

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition of BellSouth
Telecommunications, Inc. to
remove interLATA access subsidy
received by St. Joseph Telephone
& Telegraph Company.

DOCKET NO. 970808-TL
ORDER NO. PSC-98-0639-PHO-TL
ISSUED: May 7, 1998

Pursuant to Notice, a Prehearing Conference was held on May 4, 1998, in Tallahassee, Florida, before Commissioner J. Terry Deason, as Prehearing Officer.

APPEARANCES:

Nancy B. White, Esquire, c/o Ms. Nancy H. Sims, 150
South Monroe Street, Suite 400, Tallahassee, Florida.
On behalf of BellSouth Telecommunications, Inc.

David B. Erwin, Esquire, 127 Riversink Road,
Crawfordville, Florida 32327
On behalf of GTC, Inc.

Tracy Hatch, Esquire, 101 North Monroe Street, Suite 700
Tallahassee, Florida 32301
On behalf of AT&T Communications of the Southern States,
Inc.

Beth Keating, Esquire, Florida Public Service Commission,
2540 Shumard Oak Boulevard, Tallahassee, Florida
32399-0850
On behalf of the Commission Staff.

DOCUMENT NUMBER-DATE

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FPSC-RECORDS/REPORTING

PREHEARING ORDER

I. CASE BACKGROUND

On July 1, 1997, BellSouth Telecommunications, Inc. (BellSouth) filed a Petition to Remove InterLATA Access Subsidy received by St. Joseph Telephone and Telegraph Company, which is now GTC, Inc. (GTC). On July 22, 1997, BellSouth filed a revised Petition. On August 11, 1997, GTC filed an Answer in opposition to BellSouth's revised Petition.

On April 6, 1998, GTC, Inc. filed a separate request to terminate the same interLATA access subsidy and convert those subsidy payments to access charges. We initially considered consolidating Dockets Nos. 970808-TL and 980498-TP for hearing. On May 4, 1998, the day of the prehearing conference, AT&T Communications of the Southern States, Inc. (AT&T) filed a petition to intervene in this proceeding. At the prehearing conference, AT&T also asked that it be allowed additional time to file testimony. The parties indicated that they did not oppose AT&T's intervention. Therefore, I granted AT&T's petition to intervene. I determined, however, that the dockets should not be consolidated for hearing, because the notice of hearing and prehearing was issued before the suggestion of consolidation arose, and, therefore, interested persons would not have notice that Docket No. 980498-TP would be addressed on the same hearing schedule.

In addition, I allowed AT&T additional time to file testimony and to present a witness. I also allowed the parties and Commission staff additional time to file testimony rebutting AT&T's testimony. I note that this Order is being issued prior to these extended filing dates; therefore, the list of witnesses and exhibits contained herein may not be fully inclusive of that which will be presented at hearing. My specific ruling on this matter is set forth in Section IX of this Order.

This matter has been set for hearing on May 20, 1998.

II. PROCEDURE FOR HANDLING CONFIDENTIAL INFORMATION

A. Any information provided pursuant to a discovery request for which proprietary confidential business information status is requested shall be treated by the Commission and the parties as

confidential. The information shall be exempt from Section 119.07(1), Florida Statutes, pending a formal ruling on such request by the Commission, or upon the return of the information to the person providing the information. If no determination of confidentiality has been made and the information has not been used in the proceeding, it shall be returned expeditiously to the person providing the information. If a determination of confidentiality has been made and the information was not entered into the record of the proceeding, it shall be returned to the person providing the information within the time periods set forth in Section 364.183(2), Florida Statutes.

B. It is the policy of the Florida Public Service Commission that all Commission hearings be open to the public at all times. The Commission also recognizes its obligation pursuant to Section 364.183, Florida Statutes, to protect proprietary confidential business information from disclosure outside the proceeding.

In the event it becomes necessary to use confidential information during the hearing, the following procedures will be observed:

- 1) Any party wishing to use any proprietary confidential business information, as that term is defined in Section 364.183, Florida Statutes, shall notify the Prehearing Officer and all parties of record by the time of the Prehearing Conference, or if not known at that time, no later than seven (7) days prior to the beginning of the hearing. The notice shall include a procedure to assure that the confidential nature of the information is preserved as required by statute.
- 2) Failure of any party to comply with 1) above shall be grounds to deny the party the opportunity to present evidence which is proprietary confidential business information.
- 3) When confidential information is used in the hearing, parties must have copies for the Commissioners, necessary staff, and the Court Reporter, in envelopes clearly marked with the nature of the contents. Any party wishing to examine the confidential material that is not subject to an order granting confidentiality shall be provided a copy in the same fashion as provided

to the Commissioners, subject to execution of any appropriate protective agreement with the owner of the material.

