



Public Service Commission

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

JUL 23 PM 12:39
REPORTING

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

ORIGINAL

DATE: JULY 23, 1998

TO: DIRECTOR, DIVISION OF RECORDS AND REPORTING (BAYO)

FROM: DIVISION OF AUDITING AND FINANCIAL ANALYSIS (WRIGHT, 198
HACKNEY) & H
DIVISION OF COMMUNICATIONS (AUDU) A
DIVISION OF LEGAL SERVICES (B. KEATING) BK mib

RE: DOCKET NO. 970808-TL - PETITION OF BELLSOUTH
TELECOMMUNICATIONS, INC. TO REMOVE INTERLATA ACCESS
SUBSIDY RECEIVED BY ST. JOSEPH TELEPHONE & TELEGRAPH
COMPANY

AGENDA: 08/04/98 - REGULAR AGENDA - POST-HEARING DECISION -
PARTICIPATION IS LIMITED TO COMMISSIONERS AND STAFF

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: NONE

FILE NAME AND LOCATION: S:\PSC\AFA\WP\970808.RCM

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. By Order No. PSC-98-0639-PHO-TL, issued May 7, 1998, AT&T's petition to intervene was granted. A hearing was held in this Docket on May 20, 1998. Staff's recommendation on the issues is set forth below.

DOCUMENT NUMBER-DATE

07800: JUL 23 8 407

FPSC-RECORDS/REPORTING

DISCUSSION OF ISSUES

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

RECOMMENDATION: The interLATA access subsidy is a temporary mechanism that the Commission established to ease the transition from an access charge pooling environment to a bill and keep environment for access charges. The parties and staff agree that this was the reason the subsidy was established. (HACKNEY)

POSITION OF THE PARTIES

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.

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 avoid revenue disruption relating to bill and keep of access charges until a subsidy recipient's rates were adjusted to operate on a stand-alone basis.

GTC: The interLATA Access subsidy was created to end access charge pooling, maintain uniform access charges and move to a bill and keep system while maintaining each company's pre-bill and keep financial position. From the beginning BellSouth, the designated administrator, has collected IXC access charge revenue and paid it to GTC.

STAFF ANALYSIS: BellSouth witness Lohman testifies that the interLATA access subsidy was established by the Commission in Order No. 14452, issued on June 10, 1985, as a transition from the pooling of access revenues to a more appropriate approach of each company keeping the revenue it receives for use of its local facilities. The Commission recognized that all of its access plans, such as bill and keep of LEC toll, could not be implemented at that time and found that the establishment of a temporary subsidy pool was in the public interest. The plan was established so that there was a "wash" on companies' earnings. (TR 12,13)

In its brief, AT&T argues that the interLATA access subsidy mechanism is a transitional system of subsidy payments to those LECs that would have experienced a shortfall in access revenues if

DOCKET NO. 970808-TL

DATE: July 23, 1998

bill and keep had been implemented on a flashcut basis. (AT&T BR 2)

GTC states in its brief that the interLATA access subsidy was created to end access charge pooling, maintain access charges, and move to a bill and keep system while maintaining each company's pre-bill and keep financial position. (GTC BR 1)

Staff witness Mailhot also states in his testimony that the subsidy pool was established as a temporary mechanism to ease the transition from an access charge pooling environment to a bill and keep environment for access charges. (TR 119)

Staff agrees that the subsidy was established for the purpose of making the transition easier for the LECs in going from a pooling environment for interLATA access charges to the more equitable bill and keep environment.

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?

RECOMMENDATION: Under the original interLATA subsidy pool six companies were receiving subsidy payments; however, since the beginning of price cap regulation, GTC, Inc. has been the only company receiving an interLATA access subsidy payment. Originally, all of the LECs contributed to the pool, but at the present time BellSouth is the only contributor to the pool.

Under rate of return regulation, the Commission reduced or eliminated the subsidy when a company was overearning. In turn, the Commission has ordered the payor(s) to either reduce a rate or set aside the monies pending further Commission action, so that the payor(s) of the subsidy would not receive a windfall when the subsidy was eliminated. (HACKNEY)

POSITION OF THE PARTIES

BELLSOUTH: The subsidy was established as a temporary, transition related payment that would be eliminated as circumstances changed. Over the years, the Commission has been proactive in eliminating the subsidy payments.

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.

GTC: The interLATA access subsidy began in 1985. Before price regulation, the Commission considered rate base, rate of return over-earnings as the criteria for subsidy termination. The Commission has not developed criteria for terminating the subsidy of a price regulated company. Earnings would not be a lawful criteria under current law.

STAFF ANALYSIS: BellSouth witness Lohman states that under the original subsidy pool, six companies received subsidy payments. These companies were ALLTEL, Gulf, Indiantown, Northeast, GTC, and United. (TR 16) Witness Lohman details the history of the reduction or elimination of the subsidy receipts for the six original companies in his exhibit, TFL-1, EXH 2, as well as in his testimony. (TR 16-20) The Commission eliminated the subsidy for

DOCKET NO. 970808-TL

DATE: July 23, 1998

Gulf in 1988. See Order No. 19692, issued July 19, 1988, in Docket No. 820537-TP. In that Order, the Commission noted that, at the same time Gulf was overearning, it was also receiving a subsidy from the interLATA subsidy pool. The Commission found it inappropriate that Gulf should receive the subsidy in light of its then current earnings posture. Accordingly, effective August 1, 1988, the Commission ordered that Gulf would no longer receive an interLATA access subsidy. (TR 7-8)

The next company to have the subsidy removed was Indiantown. In Order No. 21954, issued September 27, 1989, the Commission stated that because of Indiantown's current and anticipated earnings situation, it found it was inappropriate for Indiantown to continue to receive the subsidy. Thus, effective September 1, 1989, its subsidy was eliminated. (TR 8) In that same order, United's subsidy was also eliminated, also effective September 1, 1989. (EXH 2)

Witness Lohman asserts that Northeast's subsidy was removed in 1993 by Order No. PSC-93-0228-FOF-TL, issued February 10, 1993. The Commission took this action based upon Northeast's level of earnings and the stimulation which was occurring with the \$.25 ECS calling plan from MacClenny to Jacksonville. (TR 18)

