

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition by Global NAPS,
Inc. for arbitration of
interconnection rates, terms and
conditions and related relief of
proposed agreement with
BellSouth Telecommunications,
Inc.

DOCKET NO. 991220-TP
ORDER NO. PSC-00-0568-FOF-TP
ISSUED: March 20, 2000

The following Commissioners participated in the disposition of
this matter:

JOE GARCIA, Chairman
J. TERRY DEASON
SUSAN F. CLARK
E. LEON JACOBS, JR.
LILA A. JABER

FINAL ORDER DETERMINING EXPIRATION
DATE OF ADOPTED INTERCONNECTION AGREEMENT

BY THE COMMISSION:

I. CASE BACKGROUND

Part II of the Federal Telecommunications Act of 1996 (Act) sets forth provisions regarding the development of competitive markets in the telecommunications industry. Section 251 of the Act regards interconnection with the incumbent local exchange carrier, and Section 252 sets forth the procedures for negotiation, arbitration, and approval of agreements.

On August 26, 1999, Global NAPs, Inc. (GNAPs) filed a petition for arbitration of an interconnection agreement with BellSouth Telecommunications, Inc. (BellSouth) under Section 252(b) of the Telecommunications Act of 1996 (the "Act"). On September 20, 1999, BellSouth timely filed its Response to the petition. This matter has been set for an administrative hearing on June 8, 2000.

On January 31, 2000, the parties filed a Joint Motion to Modify Schedule, wherein the parties indicated that the following

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issue may be resolved as a matter of law without the submission of evidence by the parties.

ISSUE 1. Is the Interconnection Agreement between DeltaCom, Inc. And BellSouth Telecommunications, Inc., which was adopted by Global NAPs (GNAPs) on January 18, 1999, valid and binding on GNAPs and BellSouth until January 2001, or did it expire on July 1, 1999?

Thus, they asked that the schedule be modified to allow them to submit briefs on this issue and that we rule on this issue based upon the briefs, in accordance with Section 120.57(2), Florida Statutes. By Order No. PSC-00-204-PCO-TP, issued February 14, 2000, the motion was granted. Therefore, the parties filed initial and reply briefs regarding Issue 1 in accordance with the approved briefing schedule. This is our determination based on the briefs.

II. RELEVANT AGREEMENT LANGUAGE

The GNAPs "opt-in" agreement, whereby GNAPs adopted the ITC ^DeltaCom/BellSouth agreement, states at page 1:

NOW, THEREFORE, in consideration of the promises and mutual covenants of this Agreement, Global NAPs and BellSouth hereby agree as follows:

1. Global NAPs and BellSouth shall adopt in its entirety the DeltaCom, Inc. Interconnection Agreement dated July 1, 1997 and any and all amendments to said agreement executed and approved by the appropriate state regulatory commission as of the date of the execution of this Agreement. The DeltaCom, Inc. Interconnection Agreement and all amendments are attached hereto as Exhibit 1 and incorporated herein by reference.
2. The term of this Agreement shall be from the effective date as set forth above and shall expire on July 1, 1999, unless an alternate expiration date is mutually agreed

to by the Parties or ordered by a Commission,
the FCC or a court of competent jurisdiction.

This "opt-in" agreement is signed by both parties.

Section XVII of the ITC^DeltaCom/BellSouth agreement adopted
by GNAPS reads, in part:

A. The term of the Agreement shall be two
years, beginning July 1, 1997.

B. The Parties agree that by no later than
July 1, 1998, they shall commence negotiations
with regard to the terms, conditions and
prices of local interconnection to be
effective beginning July 1, 1999.

III. PARTIES' ARGUMENTS - INITIAL BRIEFS

GNAPS

In its initial brief, GNAPS argues that when it adopted the
ITC^DeltaCom/BellSouth agreement, it adopted the entire contract,
including the term of the agreement, which is specified as being
two years. Thus, GNAPS believes that its adopted agreement with
BellSouth is still in effect and will be in effect until January,
2001, two years from the date the agreement was adopted.

