

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

AT&T BROADBAND PHONE OF)	
KENTUCKY, LLC)	CASE NO.
)	2003-00023
COMPLAINANT)	
)	
V.)	
)	
ALLTEL KENTUCKY, INC. AND)	
KENTUCKY ALLTEL, INC.)	
)	
DEFENDANTS)	

O R D E R

AT&T Broadband Phone of Kentucky, LLC (“AT&T Broadband”), also known as Comcast, filed a complaint against ALLTEL Kentucky, Inc. and Kentucky ALLTEL, Inc. (“ALLTEL”) on January 15, 2003. The complaint asks the Commission for relief in two areas. First, AT&T Broadband asserts that its interconnection agreement with ALLTEL provides for indirect interconnection and that ALLTEL is denying AT&T Broadband this right. AT&T Broadband is seeking to interconnect with ALLTEL in its Shepherdsville service area through a BellSouth Telecommunications, Inc. (“BellSouth”) tandem switch located in Louisville. Second, AT&T Broadband requests that ALLTEL be prohibited from billing customers once their telephone numbers have been ported from ALLTEL to AT&T Broadband. This portion of the complaint refers to ALLTEL’s properties in Shepherdsville and in Lexington. A public hearing was held on June 12, 2003. Briefs and reply briefs have been filed in December 2003 and January 2004, respectively.

Indirect Interconnection Issue

This dispute involves the interconnection between AT&T Broadband's Louisville switch and ALLTEL's three switches in Shepherdsville. ALLTEL's switches are connected to BellSouth's Louisville tandem switch, which itself is connected to AT&T Broadband's Louisville switch. Thus, calls originated by AT&T Broadband customers in Shepherdsville can be transported to ALLTEL's customers in Shepherdsville through this BellSouth Louisville tandem switch. Likewise, calls originated by ALLTEL customers in Shepherdsville can be terminated to AT&T Broadband customers in Shepherdsville over this BellSouth Louisville tandem switch. The service provided by BellSouth is referred to as transit service, and BellSouth, the third party, receives compensation for carrying these calls by the carrier whose customer originates the call.

AT&T Broadband argues that the contract between itself and ALLTEL, the Shepherdsville Interconnection Agreement, provides for indirect interconnection. AT&T Broadband asserts that not only is indirect interconnection specifically provided for in the Interconnection Agreement but also that ALLTEL has an obligation to allow indirect interconnection pursuant to 47 U.S.C. § 251(a) and KRS 278.030(2). 47 U.S.C. § 251(a) states that each telecommunications carrier has the duty to interconnect directly or indirectly with the facilities and equipment of other telecommunications carriers. Moreover, AT&T Broadband contends that the requirements of KRS 278.030(2) for "adequate, efficient, and reasonable service" and "reasonable rules governing the conduct of its business" mandate the availability of indirect interconnection.

ALLTEL, however, argues that only direct interconnection is required pursuant to 47 U.S.C. § 251(c)(2)(B), which provides for interconnection at any technically feasible point within a carrier's network. According to AT&T Broadband, 47 U.S.C. § 251(c)(2)(B) refers only to direct interconnection because indirect interconnection, by definition, would not be within a carrier's network.

ALLTEL contends that AT&T Broadband must directly interconnect by securing dedicated trunks between AT&T Broadband's Louisville switch and at least one of ALLTEL's Shepherdsville switches. Moreover, ALLTEL argues that AT&T Broadband should pay for transporting ALLTEL's originating traffic from ALLTEL's local exchange boundary in Shepherdsville to AT&T Broadband's Louisville switch and should pay the tandem transport fees.

Section 2.2 of Attachment 4 of the Interconnection Agreement between these parties states that "Indirect interconnection provides for network interconnection between the Parties through a third party tandem provider performing a transit function. Under this arrangement, the originating Party has the responsibility to pay any applicable transit or tandem switching access fees and common transport associated with traffic exchange between the parties." Additional language in Section 4.1 of Attachment 12 provides that "[w]here a local tandem function is performed by the Non-Party Provider to complete Local Traffic between the Parties, the Parties agree that the Originating Party will compensate the Non-Party Provider for any transit fees."

ALLTEL claims that Section 2.2, Attachment 4, providing indirect interconnection, is relevant and mandatory only where the interconnection is in the ALLTEL Kentucky

service area. AT&T Broadband counters that indirect interconnection by definition refers only to interconnection outside of the incumbent's service area.

The Commission finds that the indirect interconnection arrangement requested by AT&T Broadband should be furnished by ALLTEL. The contract language requires this result. The parties clearly contemplated an indirect interconnection arrangement through a third-party tandem provider. In addition, the plain meaning of the parties' contract, as well as the rules of the FCC and this Commission, obligates the originating party to pay the transit fees and common transport charges.

FCC Rule 51.703(b) requires that "a LEC (local exchange carrier) may not assess charges on any other telecommunications carrier for local telecommunications traffic that originate on the LEC's network." In the Petition of Level 3 Communications for Arbitration with BellSouth, PSC Case No. 2000-00404, the Commission followed the "well-established principle that the carrier must pay the originating costs of its own traffic." Order dated March 14, 2001 at 2-3. In that case the Commission determined that BellSouth had not shown that the rates BellSouth charged its own customers fail to cover the costs incurred to reach the CLEC's point of interconnection. ALLTEL has likewise made no such finding here.

The Commission maintained the same decision in A Petition of Brandenburg Telecom for Arbitration with Verizon South, Inc., ALLTEL's predecessor company, in Case No. 2001-00224, Order dated November 15, 2001 at 16-17. In these cases the Commission held that one point of interconnection would be provided per LATA and that the originating party would pay to reach that point of interconnection. Another point of

interconnection would be established when the traffic exchanged between the parties reached a DS3 level.

Dual Billing Dispute

The second issue in this complaint concerns whether ALLTEL should continue to bill local service customers after they have been switched to AT&T Broadband. AT&T Broadband also bills the customer at this point. The result is dual billing. The parties have agreed to a 48-hour window of time in which AT&T Broadband can activate the porting process to change a customer. ALLTEL has not, however, agreed that once the number is ported, it will stop billing the customer. Instead, it ceases to bill on its firm order completion (“FOC”) date. AT&T Broadband argues that ALLTEL should discontinue billing the customer once the number has been ported. ALLTEL, on the other hand, argues that it may continue billing the customer until the FOC date.

The FOC date is the industry standard for changing the customer’s billing. ALLTEL would have to create new systems to switch the customer billing ahead of the FOC date. This would be an unnecessary expense, given that AT&T Broadband may simply wait until the FOC date to bill the customer.

The Commission, having reviewed the complaint and having been otherwise sufficiently advised, HEREBY ORDERS that:

1. ALLTEL shall permit AT&T Broadband to indirectly interconnect through a third-party tandem switch until the traffic exchanged between the parties at this tandem switch reaches a DS3 level.
2. The originating party shall pay the tandem transport fees.

3. AT&T Broadband shall not bill a customer newly switched from ALLTEL until the FOC date.

Done at Frankfort, Kentucky, this 25th day of March, 2004.

By the Commission

ATTEST:


Executive Director