- 4) Counsel and witnesses are cautioned to avoid verbalizing confidential information in such a way that would compromise the confidential information. Therefore, confidential information should be presented by written exhibit when reasonably possible to do so.
- 5) At the conclusion of that portion of the hearing that involves confidential information, all copies of confidential exhibits shall be returned to the proffering party. If a confidential exhibit has been admitted into evidence, the copy provided to the Court Reporter shall be retained in the Division of Records and Reporting confidential files.

Post-hearing procedures

Rule 25-22.056(3), Florida Administrative Code, requires each party to file a post-hearing statement of issues and positions. A summary of each position of no more than 50 words, set off with asterisks, shall be included in that statement. If a party's position has not changed since the issuance of the prehearing order, the post-hearing statement may simply restate the prehearing position; however, if the prehearing position is longer than 50 words, it must be reduced to no more than 50 words. The rule also provides that if a party fails to file a post-hearing statement in conformance with the rule, that party shall have waived all issues and may be dismissed from the proceeding.

A party's proposed findings of fact and conclusions of law, if any, statement of issues and positions, and brief, shall together total no more than 60 pages, and shall be filed at the same time. The prehearing officer may modify the page limit for good cause shown. Please see Rule 25-22.056, Florida Administrative Code, for other requirements pertaining to post-hearing filings.

III. PREFILED TESTIMONY AND EXHIBITS

Testimony of all witnesses to be sponsored by the parties (and Staff) has been prefiled. All testimony which has been prefiled in this case will be inserted into the record as though read after the witness has taken the stand and affirmed the correctness of the testimony and associated exhibits. All testimony remains subject to appropriate objections. Each witness will have the opportunity to orally summarize his or her testimony at the time he or she takes the stand. Upon insertion of a witness' testimony, exhibits appended thereto may be marked for identification. After all parties and Staff have had the opportunity to object and cross-examine, the exhibit may be moved into the record. All other exhibits may be similarly identified and entered into the record at the appropriate time during the hearing.

Witnesses are reminded that, on cross-examination, responses to questions calling for a simple yes or no answer shall be so answered first, after which the witness may explain his or her answer.

IV. ORDER OF WITNESSES

<u>WITNESS</u>	<u>APPEARING FOR</u>	<u>ISSUE NO.</u>
<u>DIRECT</u>		
T.F. Lohman	BellSouth	All
Mike Guedel	AT&T	All
Dale Mailhot	Staff	All
<u>REBUTTAL</u>		
T.F. Lohman	BellSouth	All

V. BASIC POSITIONS

BELLSOUTH:

The Commission established the interLATA Access subsidy payment to GTC (and others) in 1985 and described it as a temporary, transition related payment that would be eliminated as circumstances changed. The intent of the subsidy was to

eliminate fluctuations in the rates companies charged customers, as the Commission worked its way through Bill and Keep for toll and access. The subsidy payments were never intended to be permanent nor extend beyond the transition to a full Bill and Keep system.

GTC is the only company currently receiving an interLATA subsidy payment, they have elected price regulation, and the transition to Bill and Keep for both toll and access has been completed. The Commission should eliminate the payment to GTC effective on the date it became price regulated (or earlier if they were overearning). This "temporary" subsidy has now run its course.

GTC:

The basic position of GTC is that the petition of BellSouth Telecommunications, Inc. (BellSouth) should be denied. Access charges collected by BellSouth for GTC should be paid directly to GTC by IXCs providing long distance service in GTC's territory.

AT&T:

BellSouth Telecommunications, Inc.'s (BellSouth's) request to eliminate its interLATA access charge subsidy payment to St. Joseph Telephone and Telegraph Company/GTC, Inc. (GTC) should be granted. To avoid a windfall to BellSouth, BellSouth should reduce its switched access charges by the amount of interLATA access subsidy that is eliminated. To the extent that GTC believes that the revenues lost from the elimination of its interLATA access subsidy must be replaced from other sources, it must demonstrate a need for such revenues.

The access subsidy mechanism was created to avoid adverse effects on any individual LEC stemming solely from the implementation of bill and keep for access charges. As a result, each LEC was kept on a revenue neutral basis. Those LECs experiencing a windfall from bill and keep were required to use such windfall to subsidize those LECs experiencing a shortfall. The access subsidy was created to avoid the probability of having thirteen simultaneous rate cases upon the implementation of access bill and keep. It was intended as a temporary mechanism that would last only until the

Commission could eliminate the subsidies through rate cases or other convenient proceedings.

