

COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

TELECOMMUNICATIONS INTERCONNECTION) ADMINISTRATIVE
AGREEMENTS PURSUANT TO THE) CASE NO. 358
TELECOMMUNICATIONS ACT OF 1996)

O R D E R

On March 25, 1996, AT&T Communications of the South Central States, Inc. ("AT&T") filed with the Commission a letter requesting that all existing interconnection agreements between Kentucky-certified local exchange carriers and other carriers be submitted to the Commission for review pursuant to 252(e) of the Telecommunications Act of 1996 ("the Act"). AT&T states that such filing is required by Section 252(a) of the Act. AT&T further requests that copies of these agreements be served upon it so that it can participate in review pursuant to Section 252(e) of the Act. AT&T's letter is attached hereto as Appendix A.

Subsequently, GTE South Incorporated ("GTE South") filed a response to AT&T's request, stating that AT&T errs in construing the Act to require agreements consummated prior to the effective date of the Act to be submitted for the regulatory approval process set forth in Section 252(e). In support of its position, GTE South offers arguments based upon, inter alia, the wording of the statute and the intent of Congress in enacting the statute. GTE South's letter dated April 16, 1995 urging the Commission to deny AT&T's request is attached hereto as Appendix B. Similar arguments are

made by BellSouth Telecommunications, Inc. in a letter dated April 16, 1996 and attached hereto as Appendix C.

The Commission finds that parties who signified interest in interconnection issues through participation in the hearing recently held in Administrative Case No. 355¹ should be made aware of this issue and should be afforded an opportunity to submit comments. Accordingly, the Commission hereby initiates this proceeding in order to receive those comments prior to rendering its decision in this matter. Any comments should be submitted within thirty days of the date of this Order.

IT IS THEREFORE ORDERED that:

1. All parties who participated in the hearing held in Administrative Case No. 355 shall receive a copy of this Order.

2. The Commission shall receive comments regarding the filing and approval issues raised by AT&T in its letter of March 25, 1996, for a period of 30 days following the issuance of this Order.

Done at Frankfort, Kentucky, this 29th day of April, 1996.

PUBLIC SERVICE COMMISSION

Linda K. Breathitt
Chairman

E. J. H. [Signature]

Vice Chairman

Robert M. Davis
Commissioner

ATTEST:

Don Mills
Executive Director

¹ Administrative Case No. 355, An Inquiry Into Local Competition, Universal Service, and the Non-Traffic Sensitive Access Rate.

APPENDIX A

AN APPENDIX TO AN ORDER OF THE KENTUCKY PUBLIC SERVICE COMMISSION
IN ADMINISTRATIVE CASE NO. 358 DATED APRIL 29, 1996

RECEIVED



Edward H. Hancock

MAR 25 9 51 AM '96

245 West Main Street
Frankfort, KY 40601
502 875-1014

March 25, 1996

PUBLIC SERVICE
COMMISSION

Mr. Don Mills
Executive Director
Kentucky Public Service Commission
730 Schenkel Lane
Frankfort, Kentucky 40601

Re: Interconnection Agreements

Dear Mr. Mills:

Section 252(a) of the Telecommunications Act of 1996 (the "Act") requires interconnection agreements (including those negotiated before the date of enactment of the Act) between incumbent local exchange telecommunications carriers and other carriers to be submitted to the appropriate state commission. Consequently, AT&T Communications of the South Central States, Inc. ("AT&T"), hereby requests that the Kentucky Public Service Commission (the "Commission") require the filings of all existing interconnection agreements between local exchange telecommunications companies certificated by the Commission and other carriers (including other local exchange telecommunications carriers, alternative local exchange telecommunications companies, and alternative access vendors) in accordance with Section 252(a) of the Act.

AT&T further respectfully requests that copies of such agreements be served on AT&T at the time that they are filed, so that AT&T can participate in the review of such agreements pursuant to Section 252(e) of the Act. AT&T's participation will not only aid the Commission's review of the agreements, as required, but will also enable AT&T to protect its own interests since AT&T may need to obtain interconnection services under such agreements pursuant to Section 252(i) of the Act, prior to obtaining an interconnection agreement of its own.

Thank you for the Commission's consideration of this matter. Please give me a call if you or any member of the Commission or its Staff have any questions about this request.

Sincerely,

A handwritten signature in cursive script that reads "Edward H. Hancock".

