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October 2, 2003

Sharla Dillon, Docket Manager
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, TN 37243

RE: *Joint Application of Now Acquisition Corporation for Authority to
Acquire Certain Assets of Now Communications, Inc.*

Docket No. 03-00454

Dear Ms. Dillon:

Enclosed are the original and thirteen (13) copies of Now Acquisition Corporation's Motion to Dismiss Petition of BellSouth Telecommunications, Inc. for Leave to Intervene.

Should you have any questions, please contact me.

Very truly yours,

EARLY, LENNON, CROCKER & BARTOSIEWICZ, P.L.C.

By


David G. Crocker

DGC/tlb

enc

BEFORE THE TENNESSEE REGULATORY AUTHORITY
Nashville, Tennessee

In Re: Joint Application of Now Acquisition Corporation for Authority to Acquire
Certain Assets of Now Communications, Inc.

Docket No. 03-00454

MOTION TO DISMISS PETITION OF BELL SOUTH
TELECOMMUNICATIONS, INC. FOR LEAVE TO INTERVENE

Now Acquisition Corporation ("NAC") moves to dismiss the Petition for
Leave to Intervene ("Petition") filed by BellSouth Telecommunications, Inc.,
("BellSouth"), for the following reasons:

1. The statutes and Authority Rules relied upon by BellSouth to intervene in
this proceeding require that BellSouth set forth with particularity those facts which
demonstrate that BellSouth's legal interests may be determined in this proceeding.
2. The only facts set forth by BellSouth to demonstrate that its legal interests
may be determined in this proceeding are contained in paragraphs 4, 5, 6, 7 and 8 of
the Petition.
3. The facts as set forth in paragraphs 4, 5, 6, 7 and 8 of the Petition relate to
matters which are outside the jurisdiction of the Authority and which are being litigated
in the U.S. Bankruptcy Court for the Southern District of Mississippi except for the
allegation in paragraph 6 that NAC does not have an interconnection agreement with
BellSouth. The interconnection agreement issue may come before the Authority in
another proceeding since BellSouth on July 16, 2003, illegally refused to allow NAC to
adopt the AT&T Communications of the Southern States, LLC, interconnection

agreement with BellSouth as required by 47 USC 252. Interjection of the other facts alleged in paragraphs 4, 5, 6, 7 and 8 of the Petition into this docket is nothing more than a blatant attempt by BellSouth to find an alternative forum to review BellSouth's unsecured claim, which is an issue for the Bankruptcy Court alone. BellSouth should not be allowed to use the regulatory process in such a manner so as to thwart both competitors and the bankruptcy code.

4. Since the Authority does not have jurisdiction to determine any of the legal issues raised by the facts set forth in paragraphs 4, 5, 6, 7 and 8 of the Petition, except for the anticompetitive act of BellSouth in illegally refusing the NAC request, the Petition does not comply with the statutory and regulatory requirements so as to allow BellSouth to intervene in this proceeding.

5. This proceeding is a request for approval of the transfer of certain assets, including the customer base, of NOW Communications, Inc. ("NOW") to NAC. The transfer will not occur unless it is approved by the U.S. Bankruptcy Court having jurisdiction of the bankruptcy of NOW. The issues raised by BellSouth, by the terms of its own pleadings, are in the sole and exclusive jurisdiction of the U.S. Bankruptcy Court for the Southern District of Mississippi and will not be determined by the Authority in this proceeding. Those issues have nothing to do with whether or not NAC and NOW satisfy regulatory requirements to allow the orderly transfer of the NOW customers to be served by NAC on a going-forward basis.

NAC therefore requests that the Authority dismiss the Petition or require that BellSouth supplement the Petition and set forth with particularity the facts which

demonstrate that the legal interests of BellSouth may be determined in this proceeding which is limited as set forth in paragraph 5 above.

Dated: October 2, 2003

Respectfully submitted,

Now Acquisition Corporation

Early, Lennon, Crocker & Bartosiewicz, P.L.C.

By:


David G. Crocker

Its Attorney

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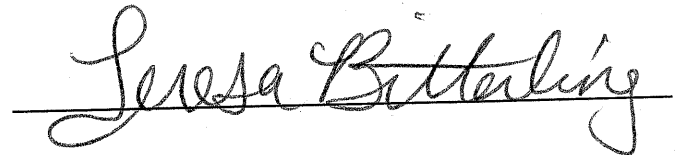
CERTIFICATE OF SERVICE

I hereby certify that on October 2, 2003, a copy of the foregoing document was served on the parties of record, via the method indicated:

- ☐ Hand
- ☒ Mail
- ☐ Facsimile
- ☐ Overnight

Guy M. Hicks
BellSouth Telecommunications, Inc.
333 Commerce Street, Suite 2101
Nashville, Tennessee 37201-3300

Joelle Phillips
BellSouth Telecommunications, Inc.
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A handwritten signature in cursive script, reading "Teresa Bitterling", is written over a horizontal line.