Witness Lohman also explained that ALLTEL's subsidy was reduced several times in disposing of several years of overearnings, and then eliminated totally in 1995. The company's 1991 overearnings were disposed through a subsidy reduction (effective April 1, 1992) in Order No. PSC-92-0028-FOF-TL, issued March 10, 1992. (TR 18) In Orders No. PSC-93-0562-FOF-TL (issued April 13, 1993), PSC-93-1176-FOF-TL (issued August 10, 1993), and PSC-94-0383-FOF-TL (issued March 31, 1994), the Commission made further reductions to ALLTEL's subsidy due to overearnings. Finally, in Order No. PSC-95-0486-FOF-TL, issued April 13, 1995, the Commission reduced the 1994 subsidy amount and eliminated the subsidy, effective July 1, 1995, based upon 1994 overearnings. (TR 18-19; EXH 2)

Finally, Witness Lohman testifies that in 1989, in Order No. 22284, issued December 11, 1989, the Commission accepted GTC's proposal to reduce its interLATA subsidy by \$300,000. The company had proposed this reduction in the subsidy because the lowering of its authorized range of return on equity would have otherwise resulted in overearnings. The Commission felt that GTC would have sufficient earnings to absorb the reduction in its subsidy and still earn within its newly authorized range of return on equity. (TR 19-20) Staff witness Mailhot stated in his testimony that GTC

DOCKET NO. 970808-TL

DATE: July 23, 1998

has been the only company receiving an interLATA subsidy since the beginning of price cap regulation. (TR 119)

The parties and staff agree that the history shows that the main criterion the Commission used to reduce or eliminate the subsidy of a rate base regulated company was earnings. BellSouth witness Lohman asserted that when the subsidy was established in Order No. 14452 the Commission stated clearly that it would not be logical to provide a subsidy to a LEC that was in an overearnings position. (TR 13) The detailed history in his testimony shows that in all previous reductions or eliminations of the interLATA subsidy, the company involved was in an overearnings situation and the Commission determined that the LEC no longer needed the subsidy. (TR 16-20) Staff witness Mailhot states that prior to the beginning of price cap regulation, earnings were the only criterion used by the Commission for ending the subsidy. If the company had sufficient or excess earnings, the subsidy was often eliminated by specific action of the Commission in a Modified Minimum Filing Requirements docket or in an overearnings investigation. (TR 119)

In its brief, GTC agrees that before price regulation, the Commission considered rate base, rate of return overearnings as the criterion for subsidy termination and agreed that there is not much of an argument among the parties about the history of the subsidy, or what the criterion was for individual company subsidy termination before the passage of price cap regulation. (GTC BR 3) In its brief, AT&T states that, beginning with Order No. 14452, virtually every order issued by the Commission involving the access subsidy mechanism indicated that the subsidy would be reduced or eliminated as the earnings of the recipient LECs would allow. (AT&T BR 7)

The record shows that prior to a company electing price cap regulation, the Commission used the earnings situation of the company as the criterion when reducing or eliminating the subsidy. (TR 16-20) The five companies which have had the subsidy eliminated were rate of return companies at the time the Commission eliminated the subsidy and all five were overearning. GTC, the only company still receiving the interLATA subsidy, had its subsidy amount reduced based upon its earnings when it was still under rate of return regulation. (EXH 2)

The record also shows that the payor(s) of the subsidy were required to reduce some rate or the monies were set aside pending Commission action. BellSouth's witness Lohman testified on cross examination that, in the past, when the subsidy was reduced or

DOCKET NO. 970808-TL

DATE: July 23, 1998

terminated, BellSouth was required to reduce charges in some area or make some other type of reduction. He also stated that any monies that were set aside pending further action were eventually disposed of by the Commission. (TR 78-79)

AT&T's witness Guedel also asserts that, when the Commission removed a subsidy, it also reduced the rates of the payor to prevent a windfall profit. (TR 114)

Staff's witness Mailhot also indicates that in prior cases when the Commission eliminated the payment of the subsidy to a company, the Commission also ordered the payor of the subsidy to reduce some rate by an amount equal to the subsidy payment. Witness Mailhot explains that this was to keep the payor of the subsidy whole but preclude a windfall, which was one of the goals of the bill and keep docket. (TR 121) The record shows that this policy was designed to keep all the subsidy participants revenue neutral. (TR 114, 121)

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?

RECOMMENDATION: No. The interLATA access subsidy pool was not intended to be a permanent subsidy. The primary criterion that should be used for ending the interLATA access subsidy pool is whether there have been changes in a company's circumstances that support termination of the subsidy. (HACKNEY)

POSITION OF THE PARTIES

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

AT&T: No. 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.

GTC: The interLATA subsidy pool was not intended to be permanent, but it should end through means that do not depart from the essential requirements of law and in a manner that furthers the original intent of the Commission to create a "wash" through the implementation of bill and keep.

STAFF ANALYSIS: Staff witness Mailhot in his testimony states that, in Order No. 14452, the Commission established the interLATA subsidy pool as a temporary mechanism to ease the transition from an access charge pooling environment to a bill and keep environment for access charges. (TR 119) BellSouth witness Lohman also asserts that the Commission never envisioned that the access subsidy would be permanent. (TR 15) AT&T witness Guedel and GTC both agree that the subsidy pool was a temporary mechanism and not intended to be permanent. (TR 98; GTC BR 5) The parties agree that the interLATA subsidy pool was to be a temporary mechanism and was never envisioned to be permanent.

