

ORIGINAL

INGRAM

&

ASSOCIATES, PLLC

OFFICE OF CARROLL H. INGRAM

ATTORNEYS

AND

COUNSELORS AT LAW

March 16, 2000

Mrs. Blanca S. Bayo
Director, Division of Records and Reporting
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850


RE: Petition for Arbitration of the Interconnection Agreement Between BellSouth Telecommunications, Inc. and NOW Communications, Inc., Pursuant to the Telecommunications Act of 1996 - Docket No: 000262-TP

Dear Mrs. Bayo:

Enclosed are the original and appropriate number of copies of the Motion to Dismiss Petition of BellSouth Telecommunications, Inc. for Section 252(b) Arbitration. Copies of the enclosed are being provided to counsel of record for all parties.

Cordially,

INGRAM & ASSOCIATES, PLLC


Carroll H. Ingram

AFA _____
APP _____
CAF _____
CML _____
CTR _____
EAG _____
LEG _____
MAS _____
OPC _____
RRR _____
SEC _____
WAW _____
OTH _____

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HATTIESBURG, MISSISSIPPI 39404-5039

PHONE (601) 261-1385
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DOCUMENT NUMBER DATE
03439 MAR 17 2000
RECORDS AND REPORTING

BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

In re:)
)
Petition for Arbitration of the Interconnection)
Agreement Between BellSouth Telecommunications,)
Inc. and NOW Communications, Inc., Pursuant)
to the Telecommunications Act of 1996.)
_____)

Docket No. 000262-TP

**MOTION TO DISMISS
PETITION OF BELLSOUTH TELECOMMUNICATIONS, INC.
FOR SECTION 252(b) ARBITRATION**

NOW Communications, Inc., by and through counsel files its motion to dismiss the BellSouth Section 252(b) Petition for Arbitration and presents to the Commission the following:

I.

BellSouth Telecommunications, Inc. on February 25, 2000 filed its Section 252(b) Petition for Arbitration seeking Public Service Commission arbitration of Interconnection Agreement issues with NOW Communications, Inc. (February 25, 2000 BellSouth Telecommunications Notice of Filing attached as Exhibit A).

II.

BellSouth Telecommunications, Inc. on August 20, 1999 initiated renegotiation of the Interconnection Agreement between BellSouth and NOW Communications, Inc., in addition thereto, sought the immediate imposition of OSS charges under the initial Interconnection Agreement between the parties. (BellSouth Requests for Renegotiations attached as Exhibit B).

III.

Section 252(b)(1) of the Telecommunications Act of 1996 (47 U.S.C. Section 252 (b)(1))

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mandates the statutory “window” for filing a petition for arbitration. The statutory mandate is jurisdictional and cannot be amended, agreed, extended or waived. Jurisdiction cannot be conferred upon the Commission by agreement, amendment, extension or waiver.

IV.

The Public Service Commission lacks jurisdiction to hear the BellSouth Petition. The Commission lacks subject matter jurisdiction and the attempted filing of the BellSouth Petition is outside the mandated statutory limitation for filing. The Petitioner BellSouthTelecommunications, Inc. is on notice of its failure to timely file its Petition for Arbitration by virtue of the statutory provisions of the Telecommunications Act of 1996 and by virtue of the action of the Public Service Commission of the State of South Carolina. The Public Service Commission of the State of South Carolina dismissed and/or returned the BellSouth Petition for Arbitration for the reason that the BellSouth Petition was not filed within the statutory mandated time. (South Carolina Public Service Commission Order/Letter to BellSouth February 28, 2000 attached as Exhibit C)

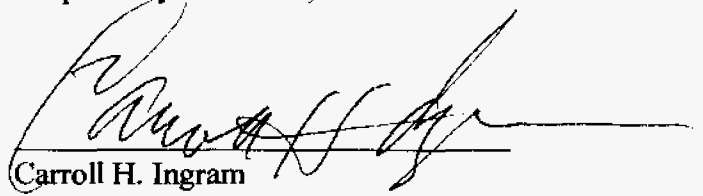
V.

The Petitioner, BellSouth, failed to comply with the statutory provision for properly providing a copy of the Petition and any documentation to the other party or parties. See Section 252 (b).

The BellSouth Petition should be dismissed for other good and valid reasons to be presented pursuant to the rules and upon hearing.

WHEREFORE, NOW Communications, Inc. respectfully requests the Commission to dismiss the untimely BellSouth Petition for Arbitration.

Respectfully submitted,



Carroll H. Ingram
Attorney for NOW Communications, Inc.

