



S T O L L · K E E N O N · O G D E N
P L L C

2000 PNC PLAZA
500 WEST JEFFERSON STREET
LOUISVILLE, KY 40202-2828
MAIN: (502) 333-6000
FAX: (502) 333-6099
www.skofirm.com

DOUGLAS F. BRENT
DIRECT DIAL: 502-568-5734
douglas.brent@skofirm.com

May 20, 2010

RECEIVED

MAY 23 2010

PUBLIC SERVICE
COMMISSION

Jeff DeRouen
Executive Director
Kentucky Public Service Commission
P.O. Box 615
211 Sower Boulevard
Frankfort, KY 40601

*RE: Notice of Express Phone Service Inc.'s Intent to Adopt the
Interconnection Agreement Between BellSouth Telecommunications, Inc.
and New Talk, Inc.
Case No. 2010-00161*

Dear Mr. DeRouen:

Enclosed please find an original and ten copies of Express Phone Service, Inc.'s Reply.

Please indicate receipt of this filing by placing your file stamp on the extra copy and returning to me via the enclosed self-addressed postage paid envelope.

Very truly yours,

STOLL KEENON OGDEN PLLC

Douglas F. Brent

DFB:

Enclosures

113265.136449/627639.1

COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

IN THE MATTER OF

NOTICE OF EXPRESS PHONE SERVICE INC.'S)
INTENT TO ADOPT THE INTERCONNECTION)
AGREEMENT BETWEEN BELL SOUTH)
TELECOMMUNICATIONS, INC. AND)
NEW TALK, INC.)

Case No. 2010-00161

RECEIVED

MAY 23 2010

EXPRESS PHONE SERVICE INC.'S REPLY

PUBLIC SERVICE
COMMISSION

Express Phone Service, Inc. ("Express Phone") has filed its Notice of Intent to adopt the currently effective interconnection agreement between BellSouth Telecommunications, Inc. d/b/a AT&T-Kentucky ("AT&T-KY") and New Talk, Inc. AT&T-KY has objected, but its protest cannot displace the federal law that requires AT&T-KY to make the agreement available to Express Phone. The Commission should dismiss the objection and promptly order AT&T-KY to file a conformed copy of the agreement.

AT&T's sole objection to the Notice of Adoption is that the adoption of another agreement is premature since there is an agreement between Express Phone Service and AT&T that does not expire until August 23, 2013. AT&T fails to disclose that the existing agreement is a *resale-only* agreement which does not allow for the purchase of unbundled network elements ("UNEs") or collocation of facilities. In contrast, the agreement which Express Phone has noticed for adoption is a comprehensive interconnection agreement providing for resale, UNEs, collocation and numerous other matters which establish and full and complete interconnection relationship. The noticed

agreement is between New Talk, Inc. and AT&T; it was found to be in compliance with federal and state law and with previous Commission orders. Express Phone Service seeks to adopt that agreement in its entirety without changes, as it is permitted to do under law.

AT&T is obligated under the federal Telecommunications Act of 1996 to allow Express Phone to opt into the New Talk agreement. The Act provides at Section 252(i):

(i) AVAILABILITY TO OTHER TELECOMMUNICATIONS CARRIERS- A local exchange carrier shall make available any interconnection, service, or network element provided under an agreement approved under this section to which it is a party to any other requesting telecommunications carrier upon the same terms and conditions as those provided in the agreement.¹

Express Phone's request is made pursuant to Section 252(i) of the Act and the FCC's interconnection adoption regulation at 47 C.F.R. § 51.809. Congress included Section 252(i) in the Act as a primary tool for preventing discrimination under section 251.

As the FCC made clear in its *Local Competition Order*², "Section 252(i) entitles all parties with interconnection agreements to "most favored nation" status regardless of whether they include "most favored nation" clauses in their agreements."³ The statute would have no meaning at all if AT&T-KY could simply write its way around the requirement that it *shall make available* network elements provided under an approved agreement. After all, the FCC concluded that 252(i) was so important in preventing discrimination that a carrier "shall be permitted to obtain its statutory rights on an

¹ 47 U.S.C. § 252(i).

² *In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, First Report and Order, 11 FCC Rcd 15,499 (1996).

³ *Id.* at ¶ 1316.

expedited basis”⁴ rather than going through the procedures for initial section 251 requests. AT&T-KY simply is not the gatekeeper here.

Finally, as this Commission recently recognized in its February 18, 2008 Order in Case No. 2007-0255⁵, the FCC’s rule provides only two bases upon which an adoption request may be rejected: (1) where the costs of providing a particular agreement to one carrier are greater than the costs of providing the same terms to another carrier; and (2) where the provision of a particular agreement to the requesting carrier is not technically feasible. There is no such basis in play here.

Based on the foregoing, the Notice of Adoption should be summarily approved.

Dated: May 20, 2010

Respectfully submitted,



Douglas F. Brent
STOLL KEENON OGDEN PLLC
2000 PNC Plaza
500 West Jefferson Street
Louisville, Kentucky 40202
(502) 333-6000

Counsel for Express Phone, Inc.

⁴ *Id.* at ¶ 1321.

⁵ *Adoption by Nextel West Corp. of the Existing Interconnection Agreement by and between BellSouth Telecommunications, Inc. and Sprint Communications Company, L.P., Sprint Spectrum L.P. (“Nextel Adoption Order”)*

CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing was served on the following by first-class United State mail, sufficient postage prepaid, this 20th day of May, 2010.

Mary Keyer
General Counsel
AT&T-KY
601 W. Chestnut Street, Room 408
Louisville, KY 40203

AT&T Contract Management
311 S. Akard
Four AT&T Place, 9th Floor
Dallas, TX 75202



Douglas F. Brent