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June 29, 2000

VIA FAX AND HAND DELIVERY

Hon. Gary Hotvedt, Hearing Officer
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, TN 37238

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. 00-00141

Dear Mr. Hotvedt:

Following oral argument on June 8, 2000, you preliminarily (1) denied NOW's motion to dismiss and (2) found that BellSouth has two options with respect to the petition for arbitration it filed in this proceeding. First, BellSouth could proceed based on the petition as filed with the understanding that under the FCC's analysis in the *Armstrong* case, the TRA would not be bound by the nine-month deadline in Section 252(b)(4)(C) of the federal Act. Alternatively, BellSouth could refile its petition for arbitration by June 29, 2000 and proceed with an arbitration in which the Authority would conclude the resolution of any unresolved issues within nine months.

In response to your request to notify you as to which alternative BellSouth will choose, BellSouth will proceed based on the petition it filed on February 25, 2000. While BellSouth agrees with your preliminary finding that NOW's motion to dismiss should be denied, BellSouth also believes that its petition for arbitration was filed in a timely manner.

Finally, during the oral argument on June 8, the parties noted that they were awaiting a ruling by the Alabama Public Service Commission on NOW's motion to dismiss. Attached is a copy of the Alabama PSC's Order, which was entered recently, on June 23, 2000. The parties are continuing to attempt to negotiate a settlement of the issues in this proceeding.

Very truly yours,

Guy M. Hicks

GMH:ch
Enclosure

P 7-7-00

218016

STATE OF ALABAMA
ALABAMA PUBLIC SERVICE COMMISSION
P.O. BOX 991
MONTGOMERY, ALABAMA 36101-0991

PETITION FOR ARBITRATION OF THE INTERCONNECTION AGREEMENT BETWEEN BELLSOUTH TELECOMMUNICATIONS, INC. AND NOW COMMUNICATIONS, INC., PURSUANT TO THE TELECOMMUNICATIONS ACT OF 1996.

DOCKET 27461

PROCEDURAL ORDER

I. Introduction/Background

On February 25, 2000, BellSouth Telecommunications, Inc. (BellSouth) filed a Petition for Arbitration of the Interconnection Agreement Between BellSouth Telecommunications, Inc. and NOW Communications, Inc. (NOW) pursuant to the Telecommunications Act of 1996 (the 1996 Act) (hereinafter the BellSouth Petition for Arbitration or the Petition). Said filing was assigned Docket No. 27461.

On March 17, 2000, NOW filed a Motion to Dismiss BellSouth's February 25, 2000 Petition for Arbitration. NOW asserted in its March 17, 2000 Motion to Dismiss that the Commission lacked subject matter jurisdiction to address said Petition due to the fact that BellSouth filed the Petition outside the window established for the filing of arbitrations by §252(b)(1) of the 1996 Act. More specifically, NOW argued that BellSouth initiated its

request for negotiations on August 20, 1999. NOW accordingly implied that the statutory arbitration window expired on January 27, 2000 and could not be amended, extended or waived under any circumstances.

NOW also asserted in its March 17, 2000 Motion to Dismiss that BellSouth failed to comply with the statutory provision of §252(b) of the 1996 Act by failing to properly provide a copy of its Petition for Arbitration and the documentation supporting it to NOW. NOW did not, however, elaborate further on that issue.

On March 21, 2000 NOW submitted its Response to BellSouth's Petition for Arbitration (hereinafter NOW's Response or Response). In said Response, NOW renewed its previously filed Motion to Dismiss and asserted as its first and second defenses the untimeliness of BellSouth's Petition for Arbitration and BellSouth's failure to comply with the provisions of §252(b)(2)(B) of the 1996 Act governing the timely and proper service of petitions for arbitration.

As its third defense, NOW asserted in its March 21, 2000 Response that BellSouth had failed to comply with the statutory mandate of good faith negotiations of interconnection agreements pursuant to §251(c)(1) of the 1996 Act. NOW alleged that BellSouth had conducted a planned and designed scheme of bad faith negotiations which were intended to place NOW in a vulnerable position of accepting onerous terms of adhesion that would destroy the financial and corporate viability of NOW.