The parties do not agree, however, what criteria should be used to end the interLATA subsidy pool. BellSouth witness Lohman states that he believes that earnings or other changes in circumstances should be the criteria utilized. (TR 21) He testifies that in Order No. PSC-92-0028-FOF-TL the Commission stated that its intent was for the access subsidy to last only until it was presented with an opportunity to address each

company's particular circumstances through a rate case or other proceeding. (TR 15) He adds that in Order No. PSC-95-0486-FOF-TL the Commission stated that it had removed LECs from the interLATA subsidy pool when it appeared that the LEC no longer needed the subsidy. (TR 18) Witness Lohman states that under Section 364.051(5), Florida Statutes (F.S.), a company that is still in the subsidy pool and under price cap regulation may use changed circumstances as the avenue to restructure its rates to cover the subsidy elimination, by petitioning the Commission for a rate increase. (TR 24)

In its brief, AT&T states that any continuation of the access subsidy should be contingent on a clear showing of need by the LEC -- in this case, GTC. AT&T believes that this would be consistent with the Commission's prior policies. (AT&T BR 7)

Staff witness Mailhot testifies that the Commission could, in addition to earnings, examine whether the subsidy payments still maintain uniform statewide access charges as a criterion for ending the interLATA subsidy pool. He states that maintenance of uniform charges was one of the primary reasons for establishing the subsidy payments when the interLATA access charge pooling arrangement ended. Uniform statewide access charges were believed to be needed to avoid having IXCs serve only those parts of the state that had low access charges. (TR 120) He also testifies that with the institution of price cap regulation in 1995, the lack of regular earnings information from price cap companies could also be used in determining whether or not to end the pool. (TR 119-121)

GTC addresses this question in its brief. It argues that earnings would not be a lawful criterion for a price cap company under the current law. It further states that the subsidy pool should end only through means that do not depart from the essential requirements of the law and in a manner that furthers the Commission's original intent to create a "wash" through the implementation of bill and keep. (GTC BR 5) The company suggests that one criterion that the Commission could use is when a company can legally raise rates to offset the loss of its subsidy revenue (since the subsidy is one of the components of the revenue stream that has been frozen by price regulation). (GTC BR 4)

The record shows that the Commission's intent was to have the access subsidy last only until it was able to address each company's circumstances and staff believes that changed circumstances should continue to be the criterion for determining if the subsidy should be eliminated. Staff also agrees with BellSouth that pursuant to Section 364.051(5), F.S., changed

DOCKET NO. 970808-TL

DATE: July 23, 1998

circumstances can be used as the basis for a price cap company petitioning the Commission for a rate increase

Staff disagrees with GTC's argument that the Commission should consider whether the company is capable of raising its rates in determining whether the subsidy should be eliminated. Section 364.051(5), F.S., states that a price cap company can petition the Commission for a rate increase if circumstances change substantially. Therefore, the Commission should not use rate raising ability as a criterion for determining whether to end the subsidy since that option is always legally available. Moreover, GTC has the ability to raise rates for non-basic services, per Section 364.051(6)(a), F.S.

Staff agrees with witness Mailhot that under price cap regulation, the Commission no longer has regular earnings information available to review to determine whether a company still needs a subsidy. Staff believes this makes using earnings as a criterion in ending the subsidy very difficult. Therefore, staff concludes that changed circumstances, such as the election of price regulation, should be the primary criterion used by the Commission in ending the interLATA subsidy pool.

DOCKET NO. 970808-TL

DATE: July 23, 1998

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

RECOMMENDATION: As set forth in Order No. 14452, the Commission had the authority to establish the interLATA access subsidy; therefore, it has the authority to eliminate it. (B. KEATING)

POSITION OF THE PARTIES

BELLSOUTH: The Commission had the authority to impose the subsidy; it has the authority to eliminate the subsidy.

AT&T: The Commission has the authority to enforce its prior orders lawfully enacted prior to the adoption of the 1995 amendments to Chapter 364. In addition, the Commission has the authority to eliminate GTC's subsidy pursuant to Section 364.01(4), Florida Statutes.

GTC: There is no statute specifically granting authority to eliminate the interLATA access subsidy of GTC. Subsidy creation and termination has only been addressed in Commission orders. All such orders relating to interLATA subsidies predate the Florida Telecommunications Act of 1995, which established price regulation.

STAFF ANALYSIS:

BellSouth's Argument

As BellSouth explains in its brief, by Order No. 12765, issued December 9, 1983, in Docket No. 820537-TP, the Commission established the access charges that interexchange telecommunications companies pay local telecommunications companies for the use of the local network. BellSouth states that the Commission took this action in accordance with the Modified Final Judgment, U.S. v. ATT, 552 F.Supp. 131(D.D.C. 1982) and action in FCC Docket 78-72. (BR 5) See also Order 12765, p. 4. Thereafter, by Order No. 14452, the Commission established the interLATA access subsidy to ensure that all LECs would be compensated for the use of their facilities without increases in local rates. (BellSouth BR 5) Because the Commission had the authority to implement the interLATA access subsidy, BellSouth argues, it has equal authority to terminate it. (BellSouth BR 6; Lohman, TR 13)

BellSouth claims that the Commission clearly recognized from the beginning that the subsidy was temporary and that it could

terminate the subsidy. BellSouth asserts that GTC is attempting to use its election of price regulation as a shield to protect it from elimination of the subsidy payment. (BellSouth BR 5) BellSouth argues that GTC should not be protected from elimination of the subsidy simply because GTC voluntarily elected to be price regulated. BellSouth further argues that GTC's election of price regulation is, in fact, a reason the Commission could consider in eliminating the subsidy for GTC. (BellSouth BR 6) BellSouth adds that if the Commission determines that it does not have the authority to terminate the subsidy to GTC, then it must also determine that it has no authority to require BellSouth to continue the payment. (BellSouth BR 7)

GTC's Argument

GTC asserts that there is no specific statutory authority that permits the Commission to terminate the interLATA subsidy payment to GTC. GTC states that the subsidy and its history has only been addressed in Commission orders. (GTC BR 6) GTC argues that one cannot rely on prior Commission orders terminating the subsidy for other LECs as authority to terminate the subsidy here, because those orders were issued prior to the Florida Telecommunications Act of 1995, which established price regulation. GTC further contends that the Commission must not rely on rate of return regulation considerations in addressing BellSouth's petition, but must consider new approaches more appropriate for the current regulatory scheme. (GTC BR 6)

Essentially, GTC argues that because it is now price regulated, and the Commission has never eliminated the subsidy for a price-regulated LEC, then the Commission cannot now eliminate the subsidy for GTC -- at least not based upon the criteria used by the Commission in past cases. (BR 6) GTC asserts that the Commission has used earnings as the criteria for termination of the subsidy for rate of return regulated LECs in the past. GTC asserts, however, that earnings is a meaningless criteria when applied to a price regulated LEC, which is exempt from rate base, rate of return regulation pursuant to Section 364.051(1)(c), F.S. (GTC BR 6)

In addition, GTC notes staff witness Mailhot's suggestion that the Commission could allow GTC to increase its access charges and require BellSouth to decrease its access charges in an amount equal to the subsidy as an alternative to simply eliminating the subsidy. (Mailhot TR 120-121) GTC asserts that witness Mailhot's proposal is a "workable solution" that would balance the interests of all parties. (GTC BR 6)

