

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ESSEX COMMUNICATIONS, INC.	)	
d/b/a eLEC COMUNICATIONS, INC.	)	
	)	
COMPLAINANT	)	CASE NO.
	)	2000-00518
v.	)	
	)	
BELLSOUTH TELECOMMUNICATIONS, INC.	)	
	)	
DEFENDANT	)	

O R D E R

The complaint of Essex Communications, Inc. d/b/a eLEC Communications, Inc. ( eLEC ) in this matter against BellSouth Telecommunications, Inc. ( BellSouth ) involves carrier billing issues. Certain matters in dispute in this proceeding have been resolved but others remain.

On June 21, 2002, BellSouth officially notified eLEC of its intention to disconnect eLEC s local resale service for nonpayment of carrier charges in Kentucky on July 22, 2002. By that same notice, BellSouth reminded eLEC of its responsibility to notify end-users. This letter and the attachment thereto are appended to this Order and incorporated herein. eLEC contacted Commission Staff on an informal basis to indicate that it would be unable to pay outstanding balances to BellSouth and would thus be notifying its customers to change carriers or be disconnected. As of July 25, 2002, eLEC indicated that all of its customers had been contacted. A copy of eLEC s electronic mailing to the Commission so stating is attached hereto and incorporated herein.

On July 30, 2002, BellSouth petitioned the Commission for approval of a plan to provide notification to eLEC s customers who have not yet notified BellSouth of a selection of a local telephone service provider. BellSouth agreed to allow eLEC until close of business on July 22, 2002 to pay its outstanding balance and retain service with BellSouth. eLEC has failed to pay the outstanding balance and thus is not retaining service with BellSouth.<sup>1</sup> BellSouth agreed to give eLEC until July 31, 2002 to complete the customer notification.

BellSouth, through its petition, has now agreed to a further notification of the remaining eLEC customers who have not made other service arrangements by sending a letter to customer locations identified in BellSouth s records. BellSouth also has agreed that it will not disconnect any of eLEC s customers through the transition date of August 15, 2002 and that it will assume the cost of serving those customers in this interim period. In exchange for this additional notice and service provided to these customers during this transition period, BellSouth requests that the Commission find that this plan will not result in liability to BellSouth for unauthorized carrier changes under KRS 278.535. BellSouth also requests that the Commission find that the plan does not result in any release of customer propriety network information ( CPNI ) that has been prohibited by the Federal Communications Commission.

The Commission has reviewed BellSouth s proposed plan contained in its petition and the accompanying customer notice letter and finds that the plan will not result in liability to BellSouth for unauthorized carrier changes or CPNI violations.

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<sup>1</sup> See the attached facsimile transmission dated July 16, 2002 wherein eLEC acknowledges debt of approximately \$70,000. Though BellSouth asserts the debt is much greater, eLEC still agrees that it cannot pay the debt, which it does acknowledge.

The Commission further finds that the issues remaining pursuant to eLEC's complaint, except for one back-billing issue regarding applicable UNE rates, are moot. The issues are moot in that they concern ongoing billing matters.

In regard to the back-billing issue, BellSouth's response to eLEC's data request filed May 28, 2002, indicates at Item No. 11 that it has charged eLEC UNE zone rates for zones 1, 2 and 3 in Kentucky based on rates in effect at the time of service. BellSouth admits that due to billing system constraints it was not able to bill all UNE zones and thus billed only the lowest rate UNE zone 1 until billing changes were upgraded. Moreover, BellSouth indicates that eLEC was notified that this true-up would take place when BellSouth's systems were upgraded. The Commission finds that BellSouth should bill eLEC UNE rates in effect at the time of the service rendered to eLEC. However, the Commission further finds that BellSouth and eLEC should negotiate a mutually agreeable time frame for the payment of the UNE back-billing caused by BellSouth's billing system constraints.

The Commission having reviewed the record and having been sufficiently advised, IT IS HEREBY ORDERED that:

1. BellSouth, as the underlying ILEC, is authorized to provide notice of eLEC's discontinuation of service to eLEC's customers who have not yet selected alternate service providers and is further authorized to utilize customer records in order to accomplish this notification.

2. BellSouth shall continue to provide service to these eLEC customers during the transition period until August 15, 2002 as stated in BellSouth's customer notice letter.

3. As eLEC has indicated its intention to discontinue providing service in Kentucky and has so notified its customers, unless the Commission is otherwise notified, within 30 days of the date of this Order, the tariff previously filed by eLEC shall be removed and the utility's name stricken from this Commission's list of active utilities without further Order. This Order shall not be construed as prohibiting eLEC from filing a tariff in the future if it should once again wish to provide service in Kentucky.

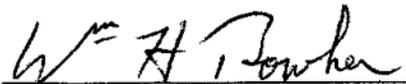
4. BellSouth may bill eLEC for past service rendered pursuant to its interconnection agreement and Commission Orders for UNE service rendered and shall accomplish this back-billing within a mutually agreeable period of time.

5. All other issues pending in the formal complaint are dismissed as moot, and this matter is hereby removed from the Commission's docket.

Done at Frankfort, Kentucky, this 2<sup>nd</sup> day of August, 2002.

