Docket No. 12444-U

ORDER

In Re: Petition of Sprint Communications Company L.P. For Arbitration with BellSouth Telecommunications, Inc. Pursuant to Section 252(b) of the Telecommunications Act of 1996

BY THE COMMISSION:

On June 8, 2000, Sprint Communications Company L.P. ("Sprint") petitioned the Georgia Public Service Commission ("Commission") to arbitrate certain unresolved issues in the interconnection negotiations between Sprint and BellSouth Telecommunications, Inc. ("BellSouth").

I. JURISDICTION AND PROCEEDINGS

Under the Federal Telecommunications Act of 1996 (the Federal Act), State Commissions are authorized to decide the issues presented in a petition for arbitration of interconnection agreements. In addition to its jurisdiction of this matter pursuant to Sections 251 and 252 of the Federal Act, the Commission also has general authority and jurisdiction over the subject matter of this proceeding, conferred upon the Commission by Georgia's Telecommunications and Competition Development Act of 1995 (Georgia Act) O.C.G.A. §§ 46-1-1 *et seq.*, 46-2-20, 46-2-21 and 46-2-23.

The Commission approved the previous interconnection agreement between the parties for a three-year period beginning June 27, 1997. On August 29, 2000, the Commission issued its Procedural and Scheduling Order in this matter. A hearing was held before the Commission on February 5, 2001. On February 26, 2001, the parties filed simultaneous briefs on the unresolved issues. The Commission has before it the testimony, evidence, arguments of counsel and all appropriate matters of record enabling it to reach its decision.

II. FINDINGS AND CONCLUSIONS

1. Issue 4

Should BellSouth make its Custom Calling Features available for resale on a stand-alone basis?

The Federal Act imposes the duty upon incumbent local exchange carriers ("ILECs") "to offer for resale at wholesale rates any telecommunications service that the carrier provides at retail to subscribers who are not telecommunications carriers." 47 U.S.C. §251(c)(4). The parties disagree over whether this statutory obligation applies to Custom Calling Features on a stand-alone basis. Sprint argues that Custom Calling Features fit within the meaning of "any telecommunications service." The Federal Act defines "telecommunications service" as "the offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public regardless of the facilities used." 47 U.S.C. 153(46). Sprint points out that BellSouth provides Custom Calling features at retail to end-users. (Sprint Post-Hearing Brief, p. 3).

In its First Report and Order[1], the FCC stated that ILECs are not required to "disaggregate a retail service into more discrete retail services." (¶877). BellSouth argues, in effect, that the Custom Calling features are "more discrete retail services," and that therefore, Sprint's request goes beyond BellSouth's obligation under the Federal Act. BellSouth argues that it meets its obligation by allowing Sprint to resell Custom Calling features "under the same terms and conditions that BellSouth provides those services to BellSouth's end-user customers." (BellSouth Post-Hearing Brief, p. 4). BellSouth's tariff A13.9 provides that Custom Calling services are provided in addition to basic telephone service. BellSouth's tariff A13.9.2B states that these services are only furnished in connection with individual line residence and business main service. Since BellSouth end-user customers must subscribe to basic local exchange services in order to receive Custom Calling features, it is in compliance with the Federal Act to require the same for Sprint's end-user customers.

In Docket No. 7061-U, *Review of Cost Studies, Methodologies, and Cost-Based Rates for Interconnection and Unbundling of BellSouth Telecommunications Services*, the Commission determined that "switch vertical features should not be priced as individual elements but incorporated within the unbundled switch port element." (Order Establishing Cost-Based Rates, p. 5). It is consistent with the Commission's earlier decision not to disaggregate the Custom Calling Features from the loop, to determine that these features are "more discrete retail services" as contemplated in the FCC's First Report and Order. The Commission finds that BellSouth is not obligated to make its Custom Calling Features available on a stand-alone basis.

[1] First Report and Order, *In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket No. 96-98 (August 8, 1996) ("First Report and Order").

2. Issue 7

In situations where a CLEC's end-user customer is served via unbundled switching and is located in density zone 1 in one of the top fifty Metropolitan Statistical Areas ("MSAs") and who currently has three lines or less, adds additional lines, should BellSouth be able to charge market-based rates for all of the customer's lines?

