

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition by BellSouth  
Telecommunications, Inc. for  
arbitration of resale agreement  
with Atlantic Telecommunication  
Systems, Inc.

DOCKET NO. 992018-TP  
ORDER NO. PSC-00-0760-PHO-TP  
ISSUED: April 18, 2000

Pursuant to Notice and in accordance with Rule 28-106.209,  
Florida Administrative Code, a Prehearing Conference was held on  
April 7, 2000, in Tallahassee, Florida, before Commissioner E. Leon  
Jacobs, Jr., as Prehearing Officer.

APPEARANCES:

NANCY B. WHITE, ESQUIRE, c/o Ms. Nancy H. Sims, 150 South  
Monroe Street, Suite 400, Tallahassee, Florida  
32301-1556  
On behalf of BellSouth Telecommunications, Inc.

C. LEE FORDHAM, ESQUIRE, Florida Public Service  
Commission, 2540 Shumard Oak Boulevard, Tallahassee,  
Florida 32399-0850  
On behalf of the Commission Staff.

PREHEARING ORDER

I. CONDUCT OF PROCEEDINGS

Pursuant to Rule 28-106.211, Florida Administrative Code, this  
Order is issued to prevent delay and to promote the just, speedy,  
and inexpensive determination of all aspects of this case.

II. CASE BACKGROUND

Atlantic Telecommunications Systems, Inc. (Atlantic) is an  
ALEC, holding a Florida certificate to resell telecommunications  
services provided by BellSouth Telecommunications, Inc.  
(BellSouth).

On February 9, 1998, the Commission approved a  
BellSouth/Atlantic Resale Agreement, which expired on September 16,  
1999. The parties agreed to continue service pursuant to the  
expired agreement until a successor agreement was adopted. On

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December 23, 1999, however, BellSouth filed a Petition for Arbitration of Resale Agreement with Atlantic.

Though only one issue remains, BellSouth and Atlantic have been unable to negotiate a new resale agreement. The matter has, therefore, been set for an administrative hearing on April 19, 2000.

At the scheduled prehearing conference, held April 7, 2000, Atlantic failed to appear. Therefore, in accordance with Order No. PSC-00-0391-PCO-TP, the Order Establishing Procedure for this case, Atlantic has waived all positions and issues raised in its prehearing statement.

### III. PROCEDURE FOR HANDLING CONFIDENTIAL INFORMATION

A. Any information provided pursuant to a discovery request for which proprietary confidential business information status is requested shall be treated by the Commission and the parties as confidential. The information shall be exempt from Section 119.07(1), Florida Statutes, pending a formal ruling on such request by the Commission, or upon the return of the information to the person providing the information. If no determination of confidentiality has been made and the information has not been used in the proceeding, it shall be returned expeditiously to the person providing the information. If a determination of confidentiality has been made and the information was not entered into the record of the proceeding, it shall be returned to the person providing the information within the time periods set forth in Section 364.183, Florida Statutes.

B. It is the policy of the Florida Public Service Commission that all Commission hearings be open to the public at all times. The Commission also recognizes its obligation pursuant to Section 364.183, Florida Statutes, to protect proprietary confidential business information from disclosure outside the proceeding.

1. Any party intending to utilize confidential documents at hearing for which no ruling has been made, must be prepared to present their justifications at hearing, so that a ruling can be made at hearing.

2. In the event it becomes necessary to use confidential information during the hearing, the following procedures will be observed:

- a) Any party wishing to use any proprietary confidential business information, as that term is defined in Section 364.183, Florida Statutes, shall notify the Prehearing Officer and all parties of record by the time of the Prehearing Conference, or if not known at that time, no later than seven (7) days prior to the beginning of the hearing. The notice shall include a procedure to assure that the confidential nature of the information is preserved as required by statute.
- b) Failure of any party to comply with 1) above shall be grounds to deny the party the opportunity to present evidence which is proprietary confidential business information.
- c) When confidential information is used in the hearing, parties must have copies for the Commissioners, necessary staff, and the Court Reporter, in envelopes clearly marked with the nature of the contents. Any party wishing to examine the confidential material that is not subject to an order granting confidentiality shall be provided a copy in the same fashion as provided to the Commissioners, subject to execution of any appropriate protective agreement with the owner of the material.
- d) Counsel and witnesses are cautioned to avoid verbalizing confidential information in such a way that would compromise the confidential information. Therefore, confidential information should be presented by written exhibit when reasonably possible to do so.
- e) At the conclusion of that portion of the hearing that involves confidential information, all copies of confidential exhibits shall be returned to the proffering party. If a confidential exhibit has been admitted into evidence, the copy provided to the Court Reporter shall be retained in the Division of Records and Reporting's confidential files.

IV. POST-HEARING PROCEDURES

BellSouth shall file a post-hearing statement of issues and positions. A summary of its position of no more than 50 words, set off with asterisks, shall be included in that statement. If its position has not changed since the issuance of the prehearing order, the post-hearing statement may simply restate the prehearing position; however, if the prehearing position is longer than 50 words, it must be reduced to no more than 50 words. If BellSouth fails to file a post-hearing statement, it shall have waived all issues and may be dismissed from the proceeding.

Pursuant to Rule 28-106.215, Florida Administrative Code, a party's proposed findings of fact and conclusions of law, if any, statement of issues and positions, and brief, shall together total no more than 40 pages, and shall be filed at the same time.

