

**CASE**

**NUMBER:**

99 - 484



COMMONWEALTH OF KENTUCKY  
PUBLIC SERVICE COMMISSION  
211 SOWER BOULEVARD  
POST OFFICE BOX 615  
FRANKFORT, KY. 40602  
(502) 564-3940

September 1, 2000

To: All parties of record

RE: Case No. 1999-484

We enclose one attested copy of the Commission's Order in  
the above case.

Sincerely,

A handwritten signature in cursive script that reads "Stephanie Bell".

Stephanie Bell  
Secretary of the Commission

SB/hv  
Enclosure

Honorable Jonathon N. Amlung  
Attorney for IgLou Internet Services  
1000 Republic Building  
429 West Muhammad Ali Boulevard  
Louisville, KY 40202 2347

IgLou Internet Services, Inc.  
3315 Gilmore Industrial Boulevard  
Louisville, KY 40213

Honorable Dorothy J. Chambers  
Counsel for BellSouth  
BellSouth Telecommunications, Inc.  
601 West Chestnut Street, Room 407  
P. O. Box 32410  
Louisville, KY 40232

Honorable R. Douglas Lackey  
Counsel for BellSouth  
BellSouth Telecommunications, Inc.  
675 West Peachtree Street, N.W.  
Suite 4300 - BellSouth Center  
Atlanta, GA 30375

Tanya Monsanto  
Legislative Research Commission  
Capital Annex  
Room 127  
Frankfort, KY 40601

Creighton E. Mershon  
BellSouth Telecommunications, Inc.  
P.O. Box 32410  
Louisville, KY 40203

Mr. Richard M. Breen  
2950 Breckenridge Lane, Suite 3  
Louisville, KY 40220

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

IGLOU INTERNET SERVICES, INC.	)	
	)	
COMPLAINANT	)	
	)	
v.	)	CASE NO. 99-484
	)	
BELLSOUTH TELECOMMUNICATIONS, INC.	)	
	)	
DEFENDANT	)	

O R D E R

This matter arising upon the motion of Richard M. Breen, filed August 25, 2000, for full intervention, and it appearing to the Commission that such intervention is likely to present issues and develop facts that will assist the Commission in fully considering the matter without unduly complicating or disrupting the proceedings, and this Commission being otherwise sufficiently advised,

IT IS HEREBY ORDERED that:

1. The motion of Richard M. Breen to intervene is granted.
2. Mr. Breen shall be entitled to the full rights of a party but shall accept the record of the proceeding as he finds it.
3. Mr. Breen shall be served with the Commission's Orders and with filed testimony, exhibits, pleadings, correspondence, and all other documents submitted by parties after the date of this Order.

4. Should Mr. Breen file documents of any kind with the Commission in the course of these proceedings, he shall also serve a copy of said documents on all other parties of record.

Done at Frankfort, Kentucky, this 1st day of September, 2000.

By the Commission

ATTEST:

A handwritten signature in cursive script, appearing to read "Thomas H. Jordan".

Executive Director

RECEIVED

BEFORE THE PUBLIC SERVICE COMMISSION

AUG 25 2000

PUBLIC SERVICE  
COMMISSION

In the matter of:

RICHARD M. BREEN )  
 )  
 COMPLAINANT )  
 )  
 vs. )  
 )  
 BELLSOUTH )  
 TELECOMMUNICATIONS, INC. )  
 )  
 DEFENDANT )

NO. 1999-484

**INTERVENING COMPLAINT**

Richard M. Breen for his Complaint respectfully states as follows:

1. Complainant is Richard M. Breen, an attorney, with law offices at 2950 Breckenridge Lane, Suite 3, Louisville, Kentucky 40220.

2. Bellsouth Telecommunications, Inc. ("BS") is a local exchange carrier and a utility as defined by KRS 278.010(3) et seq. and has its principal office located at 675 West Peachtree Street, Room 4506, Atlanta, Georgia 30375.

