

State of Florida



Public Service Commission

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TALLAHASSEE, FLORIDA 32399-0850

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RECORDS AND REPORTING

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DATE: DECEMBER 9, 1999

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

FROM: DIVISION OF COMMUNICATIONS (DOWDS, ANDU)
DIVISION OF LEGAL SERVICES (CALDWELL) *Duc BK*

RE: DOCKET NO. 981052-TP - PETITION BY TELEPHONE COMPANY OF CENTRAL FLORIDA, INC. FOR RESOLUTION OF ITEMS UNDER DISPUTE IN RESALE AGREEMENT WITH BELLSOUTH TELECOMMUNICATIONS, INC.

AGENDA: DECEMBER 21, 1999 - REGULAR AGENDA - POST HEARING DECISION - PARTICIPATION IS LIMITED TO COMMISSIONERS AND STAFF

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: NONE

FILE NAME AND LOCATION: S:\PSC\LEG\WP\981052.RCM

CASE BACKGROUND

On August 20, 1998, Telephone Company of Central Florida, Inc. (TCCF), filed a petition for resolution of items under dispute in its resale agreement with BellSouth Telecommunications, Inc. (BellSouth). An evidentiary hearing was held on January 22, 1999, and continued on February 9, 1999. On May 20, 1999, the Commission issued Order No. PSC-99-1013-FOF-TP. On June 4, 1999, BellSouth filed a Motion for Reconsideration of the Order. TCCF filed its Response to BellSouth's Motion on June 16, 1999. TCCF then filed on July 19, 1999, a request to withdraw pleadings and notice of intent to request the Commission to vacate the May 20, 1999, Order upon the Bankruptcy Court's approval of a settlement. TCCF also filed on August 30, 1999, a Motion to Dismiss Petition for Resolution. Finally on September 28, 1999, BellSouth and TCCF filed a Joint Motion to Vacate Commission's May 20, 1999, Order.

DOCUMENT NUMBER-DATE

15057 DEC-99

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DISCUSSION OF ISSUES

ISSUE 1: Should the Commission grant BellSouth Telecommunications, Inc.'s and the Telephone Company of Central Florida, Inc.'s Joint Motion to Vacate Commission's May 20, 1999, Order?

RECOMMENDATION: Yes. The Commission should grant BellSouth Telecommunications, Inc.'s and the Telephone Company of Central Florida, Inc.'s Joint Motion to Vacate Commission's May 20, 1999, Order and deem the underlying petition withdrawn. In addition, if the Commission grants the Motion to Vacate, all other pending motions will be moot. (CALDWELL)

STAFF ANALYSIS: In their Joint Motion, BellSouth and TCCF (Movants) state that they have reached a settlement of the issues in dispute in this matter in a parallel action brought by TCCF in an adversary proceeding in the United States Bankruptcy Court for the Middle District of Florida (BKY Case No. 98-04587-6BI, Adv. No. 98-420). The Bankruptcy Court approved that settlement by written order entered on July 15, 1999. The parties agreed to a new Resale Agreement, which was filed with this Commission on August 10, 1999, and was approved by Order No. PSC-99-2066-FOF-TP, issued October 21, 1999. The parties now wish to govern their relationship according to the terms of their Bankruptcy Court settlement and the new Resale Agreement, rather than the terms of the Commission's Order No. PSC-99-1013-FOF-TP. The Movants request that the Order be vacated in its entirety.

In support of their motion, the Movants state that the Commission's Order No. PSC-99-1013-FOF-TP is not final because of the outstanding Motion for Reconsideration filed by BellSouth. The Movants request that the Commission defer any action on that Motion. The Movants argue that if the Commission grants the Joint Motion to Vacate, the Motion to Reconsider would be moot. Moreover, TCCF withdraws its Complaint in this matter. Finally, the Joint Movants state that no party or other telecommunications carrier or customer would be prejudiced if the Order were vacated.

Staff agrees that it is appropriate to grant the Joint Motion to Vacate Order No. PSC-99-1013-FOF-TP because, although final, it is still within the Commission's control due to the outstanding Motion for Reconsideration. The purpose of this proceeding was to resolve a contract dispute between BellSouth and TCCF. If, in their course of business, they have resolved their differences and entered into a new contract, there is no purpose served by not

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vacating the Order. Staff believes that no one will be harmed if the Commission grants the Motion.

Finally, staff recommends that if the Commission grants the Joint Motion to Vacate, the outstanding Motion for Reconsideration filed by BellSouth and Motion to Dismiss filed by TCCF are moot.

ISSUE 2: Should this docket be closed?

RECOMMENDATION: Yes. If the Commission grants the Joint Motion to Vacate the Commission's May 20, 1999, Order and denies BellSouth Telecommunications, Inc.'s Motion for Reconsideration and Telephone Company of Central Florida, Inc.'s Motion to Dismiss, no further action needs to be taken and the docket should be closed. If the Commission denies staff's recommendation, the docket should remain open to resolve pending motions. (**CALDWELL**)

STAFF ANALYSIS: If the Commission grants the Joint Motion to Vacate the Commission's May 20, 1999, Order and denies BellSouth Telecommunications, Inc.'s Motion for Reconsideration and Telephone Company of Central Florida, Inc.'s Motion to Dismiss, no further action needs to be taken and the docket should be closed. If the Commission denies staff's recommendation, the docket should remain open to resolve pending motions.