



# Public Service Commission

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

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**DATE:** JUNE 13, 2001

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

**FROM:** DIVISION OF COMPETITIVE SERVICES (HINTON, DOWDS, FULWOOD, KING) *CH*  
 DIVISION OF POLICY ANALYSIS AND INTERGOVERNMENTAL LIAISON (OLLILA) *MD*  
 DIVISION OF LEGAL SERVICES (KEATING) *JK*

**RE:** DOCKET NO. 991220-TP - PETITION BY GLOBAL NAPS, INC. FOR ARBITRATION OF INTERCONNECTION RATES, TERMS AND CONDITIONS AND RELATED RELIEF OF PROPOSED AGREEMENT WITH BELL SOUTH TELECOMMUNICATIONS, INC.

**AGENDA:** 06/25/01 - REGULAR AGENDA - POST HEARING DECISION - EXTENSION OF TIME/ARBITRATED AGREEMENT

**CRITICAL DATES:** STATUTORY TIME FRAME TO CONCLUDE ARBITRATION WAIVED BY THE PARTIES

**SPECIAL INSTRUCTIONS:** NONE

**FILE NAME AND LOCATION:** S:\PSC\CMP\WP\991220.RCM

### CASE BACKGROUND

On August 26, 1999, Global NAPS, Inc. (GNAPs) filed a petition for arbitration of an interconnection agreement with BellSouth Telecommunications, Inc. (BellSouth) under Section 252(b) of the Telecommunications Act of 1996 (the "Act"). On September 20, 1999, BellSouth timely filed its Response to the petition. At the issue identification meeting, the parties identified 14 issues to be arbitrated.

An administrative hearing was held on June 7, 2000. Parties agreed to stipulate all testimony and exhibits, entering them into the record without calling witnesses.

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By Order No. PSC-00-1680-FOF-TP, issued September 19, 2000, the Commission rendered its decision on the issues. Therein, the Commission addressed the treatment of dial-up traffic to Internet service providers (ISPs), reciprocal compensation, the definition of local traffic, rates for unbundled network elements (UNEs), and collocation provisions.

On October 4, 2000, BellSouth filed a Motion for Reconsideration of the Commission's post-hearing decision. That same day, GNAPs also filed a Motion for Reconsideration and/or Clarification of the Commission's decision. On October 16, 2000, the parties filed their responses to the Motions. By Order No. PSC-01-0762-FOF-TP, issued March 26, 2001, the Commission denied the Motions for Reconsideration and required that the final arbitrated agreement be filed within 30 days of the issuance of the Order. The agreement was, therefore, due to be filed on April 25, 2001.

On April 24, 2001, the parties filed a Joint Motion for Extension of Time to file their arbitrated agreement. Therein, they requested an extension of 30 days to allow them to file their final interconnection agreement on May 25, 2001. On May 25, 2001, BellSouth filed the final interconnection agreement along with a Statement of Disputed Issues. On that same day, GNAPs filed a letter requesting that the Commission order the parties to adopt the final agreement with GNAPs' language, as opposed to BellSouth's.

This is staff's recommendation on the Motion for Extension of Time, the disputed final language, and the parties' interconnection agreement.

#### **JURISDICTION**

Part II of the Federal Telecommunications Act of 1996 (Act) sets forth provisions regarding the development of competitive markets in the telecommunications industry. Section 251 of the Act regards interconnection with the incumbent local exchange carrier, and Section 252 sets forth the procedures for negotiation, arbitration, and approval of agreements.

Section 252(b) addresses agreements reached through compulsory arbitration. Specifically, Section 252(b)(1) states:

(1) Arbitration. - During the period from the 135th to 160th day (inclusive) after the date on which an incumbent local exchange carrier receives a request for negotiation under this section, the carrier or any other party to the negotiation may petition a State commission to arbitrate any open issues.

Section 252(b)(4)(C) states that the State commission shall resolve each issue set forth in the petition and response, if any, by imposing the appropriate conditions as required. This section requires this Commission to conclude the resolution of any unresolved issues not later than 9 months after the date on which the local exchange carrier received the request under this section. In this case, however, the parties have explicitly waived the 9-month requirement set forth in the Act. Pursuant to Section 252(e)(5) of the Act, if the Commission refuses to act, then the FCC shall issue an order preempting the Commission's jurisdiction in the matter, and shall assume jurisdiction of the proceeding. Furthermore, Section 252(e) requires that arbitrated agreements be submitted for approval by the state Commission in accordance with the requirements of that subsection and applicable state law.