3. Pursuant to KRS 278.010(14) and KRS 278.030, Defendant has failed to furnish Complainant adequate, efficient, and reasonable high-speed internet access service. In support of this allegation, Complainant states the following:

a. On January 26, 2000, Complainant ("Breen"), contracted with Bluestar Communications for DSL high-speed Internet access.

b. On April 10, 2000, Bluestar informed Breen that BS had a facilities problem and DSL high-speed Internet access was unavailable for Breen. The facilities problem was described as "fiber" in BS's lines.

c. On April 11, 2000 Breen and Bluestar initiated an order for 128 IDSL high-speed Internet access.

d. Because of the long time involved, Breen contacted BS directly on May 8, 2000. A person by the name of Aurora at 888-321-2375 told Breen that DSL service was not

available for Breen's number. Breen then inquired about ISDN service. Breen was connected to another BS employee named Jill who told Breen ISDN service was available, that it would cost \$230.00 to install ISDN service to the building, \$158.00 for BS to install the line inside the building, and \$96.40 per month thereafter for 320 minutes per month.

e. On June 6, 2000, Bluestar contacted Breen to advise that BS had turned down Breen's request for an IDSL. BS's reason: Breen was behind an RSO which Bluestar explained as behind a repeater. Bluestar then advised that they could not install an ISDN, they are not equipped for such a service.

f. Breen has private telephone service with Adelphia. Breen contacted Adelphia to request ISDN service. As aforementioned, Breen was told on May 8, 2000 by Jill at BS that ISDN service was available to Breen.

g. On June 19, 2000 Adelphia notifies Breen that ISDN service has been ordered from BS.

h. Adelphia tells Breen that BS is scheduled to install ISDN service the week of July 17<sup>th</sup>.

i. On July 18<sup>th</sup> BS notifies Adelphia, which notifies Breen, that Breen's request is in "pending facilities" because BS is "out of wire" and the new date is now August 4, 2000 for installation.

k. BS postpones Breen's installation date from August 4, 2000 to August 11, 2000.

l. Breen learns BS has again postponed installation from August 11, 2000 to August 18, 2000.

m. Breen has information that others are experiencing similar problems.

4. As of the date of the filing of this Complaint, Breen has yet to be connected by BS for any high-speed Internet access.

5. Having been told on May 8, 2000 by Jill at BS that ISDN access was available through BS for Breen's office, Breen believes he is being discriminated against because Breen seeks high-speed Internet access service through a private carrier.

6. Breen believes BS is in violation of KRS 278.010 and KRS 278.030 for failing to provide adequate, efficient and reasonable service.

WHEREFORE, Richard M. Breen, moves the Commission for the following relief:

1. An Order requiring BellSouth to forthwith provide DSL high-speed Internet access to Breen;

2. An Order from the Commission for BellSouth to forthwith cease and desist discrimination against customers of private phone carriers;

3. An Order from the Commission for BellSouth to forthwith provide sufficient capacity so as to furnish adequate equipment and reasonable high-speed Internet access to the community.

4. Costs herein incurred.

Respectfully submitted,



---

RICHARD M. BREEN  
2950 Breckenridge Lane, Suite 3  
Louisville, Kentucky 40220  
(502) 473-0579  
Fax: (502) 451-9144

#### **CERTIFICATE**

This is to certify that a copy of the foregoing was mailed this 23 day of August, 2000 to: Mr. Jonathon Amlung, Barristers Hall, 1009 South Fourth Street, Louisville, Kentucky 40203-3226; Dorothy Chambers, 601 West Chestnut Street, Room 407, Post Office Box 32410, Louisville, Kentucky 40232; and Mr. R. Douglas Lackey, Suite 4300 - BellSouth Center, 675 West Peachtree Street, N.W., Atlanta, Georgia 30375.



