



# Public Service Commission

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REC'D DIVISION OF RECORDS AND REPORTING  
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**DATE:** JANUARY 25, 2001

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

**FROM:** DIVISION OF LEGAL SERVICES (FORDHAM) C. J. P.  
DIVISION OF COMPETITIVE SERVICES (HINTON) CARL W

**RE:** DOCKET NO. 990108-TP - REQUEST FOR ARBITRATION CONCERNING COMPLAINT OF THE OTHER PHONE COMPANY, INC. D/B/A ACCESS ONE COMMUNICATIONS AGAINST BELLSOUTH TELECOMMUNICATIONS, INC. REGARDING BREACH OF RESALE AGREEMENT.

**AGENDA:** FEBRUARY 6, 2001 - REGULAR AGENDA - INTERESTED PERSONS MAY PARTICIPATE

**CRITICAL DATES:** NONE

**SPECIAL INSTRUCTIONS:** NONE

**FILE NAME AND LOCATION:** S:\PSC\LEG\WP\990108RD.RCM

### CASE BACKGROUND

On January 29, 1999, The Other Phone Company, Inc. d/b/a Access One Communications (Access One) filed a complaint against BellSouth Telecommunications, Inc. (BellSouth) for breach of their resale agreement. This matter was set for an administrative hearing on August 11, 1999.

On August 11, 1999, Access One and BellSouth filed a Joint Motion for Continuance. In the Joint Motion, the parties indicated that negotiations were underway, and they were hopeful that the negotiations would result in settlement of all issues. On August 12, 1999, this Commission entered Order No. PSC-99-1584-PCO-TP, granting the joint Motion for Continuance. The Order did not specify any new hearing dates.

DOCUMENT NUMBER-DATE

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Since that time, there has been no activity of any type on this docket. The Docket was set for Prehearing on January 9, 2001 and Hearing on January 31, 2001. There have been no pleadings filed by Access One for the last 16 months. On November 29, 2000, BellSouth filed a Motion to Dismiss Complaint.

Staff has made several unsuccessful attempts to contact any attorney of record in this Docket. Also, staff has made several contacts with Access One and has been unable to identify anyone in that company who professes any knowledge of the pending Docket. The final person at the company with whom staff spoke indicated that they would provide a document via facsimile to the Commission which would either withdraw the complaint or agree to the motion to dismiss. That document has not been forthcoming nor had the company responded further in any manner, until after a January 4, 2001, recommendation was filed for the January 16, 2001 Agenda Conference.

On Monday, January 8, 2001, staff received a telephone call from attorney Neil Baritz, who advised that he had been retained to represent Access One in this Docket, and would be requesting a deferral of BellSouth's Motion to Dismiss. At the end of that day, staff received via facsimile a copy of a letter from Mr. Baritz to Chairman Jacobs, requesting that the item be deferred from the January 16, 2001, Agenda.

Based on BellSouth's Motion to Dismiss and the failure of Access One to pursue its Complaint with any diligence whatsoever, staff brings the following recommendation.

**DISCUSSION OF ISSUES**

**ISSUE 1:** Should the Commission grant BellSouth's Motion to Dismiss Complaint?

**RECOMMENDATION:** Yes. Access One has failed to diligently pursue its Complaint and the Complaint should be dismissed (**FORDHAM**)

**STAFF ANALYSIS:** BellSouth filed its Motion to Dismiss Complaint pursuant to Rule 1.42(e), Florida Rules of Civil Procedure and Rule 28-106.204, Florida Administrative Code. In support of its Motion, BellSouth alleges that it continued to have settlement discussions with Access One for a short time following the continuance of the Hearing. All discussions ended, however in late 1999. BellSouth

has had no discussions with Access One regarding this Docket in more than a year. In view of the passage of more than a year since any activity has occurred in this Docket, BellSouth urges that the Complaint be dismissed. Staff also observes that, on May 9, 2000, this Commission approved a successor agreement to the one under which this complaint arose.

During the January 8, 2001 telephone call from Access One's new counsel, Neil Baritz, he advised staff that he had been retained on January 5, 2001 to represent Access One in this Docket. He stated that Access One had a great interest in preventing the complaint from being dismissed. Since that communication, however, there has been no further contact from Mr. Baritz. There has been no responsive pleading from Access One to the Motion to Dismiss, and BellSouth reports that they, also, have heard nothing further from Access One since the January 8, 2001 letter.

In view of Access One's failure to pursue its Complaint with any diligence whatsoever, staff recommends that the Commission grant BellSouth's Motion to Dismiss Access One's Complaint.

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

**RECOMMENDATION:** Yes. If the Commission approves staff's recommendation in Issue 1, this Docket will require no further action, and may be closed. **(FORDHAM)**

**STAFF ANALYSIS:** If the Commission approves staff's recommendations in Issue 1, this Docket will require no further action, and may be closed.