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Colorado Springs, CO 80903
Phone: 719-633-3059
Fax: 413-431-8445
E-Mail: rss@nowcommunications.com

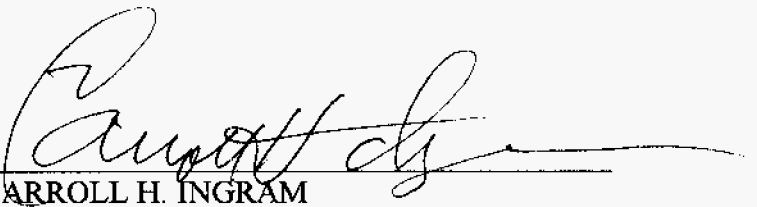
CERTIFICATE OF SERVICE

I, Carroll H. Ingram, do hereby certify that I have, this day, served a true and correct copy
of the foregoing Motion to Dismiss via U.S. Mail, postage fully pre-paid to the following:

Nancy B. White
BellSouth Telecommunications, Inc.
150 South Monroe Street
Room 400
Tallahassee, FL 32301

R. Douglas Lackey
Thomas B. Alexander
General Attorneys
Suite 4300, BellSouth Center
675 West Peachtree Street, N.E.
Atlanta, GA 30375

THIS, the 16th day of March, 2000.


CARROLL H. INGRAM

NANCY B. WHITE
General Counsel-Florida

BellSouth Telecommunications, Inc.
150 South Monroe Street
Room 400
Tallahassee, Florida 32301
(305) 347-5558

February 25, 2000

Mrs. Blanca S. Bayó
Director, Division of Records and Reporting
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

**Re: Petition for Section 252(b) Arbitration of a resale agreement
between BellSouth Telecommunications, Inc., and NOW
Communications, Inc.**

Dear Ms. Bayó:

Enclosed is an original and fifteen copies of BellSouth Telecommunications, Inc.'s Petition for Section 252(b) Arbitration, which we ask that you file in the above-referenced matter.

A copy of this letter is enclosed. Please mark it to indicate that the original was filed and return the copy to me. Copies have been served to the parties shown on the attached Certificate of Service.

Sincerely,


Nancy B. White

cc: All Parties of Record
Marshall M. Criser III
R. Douglas Lackey



BellSouth Interconnection Services

675 West Peachtree Street
Room 34S91
Atlanta, Georgia 30375

Page Miller
(404) 927-1377
Fax: (404) 927-8324

August 20, 1999

Mr. Larry Seab
President
NOW Communications, Inc.
713 Country Place Drive
Jackson, MS 39208

Dear Mr. Seab.

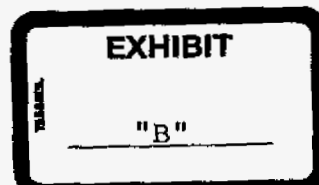
The purpose of this letter is to initiate renegotiations of the resale agreement between BellSouth and NOW Communications, Inc. as well as to request the execution of an OSS amendment to the current agreement while the parties work together to negotiate the new agreement.

The expiration date for your Agreement was May 31, 1999. BellSouth is hereby requesting that NOW Communications, Inc. commence good-faith negotiations with BellSouth to enter into a new agreement in compliance with Section 251(c)(1) of the Communications Act of 1934, as amended.

In an effort to move the negotiation process along, a copy of the BellSouth Standard Resale Agreement is herein provided for your review. Please note that we have had a number of changes to our standard agreement that may be of interest to your company. Once you have had an opportunity to review the proposed agreement, please contact me with questions. If need be, we will begin scheduling meetings between the companies to address issues raised during your review.

In addition to renegotiating a new agreement, BellSouth also requests that NOW execute the enclosed amendment to add Operational Support System rates to the existing resale agreement. One of the major requirements imposed on BellSouth by the 1996 Telecommunications Act was to develop and implement processes that allow Competitive Local Exchange Carriers (CLECs) to access BellSouth's OSS functions including pre-ordering, ordering, maintenance and repair. Regulatory commissions at both the Federal and State level recognize that BellSouth should be allowed to recover these costs from the users of these processes.

As such, on April 15, 1999, BellSouth began billing OSS charges to CLECs whose agreement included OSS rates for the recovery of costs associated with providing CLECs access to its OSS. To date, you as a CLEC have not paid nor have you been billed for the use of these systems. However, since the various state commissions have ordered OSS rates, it is appropriate that we amend your existing agreement with BellSouth to include these rates. Therefore, attached is an amendment to your current agreement with BellSouth which includes BellSouth's proposed regional OSS rates as shown below.



