

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-00-1070-PHO-TP  
ISSUED: June 5, 2000

Pursuant to Notice and in accordance with Rule 28-106.209, Florida Administrative Code, a Prehearing Conference was held on May 25, 2000, in Tallahassee, Florida, before Commissioner E. Leon Jacobs, Jr., as Prehearing Officer.

APPEARANCES:

JON C. MOYLE, JR., Esquire, and CATHY M. SELLERS, Esquire, Moyle Flannigan Katz Kolins Raymond & Sheehan, P.A., 118 North Gadsden Street, Tallahassee, Florida 32301; and an appearance was entered for CHRISTOPHER W. SAVAGE, Esquire, Cole, Raywid, & Braverman, L.L.P., 1919 Pennsylvania Avenue, N.W., Washington, D.C. 20006  
On behalf of Global NAPS, Inc.

J. PHILLIP CARVER, Esquire, and an appearance was entered for NANCY B. WHITE, Esquire, and MICHAEL P. GOGGIN, Esquire, c/o Nancy Sims, 150 South Monroe Street, Room 400, Tallahassee, Florida 32301  
On behalf of BellSouth Telecommunications, Inc.

BETH KEATING, Esquire, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399  
On behalf of the Florida Public Service Commission

PREHEARING ORDER

I. CONDUCT OF PROCEEDINGS

Pursuant to Rule 28-106.211, Florida Administrative Code, this Order is issued to prevent delay and to promote the just, speedy, and inexpensive determination of all aspects of this case.

DOCUMENT NUMBER-DATE

06788 JUN-58

FPSC-RECORDS/REPORTING

## II. 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.

On January 31, 2000, the parties filed a Joint Motion to Modify Schedule. Therein, the parties explained that they believed that the following issue could 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?

The Joint Motion was granted by Order No. PSC-00-0294-PCO-TP, issued February 14, 2000. Thereafter, this Commission considered the briefs filed by the parties addressing the issue identified above. By Order No. PSC-00-0568-FOF-TP, issued March 20, 2000, we determined that the agreement had, in fact, terminated on July 1, 1999. Therefore, we are proceeding to hearing on the remaining issues identified in Order No. PSC-00-0294-PCO-TP.

## III. PROCEDURE FOR HANDLING CONFIDENTIAL INFORMATION

A. Any information provided pursuant to a discovery request for which proprietary confidential business information status is requested shall be treated by the Commission and the parties as confidential. The information shall be exempt from Section 119.07(1), Florida Statutes, pending a formal ruling on such

request by the Commission, or upon the return of the information to the person providing the information. If no determination of confidentiality has been made and the information has not been used in the proceeding, it shall be returned expeditiously to the person providing the information. If a determination of confidentiality has been made and the information was not entered into the record of the proceeding, it shall be returned to the person providing the information within the time periods set forth in Section 364.183, Florida Statutes.

B. It is the policy of the Florida Public Service Commission that all Commission hearings be open to the public at all times. The Commission also recognizes its obligation pursuant to Section 364.183, Florida Statutes, to protect proprietary confidential business information from disclosure outside the proceeding.

1. Any party intending to utilize confidential documents at hearing for which no ruling has been made, must be prepared to present their justifications at hearing, so that a ruling can be made at hearing.

2. In the event it becomes necessary to use confidential information during the hearing, the following procedures will be observed:

- a) Any party wishing to use any proprietary confidential business information, as that term is defined in Section 364.183, Florida Statutes, shall notify the Prehearing Officer and all parties of record by the time of the Prehearing Conference, or if not known at that time, no later than seven (7) days prior to the beginning of the hearing. The notice shall include a procedure to assure that the confidential nature of the information is preserved as required by statute.
- b) Failure of any party to comply with 1) above shall be grounds to deny the party the opportunity to present evidence which is proprietary confidential business information.
- c) When confidential information is used in the hearing, parties must have copies for the Commissioners, necessary staff, and the Court Reporter, in envelopes clearly marked with the

nature of the contents. Any party wishing to examine the confidential material that is not subject to an order granting confidentiality shall be provided a copy in the same fashion as provided to the Commissioners, subject to execution of any appropriate protective agreement with the owner of the material.