As a fourth defense, NOW asserted that BellSouth was in direct violation of the 1996 Act by virtue of its purposeful violation of the provisions requiring the development of competition in local exchange markets. NOW specifically alleged that BellSouth had

engaged in anti-competitive behavior which constituted a violation of the Sherman Antitrust Act codified at 15 U.S.C. §2.

NOW's fifth defense was that BellSouth, through waiver and agreement, had elected not to exercise its rights, if any, for arbitration under the Act. NOW asserted that BellSouth's agreement to renew and extend the initial interconnection agreement effectively vitiated BellSouth's Petition for Arbitration.

As its sixth defense, NOW asserted that the agreement it originally entered with BellSouth on June 1, 1997 automatically renewed for a period of two years from May 31, 1999 to May 31, 2001. NOW contended that the Commission should dismiss the BellSouth Petition for Arbitration because the initial agreement between the parties remained in full force and effect and had not expired, therefore, depriving BellSouth of any right to proceed with arbitration.

NOW similarly argued that arbitration was inappropriate because the parties had, on the 26th day of January, 2000, affirmed their initial interconnection agreement. The correspondence relied on by NOW for this contention was included as Exhibit 2 to its Response and was attached to BellSouth's original Petition for Arbitration as Exhibit E.

NOW's March 21, 2000 Response included additional background information concerning the negotiations conducted between BellSouth and NOW. NOW also answered each paragraph of the BellSouth Petition for Arbitration and asserted that the issues raised in its previously filed Motion to Dismiss, and renewed in its Response, were primary and threshold issues which were ripe for decision. NOW asserted that the affirmative defenses it had raised would preclude further proceedings on the BellSouth Petition and urged the Commission dismiss BellSouth's Petition for Arbitration. In the

event of a determination by the Commission that the arbitration should proceed, NOW contended that an appropriate order requiring arbitration of every term and provision being negotiated between NOW and BellSouth would be required.

On March 28, 2000, BellSouth filed a Response to NOW's March 17, 2000 Motion to Dismiss and therein urged the Commission to deny NOW's Motion. BellSouth noted that it sent a formal request to NOW to renegotiate the existing resale agreement between the parties on August 20, 1999. BellSouth thus agreed that the window for the filing of a petition for arbitration by either party began on January 2, 2000 (the one hundred and thirty fifth day following the commencement of negotiations) and ended on January 27, 2000 (the one hundred and sixtieth day following the formal request to commence negotiations).

BellSouth pointed out, however, that on January 21, 2000, just six days before the arbitration window was to close, NOW submitted to BellSouth a written request to extend the arbitration window in order to allow for continued negotiations between the parties. BellSouth argued that NOW expressly acknowledged in its request that the arbitration window would expire on January 27, 2000, but respectfully requested BellSouth's concurrence to extend the window for the filing of arbitration for a period of thirty days in order to facilitate further negotiations. The NOW letter of January 21, 2000 requesting the thirty day extension was attached to the BellSouth Petition for Arbitration as Appendix D.

BellSouth further represented that a letter was sent to NOW on January 26, 2000 in which BellSouth acknowledged that it would agree to extend the time for the parties to negotiate a new agreement. That letter was attached to BellSouth's Petition for arbitration as Appendix E.

BellSouth argued that the agreement between the parties to extend the time for negotiations was not, as NOW apparently asserted, an agreement to alter the arbitration time lines found in §251(b)(1) of the 1996 Act, but was instead an agreement to alter the start date of the negotiations between the parties which would trigger the statutory arbitration deadlines. BellSouth represented that the parties basically agreed to continue negotiating and to treat the date that the initial request for negotiations was sent by BellSouth as having been sent on September 19, 1999 as opposed to August 20, 1999. BellSouth argued that pursuant to that approach, the statutory window for arbitration closed on February 25, 2000, the date that BellSouth filed its Petition for Arbitration with the Commission.

