COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

TELECOMMUNICATIONS INTERCONNECTION AGREEMENTS PURSUANT TO THE TELECOMMUNICATIONS ACT OF 1996	) ADMINISTRATIVE) CASE NO. 358)

O R D E R

On April 29, 1996, the Commission, on its own motion, initiated this proceeding to receive comments regarding a request of AT&T Communications of the South Central States, Inc. ("AT&T"), submitted by letter dated March 25, 1996. AT&T requested all existing interconnection agreements between local exchange telecommunications companies ("LECs") certified by the Commission and other carriers be submitted for review by the Commission in accordance with Section 252(a) of the Telecommunications Act of 1996 ("the Act"). Further AT&T requested that a copy of these agreements be served on it so that it could participate in the review. AT&T stated that its participation would enhance the Commission's review and would also enable AT&T to protect its own interests. AT&T asserts it may need to obtain interconnection services under such agreements pursuant to Section 252(i) of the Act prior to obtaining an interconnection agreement of its own.

Subsequently, GTE South Incorporated ("GTE South") by letter dated April 16, 1996, and BellSouth Telecommunications, Inc. ("BellSouth") by letter dated April 16, 1996, filed comments stating that AT&T had misconstrued Section 252(a). GTE South asserts that the Act did not contemplate the filing of agreements consummated prior to

its effective date except for those which dealt with Section 251 issues - e.g., resale, unbundling and number portability. GTE South also points out that agreements in existence prior to the Act are not subject to Section 251 obligations since Section 251 duties did not exist when the agreements were signed. BellSouth states the Act requires the filing only of those preexisting agreements between the parties to a new Section 251 agreement that is submitted for approval. The context, BellSouth argues, determines the relevancy of a preexisting agreement. Both, GTE South and BellSouth urge the Commission to deny AT&T's request.

The Commission has received comments in support of AT&T from the Telecommunications Resellers Association, Sprint Communications Company L.P., WorldCom, Inc., American Communications Services of Louisville, Inc., American Communications Services of Lexington, Inc. ("ACSI"), and MCI Telecommunications Corporation ("MCI"). AT&T also filed further comments. Commenting in opposition were the Independent Telephone Group,[1] ALLTEL Kentucky, Inc. ("ALLTEL") and Cincinnati Bell Telephone Company ("Cincinnati Bell").

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[1] The Independent Telephone Group is comprised of Ballard Rural Telephone Cooperative Corporation, Inc., Brandenburg Telephone Company, Inc., Duo County Telephone Cooperative Corporation, Inc., Foothills Rural Telephone Cooperative Corporation, Inc., Harold Telephone Company, Inc., Highland Telephone Cooperative, Inc., Logan Telephone Cooperative, Inc., Mountain Rural Telephone Cooperative, Inc., North Central Telephone Cooperative, Inc., Peoples Rural Telephone Cooperative, South Central Rural Telephone Cooperative, Thacker-Grigsby Telephone Company, Inc., and West Kentucky Rural Telephone Cooperative.

Positions of the Parties

The LECs are united in their interpretation of Section 252 that agreements between noncompeting LECs consummated prior to the Act are not required to be resubmitted for review by the Commission. The Independent Telephone Group contends that existing interconnection agreements between incumbent LECs and other telecommunications carriers should be filed, while agreements between incumbent LECs should not.

ALLTEL states that the clear intent of the Act is to foster local exchange competition by requiring incumbent LECs to provide interconnection, thereby allowing new market entrants to provide local service. Consequently, ALLTEL concludes, agreements applicable to the noncompetitive, joint provisioning environment that existed under monopoly conditions are irrelevant to the inquiry mandated by the Act; therefore, only agreements reached pursuant to local competition initiatives in states which had initiated local competition before the United States Congress mandated it should be submitted.

Cincinnati Bell agrees, stating that the reference to "any interconnection agreement" negotiated before the date of enactment in Section 252(a)(1) was clearly intended to apply to those interconnection agreements negotiated in states which authorized local exchange competition before enactment of the Act. Cincinnati Bell also concludes that Section 252 cannot reasonably be read to apply retroactively to interconnection agreements that have already been approved by the Commission.