- d) Counsel and witnesses are cautioned to avoid verbalizing confidential information in such a way that would compromise the confidential information. Therefore, confidential information should be presented by written exhibit when reasonably possible to do so.
- e) At the conclusion of that portion of the hearing that involves confidential information, all copies of confidential exhibits shall be returned to the proffering party. If a confidential exhibit has been admitted into evidence, the copy provided to the Court Reporter shall be retained in the Division of Records and Reporting's confidential files.

#### IV. POST-HEARING PROCEDURES

Each party shall file a post-hearing statement of issues and positions. A summary of each position of no more than 50 words, set off with asterisks, shall be included in that statement. If a party's position has not changed since the issuance of the prehearing order, the post-hearing statement may simply restate the prehearing position; however, if the prehearing position is longer than 50 words, it must be reduced to no more than 50 words. If a party fails to file a post-hearing statement, that party shall have waived all issues and may be dismissed from the proceeding.

Pursuant to Rule 28-106.215, Florida Administrative Code, a party's proposed findings of fact and conclusions of law, if any, statement of issues and positions, and brief, shall together total no more than 40 pages, and shall be filed at the same time.

V. PREFILED TESTIMONY AND EXHIBITS; WITNESSES

Testimony of all witnesses to be sponsored by the parties has been prefiled. All testimony which has been prefiled in this case will be inserted into the record as though read after the witness has taken the stand and affirmed the correctness of the testimony and associated exhibits. All testimony remains subject to appropriate objections. Each witness will have the opportunity to orally summarize his or her testimony at the time he or she takes the stand. Upon insertion of a witness' testimony, exhibits appended thereto may be marked for identification. After all parties and Staff have had the opportunity to object and cross-examine, the exhibit may be moved into the record. All other exhibits may be similarly identified and entered into the record at the appropriate time during the hearing.

Witnesses are reminded that, on cross-examination, responses to questions calling for a simple yes or no answer shall be so answered first, after which the witness may explain his or her answer.

The Commission frequently administers the testimonial oath to more than one witness at a time. Therefore, when a witness takes the stand to testify, the attorney calling the witness is directed to ask the witness to affirm whether he or she has been sworn.

VI. ORDER OF WITNESSES

<u>Witness</u>	<u>Proffered By</u>	<u>Issues #</u>
<u>Direct and Rebuttal</u>		
William J. Rooney (Direct and Rebuttal)	Global	ALL
Fred R. Goldstein (Rebuttal only)	Global	2 - 5
Lee L. Selwyn (Rebuttal only)	Global	2 - 5
Alphonso J. Varner (Direct and Rebuttal)	BellSouth	ALL

VII. BASIC POSITIONS

**Global:** With the exception of the need to clarify the situation regarding ISP-bound calls, the existing interconnection agreement between Global NAPs and BellSouth is reasonable, complies with the Federal Telecommunications Act of 1996, and can and should be reestablished for another two-year period of time. It is BellSouth, not Global NAPs, that wishes to make other changes, and, therefore, BellSouth should bear the burden of proof with respect to whatever changes it proposes to make to the existing agreement.

**BellSouth:** Many of the issues in this case involve the treatment of ISP traffic. This traffic is not local traffic, and should not be subject to the reciprocal compensation provisions in an Interconnection Agreement that apply to local traffic. Further, this Commission need not take any action to develop a compensation mechanism for this traffic; the FCC currently has a rulemaking under way for this purpose. If this Commission wishes to take some action prior to the conclusion of the FCC Rulemaking, this Commission should direct the parties to implement a bill and keep mechanism while awaiting a decision by the FCC.