STAFF:

Staff's positions are preliminary and based on materials filed by the parties and on discovery. The preliminary positions are offered to assist the parties in preparing for the hearing. Staff's final positions will be based upon all the evidence in the record and may differ from the preliminary positions.

VI. ISSUES AND POSITIONS

ISSUE 1: What is the interLATA access subsidy and why was the interLATA access subsidy established?

POSITION:

BELLSOUTH:

The subsidy was established by Order No. 14452 issued on June 10, 1985 as a transition from the pooling of access revenues to bill and keep.

GTC:

The interLATA access subsidy was created to end the pooling of access charges and move to a bill and keep system of access charges that would keep each company "...in the same financial position it would have been in prior to implementing bill and keep." (See Order NO. 14452, page 11, Docket No. 820537-TP.) The result of the methodology used was a "...respective shortfall or surplus from bill and keep for each company..." (See Order No. 14452, page 12, Docket No. 820537-TP.) The subsidy pool was established to maintain uniform access charges and to create a "wash;" it was funded by having each LEC contribute a portion of the access revenue received by the LEC. (See Order No. 14452, page 12, Docket No. 820537-TP.) In essence, BellSouth Telecommunications, Inc., as the subsidy pool administrator, has been collecting GTC, Inc.'s access charge revenue and paying that access charge revenue to GTC, Inc.

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AT&T:

The interLATA access subsidy mechanism is a transitory system of subsidy payments to those LECs that would have experienced a shortfall in access revenues if bill and keep had been implemented on a flashcut basis. The interLATA access subsidy mechanism was established to initially maintain revenue neutrality for each LEC to avoid revenue disruption relating to the implementation of bill and keep of access charges. The subsidy was intended to exist only as long as there was a demonstrated need.

STAFF:

Staff has no position at this time.

ISSUE 1b: What is the history of the interLATA access subsidy and how has Commission policy regarding the subsidy evolved since the subsidy was established?

POSITION:

BELLSOUTH:

The Commission has been proactive in eliminating the subsidy payments.

GTC:

The interLATA access subsidy has persisted for more than a decade, since it has taken different LECs differing amounts of time to exit the arrangement. Before the onset of price regulation the Commission considered earnings as the criteria for subsidy termination. Since price regulation the Commission has had no occasion to consider a non-consensual elimination of any LEC from the interLATA subsidy pool until BellSouth Telecommunications initiated this docket. Consequently, the Commission has not yet developed criteria for ending a subsidy under the law in effect for price regulated companies; under that law, earnings is not a lawful criteria for ending a subsidy.

AT&T:

From the inception of the access subsidy mechanism the Commission has reduced or eliminated the subsidy for each recipient in each practicable instance. In order to avoid a windfall to the contributors of the subsidies, commensurate with the reduction of the access charge subsidies, the Commission also reduced the revenues of the subsidy contributors by a like amount.

STAFF:

Staff has no position at this time.

ISSUE 2: Was the interLATA access subsidy pool intended to be a permanent subsidy? If not, what criteria should be used for ending the interLATA access subsidy pool?

POSITION:

BELLSOUTH:

No. The Commission has eliminated the subsidy payments when it appeared that the LEC receiving the payments no longer needed the payments.

GTC:

The interLATA subsidy pool was not intended to be a permanent subsidy. The interLATA subsidy pool should end at an appropriate time and through means that do not depart from the essential requirements of law. It should also end in a manner that furthers the original intent of the Commission to create a "wash" through the implementation of bill and keep. Converting to payment of access charge revenue directly to GTC would accomplish the intent of the Commission.

AT&T:

The interLATA subsidy pool was never intended to be permanent. Consistent with the Commission's prior policies, any continuation of the access subsidy should be contingent on a clear showing of need by GTC.

STAFF:

The interLATA access subsidy pool was intended to be a temporary subsidy. Staff has no position at this time on the second part of this issue.

ISSUE 3: What is the statutory authority for the BellSouth Telecommunications, Inc.'s proposal to eliminate the interLATA access subsidy of GTC, Inc.?

POSITION:

BELLSOUTH:

The Commission had the authority to impose the subsidy, it has the authority to eliminate the subsidy.

GTC:

There is no statutory authority for BellSouth Telecommunications, Inc.'s proposal to eliminate the interLATA access subsidy of GTC, Inc. The Commission has addressed the interLATA access subsidy through its orders, but it must be recognized that all of those orders were either issued before the Florida Telecommunications Act of 1995 or, in one instance, concerned a rate base regulated LEC (Frontier Communications of the South, Inc.). This is the first instance of an attempt to end the subsidy of a price regulated LEC under the new law.

