

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

PETITION OF THE ELECTRIC AND WATER PLANT )	
BOARD OF THE CITY OF FRANKFORT FOR )	
ARBITRATION OF AN INTERCONNECTION )	CASE NO.
AGREEMENT WITH BELL SOUTH )	99-443
TELECOMMUNICATIONS, INC. PURSUANT TO )	
SECTION 252(b) OF THE TELECOMMUNICATIONS )	
ACTION OF 1996 )	

O R D E R

On November 24, 1999, the Electric and Water Plant Board of the City of Frankfort ("FEWPB") filed a petition for arbitration with BellSouth Telecommunications, Inc. ("BellSouth"). On December 17, 1999, BellSouth filed a response to the petition. According to FEWPB, the disputed issue is whether BellSouth is required to execute the interconnection agreement that it negotiated with FEWPD and that contains terms upon which the parties have agreed. According to BellSouth, the disputed issue is whether the FEWPB has the legal authority to offer telecommunications services. BellSouth also is concerned that the FEWPB does not appear to be subject to regulatory requirements applicable to competitive local exchange carriers ("CLECs"). Those requirements entail submittal of a tariff containing rates and services.

47 U.S.C. § 251 imposes upon telecommunications carriers the duty to interconnect with the facilities and equipment of other telecommunications carriers. Incumbent LECs have additional duties: to negotiate in good faith the terms and conditions of interconnection agreements; to provide interconnection with the facilities and equipment of any requesting telecommunications carrier; and to offer for resale at

wholesale rates any telecommunications service that the carrier provides to non-telecommunications carriers at retail.

In addition, 47 U.S.C. § 253 provides that no state or local statute or regulation or other state or local legal requirement may prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service.

FEWPB asserts that it is a provider of telecommunications services as defined by 47 U.S.C. § 153(43) and thus meets the definition of a telecommunications carrier as defined by 47 U.S.C. § 153(44). Accordingly, it is entitled to the benefits of the Telecommunications Act of 1996, which has opened the telecommunications market to all providers and has purposely removed legal or regulatory barriers to the provision of telecommunications service. By state statute, however, FEWPB is specifically exempted from Commission regulation at this time. KRS 278.010(3).<sup>1</sup>

The Commission, having considered the legal issues and having been otherwise sufficiently advised, finds that BellSouth must execute an interconnection agreement with any entity purporting to provide telecommunications services as defined by federal statute and must do so on the same terms and conditions as it makes available to any other carrier. Should BellSouth believe that another entity is not authorized by statute to provide telecommunications services and it believes that it has standing to bring such a claim, it may petition a court of general jurisdiction.

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<sup>1</sup> As of the date of this Order, House Bill 477, an act relating to the provision of telecommunication services by municipalities and municipal utilities, has been approved by both chambers of the General Assembly and awaits the Governor's signature. When this Bill becomes effective, FEWPB will be regulated as a CLEC and presumably BellSouth's concerns will be addressed.

IT IS THEREFORE ORDERED that:

1. BellSouth shall execute an interconnection agreement with FEWPB containing the agreed terms which have been negotiated.

2. Within 30 days of the date of the Order, the executed interconnection agreement shall be submitted for Commission review.

Done at Frankfort, Kentucky, this 13<sup>th</sup> day of March, 2000.

By the Commission

ATTEST:

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Executive Director