

State of Florida



Public Service Commission

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RECORDS AND REPORTING

DATE: AUGUST 17, 2000

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

FROM: DIVISION OF LEGAL SERVICES (VACCARO) *JK*
DIVISION OF COMPETITIVE SERVICES (BARRETT) *McB*

RE: DOCKET NO. 000262-TP - PETITION BY BELLSOUTH TELECOMMUNICATIONS, INC. FOR SECTION 252(b) ARBITRATION OF A RESALE AGREEMENT WITH NOW COMMUNICATIONS, INC.

AGENDA: 08/29/00 - REGULAR AGENDA - PARTIES MAY PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: NONE

FILE NAME AND LOCATION: S:\PSC\LEG\WP\000262.RCM

CASE BACKGROUND

On February 25, 2000, BellSouth Telecommunications, Inc. (BellSouth) filed a petition for arbitration of an interconnection agreement with NOW Communications, Inc. (NOW) under Section 252(b) of the Federal Telecommunications Act of 1996. NOW filed its response to BellSouth's petition on March 21, 2000. On March 7, 2000, NOW filed a Motion to Dismiss BellSouth's petition. On May 3, 2000, NOW filed a Motion for Determination of Preliminary Matter and on May 5, 2000, a Motion for Leave to Submit Information Supplementary to its Motion for Determination of Preliminary Matter. BellSouth timely responded to these motions.

On June 21, 2000, Order No. PSC-00-1128-PCO-TP, establishing procedure was issued. The order noted that certain issues were in dispute. The parties resolved the disputed issues, and Order No. PSC-1371-PCO-TP, issued July 31, 2000, set forth the tentative list of issues for this proceeding.

DOCUMENT NUMBER-DATE

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On August 7, 2000, BellSouth filed a Motion for Withdrawal of Petition for Arbitration, stating that the parties had executed a new resale agreement on August 2, 2000, which effectively resolved all issues subject to arbitration. On August 16, 2000, NOW filed a Notice of Concurrence with the Motion of BellSouth Telecommunications, Inc. for Withdrawal of Petition for Arbitration as Clarified. NOW highlights BellSouth's use of the phrase "effectively resolving all issues which are the subject of this arbitration" at lines 7 and 8 of BellSouth's motion. NOW states that it understands the phrase to simply mean that as a result of the parties' new resale agreement, there are no longer unresolved issues between them which require arbitration at this time. Further, NOW states that it understands BellSouth's motion to remove from arbitration each one of the issues that has been presented for arbitration. With those clarifications and the understanding that the Commission will dismiss the petition for arbitration without prejudice, NOW concurs with BellSouth's motion.

On August 16, 2000, NOW filed notices of withdrawal of its motion for determination of preliminary matter and motion for leave to submit information supplementary to its previous motion. NOW did not file a notice of withdrawal of its motion to dismiss. Staff believes that BellSouth's motion for withdrawal renders NOW's motions moot. This recommendation addresses BellSouth's motion to withdraw its arbitration petition.

DISCUSSION OF ISSUES

ISSUE 1: Should the Commission grant BellSouth Telecommunications, Inc.'s Motion for Withdrawal of Petition for Arbitration?

RECOMMENDATION: Yes. The Commission should grant BellSouth Telecommunications, Inc.'s Motion for Withdrawal of Petition for Arbitration. Further, BellSouth's motion renders NOW's motion's moot. (VACCARO)

STAFF ANALYSIS: Staff recommends that the Commission grant BellSouth's motion, because BellSouth is withdrawing a petition it filed. NOW concurs with BellSouth's motion. Further, BellSouth's motion renders NOW's motion's moot.

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ISSUE 2: Should this docket be closed?

RECOMMENDATION: Yes, if Issue 1 is approved, the docket should be closed. (VACCARO)

STAFF ANALYSIS: If Issues 1 is approved, the docket should be closed.