AT&T:

The Commission's authority to oversee the continuing implementation of its orders allows the Commission to terminate the access subsidy payments to GTC by BellSouth. The Commission's authority to act in the creation and implementation of its access charge system and its associated mechanisms stems generally from Section 364.14, Florida Statutes. The adoption of the amendments to Chapter 364 in 1995 did not act as a general repealer of any prior lawful act of the Commission. The Commission's ability to oversee and enforce its prior orders remains unchanged. The current law

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will govern any new actions not encompassed in the Commission's prior orders.

STAFF:

Staff has no position at this time.

ISSUE 4: Considering that the rates of a small LEC electing price cap regulation may not be altered during the period rates are frozen, except as provided for in Section 364.051(5), Florida Statutes, may the subsidy in effect at the time price cap regulation was elected be discontinued during the period rates are frozen?

POSITION:

BELLSOUTH:

Yes. Section 364.051(5), Florida Statutes is applicable to the situation.

GTC:

No, GTC asserts the Commission cannot, as a matter of law, and should not, as a matter of policy, selectively alter one component of rates during the period they are frozen. The price cap regulation established in Section 364.051 is a series of checks and balances that are, in essence a legislatively crafted compromise between traditional, pervasive rate base regulation and no regulation at all. The quid pro quo of price cap regulation is that a company is freed from regulation of its rate of return, but, its rates are frozen for a period of at least three, and probably, five years. Thereafter, price increases are capped by the rate of inflation less one percent. Section 364.051(4), F.S. The Legislature did not anticipate that this would be a problem, because it did not anticipate that there would be on-going regulatory adjustments for a company electing price cap regulation, particularly adjustments based on traditional rate of return calculations. Converting to payment of access charges directly to GTC would overcome the problem raised by Issue 4.

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AT&T:

Yes. Section 364.051(5), Florida Statutes, provides an opportunity for each price-capped LEC to avoid the price caps upon a sufficient showing.

STAFF:

Staff has no position at this time.

ISSUE 5: Should the interLATA access subsidy received by GTC, Inc. be removed?

POSITION:

BELLSOUTH:

Yes.

GTC: The interLATA access subsidy should not be removed as long as rates are frozen under the new telecommunications law. There is one alternative approach to eliminating the access subsidy, however. The collection of access charges by BellSouth Telecommunications on behalf of GTC, Inc. could be ended, and the access charges could be paid directly to GTC, Inc. This would have the effect of terminating the subsidy. It would further the original intent of the Commission in the bill and keep docket to create a "wash". Although this methodology would create non-uniform access charges, that would be no problem, since the concept of uniform access charges, originally fostered by the Commission in the access bill and keep docket, was abandoned years ago. Converting to direct payment of access charges to GTC would permit elimination of the access subsidy and further the original intent of the Commission.

AT&T:

Yes. Access charge subsidy payments are inconsistent with the competitive environment as was determined by the Commission when the access subsidy mechanism was created. This is particularly true where the subsidy recipient has elected to avail itself of the competitive advantages of Chapter 364 and to forego the protective mechanisms of traditional regulation.

STAFF:

Staff has no position at this time.

ISSUE 6: If the access subsidy being paid to GTC, Inc. is eliminated, should BellSouth Telecommunications, Inc. be directed to cease collection of the access subsidy funds? If the access subsidy being paid to GTC, Inc. is eliminated, and collection of the access subsidy funds is not terminated, what disposition should be made of the funds?

POSITION:

BELLSOUTH:

BellSouth has completely eliminated any surplus by reducing access charges well over \$2.7. million since 1985.

GTC: If the access subsidy being paid to GTC, Inc. is eliminated, BellSouth Telecommunications should be directed to cease collection of the subsidy funds. The money that makes up the subsidy is access charge revenue from IXC's. BellSouth Telecommunications is merely the subsidy administrator through which the IXC access charge revenue flows from the IXCs to GTC, Inc. This money could just as well flow directly to GTC, Inc. (See the Position of GTC, Inc. to Issue 5 , above.)

AT&T:

Yes. The access subsidy payments to GTC should be terminated and BellSouth should be directed to reduce its access charges by the amount of the access subsidy. Since the revenues that feed the subsidy payments made by BellSouth are collected from IXCs in the form of access charges, the only appropriate disposition of access revenue windfall is to reduce BellSouth's switched access charges.

