

BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

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In the Matter of : DOCKET NO. 992018-TP
:
PETITION BY BELLSOUTH :
TELECOMMUNICATIONS, INC. FOR :
ARBITRATION OF RESALE AGREEMENT :
WITH ATLANTIC TELECOMMUNICATION :
SYSTEMS, INC. :

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PROCEEDINGS: HEARING

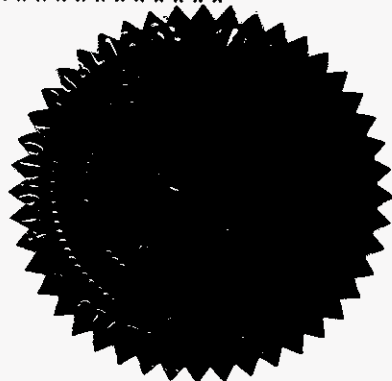
BEFORE: COMMISSION SUSAN F. CLARK
COMMISSIONER LILA JABER

DATE: Wednesday, April 19, 2000

TIME: Commenced at 9:30 a.m.
Concluded at 9:34 a.m.

PLACE: Betty Easley Conference Center
Room 148
4075 Esplanade Way
Tallahassee, Florida

REPORTED BY: TRICIA DeMARTE
Official Commission Reporter



1 **APPEARANCES:**

2 E. EARL EDENFIELD, JR., BellSouth
3 Telecommunications, Inc.; c/o Nancy Sims, 150 South Monroe
4 Street, Suite 400, Tallahassee, Florida 32301, appearing
5 on behalf of BellSouth Telecommunications, Inc.

6 C. LEE FORDHAM, Florida Public Service
7 Commission, Division of Legal Services, 2540 Shumard Oak
8 Boulevard, Tallahassee, Florida 32399-0850, appearing on
9 behalf of the Commissioner Staff.

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I N D E X

WITNESSES

NAME	PAGE NO.
ELIZABETH R. A. SHIROISHI	5
Stipulated Direct Prefiled Testimony Inserted	
CERTIFICATE OF REPORTER	14

P R O C E E D I N G S

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COMMISSIONER CLARK: We'll call this hearing to order. Would you please read the notice.

MR. FORDHAM: Pursuant to notice, this time and place were set for a hearing in Docket Number 992018-TP, which was a petition by BellSouth Telecommunications, Inc., for arbitration of resale agreement with Atlantic Telecommunication Systems, Inc.

COMMISSIONER CLARK: We'll take appearances.

MR. EDENFIELD: Good morning. Kip Edenfield on behalf of BellSouth.

MR. FORDHAM: And Lee Fordham representing the Commission.

COMMISSIONER CLARK: Okay. I want to indicate that Commissioner Jacobs will be here. He's running just a bit late, and he asked us to go ahead and get started.

Mr. Fordham, what do we need to do?

MR. FORDHAM: Commissioner, as noted in Commissioner Jacobs' prehearing order, when the prehearing date arrived on the 7th of April, Atlantic did not appear. And under the terms of the procedural order, a failure to appear at the prehearing order waives their position and issues. Consequentially, in the prehearing order, Commissioner Jacobs had ordered that we allow the testimony to be introduced by counsel for BellSouth as

1 opposed to a witness since there would be no
2 cross-examination.

3 COMMISSIONER CLARK: Okay.

4 MR. FORDHAM: So, at this point, I would suggest
5 that we yield to BellSouth.

6 COMMISSIONER CLARK: All right. Mr. Edenfield?

7 MR. EDENFIELD: Good morning. At this time,
8 BellSouth would move into the record as if read the direct
9 testimony of Beth Shiroishi which consists of seven pages
10 and no exhibits.

11 COMMISSIONER CLARK: It will be inserted in the
12 record as though read.

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BELLSOUTH TELECOMMUNICATIONS, INC.
DIRECT TESTIMONY OF BETH SHIROISHI
BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION
DOCKET NO. 992018-TP
March 3, 2000

Q. PLEASE STATE YOUR NAME, YOUR POSITION WITH BELLSOUTH TELECOMMUNICATIONS, INC. ("BELLSOUTH") AND YOUR BUSINESS ADDRESS.

A. My name is Elizabeth R. A. Shiroishi. I am employed by BellSouth Telecommunications, Inc., ("BellSouth") as Manager – Interconnection Services Pricing. My business address is 675 West Peachtree Street, Atlanta, Georgia 30375.

