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WRITTEN EX PARTE

October 2, 2002

Ms Marlene H. Dortch
Secretary
Federal Communications Commission
The Portals
445 12th Street, S.W.
Washington, D.C. 20554

RECEIVED

OCT - 2 2002

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Re: CC Docket No. 02-307

Dear Ms Dortch:

On October 2, we sent the attached written material to members of the Department of Justice's Telecommunications Task Force . This material relates to deliberations of the Georgia Public Service Commission on September 17, 2002 relating to the Change Control Process governing CLEC-affecting changes to BellSouth's OSS notification. The material was sent to the Task Force members at their request.

I am filing two copies of this *ex parte* notice in the docket identified above, as required by Commission, and request that you associate this notice and the attachments with the record of that proceeding. If you have any questions concerning this, please call me at 202.463.4113. Thank you.

Sincerely,



Kathleen B. Levitz

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Attachments

cc: Christine Newcomb
Janice Myles
James Davis-Smith (Department of Justice)
Luin Fitch (Department of Justice)

BEFORE THE GEORGIA PUBLIC SERVICE COMMISSION

ADMINISTRATIVE SESSION

Hearing Room 110
244 Washington Street
Atlanta, Georgia

Tuesday, September 17, 2002

The administrative session was called to order at
10:04 a.m., pursuant to Notice.

PRESENT WERE:

DAVID BURGESS, Chairman
LAUREN MCDONALD, Jr., Vice Chairman
STAN WISE, Commissioner
ROBERT BAKER, Commissioner
EARLEEN SIZEMORE, Commissioner

P R O C E E D I N G S

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CHAIRMAN BURGESS: Good morning. This is the administrative session for September 17, 2002.

We'll first take up our Utilities Division agenda. We have a consent agenda before us first that consists of 15 items. I've had one request from staff, item 10(c), to be held this morning. So we'll hold that part 10(c).

I would ask the Commissioners are there any other items that you have further discussion on or you would like to see held this morning?

(No response.)

CHAIRMAN BURGESS: Hearing none, all in favor of adoption of the consent agenda, say aye.

COMMISSIONER WISE: Aye.

COMMISSIONER BAKER: Aye.

CHAIRMAN BURGESS: Aye.

COMMISSIONER SIZEMORE: Aye.

VICE CHAIRMAN McDONALD: Aye.

CHAIRMAN BURGESS: All opposed.

(No response.)

CHAIRMAN BURGESS: It's approved on a 5-0 vote. Voting in favor: Commissioner McDonald, Commissioner Sizemore, Commissioner Baker, Commissioner Wise and Commissioner Burgess.

We'll now take up our regular agenda with item R-

1 1.

2 MR. COGBURN: Commissioners, item R-1 is
3 consideration of staff's proposed Notice of Rulemaking in
4 Docket 15640-U regarding setting of standards for
5 determining if prices are constrained by market forces and
6 for determining if consumers are significantly worse off
7 than they would be if prices were constrained.

8 In July, the Commission issued a Notice of Inquiry
9 regarding this subject. We received and reviewed responsive
10 comments from four parties -- Atlanta Gas Light Company, the
11 ESPA marketers, Georgia Natural Gas and SCANA Energy
12 Marketing.

13 The staff then held a technical workshop on
14 Tuesday, September 10. Participants of the workshop
15 included the above-mentioned commenters as well as other
16 marketers and representatives of the CUC. The information
17 gathered through these forums provided the staff with
18 valuable input for this NOPR.

19 The NOPR largely follows Code Section O.C.G.A. 46-
20 4-157 and deviates from it only where the legislature
21 provides the Commission with the authority to develop
22 standards for determining if market forces are constraining
23 prices and standards for determining when in times where
24 prices are not constrained, if consumers are significantly
25 adversely affected.

1 The proposed rule establishes that the Commission
2 will find that prices are not constrained by market forces
3 when two of the following conditions are met: the
4 Herfindahl-Hershman Index exceeds 2500; an individual
5 marketer or group of marketers is shown to possess excessive
6 market power; the market lacks the structure of an industry
7 likely to result in competitive pricing or tacit collusion
8 between marketers on pricing has occurred in a delivery
9 group.

10 It then elaborates on how the Commission might go
11 about establishing that these criteria have been met. The
12 rule then establishes that the Commission will find that
13 consumers are significantly worse off if the following
14 conditions are met: over the prior 12 months, such prices
15 are more than 10 percent higher than such prices would be if
16 they were constrained by market forces or over a three month
17 period, such prices are more than 20 percent higher than
18 such prices would be if they were constrained by market
19 forces or the current prices are more than 30 percent higher
20 than such prices would be if they were constrained by market
21 forces.

