COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

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

ORDER TO SATISFY OR ANSWER

BellSouth Telecommunications, Inc. ("BellSouth") is hereby notified that it has been named as defendant in a formal complaint filed on March 4, 2005, a copy of which is attached hereto.

Pursuant to 807 KAR 5:001, Section 12, BellSouth is HEREBY ORDERED to satisfy the matters complained of or file a written answer to the complaint no later than March 14, 2005.

Should documents of any kind be filed with the Commission in the course of this proceeding, the documents shall also be served on all parties of record.

Done at Frankfort, Kentucky, this 7th 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

Dougherty

RECEIVED
MAR - 7 2005
GENERAL COUNSEL
PSC
RECEIVED
MAR 0 4 2005
PUBLIC SERVICE
COMMISSION

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

Petition of BellSouth Telecommunications	)
To Establish a Generic Docket to	)
Consider Amendments to Interconnection	)
Agreements Resulting from Changes	)
of Law	)

Case No. 2004-00427

FORMAL COMPLAINT

The Electric and Water Plant Board of the City of Frankfort, KY (Frankfort Plant Board or FPB), by counsel, requests resolution of a dispute with regard to its interconnection agreement with BellSouth Telecommunications, Inc. (BellSouth), through a formal complaint pursuant to KRS 278.260 and 807 KAR 5:001(12), and states as follows:

1. The full name and address of the Frankfort Plant Board is The Electric and Water Plant Board of the City of Frankfort, KY, P.O. Box 308, 317 W. Second Street, Frankfort, KY 40602. Frankfort Plant Board is a facilities-based competitive local exchange company (CLEC) which provides local exchange service to its customers in the Frankfort and Franklin County Kentucky area.
2. The full name and address of BellSouth is BellSouth Telecommunications, Inc., 601 W. Chestnut Street, Louisville, KY 40203. BellSouth is an incumbent local exchange carrier (ILEC) which provides local telephone service in the Frankfort and Franklin County Kentucky area.
3. The facts supporting this complaint are set forth more fully below, but briefly this complaint concerns BellSouth's requirement that the Frankfort Plant Board (or FPB) sign a proposed "Market Agreement". Among other things, that agreement contains rates for certain services that are significantly higher

than the rates for the same services as contained in FPB's present interconnection agreement with BellSouth effective May 3, 2003, that was filed with and approved by the Public Service Commission. FPB is requesting that the rates in its filed interconnection agreement continue to remain in effect for the term of that interconnection agreement, at which time they will be subject to negotiation. BellSouth states its proposed Market Agreement must be signed and the rates take effect immediately or it will discontinue the provision of such services on March 18, 2005.

APPLICABLE LAW

4. Pursuant to KRS 278.030(1): "Every utility may demand, collect and receive fair, just, and reasonable rates for the services rendered or to be rendered by it to any person." KRS 278.030(2) requires BellSouth to "furnish adequate, efficient and reasonable service…" It may not demand unfair, unjust, and unreasonable rates for the services it renders. And, it may not discriminate in the rates charged for providing a "like and contemporaneous service under the same or substantially the same conditions." KRS278.170.
5. Pursuant to KRS 278.040, the Commission has jurisdiction "over the regulation of rates and services of utilities" within the Commonwealth,
6. Pursuant to KRS 278.260, the Commission is vested with the express authority to investigate and remedy "complaint as to rates or service of any utility."
7. Pursuant to KRS 278.040(3), the Commission may adopt, in keeping with KRS Chapter 13A, reasonable regulations to implement the provisions of KRS Chapter 278 and investigate the methods and practices of utilities to require them to conform to the laws of this state, and to all reasonable rules, regulations and orders of the commission not contrary to law.