Q. PLEASE PROVIDE A BRIEF DESCRIPTION OF YOUR BACKGROUND AND EXPERIENCE.

A. I graduated from Agnes Scott College in Decatur, Georgia, in 1997, with a Bachelor of Arts Degree. I began employment with BellSouth in 1998 in the Interconnection Services Pricing Organization as a pricing analyst. I then moved to a position in product management, and now work with Interconnection Agreements as a negotiator.

1

2 Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?

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4 A. The purpose of my testimony is to present BellSouth's position on the
5 unresolved issue in the negotiations between BellSouth and Atlantic
6 Telecommunications Systems, Inc. ("Atlantic").

7

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

12

13 Q. IS THIS ISSUE APPROPRIATE AS AN ISSUE FOR ARBITRATION?

14

15 A. No. Limitation on a telecommunication carrier's ability to sell and market
16 services is not appropriate as an issue for arbitration, and contractual language
17 regarding this issue should not be imposed by this Commission. Neither the
18 Telecommunications Act of 1996 ("1996 Act"), the FCC Rules nor Florida law
19 address the issue of exclusive service arrangements. Clearly, there is no
20 requirement under Section 251 that such arrangements be addressed in a
21 Resale Agreement. Therefore, this issue is not appropriate for § 252
22 arbitration under the 1996 Act.

23

24 Q. WHAT IS BELL SOUTH'S POSITION ON THIS ISSUE?

25

1 A. BellSouth's position is that it is not appropriate to include specific language
2 regarding exclusive service arrangements in the Resale Agreement. In a
3 competitive environment, consumers should have choices as to service
4 providers, as well as types and pricing of services. Simply put, Atlantic seeks
5 to have the Commission erect a barrier around Atlantic's customers to protect
6 these customers from competition from BellSouth. BellSouth asserts that the
7 Commission should not limit BellSouth or any telecommunications provider
8 from marketing its products and services.

9

10 Q. WHAT IS ATLANTIC'S POSITION ON THIS ISSUE?

11

12 A. It is unclear exactly what Atlantic's position is from the language it has
13 requested for the Resale Agreement. Since Atlantic did not file a Response to
14 BellSouth's Petition in this arbitration, no additional insight has been provided.
15 However, as a practical matter, Atlantic's reference to "an exclusive
16 arrangement with end users within that Party's service area" may likely be in
17 the context of a multitenant environment.

18

19 Q. IS THE FCC EXPECTED TO ADDRESS THE ISSUE OF EXCLUSIVE
20 SERVICE ARRANGEMENTS IN A MULTITENANT ENVIRONMENT?

21

22 A. Yes. The FCC's Order 99-141 issued a Third Further Notice of Proposed Rule
23 Making in CC Docket No. 96-98 (rel. July 7, 1999) (Competitive Networks
24 Notice). The FCC explained its focus as follows:

25

1 *This item initiates a rulemaking proceeding to consider certain actions*
2 *to facilitate the development of competitive telecommunications*
3 *networks, and commences an inquiry into certain other issues related*
4 *to this goal. In particular, we consider actions to help ensure that*
5 *competitive providers will have reasonable and nondiscriminatory*
6 *access to rights-of-way, buildings, rooftops, and facilities in multiple*
7 *tenant environments. (Order 99-141, ¶ 1)*

8

9 Further, at ¶ 31, the FCC discusses the need to address exclusive service
10 arrangements in a multiple tenant environment:

11 *In several proceedings before the Commission, a number of parties*
12 *have argued that both building owners and incumbent LECs have*
13 *obstructed competing telecommunications carriers from obtaining*
14 *access on reasonable and nondiscriminatory terms to necessary*
15 *facilities located within multiple unit premises. ... At the same time, we*
16 *are aware that competitive telecommunications carriers have*
17 *successfully negotiated building access agreements in many instances,*
18 *and we recognize that building owners may have an incentive to offer*
19 *high quality telecommunications services and choices of providers in*
20 *order to attract tenants. On the other hand, long-term tenant leases*
21 *and high relocation costs may prevent the market from effectively*
22 *conveying tenants' preferences to building owners. We request parties,*
23 *including competing carriers, building owners, incumbent LECs, and*
24 *customers to provide additional evidence of their experiences*

25

1 *regarding the provision of telecommunications services in multiple*
2 *tenant environments.*

3
4 The FCC has recognized the need to examine exclusive service arrangements
5 in a competitive environment, and will do so in the above-mentioned
6 proceeding. Therefore, it is not appropriate at the present time to include
7 language in an interconnection resale agreement which may be contrary to
8 future FCC rules.

