

S T O L L | K E E N O N | & | P A R K | L L P

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C. KENT HATFIELD
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June 8, 2004

RECEIVED

JUN 8 2004

PUBLIC SERVICE
COMMISSION

Ms. Elizabeth O'Donnell
Executive Director
Kentucky Public Service Commission Case 2004-00234
211 Sower Blvd
P.O. Box 615
Frankfort, Kentucky 40601

Re: *Petition by AT&T Communications of the South Central States, LLC. and TCG Ohio for Arbitration of the Interconnection Agreement with BellSouth Telecommunications, Inc. Pursuant to 47 U.S.C. Section 252*

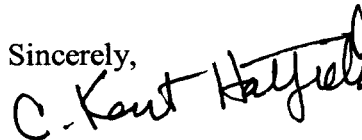
Dear Ms. O'Donnell:

Enclosed please find the original and ten (10) copies of AT&T Communications of the South Central States, LLC and TCG Ohio, Inc.'s Petition for Arbitration with BellSouth Telecommunications Inc.

In order to meet the filing requirements pursuant to Section 252 of the Federal Act it was necessary that AT&T file these Arbitration petitions in four separate states simultaneously. AT&T and BellSouth have agreed to work cooperatively to develop a proposed schedule for each state that will minimize scheduling conflicts and will be providing that proposal to the Commission within seven business days. Please indicate receipt of this filing by your office by placing a file stamp on the extra copy and returning to me via our runner.

If you have questions, please let me know.

Sincerely,



C. Kent Hatfield
Counsel For AT&T Communications of the
South Central States, LLC, And TCG Ohio, Inc.

CKH:jms

Cc: Dorothy J. Chambers, Esquire

BEFORE THE
KENTUCKY PUBLIC SERVICE COMMISSION

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PUBLIC SERVICE
COMMISSION

In the Matter of:)
Petition by AT&T Communications of the)
South Central States, LLC and TCG Ohio, Inc.)
for Arbitration of Certain Terms)
and Conditions of a Proposed)
Interconnection Agreement with)
BellSouth Telecommunications, Inc.)
Pursuant to 47 U.S.C. Section 252)
_____)

Case No. 2004-00234

**PETITION BY AT&T AND TCG FOR ARBITRATION
WITH BELL SOUTH TELECOMMUNICATIONS, INC.**

Pursuant to Section 252(b)(1) of the Federal Telecommunications Act of 1996 (the "Act"), AT&T Communications of the South Central States, LLC ("AT&T") and TCG Ohio, Inc. ("TCG") (collectively "AT&T") petition the Kentucky Public Service Commission ("Commission") to arbitrate unresolved issues resulting from the interconnection agreement negotiations between AT&T and BellSouth Telecommunications, Inc. ("BellSouth"). Specifically, AT&T requests that the Commission resolve each of the unresolved issues by ordering AT&T and BellSouth (the "Parties") to incorporate AT&T's position in the interconnection agreement ("ICA") that is ultimately executed by the Parties.

In support of its Petition, AT&T respectfully shows as follows:

1. This Petition includes the Parties' list of unresolved issues, set out in a Joint Issue Matrix (Attachment A) showing AT&T's position on those issues. BellSouth will file, with its response to this Petition, the BellSouth position on the issues in the Joint Issue Matrix and a copy of the proposed ICA between the Parties, including the suggested language of AT&T and the suggested language of BellSouth on the disputed issues.

PARTIES

2. AT&T is a Delaware corporation and is authorized to provide local exchange service in the state of Kentucky. AT&T's business address is:

AT&T Communications of the South Central States, LLC
1200 Peachtree Street, N.E.
Atlanta, GA 30309

Copies of pleadings, notices and orders in this docket should be served on:

C. Kent Hatfield
Stoll, Keenon & Park, LLP
2650 Aegon Center
400 West Market Street
Louisville, KY 40202
502-568-9100

Martha Ross-Bain
AT&T
1200 Peachtree Street
Suite 8100
Atlanta, GA 30309
404-810-6713

3. AT&T Corp., the parent corporation of AT&T Communications of the South Central States, LLC, acquired Teleport Communications Group, Inc., the parent company of TCG Ohio, effective July 23, 1998. TCG Ohio is authorized to provide local exchange service in the state of Kentucky.