GNAPS explains that this issue may be resolved by looking to
the specific language in the contract and the plain meaning of
Section 252(i) of the Act. GNAPS maintains that the language in
both support GNAPS contention that it got the "same" deal that
ITC^DeltaCom got, which is a two year contract.

Specifically, GNAPS asserts that Section XVII.A of the
ITC^DeltaCom agreement states that "the term of this agreement
shall be two years. . ." from the effective date of that agreement,
which was July 1, 1997. GNAPS emphasizes that the ITC^DeltaCom
agreement clearly contemplates that the agreement will last for two
years; thus, anyone that adopts that agreement should also have it
for two years from the effective date of their adoption. As such,
GNAPS should have the agreement for two years from January 18,
1999, the date it adopted the agreement.

GNAPs argues that this Commission's own language in approving the ITC^DeltaCom agreement in 1997 affirms that the term of the agreement is two years. GNAPs notes that in our order approving the ITC^DeltaCom/BellSouth agreement, there is no mention of the effective dates of the agreement. Instead, our order states that "[t]his agreement covers a two-year period and governs the relationship between the companies. . ." Order No. PSC-97-1265-FOF-TP, issued October 14, 1997.

GNAPs further explains that other portions of the agreement emphasize that this agreement must be for a two-year term. GNAPs refers to Section XVII.B of the agreement, which states:

The Parties agree that by no later than July 1, 1998, they shall commence negotiations with regard to the terms, conditions, and prices of local interconnection to be effective beginning July 1, 1999.

GNAPs maintains that the agreement indicates that there will be an orderly process for the negotiation of subsequent contracts that would begin a year before termination of the current agreement. If, however, the dates rather than the two-year term are applicable to GNAPs' adoption of the agreement, then when GNAPs adopted this agreement in January of 1999, the parties were automatically in breach of this negotiation provision on the date the adoption became effective. GNAPs argues that this simply does not make sense. GNAPs contends that the more logical interpretation is that all dates in the agreement, including the ending date, adjust with the new effective date of the adoption. As such, the obligation to begin negotiations under Section XVII.B would begin January 18, 2000, one year after the effective date of the GNAPs' adoption of the agreement.

Similarly, GNAPs notes that Section XVII.C of the ITC^DeltaCom agreement indicates that if negotiations are unsuccessful, the parties will petition for arbitration by the Commission and will ask for resolution by the Commission no later than January 1, 1999. As with Section XVII.B, GNAPs believes that if these dates do not adjust with the new effective date of GNAPs' adoption of the agreement, the parties were automatically in breach on the date the adoption became effective.

GNAPs emphasizes that its adoption of the ITC^DeltaCom agreement did not become effective until January 1, 1999;

therefore, GNAPs contends it would not make sense to immediately begin negotiations for a new agreement just a few days later on January 18, 1999. GNAPs argues that these two provisions clearly demonstrate that the adoption must be effective for the full two-year term, rather than for the duration of the effective dates set forth in the ITC^DeltaCom/BellSouth agreement.

GNAPs also argues that other provisions illustrate this point. They point to Section IV.I of the agreement, which allows GNAPs to request unbundled network elements not specifically included in the contract. Under this provision, BellSouth must accept or reject the request in 30 days, provide pricing in 45 days, and provide actual interconnection and service within 90 days. GNAPs contends that even if BellSouth actually met the 90 day provision, considering BellSouth believes that the agreement was only effective for five and one-half months, it would hardly make it worthwhile for GNAPs to request any UNEs, since the newly requested UNE would only be effective for two and one-half months.

GNAPs adds that Section V.E.5 also demonstrates that the agreement must be in effect for the full two-year term. Under this provision, the parties are to use "good faith efforts" to establish a plan to maintain an industry standard level of traffic blockage between their networks. This plan must be developed within 90 days of the execution of the agreement. If the effective dates of the ITC^DeltaCom agreement are applicable, rather than the two-year term, GNAPs emphasizes that this plan could only be in effect for two and one-half months. Furthermore, if GNAPs then wants to change any of its interconnection arrangements, pursuant to Section V.C.2, it can only do so upon 60 days notice. If the agreement only lasts for five and one-half months, then GNAPs maintains that Section V.C.2 is rendered a nullity.