Each of the remaining individually numbered issues in this docket represent a dispute between BellSouth and Global NAPs as to whether the Interconnection Agreement between the parties should be BellSouth's Current Standard Agreement or the Agreement that BellSouth entered into with DeltaCom in 1997. BellSouth's Standard Agreement is more consistent with the Act, the pertinent rulings of the FCC, this Commission's previous orders, and the appropriate current practices in the various subject areas covered by the Agreement. Therefore, each BellSouth's position should be sustained by the Commission.

**STAFF:** Staff's positions are preliminary and based on materials filed by the parties and on discovery. The preliminary positions are offered to assist the

parties in preparing for the hearing. Staff's final positions will be based upon all the evidence in the record and may differ from the preliminary positions stated herein.

VIII. ISSUES AND POSITIONS

**ISSUE 2:** Should dial-up connections to an ISP (or "ISP-bound traffic") be treated as "local traffic" for purposes of reciprocal compensation under the new Global NAPs/BellSouth Interconnection Agreement or should it be otherwise compensated?

**POSITIONS:**

**Global:** Dial-up connections to an ISP (ISP-bound traffic) should be treated as local traffic for reciprocal compensation purposes under the new Global NAPs/BellSouth Interconnection Agreement. Therefore, reciprocal compensation should be due for ISP-bound traffic, just as it is due for other local traffic.

**BellSouth:** Dial-up connections to an ISP ("ISP-bound traffic") should not be treated as local traffic for purposes of reciprocal compensation. Instead, local traffic should be defined in the manner described below in response to Issue 5.

**STAFF:** Staff takes no position at this time.

**ISSUE 3:** If ISP-bound traffic should be compensated, what compensation rate should apply?

**POSITIONS:**

**Global:** ISP-bound traffic should be compensated at the same compensation rate as other local traffic is compensated.

**BellSouth:** Since ISP-bound traffic is access traffic, not local traffic, it is not subject to the reciprocal

compensation obligations contained in Section 251 of the Act, and should not be compensated in the Agreement. However, if the Commission does order that the Agreement address compensation for ISP traffic, it should direct the parties to implement a bill-and-keep arrangement as the inter-carrier compensation mechanism for ISP-bound traffic until such time as the FCC's rulemaking on inter-carrier compensation is completed.

**STAFF:** Staff takes no position at this time.

**ISSUE 4:** What are the appropriate reciprocal compensation rates to be included in the new Global NAPs/BellSouth Interconnection Agreement?

**POSITIONS:**

**Global:** The parties' current reciprocal compensation rate of \$0.009 per minute is appropriate and Global NAPs sees no reason why this compensation rate should be changed. However, if BellSouth objects to the inclusion of that rate in the new interconnection agreement, then the per-minute rate should be no lower than a rate that this Commission has established based on the FCC's TELRIC methodology (e.g., an unbundled network element rate for local switching). If no such TELRIC -based rate has been established, then as a matter of Federal law, the Commission should establish a per-minute rate within the \$0.002 to \$0.004 proxy rate contained in the FCC's regulations at this point, until a fully TELRIC-compliant rate can be established.

**BellSouth:** The appropriate rates for reciprocal compensation of local, non-ISP traffic, are the Commission-approved elemental rates for reciprocal compensation, specifically the rates for end office termination, tandem switching and common transport.

**STAFF:** Staff takes no position at this time.



**ISSUE 5:** What is the appropriate definition of local traffic to be included in the Interconnection Agreement?

**POSITIONS:**

**Global:** Any call that is originated on one party's network, dialed by that party's customer as a local call, handed off to the other party, and delivered to the other party's customer, shall be treated as a local call between the parties for purposes of reciprocal compensation.

**BellSouth:** Local traffic should be defined as any telephone call that originates in one exchange and terminates in either the same exchange, or other local calling area associated with the originating exchange as defined and specified in Section A3 of BellSouth's General Subscriber Service Tariff. Local traffic should not include traffic that originates from or is directed to or through an enhanced service provider or information service provider.

