

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

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

**BELLSOUTH TELECOMMUNICATIONS, INC.'S RESPONSE
TO FORMAL COMPLAINT AND MOTION TO DISMISS**

BellSouth Telecommunications, Inc. ("BellSouth"), by and through its undersigned counsel, hereby files its Response and Motion to Dismiss the Formal Complaint ("Complaint") filed on or about March 4, 2005, by the Electric and Water Plant Board of the City of Frankfort, KY ("FPB"). As explained below, FPB's Complaint should be summarily dismissed by the Kentucky Public Service Commission ("Commission") because in its Complaint FPB seeks an Order requiring BellSouth to continue providing access to certain call-related databases (for example, LIDB and CNAM) at TELRIC rates despite the fact that BellSouth has neither a legal nor contractual obligation to do so.

SUMMARY POSITION

The Commission should deny FPB's request. In its Complaint, FPB acknowledges that it is a facilities-based competitive local exchange carrier ("CLEC") that provides local exchange service in certain areas in Kentucky.¹ The Complaint alleges that BellSouth provides certain

¹ Complaint, ¶ 1.

services to FPB pursuant to an interconnection agreement (“ICA”) that the parties entered into on or about May 2, 2003, and that was approved by the Commission pursuant to Section 252 of the Federal Telecommunications Act of 1996 (the “Act”).² FPB further admits that in January 2004, FPB executed an amendment to its ICA so that the ICA would be compliant with the *Triennial Review Order* (“TRO”)³ issued by the Federal Communications Commission (“FCC”) in August 2003 (“TRO Amendment”).

In the *TRO*, the FCC addressed several call-related databases that had previously been subject to unbundling pursuant to Section 251 of the Act, including: (i) Line Information Database (“LIDB”); (ii) Caller ID with Name Database (“CNAM”); and, (iii) Local Number Portability Database (“LNP”).⁴ Regarding access to such databases, the FCC found “that competitive carriers that deploy their own switches *are not impaired in any market without access to incumbent LEC call-related databases . . .*”⁵ Regarding impairment, the FCC made clear in the *TRO* that TELRIC pricing is properly limited only to those instances where there has been a finding of impairment under Section 251 of the Act.⁶ This decision was affirmed by the D.C. Circuit Court of Appeals in *USTA II*.⁷

The FCC concluded that ILECs only have an obligation to provide unbundled access to these databases at TELRIC in limited circumstances: where switching remains a UNE, CLECs “purchasing the switching UNE will have [unbundled] access to signaling and the call-related

² Compliant, ¶ 3.

³ Report and Order and Order on Remand and Further Notice of Proposed Rulemaking, *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, et al.*, CC Docket No. 01-338, et al., FCC 03-36, (rel. August 21, 2003) (“*Triennial Review Order*”), affirmed in part and reversed in part, *United States Telecom Ass’n v. FCC*, 359 F.3d 554 (D.C. Cir. 2004) (“*USTA II*”).

⁴ *TRO* at ¶ 549.

⁵ *Id.* at ¶ 551 (emphasis added). The FCC also denied WorldCom’s Petition for Declaratory Ruling requesting access to LIDB at cost-based rates (*TRO* at ¶ 559), and upheld its ruling in the *UNE Remand Order* that no impairment exists for unbundled access to Operator Services and Directory Assistance (OS/DA), therefore declining to require UNE pricing for OS/DA. (*TRO* at ¶ 560).

⁶ *TRO* at ¶¶ 657-664 (declining to subject elements provided pursuant to Section 271(c)(2)(B) to the pricing standard set forth in Section 252(d)(1) [TELRIC]).

⁷ 359 F.3d at 589.

databases that the signaling networks permit carriers to access.”⁸ Of course, in its recently released permanent unbundling rules, the FCC held that there is no unbundling obligation under Section 251 of the Act for switching.⁹ In short, under current controlling law, BellSouth is no longer obligated to provide access to BellSouth’s call-related databases, such as LIDB and CNAM, at TELRIC rates. Further, under current controlling law, BellSouth has no obligation to provide FPB OS/DA services at TELRIC rates. As such, FPB’s Complaint, to the extent it seeks access to such call-related databases at TELRIC rates, should be dismissed.

From a contractual perspective, the *TRO* Amendment to the Parties’ ICA unequivocally states that BellSouth will provide unbundled access to call-related databases (such as LIDB and CNAM) at TELRIC prices only “where BellSouth is required to provide and is providing unbundled access to local circuit switching to FPB.”¹⁰ FPB is not purchasing any UNE-P or unbundled “stand alone” local circuit switching from BellSouth pursuant to the ICA. Consequently, unless FPB is purchasing switching under the ICA, which is not the case here, FPB has no contractual right to access call-related databases at TELRIC rates.

