



Public Service Commission

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RECORDS AND REPORTING

DATE: APRIL 22, 1999

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

FROM: DIVISION OF COMMUNICATIONS (ADDU, DOWDS) *ADU*
DIVISION OF LEGAL SERVICES (MCKINNEY) *Jan CB*

RE: DOCKET NO. 981052-TP - PETITION BY TELEPHONE COMPANY OF CENTRAL FLORIDA, INC. FOR RESOLUTION OF ITEMS UNDER DISPUTE IN RESALE AGREEMENT WITH BELLSOUTH TELECOMMUNICATIONS, INC.

AGENDA: 5/4/99 - REGULAR AGENDA - POST HEARING DECISION - PARTICIPATION IS LIMITED TO COMMISSIONERS AND STAFF

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: NONE

FILE NAME AND LOCATION: S:\PSC\CMU\WP\981052A.RCM

CASE BACKGROUND

On August 20, 1998, Telephone Company of Central Florida, Inc. (TCCF), filed a petition for resolution of items under dispute in its resale agreement with BellSouth Telecommunications, Inc. (BellSouth or BST). The issues raised in the petition have been separated into issues for enforcement of its current interconnection agreement, and issues for arbitration of the renewal of the resale agreement. The issues raised in TCCF's petition were set for an administrative hearing on January 22, 1999, which was continued for an additional day, to February 9, 1999.

Complaint Issue 1 pertains to whether BellSouth provided to TCCF ESSX service in compliance with its resale agreement, while Arbitration Issue 2 concerns whether BellSouth should make ESSX service available for resale to TCCF in the parties' new agreement.

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These two interrelated issues were dealt with by the Commission at the April 20, 1999 agenda conference.

The remaining issue in this proceeding and the subject of this recommendation, Arbitration Issue 1, is whether or not BellSouth should be allowed to recover from TCCF its non-recurring and recurring costs associated with providing access to BST's operational support systems, and if so, at what rates.

ARBITRATION ISSUES:

ISSUE 1: Should BellSouth be permitted to recover from TCCF its non-recurring and recurring costs of providing OSS for use by ALECs?

- A. If so, how should the charges for such use be determined?
- B. What language and rates regarding OSS should be included?

RECOMMENDATION: Not at this time. The determination of the appropriate charges, if any, that may be assessed for OSS cost recovery should be dealt with in a generic proceeding.

POSITIONS OF THE PARTIES

TCCF:

No. BellSouth has attempted to include language in the new Resale Agreement which would require TCCF to pay BellSouth for the development of OSS systems. It has also attempted to include an "OSS chart" setting out fees for OSS services. It is TCCF's position that it is BellSouth's responsibility under the Act to provide OSS at parity with what it provides itself. As the Commission has said, each party should bear its own costs. Further, requiring resellers to pay for the development of these systems would turn the Act on its head.

It should also be remembered that resellers have their own development costs. BellSouth's attempt to inflate the fees charged for processing orders is nothing more than an arbitrary and discriminatory attempt to reduce the wholesale discount ordered by this Commission and should not be permitted. In addition, the Commission should not place the burden on small carriers of trying to analyze BellSouth's cost studies.

- A. As noted above, no such fees should be permitted. But if such fees are permitted, the Commission must determine, prior to permitting any such fees, that BellSouth is providing OSS to resellers that is equal to that BellSouth uses when processing retail orders. BellSouth should be required to substantiate all costs, explain the formula used to recover such costs, explain how the costs will be apportioned among ALECs, explain any future anticipated costs and identify OSS which will result from such expenditures.
- B. Language should be included requiring BellSouth to provide OSS to resellers that is at parity with the OSS BellSouth personnel use to process retail orders. The Commission should institute a monitoring process to ensure that this is accomplished. No additional processing fees or "development" fees should be permitted.