22 Staff recommends that you release this NOPR with
23 comments due back on October 22.

24 CHAIRMAN BURGESS: Commissioners, you've heard the
25 recommendation of the staff. Any questions or comments on

1 that recommendation?

2 VICE CHAIRMAN McDONALD: Mr. Cogburn, do we have a
3 particular deadline on this from the statute? Mr. Bond, is
4 there --

5 MR. COGBURN: There is not a statutory deadline.

6 VICE CHAIRMAN McDONALD: Mr. Chairman. I'm going
7 to request that this item be held today. I certainly know
8 that this Commission will carry out the legislative intent
9 as the Commission carried out the legislative intent in 1997
10 when the General Assembly deregulated the natural gas
11 marketplace.

12 But I still have some serious concerns about the
13 price or the price of the natural gas to the consumers in
14 the deregulated marketplace. As I look at a regulated
15 market in our state and I look at the prices of those
16 consumers for natural gas, it really concerns me that the
17 deregulated marketplace is not performing as a competitive
18 marketplace. I just want to kind of send up a smoke signal.

19 As you know, I'm a person that if -- the free
20 enterprise system works, it's worked in this nation for over
21 200 years and will work continually. I don't want to over-
22 regulate deregulation. But I am concerned that the challenge
23 of the competitive marketplace is not meeting its obligation
24 and I just want that to be a little signal before we really
25 plow into this new rulemaking process here, that this is on

1 my mind.

2 CHAIRMAN BURGESS: Well, Mr. Chairman -- I mean,
3 Commissioner McDonald, I don't have a problem holding this
4 item this morning, it's fine; if you request that it be
5 held, we'll hold it, but I want to say I want to send more
6 than a smoke signal, I want to send some fire.

7 (Laughter.)

8 CHAIRMAN BURGESS: I'm tired, I really am.
9 Marketers need to get these prices in line here in this
10 state. Consistently, month after month when we do price
11 comparisons of what Georgia consumers are paying for their
12 gas consumption, residential and small business consumers,
13 versus other states in the southeast, throughout the nation,
14 versus our regulated market in this state, they are
15 consistently higher. And that message has been reiterated
16 from this chair time and time again and still we see no
17 relief provided in competitive pricing in this market.

18 I say to the marketers again, if the marketplace
19 will not work, this Commission is going to take some action
20 to make it work. You keep on coming to the Commission
21 seeking relief from the Commission saying don't do this,
22 don't impose these rules on us, let the market work. We've
23 done that now for quite some time and competitive pricing is
24 simply not working in this market.

25 I am determined, this Commission is determined

1 that something is going to be done about the rates that
2 Georgia consumers are paying for their gas service.

3 So, Commissioner McDonald, we'll take your smoke
4 and my fire. I'm hopeful that the message is pretty clear
5 to the marketing community in this state that something
6 needs to be done about the pricing that Georgia consumers
7 are paying for their gas here.

8 COMMISSIONER BAKER: Well, let me just say that
9 I'm a little confused. If we want to send a clear message
10 that we are concerned, what this issue is is we're asking
11 for the marketers to give us their comments, their feedback,
12 their alternative proposals. Holding it for two weeks is
13 not going to help that situation.

14 We're not voting on any final rule today. We are
15 merely authorizing this NOPR to go out for more than a 30-
16 day period. I believe the due date is October 22, Mr.
17 Cogburn?

18 MR. COGBURN: That's correct.

19 COMMISSIONER BAKER: So what we are doing by
20 holding this item is we're sending completely the opposite
21 message. What we need to do to have a constructive analysis
22 of the problem that we're facing is to get the marketers and
23 anybody else who wants to respond to this NOPR to provide us
24 with their comments so that we can review it, see where
25 their concerns are, if they disagree with the proposal

1 that's been offered by the staff and to also solicit them to
2 come up with alternative proposals or at least a sensible
3 rationale for why they feel staff's recommendations are
4 inappropriate and not going to accomplish the task of trying
5 to assist keeping prices in line.

