COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

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

O R D E R

Parties to this proceeding have filed comments in the wake of the informal conference held on February 24, 2005. BellSouth Telecommunications, Inc. ("BellSouth") argues that the matters presented in this change of law proceeding are purely legal in nature and that no evidentiary hearing or discovery is necessary. SouthEast Telephone, Inc. ("SouthEast") concurs that the matter presented is legal and not evidentiary.

On the other hand, Cinergy Communications Company ("Cinergy") and Aero Communications, LLC ("Aero") assert that there are factual issues in dispute. Several motions are also pending in this proceeding. Cinergy has moved that this matter be consolidated with the generic change of law proceeding initiated by BellSouth.[1] SouthEast supports this motion to consolidate. However, BellSouth and Aero oppose the motion. The Commission finds that this matter regarding the effects of the Kentucky

[1] Case No. 2004-00427, Petition of BellSouth Telecommunications, Inc. To Establish Generic Docket To Consider Amendments To Interconnection Agreements Resulting From Changes of Law.

Broadband Act[2] may be handled on a stand-alone basis apart from the other pending change of law issues. Doing so appears to further the Commission's goal of administrative efficiency.

CLECs have raised matters of whether they have been billed correctly. If parties continue to believe that there are billing disputes, these matters are more appropriately addressed by the filing of separate formal complaints in new dockets.

The Commission, moreover, finds that the effect of the Kentucky Broadband Act on existing interconnection agreements is a question of law and may be addressed adequately by the filing of briefs by the parties. Accordingly, each party may file a legal brief with the Commission detailing its views and offering legal support for positions taken. The Commission also requests that the parties address the effect, if any, of the Federal Communications Commission's recent order regarding BellSouth's request for a declaratory ruling that state commissions may not regulate broadband.[3] Upon the submittal of the parties' legal briefs as discussed herein, this matter shall be submitted for Commission decision. The Commission will address appropriate changes, if any, to the parties' interconnection agreements. All matters not specifically addressed herein remain pending in this proceeding.

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[2] KRS 278.546, 278.5461, and 278.5462.

[3] 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).

IT IS HEREBY ORDERED that:

1. Cinergy's motion to consolidate this proceeding with Case No. 2004-00427 is denied.

2. The request by parties that the Commission address whether billing has been appropriate between the parties will not be addressed in this proceeding but, rather, by separate petition of parties.

3. Within 20 days of the date of this Order, parties shall submit legal briefs as described herein.

4. Within 30 days of the date of this Order, parties may submit reply legal briefs.

5. Upon submittal of these written briefs, this matter will be submitted to the Commission for decision on the merits.

6. Matters not specifically addressed herein remain pending in this proceeding.

Done at Frankfort, Kentucky, this 30th day of March, 2005.

By the Commission

Commissioner W. Gregory Coker did not participate in the deliberations or discussion concerning this case.

ATTEST:

Executive Director