

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

INTERCONNECTION AGREEMENT BETWEEN)	
ACC OF KENTUCKY LLC AND BRANDENBURG)	CASE NO.
TELEPHONE COMPANY, INC. PURSUANT TO)	2001-229
SECTION 252(b) OF THE COMMUNICATIONS)	
ACT OF 1934, AS AMENDED BY THE)	
TELECOMMUNICATIONS ACT OF 1996)	

INTERIM ORDER

On August 8, 2001, ACC of Kentucky LLC ("ACC") filed a motion to establish an interim connection arrangement with Brandenburg Telephone Company, Inc. ("Brandenburg") for the exchange of all traffic between them during the pendency of this arbitration proceeding. In its response, Brandenburg states that it has offered to provide transport and termination for traffic originated by ACC and directed to its customers, but denies that it should be required to enter into such an arrangement with ACC for traffic originated by Brandenburg customers.

ACC is a commercial mobile radio service provider ("CMRS") authorized to provide cellular service in 36 counties located in south central Kentucky. Brandenburg is the incumbent local exchange carrier in one of those counties. Since February 15, 2001, the parties have attempted to negotiate an interconnection agreement pursuant to the provisions of Section 252 of the Telecommunications Act of 1996 (the "Act"). 47 USCA § 252. While the parties have been able to resolve many of the issues between them, several remain unresolved, including issues of transport and termination rates. To resolve the open issues, ACC petitioned this Commission for arbitration on July 25, 2001.

On April 20, 2001, during the course of their negotiations, ACC requested Brandenburg to interconnect their two systems and to provide transport and termination of Brandenburg traffic on an interim basis. Incumbent local exchange companies are required by 47 CFR 51.715 to provide such service immediately when requested by a carrier with whom they are negotiating an interconnection agreement. On June 22, 2001, Brandenburg responded to the request by offering to transport calls originated by ACC to Brandenburg customers and delivered to Brandenburg at facilities connecting an ACC cell site with the Brandenburg Radcliffe central office. As compensation for its services, Brandenburg proposed a rate of \$0.019678 per terminating minute of use, plus other specified charges. The proposal specifically stated that Brandenburg did not seek the same service from ACC and would not deliver traffic it originated to ACC. Brandenburg's refusal to deliver its traffic was unacceptable to ACC and the proposal was rejected. The parties have been unable to resolve this issue and on August 8, 2001, ACC filed this motion.

ACC's motion is made pursuant to Subsection (a) of 47 CFR 51. 715. It provides in relevant part:

(a) Upon request from a telecommunications carrier without an existing interconnection arrangement with an incumbent LEC, the incumbent LEC shall provide transport and termination of telecommunications traffic immediately under an interim arrangement, pending resolution of negotiation or arbitration regarding transport and termination rates and approval of such rates by a state commission under sections 251 and 252 of the Act.

The motion relates only to "local" traffic; that is, traffic between the two carriers that moves wholly within ACC's major trading area. Currently, this traffic follows the two separate routes proposed by Brandenburg in its response to ACC's original request: (1)

by direct delivery to Brandenburg for transport to the calls final destinations; or (2) by delivery first to an interconnected carrier, which then carries the calls to ACC for final transport and delivery. The former is the route followed by calls originated by ACC customers, and the latter is the route followed by calls originated by Brandenburg customers. Because an additional carrier participates in the carriage of the local calls originated by Brandenburg customers, additional charges are added to the cost of each call. ACC contends that this puts it at a competitive disadvantage in comparison to Brandenburg. The purpose of ACC's motion is to eliminate the discrepancy in cost.

While Brandenburg concedes that it is required to provide "transport and termination" for ACC traffic directed to its customers, it maintains that the regulation does not require it to seek the same service from ACC. Brandenburg also notes that calls originated by its customers are completed to ACC customers under existing interconnection arrangements and, therefore, Brandenburg contends that ACC does not qualify for relief under the regulation.

