



# Public Service Commission

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD  
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RECORDS AND REPORTING

**DATE:** JUNE 29, 2000

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

**FROM:** DIVISION OF COMPETITIVE SERVICES (DOWDS, SIMMONS) *SD SAS*  
DIVISION OF LEGAL SERVICES (FORDHAM) *1/24 1/12*

**RE:** DOCKET NO. 992018-TP - PETITION BY BELLSOUTH TELECOMMUNICATIONS, INC. FOR ARBITRATION OF RESALE AGREEMENT WITH ATLANTIC TELECOMMUNICATIONS SYSTEMS, INC.

**AGENDA:** 07/11/2000 - REGULAR AGENDA - POST HEARING DECISION- PARTICIPATION IS LIMITED TO COMMISSIONERS AND STAFF

**CRITICAL DATES:** NONE

**SPECIAL INSTRUCTIONS:** NONE

**FILE NAME AND LOCATION:** S:\PSC\CMP\WP\992018.RCM

### CASE BACKGROUND

Atlantic Telecommunications Systems, Inc. (Atlantic) is an ALEC, holding a Florida certificate to provide telecommunications service, and is reselling telecommunications services provided by BellSouth Telecommunications, Inc. (BellSouth).

On February 9, 1998, the Commission approved a BellSouth/Atlantic Resale Agreement, which expired on September 16, 1999. The parties agreed to continue service pursuant to the expired agreement until a successor agreement was adopted. On December 23, 1999, however, BellSouth filed a Petition for Arbitration of Resale Agreement with Atlantic. The petition consisted of two issues; however, the parties subsequently reached agreement on one issue.

At the scheduled prehearing conference, held April 7, 2000, Atlantic failed to appear. Therefore, in accordance with Order No. PSC-00-0391-PCO-TP, the Order Establishing Procedure for this case,

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Atlantic has waived all positions and issues raised in its prehearing statement.

An Administrative hearing was held on April 19, 2000. However, in accordance with the Prehearing Order, Atlantic's testimony and exhibits were not allowed to be entered into the record; therefore, the only evidence entered into the record was the prefiled direct testimony submitted by BellSouth. Moreover, Atlantic did not appear for the hearing.

**DISCUSSION OF ISSUES**

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

**RECOMMENDATION:** Exclusive service arrangements are not addressed in Sections 251 or 252 of the Telecommunications Act of 1996. Therefore, staff recommends that the Commission should not require that provisions pertaining to exclusive service arrangements be included in the resale agreements. **(FAVORS)**

**POSITIONS OF THE PARTIES:**

**BELLSOUTH:**

No. This issue is clearly not appropriate under Section 252 of the Act. Moreover, such an agreement would limit customer choice and would be inconsistent with the goals of the Act and Chapter 364, Florida Statutes.

**ATLANTIC:**

Atlantic's positions are waived by its failure to appear at the Prehearing Conference.

**STAFF ANALYSIS**

The issue before the Commission is to determine whether Atlantic can require BellSouth to include a provision in the parties' resale agreement that would preclude BellSouth from offering services to consumers covered by an exclusive service arrangement with Atlantic. BellSouth witness Shiroishi does not believe that this issue is appropriate for arbitration, as she states:

Limitation on a telecommunication carrier's ability to sell and market services is not appropriate as an issue for arbitration, and contractual language regarding this issue should not be imposed by this Commission. Neither the Telecommunications Act of 1996 ("1996" Act"), the FCC Rules nor Florida law address the issue of the exclusive service arrangements. Clearly, there is no

requirement under Section 251 that such arrangements be addressed in a Resale Agreement. Therefore, this issue is not appropriate for Section 252 arbitration under the 1996 Act. (TR 7)

Witness Shiroishi also states:

In a competitive environment, consumers should have choices as to service providers, as well as types of pricing of services. Simply put, Atlantic seeks to have the Commission erect a barrier around Atlantic's customers to protect these customers from competition from BellSouth. (TR 8)

Witness Shiroishi further states that she is unclear exactly what Atlantic's position is from the language it has requested for the Resale Agreement, but she opines that Atlantic's reference to an "exclusive arrangement with end users within the Party's service area" may likely be in the context of a multi-tenant environment. (TR 8).

As noted earlier, Atlantic did not attend the scheduled Prehearing Conference. Thus, in accordance with Order No. PSC-00-0391-PCO-TP, the Order Establishing Procedure for this case, Atlantic has waived all the positions and issues raised in its prehearing statement, and none of its evidence was allowed to be entered into the record. Notwithstanding, staff agrees with BellSouth that language pertaining to customers served under exclusive service arrangements does not appear appropriate for inclusion in a resale agreement under Sections 251 and 252 of the Act. Section 252(c) of the Act provides in part:

Standards for Arbitration - In resolving by arbitration under subsection (b) any open issues and imposing conditions upon the parties to the agreement, a State commission shall -

(1) ensure that such resolution and conditions meet the requirements of section 251, including the regulations prescribed by the Commission pursuant to Section 251;

In arbitrating any open issues under Section 252 of the Act, the Commission has to ensure that the resolution meets the requirements of Section 251. Section 251 promulgates no requirements regarding

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exclusive service arrangements; therefore, staff believes that inclusion of language pertaining to this issue is not appropriate.

Conclusion

Staff believes that exclusive service arrangements are not addressed in Sections 251 or 252 of the Act. Therefore, based on the evidence and arguments presented by BellSouth, staff recommends that the Commission should not require that language addressing this issue be included in this agreement.

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**ISSUE 2:** Should this docket be closed?

**RECOMMENDATION:** No, the parties should be required to submit a signed agreement that complies with the Commission's decisions in this docket for approval within thirty (30) days of issuance of the Commission's Order. This docket should remain open pending Commission approval of the final arbitration agreement in accordance with Section 252 of the Telecommunications Act of 1996.  
**(FORDHAM)**

**STAFF ANALYSIS:** The parties should be required to submit a signed agreement that complies with the Commission's decisions in this docket for approval within thirty (30) days of issuance of the Commission's Order. This docket should remain open pending Commission approval of the final arbitration agreement in accordance with Section 252 of the Telecommunications Act of 1996.