FCC Rule 51.319(c)(2) sets forth an exception to an ILEC's general obligation under FCC Rule 51.311, to provide nondiscriminatory access to local circuit switching capability and local tandem switching capability. FCC Rule 51.319(c)(2) states that "an incumbent LEC shall not be required to unbundle local circuit switching for requesting telecommunications carriers when the requesting telecommunications carrier serves end-users with four or more voice grade (DSO) equivalents or lines." This exception is subject to the ILEC providing nondiscriminatory access to combinations of unbundled loops and transport throughout Density Zone 1. In addition, for the exception to apply, the ILEC's local circuit switches must be located in the top 50 Metropolitan Statistical Area (MSA), and in Density Zone 1.

Two issues have arisen concerning the applicability of this exception. The first concerns whether when a customer who currently has three lines or less, and then adds additional lines, the exception applies to all of the customer's lines. That is, whether BellSouth can charge market-based rates for all of the lines or just the additional lines. Sprint argues that it would foster competition to limit the exception to the additional lines. (Sprint Post-Hearing Brief, p. 7). BellSouth claims that this could result in customers gaming the system by staggering their line orders. (BellSouth Post-Hearing Brief, p. 8). The Commission does not find any basis in the FCC regulation for limiting the applicability of the exception to the additional lines; therefore, the Commission adopts BellSouth's position on this issue.

The second issue related to this exception is whether this exception applies when the customer's four lines are not all located at the same premises. In Docket No. 11853-U, *Petition of AT&T Communications of the Southern States, Inc. and Teleport Communications Atlanta, Inc. for Arbitration of Certain Terms and Conditions of Proposed Agreement with BellSouth Telecommunications, Inc. Under the Telecommunications Act of 1996*, the Commission determined that the plain language of the regulation indicates that the exception applies regardless of whether the four lines are located at different premises. (Commission Order, p. 8-9). Consistent with its determination in Docket No. 11853-U, the Commission concludes that the customer's four lines do not all have to be at the same premises in order for the exception to apply.

3. Issue 8

Should BellSouth be able to designate the network Point of Interconnection ("POI") for delivery of BellSouth's local traffic?

Issue 49

Should BellSouth be allowed to designate a virtual point of interconnection in a BellSouth local calling area to which Sprint has assigned a Sprint NPA/NXX? If so, who pays for the transport and multiplexing, if any, between BellSouth's virtual point of interconnection and Sprint's point of interconnection?

Under Section 252(c)(2) of the Federal Act, BellSouth has the duty to provide CLECs with interconnection with its network "at any technically feasible point within the carrier's network." The dispute among the parties concerns which party must bear the costs of transporting traffic from a BellSouth local calling area to the point of interconnection established by Sprint.

This issue has arisen in other arbitration proceedings before the Commission. In Docket No. 11901-U, the Commission ordered the initiation of a generic proceeding to address points of interconnection and virtual FX. In Docket No. 13542-U, *Generic Proceeding on Point of Interconnection and Virtual FX Issues*, the Commission will resolve these issues. Accordingly, the Commission finds it prudent not to rule on these issues in the context of this proceeding.

4. Issue 9

Should the parties' Agreement contain language providing Sprint with the ability to transport multi-jurisdictional traffic over a single trunk group, including an access trunk group?

At the commencement of the hearing, the parties informed the Commission that they had reached an agreement with respect to this issue. (Tr. 7). Specifically, the parties have agreed that Sprint's request to route multi-jurisdictional traffic over the same trunk group, including access trunk groups, is technically feasible. If the parties are unable to agree upon the reasonable costs related to Sprint's proposal, then the parties will request that the Commission determine the reasonable costs. (Sprint Post-Hearing Brief, p. 14, BellSouth Post-Hearing Brief, pp. 10-11).

The Commission finds that the agreement between the parties is reasonable and hereby incorporates this agreement into this order.

5. Issue 12

Should voice-over-Internet ("IP Telephony") traffic be included in the definition of "Switched Access Traffic"?

