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August 19, 2004

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AUG 20 2004

PUBLIC SERVICE
COMMISSION

Ms. Beth O'Donnell
Executive Director
Public Service Commission
211 Sower Boulevard
P.O. Box 615
Frankfort, KY 40602

Re: The Electric and Water Plant Board of the City of Frankfort, Kentucky,
Complainant v. BellSouth Telecommunications, Inc., Defendant
PSC 2004-00297

Dear Ms. O'Donnell:

Enclosed for filing in the above-captioned case are the original and ten (10) copies of Answer of BellSouth Telecommunications, Inc. to Formal Complaint.

Sincerely,



Dorothy J. Chambers

Enclosure

cc: Parties of Record

547249

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

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THE ELECTRIC AND WATER PLANT)
BOARD OF THE CITY OF FRANKFORT,)
KENTUCKY)

AUG 20 2004

PUBLIC SERVICE
COMMISSION

COMPLAINANT)

CASE NO. 2004-00297

v.)

BELLSOUTH TELECOMMUNICATIONS, INC.)

DEFENDANT)

ANSWER OF BELLSOUTH TELECOMMUNICATIONS, INC.
TO FORMAL COMPLAINT

BellSouth Telecommunications, Inc. ("BellSouth"), by and through its undersigned counsel, hereby files its Answer to the Formal Complaint ("Complaint") filed on July 26, 2004, by the Electric and Water Plant Board of the City of Frankfort, KY ("FPB"). According to the Complaint, FPB is a facilities-based competitive local exchange carrier ("CLEC") which provides local exchange service in certain areas in Kentucky. BellSouth provides services to FPB pursuant to an interconnection agreement ("ICA") that the parties entered into on or about May 2, 2003, and approved by the Commission pursuant to Section 252 of the Telecommunications Act of 1996. In its Complaint, FPB essentially asserts that the ICA prevents BellSouth from charging FPB a secondary service order charge ("SSC") when FPB obtains a BellSouth customer. The SSC is a nonrecurring charge, set forth in BellSouth's General Subscriber Services Tariff ("GSST"), that, as is relevant here, applies when BellSouth transfers account responsibility from a BellSouth end user to a CLEC.

As explained more fully below in the “Affirmative Defenses” portion of this pleading: (i) the ICA plainly obligates FPB to pay applicable tariff charges (such as the SSC) when FPB obtains a BellSouth customer; (ii) the SSC is the appropriate and applicable tariff charge as it applies to transfer of account responsibility situations; and (iii) FPB should not be allowed to rely on Commission Orders issued in an arbitration proceeding involving another CLEC to avoid its obligation to pay SSCs.

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.

3. BellSouth denies the allegations set forth in Paragraph 3 of the Complaint.

4. Responding to Paragraph 4 of the Complaint, the referenced portions of KRS 278.030 and KRS 278.170 speak for themselves and require no specific response from BellSouth at this time.

5. Responding to Paragraph 5 of the Complaint, the referenced portion of KRS 278.040 speaks for itself and requires no specific response from BellSouth at this time.

6. Responding to Paragraph 6 of the Complaint, the referenced portion of KRS 278.260 speaks for itself and requires no specific response from BellSouth at this time.

7. Responding to Paragraph 7 of the Complaint, the referenced portion of KRS 278.040(3) speaks for itself and requires no specific response from BellSouth at this time.

8. Responding to the allegations set forth in Paragraph 8 of the Complaint, BellSouth admits only that in October 2003, BellSouth billed FPB applicable and appropriate SSCs, and FPB disputed such charges by submitting to BellSouth a Billing Adjustment Request Form (“BAR”). BellSouth denies the remaining allegations set forth in Paragraph 8.

9. Responding to the allegations set forth in Paragraph 9 of the Complaint, BellSouth admits only that in November 2003, BellSouth billed FPB applicable and appropriate SSCs, and provided notice that certain charges were past due. Contrary to the allegations set forth in Paragraph 9, there is no Exhibit 2 attached to the Complaint. Accordingly, BellSouth lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 9 of the Complaint as it relates to Exhibit 2, and therefore can neither admit nor deny such allegations at this time.

10. Responding to the allegations set forth in Paragraph 10 of the Complaint, BellSouth admits only that in December 2003, FPB again disputed its obligation to pay SSCs by submitting a second BAR, BellSouth advised FPB that such charges were owed, and FPB paid the disputed charges.

11. BellSouth admits the allegations set forth in Paragraph 11 of the Complaint.

12. BellSouth responds to the allegations set forth in Paragraph 12, subparts A. through D., as follows:

A. Responding to the allegations set forth in Paragraph 12.A. of the Complaint, the quoted portions of the ICA and the GSST speak for themselves and require no specific response from BellSouth. BellSouth denies the remaining allegations set forth in Paragraph 12.A.