**STAFF:** Staff takes no position at this time.

**ISSUE 6:** What are the appropriate UNE rates to be included in the Interconnection Agreement?

**POSITIONS:**

**Global:** With the revisions addressed below, Global NAPs has no objection to including current UNE rates in its interconnection agreement with BellSouth with the understanding that if Global NAPs needs to order UNEs at some further time, it may do so at the then-prevailing rates, terms and conditions, taking into account orders of the FCC and/or this Commission that might not yet be fully reflected in BellSouth's standard UNE language. Revisions that should be made to the existing language of the BellSouth Standard Interconnection Agreement include deleting the first full sentence of page 4, Attachment 2 to the Agreement; also, the language on Page 16 of Attachment 2, all of Section 2.6.7.3.4 should be deleted.

**BellSouth:** The appropriate UNE rates to be included in the Interconnection Agreement are those set forth in the Standard Agreement attached to the testimony of BellSouth's witness, Alphonso J. Varner, as AJV-1.

**STAFF:** Staff takes no position at this time.

**ISSUE 7:** What are the appropriate collocation provisions to be included in the Interconnection Agreement?

**POSITIONS:**

**Global:** Global NAPs has no objection to including BellSouth's current language concerning collocation in its Interconnection Agreement, as long as this information is subject to updating, as described in Global NAPs' position with respect to Issue 6. That is, the parties would understand and agree that GNAPs would automatically be entitled to the then-current rates, terms, and conditions for collocation if and when Global NAPs actually requests collocation from BellSouth.

**BellSouth:** The appropriate collocation provisions are those set forth in the Standard Agreement attached to the testimony of BellSouth's witness, Alphonso J. Varner, as AJV-1. The Standard Agreement provides a current, detailed collocation offering that is consistent with the FCC's Order on collocation. The DeltaCom Agreement does not reflect the FCC's recent Order.

**STAFF:** Staff takes no position at this time.

**ISSUE 8:** What is the appropriate language concerning order processing to be included in the Interconnection Agreement?

The parties stated at the prehearing conference that this issue has been resolved.

**ISSUE 9:** What is the appropriate language relating to conversion of exchange service to network elements to be included in the Interconnection Agreement?

This issue was withdrawn at the prehearing conference.

**ISSUE 10:** What are the appropriate service quality measurements to be included in the Interconnection Agreement?

The parties stated at the prehearing conference that this issue has been resolved.

**ISSUE 11:** What is the appropriate language relating to network information exchange to be included in the Interconnection Agreement?

The parties stated at the prehearing conference that this issue has been resolved.

**ISSUE 12:** What is the appropriate language relating to maintenance and trouble resolution to be included in the Interconnection Agreement?

The parties stated at the prehearing conference that this issue has been resolved.

**ISSUE 13:** What is the appropriate language relating to local traffic exchange to be included in the Interconnection Agreement?

**POSITIONS:**

**Global:** Global NAPs wishes to keep the existing language in the existing interconnection agreement between Global NAPs and BellSouth regarding local traffic exchange.

**BellSouth:** The appropriate language concerning local traffic exchange is set forth in the Standard Agreement attached to the testimony of BellSouth's witness, Alphonso J. Varner, as AJV-1. The Standard Agreement more clearly defines the terms and compensation for local traffic exchange than does the DeltaCom Agreement.

**STAFF:** Staff takes no position at this time.

**ISSUE 14:** What is the appropriate language relating to telephone number portability arrangements to be included in the Interconnection Agreement?

The parties stated at the prehearing conference that this issue has been resolved.

