

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

|                                 |   |            |
|---------------------------------|---|------------|
| PETITION TO ESTABLISH DOCKET TO | ) |            |
| CONSIDER AMENDMENTS TO          | ) | CASE NO.   |
| INTERCONNECTION AGREEMENTS      | ) | 2004-00501 |
| RESULTING FROM CHANGE OF LAW,   | ) |            |
| KENTUCKY BROADBAND ACT          | ) |            |

O R D E R

On December 10, 2004, BellSouth Telecommunications, Inc. (“BellSouth”) filed a petition to establish this docket to consider amendments to interconnection agreements resulting from a change of law enacted as KRS 278.546, KRS 278.5461, and KRS 278.5462. In its petition, BellSouth named several competitive local exchange carriers (“CLECs”), including SouthEast Telephone, Inc. (“SouthEast”). By Order dated April 29, 2005, the Commission determined that it no longer had authority to require an incumbent local exchange carrier (“ILEC”) to provide digital subscriber line (“DSL”) to an end-user customer over the same unbundled network element (“UNE”) loop facility that a CLEC uses to provide voice services to that same customer. The Commission found that to determine otherwise would be inconsistent with KRS 278.5462 and with Federal Communications Commission (“FCC”) policies.<sup>1</sup> The FCC specifically rejected the argument that the FCC’s “commingling rules apply to the provisioning of wholesale DSL

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<sup>1</sup> See Memorandum, Opinion and Order and Notice of Inquiry, BellSouth Telecommunications, Inc. Request for Declaratory Ruling that state commissions may not regulate broadband Internet access services by requiring BellSouth to provide wholesale or retail broadband services to competitive LEC UNE voice customers, WC Docket No. 03-251, FCC 05-78 (rel. March 25, 2005) (FCC Order).

services over a UNE loop facility.”<sup>2</sup> The FCC further found that competitive carriers have the alternative of line splitting available to them.<sup>3</sup> Finally, the Commission required parties to submit amendments to their interconnection agreements reflecting the decision that ILECs are not required to provide DSL service to an end-user customer over the same unbundled network loop facility that a CLEC uses to provide voice services to that same customer. The Commission required these amendments to be submitted within 20 days of April 29, 2005.

Cinergy Communications Company (“Cinergy”) sought rehearing or in the alternative sought clarification of the Commission’s April 29, 2005 Order to ensure compliance with the FCC’s transition period for the UNE-P “embedded customer base.” On June 13, 2005, the Commission granted Cinergy’s alternative relief. The Commission determined that BellSouth must continue to treat those lines which, but for the presence of DSL, would have been UNE-P in a manner that prices those at the UNE-P rates during this transition period. The Commission further advised all carriers to mutually agree on the methodology to accomplish this end without any material affect on or disruption of service to end-users.

BellSouth filed a motion to enforce the Commission’s April 29, 2005 Order as it relates to SouthEast. BellSouth asserts that the Commission has held it was not required to provide DSL over UNE-P where a CLEC such as SouthEast was using the same facility to provide voice service to that customer. BellSouth now seeks Commission intervention after several months where negotiations have been

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<sup>2</sup> FCC Order at ¶ 20.

<sup>3</sup> FCC Order at ¶ 31.

unsuccessful. BellSouth has continued to issue credits for DSL over UNE-P lines to SouthEast.

BellSouth has renewed its motion to enforce the April 29, 2005 Order, asserting that SouthEast, the only noncompliant CLEC, inappropriately continues to receive credits from BellSouth merely because it has failed to execute a compliant amendment.

The Commission, having considered BellSouth's motion and having been otherwise sufficiently advised, herein requires SouthEast to execute an amendment to its agreement with BellSouth which reflects the change of law regarding DSL service. Such agreement should be executed with a date of May 19, 2005 to comply with Commission's orders herein.<sup>4</sup>

The Commission HEREBY ORDERS that:

1. SouthEast shall execute the amendment to its interconnection agreement with BellSouth reflecting changes of law to DSL service effective May 19, 2005.
2. This proceeding shall be removed from the Commission's docket.

Done at Frankfort, Kentucky, this 17<sup>th</sup> day of May, 2006.

By the Commission

ATTEST:

  
Executive Director

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<sup>4</sup> Cinergy executed this type of agreement in January 2006 which had an effective date of May 19, 2005.