9

10

11 Q. HAS THIS COMMISSION ADDRESSED THE ISSUE OF EXCLUSIVE
12 SERVICE AGREEMENTS?

13

14 A. Yes. As an outcome of Special Project No. 980000B-SP, this Commission
15 issued a report in February 1999 entitled "Access by Telecommunications
16 Companies to Customers in Multitenant Environments". That report states, on
17 page (i),

18 *"A multitenant environment (MTE) in which a landlord or building*
19 *owner controls access to the telecommunications equipment area or*
20 *other related facilities in a structure appears to be a situation where*
21 *limitations to competition may exist."*

22 Further, on page (iv), the report states,

23 *"Exclusionary contracts between telecommunications companies and*
24 *landlords are anticompetitive and should be against public policy.*

25

1 *Therefore, the Commission recommends that exclusionary contracts*
2 *should be prohibited.”*

3

4 Q. WHAT IS BELLSOUTH’S POSITION WITH REGARD TO
5 EXCLUSIONARY CONTRACTS IN MULTITENANT ENVIRONMENTS?

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7 A. BellSouth’s position is that carriers should not be prevented from marketing
8 their services to occupants of multitenant properties. BellSouth believes that,
9 in the long run, the most desirable properties will be those which permit
10 tenants to obtain service from any carrier offering service to the property.
11 Owners of such properties may tout their non-exclusionary leases and, perhaps,
12 go a step further and offer their own branded service in concert, or in
13 competition, with one or more carriers. Preferred carriers who offer the best
14 mix of price, features and service will succeed by adding value to a property.
15 Limiting a consumer’s choices of carriers is not in the spirit of competition,
16 and is not in the public interest.

17

18 In addition to the need for consumers to have a choice of carriers, in particular,
19 BellSouth as a Carrier of Last Resort (“COLR”) should not be prevented from
20 serving end users in its territory. COLRs, including BellSouth, do not have the
21 freedom to pick and choose those subscribers or properties which they desire
22 to serve, whereas other carriers have such an option. Thus, within its
23 franchised service territory, BellSouth is literally the “last resort” for
24 subscribers who are bypassed by other carriers. Until such time as BellSouth
25 is no longer obligated to serve all end users in its franchised territory, and until

1 such time as BellSouth is totally free from rate regulation and service indices
2 imposed by the Commission, all subscribers should have the right to subscribe
3 to those services which have been designated by Florida legislation as being in
4 the best interest of the citizens of the state.

5

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

10

11 Q. WHAT IS BELLSOUTH'S POSITION ON THIS ISSUE?

12

13 A. It is BellSouth's understanding that this issue has been resolved by the parties.
14 However, BellSouth reserves the right to file testimony on this issue, should it
15 be further disputed.

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17 Q. DOES THIS CONCLUDE YOUR TESTIMONY?

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19 A. Yes.

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1 MR. EDENFIELD: Thank you. And that concludes
2 BellSouth's case.

3 COMMISSIONER CLARK: Okay. Mr. Fordham, now
4 what do we do?

5 MR. FORDHAM: Staff has no questions for
6 Mr. Edenfield and, obviously, no cross-examination of the
7 testimony. So, at this point, we rest our case, and the
8 Staff will prepare a recommendation based on the testimony
9 which was just introduced.

10 COMMISSIONER CLARK: All right. And then we'll
11 show the hearing adjourned, and we will -- Staff will
12 prepare a recommendation according to the CASR.

13 MR. FORDHAM: Very good.

14 COMMISSIONER CLARK: Okay. With that, this
15 hearing is adjourned. Thank you very much.

16 MR. FORDHAM: Thank you, Commissioner.

17 (Hearing concluded at 9:34 a.m.)

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1 STATE OF FLORIDA)

2 : CERTIFICATE OF REPORTER


3 COUNTY OF LEON)

4 I, TRICIA DeMARTE, Official FPSC Commission
5 Reporter, do hereby certify that the Hearing in Docket No.
6 992018-TP was heard by the Florida Public Service
7 Commission at the time and place herein stated.

8 It is further certified that I stenographically
9 reported the said proceedings; that the same has been
10 transcribed under my direct supervision; and that this
11 transcript, consisting of 13 pages, constitutes a true
12 transcription of my notes of said proceedings and the
13 insertion of the prescribed prefiled testimony of the
14 witness.

15 I FURTHER CERTIFY that I am not a relative,
16 employee, attorney or counsel of any of the parties, nor
17 am I a relative or employee of any of the parties'
18 attorneys or counsel connected with the action, nor am I
19 financially interested in the action.

20 DATED THIS 19TH DAY OF APRIL, 2000.

21 
22 _____
23 TRICIA DeMARTE
24 FPSC Official Commission Reporter
25 (850) 413-6736

FLORIDA PUBLIC SERVICE COMMISSION