#### DISCUSSION OF ISSUES

**ISSUE 1:** Should the Commission grant the parties' Joint Motion For Extension of Time?

**RECOMMENDATION:** Yes. Allowing the parties additional time to file their agreement will not prejudice any party to this proceeding.  
**(KEATING)**

**STAFF ANALYSIS:** In their motion, the parties indicate that they need additional time in which to file their final executed interconnection agreement, because they need additional time to work out the details. The parties both agree that this extension is necessary and that it will prejudice neither party. Staff, therefore, recommends that the Joint Motion for Extension of Time be granted. Staff notes that an unsigned version of their agreement was filed on May 25, 2001.

**ISSUE 2:** Should the Commission incorporate language in the final interconnection agreement for the disputed issues identified by the parties that were not considered in the arbitration proceeding?

**RECOMMENDATION:** No. The Commission should not incorporate language in the arbitrated agreement for disputed issues that were not part of the arbitration proceeding. **(HINTON)**

**STAFF ANALYSIS:** The parties to this proceeding, upon filing their final interconnection agreement, have identified language that is still in dispute. This language involves two issues identified by BellSouth, namely: (1) the definition of ISP-bound traffic; and (2) the establishment of the point of interconnection. Global NAPs agrees that language involving these two issues is still in dispute. However, Global NAPs identifies a third issue that is still being negotiated, namely: (3) the use of fiber optics as an interconnection technology. The above issues, and the applicable language, are addressed in Attachment 3 of the interconnection agreement. More specifically, the disputed language is contained in sections 1.2, 1.6, 1.7, 1.9.1, 1.9.2, 1.9.5, 1.9.6, and 5.1.2, and identified as the shaded language in the final interconnection agreement filed by BellSouth on May 25, 2001.

The above mentioned issues were not identified in either Global NAPs' petition for arbitration or BellSouth's response. Since the Commission is limited to considering only those issues raised in the petition for arbitration and any response thereto, pursuant to Section 252(b)(4)(A) of the Telecommunications Act of 1996, staff does not believe it is appropriate for the Commission to address the above mentioned issues in this proceeding. Therefore, staff recommends that the Commission not incorporate language resolving these issues in the final interconnection agreement filed by the parties. This recommendation is consistent with recommendations approved in Docket Nos. 960833-TP and 960847-TP.

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**ISSUE 3:** Should the Commission approve the interconnection agreement between Global NAPs and BellSouth filed in accordance with Order No. PSC-01-0762-FOF-TP and Order No. PSC-00-1680-FOF-TP, on May 25, 2001?

**RECOMMENDATION:** No, the Commission should not approve the final interconnection agreement between Global NAPs and BellSouth filed on May 25, 2001. **(HINTON)**

**STAFF ANALYSIS:** As addressed in Issue 2 above, the parties have identified language within this interconnection agreement that is still a matter of dispute. In addition, the interconnection agreement filed by BellSouth on May 25, 2001, has not been executed by the parties; therefore, it is not a valid agreement that may be approved by the Commission. Staff recommends that the Commission reject the agreement filed on May 25, 2001, and require the parties to file a fully executed agreement that does not contain language still in dispute.

**ISSUE 4:** Should this Docket be closed?

**RECOMMENDATION:** No. If the Commission approves staff's recommendations in Issues 1, 2, and 3, this docket should remain open in order that parties may file a final interconnection agreement. The parties should be required to file this final interconnection agreement within 30 days of the issuance of the Commission's order. **(KEATING)**

**STAFF ANALYSIS:** If the Commission approves staff's recommendations in Issues 1, 2, and 3, this docket should remain open in order that parties may file a final interconnection agreement. The parties should be required to file a final interconnection agreement within 30 days of the issuance of the order from this recommendation. This agreement should not include language that is still in dispute as addressed in Issues 2 and 3 above, and should be in compliance with Order Nos. PSC-01-0762-FOF-TP and PSC-00-1680-FOF-TP.