4. BellSouth is a corporation organized and formed under the laws of the State of Georgia, having an office at 675 West Peachtree Street, Atlanta, Georgia 30375. BellSouth provides local exchange and other services within its franchised areas in Kentucky. BellSouth is

a “Bell operating company” (“BOC”) and an “incumbent local exchange carrier” (“ILEC”) under the terms of the Telecommunications Act of 1996 (the “Act”).¹

JURISDICTION

5. The Commission has jurisdiction over AT&T’s Petition pursuant to Section 252(b)(1) of the Act. 47 U.S.C. § 252(b)(1). Under the Act, parties to a negotiation for interconnection, access to unbundled network elements (“UNEs”), or resale of services within a particular state have a right to petition the state commission for arbitration of any open issues when negotiations between them fail to yield an agreement. 47 U.S.C. § 252(b). Under Section 252(b)(1), the request for arbitration by the state commission may be made at any time during the period from the 135th to the 160th day (inclusive) after the date on which the ILEC receives a request for negotiations under Section 251 of the Act. The non-petitioning party may respond to the petition within 25 days after the state commission receives the petition. 47 U.S.C. § 252(b)(3). The open issues must be resolved no later than nine months after the request for negotiations. 47 U.S.C. §252(b)(4)(C).

STANDARD OF REVIEW

6. This arbitration must be resolved by the standards established in 47 U.S.C. §§ Sections 251 and 252 and the rules adopted by the FCC. Section 252(c) requires a state commission resolving open issues through arbitration to:

- (1) ensure that such resolution and conditions meet the requirements of section 251 of this title, including the regulations prescribed by the [FCC] pursuant to section 251 of this title; [and]

¹ 47 U.S.C. §§ 153(35), 251(h).

- (2) establish any rates for interconnection, services, or network elements according to subsection (d) of this section ...

The Commission is required to make an affirmative determination that the rates, terms and conditions that it prescribes in the arbitration proceeding for interconnection are consistent with the requirements of 47 U.S.C. §§ 251(b)-(c) and 252(d).

7. The Commission may also, under its own state law authority, impose additional requirements pursuant to Section 252(e)(3) of the Act, as long as such requirements are consistent with the Act and the FCC's regulations. 47 U.S.C. § 252(e).

NEGOTIATIONS AND BACKGROUND

8. The current Interconnection Agreement ("ICA") between AT&T and BellSouth was approved by the Commission in Case No. 2000-465 by its Order issued on August 13, 2001, with the underlying ICA effective on July 20, 2001. Pursuant to the term provisions of the ICA, the ICA "expires" on July 19, 2004.

9. Pursuant to agreement of the Parties, AT&T properly noticed BellSouth of a request for negotiation of successor ICAs under the existing ICA and Sections 251 and 252 of the Act on January 2, 2004. Under Section 252(b)(1) of the Act, the Parties have from the 135th through the 160th day (inclusive) after receipt of a request for negotiations to file for arbitration of unresolved interconnection issues.

10. The Parties have negotiated diligently and in good faith throughout the negotiation period and it is AT&T's intent to continue to do so. Proposed contract language has been exchanged and discussed and good faith negotiations have taken place with respect to all disputed attachments or appendices, agreed or disputed that are necessary to complete a new

agreement. The Parties have also discussed and agreed on the framing of issue statements for inclusion within a Joint Issues Matrix.

ISSUES TO BE ARBITRATED

11. AT&T and BellSouth have reached agreement on a substantial number of issues during the course of negotiations. Those agreements are reflected in the Proposed Interconnection Agreement to be filed by BellSouth. However, other issues remain open and unresolved. Those unresolved issues are set forth in the Joint Issues Matrix, Attachment A to this Petition. Attachment A states each unresolved issue, assigns the issue a number, and summarizes AT&T's position on the issue.

12. This is the first arbitration between BellSouth and AT&T after BellSouth has been granted section 271 authority to enter long distance in Kentucky. Moreover, the current status of *USTA II* -- whether sections of the Triennial Review Order ("TRO") will be vacated and the outcome of a final decision in the case -- introduces some uncertainty with regard to the applicable federal law. In this landscape, this Commission has the opportunity to ensure local competition in the State of Kentucky by carefully reviewing the issues presented, determining BellSouth's obligations under both the Telecommunications Act and state law, and approving an appropriate and fair ICA. This ICA will be the operative document in the coming years and can assure that the Parties, and others in the industry, remain on the path toward full and fair telephone competition in Kentucky.

13. The issues raised in this Petition fall into four general categories. One group of issues concerns BellSouth's overall obligations under the Telecommunications Act and state law. A second group of issues relate to BellSouth's obligations to provide unbundled local loops. A third group of issues relates to items, services or rights under the ICA that BellSouth has refused

to provide. AT&T requests an order that BellSouth is required to provide these items, services and rights, and a determination of the appropriate charges and fees for doing so. The final group of issues relates to standards and costs for collocation and whether those issues should be determined in this proceeding or in a generic docket.