BellSouth further noted that NOW submitted correspondence to BellSouth on February 22 and February 23 requesting yet another extension of the arbitration window. BellSouth pointed out that it declined to agree to the further extensions requested by NOW. The correspondence memorializing the additional NOW requests for extension and BellSouth's response thereto were attached to BellSouth's Petition for Arbitration as Exhibits F and G respectively.

With regard to NOW's contention that BellSouth failed to comply with the statutory provisions of §252(b) by improperly failing to provide a copy of its Petition for Arbitration and the documentation in support thereof to NOW, BellSouth represented that it served a copy of its Petition for Arbitration with the Exhibits attached thereto upon at least two representatives of NOW on the same day that the petition was filed with the Commission. BellSouth asserted that its actions in that regard clearly demonstrated its compliance with the service requirements of §252(b).

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On March 29, 2000 the Commission issued a Procedural Ruling dismissing NOW's March 17, 2000 Motion to Dismiss. In response, NOW filed on April 7, 2000 a Motion to Dismiss, a Motion for the Commission to Reconsider NOW's earlier Motion to Dismiss and a Motion for Hearing on its Motion's.

In its April 7, 2000 filing, NOW reemphasized that the interconnection between BellSouth and NOW which was approved by the Commission on November 17, 1999 was still in full force and effect until June 1, 2001. More specifically, NOW argued that because BellSouth failed to provide the written notice of its intent to terminate required by Section I.,B of said agreement, it automatically renewed on June 1, 1999 for two one year terms. NOW accordingly argued that there was nothing to negotiate pursuant to §252 of the 1996 Act and that the Commission had no subject matter jurisdiction to arbitrate under §252(b)(1). NOW, therefore, urged the Commission to dismiss BellSouth's Petition to Arbitrate based on the argument that the 1997 agreement entered between BellSouth and NOW remained in full force and effect until June 1, 2001 or in the alternative because BellSouth's Petition was untimely filed.

On April 17, 2000, BellSouth filed its Response to NOW's April 7, 2000 filing. BellSouth argued therein that NOW's additional Motion to Dismiss was improper and should be rejected in light of the Commission's March 29, 2000 Ruling dismissing NOW's original Motion to Dismiss. BellSouth further argued that NOW's Request for Reconsideration of the Commission's March 29, 2000 dismissal of NOW's March 17, 2000 Motion to Dismiss was also improper under Rule 21 of the Commission's Rules of Practice. More specifically, BellSouth argued that NOW had not submitted new evidence which would support its Motion for Reconsideration.

BellSouth further argued in its April 17, 2000 filing that contrary to the arguments raised by NOW, there was no reason why the parties could not arbitrate a new agreement prior to the expiration of their existing agreement. BellSouth argued that such occurrences are in fact common place and necessary for continued operation.

BellSouth further noted in its April 17, 2000 filing that it sent a letter to NOW on March 30, 2000 formalizing its intent not to renew the existing agreement between the parties for an additional period of one year. BellSouth noted that the written statement of its intent not to renew the existing agreement was sent in spite of the fact that BellSouth had negotiated with NOW in good faith for a number of months and NOW was well aware of BellSouth's desire to enter into a new agreement long before the existing agreement was set to expire by its terms. BellSouth respectfully requested that the Commission deny NOW's second Motion to Dismiss and allow the matter to proceed to arbitration in order that the parties may enter into a new resale agreement which is needed for the parties to continue doing business.

II. The April 21, 2000 Prehearing Conference

In order to address the issues in NOW's pending Motions and its Response to BellSouth's Petition for Arbitration, the Commission scheduled a Prehearing Conference for April 21, 2000. NOW and BellSouth were allowed at said Prehearing Conference to orally argue the issues pending before the Commission. Both parties essentially reemphasized the arguments raised in their previous pleadings.

Counsel for NOW strongly reiterated NOW's position that the resale agreement entered between NOW and BellSouth in 1997 was in full force and effect until May 31, 2001 due to BellSouth's failure to specifically notify NOW in writing of BellSouth's intention

to terminate the agreement at least sixty (60) days before its original termination date of May 31, 1999. Counsel for NOW also asserted that pursuant to §252(b) of the 1996 Act, incumbent LECs such as BellSouth may not initiate requests for negotiations which trigger the statutory window for arbitration.