6 So if you really want to move ahead with sending a
7 clear message, I think we need to just go forward with this
8 NOPR, get comments and, as is typical for any NOPR, if you
9 get, you know, constructive feedback, there may be a need
10 for another issuance of a modification of this proposed
11 rule, which will take another 30 days. So I think if
12 there's a genuine concern about prices, let's wait until we
13 have a final rule and then if there's a need for -- to hold
14 the item for further discussion right before you're actually
15 going to approve some rule, let's do that, but I'm really
16 interested in just getting the other side of the story,
17 getting the feedback. If anybody has a good argument
18 against what's being proposed or has a better proposal,
19 let's hear it, let's get it to the Commission as soon as
20 possible for us to consider, rather than holding it for
21 another two week period.

22 VICE CHAIRMAN McDONALD: Well, Commissioner, the
23 holding doesn't negate the ability for marketers or whomever
24 to continue to have input into this. But all it takes is
25 for one marketer to make some adjustments -- as Chairman

1 Burgess has stated with fire and mine with smoke, that we're
2 going to have a competitive marketplace out here. That's
3 all it takes is a little movement. When that service
4 station down the street moves, it brings whole block with
5 it. That's what we're talking about and there's nothing in
6 delaying this or holding this for two more weeks that's
7 going to keep any marketer or any consumer or the CUC from
8 continuing to help with our staff, to have another technical
9 workshop and to have input into this thing -- doesn't negate
10 that at all.

11 CHAIRMAN BURGESS: That's the direction I would
12 offer, is to direct the staff and the marketers and any
13 other interested party to sit down in another technical
14 workshop, not just simply to hold the item for two weeks and
15 let it sit. But I would give the direction that we have an
16 additional technical workshop to continue to talk about the
17 issues and see where parties are. I think that in itself is
18 a better process than a paper process. Once things start
19 being committed to paper, parties take hard line positions
20 in those papers that are filed. I think having a
21 collaborative dialogue has proved successful in compiling
22 many of the proposed rules that have come before this
23 Commission and I think here is another opportunity to go
24 forward with another collaborative in that area and see if
25 some of these differences cannot be resolved. It's not

1 simply to hold the item for two weeks.

2 COMMISSIONER BAKER: In that particular case then,
3 the burden shifts I think from the staff. The staff has
4 outlined what they're proposing. In two weeks, I hope we
5 will get some responses then from other interested parties
6 who can critique staff's recommendation or provide some
7 alternatives that have not been put on the table at this
8 time. But if we are looking at the same staff proposal two
9 weeks from now -- hopefully we aren't, without any kind of
10 feedback, if this is the purpose of holding this item.

11 CHAIRMAN BURGESS: Any other questions or
12 comments?

13 (No response.)

14 CHAIRMAN BURGESS: The item will be held.
15 Let's go to item R-2.

16 MS. BARBER: Item R-2 is Docket Number 15327-U,
17 determination of the interruptible surcharge for natural gas
18 customers, consideration of revised Procedural and
19 Scheduling Order.

20 On July 19, 2002, the Commission issued an order
21 suspending without date the prefiling of testimony and
22 postponing hearing in this docket. The Commission had
23 approved a procedural and scheduling on May 29, 2002.

24 On July 9, 2002, the adversary staff had filed a
25 petition for suspension of date to allow for cost of service

1 information pertaining to interruptible natural gas users to
2 be obtained from Atlanta Gas Light Company.

3 Staff recommends approval of the revised
4 Procedural and Scheduling Order. The dates are as follows:
5 November 1, pre-filing of testimony; November 19, it would
6 be responsive testimony; December 2, a hearing beginning at
7 10:00 a.m.; December 10, proposed orders and briefs; and a
8 decision at the administrative session on December 17.

9 CHAIRMAN BURGESS: You've heard the staff
10 recommendation. Any questions or comments on staff
11 recommendation?

12 (No response.)

13 CHAIRMAN BURGESS: All in favor of adoption of
14 staff recommendation, say aye.

15 COMMISSIONER WISE: Aye.

16 COMMISSIONER BAKER: Aye.

17 CHAIRMAN BURGESS: Aye.

18 COMMISSIONER SIZEMORE: Aye.

19 VICE CHAIRMAN McDONALD: Aye.

20 CHAIRMAN BURGESS: All opposed.

21 (No response.)

22 CHAIRMAN BURGESS: It's approved on a vote of 5-0.
23 Item R-3.

24 MS. BARBER: R-3 is Docket Number 6753-U, petition
25 of Atmos Energy Corporation through its division United

1 Cities Gas Company for approval to extend for 90 days and to
2 make permanent this performance-based ratemaking mechanism.

3 In a petition filed May 9, 2002, United Cities
4 requested that the Commission consider making its PBR
5 program permanent. The Commission originally approved a PBR
6 program for United Cities Gas Company in April 1997 for a
7 period of two years. The company filed to renew the program
8 with modifications on April 7, 1999. The Commission
9 approved the modified PBR for a period of three years.

