

State of Florida



Public Service Commission

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RECORDS AND REPORTING

DATE: SEPTEMBER 23, 1999

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

FROM: DIVISION OF LEGAL SERVICES (WATTS, BEDELL, PENA) *CBW CB kmf*
DIVISION OF COMMUNICATIONS (CORDIANO) *✓* *(2)*

RE: DOCKET NO. 990950-TP - REQUEST BY BELLSOUTH TELECOMMUNICATIONS, INC. FOR APPROVAL OF INTERCONNECTION, UNBUNDLING, AND RESALE AGREEMENT WITH THE OTHER PHONE COMPANY, INC. D/B/A ACCESS ONE COMMUNICATIONS.

AGENDA: OCTOBER 5, 1999 - REGULAR AGENDA - PROPOSED AGENCY ACTION - INTERESTED PERSONS MAY PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: NONE

FILE NAME AND LOCATION: S:\PSC\LEG\WP\990950.RCM

CASE BACKGROUND

On July 22, 1999, pursuant to Section 252(e) of the Telecommunications Act of 1996, BellSouth Telecommunications, Inc. (BellSouth) and Access One Communications, Inc. (Access One) submitted their negotiated agreement for the interconnection of their networks, the unbundling of specific network elements offered by BellSouth, and the resale of BellSouth telecommunications services to Access One Communications, Inc.

This recommendation addresses the approval of the negotiated agreement between BellSouth and Access One.

DOCUMENT NUMBER-DATE

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DISCUSSION OF ISSUES

ISSUE 1: Should the Commission approve the negotiated agreement between BellSouth and Access One in Docket No. 990950-TP?

RECOMMENDATION: Yes, the Commission should approve the negotiated agreement between BellSouth and Access One in Docket No. 990950-TP, except for Attachment 13 and references to it contained in Attachment 2. Staff recommends rejection of Attachment 13 of the negotiated agreement because it is not consistent with the public interest. **(Cordiano, Watts)**

STAFF ANALYSIS: Staff has reviewed the negotiated agreement between BellSouth and Access One Communications, Inc. and believes that the agreement is consistent with the act except for Attachment 13.

Section 252(e)(2) of the Act provides that a state commission may reject an interconnection agreement (or any portion thereof) if the agreement discriminates against a carrier not a party to the agreement, or if the agreement is inconsistent with the public interest, convenience, and necessity. Staff believes that approval of Attachment 13 is not in the public interest.

Attachment 13 is titled "Professional Services and Combinations." Attachment 13 reads, in part:

...[T]he Parties agree that, to the extent this Attachment 13 requires BellSouth to undertake duties and obligations that it is not otherwise required to perform pursuant to any section of the Act nor pursuant to current or future order of the Federal Communications Commission or of any state public service commission, such duties and obligations are not subject to the jurisdiction of the FCC or of any state public service commission, including but not limited to any authority to arbitrate the rates, terms, and conditions for the offering of such combinations to network elements. To the extent that either party hereto, the FCC, any state public service commission or any other person, entity or party asserts that any such rates, terms and conditions of this Attachment 13, or any other contract or agreement which is based upon this Attachment 13 as a result of any telecommunications carrier exercising its rights under Section 252(I) of the Act, are subject to the jurisdiction of the FCC or any state public service commission for the purpose of changing the rates, terms

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and conditions of this Attachment 13, or are subject to arbitration, then, the rates, terms and conditions of this Attachment 13 or any such contract or agreement based upon this Attachment 13 under which such assertion is made, shall immediately become null and void and of no effect whatsoever.

Staff believes that this portion of the agreement should not be approved. The parties to the agreement assert that the services offered are not subject to the jurisdiction of the FCC or this Commission. If this Commission has no jurisdiction over the contents of Attachment 13, staff recommends such contract language should not be approved.

If the provisions of Attachment 13 are beyond the scope of the Act, then parties should enter a separate agreement not reviewable by this Commission or the FCC. This Commission should not assert its jurisdiction under the Act to approve a provision of an agreement which clearly states that it was not entered into pursuant to the Act, over which no State Commission or the FCC has any jurisdiction and that specifically precludes any exercise of our jurisdiction. Therefore, staff recommends approval the negotiated interconnection, unbundling, and resale agreement except Attachment 13 and any references to it.

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ISSUE 2: Should this docket be closed?

RECOMMENDATION: Yes, upon approval of staff's recommendation in Issue 1, this docket should be closed if no person whose substantial interests are affected files a protest within 21 days of the issuance of this Order. If no timely protest is filed, the Order will become final upon issuance of a consummating order and this docket should be closed. **(WATTS, BEDELL, PEÑA)**

STAFF ANALYSIS: Assuming staff's recommendation in Issue 1 is approved, this docket should be closed if no person whose substantial interests are affected files a protest within 21 days of the issuance of this Order. If no timely protest is filed, the Order will become final upon issuance of a consummating order and this docket should be closed.