The potential alternative local exchange carriers ("ALECs") interpret Section 252 as requiring LECs to submit to the Commission for review and approval all agreements between themselves and any other telecommunications carriers in existence prior to the effective date of the Act. Their arguments generally focus on discrimination issues that, in their opinion, would develop if existing agreements are not available for review.

AT&T points to the prohibition on the discriminatory provision of services contained in the Act, in particular Section 252(c)(2) which requires LECs to provide interconnection on rates, terms and conditions that are just, reasonable and nondiscriminatory. In AT&T's opinion, only requiring these agreements to be publicly filed will guarantee that these requirements are met. To allow LECs to enter into agreements with other carriers on terms more favorable than those given to ALECs would, according to AT&T, defeat the nondiscriminatory mandate that underlies the Act.

ACSI also discusses the discrimination issue in great detail. ACSI cites the duty imposed by the Act upon incumbents to interconnect to any requesting telecommunications carrier and states that Congress did not limit this duty to any particular group of carriers. ACSI concludes that agreements between incumbents are necessarily covered by the Act. The company also points out that Congress could have limited the filing requirements, but chose not to do so. Finally, ACSI notes that the Wisconsin Public Service Commission has interpreted Section 252 to include all agreements for telecommunications services provided to other carriers and, accordingly, has ordered incumbents to file them.

Sprint notes that the only way to ensure competitive equity is through Commission review and approval of all interconnection agreements, both new and existing.

MCI requests that the Commission order BellSouth and GTE South to submit all agreements to the Commission promptly. MCI states it has already begun its negotiation process with these two companies and states it must review these prior agreements in that context. However, any argument that MCI needs these agreements to negotiate its interconnection arrangements may be made before the Commission in its specific cases. It will not be addressed now.

Federal Communications Commission ("FCC") Action

On August 8, 1996, the FCC issued an order[2] that promulgated, inter alia, rules applicable to the preexisting agreements discussed in Section 252. The FCC concluded that all interconnection agreements, including those entered into prior to the effective date of the Act, should be submitted to the state commissions for review. The FCC opined that state commissions should have the opportunity to review all agreements, including those negotiated before the new law was enacted, to ensure that such agreements do not discriminate against third parties and are not contrary to the public interest.[3] Furthermore, the filings should be public[4] and should include agreements

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2 CC Docket No. 96-98, Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; CC Docket 95-185, Interconnection between Local Exchange Carriers and Mobile Radio Service Providers (FCC 96-325, August 8, 1996).

3 Id. at 84.

4 Id. at 85.

between neighboring, noncompeting LECs.[5] The FCC recognized that preexisting agreements may not provide a reasonable basis for interconnection under the Act. If so, the state commission has authority to reject these agreements as inconsistent with the public interest.[6] If an agreement is approved, it will be available to other parties pursuant to Section 252(i) of the Act.[7]

The FCC left to the states the responsibility to establish procedures and reasonable time frames for requiring the filing of preexisting agreements in a timely manner, although a filing deadline of June 30, 1997 was established for agreements between Class A carriers.[8]

The Commission concurs with the reasoning of the FCC in this matter and will therefore require that all interconnection agreements existing prior to the effective date of the Act be filed for review no later than June 30, 1997. The Commission will review each agreement to ensure that it is in the public interest and that it does not discriminate against any carrier not party to the agreement. The filing requirement applies to, but is not limited to, interconnection agreements between Class A carriers, between Class B carriers, and between Class A and Class B carriers. However, the Commission may order specific agreements to be filed prior to June 30, 1997 if they are relevant to a negotiation, mediation, or arbitration case.

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5 Id. at 85-86.

6 Id. at 87.

7 Id.

8 Id. at 87-88.

IT IS THEREFORE ORDERED that all existing interconnection agreements between local exchange telecommunications companies certified by the Commission and other carriers, including other local exchange carriers, alternate local exchange telecommunications carriers, and alternate access providers, shall be submitted to the Commission for review no later than June 30, 1997.

Done at Frankfort, Kentucky, this 26th day of September, 1996.

PUBLIC SERVICE COMMISSION

Linda K Breathitt
Chairman

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Vice Chairman

Robert M. Davis
Commissioner

ATTEST:

Da Mills
Executive Director