GNAPs argues that these examples within the agreement itself demonstrate that the entire agreement contemplates that it will be in effect for two years. Therefore, from a legal, as well as practical perspective, GNAPs believes that when it adopted this agreement, it got it for the full two-year term.

GNAPs further argues that Section 252(i) of the Act supports GNAPs' argument that it obtained the ITC^DeltaCom/BellSouth agreement for the entire duration. GNAPs argues that the purpose of Section 252(i) is to prevent discrimination between competitive local exchange companies (CLECs) to ensure that "any deal that an ILEC makes available to one CLEC is automatically available to all

CLECs." Using this interpretation of Section 252(i), GNAPS argues that one must first determine what deal ITC^DeltaCom got in its agreement with BellSouth. GNAPS maintains that ITC^DeltaCom obtained a two-year deal, and, therefore, any other CLEC that chose to adopt that agreement should have it for two-years in accordance with Section 252(i).

Finally, GNAPS argues that FCC Rule 47 C.F.R. § 51.809 provides a means for an ILEC to demonstrate that it should not have to give a CLEC terms and conditions that it provided to another CLEC. Under this rule, GNAPS explains that the ILEC must simply make a showing that providing a specific interconnection arrangement has become more expensive for the ILEC than at the time the arrangement was originally provided or demonstrate that the arrangement has become technically infeasible. GNAPS argues that this rule eliminates any concerns that an ILEC could get trapped into providing an unfavorable arrangement in perpetuity.

For all these reasons, GNAPS argues that its adopted agreement with BellSouth should be effective until January 2001, a full two years after the effective date of the GNAPS' adoption.

BELLSOUTH

BellSouth argues that the unambiguous language in the contract must govern in this situation.¹ BellSouth adds that the parties have agreed that this contract is unambiguous, and, therefore, this matter may be resolved as a legal issue without reliance upon any extrinsic evidence.

BellSouth contends that its "opt-in" agreement with GNAPS, by which GNAPS adopted the ITC^DeltaCom/BellSouth agreement, clearly states that the expiration date is July 1, 1999, and that there are no other indications that another expiration date was contemplated. BellSouth argues that in order to accept GNAPS' argument that the duration of the contract is a material term, one would have to assume that the parties agreed to disagree on a material term--the expiration date that is clearly identified. BellSouth maintains

¹ Citing Walgreen Co. v. Habitat Development Corp., 655 So. 2d 164, 165 (Fla. 3rd DCA 1995); and Acceleration National Service Corp. v. Brickell Financial Services Motor Club, Inc., 541 So. 2d 738, 739 (Fla. 3rd DCA 1989).

that nothing in the agreement indicates that there was any such agreement.

BellSouth further argues that our approval of the adoption did not change the unambiguous terms of the agreement.² BellSouth contends, therefore, the clear language in the agreement itself must be relied upon in determining when the agreement expired, and the language clearly states that the agreement expired on July 1, 1999.

BellSouth explains that under both state and federal law, the stated expiration date controls in an adopted agreement. BellSouth refers first to Section 252(i) of the Act, which states:

(i) AVAILABILITY TO OTHER TELECOMMUNICATIONS CARRIERS - A local exchange carrier should make available any interconnection, service, or network element provided under an Agreement approved under this section to which it is a party to any other requesting telecommunications carrier upon the same terms and conditions as those provided in the agreement.

BellSouth argues that the phrase "same terms and conditions" means that the carrier adopting an agreement must accept the expiration date. BellSouth explains that under GNAPs' interpretation, even if GNAPs adopts the agreement well after the start date, it would be able to prolong the agreement much later than was intended in the originally negotiated agreement. BellSouth asserts that this argument has been rejected by the FCC, Federal Courts, and many state commissions. BellSouth contends that GNAPs has, itself, been involved in many of these decisions, and in almost every instance, has lost.

Specifically, BellSouth explains that this issue came before the FCC in CC Docket No. 99-198, In the Matter of Global NAPs South, Inc. Petition for Preemption of Jurisdiction of Virginia State Corporation Commission Regarding Interconnection Dispute with

² Citing Emergency Associates of Tampa, P.A. v. Sassano, 664 So. 2d 1000, 1003 (Fla. 2nd DCA 1995) (when the terms of a contract are clear and unambiguous, the court cannot rewrite the contract to make it more reasonable.)