Furthermore, the *TRO* Amendment addresses the fact that FPB may elect to continue to access such databases *under a separate agreement or pursuant to an applicable tariff*, even though there is no legal or contractual obligation under the ICA to provide access to the subject databases. Specifically, to provide FPB with an opportunity to continue accessing such databases, the *TRO* Amendment states that, if “unbundled local switching is converted to market based switching,” BellSouth may provide access to call-related databases (such as LIDB and

⁸ *Id.*

⁹ Order on Remand, *In the Matter of Unbundled Access to Network Elements; Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, WC Docket No. 04313, CC Docket No. 01-338, FCC 04-290 (rel. Feb. 4, 2005) (“*Triennial Review Remand Order*” or “*TRRO*”) at ¶ 199.

¹⁰ *TRO* Amendment, Attachment 2 (Network Elements and Other Services), Section 7.1.

CNAM) “at market based rates pursuant to a separate agreement or tariff.”¹¹ Finally, the *TRO* Amendment **removed** OS/DA services from FPB’s ICA. FPB has not signed a MBR agreement which provides them access to OS/DA services at market based rates. BellSouth is currently providing these services today without a contract because this customer has refused to sign the MBR agreement. The continued provision of OS/DA service without a contract for OS/DA is the primary reason BellSouth had no choice but to advise FPB that it needed to sign an MBR agreement or its access to such services would be discontinued.

Since at least August 2004, BellSouth has advised FPB that services such as LIDB and CNAM were no longer being offered at TELRIC rates, but that such services would be offered pursuant to a commercially negotiated Market Based Rate Agreement (“MBR agreement”). (Exhibit 1 to this Response and Motion to Dismiss is correspondence between FPB and BellSouth wherein BellSouth advised FPB of the need to execute an MBR agreement.) In sum, because FPB has no contractual or legal right to pay TELRIC rates for services such as LIDB, CNAM, and OS/DA, unless FPB was also purchasing unbundled switching pursuant to the ICA, which it is not, FPB’s Complaint should be dismissed.

SPECIFIC RESPONSE

Any allegation of the Complaint that is not specifically admitted is denied. Responding to the specific allegations of the Complaint, BellSouth alleges and states as follows:

1. BellSouth lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 1 of the Complaint and, therefore, can neither admit nor deny such allegations at this time.
2. BellSouth admits the allegations set forth in Paragraph 2 of the Complaint.

¹¹ *TRO* Amendment, Attachment 2 (Network Elements and Other Services), Section 7.2.

3. Responding to the allegations set forth in Paragraph 3 of the Complaint, BellSouth admits only that BellSouth provided FPB with a MBR agreement so that FPB could continue to buy certain services from BellSouth (such as call-related databases) at appropriate market-based rates following the FCC's determination that CLECs (such as FPB) have no right to buy such services at TELRIC rates in the absence of unbundled switching purchased pursuant to Section 251 of the Act. BellSouth denies the remaining allegations set forth in Paragraph 3 of the Complaint.

4. Responding to the allegations set forth in Paragraphs 4, 5, 6, and 7 of the Complaint (APPLICABLE LAW section), the referenced portions of KRS 278.030, KRS 278.040, 278.260 speaks for themselves and require no specific response from BellSouth at this time. Notwithstanding the forgoing, BellSouth denies that the aforementioned Kentucky statutes are relevant to the issues raised by FPB, and affirmatively states that the pricing for the call-related databases that are the subject of this so-called "dispute" are subject only to the requirements of Sections 201 and 202 of the Act and review by the FCC.

5. BellSouth admits the allegations set forth in Paragraph 8 of the Complaint.

6. Responding to the allegations set forth in Paragraph 9 of the Complaint, BellSouth admits only that the ICA contains an initial three year term, but denies that FPB has the unfettered right to the rates contained in the ICA for the duration of ICA. This is particularly true here, where the right to certain rates (specifically, the right to access call-related databases at TELRIC rates independent of unbundled switching pursuant to Section 251 of the Act) *has been eliminated by the FCC and removed from the ICA upon execution of the TRO Amendment to the ICA*. FPB's ICA has modification of agreement language and once an amendment has been

signed by both parties, it the rates, terms & conditions set forth in that amendment govern from that point forward unless amended again.