---

RICHARD M. BREEN



RECEIVED

BEFORE THE PUBLIC SERVICE COMMISSION

AUG 25 2000

PUBLIC SERVICE  
COMMISSION

In the matter of:

IGLOU INTERNET SERVICES, INC. )  
 )  
 COMPLAINANT )  
 )  
 vs. )  
 )  
 BELLSOUTH )  
 TELECOMMUNICATIONS, INC. )  
 )  
 DEFENDANT )

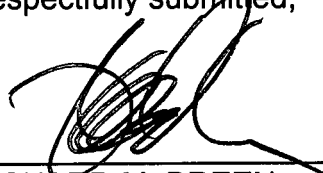
CIVIL ACTION NO: 99-484

**MOTION TO INTERVENE**

Comes Richard M. Breen and respectfully moves the Commission for leave to intervene in this action.

Breen believes that Bellsouth Telecommunications, Inc. has violated KRS 278.010(14) and KRS 278.030 by failing to furnish adequate, efficient, and reasonable service to Breen. An Intervening Complaint is attached.

Respectfully submitted,

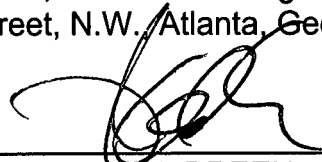



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RICHARD M. BREEN  
 2950 Breckenridge Lane, Suite 3  
 Louisville, Kentucky 40220  
 (502) 473-0579  
 Fax: (502) 451-9144

**CERTIFICATE**

This is to certify that a copy of the foregoing was mailed this <sup>23</sup> day of August, 2000 to: Mr. Jonathon Amlung, Barristers Hall, 1009 South Fourth Street, Louisville, Kentucky 40203-3226; Dorothy Chambers, 601 West Chestnut Street, Room 407, Post Office Box 32410, Louisville, Kentucky 40232; and Mr. R. Douglas Lackey, Suite 4300 - BellSouth Center, 675 West Peachtree Street, N.W., Atlanta, Georgia 30375.



---

RICHARD M. BREEN

BellSouth Telecommunications, Inc.  
P.O. Box 32410  
Louisville, KY 40232  
or  
BellSouth Telecommunications, Inc.  
Room 407  
601 West Chestnut Street  
Louisville, KY 40203

Creighton.Mershon@BellSouth.com

Creighton E. Mershon, Sr.  
General Counsel-Kentucky

502 582-8219  
Fax 502 582-1573

June 23, 2000

RECEIVED  
JUN 26 2000  
PUBLIC SERVICE  
COMMISSION

Mr. Martin J. Huelsmann, Jr.  
Executive Director  
Public Service Commission  
211 Sower Boulevard  
P. O. Box 615  
Frankfort, KY 40602

RE: IgLou Internet Services, Inc., Complainant v. BellSouth  
Telecommunications, Inc., Defendant  
PSC 99-484

Dear Mr. Huelsmann:

Enclosed for filing in this case are the original and ten (10) copies of revised Certificate of Service certifying service today on all parties of record of BellSouth's Post-Hearing Brief in this case.

BellSouth's Brief was not served on parties at the time BellSouth delivered its Brief to the Commission on June 16, 2000, for reasons set forth in BellSouth's Motion to Temporarily Exclude BellSouth's Post-Hearing Brief from the Record.

Sincerely,



Creighton E. Mershon, Sr.

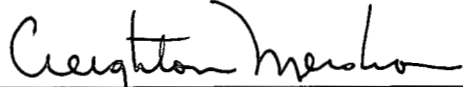
Enclosures

cc: Parties of Record

217721

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served by fax and mail to: Honorable Jonathon N. Amlung, 1000 Republic Building, 429 West Muhammad Ali Blvd., P. O. Box 1417, Louisville, KY 40201-1417, and by mailing a copy to: IgLou Internet Services, Inc., 3315 Gilmore Industrial Boulevard, Louisville, KY 40213, this 23rd day of June, 2000.

  
\_\_\_\_\_  
Creighton E. Mershon, Sr.



