

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

PETITION OF 1-800-RECONEX, INC. FOR)	
DESIGNATION AS A COMPETITIVE)	
ELIGIBLE TELECOMMUNICATIONS)	
CARRIER PURSUANT TO SECTION 214(e))	CASE NO. 2006-00060
OF THE TELECOMMUNICATIONS ACT OF)	
1996)	

O R D E R

On February 10, 2006, 1-800-Reconex, Inc. d/b/a U.S. Tel ("Reconex"), a Competitive Local Exchange Carrier, filed with the Commission a petition under 47 U.S.C. § 214(e)(2) seeking designation as an Eligible Telecommunications Carrier ("ETC") in order to receive federal universal service support for service offered throughout its service area in the state of Kentucky.¹

The petition states that: (1) Reconex meets all the requirements for designation as an ETC to serve the designated areas in the state of Kentucky;² (2) Reconex requests designation throughout each of the designated areas within its service coverage;³ (3) in accordance with 47 U.S.C. § 214(e)(2), Reconex is entitled to be designated as an ETC in non-rural wirecenters;⁴ and (4) designation of Reconex as an ETC for the designated areas served in Kentucky will serve the public interest.⁵

¹ Reconex requests ETC designation throughout the service area of BellSouth Telecommunications, Inc. ("BellSouth"). See Petition at page 1 and Exhibit B.

² Id. at 2.

³ Id. at 2 and Exhibit B.

⁴ Id. at 10.

⁵ Id. at 11.

On March 29, 2006, the Commission set forth a procedural schedule that included opportunity for public comment, discovery, and opportunity to request a hearing. On May 8, 2006, the Commission issued discovery requests to Reconex. Reconex replied to those requests on May 26, 2006. Having completed the procedural schedule and not receiving a request for a public hearing, this matter is ripe for the Commission's decision.

DISCUSSION

47 U.S.C. § 254(e) provides that “only an eligible telecommunications carrier designated under section 214(e) shall be eligible to receive specific Federal universal service support.” Pursuant to 47 U.S.C. § 214(e)(1), a common carrier designated as an ETC must offer and advertise the services supported by the federal universal service mechanisms throughout the designated service area.

47 U.S.C. § 214(e)(2) provides state commissions with the primary responsibility for performing ETC designations. Pursuant to 47 U.S.C. § 214(e)(2), the Commission may, with respect to an area served by a rural telephone company, and shall, in all other cases, designate more than one common carrier as an ETC for a designated service area, consistent with the public interest, convenience, and necessity, so long as the requesting carrier meets the requirements of 47 U.S.C. § 214(e)(1). Also, before designating an additional ETC for an area served by a rural telephone company, the Commission must determine that the designation is in the public interest.

An ETC petition must contain the following: (1) a certification that the petitioner offers or intends to offer all services designated for support by the Commission pursuant to 47 U.S.C. § 254(c); (2) a certification that the petitioner offers or intends to offer the

supported services “either using its own facilities or a combination of its own facilities and resale of another carrier’s services”; (3) a description of how the petitioner “advertise[s] the availability of [supported] services and the charges therefore using media of general distribution”; and (4) if the petitioner meets the definition of a “rural telephone company” pursuant to 47 U.S.C. § 3(37), the petitioner must identify its study area, or, if the petitioner is not a rural telephone company, it must include a detailed description of the geographic service area for which it requests an ETC designation from the Commission.

OFFERING THE SERVICES DESIGNATED FOR SUPPORT

Reconex has demonstrated through the required certifications and related filings that it now offers, or will offer upon designation as an ETC, the services supported by the federal universal service mechanism. Reconex certifies that it now provides or will provide throughout its designated service area the services and functionalities enumerated in 47 C.F.R. § 54.101(a). Reconex has also certified that, in compliance with 47 C.F.R § 54.405, it will make available and advertise Lifeline service to qualifying low-income consumers.

