



Public Service Commission

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD
TALLAHASSEE, FLORIDA 32399-0850

-M-E-M-O-R-A-N-D-U-M-

RECEIVED-FPSC
JAN 4 PM 2:25
RECORDS AND REPORTING

DATE: JANUARY 4, 2001

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

FROM: DIVISION OF LEGAL SERVICES (FORDHAM) *RFY*
DIVISION OF COMPETITIVE SERVICES (HINTON) *SAS for CH*

RE: DOCKET NO. 990108-TP - REQUEST FOR ARBITRATION CONCERNING COMPLAINT OF THE OTHER PHONE COMPANY, INC. D/B/A ACCESS ONE COMMUNICATIONS AGAINST BELLSOUTH TELECOMMUNICATIONS, INC. REGARDING BREACH OF RESALE AGREEMENT.

AGENDA: JANUARY 16, 2001 - REGULAR AGENDA - INTERESTED PERSONS MAY PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: NONE

FILE NAME AND LOCATION: S:\PSC\LEG\WP\990108RD.RCM

CASE BACKGROUND

On January 29, 1999, The Other Phone Company, Inc. d/b/a Access One Communications (Access One) filed a complaint against BellSouth Telecommunications, Inc. (BellSouth) for breach of their resale agreement. This matter was set for an administrative hearing on August 11, 1999.

On August 11, 1999, Access One and BellSouth filed a Joint Motion for Continuance. In the Joint Motion, the parties indicated that negotiations were underway, and they were hopeful that the negotiations would result in settlement of all issues. On August 12, 1999, this Commission entered Order No. PSC-99-1584-PCO-TP, granting the joint Motion for Continuance. The Order did not specify any new hearing dates.

DOCUMENT NO.
00207-01
1/4/01

DOCKET NO. 990108-TP
DATE: JANUARY 4, 2001

Since that time, there has been no activity of any type on this docket. The Docket is set for Prehearing on January 9, 2001 and Hearing on January 31, 2001. There have been no pleadings filed by Access One for the last 16 months. On November 29, 2000, BellSouth filed a Motion to Dismiss Complaint.

Staff has made several unsuccessful attempts to contact any attorney of record in this Docket. Also, staff has made several contacts with Access One and has been unable to identify anyone in that company who professes any knowledge of the pending Docket. The final person at the company with whom staff spoke indicated that they would FAX a document to the Commission which would either withdraw the complaint or agree to the motion to dismiss. That document has not been forthcoming nor has the company responded further in any manner.

Based on BellSouth's Motion to Dismiss and the failure of Access One to pursue its Complaint with any diligence whatsoever, staff brings the following recommendation.

DISCUSSION OF ISSUES

ISSUE 1: Should the Commission grant BellSouth's Motion to Dismiss Complaint?

RECOMMENDATION: Yes. Access One has failed to diligently pursue its Complaint and the Complaint should be dismissed (**FORDHAM**)

STAFF ANALYSIS: BellSouth filed its Motion to Dismiss Complaint pursuant to Rule 1.42(e), Florida Rules of Civil Procedure and Rule 28-106.204, Florida Administrative Code. In support of its Motion, BellSouth alleges that it continued to have settlement discussions with Access One for a short time following the continuance of the Hearing. All discussions ended, however in late 1999. BellSouth has had no discussions with Access One regarding this Docket in more than a year. In view of the passage of more than a year since any activity has occurred in this Docket, BellSouth urges that the Complaint be dismissed.

In view of Access One's failure to pursue its Complaint with any diligence whatsoever, staff recommends that the Commission grant BellSouth's Motion to Dismiss Access One's Complaint.

DOCKET NO. 990108-1P
DATE: JANUARY 4, 2001

ISSUE 2: Should this Docket be closed?

RECOMMENDATION: Yes. If the Commission approves staff's recommendation in Issue 1, this Docket will require no further action, and may be closed. **(FORDHAM)**

STAFF ANALYSIS: If the Commission approves staff's recommendations in Issue 1, this Docket will require no further action, and may be closed.