\$ 3.50 per LSR received by one of the OSS interactive interfaces
\$19.99 per LSR received by means other than one of the OSS interactive interfaces.

The proposed regional rates set forth above are billed on a "per LSR" basis. A transitional Threshold Charging Plan is also offered in conjunction with the regional rates. This Threshold Charging Plan provides for the mechanized price to be charged for both mechanized and manual LSRs for CLECs who transmit a significant portion of their LSR volume over a mechanized system. The specific details of this plan are included on the attached amendment.

As another option to CLECs, state specific rates set by the various commissions within the BellSouth region are available. In most cases, the regional rates are lower than state specific rates. In those states where the commission has not yet set rates, BellSouth proposes interim rates, subject to true-up once final rates have been set by the commission.

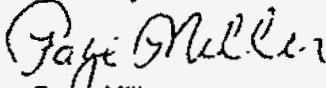
Please note that the State Commissions in three of the BellSouth states, have ordered OSS rates. In the remaining states, BellSouth is proposing interim rates which are subject to true-up. These interim rates are very much in line with the rates that have already been established in the other three BellSouth states.

Please review this amendment and sign both copies returning them to my attention at the above address. I will have the amendment executed on behalf of BellSouth and return one copy to you for your records. BellSouth will file the amendment with the appropriate regulatory agencies.

If you choose to expedite the signing of a new resale agreement, please contact me at (404) 927-1377 so that I can send you executable copies reflecting your company name throughout the agreement. Of course, if a new agreement is executed quickly, there is no need to sign the enclosed OSS amendment due to the fact that OSS rates would be included in the new resale agreement.

If you have any questions, please do not hesitate to call me.

Sincerely,



Page Miller
Manager - Interconnection Services/Pricing

Enclosures

COMMISSIONERS
PHILIP T. BRADLEY, 4TH DISTRICT
CHAIRMAN
WILLIAM "BILL" SAUNDERS, 1ST DISTRICT
VICE CHAIRMAN



COMMISSIONERS
SCOTT ELLIOTT, 2ND DISTRICT
RANDY MITCHELL, 3RD DISTRICT
H. CLAY CARRUTH, JR., 5TH DISTRICT
MIGNON L. CLYBURN, 6TH DISTRICT
C. ROBERT MOSELEY, AT LARGE

GARY E. WALSH
EXECUTIVE DIRECTOR
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The Public Service Commission State of South Carolina

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Koger Executive Center
101 Executive Center Dr.
Columbia, SC 29210
www.psc.state.sc.us

February 28, 2000

Caroline N. Watson, Esquire
General Counsel – South Carolina
BellSouth Telecommunications, Inc.
1600 Hampton St., Suite 821
Columbia, SC 29201

RE: Petition for Arbitration of an Interconnection Agreement Between
BellSouth Telecommunications, Inc. and NOW Communications, Inc.
Pursuant to the Telecommunications Act of 1996

Dear Caroline:

Enclosed is the Petition of BellSouth Telecommunications, Inc. requesting arbitration of an interconnection agreement with NOW Communications, Inc. pursuant to Section 252(b) of the Telecommunications Act of 1996. I have not accepted this Petition for processing and am returning this Petition as being untimely filed.

In the Petition, BellSouth states that NOW requested, and BellSouth agreed to, a thirty-day extension of the arbitration window. The Telecommunications Act of 1996 provides in Section 252(b)(1) that a party may file a petition for arbitration during the "window" from the 135th day to the 160th day after the request for negotiation is received. The Petition filed in the above-referenced matter reveals that the request for negotiation was made on August 20, 1999. Based on the August 20, 1999, request for negotiation, the "window" in which to file for arbitration commenced on January 2, 2000, and ended on January 27, 2000. The Telecommunications Act of 1996 makes no provision for the parties, or the Commission, extending the "window" in which to request arbitration. Thus the parties cannot agree to extend the statutorily imposed time frame. Since the Petition was not filed between January 2, 2000, and January 27, 2000, the Petition of BellSouth is untimely and cannot be accepted for processing.



Caroline N. Watson, Esq.

February 28, 2000

Page 2

Should you have questions regarding this matter, please do not hesitate to call me.

Very truly yours,



Florence P. Belser
Staff Attorney

FPB:dd

Enclosure

cc: Mr. Larry Seab (without enclosure)

Carroll H. Ingram, Esquire (without enclosure)