COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

IGLOU INTERNET SERVICES, INC. COMPLAINANT	)	
v.	)	CASE NO. 99-484
BELLSOUTH TELECOMMUNICATIONS, INC. DEFENDANT	)	

O R D E R

On January 11, 2001, the Commission granted rehearing to BellSouth Telecommunications, Inc. ("BellSouth") on its November 30, 2000 Order (the "November 2000 Order") to determine whether BellSouth's proposal to revise its Federal Communications Commission ("FCC") interstate wholesale digital subscriber line ("DSL") tariff rather than to file a Kentucky-specific tariff sufficiently addresses the Commission's concerns regarding BellSouth's provision of DSL service in Kentucky.[1] BellSouth has filed its entire proposed revised DSL tariff for the Commission's review. IgLou Internet Services, Inc. ("IgLou") has responded to BellSouth's proposal and an informal conference has been held. The parties agree that no additional public hearing is necessary.

Having reviewed BellSouth's proposals, we approve them subject to future review, with one modification to the tariffed termination penalty provision, and modify our earlier decisions in this case accordingly.

[1] This Commission has authority to address IgLou's complaint, as it has explained in previous Orders. Despite BellSouth's contentions to the contrary, we reaffirm our previous holdings on this issue here.

BELLSOUTH'S ALTERNATIVE PROPOSAL TO VOLUME REDUCTIONS FILED IN AN INTRASTATE TARIFF

The November 2000 Order required BellSouth to reduce its DSL tiers applicable to Kentucky to reflect 5 percent of the FCC's tariffed volumes. Thus, the per-line rate for the lowest volume tier would have been $37 a month. Instead of reducing the volumes necessary to qualify for specific prices, BellSouth proposes to reduce the prices themselves while retaining the regional count. Thus, for entities ordering 51 to 10,000 DSL lines, the per-line rate in BellSouth's proposal is $32 a month. For those ordering 10,001 to 40,000 DSL lines, the per-line rate is $30 a month. For those ordering more than 40,000 lines, the per-line rate is $29 a month.

BellSouth asserted at the March 7, 2001 informal conference that, if the Commission accepts its FCC revisions in lieu of the requirements imposed by the Commission's November 30, 2000 Order, BellSouth will file its revisions with the FCC within 15 days of the Commission's Order.

IgLou objects to BellSouth's proposal. Because the best price is available only to those who provide 40,000 DSL lines on a region-wide basis, IgLou states it will never be able to match the best price which BellSouth currently provides to itself. Moreover, IgLou expressed concern that BellSouth is not legally required to maintain for any specified period of time the proposed FCC tariff changes which it has agreed to file in response to this Kentucky proceeding.

Nevertheless, a comparison of the requirements of the November 2000 Order, wherein BellSouth was ordered to reduce the volumes necessary to be eligible for each price range tier, and BellSouth's proposed FCC tariff revision, wherein the monthly rate is reduced from $37 to $32 for the entry level range, demonstrates that IgLou and other similarly situated providers are substantially benefited by the proposed revisions to the FCC tariff.[2] Thus, the Commission accepts BellSouth's proposal.

PENALTY REDUCTIONS IN BELLSOUTH'S PROPOSAL

The November 2000 Order also required BellSouth to eliminate or greatly reduce the tariff penalties associated with DSL service. BellSouth's proposed revised FCC tariff does not specifically modify the terms relating to the penalty provisions. However, because BellSouth's shortfall penalties are largely tied to prices, the price reductions automatically reduce the penalty provisions. The shortfall penalties in BellSouth's proposed revised tariff are, in fact, three-eighths of the current penalties. The Commission finds that such reductions meet its requirements for shortfall penalties and will allow BellSouth's competitors to function in the DSL market.

The tariff still, however, contains a termination liability charge that the Commission finds inappropriate insofar as it applies when an end-use customer switches Internet service providers ("ISP") but continues to receive service over BellSouth's DSL facilities. Under such circumstances, BellSouth suffers no loss: the customer has terminated his agreement with a particular ISP but his new ISP will continue to pay BellSouth for DSL service. Accordingly, the terms of BellSouth's tariff should be modified to delete the termination liability charge if the end-use customer continues to receive service over BellSouth's DSL facilities, despite having severed his relationship with the ISP who otherwise would incur the termination charge.

[2] Additionally, with the reduction in price, the effectiveness of the Florida Internet Services Providers Association agreement is minimized. This agreement would allow a member to purchase a DSL line for $2.00 less than otherwise available, plus any membership fees.

CONCLUSION

Rapid deployment of, access to, and extensive use of DSL are vital to Kentucky's economic future. Accordingly, we will continue to monitor the terms and conditions upon which the service is offered and will require, from time to time, such reports as are necessary to ensure that all Kentuckians receive the benefits of this technology as soon as possible.

For the time being, smaller ISPs should be able to obtain service for their customers and to compete effectively under the terms approved in this Order. The modification approved herein gives these ISPs better prices than they would have received under the terms of the November 2000 Order between volumes of 51 DSL lines and 2,000 DSL lines. Because further issues that implicate the public interest in the terms and conditions under which DSL is sold in Kentucky may arise in the future, BellSouth should file, one year from the date of this Order, a report justifying the continued applicability of the tariff approved herein. In the alternative, BellSouth may file proposed changes to this tariff which may more effectively serve the Kentucky DSL market.

The Commission, having considered BellSouth's request for rehearing and IgLou's response thereto and having been otherwise sufficiently advised, HEREBY ORDERS that:

1. BellSouth's proposed FCC tariff revisions for DSL service are hereby approved as a substitute for the specifications ordered previously by this Commission, with the modification to its termination penalty charge as described herein.

2. The November 2000 Order in this matter is modified to the extent that its provisions conflict with this Order.

3. BellSouth shall file with the FCC no later than 15 days from the date of this Order, its proposed tariff revisions with the modifications described herein, and shall file a copy of the same with this Commission.

4. One year from the date of this Order, BellSouth shall file a report stating the number of DSL lines in Kentucky sold to each Internet service provider, and explaining in detail whether, in its opinion, the tariff approved herein continues to promote competition in Kentucky that benefits consumers; or, in the alternative, BellSouth shall file further proposed amendments to its DSL tariff.

5. Six months from the date of this Order, there shall be an informal conference in the Commission's offices to discuss the status of DSL competition in Kentucky.

Done at Frankfort, Kentucky, this 9th day of April, 2001.

By the Commission

ATTEST:

Executive Director