BELLSOUTH:

BellSouth should be permitted to recover from TCCF its nonrecurring and recurring costs of providing Operational Support Systems (OSS) for use by ALECs. Section 251(c)(3) of the Telecommunications Act of 1996 ("the Act") requires BellSouth to develop non-discriminatory electronic interfaces for access to BellSouth's OSS in order to remove barriers to competition. BellSouth has complied with the Act and should be entitled to recover its OSS costs, both manual and electronic. The appropriate rates should be a mechanized order charge of \$6.78 per Local Service Request (LSR), and a manual order charge of \$20.08 per LSR, based on BellSouth's cost studies filed in this docket. The appropriate language to be included in the parties' new Resale Agreement should be negotiated by the parties and not dictated by the Commission.

Based on the foregoing, the Commission should find that BellSouth is permitted to recover its OSS costs from

TCCF, that the charges should be based on BellSouth's cost studies, that the appropriate rates are \$6.78 per LSR for mechanized orders and \$20.08 per LSR for manual orders, and that the parties should negotiate the appropriate language for inclusion in their new Resale Agreement based on the Commission's order in this docket.

STAFF ANALYSIS:

In this proceeding BellSouth proposes to establish and incorporate into its agreement with TCCF, charges to recover costs BST has incurred associated with the development and implementation of nondiscriminatory electronic interfaces to afford ALECs access to certain BST operational support systems (OSS). These interfaces allow ALECs to access BellSouth's OSS for pre-ordering, ordering, provisioning, maintenance and repair, and billing. (Arrington TR 236-237) Since BellSouth was required by the Act to develop and implement these interfaces, the company asserts it should be allowed to recover the development, implementation and maintenance costs of these interfaces, as well as any ongoing order processing costs that it incurs. (TR 237)

BellSouth proposes two types of charges that would be levied per local service request (LSR). For orders submitted electronically, BST would charge TCCF \$6.78 per LSR; for orders submitted manually, BST would charge TCCF \$20.08 per LSR. (Arrington TR 237) According to BellSouth witness Caldwell the proposed \$6.78 charge per LSR submitted electronically is designed to recover two cost components. The first component, \$2.46, relates to the development and implementation of the electronic interfaces. The second component, \$4.32, represents BST's ongoing order processing charges for an ALEC LSR. (Caldwell TR 286)

Both recurring and nonrecurring costs would be recovered in BellSouth's proposed charges. Recurring costs include such items as the capital costs (return, depreciation, and taxes) associated with investment in, e.g., computer equipment, as well as operating expenses such as those related to ongoing application software maintenance and ongoing labor costs to support access to legacy systems via the electronic interfaces. Further, Local Carrier Service Center (LCSC) labor associated with orders submitted electronically but that "fallout" is recovered in the \$4.32 component, while the \$20.08 manual ordering charge represents BST's cost of LCSC labor for manual order processing. Nonrecurring costs are reflected in BellSouth's proposed \$2.46 component, and include software expenses and one-time labor costs of systems planning and

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design, programming, testing, and implementation of the electronic interfaces. (Caldwell TR 279-280)

According to BellSouth witness Caldwell, development and implementation costs and ongoing support costs for eight interfaces are reflected in BST's cost study: EDI (Electronic Data Interexchange), LENS (Local Exchange Navigational System), TAG (Telecommunications Access Gateway), LEO (Local Exchange Ordering), LESOG (Local Exchange Service Order Generator), BSOG (BellSouth Service Order Generator), TAFI (Trouble Analysis Facilitation Interface) and ECTA (Electronic Communications Trouble Administration). EDI, LENS, TAG, LEO, LESOG, and BSOG pertain to preordering and ordering, while TAFI and ECTA are systems for trouble maintenance and repair. (EXH 17, DDC-1, p. 3)