V. PREFILED TESTIMONY AND EXHIBITS; WITNESSES

Testimony of all witnesses to be sponsored by the parties has been prefiled. The prehearing officer recommends to the presiding officer that all testimony which has been prefiled by BellSouth in this case may be inserted into the record as though read at the hearing. The prehearing officer also recommends to the presiding officer that Atlantic's prefiled testimony and exhibits not be inserted into the record at the hearing. This recommendation is contingent upon affirmation by the presiding officer. All testimony remains subject to appropriate objections.

VI. ORDER OF WITNESSES

Direct

<u>Witness</u>	<u>Proffered By</u>	<u>Issues #</u>
Beth Shirioshi	BellSouth	1

VII. BASIC POSITIONS

BELLSOUTH:

The issue in this docket represents a specific dispute between BellSouth and Atlantic Telecommunications Systems, Inc. ("Atlantic") as to what should be included in the Resale

Agreement between the parties. The issue involves a matter not properly within the scope of the Telecommunications Act of 1996 ("1996 Act") and should, therefore, not be part of an arbitrated Resale Agreement. In the event that the Florida Public Service Commission ("Commission") determines that the issue is within the parameters of the Telecommunications Act of 1996 ("1996 Act"), BellSouth's position is the more consistent with the 1996 Act, the pertinent rulings of the FCC and the rules of this Commission. Therefore, the Commission should sustain BellSouth's position.

**ATLANTIC:**

Atlantic's positions are waived by its failure to appear at the Prehearing Conference.

**STAFF:**

Staff's positions are preliminary and based on materials filed by the parties and on discovery. The preliminary positions are offered to assist the parties in preparing for the hearing. Staff's final positions will be based upon all the evidence in the record and may differ from the preliminary positions.

VIII. ISSUES AND POSITIONS

**ISSUE 1:** Under the Telecommunications Act of 1996, can Atlantic require BellSouth to include a provision in the Resale Agreement whereby BellSouth is precluded from offering service to consumers covered by an exclusive service arrangement with Atlantic?

**POSITIONS**

**BELLSOUTH:**

No. Neither the 1996 Act nor Florida law addresses the issue of exclusive service arrangements. Thus, this issue is clearly not appropriate for arbitration under 252 of the 1996 Act. As a matter of policy, however, the Florida Public Service Commission should not allow any type of arrangement wherein a consumer's choice is limited. The practical effect of exclusive service arrangements is that a consumer, once committed, can be "held hostage" by the service provider, even

in the face of poor service or non-competitive pricing. Clearly, exclusive service arrangements do not promote the goal of increased competition envisioned by the 1996 Act or Chapter 364, Florida Statutes.

**ATLANTIC:**

Atlantic's positions are waived by its failure to appear at the Prehearing Conference.

**STAFF:**

Staff has no position at this time.

**ISSUE 2:** In the event of an unauthorized change in local service (i.e., slamming) by Atlantic, is BellSouth allowed to recover from Atlantic the costs BellSouth incurs in returning the slammed customer to the appropriate local service provider? If so, should the obligation be reciprocal? (**Stipulated**)

**POSITIONS**

**BELLSOUTH:**

The parties have reached agreement on this issue.

**ATLANTIC:**

The parties have reached agreement on this issue.

**STAFF:**

Staff has no position at this time.

**IX. EXHIBIT LIST**

BellSouth did not prefile any exhibits; therefore, no exhibits will be introduced at the hearing.

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X. RULINGS

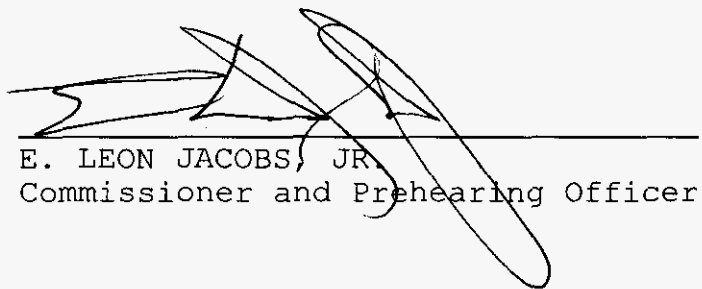
A. Pursuant to the Order Establishing Procedure, Order PSC-00-0391-PCO-TP, issued February 23, 2000, Atlantic Telecommunication Systems, Inc., by virtue of its failure to appear at the Prehearing Conference in this matter, has waived all issues and positions raised by it. Therefore, the prehearing officer recommends to the presiding officer that the testimony and exhibits proffered by Atlantic not be entered into the record at the hearing scheduled for April 19, 2000.

B. No BellSouth witnesses will be required to appear at the April 19, 2000 Hearing.

It is therefore,

ORDERED by Commissioner E. Leon Jacobs, Jr., as Prehearing Officer, that this Prehearing Order shall govern the conduct of these proceedings as set forth above unless modified by the Commission.

By ORDER of Commissioner E. Leon Jacobs, Jr. as Prehearing Officer, this 18th day of April, 2000.



E. LEON JACOBS, JR.  
Commissioner and Prehearing Officer

( S E A L )

CLF

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

Any party adversely affected by this order, which is preliminary, procedural or intermediate in nature, may request: (1) reconsideration within 10 days pursuant to Rule 25-22.0376, Florida Administrative Code, if issued by a Prehearing Officer; (2) reconsideration within 15 days pursuant to Rule 25-22.060, Florida Administrative Code, if issued by the Commission; or (3) judicial review by the Florida Supreme Court, in the case of an electric, gas or telephone utility, or the First District Court of Appeal, in the case of a water or wastewater utility. A motion for reconsideration shall be filed with the Director, Division of Records and Reporting, in the form prescribed by Rule 25-22.060, Florida Administrative Code. Judicial review of a preliminary, procedural or intermediate ruling or order is available if review of the final action will not provide an adequate remedy. Such review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.