

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of
Momentum Telecom, Inc. f/k/a
Momentum Business Solutions, Inc.,
Complainant,
v.
BellSouth Telecommunications, Inc.,
Defendant.
File No. EB-05-MD-029

ORDER OF DISMISSAL

Adopted: March 3, 2006

Released: March 3, 2006

By the Chief, Market Disputes Resolution Division, Enforcement Bureau:

1. On March 2, 2006, the complainant, Momentum Telecom, Inc. f/k/a Momentum Business Solutions, Inc. ("Momentum"), filed a motion to withdraw with prejudice the Complaint that it filed against BellSouth Telecommunications, Inc. ("BellSouth"), pursuant to sections 208 and 271 of the Communications Act of 1934, as amended ("Act"). In its Complaint, Momentum claims that the rates, terms, and conditions under which BellSouth is offering local switching violate sections 271, 201(b) and 202(a) of the Act.

2. The Motion states that Momentum has addressed its business concerns through an agreement with BellSouth, and "has determined that further litigation of its complaint is unnecessary at this time and that withdrawal is in the best interest of both parties." Momentum states in its letter transmitting its Motion that "BellSouth does not object to the withdrawal of the complaint." Momentum further asserts that state commissions "have concurrent jurisdiction with the Commission over the issues in dispute in this proceeding" and that Momentum intends to pursue ongoing litigation before state

1 Motion to Withdraw, File No. EB-05-MD-029 (filed Mar. 2, 2006) ("Motion").

2 Formal Complaint, File No. EB-05-MD-029 (filed Nov. 21, 2005) ("Complaint").

3 47 U.S.C. §§ 208 and 271. Section 271(d)(6) of the Act requires that "[u]nless the parties otherwise agree, the Commission shall act on [Momentum's] complaint within 90 days." 47 U.S.C. § 271(d)(6). The parties agreed that the deadline for resolution of the captioned proceeding did not end until March 3, 2006. See Letter from Jennifer Kashatus, Counsel for Momentum, to Alexander P. Starr, Chief, Market Disputes Resolution Division, EB, File No. EB-MD-05-029 (filed Feb. 24, 2006).

4 Motion at 1-2.

5 Letter from Jennifer M. Kashatus, Counsel for Momentum, to Marlene Dortch, Secretary, FCC, File No. EB-05-MD-029 (filed Mar. 2, 2006).

commissions.⁶

3. In response to the Motion, BellSouth states that it does not object to the withdrawal of Momentum's Complaint with prejudice, but it does object to Momentum's assertion that state commissions have concurrent jurisdiction with the Commission on the issues raised in the dispute.⁷ BellSouth asks the Commission to reject Momentum's assertion related to concurrent state jurisdiction.⁸

4. We are satisfied that dismissing the Complaint with prejudice will serve the public interest by promoting the private resolution of disputes and by eliminating the need for further litigation and the expenditure of further time and resources of the parties and this Commission.⁹ Although we grant Momentum's Motion, we do not address Momentum's assertion that state commissions have concurrent jurisdiction over the issues in dispute in this proceeding, and our order of dismissal should not be construed as agreeing or disagreeing with Momentum's assertion.

5. Accordingly, IT IS ORDERED, pursuant to sections 1, 4(i), 4(j), and 208 of the Act, 47 U.S.C. §§ 151, 154(i), 154(j), 208 and 271, and the authority delegated in sections 0.111, 0.311, and 1.720-1.736 of the Commission's rules, 47 C.F.R. §§ 0.111, 0.311, and 1.720-1.736, that the Motion is GRANTED, and that the Complaint is DISMISSED with prejudice.

FEDERAL COMMUNICATIONS COMMISSION

Alexander P. Starr
Chief, Market Disputes Resolution Division

⁶ Motion at 1-2.

⁷ See Email from E. Earl Edenfield, Counsel for BellSouth, to Alexander P. Starr, Chief, Market Disputes Resolution Division, EB, File No. EB-MD-05-029 (filed Mar. 2, 2006).

⁸ *Id.*

⁹ Motion at 2, ¶ 2.