DATE: July 23, 1998

AT&T's Argument

In its brief, AT&T argues that the Commission has the authority to "oversee the continuing implementation of its orders." AT&T also argues that the Commission's prior lawful actions were not repealed by the enactment of the Florida Telecommunications Act of 1995; therefore the Commission's authority and oversight with regard to its prior orders is still in effect. (AT&T BR 8)

AT&T also argues that Section 364.01(4)(g), F.S., requires the Commission to ensure that all providers of telecommunications services are treated fairly. (AT&T BR 8; Guedel TR 98, 113) According to AT&T, it is clearly unfair for IXCs to subsidize GTC's revenues through the payment of switched access charges to BellSouth. AT&T states that receipt of the subsidy constitutes anticompetitive behavior. Thus, AT&T argues, the subsidy can and should be eliminated. (AT&T BR 8)

Discussion

Based upon the evidence and the arguments presented, staff believes that the Commission has the authority to eliminate the subsidy payment to GTC because the Commission had the authority to establish the subsidy in the first place. (See Order 14452 at p. 12 ("[W]e find that a temporary subsidy pool is required and is in the public interest.")). Elimination of the subsidy payment to GTC does not conflict in any way with Section 364.051, F.S. Staff also believes that the enactment of the Florida Telecommunications Act of 1995 did not impair the Commission's authority to implement and enforce its prior, lawfully enacted orders regarding the subsidy.

Staff agrees with AT&T and BellSouth that the Commission has continuing authority over its prior orders. The parties and staff also agree that the Commission lawfully implemented this subsidy. Staff believes, therefore, that the Commission can lawfully terminate this subsidy. Staff does not believe that the fact that GTC is now price regulated alters the Commission's authority with regard to this subsidy, which was implemented by the Commission prior to GTC's election of price regulation. In fact, it seems quite appropriate that the Commission should remove a revenue support instituted when the company was under rate of return regulation when that company becomes price regulated. (Lohman TR 54)

Staff also notes that each of the parties has agreed that the interLATA subsidy was clearly intended to be temporary. (See Order

DOCKET NO. 970808-TL

DATE: July 23, 1998

No. 14452; BellSouth BR 4; AT&T BR 7, GTC BR 5). The Commission has, in fact, eliminated the subsidy for each of the other original participants in the pool, except GTC. (Mailhot TR 119; EXH 1) The Commission has not eliminated a subsidy payment for a LEC after it has elected price regulation, nor has it been asked to do so -- until now. (Mailhot TR 119)

Staff does not, however, agree with GTC's argument that simply reviewing earnings criteria to determine the impact of removing the subsidy payment amounts to rate of return regulation. Although the Commission has, in the past, used earnings to determine whether a subsidy payment should be removed, earnings have never been identified as the sole criteria. Staff believes, therefore, that the Commission could eliminate the subsidy if it finds that the subsidy has fulfilled its stated purpose "to have a 'wash' when implementing bill and keep. . ." and if it determines that elimination of the subsidy is in the public interest. Order No. 14452 at 12. Traditional, rate of return earnings information is not necessarily the only evidence that may indicate a "wash" or public interest.

Finally, staff does not agree with AT&T that receipt of the subsidy amounts to an "anticompetitive behavior" under 364.01(4)(g), F.S. Staff does agree, however, with AT&T that the continued subsidization of GTC's revenues is contrary to Commission statements in Order No. 14452 that:

Doing away with pooling of access revenues is in the public interest in that the inequities inherent in pooling are being replaced with the more appropriate approach of each company keeping the revenue it receives for use of its local facilities. We recognize that discontinuance of the access pool is not complete because we have established a temporary subsidy pool. However, our implementation plan is an important first step in this complex process.

Order No. 14452 at p. 13.

For all of these reasons, staff believes that the Commission has the authority to terminate the interLATA subsidy payment to GTC.

DOCKET NO. 970808-TL

DATE: July 23, 1998

ISSUE 4: Considering that the rates of a small LEC electing price 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?

RECOMMENDATION: Yes. The fact that GTC's basic rates are currently frozen does not alter the Commission's ability to terminate the subsidy payment as explained in Issue 3. (B. KEATING)

POSITION OF THE PARTIES

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

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

GTC: 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.

STAFF ANALYSIS:

BellSouth's and AT&T's Argument

BellSouth argues that the Commission may terminate the subsidy payment to GTC even though GTC's basic rates are frozen, because Section 364.051(5), F.S., provides that GTC may petition the Commission for a rate increase if it believes that circumstances have changed substantially to justify an increase. (BellSouth BR 7-8) AT&T also asserts that the Commission can terminate the subsidy payment, because Section 364.051(5), F.S., allows GTC to petition for rate relief upon a showing of changed circumstances. (AT&T BR 10)

GTC's Argument

GTC argues that Section 364.051, F.S., creates a balance between rate of return regulation and no regulation by freezing rates for a certain time, and then allowing rates to increase a limited amount over time. (GTC BR 8) GTC asserts that termination of the subsidy payment would significantly alter the approach set forth in Section 364.051, F.S., because it would eliminate a component of GTC's revenues during a period when the company's

rates are frozen. GTC claims that it would be unable to recover the lost revenue and would be forced into a "lose-lose" situation. (GTC BR 8) GTC contends that if the subsidy payment is terminated, it will be the only LEC to have its access charges reduced simply because it elected price regulation. GTC argues that termination of the subsidy would be ". . . an adjustment which is either an unlawful rate of return calculation or an arbitrary determination based upon nothing put forth in evidence in this docket." (GTC BR 9)

Discussion

Staff agrees with BellSouth and AT&T that the fact that GTC's basic rates are currently frozen does not alter the Commission's ability to terminate the subsidy payment as explained in Issue 3. Section 364.051(5), F.S., states, in pertinent part:

Notwithstanding the provisions of subsection (2), any local exchange telecommunications company that believes circumstances have changed substantially to justify any increase in the rates for basic local telecommunications services may petition the commission for a rate increase, but the commission shall grant such petition only after an opportunity for a hearing and a compelling showing of changed circumstances.

