

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition by Global NAPS,
Inc. for arbitration of
interconnection rates, terms and
conditions and related relief of
proposed agreement with
BellSouth Telecommunications,
Inc.

DOCKET NO. 991220-TP
ORDER NO. PSC-01-1423-FOF-TP
ISSUED: July 2, 2001

The following Commissioners participated in the disposition of
this matter:

E. LEON JACOBS, JR., Chairman
J. TERRY DEASON
LILA A. JABER

ORDER GRANTING EXTENSION OF TIME TO FILE FINAL
ARBITRATED AGREEMENT, DECLINING TO RESOLVE DISPUTE REGARDING
LANGUAGE NOT ADDRESSED IN ARBITRATION ORDER, REJECTING INCOMPLETE
AGREEMENT, AND REQUIRING PARTIES TO REFILE
FINAL ARBITRATED AGREEMENT

BY THE COMMISSION:

I. 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.

DOCUMENT NUMBER-DATE

08132 JUL-26

FILED BY: [REDACTED] / REPORTING

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By Order No. PSC-00-1680-FOF-TP, issued September 19, 2000, we rendered our decision on the issues. Therein, we 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 our 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, we 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 we order the parties to adopt the final agreement with GNAPs' language, as opposed to BellSouth's.

II. 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 explicitly waived the 9-month requirement set forth in the Act. Pursuant to Section 252(e)(5) of the Act, if we were to refuse to act, then the FCC could issue an order preempting our jurisdiction in the matter, and thereafter 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.

III. EXTENSION OF TIME

In their motion, the parties indicated that they needed additional time in which to file their final executed interconnection agreement, because they needed additional time to work out the details. The parties both agreed that this extension was necessary and that it would prejudice neither party. We note that the parties filed their agreement within the requested time frame. As such, we approve the extension of time.

IV. DISPUTED LANGUAGE

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 we are 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, we do not find it appropriate to address the above mentioned issues in this proceeding. Therefore, we shall not approve language resolving these issues for incorporation in the final interconnection agreement filed by the parties.

V. FINAL AGREEMENT

As set forth 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, we find it is not a valid agreement, and as such, shall not approve it. Therefore, we hereby require the parties to refile a fully executed agreement that does not contain language still in dispute within 30 days of the issuance of this Order.

It is therefore

ORDERED by the Florida Public Service Commission that the Extension of Time requested by the parties for filing their arbitrated agreement has been approved. It is further

ORDERED that we hereby decline to resolve the disputed language identified by the parties for the reasons set forth in the body of this Order. It is further

ORDERED that we hereby reject the agreement submitted by BellSouth Telecommunications, Inc., on May 25, 2001, for the reasons set forth in the body of this Order. It is further

ORDERED that the parties shall file their final arbitrated agreement complying with the provisions of this Order, our final Order on the parties' arbitration, Order No. PSC-00-1680-FOF-TP, and our decision on the Motions for Reconsideration, Order No. PSC-

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01-0762-FOF-TP, within thirty (30) days of the issuance of this Order. It is further

ORDERED that this Docket shall remain open pending approval of the parties' final arbitrated agreement.

By ORDER of the Florida Public Service Commission this 2nd Day of July, 2001.

BLANCA S. BAYÓ, Director
Division of the Commission Clerk
And Administrative Services

By: Kay Flynn
Kay Flynn, Chief
Bureau of Records

(S E A L)

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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.

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Any party adversely affected by the Commission's final action in this matter may request: 1) reconsideration of the decision by filing a motion for reconsideration with the Director, Division of the Commission Clerk and Administrative Services, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, within fifteen (15) days of the issuance of this order in the form prescribed by Rule 25-22.060, Florida Administrative Code; or 2) 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 and/or wastewater utility by filing a notice of appeal with the Director, Division of the Commission Clerk and Administrative Services and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days after the issuance of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900(a), Florida Rules of Appellate Procedure.