

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

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

O R D E R

On October 10, 2001, Brandenburg Telephone Company, Inc. ("Brandenburg") filed a motion and supporting memorandum requesting reconsideration of the Commission's Interim Order issued on October 2, 2001. The motion further requested the Commission stay the Interim Order pending its decision on reconsideration or its final decision on the entire proceeding. On October 18, 2001, ACC of Kentucky LLC ("ACC") filed its response requesting that the October 2, 2001 Order be affirmed and that Brandenburg begin providing the services directed in the Order. On October 22, 2001, Brandenburg filed an addendum to its motion. The Addendum withdrew the earlier motion and supporting memorandum and refiled them as of the date the Addendum was filed. In addition, the Addendum requested that the Commission confirm several fact statements set forth therein and requested an oral hearing on the issues raised by the Interim Order.

The October 2, 2001 Order arose out of a motion by ACC to establish an interim connection arrangement with Brandenburg during the pendency of this proceeding. The motion was filed pursuant to 47 CFR 51.715, which requires an incumbent local exchange carrier ("ILEC") to establish an interim interconnection arrangement when

requested by a telecommunications carrier, pending resolution of negotiations or arbitration of an interconnection agreement between the parties. The Interim Order directed Brandenburg to establish a direct interconnection with ACC for the movement of local traffic originated by Brandenburg customers.

On October 12, 2001, at an informal conference conducted in these proceedings, it became immediately clear at the outset that the parties had misunderstood the Order and that Brandenburg's concerns were due largely, but not entirely, to that misunderstanding. Contributing to the misunderstanding was an error in the Order's discussion that was repeated in the ordering provisions. The misunderstanding concerned the scope of the Order and a perceived advantage that Brandenburg thought it conferred upon ACC. The purpose of the Addendum appears to be to broaden the scope of the reconsideration motion to include the issues raised at the informal conference that remained after the misunderstood provisions were explained. In this Order the Commission will address those issues, together with those raised in the original reconsideration motion. However, the Commission declines to confirm the factual statements presented in the Addendum *per se*, preferring to state those subjects in its own terms and in the context of its Order. In addition, time constraints will not permit a separate oral hearing on the issues.

ACC is a commercial mobile radio service provider whose major trading area covers 36 counties in south central Kentucky. Brandenburg is the ILEC in parts of one of those counties. At the informal conference Brandenburg representatives advised Commission Staff that they understood the Order to require them to rate all traffic between Brandenburg customers and ACC customers that originated and terminated

within the ACC 36 county trading area as local calls. Commission Staff advised Brandenburg that that was not what the Commission had ordered and that they would recommend that the Commission issue an Order clarifying the Commission's intent and correcting the errors in the October 2, 2001 Order that led to the misunderstanding. This Order is directed toward that end.

This proceeding is an arbitration instituted under Section 252 of the Telecommunications Act of 1996 ("the Act"). 47 USCA § 252. In this proceeding, ACC seeks to establish an interconnection agreement with Brandenburg. Brandenburg's service territory is divided into separate local calling areas. Calls between Brandenburg customers from one local calling area to another are routed through the calling customers' interexchange carriers ("IXCs") and are rated as toll calls. Calls within a local calling area from one Brandenburg customer to another are routed as local calls for which there is no toll charge. However, Brandenburg treats calls from its customers to ACC customers differently, and it was this difference that gave rise to ACC's motion.

Currently, calls that are from Brandenburg customers to ACC customers with numbers rated in the same local calling area are routed through the Brandenburg customers' IXCs and rated as toll calls. It was the purpose and intent of the Interim Order to remove this distinction so that all calls between Brandenburg customers and ACC customers with numbers rated in the same local calling area, including those originated by Brandenburg customers, would not be routed through an IXC. The Order did not affect calls between Brandenburg customers and ACC customers with numbers rated in different local calling areas. As the parties were advised at the informal conference, Brandenburg can continue to treat such calls as toll calls.

As noted earlier, Brandenburg's misinterpretation of the Order was likely due in part to an error that appears in both the discussion and the ordering paragraphs. To correct that error, the first sentence of the last paragraph beginning on page 5 should be amended as follows:

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 *Brandenburg*. (Emphasis added to reflect the revision)

Likewise, to both clarify the Commission's intent and to correct its error, paragraph 2 of the ordering paragraphs should be amended to read:

2. ACC and Brandenburg shall, during the pendency of this proceeding, each furnish to the other transportation and termination of *local* 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 *Brandenburg*. (Emphasis added to reflect the revisions)

While these changes address one of Brandenburg's major concerns with the Interim Order, they do not address all of Brandenburg objections.

During the course of the informal conference, Brandenburg expressed concern that the Interim Order might cause it to incur termination charges for calls it delivers to ACC customers. ACC maintains that under the Act it is entitled to compensation from Brandenburg for any calls that Brandenburg delivers to it for termination. Thus, under the Interim Order, calls from Brandenburg customers to ACC customers that originate and terminate within one of Brandenburg's local calling areas would be subject to such termination compensation. While Brandenburg does not concede that obligation, it is concerned that if ACC later prevails on that point it will be subject to charges that are

not covered by its current tariffs. Because of these concerns, Brandenburg renewed its request that the Commission stay its Order until the issues that it raises are subjected to hearing and a fuller examination. Alternatively, Brandenburg has now requested an opportunity to file a tariff that will allow it to recover the costs associated with its termination expense. However, as noted in the Interim Order, 47 CFR 51.715 specifically requires the immediate interconnection of facilities during the negotiation or arbitration process and makes no provision to accommodate the concerns expressed by Brandenburg. Therefore, the Commission will not delay implementation of the regulation.

Brandenburg raises additional arguments in its motion for reconsideration. Some of those arguments were addressed in the Interim Order and others are based on Brandenburg's misunderstanding of the Interim Order. Of those raised earlier, the Commission's position remains the same and requires no further discussion. Concerning the arguments based on Brandenburg's misunderstanding, this Order's clarification of the earlier Order should adequately remove them as issues. Other related issues raised by Brandenburg will be addressed in the final Order of this proceeding.

Therefore, for the foregoing reasons, the motion for reconsideration should be denied.

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

1. Brandenburg's motion for reconsideration of the Commission's Interim Order issued on October 2, 2001, and for a stay of the Order, is denied.

2. The Interim Order entered on October 2, 2001 is amended as follows, with the same effect as if the amendments were set forth in the original Order:

a. The first sentence of the last paragraph beginning on page 5 shall read as follows:

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 Brandenburg.

b. Ordering paragraph 2 shall read as follows:

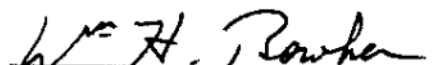
2. ACC and Brandenburg shall, during the pendency of this proceeding, each furnish to the other transportation and termination of *local* telecommunications traffic in the manner prescribed and for the rates specified in the interim agreement offered by Brandenburg, but modified by this Order to include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

3. Brandenburg's request for an oral hearing on its motion to reconsider is denied.

Done at Frankfort, Kentucky, this 9th day of November, 2001.

By the Commission

ATTEST:


Deputy Executive Director