Citing a decision of the California Public Service Commission in *In Re: Petition by Pacific Bell For Arbitration of an Interconnection Agreement with Pac-West Telecom, Inc.*, 1999 Cal. PUC-LEXIS 70 (Cal. Public Utilities Comm'n February 4, 1999) (*In Re: Pac Bell)* (attached to BellSouth's March 28, 2000 response as Exhibit 2), counsel for BellSouth argued that ILECs could indeed initiate requests for negotiations pursuant to §252(b) of the 1996 Act. Counsel for BellSouth also asserted that BellSouth and NOW had mutually and properly agreed to extend the date that BellSouth originally requested negotiations with NOW in order to allow for further negotiations. The FCC's decision *In Re: Armstrong Communications, Inc. Petition for Relief Pursuant to §252(e)(5) of the Telecommunications Act of 1996*, 13 F.C.C. Rcd. 871, DA 98-85, ¶'s 10-11 (January 22, 1998) (*In Re: Armstrong)* (attached to BellSouth's March 28, 2000 Response as Exhibit 1) was cited as support for that proposition.

III. Discussions and Conclusions

Following the April 21, 2000 prehearing conference the parties each submitted information concerning action taken in the jurisdictions of Louisiana and Kentucky on BellSouth's Petition for Arbitration with NOW. The information and arguments so presented have been considered in this Ruling.

It appears from a review of the record that the first issue to be addressed is the status of the agreement entered between BellSouth and NOW in 1997. NOW essentially argues that the 1997 agreement is in full force and effect until May 31, 2001 due to BellSouth's failure to properly terminate said agreement by providing written notice of its intent to do so at least sixty (60) days prior to the agreement's original termination date of May 31, 1999. (Tr. at p. 7) BellSouth essentially argues that it clearly communicated to NOW its intention to renegotiate the existing agreement between the parties as early as October of 1998 and that NOW clearly understood BellSouth's intentions in that regard. Given NOW's insistence on written termination notice, however, BellSouth represented that it formally provided written notification to NOW of its intention to terminate the agreement via a March 30, 2000 letter from Paige Miller, the BellSouth employee responsible for negotiations with NOW. (Tr. at p. 33)

BellSouth asserts that its provision of the written termination notice discussed above properly terminated the 1997 BellSouth/NOW agreement as of May 31, 2000. NOW, however, maintains that BellSouth's failure to provide termination notice at least sixty (60) days prior to the original termination date of May 31, 1999 resulted in the contract automatically renewing for two years through May 31, 2001. NOW essentially argues that the automatic extension language in the 1997 agreement ambiguously stated that the failure of either party to properly terminate the agreement prior to May 31, 1999 would result in the automatic renewal of the agreement for "two one year terms" as opposed to two separate one year terms as argued by BellSouth. NOW argues that pursuant to Georgia statute O.C.G.A. §13-2-2(5), the ambiguous extension language in the 1997

agreement must be construed in its favor due to the fact that BellSouth drafted the provision in question. (Tr. at pp. 9-10).

BellSouth concedes that pursuant to the terms of its 1997 agreement with NOW, Georgia law governs the contract between the parties. BellSouth argues, however, that the automatic extension language in the 1997 agreement between BellSouth and NOW clearly contemplates two separate one year terms. BellSouth thus asserts that it properly terminated the 1997 agreement as of May 31, 2000. BellSouth contends that NOW also conceded the termination date of May 31, 2000 in pleadings before the Tennessee Public Service Commission on these same facts and issues (Tr. at pp. 31-35) (*See* BellSouth's Hearing Exhibit 1 at page 2).