Bell Atlantic of Virginia, Inc. BellSouth states that GNAPs filed an arbitration in Virginia, in which the specific issue was whether the agreement of another carrier that GNAPs had adopted was going to expire shortly. The Virginia Commission determined that the agreement would terminate on July 1, 1999, the clearly expressed termination date, because the agreement did not indicate that the parties had negotiated otherwise. Since the Commission believed that the agreement would only last for 30 days, they did not allow GNAPs to adopt the agreement. BellSouth explains that GNAPs then took the matter to the FCC. BellSouth maintains that the FCC upheld the Virginia Commission's decision, stating that, " the carrier opting into an existing agreement takes all the terms and conditions of that agreement (or portions of that agreement), including its original expiration date." Final Order at fn. 27 in CC Docket 99-198.

BellSouth argues that in a similar case, in CC Docket No. 99-154, In the Matter of Global NAPs, Inc. Petition for Preemption of Jurisdiction of the New Jersey Board of Public Utilities Regarding Interconnection Dispute with Bell Atlantic-New Jersey, Inc., the FCC again sustained the New Jersey Commission's determination that the termination date controls in an adopted agreement, stating that, " the carrier opting into an existing agreement takes all the terms and conditions of that agreement (or portions of that agreement), including its original expiration date." Final Order at fn. 25 in CC Docket 99-154.

BellSouth states that GNAPs also attempted to make this argument to the Maryland Public Service Commission, in Case No. 8731, In the Matter of Petitions for Approval of Agreements and Arbitration of Unresolved Issues Arising Under Section 252 of the Telecommunications Act of 1996; Petition of Global NAPs South, Inc. For Arbitration of Interconnection Rates, Terms and Conditions and Related Relief. BellSouth explains that the Maryland Commission also rejected GNAPs' argument, and concluded that:

Furthermore, we find that even if it were reasonable to permit GNAPs to "opt in" to the MFS agreement at this late date, GNAPs would be entitled to the terms of the MFS agreement only until the termination date of July 1, 1999. GNAPs cannot avoid the fact that the language of the agreement says that its term ends on a stated date, not three years from the date hereof. This term was negotiated and agreed upon by both MFS and Bell Atlantic and there is no support for the argument that the length

f the contract is not an integral part of the agreement. GNAPs seeks not only to "opt in" to the MFS agreement, but also to change one of its terms. There is nothing in the 1996 Act nor the FCC rules which would permit a CLEC to choose to opt in to an agreement while at the same time changing the terms of that agreement. Opting into contracts must occur upon the same terms and conditions as those which appear in the original agreement.

Order No. 75360.

BellSouth notes that this Commission's own comments to the FCC last year in CC Docket No. 96-98 and CC Docket No. 99-68 support BellSouth's position. Therein, we stated:

With regard to the Commission's specific example involving the time frame a carrier should be afforded to opt into a pre-existing contract, the FPSC believes that the ability of a CLEC to use conditions or rates from a pre-existing contract should expire at the same time the original contract terminates.

FPSC Comments at p. 8.

BellSouth adds that in the only state commission decision to grant GNAPs' request to adopt and extend an existing agreement, a Federal Court subsequently overturned the state commission's decision.³ In its decision, the Federal Court stated that:

Although the [state] PSC has the authority to impose 'appropriate conditions to implement federal law,' 47 U.S.C. § 252(b)(4), the PSC does not have the authority to impose terms that extend beyond what is permitted by federal law.

Id.

BellSouth argues that even from a public policy perspective, the agreement should not be extended beyond the stated expiration

³ Bell Atlantic-Delaware, Inc. et al. vs. Global NAPs South, Inc., 1999 US Dist. LEXIS 19362, December 14, 1999.

date. BellSouth maintains that to do so would require that any term offered in a contract could be maintained in perpetuity and made available to every new entrant. BellSouth argues that this would have a chilling effect on future negotiations. BellSouth further contends that this could result in technically infeasible or financially detrimental provisions being perpetuated ad infinitum through the adoption process. BellSouth asserts that this is a loophole that Congress did not intend in promulgating Section 252(i) of the Act.