14. The first group of issues revolves around the TRO and the D.C. Circuit's decision in *USTA II*. BellSouth would have this Commission predict the final outcome of *USTA II*, assume certain provisions of the TRO will be vacated, and severely curtail its obligation to provide access to unbundled network elements and other services. (*See* Issues 1 - 4.) AT&T, in contrast, asks this Commission to determine BellSouth's obligations under existing law, including sections 251 and 271 of the Telecommunications Act and state law, and to incorporate those obligations into an ICA under section 252 of the Telecommunications Act.

15. The second group of issues relates to BellSouth's obligation to provide unbundled local loops. There can be no question that BellSouth is required to do so. Nonetheless, BellSouth has refused to provide certain lengths of loops, refused to provide line conditioning on certain loops and, in many instances, attempted to impose unreasonable requirements and charges on AT&T when it seeks unbundled local loops. (*See* Issues 6 - 13.) Similarly, even though BellSouth is attempting to avoid providing local switching, it was unwilling to agree to specific language setting out the process by which unbundled local loops would be moved from BellSouth's switch to AT&T's switch so that AT&T can provide service using unbundled local loops and its own switch. (*See* Issue 5.) AT&T's language with regard to all of these issues should be adopted.

16. The third group of issues relates to AT&T's rights under the ICA or services AT&T has requested that BellSouth provide. For example, AT&T seeks audit rights, the ability

to do its own "Make-Ready" work when BellSouth is delayed in doing so, and expedited service at an appropriate charge. (See Issues 14 - 16.) Also included in this group of issues are disputes relating to the appropriate charges, fees and billing arrangements for certain services. (See Issues 17 - 30.) Here too, AT&T's proposed language should be adopted.

17. The final issue relates to collocation. (See Issue 29.) Appropriate collocation requirements and charges are critical to competition. The questions raised relate to what rights exist under current rules for collocation and whether any changes to those rules should be determined in this docket or in a generic collocation docket in which any interested industry entity could participate.

18. This arbitration raises issues that are critical to AT&T's ability to compete in Kentucky. Since being granted section 271 authority for Kentucky, BellSouth has taken every opportunity to limit what unbundled network elements and services it will provide to competitive carriers and to increase the prices at which it will provide them. In considering this Petition, this Commission has the ability to determine BellSouth's obligations under the Telecommunications Act and state law and to require an ICA that will ensure the growth of competition in Kentucky.

REQUESTED RELIEF

WHEREFORE, AT&T prays that the Commission:

(1) Issue a procedural order to establish a schedule for all forms of discovery (depositions, interrogatories, data requests, and requests for admission), rebuttal testimony, prehearing conference, hearing and post hearing briefs;

(2) Arbitrate the unresolved issues identified in this Petition and its Attachment in accordance with Section 251 and 252 of the Federal Telecommunications Act;

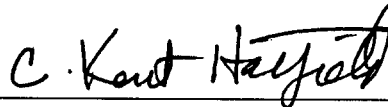
(3) In such Arbitration, adopt the positions of AT&T as set forth in Attachment A, and require the Parties to enter into an ICA that includes all the terms agreed to during negotiations and, on all disputed points, adopt the specific terms and contract language proposed by AT&T, which are identified in the Proposed Interconnection Agreement to be filed by BellSouth;

(4) Order the Parties to file on a date certain an Interconnection Agreement between AT&T and BellSouth, incorporating the Commission's decision as described above, for approval by the Commission pursuant to Section 252(c) of the Act, and retain jurisdiction of this arbitration until the Parties have submitted such Interconnection Agreement for approval; and

(5) Grant such other and further relief as the Commission deems appropriate.

Respectfully submitted this the 8th day of June, 2004.

ATTORNEYS FOR AT&T COMMUNICATIONS
OF THE SOUTH CENTRAL STATES, LLC, AND
TCG OHIO, INC.

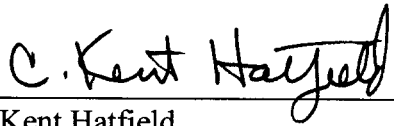


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404-810-6713

CERTIFICATE OF SERVICE

A copy of the foregoing Petition was served this 8th day of June, 2004, first class, United States mail, postage prepaid, upon Honorable Dorothy J. Chambers, General Counsel/Kentucky, BellSouth Telecommunications, Inc., 601 West Chestnut Street, Room 410, P. O. Box 32410 Louisville, KY 40232



C. Kent Hatfield