**PAUL E. PATTON**, GOVERNOR

**RONALD B. McCLOUD**, SECRETARY  
PUBLIC PROTECTION AND  
REGULATION CABINET

**MARTIN J. HUELSMANN**  
EXECUTIVE DIRECTOR  
PUBLIC SERVICE COMMISSION

COMMONWEALTH OF KENTUCKY  
**PUBLIC SERVICE COMMISSION**

211 SOWER BLVD.  
POST OFFICE BOX 615  
FRANKFORT, KENTUCKY 40602-0615  
www.psc.state.ky.us  
502-564-3940  
FAX 502-564-3460

**B.J. HELTON**  
CHAIRMAN

**EDWARD J. HOLMES**  
VICE CHAIRMAN

**GARY W. GILLIS**  
COMMISSIONER

June 23, 2000

Dorothy J. Chambers, Esq.  
BellSouth Telecommunications, Inc.  
601 West Chestnut Street, Room 407  
P. O. Box 32410  
Louisville, Kentucky 40232

RE: Petition for Confidential Protection  
Case No.: 99-484

Dear Ms. Chambers:

The Commission has received your petition filed June 15, 2000, to protect as confidential the highlighted numbers in exhibit 4 to BellSouth's Post Hearing Brief. A review of the information has determined that it is entitled to the protection requested on the grounds relied upon in the petition, and it will be withheld from public inspection.

If the information becomes publicly available or no longer warrants confidential treatment, you are required by 807 KAR 5:001, Section 7(9)(a) to inform the Commission so that the information may be placed in the public record.

Sincerely,

  
Martin J. Huelsmann  
Executive Director



BEFORE THE PUBLIC SERVICE COMMISSION

RECEIVED

JUN 22 2000

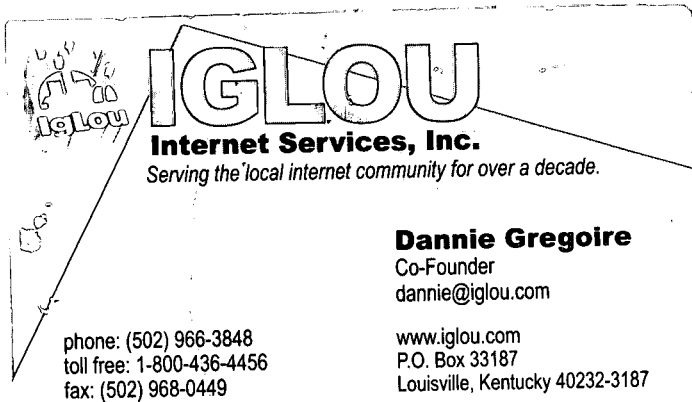
PUBLIC SERVICE  
COMMISSION

IGLOU INTERNET SERVICES, INC., )  
 Complainant, )  
 v. ) No. 1999-484  
 BELLSOUTH TELECOMMUNICATIONS, INC., )  
 Defendant. )

IGLOU INTERNET SERVICES POST HEARING BRIEF

\* \* \* \* \*

Comes now Complainant, IgLou Internet Services, Inc., and hereby submits its Post Hearing brief, a copy of which is attached hereto, in the above-referenced action.



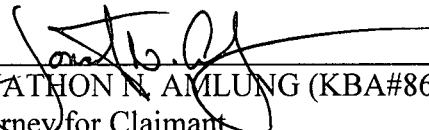
**IGLOU**  
 Internet Services, Inc.  
 Serving the local internet community for over a decade.

**Dannie Gregoire**  
 Co-Founder  
 dannie@iglou.com

www.iglou.com  
 P.O. Box 33187  
 Louisville, Kentucky 40232-3187

phone: (502) 966-3848  
 toll free: 1-800-436-4456  
 fax: (502) 968-0449

Respectfully submitted,

  
 JONATHON N. AMLUNG (KBA#86892)  
 Attorney for Claimant  
 1000 Republic Building  
 429 W. Muhammad Ali Blvd.  
 Louisville, Kentucky 40202  
 Telephone (502) 587-6838  
 Facsimile (502) 584-0439

CERTIFICATION

I hereby certify that a true and correct copy of the foregoing was mailed, postage pre-paid, to Dorothy J. Chambers, 601 W. Chestnut Street, Room 407, P.O. Box 32410, Louisville, KY 40232 and R. Douglas Lackey, Suite 4300 – BellSouth Center, 675 W. Peachtree Street, N.W., Atlanta, GA 30357, this the 22<sup>nd</sup> day of June, 2000.