In arriving at its proposed rates per local service request, BST identified all costs associated with the development of the interfaces to access its operational support systems, and then essentially derived its rates by dividing by its projected total region LSRs for the period 1999-2001. (Caldwell TR 284) Consequently, if TCCF or any ALEC accesses a single electronic interface, the charge it pays will recover a share of the costs of all the systems. (Arrington TR 250, Caldwell TR 298) However, BellSouth witness Caldwell testified that by developing all the systems at the same time, certain efficiencies and economies resulted; thus, if the various systems had been developed separately, the overall costs would have been greater. (Caldwell TR 298, 314)

TCCF witness Welch stated that it first became aware of BellSouth's intent to assess OSS charges from a review of the February 1998 draft resale agreement. (EXH 8, (AKW-2), p.13) BST informed TCCF that these charges were associated with the development and implementation of the operational support system interfaces, interfaces that BellSouth had developed on behalf of the ALECs. TCCF also became aware that BST would assess charges for manual processing of orders. According to witness Welch, TCCF believes that OSS development costs should be solely the responsibility of BellSouth. (Welch TR 105)

Witness Welch offers several arguments as to why it is inappropriate for BellSouth to levy charges to recover OSS development from TCCF and other ALECs. First, she cites to Section 251(b)(1) of the Act, which requires each LEC ". . .not to prohibit, and not to impose unreasonable or discriminatory conditions or limitations on, the resale of its telecommunications services," as well as Section 251(c)(1)(2)(D), which requires LECs

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to negotiate in good faith and provide interconnection under rates, terms and conditions that are just, reasonable and nondiscriminatory. Witness Welch concludes that BellSouth would be in violation of the Act if it imposes OSS charges on ALECs; presumably she believes that such charges would constitute unreasonable conditions on resale of BST's services. (TR 110)

Second, witness Welch notes that in Order No. PSC-97-1459-FOF-TL, the FPSC's order denying BellSouth's \$271 application, this Commission quoted the FCC as requiring comparable access to OSS:

In order to meet the nondiscriminatory standard of OSS, an incumbent LEC must provide to competing carriers access to OSS functions for pre-ordering, ordering, provisioning, maintenance and repair, and billing that is equivalent to what it provides itself, its customers or other carriers.

She contends that BST has not provided TCCF such equivalent access to OSS, and BellSouth's proposal to charge OSS fees -- in the absence of adequate OSS systems -- is "nothing short of outrageous." (TR 111) Moreover, she states that rather than provide resellers access to its existing legacy systems, BellSouth has chosen instead to provide ALECs access to its OSS only a piecemeal basis during the past few years. (TR 111-112)

Witness Welch asserts that mechanized order flowthrough (where an operator inputs data into an ordering screen and subsequent ordering processes are completed without further human intervention) is available only to a limited degree from the OSS interfaces that BellSouth has offered to ALECs during the past two years. Because of the absence of this ability, the witness stated that TCCF's provisioning and servicing costs have been excessive during its two and one-half years of doing business with BST. (TR 112, 115)

Witness Welch takes especial exception to BellSouth's proposed charge for manual order processing. She contends that to date, BellSouth has no automated system that would allow an ALEC to process adds, moves or changes. In the absence of reliable OSS, she inquires: "Why should the reseller be charged . . . for the manual submission of an order when no alternative means of submitting the order exists? In fact, why should the reseller be charged a fee at all if appropriate and functional OSS does not exist?" (TR 116) The witness repeats this general theme in her rebuttal testimony when describing the efforts of a TCCF employee who spent 14 hours trying to perform certain

functions with TAFI and LENS, without success. Witness Welch concludes:

BellSouth's OSS do not work. TCCF has learned that it is more efficient to place orders manually than it is to attempt to utilize existing OSS. We have a business to run and should not be burdened with troubleshooting deficient OSS or being required to use OSS which do not work. (TR 349)

TCCF witness Welch concludes that BellSouth should not be allowed to include charges for OSS cost recovery in the parties' new resale agreement. (TR 352) Instead, she recommends that each party should absorb its own costs incurred associated with OSS systems. In support she cites this commission's Order No. PSC-96-1579-FOF-TP, p.87; in that order the commission concluded:

. . .Based on the evidence, we find that these operations support systems are necessary for competition in the local market to be successful. We believe that both the new entrants and the incumbent LECs will benefit from having efficient operational support systems. Thus, all parties shall be responsible for the costs to develop and implement such systems. . . .However, where a carrier negotiates for the development of a system or process that is exclusively for that carrier, we do not believe all carriers should be responsible for the recovery of those costs.

