

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

AT&T COMMUNICATIONS OF THE)	
SOUTH CENTRAL STATES, INC.)	
)	
COMPLAINANT)	
)	
vs.)	CASE NO. 97-521
)	
BELLSOUTH TELECOMMUNICATIONS,)	
INC.)	
)	
DEFENDANT)	

O R D E R

On December 22, 1997, AT&T Communications of the South Central States, Inc. ("AT&T"), pursuant to KRS 278.260, filed its Complaint alleging, among other things, that BellSouth Telecommunications, Inc. ("BellSouth") has failed to comply with federal law, Commission Orders, and its own interconnection agreement with AT&T (the "Agreement") in regard to the testing, ordering, and provisioning of unbundled network elements ("UNEs"). The agreement at issue was approved by the Commission by Order dated August 21, 1997, in Case No. 96-482.¹

Pursuant to 807 KAR 5:001, Section 12(4), upon the filing of a complaint, the Commission must determine whether the complaint establishes a prima facie case and conforms to applicable regulations. Upon such determination, the Commission serves an Order upon the utility against which the complaint was made, ordering that utility to

¹ Case No. 96-482, In the Matter of the Interconnection Agreement Negotiations Between AT&T and BellSouth.

satisfy or answer the complaint. The Commission issued such an Order to BellSouth in this case on January 16, 1998. To date, BellSouth has neither satisfied the complainant nor answered the Complaint. Instead, on February 5, 1998, it filed a motion to dismiss ("BellSouth Motion"), arguing that the relief sought is beyond the Commission's jurisdiction and that, because the parties' agreement provides for alternative dispute resolution, judicial economy mandates dismissal. On February 25, 1998, AT&T filed its response to the motion.

BellSouth's first argument -- that the Commission should not hear this case because the Agreement provides for alternate dispute resolution -- lacks merit. The Agreement itself makes it clear that alternative dispute resolution is not the exclusive remedy available.² Even more to the point, this Commission is charged by statute with overseeing the rates charged and service provided by utilities operating in Kentucky. KRS 278.040. The Commission's jurisdiction over these matters is exclusive. Id. Furthermore, the Telecommunications Act of 1996 has been interpreted to confer upon state commissions the authority to oversee implementation of, and to enforce the terms of, interconnection agreements they approve. Iowa Utilities Bd. v. FCC, 120 F.3d 753, 804 (8th Cir. 1997). Thus, both federal and state law unequivocally empower this Commission to hear this case. Those laws are part of the parties' Agreement. See, e.g., Whitaker v. Louisville Transit Co., Ky., 274 S.W.2d 391, 394 (1954) (law existing at the time a contract is made becomes a part of the contract).

² Agreement at 17, ¶16.1 (discussing "[a] request by a Party to a court or a regulatory authority for interim measures or equitable relief").

BellSouth also asserts that "injunctive relief" and "specific performance," the remedies sought by AT&T, are beyond the Commission's jurisdiction. However, this Commission is empowered by federal law to enforce interconnection agreements it has approved. Iowa Utilities Bd., 120 F.3d at 804. In addition, Kentucky law states that this Commission may "require [utilities] to conform to the laws of this state, and to all reasonable rules, regulations and orders of the Commission not contrary to law." KRS 278.040(3). See also KRS 278.260 (the Commission may enter an order affecting rates or service complained of after a hearing); KRS 278.280 (upon complaint or upon its own motion, the Commission may investigate utility practices and determine "the just, reasonable, safe, proper, adequate or sufficient rules, regulations, practices, equipment, appliances, facilities, service or methods to be observed ... and shall fix the same by its order, rule or regulation"). If willful violations of Commission orders are found, the Commission may, in addition to requiring certain behavior of a utility, also assess penalties pursuant to KRS 278.990.

This Commission has consistently made clear its intention to allow parties to interconnection agreements to avail themselves of the administrative complaint process. For example, in its Orders in Case No. 96-482, the arbitration proceeding concerning this very Agreement, the PSC repeatedly stated that the Commission's complaint proceedings pursuant to KRS 278.260 would be available to resolve disputes arising from implementation of interconnection agreements.³

³ See, e.g., Order dated February 6, 1997, at 23-24 (stating that, if a competing local carrier believes it has been treated discriminatorily by an incumbent, "the complaint process is available"); Id. at 24 (parties "may bring complaints" regarding pricing and restrictions of use of unused transmission media); Id. at 28 ("[s]hould problems arise regarding the quality of service provided, AT&T may bring the matter to the Commission's attention").

It is appropriate for this Commission to deal with this Complaint, for the issues it raises go not only to the heart of the parties' interconnection agreement; they have far-reaching implications for the successful implementation of local exchange competition in this Commonwealth. There is an overriding public interest in ensuring that real competition develops in the local telecommunications market -- an interest the PSC intends to protect through assertion of its jurisdiction.

The Commission having been sufficiently advised, IT IS THEREFORE ORDERED that:

1. BellSouth's motion to dismiss the Complaint is denied.
2. Within 10 days of the date of this Order, BellSouth shall satisfy or answer the Complaint.

Done at Frankfort, Kentucky, this 8th day of April, 1998.

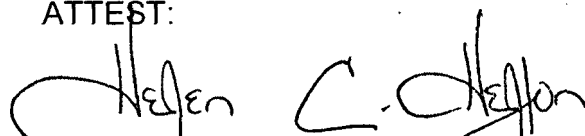
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