  
 JONATHON N. AMLUNG

## SUMMARY OF THE CASE

This case has involved the very important issue of the future of the Internet access marketplace in the Commonwealth. At issue is whether or not a \$25 Billion foreign utility such as BellSouth should be allowed to enter the Commonwealth and actively destroy a competitive Internet marketplace to the detriment of Kentucky-based Internet Service Providers and Kentucky Internet users across the state. This destructive process centers around the fact that BellSouth has been able to take a customer base, that has been built with monopoly control over the telecommunications markets they serve, and leverage it to gain an anti-competitive advantage in a new market; Internet access.

Since its inception, IgLou Internet Services, like so many other telephone-based businesses has had to depend upon BellSouth to reach all or a portion of its customers. Over the years, the relationship of BellSouth to IgLou has moved from that of supplier to that of supplier *and* competitor. In becoming both a supplier and a competitor to IgLou and other Internet Service Providers across the Commonwealth, BellSouth has created significant opportunity to abuse this position and discriminate in favor of its own ISP, BellSouth.net. This is exactly what has taken place.

Over the course of the past four years, BellSouth has been able to grow its own ISP from zero subscribers to more than 700,000. BellSouth proudly proclaims in its press releases that 70% of these customers were obtained at the expense of other ISPs. This unheard of level of customer conversion can really only be accounted for through unfair practices, and the ability to leverage the power and customer base of a 100-year-old monopoly.

Examples of the level of control that BellSouth exerts in the marketplace can be seen in the statements made in marketing materials by its own ISP. BellSouth.net has stated that you should obtain your Internet service from them because they "own and operate the telephone lines that other Internet services rent." Our concern again is not that BellSouth.net is lying in their advertisements, but rather, that they are telling the truth. This method of marketing permits BellSouth to benefit from providing poor service to Kentucky's ISPs, whether or not that poor service is intentional. This poor service includes, but is not limited to delays in providing information, delays in service installs and repairs, or poor operating performance of communication lines. Any one of these actions can do irreparable harm to an ISP's credibility from a customer standpoint and seriously affect its ability to attract new customers, while at the same time increasing the attractiveness of BellSouth's Internet service. More importantly, these actions result in serious harm to the overall Internet access marketplace in the Commonwealth.

Most poignant in the harm done to the marketplace is the impedance of the deployment of DSL in the Commonwealth. DSL Internet access technology is an important part of the future of Internet access and is key to the long-term survival of Internet Service Providers. The FCC as well as state Public Service Commissions all agree on the utmost importance of rapid and widespread deployment of broadband Internet access technologies. For this reason it is of utmost importance for IgLou and other ISPs to have adequate access to these technologies to deploy them to their existing customer bases as quickly as possible.



IgLou has in good faith tried on many occasions to resolve the issues contained in its Complaint with BellSouth directly before bringing this matter to the Commission. Those efforts were repeatedly met with denials and empty promises.

### **IGLOU'S COMPLAINT**

On November 12, 1999, left without appropriate redress of its complaints, IgLou filed its Complaint with this Commission. IgLou's Complaint cited two relevant and applicable Kentucky statutes, K.R.S. 278.170 and K.R.S. 278.514, that empower the Commission to curtail BellSouth's anticompetitive business practices.

K.R.S. 278.170(1) reads as follows:

No utility shall, as to rates or services, give any unreasonable preference or advantage to any person or subject any person to any unreasonable prejudice or disadvantage, or establish or maintain any unreasonable difference between localities or between classes of service for doing a like and contemporaneous service under the same or substantially the same conditions.