Based on the foregoing, each party shall bear its own cost of developing and implementing electronic interface systems, because those systems will benefit all carriers. . . .

However, if the commission determines that OSS cost recovery is appropriate, witness Welch recommends that it be tied to BellSouth having OSS systems in place that comply with the nondiscriminatory standards in the Act. (TR 350-351) In his rebuttal testimony, however, BellSouth witness Pate noted several factual errors and misunderstandings contained in witness Welch's direct testimony, especially with respect to what the specific systems are intended to do. (TR 475, 478-479, 486)

With regards to the OSS cost support sponsored by BellSouth witness Caldwell, TCCF witness Welch asserted that the material provided to them consisted only of high level spreadsheets;

moreover, while BST's filing in Docket No. 960757-TP consisted of an electronic model with complete supporting data, similar information was not provided to TCCF in this proceeding. (TR 353) However, witness Welch admitted that TCCF likely did not have the resources or staff to conduct a thorough critique of BellSouth's cost study. However, the witness stated that placing the burden of such an exhaustive analysis on small firms such as TCCF would undermine the procompetitive intent of the Act. Instead, she recommended that if BellSouth's OSS cost study were to be the basis for establishing charges, the commission should initiate a generic proceeding to conduct a thorough examination of all aspects of the study. (TR 353-354)

Witness Welch also identified certain aspects that should be looked into when reviewing and scrutinizing BellSouth's OSS cost study, including: technologies used for the development of the OSS; whether development costs of both BST and resellers have been considered; whether any portions of the OSS development work was put out for competitive bid; and to what extent benefits associated with the OSS enhancements will inure to BST, which CLECs will fund under BellSouth's proposal. (TR 355) Other topics for review noted by witness Welch include the reasonableness of the LSR volumes which comprise the denominator in BST's rate calculations, whether the cost study should account for differences in order rejection rates among CLECs, and for how long should BST's OSS fees be charged. (TR 356)

Conclusions and Recommendations

Fundamentally, this issue concerns whether or not BST should be able to recover any recurring and non-recurring costs to provide OSS functions to ALECs. To date, there has never been a determination by this Commission as to what costs, if any, BST incurs to provide OSS functions. As noted by TCCF, the Commission did determine in 1996 that new entrants and incumbents will each incur costs to develop OSS, and concluded at that time each party should bear its own costs of developing and implementing electronic interface systems. However, in Order No. PSC-98-0604-FOF-TP, issued in Dockets Nos. 960757-TP, 960833-TP, and 960846-TP, the Commission stated that "[w]e recognize that OSS costs, manual and electronic, may be recoverable costs incurred by BellSouth." (P.165) While the Commission declined in those proceedings to establish any charges to recover OSS costs, the commission encouraged parties to negotiate rates for OSS functions, and concluded that "[i]f, however, the companies are unable to reach agreement through such negotiations, they may of

course seek our guidance." (Ibid.) Accordingly, it appears that the Commission's policy as to the recoverability of OSS costs has evolved.

Staff believes that this limited arbitration proceeding is an improper forum for establishing rates for the recovery of OSS development and implementation costs; moreover, based on the record from this proceeding, we are unable to conclude whether or not the electronic order processing or manual order processing costs are reasonable. Consequently, we recommend that charges to recover BST's OSS costs not be set at this time.

