

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

APPROVAL OF THE)	
INTERCONNECTION AGREEMENT)	
NEGOTIATED BY BELL SOUTH)	
TELECOMMUNICATIONS, INC. AND)	
THE OTHER PHONE COMPANY D/B/A)	CASE NO. 98-165
ACCESS ONE COMMUNICATIONS,)	
INC. PURSUANT TO SECTIONS 251)	
AND 252 OF THE)	
TELECOMMUNICATIONS ACT OF 1996)	

O R D E R

On May 1, 1998, the Commission approved a resale agreement between BellSouth Telecommunications, Inc. ("BellSouth") and The Other Phone Company, Inc. d/b/a Access One Communications, Inc. ("Access One"). On April 9, 1999, the Commission approved an interconnection agreement between BellSouth and Access One. On April 1, 1999, BellSouth and Access One submitted to the Commission an amendment to their interconnection agreement. However, on April 20, 1999, prior to Commission approval of the April 1, 1999 amendment, BellSouth and Access One notified the Commission of the cancellation of the aforesaid interconnection agreement and amendment and submitted to the Commission a renegotiated interconnection agreement. This renegotiated interconnection agreement, executed April 16, 1999, is the subject of this Order.

On June 7, 1999, the Southeastern Competitive Carriers Association ("SECCA"), whose members include ITC Deltacom, Inc.; IGC Communications; MCI WorldCom; e.spire Communications; Business Telecom, Inc.; Competitive Telecommunications

Association; Time-Warner Telecom; Next Link Telecommunications Resource Association; Quest Communications; AT&T of the Southern States; and State Communications, filed comments regarding one section of the renegotiated agreement. Section 1.1.2, found at Page 2 of Attachment 2 to this agreement submitted April 20, 1999, contains the portion contested by SECCA and states in pertinent part:

BellSouth is willing to provide as a discretionary offering and above and beyond its obligations under the act, the engineering and technical expertise necessary to combine certain unbundled Network Elements on behalf of Access One for the purpose of Access One providing an end to end telecommunications service over BellSouth's Network Elements. Such professional services shall be pursuant to a separate agreement. This offer to pursue a separate agreement is only valid under the condition that its inclusion by reference does not subject the separate contract to regulation by federal or state commissions. Any request by either party to a regulatory body to arbitrate conditions of the separate agreement will invalidate this offer.

SECCA contends that the omission of the portion of the agreement relating to the combination of network elements precludes review by third parties and by the Commission, in violation of Section 252 of the Telecommunications Act of 1996. SECCA argues that under Section 252(e) a state commission reviews any interconnection agreement adopted by negotiation. Section 252(a) requires agreements regarding interconnection, services, or network elements to be submitted for review. Lastly, SECCA argues that the failure to submit this portion of the agreement denies competitors the ability to elect provisions contained in any interconnection agreement between an ILEC and a CLEC as required by Section 252(l). Without the ability to pick and choose, or indeed even to read the agreement, SECCA asserts that it is unprotected against discrimination by BellSouth.

On June 15, 1999, BellSouth responded to SECCA's comments. BellSouth argues that it can enter a separate, voluntary agreement outside of its interconnection obligations under the Telecommunications Act of 1996. According to BellSouth, this "side agreement" relates to the combination of certain unbundled network elements and not to the provision of network elements that are already combined. BellSouth argues that, because the Act does not require it to combine UNEs, a professional services arrangement between utilities regarding the combination of UNEs does not fall under BellSouth's obligations regarding the Telecommunications Act of 1996. Further, BellSouth contends that it would voluntarily offer a similar arrangement to any other carrier and offers to supply a copy of the separate agreement to the Commission for its review, subject to proprietary treatment.

Section 252 of the Telecommunications Act grants broad statutory authority to state commissions to review interconnection agreements. Subsection (a), coupled with Subsection (e), of Section 252 clearly indicates that the Commission must approve any interconnection agreement adopted by negotiation.

Section 252(a)(1) further provides that agreements reached through voluntary negotiations shall include "a detailed schedule of itemized charges for interconnection and each service or network element included in the agreement" and that the agreement shall be submitted to the state commission under Subsection (e). (Emphasis added). Matters contained in the separate agreement contended herein regard services provided by BellSouth to Access One and thus fall squarely within the definition of Section 252(a). Section 252(e)(1) further states that "any interconnection agreement adopted by negotiation or arbitration shall be submitted for approval to the state commission."

Moreover, this section provides that a state commission shall "approve or reject the agreement with written findings as to any deficiencies."

Based on the failure of BellSouth and Access One to provide their agreement for services related to network elements, the Commission finds that the partial agreement submitted is deficient and must accordingly be rejected. Because the agreement does not contain all matters agreed to relating to services provided by BellSouth to Access One, telecommunications carriers who are not a party to the agreement have suffered discrimination. Section 252(i) requires a local exchange carrier to make available "any interconnection, service, or network element provided under an agreement to which it is a party to any other requesting telecommunications carrier at the same terms and conditions as those provided in the agreement." The confidential nature of the separate agreement regarding combination of network elements precludes this mandated availability. Accordingly, the agreement is not in the public interest.

IT IS THEREFORE ORDERED that the April 20, 1999 agreement between BellSouth and Access One is hereby rejected for the reasons described herein.

Done at Frankfort, Kentucky, this 30th day of June, 1999.

By the Commission

ATTEST:

Executive Director