

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

PETITION OF BELLSOUTH)	
TELECOMMUNICATIONS, INC. TO ESTABLISH)	
GENERIC DOCKET TO CONSIDER)	CASE NO.
AMENDMENTS TO INTERCONNECTION)	2004-00427
AGREEMENTS RESULTING FROM CHANGES)	
OF LAW)	

O R D E R

On February 28, 2005, Cinergy Communications Corp. ("Cinergy"), a competitive local exchange carrier ("CLEC"), filed a complaint and motion for emergency order preserving status quo. On March 1, 2005, the Commission required BellSouth Telecommunications, Inc. ("BellSouth") to satisfy the complaint or file a written response thereto by no later than March 7, 2005. BellSouth has timely responded to the complaint.

On March 7, 2005, AmeriMex Communications Corp. ("AmeriMex"), another CLEC, filed an emergency petition addressing the same issues as those addressed in Cinergy's complaint. The Commission, on its own motion, incorporated AmeriMex's petition into this docket and required BellSouth to respond as if to a formal complaint. On March 8, 2005, BellSouth responded to Amerimex.

The CLECs assert that despite BellSouth's carrier notification indicating to the contrary, BellSouth must continue to accept unbundled network element orders until it and the CLECs have completed their negotiations required by change of law provisions in their currently effective interconnection agreements. The matters complained of

arose on February 11, 2005 with BellSouth's notification to CLECs that it intended to discontinue providing certain unbundled network elements pursuant to its understanding of the Federal Communications Commission ("FCC") Triennial Review Remand Order.¹ BellSouth asserts that the plain reading of the Triennial Review Remand Order authorizes it to cease providing certain unbundled network elements as of March 11, 2005, the FCC's designated effective date for its order.

The Commission, having considered the emergency petitions and BellSouth's responses thereto, and having been otherwise sufficiently advised, finds that a change of law within the meaning of the existing effective contract terms between BellSouth and these CLEC carriers has occurred. Because these contracts are in effect, BellSouth must follow the contract language to change its interconnection agreements. Nothing in the Triennial Review Remand Order justifies an immediate change without the parties having an opportunity to negotiate a new contract. In fact, the FCC contemplates negotiated changes to these contracts:

We expect that incumbent LECs and competing carriers will implement the Commission's findings as directed by section 252 of the Act. Thus, carriers must implement changes to their interconnection agreements consistent with our conclusions in this Order. We note that the failure of an incumbent LEC or a competitive LEC to negotiate in good faith under section 251(c)(1) of the Act and our implementing rules may subject that party to enforcement action. Thus, the incumbent LEC and competitive LEC must negotiate in good faith regarding any rates, terms, and conditions necessary to implement our rule changes. We expect that parties to the negotiating process will not unreasonably delay implementation of the conclusions adopted in this Order. We encourage the state commissions to monitor this area closely to ensure that parties do not engage in unnecessary delay.²

¹ Triennial Review Remand Order, Unbundled Access to Network Elements, Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carrier, FCC 04-290(Feb. 4, 2005)

² *Id.* at ¶ 233 (footnotes omitted)

IT IS THEREFORE ORDERED that:

1. BellSouth shall follow its contractual obligation to negotiate the effect of changes of law on its interconnection agreements regarding the discontinuation of unbundled network elements.

2. By no later than April 15, 2005, the parties shall apprise the Commission, in writing, of the status of their negotiations, if they have not previously submitted negotiated agreements addressing these issues.

3. Issues not addressed herein shall remain pending in this docket.

Done at Frankfort, Kentucky, this 10th day of March, 2005.

By the Commission

Commissioner W. Gregory Coker did not participate in the deliberations or decision concerning this case.

ATTEST:



Executive Director

Case No. 2004-00427