This statute enables the Commission to prohibit a utility, such as BellSouth, from giving unreasonable preference or advantage to its affiliate Internet Service Provider ("ISP"). It further enables the Commission to prohibit BellSouth from subjecting companies such as IgLou to unreasonable prejudice or disadvantage. The language of this statute calls for a level playing field for all customers, including ISPs and other businesses, in their dealings with BellSouth. Clearly, BellSouth may not favor any business, including its own ISP, over companies such as IgLou.

Penalties for violation of K.R.S. 278.170(1) are located in K.R.S. 278.990(1). That section calls for a possible fine on the utility of two thousand five hundred dollars (\$2,500.00) per occurrence. What constitutes an occurrence is left to open by the language of the statute. The term "occurrence" may apply to any aspect of BellSouth's

business practices referenced in IgLou's Complaint. For instance, BellSouth's marketing practices, delay in providing new product information to competitors, and poor service to ISPs. What BellSouth stands to gain from these anticompetitive and discriminatory practices is the dial-up or broadband customer. As previously noted, BellSouth has publicly boasted that it obtains 70% of its subscriber base from other ISPs. The Commission should ask itself how BellSouth has obtained these customers from other ISPs. The answer is clear that BellSouth is blatantly leveraging its monopoly position to gain favor for its own ISP. For instance, the Commission reviewed the BellSouth advertisement that declared that customers should sign up with BellSouth Internet service because BellSouth owns the lines that other ISPs rent. To suggest, as BellSouth has, that there is no implication inherent in this advertisement is laughable.

BellSouth's method of obtaining customers from other ISPs is in clear violation of K.R.S. 278.170, which gives rise to the penalties provided in K.R.S. 278.990(1). The customer is the lowest common denominator in this equation, representing the results of many occurrences of anticompetitive practices.

The Legislature has empowered this Commission to levy a fine upon BellSouth for these practices. As part of a \$25 Billion corporation, it is difficult to believe that BellSouth would feel much of a pinch from a fine levied by this Commission. A monetary fine, however, would demonstrate the Commission's resolve to protect its Kentucky-based business from anticompetitive practices of foreign utility giants such as BellSouth.

Every one customer that BellSouth obtains from other ISPs has been the result of many anticompetitive occurrences by BellSouth. Thus, the number of BellSouth

customers in Kentucky is a conservative point with which to start calculating an appropriate fine. BellSouth.net boasts a customer base of approximately 700,000 in BellSouth's nine state region. Assuming Kentucky represents only five percent (5%) of this customer base, BellSouth would have approximately 35,000 subscribers in Kentucky. Based on BellSouth's own figures, 70% of these subscribers, or approximately 24,500, were plundered from Kentucky-based ISPs. This Commission is empowered, therefore, to levy a fine of \$2,500 for each and every one of those subscribers for a total of **\$61,250,000**, again based on conservative estimations. IgLou recognizes that such a large fine is not likely to be levied upon BellSouth by this Commission. The amount of such a fine, of course, is within the Commission's discretion. At a minimum, however, the Commission should consider levying a fine against BellSouth for its practices in the amount of **\$5,000,000**. Although this amount is not large relative to BellSouth's size, such a fine would send a message by the Commission that Kentucky will not stand for this type of behavior by foreign utilities against its domestic businesses.

IgLou further cites K.R.S. 278.514(1), which reads, in relevant part:

Revenues derived from nonexempted, regulated telecommunications services, whether essential or nonessential, shall not be used to subsidize or otherwise give advantage to any person providing an exempted service. The commission shall require a provider of any exempted service to keep separate accounts, to allocate cost in accordance with procedures established by the commission, and may require other acts that will assist the commission in enforcing this section.

This statute enables the Commission with broad and sweeping powers to enact policies and regulations that ensure utilities such as BellSouth do not provide any advantage to their affiliates such as BellSouth.net, using funds derived from their regulated activities.