
BellSouth Telecommunications, Inc.

601 W. Chestnut Street
Room 407
Louisville, KY 40203

Mary.Keyer@BellSouth.com

Mary K. Keyer

General Counsel/Kentucky

502 582 8219
Fax 502 582 1573

February 2, 2007

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

RECEIVED

FEB 02 2007

PUBLIC SERVICE
COMMISSION

Re: BellSouth Telecommunications, Inc., Complainant v. Brandenburg
Telephone Company, Defendant
PSC 2006-00546

Dear Ms. O'Donnell:

Enclosed for filing in the above-captioned case are the original and ten (10) copies of BellSouth's Response to Brandenburg's Answer.

Sincerely,


Mary K. Keyer

cc: Parties of Record

666440

COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

RECEIVED

FEB 02 2007

PUBLIC SERVICE
COMMISSION

In the Matter of:

BELLSOUTH TELECOMMUNICATIONS, INC.)

Complainant)

v.)

BRANDENBURG TELEPHONE COMPANY)

Defendant)

Case No. 2006-00546

**BELLSOUTH TELECOMMUNICATIONS, INC.'S
RESPONSE TO BRANDENBURG'S ANSWER**

BellSouth Telecommunications, Inc. ("BellSouth"), by counsel, in accordance with the Commission's January 24, 2007, Order in this proceeding files its Response to Brandenburg Telephone Company's ("Brandenburg") Answer filed on January 9, 2007. BellSouth reiterates and incorporates by reference its Complaint filed on December 13, 2006, and further states as follows:

BellSouth and the independent telephone companies (ICOs) in Kentucky (one of which is Brandenburg) have a long-standing relationship of working together to resolve their differences or disputes. It has been common practice in our ICO relationships to bring forward to each other errors that have occurred and to get them corrected in a timely and fair manner. That is what BellSouth attempted to do prior to bringing this complaint before the Commission.

ACS TRAFFIC DISPUTE

BellSouth does not dispute that it made an error in paying Brandenburg twice for the same ACS Traffic¹, and in not detecting the error until 2004, approximately six years² after the commencement of double-paying Brandenburg for this traffic. This error, however, should not entitle Brandenburg to the windfall Brandenburg claims by refusing to reimburse BellSouth for one-third of the overpayment, which is what BellSouth has requested.

Background

In responding to Brandenburg's Answer, BellSouth believes it may be helpful to provide some background information to the Commission indicating the processes by which BellSouth paid Brandenburg for ACS Traffic during the relevant period from April 2002 to March 2004 ("Relevant Period").

Since 1995, Brandenburg has been billing BellSouth through the Carrier Access Billing System ("CABS") for minutes of use that BellSouth terminates to Brandenburg through the Common Transport Trunk Group ("CTTG"). See fn. 2. ACS Traffic is traffic that is routed over the CTTG and as such is included in the minutes of use billed through CABS. Brandenburg states that it received its first payment from BellSouth for ACS Traffic in December, 1997. Answer, ¶ 3.

¹ The term "ACS Traffic" as used in this docket is a generic term that includes Area Plus traffic and should not be confused with BellSouth's traditional Area Calling Service plans set forth in BellSouth's Price List.

² BellSouth had indicated in its Complaint that Brandenburg began CABS billing in or around 1998. Brandenburg alleges it was in 1995. This difference has no impact on BellSouth's claims in this case. Assuming Brandenburg is correct, and assuming Brandenburg first received payment for ACS Traffic from BellSouth in December 1997, as it states in its Answer, BellSouth would have still made double payments for the ACS Traffic going back to 1998 as it alleged. Furthermore, this date is not relevant to the outcome of this case since BellSouth is not asking Brandenburg to go back to 1995 or 1998 for those overpayments, but is only asking for reimbursement of its overpayments made in the two-year period prior to BellSouth discovering the error in 2004.

Assuming this is correct, BellSouth has been making double payments for this traffic since that time because BellSouth was making payments for ACS Traffic through CABS while also paying for the same traffic through its Settlements Process as described below.

Pursuant to the Agreement for the Provision of Telecommunications Services and Facilities, effective January 1, 1985, ("Agreement"), attached to the Formal Complaint as Exh. 1, BellSouth compensated Brandenburg through a settlements process described in the Agreement whereby BellSouth would net amounts due to and from Brandenburg and remit payment to Brandenburg based on this netting process ("Settlements Process"). At all times relevant to this Complaint, ACS Traffic was included as a line item in the Settlements Process statements. BellSouth compensated Brandenburg for this traffic through the Settlements Process while also paying Brandenburg's CABS invoices in full. See Formal Complaint, Exh. 2.

