

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

THE PETITION OF PILGRIM TELEPHONE, INC.)	
FOR ARBITRATION WITH BELL SOUTH)	CASE NO.
TELECOMMUNICATIONS, INC. PURSUANT TO)	2000-449
SECTIONS 252(b) OF THE COMMUNICATIONS)	
ACT OF 1996)	

O R D E R

Pilgrim Telephone, Inc. ("Pilgrim") has petitioned for arbitration seeking resolution of certain issues between itself and BellSouth Telecommunications, Inc. ("BellSouth") and BellSouth has responded. Pilgrim seeks arbitration of four issues. The parties have participated in an informal conference, prefiled testimony, participated in a public hearing held December 8, 2000, and filed post hearing briefs.

SCOPE OF THE CONTROVERSY

Pilgrim currently provides no local dial tone within Kentucky,¹ though it owns switches and provides services through resale.² Pilgrim bills for its services by the use of credit cards, direct billing, 1010xxx, 1-800, 1-900, 1-976, calling cards and third-party

¹ Transcript of Evidence ("T.E.") at 110.

² T.E. at 111.

billing arrangements.³ Pilgrim also provides access to voice mail boxes and collect call services.⁴

Though Pilgrim currently does not provide dial tone, it wishes to provide residential dial tone in Kentucky.⁵ Pilgrim requests billing and collection as an unbundled network element (“UNE”) because obtaining billing and collection as a UNE is less expensive than obtaining it by means of a billing and collection contract.⁶ What Pilgrim mainly seeks to avoid are the start-up costs associated with a billing and collection contract.⁷ It should be noted that BellSouth offered to waive the start-up costs because of prior arrangements between the companies.⁸

Next, Pilgrim seeks access to 900 number blocking to help control its risk of fraud.⁹ Though Pilgrim seeks real-time access to operational support systems (“OSS”) in order to check billing number and address (“BNA”) as customers are placing a call, such real-time access is not yet available.¹⁰

These issues are treated in detail below.

³ T.E. at 20, 22, 25, 59, 114 and 115.

⁴ T.E. at 33 and 54.

⁵ T.E. at 29.

⁶ T.E. at 46.

⁷ T.E. at 64.

⁸ T.E. at 202.

⁹ T.E. at 60.

¹⁰ T.E. at 94.

I. Should BellSouth be required to provide billing and collection services to Pilgrim pursuant to which BellSouth would bill and collect on behalf of Pilgrim in the case of information service calls made by BellSouth customers that are directed to information service providers transferred over Pilgrim's network facilities?

If billing and collection service is a UNE, then BellSouth must provide it on a non-discriminatory basis. Pilgrim argues that billing and collection is a UNE because "if OSS are network elements, then billing and collection must be a network element, because it is a function of the same databases and facilities that comprise OSS."¹¹ However, it is undisputed that billing and collection does not appear on the Federal Communications Commission's ("FCC") UNE list.¹² Moreover, BellSouth is not providing to anyone the billing and collection services as requested by Pilgrim through an interconnection agreement.¹³

A network element must be unbundled and sold if the following requirements are met:

"in determining what network elements should be made available for purposes of subsection (c)(3), the Commission shall consider, at a minimum, whether--

(A) access to such network elements as are proprietary in nature is necessary; and

(B) the failure to provide access to such network elements would impair the ability of the telecommunications carrier seeking access to provide the services that it seeks to offer."

47 U.S.C. § 251(d)(2).

¹¹ T.E. at 132.

¹² T.E. at 135.

¹³ T.E. at 196.

Billing and collection may be considered a network element if it contains functions and capabilities which provide a means through facilities to access databases and information sufficient for billing and collection. See 47 U.S.C. § 153(29). However, Pilgrim has failed to demonstrate that its lack of access to billing and collection as a UNE will impair its ability to provide the services it seeks to offer. Pilgrim currently provides the services without the access it requests. Thus, the Commission concludes that billing and collection does not meet the statutory requirements, and therefore, BellSouth does not have to provide the service as requested by Pilgrim.