Staff's relies on three areas for our recommendation. First, the record in this proceeding is not adequate for us to draw a definitive conclusion as to the reasonableness of the OSS costs for which BellSouth seeks recovery. BellSouth witness Caldwell sponsored the cost study, which is her Exhibit DDC-2 and consists of 13 pages. (EXH 17) Since this exhibit presumably amounted to a high level summary of the results, staff submitted detailed, extensive discovery concerning the development of this exhibit, covering virtually every page and distinct type of calculation in the exhibit. The company's responses are contained in Hearing Exhibit 19. (EXH 19, pp. 1-113)

Unfortunately, while we do not believe the company intended to be unresponsive, BST's responses are insufficient for staff to evaluate the propriety of the expenses reflected in the analysis. For example, we asked several questions of the following type but referring to different pages of witness Caldwell's Exhibit DDC-2:

Please explain the nature of the expenses in each category, identify the dollar amount of each expense category that is attributable to the development and implementation of the OSS electronic interfaces, and describe the specific activities in each category that are related to the development of the OSS electronic interfaces. (EXH 19, p.1)

In response BellSouth provided an intermediate level spreadsheet (EXH 19, pp.16-68) which essentially lists expenses and investments, by expenditure type and category, interface type, and year incurred. Further, BST provided definitions of the "basic nature of the expenses by category." (EXH 19, p.2) However, these definitions and the associated data provided were at such a relatively high level that it is not possible to discern what activities were performed. For example, while the document provided would show labor hours for system development

for BST personnel, no indication is given as to what they were doing.

Second, BellSouth proposes to recover its OSS costs on a per local service request (LSR) basis. To simplify somewhat, BST essentially determined its OSS costs to be recovered, and divided this amount by three years' forecasted LSRs for the entire BellSouth nine-state region. If BST underestimates the number of LSRs for the 1999-2001 period, the per LSR cost would be overstated. Thus, an issue arises as to whether there would be a prospective true-up. According to BellSouth witness Arrington, no contract language exists to allow for this contingency. (TR 251-252) Another question concerns why the proposed charge is on a per LSR basis, as opposed to some other means. A review of witness Caldwell's Exhibit DDC-2 appears to indicate that a sizeable portion of the costs involved are either nonrecurring, or volume insensitive. As such, perhaps an alternative rate structure, such as a uniform mark-up over all wholesale offerings might be more appropriate. Last, staff is uncertain why a three-year recovery period is most reasonable.

Third, BST's interfaces are still in the developmental stage and an independent determination has not been made that these systems provide pre-ordering or ordering functions to CLECs in the same time and manner as BST's internal interfaces. Moreover, BellSouth's proposed charge for electronic processing lumps together the electronic interface development costs of eight distinct electronic interfaces. (TR 302) The record in this proceeding clearly indicates that TCCF does not use all of these systems. (TR 247-249) At first blush, it does not seem appropriate to staff that TCCF or any CLEC should pay for systems they do not use. Although BellSouth witness Caldwell asserted that the cost was lower due to all systems being developed at the same time, staff could locate no other record evidence to substantiate this claim. (TR 297-298)

In conclusion, staff recommends that BellSouth's OSS charges proposed in this proceeding should not be approved for inclusion in the new agreement. We believe there are numerous issues related to OSS costs which cannot be resolved based on the record in this proceeding. Moreover, notwithstanding what staff perceives as record infirmities, we believe that OSS cost recovery more properly should be dealt with in a generic proceeding, not in this arbitration proceeding. If the commission were to establish OSS charges in this docket, such an action would be precedential and the basis for BellSouth including the same charges in all future negotiated agreements.

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For the reasons discussed above, staff believes that an issue with broad applicability is best handled in a generic docket, not obliquely in an arbitration proceeding.

ISSUE 3: Should this docket be closed?

RECOMMENDATION: No.

STAFF ANALYSIS: This docket should remain open, pending the parties submitting a signed agreement that complies with the Commission's decisions.