If GTC believes that termination of the subsidy payment to GTC amounts to a changed circumstance that justifies a rate increase, GTC may seek relief pursuant to Section 364.051(5), F.S., and GTC need not find itself in a "lose-lose" situation. It may petition for relief if necessary.

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

RECOMMENDATION: Yes. The interLATA bill and keep access subsidy received by GTC, Inc. should be discontinued. (AUDU, WRIGHT)

POSITION OF THE PARTIES

BELLSOUTH: Yes. GTC's election of price regulation constitutes a changed circumstance sufficient to warrant elimination of the subsidy.

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.

GTC: No, not as long as rates are frozen, but there is one alternative approach that would eliminate the access subsidy and further the original intent of the Commission to create a "wash." BellSouth could cease collecting access charges for GTC, and IXCs could pay access charges directly to GTC.

STAFF ANALYSIS: In his testimony, BellSouth witness Lohman argues that the Commission had the authority to impose the interLATA access subsidy, and therefore has the authority to eliminate the subsidy. Witness Lohman argues that the Commission has generally reduced or eliminated the interLATA access subsidy either because companies asked to be relieved from participating in the pool or companies experienced changed circumstances, such as overearnings. Witness Lohman further argues that these criteria - earnings or changes in circumstances - are appropriate reasons for discontinuing the subsidy, and should be the criterion used in this proceeding. (TR 21-22) Witness Lohman asserts that the Commission's acknowledgment of GTC's election of price regulation is a Commission action that provides the impetus to eliminate a temporary payment to GTC. (TR 34) Witness Lohman contends that GTC's election of price regulation is a major change in circumstances that calls for the elimination of the subsidy payment to GTC. (TR 22) The BellSouth witness asserts that the subsidy payment was intended to be a temporary relief measure and was to be removed as each company's circumstances changed. Witness Lohman argues, therefore, that GTC's election of price regulation is a substantial change from rate base, rate of return regulation and

warrants elimination of the subsidy from the point at which GTC elected price regulation. (TR 27, 49, 54)

AT&T witness Guedel argues that GTC should not be allowed to use its election of price regulation "as a shield to forever protect the continued flow of subsidy dollars." Witness Guedel argues that the subsidy dollars were intended to render support only during a transitional phase to bill and keep. (TR 98)

Staff witness Mailhot argues that the interLATA toll bill and keep subsidy should be removed if the Commission determines that it is appropriate to rely upon GTC's earnings as a criterion, and GTC's earnings support the elimination of the subsidy. Witness Mailhot asserts that using GTC's earnings as a criterion for removal of the subsidy is consistent with prior Commission decisions. (TR 120) He also suggests that an alternative may be to terminate the subsidy, allow GTC to increase its access charges, and require BellSouth to reduce its access charges by the amount of the subsidy. As witness Mailhot states, when the subsidy pool was established, the payments made into the pool by each company, including BellSouth, came from its access charges. In effect, BellSouth collects access charges for GTC and then passes this revenue on to GTC in the form of subsidy payments. The Commission could have adjusted each company's access charges to eliminate the subsidy system in a generic proceeding, once access charges became nonuniform, but did not. (TR 120) Witness Mailhot recommends, therefore, that the Commission terminate the subsidy to GTC, and allow GTC to increase its access charges, and require BellSouth to reduce its access charges. (TR 120, 121)

In its brief, GTC argues for the same alternative approach that staff witness Mailhot has suggested. GTC further argues that requiring GTC to collect access charges directly from the IXCs will create a "wash," and, thus, further the original intent of the Commission when the bill and keep subsidy mechanism was created. GTC further argues that this alternative will not amount to an increase in access charges for the IXCs, but a "netting effect." GTC contends that under this alternative, GTC will be placed in the same position as the other LECs that have chosen price regulation. (GTC BR 10-11)

Discussion

As stated in the staff analysis of Issue 2, staff agrees with the parties that the bill and keep access subsidy was a temporary mechanism to ease the transition to bill and keep for all the companies. Staff also agrees with the parties that the Commission

DATE: July 23, 1998

has previously used overearnings and changed circumstances as criteria to eliminate a recipient's interLATA bill and keep subsidy payments. Staff further agrees with BellSouth and AT&T that GTC's election of price regulation is a substantial change in GTC's circumstances. By electing price regulation, GTC has demonstrated a desire to take on the opportunities of the competitive arena. (AT&T BR 12)

Staff notes that GTC did not file any testimony or present a witness to support its arguments. Therefore, there is no record evidence to support GTC's arguments that the alternative suggested by witness Mailhot, and advocated by GTC, is the approach that the Commission should take in this case if it decides that the subsidy should be terminated. Furthermore, staff is concerned that the access charge "adjustment" suggested by GTC and the Commission staff's witness may be contrary to Section 364.163, F.S., which caps each LEC's intrastate access rates. Staff also believes and agrees with BellSouth that access rates are in excess of cost and may provide subsidies for services like local and universal services. (TR 55) Again, there is no information in the record to support GTC's assertions regarding the effects of this alternative, nor is there any information to demonstrate how GTC's earnings will be harmed by the elimination of the access subsidy payments. Staff emphasizes that GTC had the choice to provide such supporting data, but chose not to do so. (TR 130, 131) Staff believes that GTC's concern over its low local rates is a subject that is better addressed through other proceedings.

Based on the record and the arguments presented, staff believes that GTC has experienced a "changed circumstance," its election of price regulation, and that this changed circumstance warrants termination of the subsidy to GTC. Furthermore, staff does not believe that the record supports increasing GTC's access charges. There is no evidence as to the effects of such an increase, nor is there evidence that such an increase would be necessary for GTC if the subsidy is terminated. Thus, staff recommends the interLATA bill and keep access subsidy be terminated and GTC not be allowed any switched access charge rate increase. If necessary, staff believes GTC may seek relief as provided in Section 364.051, F.S.

DATE: July 23, 1998

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?

RECOMMENDATION: Yes, the Commission should require BellSouth Telecommunications, Inc. to terminate the subsidy payment to GTC, Inc., and implement a rate reduction in a specific rate at BellSouth's discretion, that will benefit all of its ratepayers, to offset the terminated access subsidy payments to GTC, Inc. BellSouth should be required to file tariffs within sixty (60) days of the issuance of the Order from this recommendation reflecting its rate reduction. (AUDU, WRIGHT, B. KEATING)

POSITION OF THE PARTIES

BELLSOUTH: BellSouth has completely eliminated any surplus by reducing access charges well over \$2.7 million since 1985. Because BellSouth was under a sharing requirement through 1997, BellSouth will refund to its customers any refund received from GTC for any year subject to the sharing requirement.