7. Responding to the allegations set forth in Paragraph 10 of the Complaint, the “Resolution of Disputes” provision contained in the “General Terms and Conditions” section of the ICA speaks for itself and requires no response from BellSouth. Notwithstanding the forgoing, BellSouth denies that such provision has any applicability whatsoever as FPB has no right whatsoever (legal or contractual) to be charged a TELRIC rate for access to call-related databases maintained by BellSouth under the alleged facts.

8. Responding to the allegations set forth in Paragraph 11 of the Complaint, BellSouth admits only that the ICA, as amended, contains the rates, terms, and conditions applicable to the services, elements, and combinations of elements that FPB may buy from BellSouth. BellSouth denies all remaining and/or inconsistent allegations contained in Paragraph 11, including the allegation that FPB is entitled to buy directory assistance/operator services (“DA/OS”) or calling name query data services (a/k/a CNAM) from BellSouth under the ICA at TELRIC rates.

9. Responding to the allegations set forth in Paragraph 12 of the Complaint, BellSouth admits only that FPB executed a *TRO* Amendment in January 2004, the contents of which speak for itself. Among other things, the *TRO* Amendment removed BellSouth’s obligation to provide OS/DA under the ICA unless FPB was also purchasing unbundled switching pursuant to the ICA. Further, the *TRO* Amendment removed any obligation to provide services such as CNAM and LIDB at TELRIC rates unless FPB was also purchasing unbundled switching pursuant to the ICA. *TRO* at ¶ 551.

10. Responding to the allegations set forth in Paragraph 13 of the Complaint, BellSouth admits only that the correspondence attached as Exhibit 1 to FPB's Complaint speaks for itself and requires no response from BellSouth at this time.

11. Responding to the allegations set forth in Paragraph 14 of the Complaint, BellSouth admits only that the rate for a CNAM query in BellSouth's proposed MBR agreement is \$.008 per query. All remaining allegations set forth in Paragraph 14 of the Complaint are denied.

12. Responding to the allegations set forth in Paragraph 15 of the Complaint, BellSouth admits only that the correspondence attached as Exhibit 2 to FPB's Complaint speaks for itself and requires no response from BellSouth at this time. All remaining allegations set forth in Paragraph 15 of the Complaint are denied.

13. Responding to the allegations set forth in Paragraph 16 of the Complaint, because FPB failed to identify the rates and services it claims that BellSouth has continued to bill FPB, BellSouth lacks knowledge or information sufficient to form a belief as to the truth of such allegations, and therefore denies the allegations set forth in Paragraph 16 of the Complaint.

14. Responding to the allegations set forth in Paragraph 17 of the Complaint, BellSouth admits only that the correspondence attached as Exhibit 3 to FPB's Complaint speaks for itself and requires no response from BellSouth. Notwithstanding the forgoing, FPB indicated to BellSouth that it would sign a MBR agreement prior to March 18, 2005. (Attached hereto as Exhibit 2)

15. BellSouth denies the allegations set forth in Paragraph 18 of the Complaint.

16. To the extent that Paragraph 19 of the Complaint contains allegations directed towards BellSouth, such allegations are denied.

17. BellSouth denies the allegations set forth in Paragraph 20 of the Complaint, and affirmatively states that if FPB is interested in executing a new ICA with BellSouth, that FPB follow the appropriate provisions in the current ICA for doing so.

18. Responding to the “WHEREFORE” section of the Complaint, BellSouth denies that FPB is entitled to any relief whatsoever.

FIRST AFFIRMATIVE DEFENSE

19. The Complaint fails to state a claim upon which relief can be granted.

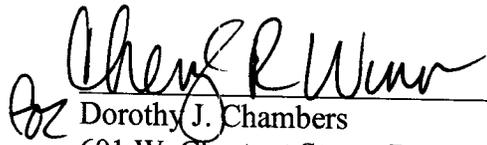
SECOND AFFIRMATIVE DEFENSE AND MOTION TO DISMISS

20. The primary issue in this generic docket is how the FCC’s permanent unbundling rules as set forth in the *TRRO* should be incorporated into existing interconnection agreements. FPB’s Complaint does not mention the *TRRO*, nor does it raise any issue that is pending in this docket. Accordingly, if the Commission refrains from immediately dismissing with prejudice FPB’s Complaint from a substantive perspective, then the Commission should dismiss the Complaint from this docket from a procedural perspective.

WHEREFORE, BellSouth respectfully requests that the Commission enter an Order:

- (1) Denying all relief requested by FPB in its Complaint and dismissing such Complaint with prejudice; and
- (2) Granting such further relief as the Commission deems fair and appropriate.

Respectfully Submitted,


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