Based on the foregoing, it is ruled that the 1997 agreement between BellSouth and NOW has been properly terminated. Contrary to the arguments of NOW, the automatic extension language found at §I., B of the 1997 agreement clearly contemplates two separate one year terms and BellSouth has properly terminated the agreement as of May 31, 2000. It is, therefore, unnecessary to address the merits of NOW's assertion that parties may not arbitrate disputes concerning interconnection or resale agreements which are in full force and effect. We note, however, that it certainly appears reasonable and prudent to commence the renegotiation of agreements which are approaching expiration in order to minimize service interruptions.

We now turn to an assessment of NOW's argument that ILECs such as BellSouth may not initiate requests for the negotiation of interconnection or resale agreements which trigger the arbitration window of §252(b)(1) of the 1996 Act. NOW maintains that it never requested renegotiations with BellSouth concerning the 1997 agreement between the

parties and implies that BellSouth's August 20, 1999 correspondence officially requesting negotiations with NOW was ineffective to pull the statutory trigger of §252(b)(1). NOW concedes that it participated in negotiations with BellSouth, but only in the context of settling the litigation which NOW instituted against BellSouth in the United States District Court for the Northern District of Alabama.

BellSouth concedes that the language of §252(b)(1) indicates that ILECs must receive requests for negotiations, but argues that the language in question must be placed in the context of what was intended by Congress with the passage of the 1996 Act. (Tr. at p. 25) Specifically, BellSouth notes that at the time of the passage of the 1996 Act, local exchange telephone service was a monopoly. Accordingly, there was then no reason for ILECs to pursue interconnection or resale agreements with CLECs.

Some four years removed from the passage of the Act, however, BellSouth argues that literally hundreds of interconnection agreements, both resale and facilities-based, are in place. (Tr. at p. 27) Given the current regulatory environment, BellSouth alleges that an interpretation of §252 which exclusively allows CLECs to initiate requests for the renegotiation of existing agreements would be prejudicial to ILECs. (Tr. at p. 27)

BellSouth further asserts that the California Public Service Commission in *In Re: Pac Bell*, addressed this same issue and established, under circumstances which closely parallel those present in this case, that ILECs can indeed initiate requests for negotiation which trigger the statutory arbitration window of §252(b)(1). In *In Re: Pac Bell*, the California Public Service Commission concluded that certain correspondence by Pacific Bell, the ILEC, to Pac West, the CLEC, constituted a de facto bonafide request for

negotiations which commenced the statutory arbitration window of §252(b)(1) of the 1996 Act. (Tr. at p. 28-29)

NOW, however, asserts that there are circumstances which distinguish the California Commission's holding in *In Re: Pac Bell* from the case at bar. Specifically, NOW contends that the California Commission's decision in *In Re: Pac Bell* was founded on the premise that there was "no other credible reason" for negotiation between Pac Bell and Pac West other than for purposes of negotiating an interconnection agreement pursuant to §252 of the 1996 Act. NOW alleges that in the present case, its desire to pursue the settlement of its litigation with BellSouth constituted "more than credible other reasons" for NOW to negotiate with BellSouth. (Tr. at p. 38-39) NOW also alleges that the December 22, 1999 letter from Paige Miller of BellSouth to Mr. Larry Seab of NOW (which was marked as NOW Exhibit 1 and admitted into evidence at the Prehearing Conference of April 21, 2000) reveals that NOW was not in fact negotiating or renegotiating its 1997 agreement with BellSouth, but was instead negotiating with BellSouth for purposes of settling the litigation between the parties.

We conclude from our review of the controlling law that it is indeed permissible for ILECs such as BellSouth to initiate requests for negotiation which trigger the statutory arbitration window of §252(b)(1). To construe the provisions of §252(b)(1) to limit such requests for negotiations to CLECs in the present telecommunications environment would undermine the spirit, if not the letter, of §252(b)(1) to the substantial prejudice of ILECs. Provisions such as the one found in §I., B of the 1997 agreement between BellSouth and NOW which continue agreements that have by their terms expired until such time as the parties have negotiated and/or arbitrated new agreements are common place. To interpret

§252(b)(1) to allow CLECs to exclusively determine when such agreements are in fact renegotiated would unfairly work to the detriment of ILECs. Congress surely did not intend such a result.