10 After review of the company's petition, staff
11 recommends that the program be extended for a period of
12 three years effective May 1, 2002.

13 CHAIRMAN BURGESS: You've heard the recommendation
14 of staff. Any questions or comments on the staff
15 recommendation?

16 (No response.)

17 CHAIRMAN BURGESS: All in favor of adoption of
18 staff recommendation, say aye.

19 COMMISSIONER WISE: Aye.

20 COMMISSIONER BAKER: Aye.

21 CHAIRMAN BURGESS: Aye.

22 COMMISSIONER SIZEMORE: Aye.

23 VICE CHAIRMAN McDONALD: Aye.

24 CHAIRMAN BURGESS: All opposed.

25 (No response.)

1 CHAIRMAN BURGESS: It's approved on a vote of 5-0.
2 Item R-4.

3 MS. THEBERT: R-4 is Docket 12720-U GPSC Rule 515-
4 7-6 Natural Gas Marketers Billing Practices, consideration
5 of staff recommendation regarding a request by Shell Energy
6 for a waiver of Commission Rule 515-7-6-.02(a)(4)(j), which
7 is set to take effect on September 23.

8 On September 11, Shell Energy filed a request for
9 a limited waiver of the aforementioned rule, which states
10 that each marketer shall include on its bills to customers
11 the amount due resulting from any pay arrangements.

12 Shell is currently in the process of making
13 billing system changes in order to comply with the rule;
14 however, the changes will not be in place until November 1,
15 2001 (sic). Shell currently only has 142 customers on the
16 payment arrangement and all these customers have received
17 letters stating the terms of the payment arrangements.

18 Staff recommends the Commission grant the limited
19 waiver of the request until November 1, 2002.

20 CHAIRMAN BURGESS: Questions or comments on staff
21 recommendation?

22 (No response.)

23 CHAIRMAN BURGESS: All in favor of adoption of
24 staff recommendation, say aye.

25 COMMISSIONER WISE: Aye.

1 COMMISSIONER BAKER: Aye.

2 CHAIRMAN BURGESS: Aye.

3 COMMISSIONER SIZEMORE: Aye.

4 VICE CHAIRMAN McDONALD: Aye.

5 CHAIRMAN BURGESS: All opposed.

6 (No response.)

7 CHAIRMAN BURGESS: It's approved on a vote of 5-0.

8 MS. THEBERT: Thank you.

9 MR. LANIER: Good morning, Commissioners. R-5 is
10 Docket Number 12509-U United Cities Gas Company's Pipe
11 Replacement Surcharge, consideration of the company's
12 request for a 30-day extension before their new surcharge
13 goes into effect.

14 Staff recommends approval of this item.

15 CHAIRMAN BURGESS: Any questions or comments on
16 staff recommendation?

17 (No response.)

18 CHAIRMAN BURGESS: All in favor of adoption of
19 staff recommendation, say aye.

20 COMMISSIONER WISE: Aye.

21 COMMISSIONER BAKER: Aye.

22 CHAIRMAN BURGESS: Aye.

23 COMMISSIONER SIZEMORE: Aye.

24 VICE CHAIRMAN McDONALD: Aye.

25 CHAIRMAN BURGESS: All opposed.

1 (No response.)

2 CHAIRMAN BURGESS: It's approved on a vote of 5-0.
3 R-6.

4 MR. REINHARDT: Commissioners, item R-6 is Docket
5 Number 7892-U, it's performance measures for
6 telecommunications interconnection, unbundling and resale,
7 consideration of staff's recommendation on performance
8 measurements and change management.

9 Staff has made a few clarifying changes and one
10 substantive change to its recommendation presented in
11 Committee on Thursday. Let me go over those real quick.

12 On number 1, late and incomplete reports, the
13 language now reads "Staff agrees with BellSouth that it
14 should not be penalized for revised SQM and SEEM reports and
15 recommends that these penalties be removed."

16 On number 7, staff added the language,
17 "Additionally, the UNE enhanced extended links, non-switched
18 combination measures shall be added to P-4(a) order
19 completion interval; 09, firm order confirmation and the
20 SEEM plan. The benchmark for EELs under 09 shall be the
21 same as other unbundled network elements under this measure.

22 The benchmark for P-4(a) is 30 percent within five days and
23 70 percent within eight days."

24 On number 15, special access metrics, staff is
25 recommending adoption of the joint competitive industry

1 group measures filed by WorldCom on January 29, 2002.