Edward H. Hancock
State Manager

APPENDIX B

AN APPENDIX TO AN ORDER OF THE KENTUCKY PUBLIC SERVICE COMMISSION
IN ADMINISTRATIVE CASE NO. 358 DATED APRIL 29, 1996

Marceil Morrell**
Vice President & General Counsel - Florida

Associate General Counsel
Anthony P. Gillman**
Leslie Reicin Stein*

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Lorin H. Albeck M. Eric Edgington
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GTE Telephone Operations

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813-224-4001
813-228-5257 (Facsimile)

AWD

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APR 17 1996

GENERAL COUNSEL

April 16, 1996

Mr. Don Mills
Executive Director
Kentucky Public Service Commission
730 Schenkel Lane
Frankfort, Kentucky 40601

Re: Administrative Case No. 355 - Interconnection Agreements

Dear Mr. Mills:

By a letter dated and filed on March 25, 1996, AT&T Communications of the South Central States, Inc. ("AT&T") requested the Kentucky Public Service Commission ("Commission") to require the filing of all existing interconnection agreements between local exchange telecommunications companies ("LECs") certificated by the Commission and other carriers, *i.e.*, LECs, alternative local exchange telecommunications companies, and alternative access vendors. AT&T based its request on its interpretation of Section 252(a) of the Telecommunications Act of 1996 (the "Act").

GTE South Incorporated ("GTE South" or "Company") believes that AT&T's reading of the Act is misplaced and encourages the Commission to deny AT&T's request.

It is the Company's position that a plain reading of Section 252(a) makes it clear that this section applies solely to new agreements. Section 252(a)(1) allows an incumbent LEC to negotiate and enter into a binding "agreement" without regard to the standards set forth in subsections (b) and (c) of Section 251. The remaining references to the term "agreement" in this section of the Act (the second and third sentences) clearly refer to the "agreement" initially referred to in the first sentence of Section 252(a)(1). Thus, only new agreements need to be submitted to the State commission under subsection(e) of Section

Mr. Don Mills
April 16, 1996
Page 2

252. Since the Act is prospective in nature this is a logical and consistent interpretation of Section 252(a). If one were to accept the position advanced by AT&T, then all existing LEC interconnection agreements would become subject to the approval process set out in Section 252(e). Such a conclusion would overwhelm the regulatory process and produce a result which is unreasonable and inconsistent with congressional intent. The Act introduces a new regulatory environment for telecommunications companies in this country and interconnection agreements that were negotiated before its adoption are not relevant.

In further support of its position, the Company would point out that Congress was aware that several states were already opening the networks of incumbent LECs to competition from new entrants and encouraged such efforts.¹ Congress did not intend to require these states and carriers to start anew under Sections 251 and 252 of the Act. This level of awareness is clearly evident in the Senate Report for S. 652 which is particularly relevant in that Section 252(a) was derived from the Senate bill. The Senate report indicated that: "Several States (such as New York, California and Illinois) have taken steps to open the local network of companies."² As a consequence of these "steps", agreements (of which the Senate was clearly aware) dealing with the same issues as are dealt with in Section 251(b) and (c), e.g., resale, unbundling, number portability, had been negotiated between incumbent LECs and new entrants prior to enactment. Accordingly, Section 252(a) provides that agreements negotiated before the date of enactment need not be renegotiated and shall be submitted to the state for approval, public filing, and availability to other carriers under Sections 252(e), (h) and (i). The Joint Explanatory Statement accompanying the Conference Report reinforces this point in its explanation of Section 251(c) of the Senate bill³[the predecessor to Section 252(a)] when it notes that this subsection deals with how a LEC may, by means of a negotiated agreement, "...meets its section 251 obligations...."⁴ Existing pre-enactment agreements with other incumbent LECs and wireless providers are, thus, not a part of the Section 251 obligations, as Section 251 obligations are called into play only as a consequence of their Section 251(c)

¹ See S. Rep. No. 104-23, 1st Sess. 20 (1995); Report of National Communications Competition and Information Infrastructure Act of 1994, Rep. No. 103-367, 2nd Sess.5 (1994).

² Supra, S. Rep. at 5.

³ H.R. Conf. Rep. No. 104-458, 2nd Sess. 121 at 124 (1996).

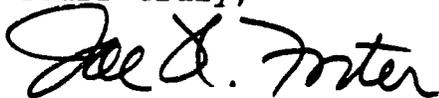
⁴ Id. at 124.

Mr. Don Mills
April 16, 1996
Page 3

duty "to negotiate in good faith, subject to the provisions of section 252 all of the obligations imposed in new sections 251(b) and 251(c)."⁵ There were no Section 251 obligations to be met at the time of these pre-enactment agreements.

Accordingly, GTE South respectfully urges the Commission to deny the request contained in AT&T's letter of March 25, 1996.

Yours truly,



Joe W. Foster

c: All Parties of Record

⁵ 47 U.S.C. § 251(c).