Issue 12 involves whether the definition of switched access in the arbitration agreement should include a reference to IP Telephony. In its Brief, BellSouth argued that it is irrelevant whether the call is placed using traditional telephone-to-telephone protocol or whether the call is placed over the internet. BellSouth argued that, either way, reciprocal compensation is not due for a long distance call. (BellSouth Post-Hearing Brief, p. 11). Sprint maintained that since the

FCC has not decided this issue yet, the arbitration agreement should remain silent on this issue. (Sprint Post-Hearing Brief, p. 15).

This issue has arisen in Docket Nos. 11644-U, 11901-U and 11853-U[2]. In each proceeding the Commission has deferred ruling on the issue until it can further consider the issue. The parties notified the Commission prior to its ruling in this docket that this issue has been resolved and thus no Commission action is warranted.

6. Issue 17

Should Sprint be given space priority over other CLECs in the event that Sprint successfully challenges BellSouth's denial of space availability in a given central office, and the other CLECs who have been denied space do not challenge?

For the allocation of collocation space, BellSouth maintains a waiting list of CLECs based on the date BellSouth received the individual CLEC's collocation request. (BellSouth Post-Hearing Brief, p. 12). Sprint's position is that a CLEC's successful challenge to BellSouth's denial of collocation space should trump collocation application date for assignment of collocation space. This means that should Sprint apply for collocation space after another CLEC, but challenge successfully BellSouth's denial of space, it should be given priority of space assignment over this hypothetical CLEC that chose not to make such a challenge. The logic behind Sprint's proposal is that it is more equitable to reward the CLEC that incurs the costs of touring BellSouth's central office than the CLEC that did not invest the time and resources. (Sprint Post-Hearing Brief, p. 17).

FCC Rule 51.323(f)(1) obligates ILECs to allocate collocation space on a first-come, first-serve basis. The rule does not include an exception that would accommodate the variation proposed by Sprint. In fact, the very purpose of Sprint's proposal would be to deviate from a first-come, first-serve basis. The Commission concludes that to allow the challenging CLEC to gain priority over a CLEC that requested collocation space first would be in violation of the FCC Rule. The Commission declines to adopt Sprint's position on this issue.[3] BellSouth shall not be

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[2] Docket No. 11644-U, *Petition of BellSouth Telecommunications, Inc. For Arbitration of an Interconnection Agreement With Intermedia Communications, Inc. Pursuant To Section 252(b) of theTelecommunications Act of 1996*, (Order, p. 14 of 17).
Docket No. 11901-U, *Petition of MCImetro Access Transmission Services, LLC and MCI WorldCom Communications, Inc. for Arbitration of Certain Terms and Conditions of Proposed Agreement with BellSouth Telecommunications, Inc. Concerning Interconnection and Resale Under the Telecommunications Act of 1996*, (Order, p. 12 of 28).
Docket No. 11853-U, (Order, p. 10 of 19).

[3] While decisions of other state commissions are not binding on this Commission, the Commission notes that the Florida Public Service Commission recently determined that "an applicant's place on the waiting list for collocation space shall be based upon the date the ILEC

obligated to grant priority to a CLEC that successfully challenges BellSouth's denial of collocation space. Instead, BellSouth shall allocate collocation space based on the date it receives the CLEC's collocation request.

7. Issue 18

Should Sprint and BellSouth have the ability to negotiate a demarcation point different from Sprint's collocation space, up to and including the convention distribution frame?

Issue 18 involves two issues: (1) which party chooses the demarcation point; and (2) the location of the demarcation point. The demarcation point is where ILEC and CLEC facilities meet. BellSouth and Sprint would each be responsible for the maintenance and provisioning of facilities on their side of the demarcation point. Sprint argues that the second issue stated above is of greater importance, and that the appropriate location for the demarcation point is its collocation space. (Tr. 129). Sprint argues, first, that since its request is technically feasible that it has a legal right to designate the Point of Termination (POT) bay, which is on the perimeter of Sprint's collocation space, as the demarcation point. (Sprint Post-Hearing Brief, pp. 18-19). From a logistics standpoint, Sprint reasons that Sprint's facilities should be located close to its collocation space. Other arrangements would increase costs to Sprint. *Id*. at 19.