For these reasons, BellSouth asks that we find that the agreement adopted by GNAPS expired on July 1, 1999.

IV. ARGUMENTS - REPLY BRIEFS

GNAPS

GNAPS responds by arguing that some modification to the ITC^DeltaCom agreement occurs at the point that the adoption became effective, because the ITC^DeltaCom agreement had an effective date of July 1, 1997, but the GNAPS adopted agreement had an effective date of January 18, 1999. GNAPS argues, therefore, that it is only logical that the expiration date would also be automatically modified to match the modified effective date.

GNAPS also argues that we are not prohibited from determining that the duration of the adopted agreement is two years, because that is what the contract says. GNAPS emphasizes that we may interpret the effective terms of the agreement to provide a two-year duration.

GNAPS again argues that FCC Rule 47 C.F.R. § 51.809 provides an "out" for an ILEC that believes that it should not have to provide an interconnection agreement to a CLEC that it has previously provided to another CLEC. Therefore, GNAPS maintains that BellSouth's concerns that unacceptable terms may be improperly perpetuated have no basis.

GNAPS further asserts that the rule in Florida that the plain and unambiguous language in the contract controls actually supports its position, instead of BellSouth's, and adds that this is a decision for this Commission, not some other state commission or the FCC.

In addition, GNAPs argues that it believes that the agreement can only be interpreted properly if consideration is given to the relationship between the effective date of the agreement, the expiration date, and other specific dates contained therein. GNAPs argues that to do otherwise would frustrate the intent behind many specific provisions in the agreement.

GNAPs further emphasizes that the cases to which BellSouth refers as having already addressed this issue are cases all involving the same contract, the MFS/Bell Atlantic agreement. Thus, GNAPs contends that these cases only demonstrate that it litigated the same issue in multiple jurisdictions. GNAPs also explains that the MFS agreement is worded differently than the ITC^DeltaCom agreement. GNAPs contends that the ITC^DeltaCom agreement specifically states that the agreement has a two year term. In contrast, GNAPs argues that the MFS agreement clearly states that the agreement ends on a date specific, as noted by the Maryland commission in rendering its decision on the matter.

GNAPs further emphasizes that the Virginia and Maryland commissions simply did not let GNAPs adopt the agreement, and, therefore, the termination date issue was not really pertinent. As for the Delaware, Pennsylvania, and New Jersey commissions, GNAPs emphasizes that each of them allowed GNAPs to establish a termination date beyond the original July 1, 1999, date in the MFS/Bell Atlantic agreement. GNAPs emphasizes that only the Delaware decision has been overturned.

Finally, GNAPs maintains that BellSouth's argument that allowing the adopted agreement to remain effective beyond the dates of the original agreement will promote "perpetual" contracts is baseless. Again, GNAPs emphasizes that FCC Rule 47 C.F.R. 51.809 eliminates the policy concerns raised by BellSouth.

BellSouth

BellSouth responds by noting that GNAPs has failed to cite any supporting case law or other legal support for its position. BellSouth contends that the reason for this omission is that all of the relevant case law is in support of BellSouth's position.

BellSouth also argues that the specific language in its "opt-in" agreement with GNAPs does, in fact, have a specific termination date, as set forth on page 1, in numbered paragraph 2. BellSouth argues that there is no other expiration date indicated and no

reason to modify that date or to assume that the agreement contemplates something else. BellSouth explains that GNAPS ignores this specific language in the "opt-in" portion of the agreement, and, instead, focuses on language in the pre-existing ITC^DeltaCom agreement with BellSouth.

BellSouth maintains that allowing GNAPS to obtain the ITC^DeltaCom agreement for a full two-year term would modify an essential term of that agreement--the termination date. BellSouth argues, however, that GNAPS is obligated to take all of the terms of the agreement, including the termination date; therefore, the termination date should not be modified.