With regard to NOW's arguments that there were "other credible reasons" for its negotiations with BellSouth, we note that BellSouth's negotiating posture was certainly crystallized by the December 22, 1999 correspondence from Ms. Miller. BellSouth clearly conveyed in said correspondence that it was, and had been, negotiating toward a resale agreement with NOW since it served a formal request for such negotiations on August 20, 1999.

Although there were indications in Ms. Miller's correspondence of December 22, 1999 that NOW informed BellSouth as late as November 22, 1999 that it had not entered into resale negotiations with BellSouth, Mr. Larry Seab in correspondence dated January 21, 2000, confirmed that BellSouth had activated the statutory arbitration window for negotiating an agreement with its August 20, 1999 request for negotiations. Mr Seab in fact acknowledged that the expiration of the arbitration window was on January 27, 2000 (Mr. Seab's January 21, 2000 letter was appended to BellSouth's Petition for Arbitration as Exhibit D) and requested a thirty day extension thereof.

A follow up letter of January 26, 2000 which was signed by Ms. Miller of BellSouth and Mr. Seab of NOW further memorialized the parties' understanding that the August 20, 1999 letter from BellSouth created an arbitration window for unresolved issues of January 2, 2000 through January 27, 2000. (Said correspondence was attached to BellSouth's Petition for Arbitration as Exhibit E) The January 26, 2000 correspondence also recognized that NOW had requested "to *move from negotiating a stand-alone resale*

agreement to negotiating a full blown interconnection agreement containing provisions for combining unbundled network elements." Importantly, the January 26, 2000 correspondence also confirmed the mutual agreement of BellSouth and NOW to extend the arbitration window thirty days to allow for further negotiations.

NOW's acknowledgment of the statutory arbitration period is even further reflected in correspondence from NOW's attorney to BellSouth dated February 22, 2000. In that correspondence, NOW, through its attorney, requested an additional 20 day extension of the arbitration window. (Said correspondence was attached to BellSouth's Petition for Arbitration Exhibit F) BellSouth denied that request.

It is apparent from the foregoing that despite NOW's representations to the contrary, both parties understood and agreed that BellSouth's August 20, 1999 correspondence to NOW requesting negotiations was intended to trigger the statutory arbitration window of §252(b)(1) for purposes of negotiating a resale agreement. The January 26, 2000 correspondence signed by representatives of both parties memorialized NOW's subsequent transition from the negotiation of a resale agreement to the negotiation of an interconnection agreement and demonstrated the mutual understanding of the parties that the arbitration window set to expire on January 27, 2000 was still applicable. Given the clarity of that January 26, 2000 correspondence and NOW's correspondence of February 22, 2000, seeking further extension of the arbitration window, it is difficult to lend credence to NOW's theory that it never intended to engage in the negotiation of a new resale agreement or the renegotiation of its existing agreement with BellSouth. NOW's well established conduct to the contrary simply belies such a position.

We lastly turn to an assessment of NOW's argument that the arbitration window of §252(b)(1) is statutorily established and thus cannot be waived under any circumstances. BellSouth argues that the January 26, 2000 letter executed by BellSouth and NOW which extended the arbitration window 30 days did not, as NOW apparently contends, alter the arbitration time lines found in §252(b)(1). BellSouth instead argues that the parties agreed to alter the start date for the parties' negotiations which would trigger the statutory arbitration deadlines. Specifically, BellSouth contends that the agreement was to treat BellSouth's August 20, 1999 request for negotiations having been served by BellSouth on September 19, 1999. According to BellSouth, that agreement between the parties moved the arbitration deadline from January 27, 2000 to February 25, 2000, the date on which BellSouth filed its Petition for Arbitration. (Tr. at p. 23)