STATEMENT OF THE FACTS

8. The Frankfort Plant Board negotiated and signed an interconnection agreement with BellSouth that was filed with and approved by the Kentucky Public Service Commission. The date of the interconnection agreement is May 3, 2003.
9. The term of the interconnection agreement is for a period of three years.
10. Under the "General Terms and Conditions", Paragraph 9 "Resolution of Disputes", is the following provision:

    "Except as otherwise stated in this Agreement, if any dispute arises as to the interpretation of any provision of this Agreement or as to the proper implementation of this Agreement, the aggrieved Party shall petition the Commission for a resolution of the dispute. However, each Party reserves any rights it may have to seek judicial review of any ruling made by the Commission concerning this Agreement."
11. The interconnection agreement contains rates, terms, and conditions applicable to the provision of unbundled network elements, operator services, and other services. Because the Frankfort Plant Board is a facilities-based competitive local exchange company (CLEC), only certain of the services provided under the interconnection agreement are required for its operation. Among such services are items related to the provision of directory assistance and operator services, as well as calling name query data.
12. On January 20, 2004, FPB signed an amendment to the interconnection agreement proposed by BellSouth "to modify provisions pursuant" to the FCC's Triennial Order. This amendment continues to provide those services used by FPB under the same rates as provided in its May, 2003 interconnection agreement. The amendment states: "All of the other provisions of the Agreement, dated May 2, 2003, shall remain in full force and effect."

13. On July 13, 2004, FPB received a request from BellSouth that it enter into an amendment of the interconnection agreement to be "in compliance with Vacatur/Remand of Triennial Review Order". (Attached as Exhibit 1) The proposed amendment was characterized by BellSouth as necessary to reflect "changes pursuant to the Court ruling by removing rates, terms and conditions for services that are no longer required to be offered at TELRIC rates." The letter also stated the following: "This notice, including the reminder of your opportunity to pursue the dispute resolution process, is consistent with BellSouth's commitment to Chairman Powell and the FCC that it will not unilaterally increase prices for carriers with current interconnection agreements."
14. FPB upon review of the proposed Market Agreement recognized that certain rates contained therein were being proposed at substantial increases compared to rates already being provided through its currently effective (May, 2003) interconnection agreement. As an example, the rate for a CNAM query was increased from $.0010348 per query to $.008 per query. The increase to this one rate element would result in an increased expense of over $3,300 per month to FPB, based on FPB's most recent monthly usage.
15. FPB sent correspondence (attached as Exhibit 2) to BellSouth on July 14, 2004 requesting that it provide a justification for the proposed rate increases and an explanation of how certain rate elements were to be applied under the proposed contract. BellSouth did not provide a response at that time.
16. From the time the BellSouth Market Agreement was proposed on July 13, 2004, until the present day, BellSouth has continued to bill FPB for these services under the rates contained in its May, 2003 interconnection agreement. Upon receipt of the BellSouth billing, FPB has continued to pay its BellSouth bills in a timely manner.
17. On February 16, 2005 BellSouth sent a letter (attached as Exhibit 3) to the Frankfort Plant Board requiring that it sign the proposed Market Agreement within thirty days. According to BellSouth, if the agreement is not signed within thirty days of the date of the letter (by March 18, 2005) "BellSouth will

discontinue Frankfort Plant Board's utilization of BellSouth Operator Services and Directory Assistance".

18. Notwithstanding the BellSouth letter of February 16, 2005, FPB maintains that BellSouth should be required to abide by the terms of the May, 2003 interconnection agreement until the three-year term of that agreement has expired and the parties have the opportunity to negotiate new terms.
19. Because of the FPB's concern that its customers will be denied certain essential services if it does not sign the BellSouth amendment forwarded to it on February 16, 2005, and because if these services are denied its customers, the FPB will suffer irreparable harm, FPB is requesting that the Commission order the current interconnection agreement remain in effect pending the final order in this matter.
20. The FPB also requests that the Commission determine that the proposed amendment is contrary to the existing interconnection agreement and applicable law and that it be disallowed. It should also require BellSouth to begin negotiating in good faith a new interconnection agreement with FPB.

WHEREFORE, for the above reasons the Frankfort Plant Board respectfully requests that the Commission take the following actions.

1. Prior to March 18th, the date of threatened termination of service, order BellSouth to continue to provide service under the terms of the currently effective interconnection agreement and prohibit termination of service or change in rates and services pending the resolution of this complaint.
2. Order that the current interconnection agreement, as amended, remain in full force and effect for the term of the agreement.
3. Disallow the BellSouth amendment proposed to FPB onJuly13, 2004 as contrary to applicable law.
4. Grant FPB any and all other relief to which it is entitled.