In addition, BellSouth argues that the FCC decisions on this point are binding on state commissions; therefore, the FCC's decision in CC Docket No. 99-198, the GNAPS Petition for preemption of the Virginia Commission's decision on this issue, is binding on state commissions.⁴

BellSouth further argues that this is simply a case of "no good deed goes unpunished." BellSouth argues that companies are limited in their ability to adopt an agreement to a "reasonable" time after that agreement became effective. BellSouth notes that in a number of cases, Bell Atlantic refused to allow GNAPS to adopt an agreement, because GNAPS sought to do so too long after the original agreement became effective. BellSouth emphasizes that this refusal was upheld by the Maryland and Virginia commissions, in the decisions previously cited herein. BellSouth contends, however, that it agreed to allow GNAPS to adopt the ITC^DeltaCom agreement, even though only six months remained until the expiration of the agreement. Now, argues BellSouth, GNAPS believes that it must be allowed to keep the adopted agreement for a full two-year term, because BellSouth did not exercise its right under 47 C.F.R. § 51.809 to try to prevent GNAPS from taking the agreement. BellSouth maintains that this is simply incorrect, and would encourage ILECs to use the provisions of 47 C.F.R. § 51.809 more readily in order to prevent an adopted agreement from being extended beyond the originally intended expiration date. BellSouth further emphasizes that 47 C.F.R. § 51.809 does not set forth the

⁴ Citing Bell Atlantic-Delaware Inc. V. Global NAPs South, Inc., 1999 U.S. Dist. Lexis 19362 (December 4, 1999)/

only bases under which opt-in rights are limited.⁵ BellSouth maintains that a carrier can only adopt an agreement prior to the expiration of the original agreement, and may be prevented from doing so if the ILEC demonstrates that the adoption would be technically infeasible or would be too costly for the ILEC.

Finally, BellSouth argues that applying GNAPs' rationale to the adoption of agreements would have a discriminatory result, contrary to GNAPs' assertions. BellSouth notes that GNAPs argues that §252(i) is an anti-discriminatory provision meant to ensure that all CLECs are placed on an even playing field. BellSouth emphasizes that once the ITC^DeltaCom agreement expired, ITC^DeltaCom no longer had a right to any of the provisions in that agreement. If, however, GNAPs is allowed to extend the terms of that agreement for itself for 18 months simply by adopting the agreement, it will receive the benefit of contract terms that are no longer available to ITC^DeltaCom.

V. DECISION

Under common principles of contract interpretation, the more specific language in an agreement controls. South Florida Beverage Corporation v. Efrain Figueredo, 409 So. 2d 490, 495 (Fla. 3rd DCA 1982), citing Hollerbach v. U. S., 233 U.S. 165, 34 S.Ct. 553, 58 L.Ed. 898 (1914); Bystra v. Federal Land Bank of Columbia, 82 Fla. 472, 90 So. 478 (1921); and 4 Williston on Contracts § 618 (3rd ed. 1961).

Based upon the plain language in the "opt-in" agreement, the language in the adopted ITC^DeltaCom agreement, and the arguments of the parties, we find that the agreement adopted by GNAPs expired on July 1, 1999. This decision is appropriate based upon: 1.) the plain language in the signed "opt-in" agreement; and 2.) the clear indication in the adopted ITC^DeltaCom agreement that a new agreement would be negotiated by July 1, 1999.

First, we emphasize that the so-called "opt-in" agreement is clear. The agreement was to expire on July 1, 1999, unless otherwise agreed to by the parties, or ordered by a state

⁵ Citing In the Matter of Global Naps, Inc., Petition for Preemption of Jurisdiction of the New Jersey Board of Public Utilities Regarding Interconnection Dispute with Bell Atlantic-New Jersey, Inc., 1999 FCC Lexis 3695.

commission, the FCC, or a court of competent jurisdiction. Neither party has argued that they agreed at any point to modify the expiration date of the agreement. Likewise, neither party has shown that either the FCC or any court of competent jurisdiction modified the date. As such, the only other basis for a change is if this Commission orders that it be modified. We note, however, that GNAPs' petition was not filed until August 26, 1999, and that GNAPs did not seek modification or clarification prior to the time of the expiration date in its adopted agreement.

