting the Joint Motion to Approve Stipulation. Staff agrees that it is in the parties' best interest for the issues in this docket to be resolved amicably. Moreover, approval of the Joint Motion appears to be fair and reasonable.

Specifically, BellSouth agrees to conduct testing with any interested CLEC to explore the feasibility of additional methods of hot cuts for lines served by IDLC (Integrated Digital Loop Carrier). Additionally, BellSouth agrees not to oppose a change control request to have multiple loop types on a bulk request. In regards to rates, the parties agree that the rate structure for hot cuts shall not differ based on whether a service converted from UNE-P is provisioned with IDLC, copper, or UDLC. To the extent that a CLEC submits conversion orders in a timely manner to meet the March 10, 2006, deadline and delays are attributed to BellSouth, BellSouth will continue to bill any affected UNE-P circuits at the Federal Communications Commission's transition rates until the requested conversion is completed.

Further, the parties stipulate that the non-recurring rates set forth in the Attachment A will be applicable to individual and batch hot cut conversions. BellSouth will make these rates available to any certificated Florida CLEC who has a current interconnection agreement and has adopted this entire stipulation.

Accordingly, staff recommends that the Commission grant the Joint Motion, thereby approving the Stipulation set forth in Attachment A to this recommendation.

Issue 2: Should these dockets be closed?

Recommendation: No. If no person whose substantial interests are affected by the proposed agency action files a protest within 21 days of the issuance of the order, the order will become final upon the issuance of a consummating order. However, this docket should remain open pending resolution of the unresolved issues in this case. If the parties fail to resolve the issues that remain, staff will bring this matter back before the Commission for resolution. (BANKS, SUSAC)

Staff Analysis: If no person whose substantial interests are affected by the proposed agency action files a protest within 21 days of the issuance of the order, the order will become final upon the issuance of a consummating order. However, this docket should remain open pending resolution of the unresolved issues in this case. If the parties fail to resolve the issues that remain, staff will bring this matter back before the Commission for resolution.