Submitted by,

John N. Hughes
124 West Todd St.
Frankfort, KY 40601
502 227-7270
Attorney for the
Frankfort Plant Board

Certificate:

I certify that a copy of this Complaint was mailed to Dorothy Chambers, BellSouth, 601 W. Chestnut St., Louisville, KY 40203 and on all parties electronically as provided by Commission orders on March 4th, 2005.

John N. Hughes

EXHIBIT 1

BELLSOUTH

BellSouth Interconnection Services
675 West Peachtree Street, NE
Room 34S91
Atlanta, Georgia 30375

Patricia C. Wanner
(404) 927-1245
FAX: 404 529-7839

Sent Via Electronic Mail and Certified Mail

July 13, 2004

Assistant General Manager
The Electric and Water Plant Board of the City of Frankfort
317 West Second Street
Frankfort, KY 40601

Subject: Request for Interconnection Agreement Amendment between The Electric and Water Plant Board of the City of Frankfort and BellSouth Telecommunications, Inc. in Compliance with Vacatur/Remand of Triennial Review Order

Dear Sir:

This is a formal notice under the Interconnection Agreement between BellSouth Telecommunications, Inc. (BellSouth) and The Electric and Water Plant Board of the City of Frankfort (FPB) for Kentucky.

Effective June 16, 2004, the United States Court of Appeals for the District of Columbia Circuit issued its mandate (Court Ruling) in the appeal of the Federal Communication Commission's (FCC) Triennial Review Order (TRO). The Court, among other things, vacated the FCC's rules associated with mass-market switching, high capacity dedicated transport, dark fiber and high capacity loops, thereby eliminating BellSouth's obligation pursuant to Section 251 of the 1996 Telecommunications Act (Act) to provide these services as Unbundled Network Elements (UNE) at Total Element Long-Run Incremental Cost (TELRIC) rates.

BellSouth hereby requests that FPB enter into an amendment that is compliant with the Court Ruling. BellSouth makes this request pursuant to the change of law provisions in Section 13.3. Pursuant to the change of law provisions of the Interconnection Agreement, if the parties are unable to reach agreement within 90 days of this notice, either party may pursue the dispute resolution process set forth in the General Terms and Conditions in the Interconnection Agreement. BellSouth intends to pursue its legal, equitable and/or regulatory rights to ensure that the existing Interconnection Agreement between the parties is modified, reformed or amended to properly reflect the Court's mandate in an expeditious manner.

BellSouth's proposed Amendment, which replaces the existing Attachment 2, Network Elements and Other Services, in its entirety is being sent via electronic mail. This new Attachment 2 reflects changes pursuant to the Court Ruling by removing rates, terms and conditions for services that are no longer required to be offered at TELRIC rates.

For execution, please print one full original Interconnection Agreement amendment and a duplicate signature page. The full original will become your file copy of the amendment. I will print BellSouth's originals from the files attached to this email. Execute both original signature pages and return only those pages to my attention. These will be executed on behalf of BellSouth and I will return one fully executed original signature page to you for inclusion in your

files. BellSouth will file the signed Interconnection Agreement amendment with the appropriate state commission.

This notice, including the reminder of your opportunity to pursue the dispute resolution process, is consistent with BellSouth's commitment to Chairman Powell and the FCC that it will not unilaterally increase prices for carriers with current interconnection agreements. If you are interested in discussing alternative services available from BellSouth that may be provided in lieu of the products and services that are no longer available as UNEs pursuant to the Interconnection Agreement, please let me know.

Should you have any questions, please feel free to contact me.

Sincerely,

Patricia C. Wanner
Manager - Interconnection Services

Attachments

EXHIBIT 2

From: Ed Hancock
To: BNETDom:"Tricia.Wanner@BELLSOUTH.COM"@BNETDom.GWIA
Date: 7/14/04 1:46PM
Subject: Re: Vacatur amendment

July 14, 2004

Tricia Wanner - BellSouth

Tricia:

Based on the Frankfort Plant Board's initial review, I believe we can move forward with the revised interconnection agreement. However, I do have some questions/concerns that need to be addressed, primarily related to our need for database access.