2 And number 18, the language now reads, "BellSouth
3 shall file a detailed accounting of the tier 2 penalties due
4 to this Commission for late and incomplete SQM reports on
5 October 1, 2002. Additionally, BellSouth shall list the
6 penalty ordered for P-11, service order accuracy, as part of
7 this accounting. Staff will review this report and
8 recommend to BellSouth on how to proceed."

9 CHAIRMAN BURGESS: Commissioners, you've heard the
10 recommendation of staff on this item. Any questions or
11 comments?

12 (No response.)

13 CHAIRMAN BURGESS: I do want to say I think this
14 represents a tremendous amount of technical expertise that
15 has been put into reviewing these performance measurements.
16 You know a six-month review took over a year to accomplish,
17 and I think that tells you a lot about the effort that has
18 been put into this particular case.

19 Parties raised specific issues last Thursday at
20 the Telecommunications Committee about some of the staff
21 recommendation, but when I look at the staff recommendation,
22 on balance, I think it's a very fair recommendation and will
23 continue to improve the operation of BellSouth's OSS systems
24 and continue to improve the performance that is received by
25 CLEC customers and retail customers here in the state. So I

1 commend the staff on doing a very thorough and excellent job
2 in conducting this performance review over the last year.

3 With that, I'm going to call for the vote. All in
4 favor of adoption of the staff recommendation on item R-6,
5 say aye.

6 COMMISSIONER WISE: Aye.

7 COMMISSIONER BAKER: Aye.

8 CHAIRMAN BURGESS: Aye.

9 COMMISSIONER SIZEMORE: Aye.

10 VICE CHAIRMAN McDONALD: Aye.

11 CHAIRMAN BURGESS: All opposed.

12 (No response.)

13 CHAIRMAN BURGESS: It's approved on a vote of 5-0.

14 That concludes our Utilities Division agenda. Now
15 we'll take up our Administrative Affairs agenda.

16 MS. FLANNAGAN: Commissioner, I have a point of
17 clarification on Utilities item B.1. The selection of a
18 vendor to provide the Telecommunications Relay Service,
19 beginning April 1, 2003 is contingent upon successful
20 contract negotiations.

21 CHAIRMAN BURGESS: I'm going to ask the
22 Commissioners -- I asked a litany of questions about this
23 item in our Administrative Affairs agenda committee on
24 Thursday and I still have some further questions that I
25 would like to have answered. So I'm going to ask that item

1 1.B. be held this morning and placed back on the next
2 Administrative Affairs agenda. I've talked with the staff
3 about this and we'll be meeting with staff and the
4 Commissioners to further discuss this matter.

5 COMMISSIONER WISE: Mr. Chairman, if I could,
6 could I ask that that be moved back to the regular Utilities
7 agenda and not Administrative Affairs so that we can have
8 the light of Committee in discussion on that item in
9 Committee?

10 CHAIRMAN BURGESS: We'll do that next Committee
11 meeting.

12 MS. FLANNAGAN: Did you also want to hold item
13 B.2?

14 CHAIRMAN BURGESS: No, the certification request
15 can go forward.

16 MS. FLANNAGAN: Okay.

17 CHAIRMAN BURGESS: It's not dependent on who the
18 provider is.

19 So with that, holding item 1.B -- any other items
20 that any other Commissioners have any discussion on or would
21 like to have held this morning?

22 (No response.)

23 CHAIRMAN BURGESS: If not, all in favor of
24 adoption of the consent agenda, say aye.

25 COMMISSIONER WISE: Aye.

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COMMISSIONER BAKER: Aye.

CHAIRMAN BURGESS: Aye.

COMMISSIONER SIZEMORE: Aye.

VICE CHAIRMAN McDONALD: Aye.

CHAIRMAN BURGESS: All opposed.

(No response.)

CHAIRMAN BURGESS: The consent agenda is approved
on a vote of 5-0.

MS. FLANNAGAN: Thank you.

CHAIRMAN BURGESS: And that concludes our
administrative session for today. Thank you.

(Whereupon, the administrative session was
concluded at 10:21 a.m.)

C E R T I F I C A T E

I, Peggy J. Warren, Certified Court Reporter, do hereby certify that the foregoing transcript is an accurate record of the proceedings had in the above-entitled matter at the time and place therein set forth.

Peggy J. Warren, CVR-CM, CCR A-171

The minutes of the Administrative Session were approved this _____ day of _____, 2002.

David Burgess, Chairman

Reece McAlister,
Executive Secretary