The FCC has prohibited BellSouth from requiring CLECs to use intermediate points of interconnection, such as a POT bay. *Deployment of Wireline Services Offering Advanced Telecommunications Capability*, CC Docket No. 98-147, First Report and Order and Further Notice of Proposed Rulemaking (March 31, 1999) ¶42. This means that BellSouth cannot obligate other CLECs to do what Sprint is requesting it be allowed to do in this agreement. Since other CLECs may not wish to designate the demarcation point at the POT bay, BellSouth will not be able to standardize the collocation process for all CLECs. BellSouth opposes Sprint's request because it claims that standardization is necessary for BellSouth to efficiently provision collocation arrangements. (BellSouth Post-Hearing Brief, p. 14).

The Federal Act obligates ILECs to provide interconnection at any technically feasible point within the carrier's network. 47 U.S.C. 251(c)(2)(B). However, it is a separate question as to whether the CLEC can choose the demarcation point. The Federal Act does not grant CLECs the right to designate demarcation points. While it was established that BellSouth could interconnect at the POT bay, the record raises questions as to the technical feasibility for BellSouth to accommodate CLECs each proposing different demarcation points. BellSouth's testimony indicates that it would impair its ability to meet collocation intervals if BellSouth routinely had to alter its collocation process to accommodate different demarcation point designations. (Tr. 305). BellSouth proposes that designating the demarcation point at the conventional distribution frame ("CDF") would provide the necessary standardization. (BellSouth Post-Hearing Brief, p. 14). The Commission finds that BellSouth shall be allowed to

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received the applicant's collocation application." (*See*, Order Granting in Part and Denying in Part Motion for Reconsideration, FPSC Docket No. 990321-TP, dated November 17, 2000.).

choose the demarcation point. The demarcation point, as chosen by BellSouth, shall be the CDF, unless otherwise mutually agreed to by BellSouth and Sprint.

8. Issue 19

In instances where Sprint desires to add additional collocation equipment that would require BellSouth to complete additional space preparation work, should BellSouth be willing to commit to specific completion intervals for specific types of additions and augmentations to the collocation space?

In Docket No. 7892-U, *Performance Measurements for Telecommunications Interconnection, Unbundling and Resale*, the Commission established benchmarks for the provisioning of collocation arrangements. (Order, p. 6 of 31). Issue 19 involves whether collocation augmentation applications should be treated differently than initial collocation applications. Sprint requests a more detailed completion interval schedule for specific types of additions and augmentations to collocation space.

Sprint proposes categorizing augmentation requests as simple, minor, intermediate, or major. Simple augments, "such as the placement of additional AC convenience outlets, or only a fuse change for additional DC power," would be provided within 20 days from BellSouth's receipt of the application. (Tr. 27). Sprint proposes a 45-day interval for minor augments, such as interconnection cabling arrangements where the infrastructure exists. (Tr. 28). The interval for intermediate augments, "consisting of additional interconnect panels/blocks, cabling DC Power arrangements, where minor infrastructure work is required," would be 60 days. Finally, major augments, such as cage expansion or power cabling, would be provided within 60-90 days from the date that BellSouth receives Sprint's application. (Tr. 28). Sprint states that adopting its proposal would alleviate the uncertainty that results from the parties addressing augment applications on a case-by-case basis. (Sprint Post-Hearing Brief, p. 22).

BellSouth attacks Sprint's proposed intervals as not being based on any statistical or empirical data. (BellSouth Post-Hearing Brief, p. 15). Sprint's witness, Melissa Closz, testified that the intervals were derived by engineers at Sprint's ILEC affiliate that perform the work in question. (Tr. 137-138). Ms. Closz testified that provisioning for Sprint's ILEC affiliate and BellSouth would be substantially the same. (Tr. 138). Sprint has provided adequate support for its proposed intervals.

BellSouth argues that Sprint's proposed additions and augments "do not fit neatly into categories," and that differences between central offices would result in different completion dates for each application. (BellSouth Post-Hearing Brief, p. 15). The Commission's current intervals were not developed based on differences in BellSouth's central offices. BellSouth's logic for denying Sprint's request would pertain to the existing collocation intervals adopted by the Commission. The proposed intervals seek to provide the same benefits as those adopted by the Commission. The Commission finds that Sprint's proposed intervals are adopted, with the exception of the interval for major augments.

