

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

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

AND

PETITION BY BELLSOUTH)
TELECOMMUNICATIONS, INC. FOR)
ARBITRATION OF TERMS AND)
CONDITIONS OF A PROPOSED) CASE NO. 97-292
AGREEMENT WITH ALLTEL CONCERNING)
INTERCONNECTION PURSUANT TO THE)
TELECOMMUNICATIONS ACT OF 1996)

O R D E R

On September 26, 1996, the Commission ordered all existing interconnection agreements between local exchange telecommunication companies certified by the Commission and other carriers including other local exchange carriers, alternative local exchange telecommunications carriers, and alternative access providers to be submitted to the Commission for review no later than June 30, 1997. The Commission based this decision on the Federal Communications Commission's ("FCC") August 8, 1996, First Report and Order in CC Docket 96-98¹ ("Interconnection Order"), that promulgated inter alia, rules applicable to the pre-existing agreements discussed in Section 252 of the

¹ 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).

Telecommunications Act of 1996 ("the Act"), Pub. L. 104-104, 110 Stat. 56 (1996).² In response to its Order, the Commission received "interconnection" agreements between non-competing local exchange carriers. Some were filed under protest, some were renegotiated and at least one, between BellSouth Telecommunications, Inc. ("BellSouth") and ALLTEL Kentucky, Inc. ("ALLTEL"), was submitted for arbitration.

BellSouth requested arbitration with ALLTEL because the two parties could not renegotiate their pre-existing agreement. However, BellSouth stated that if the Commission did vacate the requirement to file pre-existing agreements then it would reinstate its pre-existing agreement with ALLTEL and the request for arbitration would be moot.³

The Commission joined other state petitioners in their suit against the FCC in federal court to appeal the jurisdiction issues of the Interconnection Order. The Eighth Circuit Court of Appeals issued its opinion on July 18, 1997.

The Eighth Circuit Court of Appeals vacated FCC Rule 51.303, which required state commissions to review all interconnections agreements, including any interconnection agreement negotiated before February 8, 1996. In finding that the FCC simply has no jurisdiction in this area, the Eighth Circuit Court of Appeals stated:

We emphasize that our conclusion that the FCC exceeded its jurisdiction in promulgating Rule 51.303 in no way reflects any view of the merits of the Commission's interpretation of subsection 252(a)(1), and we leave the determination of

² FCC Rule 51.303, Review of Preexisting Agreements.

³ BellSouth's Response to ALLTEL's Motion to Dismiss the Petition for Arbitration, July 31, 1997 at 4.

whether and which preexisting interconnection agreements must be submitted for state commission approval to the state commissions.⁴

Therefore, the Commission is not bound by the FCC rule and it is left to this Commission to determine if such pre-existing agreements between carriers should be reviewed for consistency with the Act. Accordingly, the Commission, on its own motion, reconsiders its decision requiring carriers to file their agreements.

The Commission finds that the decision of the FCC was flawed and that the need to examine past agreements entered into prior to the passage of the Act is not necessary to the development of local competition in the Commonwealth of Kentucky. Nor is it necessary pursuant to the terms of the Act itself. The interconnection agreements entered into prior to the passage of the Act between non-competing carriers are irrelevant to the competitive market. Thus, there is little, if any, value in reviewing agreements between non-competing local exchange carriers to prevent discrimination in the competitive marketplace.

IT IS THEREFORE ORDERED that:

1. The Commission's September 26, 1996 Order requiring the filing of pre-existing "interconnection" agreements between non-competing local exchange carriers is vacated.
2. Within 30 days of the date of this Order, the non-competing local exchange carriers that have filed negotiated agreements shall notify the Commission of their

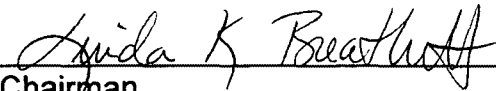
⁴ Iowa Utilities Board et al. v. Federal Communications Commission and United States of America, No. 3321 and Consolidated Cases (Opinion of July 18, 1997) at 124 and 126 N.26.

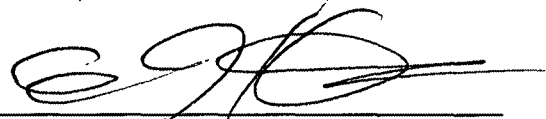
decision to seek approval of their renegotiated interconnection agreements or to reinstate their pre-existing agreements.

3. BellSouth shall reinstate its pre-existing agreement with ALLTEL and its request for arbitration is moot.

Done at Frankfort, Kentucky, this 24th day of October, 1997.

PUBLIC SERVICE COMMISSION


Chairman


Vice Chairman


Commissioner

ATTEST:


Executive Director