Brandenburg's assertion that ACC does not qualify for an interim agreement appears to be based on subsection (1) of 47 CFR 51.715 (a). It provides:

This requirement shall not apply when the requesting carrier has an existing interconnection arrangement that provides for the transport and termination of telecommunications traffic by the incumbent LEC.

The exception that is provided by this subsection is clearly inapplicable to ACC. ACC has no direct interconnection arrangement with Brandenburg providing for transport and termination of traffic. In the absence of an arrangement with Brandenburg for the transport and termination of all traffic between them, ACC remains entitled to the relief offered by the regulation.

The Commission must, then, decide which interim services are required by the regulation to be provided by an incumbent local exchange carrier during the arbitration process. More specifically, it must determine what services are included in the "transport and termination of telecommunication traffic," as that term is used in the regulation. ACC contends that the regulation applies to all telecommunication service, while Brandenburg contends that it does not apply to traffic originated by its customers. The regulation does not specifically address the issue. Therefore, it must be examined in light of its intended purpose and the intended purpose of the statute that underlies its promulgation.

The Act was designed to establish a competitive market for local exchange service. To accomplish that purpose, the Act requires all incumbent local exchange carriers to interconnect their facilities with competing local exchange carriers who request access to their systems. 47 USCA § 251(c)(2). The Federal Communications Commission has determined that this obligation extends to CMRS providers who exchange local traffic with local exchange carriers. *Interconnection between Local Exchange Carriers and Commercial Mobile Radio Service Providers et al.*, CC Dockets 96-98 and 98-185, *First Report and Order*, FCC 96-325 (rel. August 8, 1996) at paragraph 1041. The Act further imposes on all incumbent local exchange carriers the obligation to negotiate and establish reciprocal compensation arrangements for the transportation and termination of telecommunications. 47 USCA § 251(c)(1). To facilitate the negotiation process, Section 252 of the Act establishes procedures for the execution and approval of interconnection agreements, including provisions for arbitration when the parties are unable to negotiate an agreement. 47 USCA § 252.

These provisions are clearly intended to expedite the interconnection process in order to establish competitive markets as quickly as possible. In furtherance of that goal, 47 CFR 51.715 provides a means by which parties in negotiation or arbitration may interconnect their facilities "immediately," thus allowing competing carriers to institute local service while disputed provisions are being resolved. That goal would be frustrated if incumbent carriers could restrict competing carriers to offering their customers local service only on calls they originated. We conclude, therefore, that during the negotiation and arbitration process, the regulation requires incumbent local exchange carriers provide the same local service to their customers that competing carriers with whom they interconnect provide to their customers.

This conclusion is supported by language in the regulation relating to the rates that may be established under an interim arrangement. Specifically, subsection (b) requires that the service provided under an interim arrangement be at "symmetrical rates." The regulation thus contemplates that the service provided be likewise symmetrical. ACC is, therefore, entitled to the interim relief that it has requested and its motion should be granted.

We further conclude that the services should be provided in the manner prescribed and for the rates specified in the interim agreement offered by Brandenburg on June 19, 2001, but modified to include traffic originated by ACC. In accordance with the regulation, any difference between those rates and the rates finally established by negotiation or arbitration should be subject to true up when these proceedings are complete. 47 CFR 51.715 (d).

The Commission, being otherwise sufficiently advised, HEREBY ORDERS that:

1. ACC's motion for an interim connection arrangement pending the resolution of this arbitration proceeding is granted.

2. ACC and Brandenburg shall, during the pendency of this proceeding, each furnish to the other transportation and termination of telecommunications traffic in the manner prescribed and for the rates specified in the interim agreement offered by Brandenburg, but modified by this Order to include traffic originated by ACC.

3. Any difference between those rates and the rates finally established by negotiation or arbitration shall be subject to true up when these proceedings are complete.

Done at Frankfort, Kentucky, this 2nd day of October, 2001.

By the Commission

ATTEST:

Deputy W. H. Fowler
Executive Director