1) The rate for a CNAM query is not included in the proposed interconnection agreement for Unbundled Network Elements. I did find the CNAM query listed under what BellSouth termed its proposed "Market Based Agreement", which we have not yet signed. However, the rate in the "Market Based Agreement" is $.008 per query, or approximately an 800% markup over the current rate ($.0010348 per query) found in our interconnection agreement which is file with the Kentucky PSC. In your cover letter you maintain this proposal is consistent with BellSouth's commitment not to increase prices.

Is BellSouth willing to continue providing the CNAM query at the previously negotiated and approved contract rate of $.0010348 per query? If not, please explain why that previously agreed-to rate is no longer valid and the rationale for the proposed increase.

2) A similar situation exists with regard to the LIDB query (1300% price increase) and the LNP query (12% increase). I would request the same information as above.

3) Clarification Please: under the proposed UNE Signaling (CCS7), page 5 of 6, there is no rate shown per TCAP message and per ISUP message as is currently being billed under the interconnection agreement. This is also not indicated in the proposed "BellSouth Market Based" agreement. Is this simply a rate structure modification or is BellSouth indicating that there is some function that is currently provided which will no longer be made available?

There may be additional issues to be addressed, but at this time I would appreciate your response in some detail to the above questions.

Thank you.

Ed Hancock
Frankfort Plant Board
502 352-4330
ehancock@fewpb.com

>>> "Wanner, Tricia" <Tricia.Wanner@BELLSOUTH.COM> 07/13/04 10:10AM >>>
Mr. Hancock,

Please see attached cover letter and proposed amendment. The original is being sent by Certified Mail today.

Please let me know if you have any questions.

Thanks,

Tricia Wanner
34S91
675 W Peachtree St NE
Atlanta, GA 30375
404-927-1245
If you have received this message in error or do not wish to receive future commercial electronic mail messages from BellSouth Interconnection Services visit
<http://contactmanage.bellsouth.com/interconnection/optout/index.asp> or write to us at:
Attn: BellSouth Interconnection Services Marketing Communications
34H71
675 West Peachtree
Atlanta, GA 30375
<<FPBVacaturLtr.doc>> <<FPBVacaturAmend.doc>> <<FPBSignature_Page.doc>>
<<FPBEx1Att2NetworkElements.doc>> <<PostVacaturAtt2Rates.xls>>

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EXHIBIT 3

BELLSOUTH

BellSouth Interconnection Services
675 West Peachtree Street, NE
Room 34S91
Atlanta, Georgia 30375

Shemega Goodman
(404) 927-7571
FAX: 404 529-7839

Sent Via Certified Mail and Electronic Mail

February 16, 2005

Assistant General Manager
The Electric and Water Plant Board of the City of Frankfort
317 West Second Street
Frankfort, KY 40601

Dear Mr. Hancock:

The Electric and Water Plant Board of the City of Frankfort ("Frankfort Plant Board") executed a Triennial Review Order compliant amendment to their Interconnection Agreement on May 2, 2003 that, among other things, removed the terms, conditions and rates related to BellSouth's Operator Services/Directory Assistance ("OS/DA") service. Since the effective date of that agreement, Frankfort Plant Board has continued to use BellSouth's suite of OS/DA products that are no longer covered by an agreement Frankfort Plant Board is currently operating under with BellSouth (including but not limited to Directory Assistance, Operator-Assistance, Busy Line Verification/Interrupt, etc.).

BellSouth values Frankfort Plant Board's business and encourages Frankfort Plant Board to enter in to a Market Agreement so that Frankfort Plant Board may continue to utilize BellSouth's suite of Operator Services which has been consistently recognized for superior levels of customer service, customer fulfillment and database accuracy.

In order to further permit Frankfort Plant Board to utilize BellSouth's suite of Operator Services, Frankfort Plant Board must execute a Market Agreement, which includes among other things BellSouth's suite of Operator Services.

Attached is the Market Agreement for execution by Frankfort Plant Board within thirty (30) days of the date of this letter. After that time period, if there is no response from Frankfort Plant Board, BellSouth will discontinue Frankfort Plant Board's utilization of BellSouth Operator Services and Directory Assistance.

Should you have any questions, please feel free to contact me.

Sincerely,

Shemega Goodman

Shemega Goodman
Manager - Interconnection Services

Attachment