

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

PETITION OF CINERGY COMMUNICATIONS)	
COMPANY FOR ARBITRATION OF AN)	CASE NO.
INTERCONNECTION AGREEMENT WITH)	2001-00432
BELLSOUTH TELECOMMUNICATIONS, INC.)	
PURSUANT TO U.S.C. SECTION 252)	

O R D E R

This matter arises upon the parties inability to agree on language for their interconnection agreement regarding certain issues which the Commission arbitrated. The Commission required that BellSouth Telecommunications, Inc. (BellSouth) shall not refuse to provide its digital subscriber line (DSL) to a customer on the basis that the customer receives voice service from a competitive local exchange carrier (CLEC) that provides service by a means of unbundled network element platform (UNE-P).¹ Upon motions for clarification by Cinergy Communications Company (Cinergy) and BellSouth, the Commission clarified its Order to state that BellSouth may not refuse to provide DSL pursuant to a request from an Internet service provider who serves, or who wishes to serve, a customer who has chosen to receive voice service from a CLEC that provides service over the UNE-P. Moreover, BellSouth shall not require a DSL to pay loop costs of a separate loop simply because the customer receives voice from a competitor on a UNE-P basis.²

¹ Order dated July 12, 2002.

² Order dated October 15, 2002.

The language contained in Appendix A, attached hereto and incorporated herein, should be the language appearing in the parties interconnection agreement for reasons stated herein.

Regarding ¶ 2.10.1.1, the Commission will permit the definitions of relevant terms to remain as requested by BellSouth. However, the Commission will require the addition of language ensuring that those terms are as defined in the Federal Communications Commission tariff as of the date of this Order. Regarding Cinergy's proposed ¶ 2.10.1.1.2, the Commission finds this provision a reasonable safeguard for Cinergy. Paragraph 2.10.1.3 memorializes BellSouth's lack of obligation to provide its retail, DSL-based high-speed access service to an end-user that receives UNE-P-based voice services from Cinergy. The Commission will require, however, that BellSouth notify the end-user at least 10 days prior to discontinuing its retail, DSL-based high-speed Internet access service as proposed by Cinergy. Paragraphs 2.10.1.4 and 2.10.1.5 are not in dispute and thus have been included as proposed.

Paragraph 2.10.1.6 addresses BellSouth's obligations to Cinergy prior to BellSouth's completion of the modifications of its systems and processes to comply with the Commission's Orders. After reviewing both parties' proposals, the Commission finds that the language contained in Appendix A at ¶ 2.10.1.6 is most appropriate in addressing the concerns of both parties. The parties do not dispute the language provided in ¶ 2.10.1.7 in the attached Appendix.

Paragraph 2.10.1.8 requires Cinergy to cooperate with BellSouth in an effort to determine loop makeup and qualification status when a request is made for DSL on an existing Cinergy UNE-P line. The Commission has required that the procedure for doing so should be reduced to writing.

BellSouth proposed that Cinergy be required to determine whether DSL transport was on the line which was to be converted and if so to notify BellSouth of the existence of DSL on the line. BellSouth should determine if DSL service is on a BellSouth voice line or resold line, not Cinergy. The Commission finds that this language should not be included in the parties agreement.

BellSouth requested the insertion of a paragraph that it not be obligated to pay self-effecting evaluation measures (SEEM) penalties for delays in provisioning UNE-P resulting from the tariffed DSL being converted from a BellSouth resold voice line to Cinergy UNE-P. An arbitration proceeding and the resulting interconnection agreement is not an appropriate context in which to relieve BellSouth of SEEM penalties. If BellSouth believes penalties are unwarranted, it should seek relief in Case No. 2001-00105.³

The Commission, having been otherwise sufficiently advised, HEREBY ORDERS that, within 20 days of the date of this Order, BellSouth and Cinergy shall file their final interconnection agreement containing terms consistent with our July 12, 2002 Order, our October 15, 2002 Order, and the attached Appendix A.

³ Case No. 2001-00105, Investigation Concerning The Propriety of Provision of InterLATA Services by BellSouth Telecommunications, Inc., Pursuant to the Telecommunications Act of 1996.

Done at Frankfort, Kentucky, this 28th day of February, 2003.