In support of its position, BellSouth argues that the FCC was given broad regulatory oversight over the implementation and enforcement of the Telecommunications Act of 1996. (Tr. at p. 24) As such, BellSouth contends that great weight should be given to the FCC's decision in *In Re: Armstrong* wherein the FCC articulated numerous findings and conclusions concerning Congress's intentions with regard to the statutory arbitration window of §252(b)(1). Specifically, BellSouth points out that the FCC in *In Re: Armstrong* discussed the Congressional preference for voluntary negotiations between parties to interconnection agreements and the Congressional concern that parties to negotiations would seek arbitration prematurely without giving good faith negotiations a chance to succeed. BellSouth argues that the agreement between it and NOW to alter the start date of the arbitration window of §252(b)(1) was a mutually agreed upon, good faith attempt to give negotiations a chance to succeed. BellSouth argues that such an approach

is consistent with the public interest and the intentions of Congress in promulgating §252(b)(1). (Tr. at p. 30-31)

BellSouth is correct in noting that Congress granted the FCC broad supervisory authority over the implementation and enforcement of the provisions of the 1996 Act such as §252(b)(1). As a result, we place great emphasis on the FCC's decision in *In Re: Armstrong* wherein the FCC indeed emphasized that Congress's primary purpose in establishing an arbitration window in §252(b)(1) was to prevent parties from seeking arbitration prior to giving voluntary negotiations an adequate opportunity to succeed. *(In Re: Armstrong* at ¶11) It thus appears that the mutual agreement between BellSouth and NOW to extend the date from which the arbitration window of §252(b)(1) would be calculated in order to accommodate further negotiations between the parties was entirely consistent with Congress's goals in promulgating §252(b)(1).

The mutually agreed upon 30 day extension did not, in and of itself, result in detriment or procedural unfairness to either BellSouth or NOW. To the contrary, the good faith negotiations conducted during said extension were intended to work to the mutual benefit of the parties and were consistent with the primary purposes and preferences of Congress in its promulgation of §252(b)(1) of the 1996 Act.

As a general principle, agreements between parties to alter the start date of negotiations which trigger the arbitration window of §252(b)(1) should be encouraged in order to further Congress's goal for negotiations between parties. Such agreements merely allow the parties flexibility in determining the date from which the statutory deadlines of §252(b)(1) are calculated and should not be construed as waivers of the statutory time frames of §252(b)(1).

We fully recognize, as did the FCC in *In Re: Armstrong,* that "it is well established in *other* contexts that statutory deadlines cannot be waived or extended except in very limited circumstances." (*In Re: Armstrong* at ¶11) In the context of §252(b)(1) of the 1996 Act, however, such a strict interpretation concerning statutory time periods and their waiver would limit negotiations instead of encouraging them as Congress intended.

In light of the foregoing, we conclude that it would be extremely prejudicial to BellSouth to grant NOW's Motion to Dismiss and thereby allow NOW to disavow its previous agreement altering the start date of the negotiations which triggered the arbitration window of §252(b)(1). Given the prevalence of agreements wherein parties have negotiated the date that their negotiations are deemed to have begun for purposes of calculating the statutory time frames of §252(b)(1), we find that a dismissal of BellSouth's Petition for Arbitration in this cause would, at a minimum, have a chilling effect on future negotiations between telecommunications carriers. We will not allow NOW to create such uncertainty in this or future cases by granting NOW's Motion to Dismiss BellSouth's Petition for Arbitration.

Based on the foregoing, NOW's Motion to Dismiss and Motion for Reconsideration is hereby denied.

The Parties are instructed to confer and submit a mutually-proposed procedural schedule for the arbitration in this cause within ten (10) days of the effective date of this Order.

IT IS SO RULED, this 23rd day of June, 2000.

ALABAMA PUBLIC SERVICE COMMISSION

Jim Sullivan, President

Jan Cook, Commissioner

George C. Wallace, Jr., Commissioner

ATTEST: A True Copy

Walter L. Thomas, Jr., Secretary

CERTIFICATE OF SERVICE

I hereby certify that on June 29, 2000, a copy of the foregoing document was served on the parties of record, via the method indicated:

[✓] Hand [ ] Mail [ ] Facsimile [ ] Overnight	Richard Collier, Esquire Tennessee Regulatory Authority 460 James Robertson Parkway Nashville, TN 37243-0500
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