

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

IGLOU INTERNET SERVICES, INC.)	
)	
)	CASE NO.
VS.)	99-484
)	
)	
BELLSOUTH TELECOMMUNICATIONS, INC.)	

O R D E R

On April 30, 2001, BellSouth Telecommunications, Inc. (“BellSouth”) filed a motion styled “Reconsideration of April 9, 2001 Order,” to which IgLou Internet Services, Inc. has responded. BellSouth filed its motion pursuant to KRS 278.400, which provides for rehearing in which a “party may offer additional evidence that could not with reasonable diligence have been offered on the former hearing.” BellSouth’s motion contains no additional evidence. Rather, it purports to be a “proposed resolution” and BellSouth asserts that it “withdraws its original proposal and offers this alternative proposal.”¹ Accordingly, the Commission does not consider BellSouth’s motion pursuant to KRS 278.400. Instead, recognizing the unusual circumstances of this case and the ever-changing regulatory and technological parameters of the issues in this docket, the Commission considers the motion and alternative proposal pursuant to its general grant of authority under KRS Chapter 278 to ensure fair, just, and reasonable utility services and rates. Though the procedural posture of this case is unusual, we believe that, under the circumstances, the public interest would not be served by our

¹ BellSouth Motion at 2.

refusal to consider an additional BellSouth proposal which, at least in part, offers an excellent solution to concerns discussed in this docket regarding provision of digital subscriber line (“DSL”) service to small Internet service providers (“ISPs”).

BellSouth proposes to provide DSL service at a single rate with no volume commitment above the 51 line minimum; to remove shortfall charges associated with channels above the 51 line minimum; and to increase non-recurring charges. In addition, BellSouth does not propose to comply with our previous order requiring it to “delete the termination liability charge if the end-use customer continues to receive service over BellSouth’s DSL facilities.”²

IgLou objects to BellSouth’s motion. In its May 9, 2001 response, IgLou asserts that BellSouth’s proposal contains a substantial rate increase with no demonstration of any associated cost increase. IgLou also contends that the Commission should continue to take every step possible to ensure that Kentuckians are provided competitive choice for access to broadband services.

According to BellSouth, its alternative proposal resolves the parity issue addressed by this Commission in its November 30, 2000 Order. In that Order, we required BellSouth to reduce its DSL tiers applicable to Kentucky. Requesting rehearing of that Order, BellSouth proposed to revise its Federal Communications Commission (“FCC”) tariff to reduce the monthly rate from \$37 to \$32 for the minimum volume, low data-rate range. However, upon this Commission’s acceptance of this alternative proposal, BellSouth did not file that FCC tariff. BellSouth has now submitted this new alternative proposal. The Commission finds that the elimination of the tier

² April 9, 2001 Order at 3.

structure to BellSouth's tariff eliminates the Commission's concern that "smaller ISPs simply cannot purchase the services their customer's request in the volume necessary to receive the lowest tier price."³ Accordingly, this portion of BellSouth's alternative proposal should be accepted. The elimination of the tier structure will place IgLou, its larger competitors, and BellSouth's own ISP operations on this same footing regarding the monthly recurring charges.

Other portions of BellSouth's motion are not, however, acceptable. For example, BellSouth's proposal to charge non-recurring fees of \$110 rather than \$50 lacks cost justification. BellSouth must maintain the non-recurring charge of \$50, unless and until it can provide cost justification for the proposed increase. If BellSouth provides information to this Commission demonstrating any increased costs for this charge, the Commission will revisit this issue.

Moreover, the Commission affirms its April 9, 2001 decision requiring BellSouth to delete its termination liability charge if an end-use customer who switches from one ISP to another continues to receive service over BellSouth's DSL facilities. BellSouth may, however, submit cost information demonstrating that this termination liability charge is cost-based. If such information is submitted, the Commission will revisit this issue.

As a final note, the Commission is well aware that this proceeding has been a lengthy one. In it, we have been presented with complex issues of first impression, and have been, accordingly, reluctant to refuse to accept relevant ideas or information. However, eventually there must be a finality to any Commission case. Accordingly, the

³ November 30, 2000 Order at 9.

Commission does not contemplate the consideration of any additional motions in this proceeding.

CONCLUSION

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

1. BellSouth's proposed FCC tariff revision for DSL service eliminating the tier structure and the volume discounts are hereby approved as a substitute for the terms previously ordered by this Commission, as modified herein.

2. The April 9, 2001 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 to be applicable to Kentucky, and shall file a copy of the same with this Commission.

4. BellSouth shall file with this Commission a copy of all modifications to its DSL tariff, along with cost justification for such modifications, simultaneous with its filing with the FCC.

5. One year from the date of this Order, BellSouth shall file a report stating the number of DSL lines in Kentucky sold to each ISP, and explaining in detail whether, in its opinion, the tariff approved herein continues to promote competition in Kentucky that benefits consumers.

6. Within 6 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 14th day of May, 2001.

By the Commission

Chairman Martin J. Huelsmann took no part in the decision of this case.

ATTEST:

Deputy W^m H. Bowen
Executive Director