

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition by BellSouth  
Telecommunications, Inc. for  
arbitration of resale agreement  
with Atlantic Telecommunication  
Systems, Inc.

DOCKET NO. 992018-TP  
ORDER NO. PSC-00-1351-FOF-TP  
ISSUED: July 26, 2000

The following Commissioners participated in the disposition of  
this matter:

SUSAN F. CLARK  
E. LEON JACOBS, JR.  
LILA A. JABER

FINAL ORDER ON PETITION FOR ARBITRATION

BY THE COMMISSION:

I. Case Background

Atlantic Telecommunications Systems, Inc. (Atlantic) is an  
ALEC, holding a Florida certificate to provide telecommunications  
service, and is reselling telecommunications services provided by  
BellSouth Telecommunications, Inc. (BellSouth).

On February 9, 1998, we approved a BellSouth/Atlantic Resale  
Agreement, which expired on September 16, 1999. The parties agreed  
to continue service pursuant to the expired agreement until a  
successor agreement was adopted. On December 23, 1999, however,  
BellSouth filed a Petition for Arbitration of Resale Agreement with  
Atlantic. The petition consisted of two issues, but the parties  
subsequently reached agreement on one of those issues, leaving a  
single issue to be arbitrated by us.

At the scheduled prehearing conference, held April 7, 2000,  
Atlantic failed to appear. Therefore, in accordance with Order No.  
PSC-00-0391-PCO-TP, our Order Establishing Procedure for this case,  
Atlantic has waived all positions and issues raised in its  
prehearing statement.

An administrative hearing was held on April 19, 2000.  
However, in accordance with the Prehearing Order, Atlantic's  
testimony and exhibits were not allowed to be entered into the

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record; therefore, the only evidence entered into the record was the prefiled direct testimony submitted by BellSouth. Moreover, Atlantic did not appear for the hearing.

II. Discussion of the Issues:

The single issue before us is to determine whether Atlantic can require BellSouth to include a provision in the parties' resale agreement that would preclude BellSouth from offering services to consumers covered by an exclusive service arrangement with Atlantic. BellSouth witness Shiroishi does not believe that this issue is appropriate for arbitration, as she states:

Limitation on a telecommunication carrier's ability to sell and market services is not appropriate as an issue for arbitration, and contractual language regarding this issue should not be imposed by this Commission. Neither the Telecommunications Act of 1996 ("1996" Act), the FCC Rules nor Florida law address the issue of the exclusive service arrangements. Clearly, there is no requirement under Section 251 that such arrangements be addressed in a Resale Agreement.

Witness Shiroishi also states:

In a competitive environment, consumers should have choices as to service providers, as well as types of pricing of services. Simply put, Atlantic seeks to have the Commission erect a barrier around Atlantic's customers to protect these customers from competition from BellSouth.

Witness Shiroishi further states that she is unclear exactly what Atlantic's position is from the language it has requested for the Resale Agreement, but she opines that Atlantic's reference to an "exclusive arrangement with end users within the Party's service area" may likely be in the context of a multi-tenant environment.

As noted earlier, Atlantic did not attend the scheduled Prehearing Conference. Thus, in accordance with Order No. PSC-00-0391-PCO-TP, the Order Establishing Procedure for this case,

Atlantic has waived all the positions and issues raised in its prehearing statement, and none of its evidence was allowed to be entered into the record. Notwithstanding, we agree with BellSouth that language pertaining to customers served under exclusive service arrangements does not appear appropriate for inclusion in a resale agreement under Sections 251 and 252 of the Telecommunications Act of 1996. Section 252(c) of the Act provides in part:

Standards for Arbitration - In resolving by arbitration under subsection (b) any open issues and imposing conditions upon the parties to the agreement, a State commission shall -

(1) ensure that such resolution and conditions meet the requirements of section 251, including the regulations prescribed by the Commission pursuant to Section 251;

### III. Analysis and Determination

In arbitrating any open issues under Section 252 of the Telecommunications Act of 1996, we must ensure that the resolution of those issues meets the requirements of Section 251 of the Act. Section 251 promulgates no requirements regarding exclusive service arrangements; therefore, we find that inclusion of language pertaining to this issue is not appropriate. Accordingly, based on the evidence and arguments presented, we will not require that language addressing that issue be included in this agreement.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that language pertaining to exclusive service arrangements will not be required in this agreement. It is further

ORDERED that the parties shall submit for approval, within thirty (30) days of issuance of this Order, a signed agreement that complies with our decisions in this docket. It is further

ORDERED that this docket will remain open pending our approval of the final arbitration agreement, in accordance with Section 252 of the Telecommunications Act of 1996.

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By ORDER of the Florida Public Service Commission this 26th  
day of July, 2000.

BLANCA S. BAYÓ, Director  
Division of Records and Reporting

By: Kay Flynn  
Kay Flynn, Chief  
Bureau of Records

( S E A L )

CLF

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 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 and/or wastewater utility by filing a notice of appeal with the Director, Division of Records and reporting and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days after the issuance of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900(a), Florida Rules of Appellate Procedure.