9. Issue 21

Are there situations where Sprint should be permitted to convert in place when transitioning from a virtual collocation arrangement to a cageless physical collocation? If so, under what situations?

The Commission addressed this issue in Docket No. 11644-U. In its order, the Commission determined that virtual collocation may be converted to "in place" physical collocation according to the following specified criteria:

(1) There is no change in the amount of equipment or the configuration of the equipment that was in the virtual collocation arrangement;

(2) The conversion of the virtual collocation arrangement would not cause the equipment or the results of that conversion to be located in the space that BellSouth has reserved for its own future needs;

(3) Due to the location of the virtual collocation arrangement the converted arrangement does not limit BellSouth's ability to secure its own equipment and facilities;

(4) Any changes to the arrangement can be accommodated by existing power, HVAC, and other requirements;

(5) Under normal circumstances the conversion be handled by BellSouth in 60 calendar days;

(6) The interim application fee for such conversion from virtual to physical be $1,000, until such time as BellSouth shall file with this Commission a cost study for the conversion of virtual collocation to physical collocation and the same is adopted by this Commission. (Order, p. 8 of 17).

Consistent with its decision in Docket No. 11644-U, the Commission finds that these criteria should still apply to the "in place" conversion of virtual to physical collocation.

10. Issue 31

Should BellSouth be required to charge Sprint cost-based rates for dedicated OS/DA trunking?

ILECs are required to provide operator services and directory assistance ("OS/DA") as an unbundled network element, unless they provide "customized routing or a compatible signaling protocol." *In re: Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, Third Report and Order and Fourth Further Notice of Proposed Rulemaking (released January 14, 2000) ¶ 442 ("UNE Remand Order"). The Commission has decided previously that BellSouth has met the requirement of

providing customized routing.[4] The FCC noted the competitive alternatives for OS/DA in concluding that "[t]he additional nondiscrimination requirements of section 251(b)(3), coupled with evidence of multiple alternative providers of OS/DA service in the marketplace, provide strong evidence that competitors are not impaired without access to the incumbent's OS/DA service as an unbundled element." UNE Remand Order, ¶ 441.

Sprint maintains that even if BellSouth is not obligated to unbundle OS/DA services, it is still required to provide transport elements at cost-based rates. (Sprint Post-Hearing Brief, p. 26). However, the FCC listed the cost of transporting traffic to the facilities as a cost involved in self-provisioning OS/DA. *Id*. at ¶ 450. The costs involved in transporting traffic are part of the costs of a service for which the FCC has determined competitive alternatives exist and that is not an UNE. It would undermine the FCC's determination to isolate a component of OS/DA costs and find that market-based rates are inappropriate. The Commission finds that BellSouth shall be entitled to offer market-based rates for dedicated OS/DA trunking.

11. Issue 49

Should BellSouth be required to provide Sprint with two-way trunks upon request? If so, should BellSouth be required to use those two-way trunks for BellSouth originated traffic?

Federal regulations require BellSouth to provide two-way trunking upon request if technically feasible. 47 U.S.C. § 51.305(f). This rule directly answers in the affirmative the first inquiry contained in this issue. In fact, BellSouth states that it agrees that it must provide two-way local interconnection trunks if requested. (BellSouth Post-Hearing Brief, p. 19). The dispute between the parties concerns whether BellSouth should be obligated to use the two-way trunks for BellSouth originated traffic. BellSouth claims that it is not always more efficient to use two-way trunks. *Id*. Sprint argues that under BellSouth's position, Sprint would lose the benefits of two-way trunking.

The Commission previously addressed this issue in Docket No. 11901-U. In its order, the Commission determined that "[a]llowing BellSouth not to use the two-way trunking based on when it decides two-way trunking is not efficient would undermine the apparent intent of the federal regulation." (Order, p. 10 of 28). This reasoning is supported by the FCC in its Local Competition Order, where it found that an ILEC must accommodate two-way trunking if technically feasible. *Local Competition Order, ¶ 219.* Consistent with its prior ruling on this issue, the Commission finds that BellSouth is obligated to use two-way trunking for BellSouth originated traffic.

12. Issue 51

Upon denial of a Sprint request for physical collocation, what justification, if any, should BellSouth be required to provide to Sprint for space that BellSouth has reserved for itself or its affiliates at the requested premises?