However, Pilgrim may obtain billing and collection as a complete service by entering a contract or purchasing from BellSouth's billing and collection tariff. If Pilgrim opts to enter the billing and collection contract or purchase from BellSouth's tariff, then it must comply with the same conditions for service that BellSouth offers to all carriers.

2. Should BellSouth be required to specify in the interconnection agreement that it will provide access to OSS, including access to customer record information that includes billing name and address and 900 blocking number information, for the provision of telecommunication services?

The BNA and 900 blocking information are both accessible through OSS.¹⁴ BNA is a call-related database.¹⁵ 900 and 976 blocking data is available through the customer service records as part of OSS.¹⁶ However, BellSouth does not have a separate 900 blocking database.¹⁷ Not only is BNA not a stand-alone UNE, but access

¹⁴ T.E. at 132.

¹⁵ T.E. at 151.

¹⁶ T.E. at 154.

¹⁷ T.E. at 155.

to the BNA material is controlled by restrictions to customer proprietary network information ("CPNI") pursuant to 47 U.S.C. § 222.¹⁸

Pilgrim may have access as a CLEC to all of the OSS functions provided by BellSouth to all CLECs. However, access to the BNA is permitted only when the customer has consented to such access. Pilgrim may have access to BellSouth's OSS functions on the same terms and conditions that BellSouth makes them available to all carriers. BellSouth is not required to provide unique access to portions of databases which are not otherwise separately available.

3. Should BellSouth be required to specify in the interconnection agreement that it will provide resale services to Pilgrim at parity with services provided to other parties?

The parties have come to a basic agreement regarding the requirement for parity of resale. BellSouth is required by 47 U.S.C. § 251(c)(4)(A) to "offer for resale at wholesale rates any telecommunications service that the carrier provides at retail to subscribers who are not telecommunications carriers." BellSouth asserts, and the Commission agrees, that it must provide services to competitive local exchange carriers ("CLECs") at parity with the service BellSouth provides to itself. Accordingly, this issue appears, as a practical matter, to be moot.

4. Should BellSouth be required to include in the interconnection agreement provisions for alternate resolution of disputes between parties, which would include binding arbitration if good faith negotiations are not successful in resolving disputes arising under the agreement?

The parties agree that language regarding binding arbitration should not preclude BellSouth or Pilgrim from bringing actions arising under the interconnection agreement

¹⁸ T.E. at 230-231.

to the Commission.¹⁹ Such a proposal would not therefore be truly binding. Accordingly, requiring such a provision to be included in the contract would be essentially meaningless. Moreover, the Commission believes that any contract term regarding arbitration which precludes a party from petitioning the Commission for resolution of disputes arising under the agreement is contrary to the public interest.

Accordingly, IT IS THEREFORE ORDERED that:

1. BellSouth shall not be required to provide billing and collection services to Pilgrim as a UNE. BellSouth must make available to Pilgrim access to BNA and 900 blocking information through its OSS on the same terms and conditions that BellSouth provides to other CLECs and in compliance with the CPNI restrictions.

2. If Pilgrim will agree to the terms and conditions offered by BellSouth in this case, BellSouth shall provide billing and collection as a complete service to Pilgrim through a billing and collection contract or its billing and collection tariff on the same terms and conditions that BellSouth has previously provided these services to other carriers, except that BellSouth shall waive its start-up fees to Pilgrim.

3. BellSouth shall not be required to include a provision for binding arbitration in its interconnection agreement with Pilgrim.

4. Within 30 days of the date of this Order, BellSouth and Pilgrim shall submit to the Commission their executed interconnection agreement complying with the decisions herein.

¹⁹ Pilgrim prefiled testimony of Lucas at 13.

Done at Frankfort, Kentucky, this 12th day of January, 2001.

By the Commission

ATTEST:


Executive Director