APPENDIX C

AN APPENDIX TO AN ORDER OF THE KENTUCKY PUBLIC SERVICE COMMISSION
IN ADMINISTRATIVE CASE NO. 358 DATED APRIL 29, 1996

RECEIVE

APR 17 1996

PUBLIC SERVICE
COMMISSION

BellSouth Telecommunications, Inc. Fax 502 582-1573
P.O. Box 32410 502 582-8219
Louisville, Kentucky 40232

Creighton E. Mershon, Sr.
General Counsel

April 16, 1996

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APR 17 1996

GENERAL COUNSEL

Mr. Don Mills
Executive Director
Public Service Commission
730 Schenkel Lane
P. O. Box 615
Frankfort, KY 40602

Dear Mr. Mills:

This is in response to the letter request of AT&T, dated March 25, 1996. In this letter, which was not served on BellSouth Telecommunications, Inc. ("BST"), AT&T requests the Commission to enter an order requiring all LECs in Kentucky to immediately resubmit all existing interconnection agreements to the Commission for approval under Section 252(e) of the Telecommunications Act of 1996 (the "Act"). As an initial matter, it should be noted that the terms and conditions of BST's interconnection arrangements for mobile services are publicly available in the mobile services interconnection tariff. BST's agreements with other local exchange companies governing the interconnection and exchange of traffic between their mutually exclusive service areas (sometimes including local as well as toll traffic) have recently been provided to AT&T and other participants in Administrative Case 355 as a part of the discovery process. The rates are considered proprietary, and were not produced.

AT&T is incorrect in asserting that the Act requires that these agreements, even though entered into prior to the enactment of the Act, must be resubmitted for approval under the provisions of Section 252(e) of the Act. BellSouth disagrees with AT&T's interpretation of the Act. Fairly read in the context in which it appears, the language relating to agreements negotiated before the enactment of the Act does not require all existing agreements to be resubmitted to the Commission for approval.

Section 252 of the Act pertains to the procedures for negotiation, arbitration and approval of agreements. Subsection (a)(1) of this section states:

Upon receiving a request for interconnection, services, or network elements pursuant to section 251, an incumbent local exchange carrier may negotiate and enter into a binding agreement with the requesting telecommunications carrier or carriers without regard to the standards set forth in

Mr. Don Mills
April 16, 1996
Page 2

subsections (b) and (c) of section 251. The agreement shall include a detailed schedule of itemized charges for interconnection and each service or network element included in the agreement. The agreement, including any interconnection agreement negotiated before the date of enactment of the Telecommunications Act of 1996, shall be submitted to the State commission under subsection (e) of this section.

The process addressed by this subsection clearly begins with a request for interconnection, services, or network elements pursuant to Section 251. After this, the incumbent local exchange carrier may negotiate and enter a binding agreement with the requesting telecommunications carrier without regard to the standards set forth in subsections (b) and (c) of the Section 251. The agreement that is reached as a result of the request for interconnection, which could potentially include a portion or portions of an agreement that was reached prior to the enactment of the Act,¹ are then to be submitted to the Commission for approval under Section 252(e).

These provisions do not require the submission or resubmission for approval each and every existing agreement that may have touched upon interconnection in some context. The resubmission requirement contained in Section 252(a)(1), requires a "request . . . pursuant to Section 251" to trigger negotiation and potential consummation of "a binding agreement." It is that binding agreement, "including any interconnection agreement negotiated before the date of enactment. . ." that is to be submitted to the Commission. Because the reference to existing agreements occurs only in the context of an agreement negotiated under the new Act's procedures, agreements existing prior to the Act do not have to be independently submitted.

This interpretation of the Act is also consistent with the purpose of the Act itself and its practical application. The Act is designed to remove the barriers to entry into the local exchange market in order to allow the development of competition in that market. Sections 251 and 252 are designed to apply to the negotiation, arbitration and approval of agreements that result from a request of an incumbent local exchange

¹ It is possible that incumbent local exchange companies will be entering into negotiations with requesting carriers with whom they already have interconnection agreements that were negotiated prior to the Act. As a result of the Section 251/252 negotiations, the new agreement may include newly negotiated provisions, as well as provisions unchanged from the previous agreement.

Mr. Don Mills
April 16, 1996
Page 3

carrier to fulfill its obligation under the Act. The agreements that are the target of AT&T's request are between non-competing local exchange carriers, the majority of which were entered into many years ago under entirely different circumstances. These local exchange carriers operate in different service areas and did not compete with one another for local exchange customers. Thus, these local exchange carriers will not be competing against new entrants under the terms of these older interconnection agreements. To this extent, these arrangements between these non-competing local exchange carriers do not fall within the purview of the new Act and are irrelevant to the accomplishment of its purposes.

This interpretation of Section 252(a)(1) is consistent too with the practical application of the Act to outstanding agreements. BellSouth has hundreds of agreements with exchange companies, radio and other carriers. No practical purpose would be served by requiring further state review of such agreements until it becomes necessary to change their terms in the changed legal environment.

However, it is possible that these currently non-competing carriers will indeed request interconnection under the provisions of the Act and seek to enter and compete in the adjacent local exchange company's territory. When this happens, Section 252 of the Act requires that the interconnection agreement reached as a result of negotiations under Sections 251 and 252, including the terms of any agreement between the parties that happened to be negotiated prior to the enactment of the Act, be submitted for approval. Until such time as a new agreement is reached, there is simply no requirement to submit an agreement for approval by the Commission.

For these reasons, AT&T's request should be rejected as inconsistent with the requirements of the Act.

Very truly yours,


Creighton E. Mershon, Sr.