B. Responding to the allegations set forth in Paragraph 12.B. of the Complaint, the referenced tariff provision (GSST, Section A4.2.4) speaks for itself and

requires no specific response from BellSouth. BellSouth denies the remaining allegations set forth in Paragraph 12.B.

C. Responding to the allegations set forth in Paragraph 12.C. of the Complaint, the referenced Commission Order (Case No. 2001-045) speaks for itself and requires no specific response from BellSouth. BellSouth denies the remaining allegations set forth in Paragraph 12.C. as they relate to the aforementioned Commission Order. BellSouth is not sure what “mailer” was referenced in the Complaint (i.e. Exhibit 4). Accordingly, BellSouth lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 12.C. of the Complaint as it relates to Exhibit 4, and therefore can neither admit nor deny such allegations at this time. BellSouth also notes that not only are there differences in the language of the Interconnection Agreement to which FPB compares itself and the FPB Interconnection Agreement, but there are factually distinguishing features between the applicable manner in which services are provided to the other CLEC and FPB.

D. Responding to the allegations set forth in Paragraph 12.D. of the Complaint, the referenced Commission Order speaks for itself and requires no specific response from BellSouth. BellSouth notes that the Local Number Portability surcharge was approved by the FCC to recover for costs unrelated to the SSC at issue in FPB’s Complaint. BellSouth denies the remaining allegations set forth in Paragraph 12.D.

13. Responding to the “WHEREFORE” section of the Complaint, BellSouth denies that FPB is entitled to any relief whatsoever. All allegations not specifically admitted are denied.

FIRST AFFIRMATIVE DEFENSE

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

SECOND AFFIRMATIVE DEFENSE

15. The Complaint should be dismissed because under the plain terms of the ICA, FPB is obligated to pay applicable tariff charges such as the SSCs. Specifically, Section 4.1.2 of the General Terms and Conditions portion of the parties' ICA provides:

Rates. So long as FPB provides subscriber listing information (SLI) to BellSouth in accordance with Section 4.2 below, BellSouth shall provide to FPB one (1) primary White Pages listing per FPB subscriber at no charge *other than applicable service order charges as set forth in BellSouth's tariffs.*

Id. (emphasis added). Without question, pursuant to the above-quoted language, FPB agreed to pay applicable tariffed service order charges associated with White Page listings. The applicable tariffed service order charge is the SSC which applies to a customer request to change services or add new or additional services, including a request to transfer responsibility from a BellSouth end user to a CLEC. *See* GSST, Sections A4.1, and A4.2.4. In sum, the Commission should decline to rewrite the parties' contract in a manner that relieves FPB from its existing contractual obligation to pay appropriate charges that are associated with, yet independent of, directory listings.

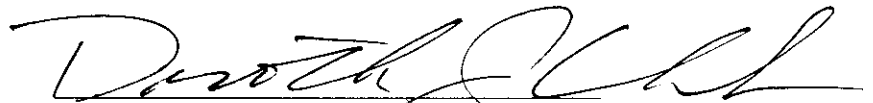
THIRD AFFIRMATIVE DEFENSE

16. FPB's reliance upon the Order(s) issued by the Commission in the arbitration proceeding involving SouthEast Telephone, Inc. ("SouthEast") and BellSouth (Case No. 2001-045), is misplaced and does not relieve FPB of its obligation to pay SSCs. As an initial matter, BellSouth is abiding by the Commission Orders issued in the aforementioned arbitration proceeding, and is abiding by the terms of its interconnection agreement with SouthEast ("SouthEast ICA"). Further, FPB was not a party to the aforementioned arbitration proceeding and should not be permitted to misconstrue Commission Order(s) that are not applicable to FPB to avoid its contractual obligations.

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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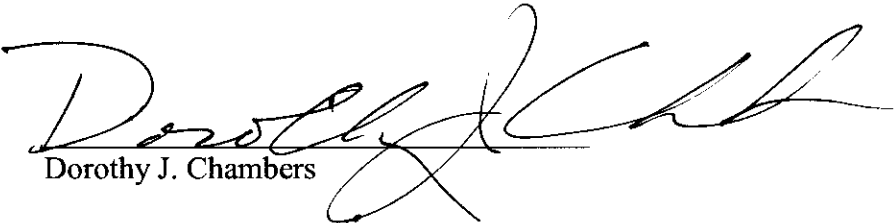
CERTIFICATE OF SERVICE

It is hereby certified that a true and correct copy of the foregoing was served on the following individuals by mailing a copy thereof, this 19th day of August, 2004.

Hon. John N. Hughes
Attorney at Law
124 West Todd Street
Frankfort, KY 40601

Hobson and Bowman
222 West Main Street
Frankfort, KY 40601

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


Dorothy J. Chambers