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.

GTC: Yes. The subsidy paid to GTC consists of access charge revenue from IXCs. BellSouth is the subsidy administrator through which the revenue flows from the IXCs to GTC. The money could just as well flow directly to GTC, but under no circumstances should BellSouth keep GTC's access revenue.

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.

STAFF ANALYSIS: In his testimony, BellSouth witness Lohman argues that his company has effectively eliminated collection of the original subsidy amount of \$2.7 million by reducing access charges

by well over this amount since 1985. (TR 28) Witness Lohman further argues that the original revenue surplus enabled BellSouth to make subsidy payments that were passed on to other companies based on the uniform access rates. (TR 35) Witness Lohman argues that the \$2.7 million surplus has not existed for many years; thus, there is no surplus for disposal. The BellSouth witness contends that "collecting and passing on" of access revenues ceased when the Commission stopped requiring uniform statewide access rates. (TR 28, 35) Witness Lohman argues that BellSouth is no longer collecting access revenues for GTC; therefore, "the payment is just a subsidy from BellSouth to GTC." (TR 28, 36) Witness Lohman asserts that terminating subsidy payments to GTC will not create a windfall that will benefit BellSouth; thus, BellSouth should be allowed to keep the dollars it has been paying to GTC. (TR 36)

BellSouth witness Lohman also argues that the original subsidy pool was established to be revenue neutral for both the LECs and the IXCs. (TR 41) Witness Lohman contends that the IXCs were not funding the subsidy pool; instead, they were paying for their access to the local network at the same level they had paid prior to implementing bill and keep. (TR 42) The BellSouth witness argues that this revenue neutrality was eliminated in 1988 as uniform access rates were replaced by LEC specific rates. (TR 43, 56) Witness Lohman asserts that the various access reductions made by BellSouth have changed the revenue neutrality of the access revenues established in the original bill and keep order. (TR 44)

As for whether BellSouth should be required to make a rate reduction upon the elimination of the subsidy payment to GTC, BellSouth witness Lohman concedes that in prior actions where the Commission eliminated subsidy payments, the Commission has either ordered BellSouth to reduce some rates or to set aside the monies pending further action. The BellSouth witness contends that besides rate reductions and set-asides, the Commission has consistently considered other companies' activities and how those activities affected the companies. Witness Lohman asserts that the Commission has not limited itself just to earnings, but has considered depreciation, rate reductions, and others factors. Witness Lohman contends that looking at BellSouth's other activities, BellSouth has reduced rates tremendously since the finalization of the bill and keep pool in 1987. However, witness Lohman argues that these activities occurred while BellSouth was still under rate of return regulation, and further argues that this has changed since BellSouth is now price regulated. (TR 49-50, 78-79)

AT&T witness Guedel argues that BellSouth will enjoy a windfall profit if the subsidy payments to GTC are discontinued without accompanying rate reductions. (TR 105) Witness Guedel further argues that this reduction should be targeted at BellSouth's switched access charges, because switched access charges have historically supported the interLATA toll bill and keep access subsidy pool. Witness Guedel contends that switched access provides BellSouth a contribution in excess of cost of over a thousand percent. Therefore, at their current levels, switched access charges deter competition by setting a price squeeze in favor of the incumbent LECs. (TR 106) However, witness Guedel concedes that it is possible for BellSouth to reduce a different service in order to eliminate any possible windfall profits resulting from the termination of the subsidy payments to GTC. (TR 114-115)

AT&T witness Guedel also argues that the bill and keep subsidy pool has been funded by a portion of BellSouth's access revenue, and that interexchange carriers were the parties paying those access charges. Witness Guedel contends that at the inception of the subsidy pool, BellSouth had a revenue surplus, which meant that access charges flowing to BellSouth were greater than computed as fair compensation for the use of its local access service. Witness Guedel contends that it was this revenue surplus that funded the subsidy pool. (TR 109-110)

AT&T witness Guedel argues that the Commission had the authority to establish the bill and keep subsidy mechanism, and by the same token, the Commission has the authority to eliminate the subsidy payments and channel the resulting windfall profits to reduce rates for the payor company. Witness Guedel further asserts that,

[i]n carrying out the elimination of the subsidy pool, the Commission would be doing exactly what it has done in the past with implementing that Order by removing part of the subsidy, and using that windfall profit to reduce rates for the payor company. (TR 114)

AT&T also argues that the Commission cannot increase GTC's access charge rates because the Commission is barred from doing so by Section 364.163, F.S. (Guedel TR 106-107) AT&T does, however, believe that the Commission can decrease BellSouth's access charges because of the Commission's past policy of precluding BellSouth from receiving a windfall when the subsidy payment to a LEC is terminated. (AT&T BR 13-14; Guedel TR 106, 115)

Staff witness Mailhot argues that the access revenues that the LECs contributed into the subsidy pool were derived from revenues that the IXCs paid via access charges, and thus, if the subsidy payments to GTC are eliminated, it is consistent with prior Commission's decisions to require BellSouth to implement a rate reduction by an amount equal to the subsidy it was paying to GTC. (TR 122 - 123) Witness Mailhot further argues that the Commission has generally required the payor to reduce some rates whenever a recipient was eliminated in order to avoid any windfall. Witness Mailhot does, however, concede that there may have been instances whereby the Commission has set aside monies and applied those monies to depreciation pending a decision on a permanent rate reduction. (TR 121, 124) Staff witness Mailhot also contends that the Commission may have the authority to require BellSouth to implement a rate reduction if these subsidy payments are terminated. (TR 121, 126-127)

In its brief, GTC argues that it has not been the recipient of BellSouth's "largesse;" instead, BellSouth has been a Commission-approved source for collecting these access revenues on behalf of GTC. GTC further argues that absent some rate reduction by BellSouth, termination of the subsidy to GTC will result in a windfall for BellSouth. (GTC BR 13) GTC argues that the Commission could have rebalanced its rates prior to its election of price-cap regulation, but did not, which ensured that GTC's local rates were kept among the lowest in the state. GTC contends that the possible elimination of the subsidy support puts it in a "bind," because it cannot raise its local rates in its present position as a price regulated LEC. (GTC BR 13)

GTC believes that the Commission can take both actions. GTC asserts that if the Commission terminates the subsidy payment, allows GTC to increase its access charges, and requires BellSouth to decrease its access charges, as suggested by staff witness Mailhot, then "the Commission will be carrying out the effect of its earlier decisions previously made in a lawful manner." (GTC BR 13)

Discussion

Staff finds no support in the record for BellSouth's assertion that it has merely been subsidizing GTC via the access subsidy payments because the subsidy surplus ended with the advent of LEC-specific access rates. Staff agrees with the other parties that discontinuance of the access revenue streams to GTC, absent any rate reduction on the part of BellSouth, will constitute a windfall for BellSouth.