Response to Answer

Brandenburg, in its Answer, wants the Commission to believe that BellSouth has withheld from Brandenburg relevant information in this case. This is not true. Brandenburg's allegations in its Answer that BellSouth "refuses" and "has refused" to provide Brandenburg with "call detail records" misrepresent the facts. See Answer, ¶¶ 3, 5. The "call detail records" that Brandenburg is seeking are switch recordings generated in the BellSouth switch. BellSouth does not keep switch recordings for extended periods of time due to the sheer volume of such records. By the time Brandenburg asked for these records, BellSouth no

longer had them and informed Brandenburg of that fact.³ Brandenburg's implication in its Answer that BellSouth had or has records that it "refuses" or "has refused" to produce to Brandenburg makes it appear that BellSouth is being less than forthcoming with the information it has, which is not the case. BellSouth has provided Brandenburg with the supporting documentation it has.

BellSouth, according to Brandenburg, began paying Brandenburg for ACS Traffic in December 1997. Answer, ¶ 3. Beginning in or around that time, and for the Relevant Period, BellSouth paid Brandenburg for the termination of the ACS Traffic through the CABS billing, while also paying Brandenburg for the termination of the same traffic through the Settlements Process. This double payment continued from December 1997 until it was discovered in April 2004, approximately six years later.

When BellSouth discovered the error in 2004, it immediately notified Brandenburg. By letter dated May 11, 2004, BellSouth made a formal claim for an adjustment for the double payments for the previous two years. See Formal Complaint, Exh. 2. BellSouth provided documentation to support its claim. *Id.* BellSouth also notified Brandenburg in the May 11 letter that it had "zeroed out the rates for this traffic going forward correcting the duplicate payment" through the Settlements Process. *Id.*

Brandenburg admits that BellSouth no longer specifies a payment for ACS Traffic as a separate line item through the Settlements Process. Answer, ¶ 5. Although Brandenburg never questioned, challenged, or disputed the "zeroed

³ In fact, if Brandenburg maintained its switch recordings that it uses to bill BellSouth on its CABS bills, it would have the very data it seeks.

out” rates by BellSouth, it refused, and continues to refuse, to reimburse BellSouth for the two-year period prior to BellSouth’s discovery of the error. Brandenburg claims that it did not challenge BellSouth’s action because “without the call detail records Brandenburg has no way of identifying ACS traffic or how BellSouth delivers it.” Answer, ¶ 5. If Brandenburg believed it was entitled to continue to receive payments for ACS Traffic in the Settlements Process, it is simply unbelievable that Brandenburg would not have challenged BellSouth when BellSouth ceased making these payments.

Although BellSouth no longer had the switch recordings, BellSouth researched its usage data on the various types of traffic utilized in the Settlements Process for a six-month period during the Relevant Period to compare the minutes of use for the types of traffic that are billed through CABS (e.g., PCP, non-meet-point-bill CMRS, meet-point-bill CMRS and Bell-to-ICO ACP (ACS Traffic)) with the actual minutes of use billed by Brandenburg to BellSouth through CABS to compare the total usage between the two. BellSouth conducted this research to assure that the numbers were consistent with BellSouth’s claim before it continued with its request for reimbursement of the overpayments. BellSouth shared this information with Brandenburg in an email dated April 6, 2005. See Formal Complaint, Exh. 3. The research revealed that 17.5% of the traffic terminated for that six-month period was ACS Traffic, and there was less than one percent differential on average between the actual minutes billed through CABS and BellSouth’s usage data. *Id.* This research indicated that the ACS Traffic was sent over the CTTG and was,

therefore, included in the CABS billing. *Id.* Brandenburg's defense in not reimbursing BellSouth for the double payments based on the unavailability of what it refers to as "call detail records" is implausible and is an attempt to discredit industry standard processes that all telephone companies across the country use in the Settlements Process.

There is no evidence to suggest that the ACS Traffic at issue in this case was, during the Relevant Period, or is today, being routed over any trunk group other than the CTTG. BellSouth's research of traffic volume and routing changes for the CTTG trunk groups support there have been no changes to the routing of traffic from the CTTG to any other trunk group, including EAS trunk groups.

BellSouth is not seeking to get out of a payment obligation or to seek a windfall payment. BellSouth is merely seeking reimbursement for the double payments it made to Brandenburg for the ACS Traffic during the two-year period prior to the discovery of the error.

Brandenburg's affirmative defenses that BellSouth's claims are barred by the doctrine of laches, the statute of limitations, Kentucky Administrative Regulations, or otherwise time barred are without merit. BellSouth notified Brandenburg immediately in 2004 once it became aware of the error and requested reimbursement for the overpayments going back only two years from that date. The Kentucky statute of limitations on claims such as this that arise under a written contract is 10 years. KRS 413.090(2). Section XI of the written Agreement for the Provision of Telecommunications Services and Facilities, see Formal Complaint, Exh. 1, under which this claim is made, states that "[n]o

claims or adjustments of such charges, or any other claims with respect to this Agreement may be made more than two years after the date of the event that gave rise to the claim, except where such limitations are *contrary to law*;....” (Emphasis added.) Such a two-year limit is in fact contrary to the 10-year statute of limitations for such claims in Kentucky. Although BellSouth could have asked for reimbursement going back the full six years that it overpaid Brandenburg, it has not done so and is not going to now. BellSouth has limited its claim to the two years provided for in Section XI of the Agreement and has acted in good faith in trying to reach resolution with Brandenburg on this issue without having to involve the Commission, but has been unsuccessful.