[4] Docket No. 11853-U, Order, p.12 of 19; Docket No. 11901-U, Order, p. 4 of 28.

Issue 51 involves the information BellSouth must provide to Sprint to justify a denial of a Sprint application for physical collocation. Both the FCC and the Commission have addressed this issue. In its *Advanced Services Order on Reconsideration*[5], the FCC ordered ILECs to provide to state commissions the necessary information to evaluate the ILEC's and its affiliates' reservations of space for future growth as well as a detailed description of the specific future uses for which the space has been reserved. ¶ 61. On July 23, 1999, in Docket No. 10429-U[6], the Commission issued an Order Adopting Interim Procedures for the Handling of Collocation Waiver Requests Filed by Incumbent Local Exchange Carriers. Sprint argues that the Interim Procedures adopted by the Commission are not sufficient to verify BellSouth's need to reserve the space, or whether the amount of reserved space is overstated. (Sprint Post-Hearing Brief, p. 30).

The Commission disagrees with Sprint's position. The procedures approved by the Commission in Docket No. 10429-U require BellSouth, upon denial of collocation request, to file a letter to the CLEC of denial of collocation request and a notice to the Commission of its intent to file collocation waiver petition. Both of these documents must contain the following information:

1. Central office designation.

2. Reason for denial.

3. All available information used by the ILEC to determine that there was no space available (e.g. worksheet, and marked engineering drawings with available project numbers).

4. Notice of date and time that walk-through is scheduled. (Order, p. 2).

Pursuant to the Commission Order in Docket No. 10429-U, BellSouth is also required to file with the Commission a collocation waiver petition. The waiver petition must attach the following information:

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[5] Order on Reconsideration and Second Further Notice of Proposed Rulemaking in CC Docket No. 98-147 and Fifth Further Notice of Proposed Rulemaking in CC Docket No. 96-98, *In the Matters of Deployment of Wireline Services Offering Advanced Telecommunications Capability and Implementation of the Local Competition Provisions of the Telecommunications Act of 1996,* CC Docket No. 98-147 and CC Docket No. 96-98, Released August 10, 2000.

[6] *Generic Proceeding for the Purpose of Holding Workshops and Hearings to Determine if Specific Procedures need to be Established for the Handling of Collocation Waiver Requests filed by Incumbent Local Exchange Carriers.*

1. Detailed engineering drawings with project codes / available project numbers for all reserved space [including general descriptions and planned retirements].

2. Completed Physical Collocation Floor Space Worksheet.

3. Reclamation timeliness.

4. Timeliness for space availability (including timeliness for retirements and building additions).

5. Description of construction plans.

6. Staffing levels and schedules, and description of all administrative space and equipment.

7. Description of grounds and surrounding area. (Order, p. 2-3).

If Sprint determines that the information BellSouth files is not sufficient for its purposes, it may use the discovery rights that the Commission granted CLECs in Docket No. 10429-U. Sprint has not shown that the information BellSouth is required to file in conjunction with CLEC discovery rights is not adequate to meet its informational needs. The Commission declines to adopt the additional requirements proposed by Sprint.

III. CONCLUSION AND ORDERING PARAGRAPHS

The Commission finds and concludes that the issues that the parties presented to the Commission for arbitration should be resolved in accord with the terms and conditions as discussed in the preceding sections of this Order, pursuant to Sections 251 and 252 of the Telecommunications Act of 1996 and Georgia's Telecommunications and Competition Development Act of 1995.

WHEREFORE IT IS ORDERED, that all findings, conclusions statements, and directives made by the Commission and contained in the foregoing sections of this Order are hereby adopted as findings of fact, conclusions of law, statements of regulatory policy and orders of this Commission.

ORDERED FURTHER, that a motion for reconsideration, rehearing, or oral argument or any other motion shall not stay the effective date of this Order, unless otherwise ordered by the Commission.

ORDERED FURTHER, that jurisdiction over these matters is expressly retained for the purpose of entering such further Order or Orders as this Commission may deem just and proper.

The above by action of the Commission in Administrative Session on the 1st day of May, 2001.

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Reece McAlister	Lauren McDonald, Jr.
Executive Secretary	Chairman
_____	_____
Date	Date