IX. EXHIBIT LIST

<u>Witness</u>	<u>Proffered By</u>	<u>I.D. No.</u>	<u>Description</u>
Alphonso J. Varner	BellSouth	_____	Standard Agreement
		(AJV-1)	
		_____	Reciprocal Compensation Diagram
		(AJV-2)	
		_____	Access Service for IXC-Bound and ISP-Bound Traffic
		(AJV-3)	
		_____	Single Network and Multi-Network Provision of Access Service
		(AJV-4)	

<u>Witness</u>	<u>Proffered By</u>	<u>I.D. No.</u>	<u>Description</u>
Alphonso J. Varner	BellSouth	<u>(AJV-5)</u>	Diagram Representing Global NAPs position
		<u>(AJV-6)</u>	BellSouth's Proposed Interim Plan
		<u>(AJV-7)</u>	Calculation of Sharing Percentage
		<u>(AJV-8)</u>	1997 DeltaCom Agreement Rates and Current FPSC Approved Rates

Parties and Staff reserve the right to identify additional exhibits for the purpose of cross-examination.

X. STIPULATIONS and MOTIONS

On May 17, 2000, BellSouth filed a Motion to Strike Exhibits to Rebuttal Testimony of Global NAP's witnesses Selwyn and Goldstein. On May 25, 2000, Global NAP's filed its response. At the prehearing conference, however, the parties reached an agreement and stipulation with regard to the exhibits at issue. The parties have agreed that the evidence and decision in Docket No. 991267-TP may be used by either party in this proceeding without objection by the other party. As a result, Global NAPs withdrew Exhibits WJR-1, LLS-1, and FG-1, proffered in this proceeding and BellSouth withdrew its Motion to Strike Exhibits to Rebuttal Testimony. At the hearing, the decision in Docket No. 991267-TP, and the evidence upon which it was based, shall be made a part of the Official Recognition List.

In addition, the parties reached agreement on Issues 8, 10, 11, 12, and 14, and Issue 9 was withdrawn completely; therefore,

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this Commission need not render a decision on these issues in this proceeding.

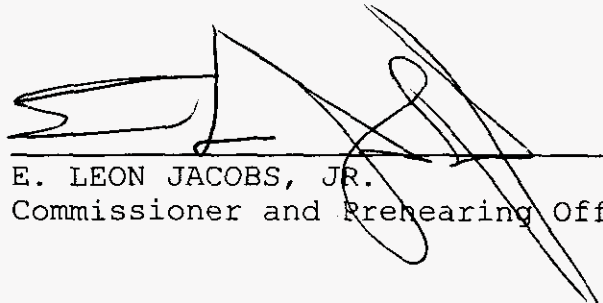
XI. RULINGS

Global NAPs requested leave to present an opening statement at the hearing of no more than 10 minutes. BellSouth did not object. The request appears reasonable; therefore, the parties shall be allowed 10 minutes to make opening statements at the beginning of the June 7, 2000, hearing.

It is therefore,

ORDERED by Commissioner E. Leon Jacobs, Jr., as Prehearing Officer, that this Prehearing Order shall govern the conduct of these proceedings as set forth above unless modified by the Commission.

By ORDER of Commissioner E. Leon Jacobs, Jr., as Prehearing Officer, this 5th day of June, 2000.

  
\_\_\_\_\_  
E. LEON JACOBS, JR.  
Commissioner and Prehearing Officer

( S E A L )

BK

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

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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.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

Any party adversely affected by this order, which is preliminary, procedural or intermediate in nature, may request: (1) reconsideration within 10 days pursuant to Rule 25-22.0376, Florida Administrative Code, if issued by a Prehearing Officer; (2) reconsideration within 15 days pursuant to Rule 25-22.060, Florida Administrative Code, if issued by the Commission; or (3) judicial review by the Florida Supreme Court, in the case of an electric, gas or telephone utility, or the First District Court of Appeal, in the case of a water or wastewater utility. A motion for reconsideration shall be filed with the Director, Division of Records and Reporting, in the form prescribed by Rule 25-22.060, Florida Administrative Code. Judicial review of a preliminary, procedural or intermediate ruling or order is available if review of the final action will not provide an adequate remedy. Such review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.