STAFF:

Yes. If the access subsidy payment to GTC is eliminated, BellSouth should be directed to cease collection of the access subsidy funds. Staff has no position on the second part of this issue at this time.

ISSUE 7: If the subsidy should be removed, should it be removed entirely at one time, or should the subsidy be phased out over a certain time period?

POSITION:

BELLSOUTH:

The subsidy should be eliminated entirely at one time.

GTC:

If the subsidy is removed, it should be phased out over a period of time beginning at the time when GTC can legally raise rates to offset the loss of the subsidy. If, however, there is a conversion to a direct payment of access charges to GTC, Inc., with elimination of the subsidy administrator, the removal could be accomplished at one time.

AT&T:

GTC's subsidy should be eliminated immediately. GTC has received an access subsidy for over a decade. GTC's election to pursue the competitive path pursuant to Chapter 364 makes continuation of the subsidy even more inconsistent with a competitive market place. If a phase-down of the subsidy is deemed absolutely necessary, it should be accomplished in as short a time as possible.

STAFF:

Staff has no position at this time.

ISSUE 8: If the subsidy should be removed entirely at one time, on what date should the removal be effective?

POSITION:

BELLSOUTH:

June 25, 1996, when GTC's price regulation was effective or the date GTC first had overearnings, whichever is earlier.

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GTC: If the subsidy is removed at one time, it should be removed at the time when GTC can legally raise rates to offset the loss of the subsidy or at the time the access subsidy is converted to a direct payment of access charges to GTC.

AT&T:

The subsidy should be removed and BellSouth's access charges reduced no later than October 1, the date the access charge reductions of all LECs are required.

STAFF:

Staff has no position at this time.

ISSUE 9: If the subsidy should be phased out, over what time period should the phase out take place and how much should the reduction of the subsidy be in each period?

POSITION:

BELLSOUTH:

Equally over 3 years starting from the earlier of when GTC first overearned or when GTC price regulation was effective.

GTC: If the subsidy should be phased out, it should be phased out over the period of time it takes GTC to lawfully increase its basic local rates to offset the loss of the subsidy.

AT&T:

If a phase-down of the subsidy is deemed absolutely necessary, it should be accomplished in as short a time as possible.

STAFF:

Staff has no position at this time.

VII. EXHIBIT LIST

<u>WITNESS</u>	<u>PROFFERED BY</u>	<u>I.D. NUMBER</u>	<u>DESCRIPTION</u>
T.F. Lohman	BellSouth	_____ (TFL-1)	History
		_____ (TFL-2)	Florida Access Line Statistics

Parties and Staff reserve the right to identify additional exhibits for the purpose of cross-examination.

VIII. PENDING MOTIONS

BellSouth's Motion to Hold Subsidy Payments in Escrow or, in the Alternative, Make Subsidy Payments Subject to Refund, filed March 25, 1998. This is currently scheduled to be addressed separately at our May 19, 1998, Agenda Conference.

IX. RULINGS

AT&T's May 4, 1998, Petition to Intervene is granted, and AT&T shall be permitted additional time to file testimony on April 8, 1998. AT&T shall ensure delivery of its prefiled testimony in the most expeditious manner possible. In addition, the parties and staff shall be allowed to file testimony responding to AT&T's testimony, if necessary, by May 15, 1998.

It is therefore,

ORDERED by Commissioner J. Terry Deason, as Prehearing Officer, that this Prehearing Order shall govern the conduct of these proceedings as set forth above unless modified by the Commission. It is further

ORDERED that AT&T Communications of the Southern States, Inc.'s Petition to Intervene is granted. It is further

ORDERED that AT&T shall be permitted an extension until May 8, 1998, to file testimony in this Docket, and the parties and Commission staff shall be allowed until May 15, 1998, to respond to AT&T's testimony.

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By ORDER of Commissioner J. Terry Deason, as Prehearing
Officer, this 7th day of May, 1998.



J. Terry Deason, Commissioner
and Prehearing Officer

(S E A L)

BK

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.59(4), 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 this order, which is preliminary, procedural or intermediate in nature, may request: 1) reconsideration within 10 days pursuant to Rule 25-22.038(2), Florida Administrative Code, if issued by a Prehearing Officer; 2) reconsideration within 15 days pursuant to Rule 25-22.060, Florida Administrative Code, if issued by the Commission; or 3) 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 or wastewater utility. A motion for reconsideration shall be filed with the Director, Division of Records and Reporting, in the form prescribed by Rule 25-22.060, Florida Administrative Code. Judicial review of a preliminary, procedural or intermediate ruling or order is available if review of the final action will not provide an adequate remedy. Such review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.