DOCKET NO. 970808-TL

DATE: July 23, 1998

Staff also notes that in past Orders pertaining to termination of the subsidy, the Commission has required BellSouth to recognize the subsidy reduction in some manner. (EXH 1) Staff notes that in Order No. PSC-92-0028-FOF-TL, issued in Docket No. 911108, on March 10, 1992, BellSouth's subsidy payment to ALLTEL was reduced by \$334,000. The subsidy payment reduction was treated as an additional extended area service (EAS) set-aside amount for BellSouth. (EXH 1) Order No. PSC-92-0368-FOF-TL, issued May 14, 1992, included a reduction in the amount of interLATA subsidies paid to Northeast Florida Telephone Company by Southern Bell and GTE Florida. The Order required Southern Bell to hold any reduction in the subsidy payments in funds set aside for EAS implementation in Docket 880069-TL. GTE Florida's portion of Northeast's interLATA subsidy reduction was placed into an unclassified depreciation reserve account until such time as rates were changed. Order No. PSC-93-0228-FOF-TL, issued February 10, 1993, required the reduced subsidy payment for BellSouth to be included as an additional set-aside amount to be disposed of in Docket No. 920260-TL. In Order No. PSC-93-1176-FOF-TL, issued August 10, 1993, BellSouth was required to add the reduction in subsidy payments to their set-aside amount to be disposed of in Docket No. 920260-TL. A similar treatment was accorded BellSouth in Order No. PSC-94-0383-FOF-TL and Order No. PSC-95-0486-FOF-TL.

Staff agrees with witness Lohman that BellSouth's original \$2.7 million subsidy was disposed of in previous dockets, however, the original subsidy amount of \$2.7 million was net of contributions. The Commission found it necessary, as discussed above, to dispose of the additional amounts resulting as BellSouth's contribution to the subsidy fund was reduced. Likewise, staff believes that BellSouth should be required to recognize the subsidy reduction if the subsidy payment to GTC is terminated.

Staff acknowledges that BellSouth has made substantial reductions in its switched access charges since the finalization of the bill and keep mechanism; however, BellSouth witness Lohman concedes that most of its switched access charge reductions were the result of either settlement or sharing agreements reached with the Commission. (TR 66-69) Staff does not believe that these agreements affected BellSouth's participation in the interLATA access subsidy pool. Rather, staff agrees with the AT&T and Commission witnesses' arguments that the IXCs funded the subsidy pool via their use of the local network, even though BellSouth's access charges were reduced.

DOCKET NO. 970808-TL

DATE: July 23, 1998

Staff also believes that the Commission may require BellSouth to either reduce its access charges or it may require BellSouth to make a reduction in some other area. Such action would be similar to action taken in Order No. PSC-97-1312-FOF-TL, issued in Dockets Nos. 970281-TL, 970172-TP, and 970173-TP, on October 22, 1997. (EXH 1, No. 24) In that order, the Commission allowed BellSouth to choose from a menu, which included access charges, the area that would be reduced to eliminate the intrastate pay phone subsidy.

As explained in Order No. PSC-97-1312-FOF-TL, the Commission opened Dockets Nos. 970281-TL, 970172-TP, and 970173-TP in response to Section 276(b)(1)(B) of the Telecommunications Act of 1996 (the Act), which requires that incumbent local exchange carriers (LECs) remove from their intrastate rates charges that recover the costs of their pay telephones. FCC Order No. 96-388 implementing Section 276 of the Act required the states to determine the intrastate rate elements that must be reduced to accomplish this elimination of any intrastate subsidies. FCC Order No. 96-388, ¶ 186; Order No. PSC-97-1312-FOF-TP at 1 and 15. The FCC did not, however, specify the areas in which reductions should be made. This Commission, therefore, identified a menu of rate elements that it determined could be reduced in order to remove the intrastate pay phone subsidy. Order No. PSC-97-1312-FOF-TP at 15-16.

While there is no federal mandate to remove the interLATA access subsidy at issue in this case, there is a request to terminate the subsidy payment to the last LEC receiving it, which would effectuate the end of the subsidy. Staff, therefore, believes that if the Commission decides that the payment to GTC should be eliminated, then the Commission may also require BellSouth to make adjustments as it deems appropriate in order to eliminate all aspects, including any windfall, associated with a subsidy plan implemented when BellSouth and GTC were both under a different regulatory scheme.

Finally, staff believes that the situation addressed by the Commission in Order No. PSC-97-1370-FOF-TP may be distinguished from the case at hand. In that case, MCI asked the Commission to investigate and reduce GTEFL's access charges pursuant to the Commission's authority under Sections 364.01(4)(g) and 364.3381(3), F.S., to investigate and remedy anticompetitive acts. Order No. PSC-97-1370-FOF-TP at 1. MCI did not allege that there was any imbalance or inaccuracy in the access charges due to past Commission policies. Rather, MCI alleged that GTEFL intentionally charged excessive access charges and used the profits to subsidize the entry of GTEFL's long distance affiliate. Order No. PSC-97-1370-FOF-TP at 2. MCI was not seeking an adjustment of GTEFL's

DOCKET NO. 970808-TL

DATE: July 23, 1998

access charges pursuant to Section 364.163(9), F.S. Instead, MCI wanted the Commission to conduct an investigation into GTEFL's alleged anticompetitive practices, then reduce GTEFL's access charges in a manner and for purposes not contemplated by Section 364.163, Florida Statutes.

