

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

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| APPROVAL OF THE RESALE |) | |
| AGREEMENT NEGOTIATED BY |) | |
| BELLSOUTH TELECOMMUNICATIONS, |) | |
| INC. AND NUSTAR COMMUNICATIONS |) | CASE NO. 97-392 |
| CORPORATION, PURSUANT TO |) | |
| SECTIONS 251 AND 252 OF THE |) | |
| TELECOMMUNICATIONS ACT OF 1996 |) | |

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

O R D E R

BellSouth Telecommunications, Inc. ("BellSouth") seeks rehearing of Commission Orders in two negotiated interconnection agreement matters. The Commission approved these agreements except for those portions of the contract signifying the applicability of laws of a state other than Kentucky. It is on this issue that BellSouth seeks rehearing. Because the relevant portions are identical, the Commission consolidates the proceedings for the purpose of addressing the motions for reconsideration.

On April 24, 2000, the Commission approved the negotiated agreement between BellSouth and The Other Phone Company, Inc. d/b/a Access One Communications, Inc.

("Access One") except for Section 18 of the contract. The Commission ordered that Section 18 must state, "This agreement shall be governed by, and construed and enforced in accordance with, the laws of the Commonwealth of Kentucky, without regard to its conflict of laws principles." The Commission determined that public interest dictated that the contract reflect the applicability of Kentucky law.

On May 15, 2000, the Commission approved a negotiated resale agreement between BellSouth and NuStar Communications Corporation ("NuStar") except for Section 18 of the contract. This section was also ordered to state "[t]his agreement shall be governed by, and construed and enforced in accordance with, the laws of the Commonwealth of Kentucky, without regard to its conflict of laws principles." As with the Access One agreement, the Commission found that public interest requires this contract to reflect the applicability of Kentucky law.

47 U.S.C. § 252(e)(2) provides for state commission rejection of agreements or portions of agreements which are inconsistent with the public interest. The Commission's decisions in these matters clearly indicate that the applicability of Kentucky law is necessary for these agreements to be consistent with the public interest. In interconnection agreements and resale agreements, unlike other commercial contracts, the rights and obligations of the parties regarding intrastate service flow directly from this Commission's determinations under both federal and state law. The inapplicability of Kentucky law to these contracts is not a term which the parties may negotiate in this Commonwealth. Moreover, BellSouth in its rehearing petition has presented no arguments which the Commission did not previously consider.

IT IS THEREFORE ORDERED that BellSouth's motions for reconsideration are denied.

Done at Frankfort, Kentucky, this 5th day of June, 2000.

By the Commission

ATTEST:


Executive Director