CMRS TRAFFIC DISPUTE

BellSouth and approximately 25 other carriers, including Brandenburg, executed the Agreement attached as Exhibit 5 to the Formal Complaint. All of the Signatory CMRS Providers and the Rural LECs, *including Brandenburg*, agreed that they would “*accept BellSouth’s measurement of minutes of use and industry standard call detail records as the basis for the billing from and compensation to the Rural LECs for Covered CMRS Provider Traffic...*” and that they would “deduct the minutes of use for Covered CMRS Provider Traffic described in this Section from the total KRSP facility minutes of use which is billed to (or due through settlements), and due from, BellSouth.” Sec. 2.07 of the Agreement.

Pursuant to the Agreement, which was effective May 1, 2004, BellSouth provided Brandenburg with its measurements of minutes of use and the industry

standard call detail records (often referred to as "EMI Records") every week since the Agreement was signed. EMI Records are industry standard records that are accepted by carriers throughout the nation. Brandenburg agreed to use these EMI Records to determine the minutes of use for Covered CMRS Provider Traffic and to deduct those minutes from the minutes of use Brandenburg billed to BellSouth under the Agreement. Instead of using the EMI Records, Brandenburg immediately began on June 1, 2004, to use a process involving its own automatic message accounting (AMA) records to recalculate or revise the indicated CMRS deductions or credits.

Brandenburg's use of its own records resulted in inaccurate crediting of minutes of use for Covered CMRS Provider Traffic and in BellSouth's overpayment for such traffic. BellSouth agreed to review Brandenburg's records and helped identify where they were inadequate for the purposes agreed to by the Parties in the Agreement. See Formal Complaint, Exh. 7, for a full outline of the steps BellSouth took. BellSouth also worked with Brandenburg to help them understand the EMI Records when BellSouth discovered that Brandenburg was misreading and misusing those records. All this was to no avail since Brandenburg continued to refuse to accept the EMI Records as agreed to in the Agreement and refuses to reimburse BellSouth for the overpayment made while Brandenburg used incorrect data.

BellSouth denies Brandenburg's claims that BellSouth violated sections 1.05 and 2.04 of the Third Party Transit Traffic Agreement and that BellSouth delivered traffic to Brandenburg that it characterized as CMRS traffic when in fact

it was not and denies the remaining allegations in Paragraph 13 and those in Paragraph 14 of Brandenburg's Answer. BellSouth provided to Brandenburg the industry accepted standard records that Brandenburg agreed, but failed, to "accept" in Section 2.07 of the Agreement.

Section 2.07 of the Agreement is clear – Brandenburg and every other signatory to the Agreement agreed they would "*accept BellSouth's measurement of minutes of use and industry standard call detail records* as the basis for the billing from and compensation to the Rural LECs for Covered CMRS Provider Traffic..." and that they would "deduct the minutes of use for Covered CMRS Provider Traffic described in this Section from the total KRSP facility minutes of use which is billed to (or due through settlements), and due from, BellSouth." Sec. 2.07 of the Agreement. Failure by Brandenburg to use such records and to deduct such minutes is a clear and direct violation of the obligations agreed to by Brandenburg when it signed the Agreement.

[Signatures continued on following page]

For the foregoing reasons, BellSouth Telecommunications, Inc., respectfully reiterates its request that the Commission grant the relief requested in its Formal Complaint filed December 13, 2006, and any and all other legal and equitable relief to which it may be entitled.

Respectfully submitted,


MARY K. KEYER
General Counsel/Kentucky
601 W. Chestnut Street
P.O. Box 32410
Louisville, KY 40232
(502) 582-8219
mary.keyer@bellsouth.com

J. Phillip Carver
Senior Attorney
Suite 4300, 675 W. Peachtree St., NW
Atlanta, GA 30375
(404)335-0710
j.carver@bellsouth.com

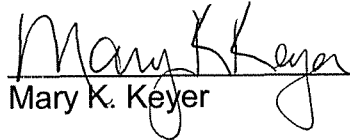
COUNSEL FOR BELL SOUTH
TELECOMMUNICATIONS, INC.

665660

CERTIFICATE OF SERVICE -- KPSC 2006-00546

It is hereby certified that a true and correct copy of the foregoing was served on the following individual by email, this 2nd day of February, 2007.

Hon. Holly C. Wallace
Dinsmore & Shohl, LLP
1400 PNC Plaza
500 West Jefferson Street
Louisville, KY 40202
Holly.Wallace@dinslaw.com


Mary K. Keyer