ADVERTISING SUPPORTED SERVICES

Reconex has demonstrated that it satisfies the requirement of 47 U.S.C. § 214(e)(1)(B) to advertise the availability of the supported services and the charges therefore using media of general distribution. In its petition, Reconex states that it currently advertises the availability of its services, and will do so for each of the supported services on a regular basis in newspapers, magazines, television, and radio, in accordance with 47 C.F.R. § 54.201(d)(2).

NON-RURAL STUDY AREAS

The Federal Communications Commission ("FCC") previously has found designation of additional ETCs in areas served by non-rural telephone companies to be *per se* in the public interest based upon a demonstration that the requesting carrier complies with the statutory eligibility obligations of 47 U.S.C. § 214(e)(1).⁶

OFFERING THE SUPPORTED SERVICES USING A CARRIER'S OWN FACILITIES

In response to Item 2 of Commission Staff's First Data Request, Reconex states that it does not have any facilities in place anywhere in Kentucky and it provides service by resale and purchasing the UNE-P replacement product known as DS0 from BellSouth. The Commission finds that Reconex does not meet the criterion that it must be providing services using its own facilities wholly or in part for the study area of BellSouth. A commercial agreement with BellSouth to offer switch/port loop combinations amounts to nothing more than a wholesale/resale agreement. BellSouth is not obligated to provide this switch/port loop combination in any manner that is enforceable pursuant to Part 51. A wholesale service platform, as provided to Reconex by BellSouth, cannot be considered a sustainable platform for ETC status. To meet the federal criteria set forth below, a carrier must have some facilities of its own. The universal service support to be provided by the federal government to Reconex upon the state commission's finding that Reconex meets the ETC criteria may lawfully be used only to upgrade and maintain facilities and services to promote the availability of

⁶ See, e.g., Cellco Partnership d/b/a Bell Atlantic Mobile Petition for Designation as an Eligible Telecommunications Carrier, Memorandum Opinion and Order, CC Docket No. 96-45, 16 FCC Rcd 39 (2000).

universal service. Reconex has no facilities and services in Kentucky for which it would legitimately be able to expend these monies. The leasing of network elements, no longer available as an entire platform, provided a degree of control and ownership that does not exist under a commercial agreement or wholesale arrangement. To be eligible for ETC designation, a carrier must own or control some facilities of its own, at least a switch, and have an interconnection agreement in place to access customer premises and to carry traffic.

Looking at the applicable regulations, 47 C.F.R. § 54.201, the relevant parts are under section (d), (e) and (f). Under section (d), the carrier must provide the supported services by “either using its own facilities or a combination of its own facilities and resale of another carrier’s services (including the services offered by another eligible telecommunications carrier).” In the next section the term “facilities” is defined: “facilities means any physical components of the telecommunications network that are used in the transmission or routing of the services that are designated for support pursuant to subpart B of this part.” Certainly, the facilities that Reconex would use pursuant to its commercial agreement would meet the definition of facilities. But the next section defines the term “own facilities” as “includes, but is not limited to, facilities obtained as unbundled network elements pursuant to part 51 of this chapter, provided that such facilities meet the definition of the term ‘facilities’ under this subpart.” This is where a commercial agreement fails the test. Even if the new service arrangement with BellSouth involved the same facilities that Reconex would have obtained pursuant to a

Section 252 agreement just a few months ago, those facilities are no longer provided “pursuant to Part 51.”

The Commission has carefully reviewed this issue and believes that Reconex cannot meet the federal criteria for ETC designation in the absence of owning or controlling some facilities of its own in BellSouth’s study area. The commercial agreement is a voluntary arrangement rather than one required by 47 U.S.C. § 252(1) and (2) and has not been submitted to this Commission for review or approval pursuant to Section 252 of the Act.

IT IS THEREFORE ORDERED that the petition of Reconex to be designated an ETC in the study area of BellSouth is denied.

Done at Frankfort, Kentucky, this 29th day of August, 2006.

By the Commission

ATTEST:


Executive Director