By the Commission

ATTEST:


Executive Director

APPENDIX A

APPENDIX TO AN ORDER OF THE KENTUCKY PUBLIC SERVICE COMMISSION IN CASE NO. 2001-00432 DATED February 28, 2003

2.10.1.1 For purposes of this Section 2.10.1.1, the term DSL, DSL transport, or DSL Transport Services shall mean that DSL transport service in the BellSouth F.C.C. Number 1 tariff in effect as of the date of this Order. In order to comply with the Kentucky Public Service Commission's Order in Case No. 2001-00432, BellSouth shall not refuse to provide any DSL transport service to a network service provider pursuant to a request from such network service provider who serves, or desires to serve, an end-user that receives UNE-P-based voice services from Cinergy Communications. However, BellSouth shall have no obligation to provide DSL transport on any loop that is not qualified for DSL, provided that BellSouth shall not make a change to any loop so as to make it not qualify for DSL on the basis of that such loop is being converted to UNE-P, rather than on the basis of architectural, mechanical, or physical limitations.

2.10.1.2 The Kentucky Public Service Commission's Order in Case No. 2001-00432 is predicated upon the ability of customers of Cinergy Communications to receive wholesale ADSL transport at the same price it was available pursuant to BellSouth Tariff F.C.C. Number 1 on the date of that Order. In the event this offering is no longer available for any reason, BellSouth agrees to provide to Cinergy Communications a wholesale ADSL transport product for the duration of this interconnection agreement on the same pricing, terms, and conditions as those in the BellSouth Tariff F.C.C. Number 1 as of the date of the Order subject to Section 2.10.1.1 above. The terms and prices of BellSouth Tariff F.C.C. Number 1 as it existed on the date of the Order are incorporated herein by reference as necessary to comply with this section.

2.10.1.3. Notwithstanding the foregoing, BellSouth shall have no obligation to provide its retail, DSL-based high-speed Internet access service, currently known as BellSouth FastAccess® DSL service, to an end-user that receives UNE-P-based voice services from Cinergy. To the extent BellSouth chooses to deny FastAccess® to an end-user, BellSouth shall not seek any termination penalties against, or in any other fashion seek to penalize, any such end-user that Cinergy identifies to BellSouth pursuant to a process to be agreed upon and reduced to writing. BellSouth shall also notify the aforementioned end-user at least 10 days prior to discontinuing its FastAccess® service.

2.10.1.4. Cinergy shall make available to BellSouth at no charge the high frequency spectrum on UNE-P for purposes of enabling BellSouth to provision DSL transport on the same loop as the UNE-P-based voice service.

2.10.1.5. When BellSouth provides tariffed DSL transport over Cinergy UNE-P, BellSouth shall have the right, at no charge, to access the entire loop for purposes of troubleshooting DSL-related troubles.

2.10.1.6. BellSouth shall not be obligated to provide tariffed DSL transport in accordance with this Section 2.10.1 until completion of the modification of systems and processes that will enable BellSouth to qualify Cinergy UNE-P lines for DSL as well as maintain and repair such DSL on Cinergy UNE-P lines. Until such time as BellSouth completes the aforementioned modification of systems and processes, BellSouth agrees to provide to Cinergy Communications wholesale DSL transport service over resale lines on the following conditions: (1) the underlying resale line and its features shall be provided by BellSouth to Cinergy Communications at the rate that Cinergy Communications normally pays for a UNE-P loop/port combination in the pertinent UNE zone; (2) BellSouth shall assign all right to carrier access charges to Cinergy Communications and shall provide detailed CABS records to Cinergy Communications free of charge; (3) because BellSouth cannot provide hunting between resale and UNE-P lines, any other lines of the end-user served by Cinergy Communications shall also be converted to resale at no charge upon submission of an LSR for such conversion and provided pursuant to (1) and (2) above unless and until BellSouth agrees to provide hunting between resale and UNE-P platforms; and (4) once the aforementioned modification of systems and process is completed, BellSouth agrees to convert all end-user lines affected by this section to UNE-P at no charge upon Cinergy Communications submission of an executable LSR for such conversion.

2.10.1.7. Cinergy Communications shall provide BellSouth with all current pertinent customer information necessary for BellSouth to comply with this section. Cinergy Communications authorizes BellSouth to access customer information on BellSouth systems as necessary for BellSouth to comply with this section. BellSouth shall provide Cinergy Communications with all current pertinent loop information necessary for Cinergy Communications to provide DSL over UNE-P, including but not limited to, loop qualification information for UNE-P lines.

2.10.1.8. If a request is made for DSL on an existing Cinergy Communications UNE-P line, Cinergy shall cooperate with BellSouth in an effort to determine loop make-up and qualification status. The parties shall mutually agree on a procedure and shall reduce same to writing.