

State of Florida



Public Service Commission

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

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

RECEIVED-FPSC  
00 FEB - 3 AM 11:40  
RECORDS AND REPORTING

**DATE:** FEBRUARY 3, 2000

**TO:** DIRECTOR, DIVISION OF RECORDS AND REPORTING (BAYÓ)

**FROM:** DIVISION OF TELECOMMUNICATIONS (CORDIANO) *VC ANT*  
DIVISION OF LEGAL SERVICES (CLEMONS) *DMC JK*

**RE:** DOCKET NO. 990950-TP - REQUEST BY BELLSOUTH TELECOMMUNICATIONS, INC. FOR APPROVAL OF INTERCONNECTION, UNBUNDLING, RESALE AND COLLOCATION AGREEMENT WITH THE OTHER PHONE COMPANY, INC. D/B/A ACCESS ONE COMMUNICATIONS.

**AGENDA:** FEBRUARY 15, 2000 - REGULAR AGENDA - FINAL AGENCY ACTION - INTERESTED PERSONS MAY PARTICIPATE

**CRITICAL DATES:** NONE

**SPECIAL INSTRUCTIONS:** NONE

**FILE NAME AND LOCATION:** S:\PSC\CMU\WP\990950.RCM

CASE BACKGROUND

On July 22, 1999, pursuant to Section 252(e) of the Telecommunications Act of 1996 (Act), BellSouth Telecommunications, Inc. (BellSouth) and Access One Communications (Access One) submitted their negotiated agreement for the interconnection of their networks, the unbundling of specific network elements offered by BellSouth, and the resale of BellSouth's telecommunications services to Access One.

Staff filed its first recommendation regarding this agreement on September 23, 1999, for the October 5, 1999, Agenda Conference. On October 4, 1999, BellSouth requested that the recommendation be deferred to a later agenda conference to allow time for BellSouth

DOCUMENT NUMBER-DATE  
**01513 FEB-38**  
FPSC-RECORDS/REPORTING

and Access One to review the Federal Communications Commission's (FCC's) recent unbundled network element (UNE) decision and to discuss the impact that it may have on the filed agreement.

On October 6, 1999, BellSouth and Access One agreed to waive the 90-day requirement for approval of the agreement.

On December 29, 1999, staff advised BellSouth that it planned to file, once again, a recommendation to approve the agreement except for Attachment 13 and any references to it. Staff further advised BellSouth that it would proceed only upon receipt of written correspondence from both parties. Staff received the correspondence indicating to go forth as planned. Therefore, staff believes the following recommendations are appropriate.

#### **DISCUSSION OF ISSUES**

**ISSUE 1:** Should the Commission approve the negotiated agreement between BellSouth and Access One?

**RECOMMENDATION:** Yes, the Commission should approve the negotiated agreement between BellSouth and Access One except for Attachment 13 and any references to it. Staff recommends rejection of Attachment 13 of the negotiated agreement because it is not consistent with the public interest. (CORDIANO, CLEMONS)

**STAFF ANALYSIS:** Staff has reviewed the negotiated agreement between BellSouth and Access One and believes that the agreement is consistent with the Act except for Attachment 13. Staff notes that Attachment 13 contains the rates, terms and conditions for BellSouth's UNE platform (UNE-p) local service offering. Specifically, this Attachment 13 obligates BellSouth to combine the loop, port, switching and transport UNEs and obligates Access One to purchase such combination(s) for a period of seven years. Staff further notes that the FCC's Rules 51.315(c)-(f), regarding UNE combinations are currently pending before the Eighth Circuit Court. Therefore, while the FCC believes that Section 251(c)(3) of the Act "provides a sound basis for reinstating [R]ules 51.315(c)-(f)" (FCC

99-238, ¶482), staff believes that Attachment 13 should not be considered for approval by this Commission until the Eighth Circuit Court renders its decision and for the reasons as described below.

Section 252(e) of the Act provides that any interconnection agreement adopted by negotiation or arbitration shall be submitted for approval to the state commission. The state commission is required to approve or reject the agreement, with written findings as to any deficiencies. Paragraph (2) of Section 252(e) provides criteria for rejecting an agreement. That paragraph provides in part that the state commission may only reject:

an agreement (or any portion thereof) adopted by negotiation under subsection (a) if it finds that (i) the agreement (or any portion thereof) discriminates against a telecommunications carrier not a party to the agreement; or (ii) the implementation of such agreement or portion is not consistent with the public interest, convenience, and necessity . . . .

Staff believes that approval of Attachment 13 is not in the public interest. Attachment 13 is titled "Professional Services and Combinations" and reads, in part:

The Parties further acknowledge and agree that BellSouth's duties and obligations as set out in this Attachment 13 require BellSouth to combine network elements that, but for the Parties' agreement herein, BellSouth would not be required to provide or combine for any telecommunications carrier. Accordingly, the Parties agree that, to the extent this Attachment 13 requires BellSouth to undertake duties and obligations that it is not otherwise required to perform pursuant to any section of the Act nor pursuant to current or future order of the Federal Communications Commission or of any state public service commission, such duties and obligations are not subject to the jurisdiction of the FCC or of any state public service commission, including but not limited to any authority to arbitrate the rates, terms, and conditions for the offering of such combinations to network elements. To the extent that either party hereto,

the FCC, any state public service commission or any other person, entity or party asserts that any such rates, terms and conditions of this Attachment 13, or any other contract or agreement which is based upon this Attachment 13 as a result of any telecommunications carrier exercising its rights under Section 252(i) of the Act, are subject to the jurisdiction of the FCC or any state public service commission for the purpose of changing the rates, terms and conditions of this Attachment 13, or are subject to arbitration, then, the rates, terms and conditions of this Attachment 13 or any such contract or agreement based upon this Attachment 13 under which such assertion is made, shall immediately become null and void and of no effect whatsoever.

Staff believes that this portion of the agreement should not be approved. The parties to the agreement assert that the services offered are not subject to the jurisdiction of the FCC or this Commission. Staff does not agree with this assertion, particularly in view of the fact that this has been presented to the Commission within the context of an agreement for the Commission's approval. We do, however, believe that, currently, the rules addressing UNE combinations and the UNE-p are under reconsideration, and ILECs are not required to provide them at this time. As such, staff does not believe it is in the public interest to approve this portion of the agreement which may, ultimately, be shown contrary to the FCC's rules and, therefore, not in the public interest. Staff notes that if, in fact, the provisions of Attachment 13 are beyond the scope of the Act, then there is no need for the parties to later seek the Commission's approval of this attachment.

DOCKET NO. 990950-TP  
DATE: FEBRUARY 3, 2000

**ISSUE 2:** Should this docket be closed?

**RECOMMENDATION:** Yes, upon approval of staff's recommendation in Issue 1, this docket should be closed if no person whose substantial interests are affected files a protest within 21 days of the issuance of this Order. If no timely protest is filed, the Order will become final upon issuance of a consummating order and this docket should be closed. (CLEMONS)

**STAFF ANALYSIS:** Assuming staff's recommendation in Issue 1 is approved, this docket should be closed if no person whose substantial interests are affected files a protest within 21 days of the issuance of this Order. If no timely protest is filed, the Order will become final upon issuance of a consummating order and this docket should be closed.