

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

AMERICAN COMMUNICATIONS SERVICES)
OF LOUISVILLE, INC. D/B/A E.SPIRE)
COMMUNICATIONS, INC.; AMERICAN)
COMMUNICATIONS SERVICES OF)
LEXINGTON, INC. D/B/A E.SPIRE)
COMMUNICATIONS, INC.; ALEC, INC.,)
AND HYPERION TELECOMMUNICATIONS)
OF LOUISVILLE, INC. F/K/A LOUISVILLE)
LIGHTWAVE)
)
COMPLAINANTS)
)
v.)
)
BELLSOUTH TELECOMMUNICATIONS, INC.)
)
DEFENDANT)

CASE NO. 98-212

O R D E R

Pending Commission decision are two motions filed by Hyperion Telecommunications, Inc. ("Hyperion"): a motion for summary judgment and a motion for oral argument on the summary judgment motion. Hyperion requests all legal issues be discussed during the oral argument. BellSouth has filed answers to both motions.

This case originated with a complaint filed by e.spire Communications, Inc. ("e.spire") against BellSouth Telecommunications, Inc. ("BellSouth"). e.spire alleged that BellSouth had breached the interconnection agreement between the two when BellSouth refused to compensate e.spire for handling local calls made to Internet

service providers ("ISPs").¹ e.spire stated that BellSouth has treated that type of call as a long distance call made over the Internet, as opposed to a local traffic call.² Lastly, e.spire requested that the Commission (1) issue a ruling that "all telephone calls placed within the same local calling area from a BellSouth end user to an e.spire end user" be deemed local traffic; (2) order BellSouth to compensate e.spire for its actions, including "past due amounts, plus interest, and all reasonable costs and attorneys' fees"; and (3) issue a ruling that any refusal on BellSouth's part to pay reciprocal compensation for ISP traffic "will be fatal to any application for authority to provide in-region long distance service."³

ALEC, Inc. ("ALEC") also filed a complaint against BellSouth on the same topic. This complaint became Case No. 98-255.⁴ The Commission consolidated the cases of e.spire and ALEC into Case No. 98-212 and closed Case No. 98-255. ITC Telecom Group, Inc. and Hyperion intervened in this case. Hyperion's motions are currently before the Commission.

The subject of ISP call traffic has caused much discussion in several venues, including other state public service commissions and the Federal Communications Commission ("FCC"). The FCC determined that calls to ISPs are interstate calls, due to

¹ Complaint of e.spire Communications at 2.

² Id.

³ Id. at 3-4.

⁴ Case No. 98-255, The Interconnection Agreement Negotiated By BellSouth Telecommunications, Inc. and ALEC, Inc., Pursuant to Sections 251 and 252 of the Telecommunications Act of 1996; ALEC, Inc. vs. BellSouth Telecommunications, Inc.

the global nature of the Internet.⁵ However, the FCC also decided that any existing interconnection contracts between ILECs and CLECs must be upheld.⁶ Finally, the FCC let stand the previous decisions of state commissions on interconnection agreements and reciprocal compensation.⁷

Thus, the subject is not settled. As such, the Commission agrees with Hyperion that oral argument is necessary to resolve the issues.

IT IS THEREFORE ORDERED that:

1. Oral argument on Hyperion's motion for summary judgment shall be heard on August 4, 1999, at 9:00 a.m., Eastern Daylight Time, in Hearing Room 1 at the Commission's offices at 730 Schenkel Lane, Frankfort, Kentucky.

2. Within 20 days of the date of this Order, parties shall file briefs addressing legal issues in this proceeding.

Done at Frankfort, Kentucky, this 25th day of June, 1999.

By the Commission

ATTEST:

Executive Director

⁵ Notice of Proposed Rulemaking in CC Docket No. 99-68, FCC 99-38, released February 26, 1999.

⁶ Id.

⁷ Id.