Based on the above arguments and the evidence presented, staff believes that the subsidy should be terminated and that BellSouth should be required to make a reduction in order to eliminate a windfall. BellSouth has not been subsidizing GTC out of its own funds, but rather acting as a subsidy administrator or clearinghouse. Staff believes, however, that BellSouth has substantially reduced its access charges through various settlement agreements and to a greater extent than these agreements required. Thus, staff recommends that the Commission require BellSouth to make rate reductions in the amount of the subsidy payment, but allow BellSouth to make the reduction in a specific rate, at BellSouth's discretion, that will benefit all of its ratepayers. Staff further recommends that BellSouth should be required to file tariffs with this Commission within sixty (60) days of the issuance of this order to implement this rate reduction.

DATE: July 23, 1998

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?

RECOMMENDATION: The subsidy should be removed all at one time.
(WRIGHT)

POSITION OF THE PARTIES

BELLSOUTH: The subsidy should be eliminated entirely at one time as was the case with Gulf and Indiantown. Since Order No. 14452 states that, "all subsidy pool contributions and receipts are subject to refund," GTC should refund to BellSouth all subsidies received from the date GTC first had overearnings or June 25, 1996 when GTC's election of price regulations was effective, whichever is earlier. (Tr. p. 29 and Order No. 14452, p. 14).

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

GTC: If removed, the subsidy should be phased out, beginning at the time GTC can legally raise rates to offset the subsidy loss. If, however, there is a conversion to a direct payment of access charge revenue to GTC, the removal could be accomplished at one time.

STAFF ANALYSIS: BellSouth witness Lohman states that the subsidy should be eliminated entirely at one time as the Commission did for both Gulf and Indiantown. (TR 29) AT&T states that the subsidy should be eliminated immediately. AT&T argues that GTC has received an access subsidy for over a decade. (AT&T BR 16) GTC states that if staff witness Mailhot's alternative approach is adopted, then the subsidy could be eliminated at once, in conjunction with redirection of IXC access charge revenue directly to GTC. If GTC's access charge revenue is simply to be terminated, then GTC believes the subsidy payments should be phased out over the period of time that it would take GTC to offset the subsidy loss. (GTC BR 14)

Based upon the testimony and arguments, and in view of staff's recommendation in Issue 2, staff recommends that the subsidy be terminated entirely at one time. Staff does not believe that this subsidy should remain in place until GTC's basic rates are no longer capped. There was no evidence provided supporting a phase-out of the payment.

DOCKET NO. 970808-TL

DATE: July 23, 1998

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

RECOMMENDATION: The subsidy should be terminated effective the date of the Commission's Order from this recommendation. (WRIGHT, AUDU)

POSITION OF THE PARTIES

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

AT&T: The subsidy should be removed and BellSouth's access charges reduced no later than October 1, 1998, the date the access charge reductions of all LECs are required.

GTC: If removed, the subsidy should be phased out, beginning at the time GTC can legally raise rates to offset the subsidy loss. If, however, there is a conversion to a direct payment of access charge revenue to GTC, the removal could be accomplished at one time.

STAFF ANALYSIS: BellSouth witness Lohman testified that GTC should refund to BellSouth all subsidies received from the date GTC first had overearnings or June 25, 1996, when GTC became price regulated, whichever is earlier. Witness Lohman believes that Order No. 14452 states that all subsidy pool contributions and receipts are subject to refund. (TR 29) AT&T believes that the effective date of the subsidy removal and the matching access reduction for BellSouth should be October 1, 1998, because the amount of the access reduction would not be a large amount. AT&T suggests that BellSouth's access charge reduction could be combined with access reductions scheduled to be made pursuant to the new legislation. (BR 17)

Staff does not agree with BellSouth that the subsidy payments should be eliminated effective from the date that GTC elected price regulation. BellSouth could have petitioned the Commission to terminate the subsidy payments when GTC elected price regulation, but it did not. Staff believes that because the subsidy was implemented by the Commission, it is appropriate for GTC to continue to receive the subsidy payment until the Commission makes a decision to terminate the subsidy. See Order No. 14452. Although the Commission did indicate that the subsidy payments were subject to refund, the Commission indicated that it would require

DOCKET NO. 970808-TL

DATE: July 23, 1998

a LEC receiving the subsidy to make a refund if the Commission found that the LEC was overearning. Order No. 14452 at p. 14. There is, however, no earnings information in the record for this case that the Commission could use to determine if GTC has been overearning. Furthermore, staff believes that it would be unduly punitive to GTC to require it to refund the subsidy payments it has received since it elected price regulation. Staff recommends, therefore, that the payments be terminated from the date of the Commission's Order from this recommendation.

DOCKET NO. 970808-TL

DATE: July 23, 1998

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?

RECOMMENDATION: If the Commission denies staff's recommendations in Issues 7 and 8, the subsidy should be phased-out equally over no more than three years beginning with the order issue date. (WRIGHT)

POSITION OF THE PARTIES

BELLSOUTH: Equally over three years starting from the earlier of when GTC first overearned or when GTC's election of price regulation was effective.

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

GTC: If removed, the subsidy should be phased out, beginning at the time GTC can legally raise rates to offset the subsidy loss. If, however, there is a conversion to a direct payment of access charge revenue to GTC, the removal could be accomplished at one time.

STAFF ANALYSIS: BellSouth's witness Lohman states that if the Commission decides to phase-out the subsidy, the phase-out should be implemented in equal steps over three years starting from when GTC first overearned or when GTC's election of price regulation became effective, June 25, 1996, whichever is the earlier date. (TR 29) AT&T believes that if the phase-out is absolutely necessary, it should be accomplished in as short a time as possible. (BR 18) GTC states that the subsidy should be phased out beginning at the time GTC can legally raise rates to offset the subsidy loss. (BR 14)

Staff agrees with BellSouth that if the Commission decides to phase out the subsidy, it should do so in equal steps over a period of three years. In view of staff's recommendation in Issue 8, staff recommends that the phase-out begin with the date the Commission's order resulting from this recommendation is issued.

DOCKET NO. 970808-TL

DATE: July 23, 1998

ISSUE 10: Should this docket be closed?

RECOMMENDATION: The docket should be closed after the time for filing an appeal has run. (B. KEATING)

STAFF ANALYSIS: The docket should be closed 32 days after issuance of the order, to allow the time for filing an appeal to run.