Second, the language in the original ITC^DeltaCom agreement with BellSouth clearly indicates that the parties intended for that agreement to end on July 1, 1999, and that they would enter into a new agreement at that point. GNAPs has not shown that the beginning and ending dates of the ITC^DeltaCom agreement, as well as the indication that a new agreement would be negotiated between July 1, 1998, and July 1, 1999, are any less integral terms than the statement that the agreement was to be for two years. Furthermore, the language in the agreement referring to a two-year term is clearly tied to the effective date and the date upon which a new agreement was to be reached. In other words, the two-year term is not a "free-standing" term. It is limited by the language and dates attached to it. Therefore, it appears that the two-year term was contemplated only within the context of the July 1, 1997, effective date, and the July 1, 1999, date contemplated for the new agreement. There is no indication to the contrary. In fact, the language in the GNAPs/BellSouth "opt-in" agreement clearly supports BellSouth's contention that GNAPs' adoption of the ITC^DeltaCom/BellSouth agreement was to expire on July 1, 1999, at the same time the ITC^DeltaCom agreement itself expired.

In addition, we note that there may be some merit to BellSouth's arguments that GNAPs' rationale may, ultimately, prove discriminatory and may increase disputes over adoptions under Section 252(i). It is possible that allowing CLECs to automatically extend the life of an agreement simply by adopting that agreement some time after its original effective date may have a discriminatory impact on the original CLEC that actually negotiated the agreement. For the party to the original agreement, the expiration date of the terms of the contract is clear. Thereafter, as BellSouth has argued, the party would have to begin negotiations for a new agreement. If, however, a CLEC is allowed to adopt an agreement and automatically extend that term of the agreement based upon the effective date of the adoption, then the adopting CLEC would have the advantage of being able to operate

under advantageous terms originally negotiated by another CLEC, but no longer available to that original CLEC. This is an absurd, if somewhat speculative, result, and could not be what was contemplated by Section 252(i).

The argument could even be made that a more absurd result could follow from the rationale presented by GNAPs. If CLEC 2 is allowed to adopt an agreement and automatically extend the life of that agreement based upon the effective date of the adoption, what is to prevent the original party to the agreement, CLEC 1, whose own contract has now expired, from simply bypassing the expiration date in its own agreement by obtaining the desired terms and conditions of its original agreement through the adoption of the now extended agreement between CLEC 2 and the ILEC. Clearly, this would be also absurd and is not what was contemplated by Section 252(i) of the Act. This scenario is not, however, beyond the realm of possibility under GNAPs' rationale.

Finally, we note that we have indicated in the past to the FCC that we believe that the ability of a CLEC to obtain the terms and conditions of a pre-existing agreement ends at the expiration of that original agreement. While these statements have no precedential value, they do indicate that we have viewed the expiration date of agreements as an integral term negotiated by the original parties, and one which travels with the agreement when it is adopted.

For the foregoing reasons, we find that the agreement adopted by GNAPs expired on July 1, 1999.

VI. CONCLUSION

We have reached this decision pursuant to the directives and criteria of Sections 251 and 252 of the Act. We believe that our decision is consistent with the terms of Section 251, the provisions of the FCC's implementing Rules that have not been vacated, and the applicable provisions of Chapter 364, Florida Statutes.

Based on the foregoing, it is therefore

ORDERED by the Florida Public Service Commission that the Interconnection Agreement between ITC^DeltaCom, Inc. and BellSouth Telecommunications, Inc., which was adopted by Global NAPs (GNAPs) on January 18, 1999, expired on July 1, 1999. It is further

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ORDERED that this Docket shall remain open to address the remaining issues identified for arbitration in this proceeding.

By ORDER of the Florida Public Service Commission this 20th day of March, 2000.

BLANCA S. BAYÓ, Director
Division of Records and Reporting

By: Kay Flynn
Kay Flynn, Chief
Bureau of Records

(S E A L)

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NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Any party adversely affected by the Commission's final action in this matter may request: 1) reconsideration of the decision by filing a motion for reconsideration with the Director, Division of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, within fifteen (15) days of the issuance of this order in the form prescribed by Rule 25-22.060, Florida Administrative Code; or 2) judicial review in Federal district court pursuant to the Federal Telecommunications Act of 1996, 47 U.S.C. § 252(e)(6).