



Public Service Commission

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RECORDS AND REPORTING

9 OCT -7 AM 11:49

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DATE: OCTOBER 7, 1999

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

FROM: DIVISION OF LEGAL SERVICES (PENA, CALDWELL) *VMP Duc*
DIVISION OF COMMUNICATIONS (HINTON) *SAS for CH mad for BK*

RE: DOCKET NO. 991099-TP - REQUEST BY BELLSOUTH TELECOMMUNICATIONS, INC. FOR APPROVAL OF RESALE AGREEMENT WITH GLOBAL INTERACTIVE COMMUNICATIONS CORPORATION.

AGENDA: OCTOBER 19, 1999 - REGULAR AGENDA - FINAL ACTION

CRITICAL DATES: NOVEMBER 10, 1999 - 90-DAY LIMIT PURSUANT TO SECTION 252(e)(4) OF THE TELECOMMUNICATIONS ACT OF 1996.

SPECIAL INSTRUCTIONS: NONE

FILE NAME AND LOCATION: S:\PSC\LEG\WP\991099.RCM

CASE BACKGROUND

On August 12, 1999, BellSouth Telecommunications Inc. (BellSouth) and Global Interactive Communications Corp. (Global) submitted their negotiated agreement for the purchase of BellSouth's telecommunications services for resale to end users by Global Interactive Communications Corp. Section 252(e) of the Telecommunications Act of 1996 provides for the approval or rejection by State commissions of any interconnection agreement within 90 days after submission by the parties.

DOCUMENT NUMBER-DATE

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DISCUSSION OF ISSUES

ISSUE 1: Should the Commission approve the negotiated agreement between BellSouth Telecommunications Inc. and Global Interactive Communications Corp. for the purchase of BellSouth's telecommunications services for resale to end users by Global?

RECOMMENDATION: The Commission should approve in part the negotiated agreement between BellSouth Telecommunications Inc. and Global Interactive Communications Corp., but should reject those provisions set forth in staff's analysis below that discriminate against telecommunications carriers not a party to the agreement. Staff believes the implementation of the agreement as written is not consistent with the public interest and violates Section 252(i) of the Telecommunications Act of 1996. (HINTON, CALDWELL)

STAFF ANALYSIS: Staff recommends the Commission approve the agreement between BellSouth and Global, with the exception of the three provisions discussed below. The agreement otherwise is consistent with the Telecommunications Act of 1996.

Section 252(e) of the Telecommunications Act of 1996 provides for approval of any interconnection agreement adopted by negotiation or arbitration to be submitted for approval to the State commission. The State commission is required to approve or reject the agreement, with written findings as to any deficiencies. Paragraph (2) of Section 252(e) provides criteria for rejecting an agreement. That paragraph provides in part that the State commission may only reject:

an agreement (or any portion thereof) adopted by negotiation under subsection (a) if it finds that (i) the agreement (or any portion thereof) discriminates against a telecommunications carrier not a party to the agreement; or (ii) the implementation of such agreement or portion is not consistent with the public interest, convenience, and necessity

The three provisions of the agreement that concern staff are as follows:

- 1) **The terms and conditions contained within this Part A & Part B were negotiated as a whole and each term and condition within this Part A &**

Part B is interdependent upon the other terms and conditions. (Agreement, Part A, Page 1) (emphasis original)

- 2) . . . The parties shall adopt all rates, terms and conditions concerning such other interconnection, service or network element and any other rates, terms and conditions that are interrelated or were negotiated in exchange for or in conjunction with the interconnection, service or network element being adopted. . . . (Agreement, Part A, page 13.)
- 3) **The rates, terms and conditions contained within this Attachment were negotiated as a whole and each rate, term and condition within the Attachment is interdependent upon the other rates, terms and conditions.** (Attachment 1 to Agreement, Page 1) (emphasis original)

The Federal Communications Commission (FCC) issued Order No. 96-325 that interpreted Section 252 of the Telecommunications Act of 1996 and explained State commission responsibilities under the Act. The FCC's interpretation of Section 252(i) of the Act is pertinent in this instance. With respect to Section 252(i), the FCC states that "[c]arriers may obtain any individual interconnection, service, or network element under the same terms and conditions as contained in any publicly filed interconnection agreement without having to agree to the entire agreement." (CC Order No. 96-325, ¶ 40)

In its Order, the FCC considered the issue whether Section 252(i) allows requesting telecommunications carriers to choose among provisions of prior approved interconnection agreements or requires them to accept an entire agreement. (CC Order No. 96-325, ¶1309) The FCC concluded that the text of Section 252(i) supports requesting carriers' ability to choose among individual provisions contained in publicly filed interconnection agreements. (CC Order No. 96-325, ¶1310) In support of its conclusion, the FCC stated that unbundled access to agreement provisions will enable smaller carriers who lack bargaining power to obtain favorable terms and conditions -- including rates -- negotiated by large interexchange carriers, and speed the emergence of robust competition. (CC Order No. 96-325, ¶1313) The FCC continued: We conclude "that the 'same terms and conditions' that an incumbent LEC may insist upon shall

DOCKET NO. 991099-TP
DATE: October 7, 1999

relate solely to the individual interconnection, service, or element being requested under Section 252(i)." (CC Order No. 96-325, ¶1315)

The provisions noted above appear to require other carriers to adopt entire sections of this agreement and not an individual interconnection, service, or element as contemplated in CC Order No. 96-325, ¶1315. Staff believes that this apparent requirement would deter potential carriers from adopting any particular rate, term or condition from that contract as its own and further appears to require the entire agreement be adopted as a whole. Staff believes that any provision that acts as a deterrent to selecting a particular rate, term or condition discriminates against potential carriers. Further, staff believes that the appearance of the requirements could have a chilling effect on competition as a whole. This chilling effect is not consistent with the public interest.

Staff believes that the provisions violate Section 252(i) of the Telecommunication Act and are not consistent with FCC Order No. 96-325. Therefore, staff recommends that the Commission reject the provisions discussed above and approve the rest of the agreement.

ISSUE 2: Should the docket be closed?

RECOMMENDATION: Yes. If the Commission approves Staff's recommendation in Issue 1, this docket should be closed. (CALDWELL)

STAFF ANALYSIS: This docket should be closed if the Commission approves staff's recommendation in Issue 1.