By the Commission

ATTEST:

  
Deputy Executive Director

June 21, 2002

To: Joe Lacher, President - Florida  
Eddy Roberts, President - Kentucky  
Harry Lightsey, President - South Carolina

From: Lynn Smith, Operations Assistant Vice President - Billing and Collections

Subject: Non-Pay Disconnect for Local Resale Services

Elec Communications is being notified via certified letter, of BellSouth's intention to disconnect local resale services for non-payment of outstanding balances in Florida, Kentucky and South Carolina on July 22, 2002. Elec Communications has a responsibility to notify its end users that it will no longer be providing telecommunication services. This responsibility is reiterated in the attached certified letter.

This customer provides local resale services in Florida, Kentucky and South Carolina in the BellSouth region. This action has been reviewed and approved by Legal and upper management in Network & Carrier Services - Customer Services.

Should you or your staff receive any questions, please call me on (205) 714-7400.

Original signed by **Lynn Smith**

Attachment

cc: Bill Smith	Marshall Criser
Jan Funderburg	Nancy White
Trip Agerton	Tanya Lynn
Quinton Sanders	Shauna Grovell
Bill Stacy	Amy Martinez
Jerry Hendrix	Fred Gerwing
Dee Freeman-Butler	Creighton Mershon
Bill Thrasher	Gregg Morton
Mark Butterworth	Caroline Watson
Frank Batusic	

Attachment

June 21, 2002

Elec Communications  
Attention: Mr. Wesley Minella/Ms. Marie Abbagnaro  
543 Main Street  
New Rochelle, New York 10801

PLEASE REMIT PAYMENT TO:  
BellSouth Network & Carrier Services  
250 Williams Street  
Suite 5010 NW  
Atlanta, Georgia 30303

Dear Mr. Minella and Ms. Abbagnaro:

Attempts to collect past due amounts from Elec Communications have been unsuccessful and to date full payment has not been received. All accounts are currently in default in the amount of \$554,122.97 and subject to disconnection. A breakdown of these accounts is \$362,289.50 in Florida, \$190,799.77 in Kentucky, and \$1,033.70 in South Carolina. Pursuant to the Resale Agreement between BellSouth Telecommunications, Inc. and Elec Communications consider this letter written notice that BellSouth will proceed with the discontinuance of existing services in Florida, Kentucky and South Carolina on July 22, 2002. Pursuant to the Agreement, it is Elec Communications' responsibility to notify its end users of this impending disconnection.

In order to continue services, Elec Communications must pay, in immediately available funds, the present undisputed balance in the sum of \$554,122.97 to BellSouth. In order to prevent disconnection of services in Florida, Elec Communications must pay \$362,289.50. In order to prevent disconnection of services in Kentucky, Elec Communications must pay \$190,799.77. In order to prevent disconnection of services in South Carolina, Elec Communications must pay \$1,033.70. Also, payments are expected for any current bills that may become due. If service is interrupted, full non-recurring charges will be applicable to reestablish service.

If you have questions regarding your account, please contact the Billing Operations Manager, Leisa Mangina, at (205) 714-7359.

Sincerely,

Original signed by Lynn Smith

cc: Dorothy Chambers  
Stephen Rausch  
Patrick Freeman

**eLEC Communications Corp.  
543 Main Street / New Rochelle, New York 10801**

**Facsimile Transmission**

**Attention: Amy Doherty**

**Sender: Maria Abbagnaro**

**Company: KY PSC**

**Telephone: 914-633-3343 x1054**

**Telephone: 502-564-3940**

**Fax: 413-521-4592**

**Fax: 502-564-7279**

**Date: July 16, 2002**

You should receive -- 2 -- pages, *including this cover sheet*. If you do not receive all the pages, please call the number above.

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**CONFIDENTIALITY NOTE**

The information contained in this FACSIMILE may be proprietary, confidential, privileged or exempt from disclosure under law. If the reader is not the intended recipient, please inform the SENDER and shred your copy of this message.

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**Amy,**

**As we discussed, per the attached letter, BellSouth is going to terminate services in Kentucky as of Monday, July 22, 2002 if payment of \$190,799.77 is not received. eLEC acknowledges debt of approximately \$70,000.00.**

**eLEC has 536 lines in Kentucky, 449 customers, which will be effected by the termination of service. eLEC would like at least another 30 days prior to termination of service so that it may notify its end users, giving them 30 days to obtain another service provider.**

**To date end users have not been notified and payment has not been submitted to BellSouth because Essex Communications is in the process of being acquired by Essex Acquisition Corp. The proposed acquisition should take approximately another 30 days. BellSouth is aware of the proposed acquisition.**

**Please contact me if you need any other information.**

**Maria**

## Dougherty, Amy (PSC)

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**From:** Maria [mabbagnaro@elec-corp.com]  
**Sent:** Thursday, July 25, 2002 8:01 AM  
**To:** aedougherty@mail.state.ky.us  
**Subject:** RE: BellSouth's letter

Amy,

At this time, all of the customers have been contacted and informed that they must switch carriers as eLEC will no longer be providing services in Kentucky. The customers were given the following options: LEC Star, Talk, Epicus and BellSouth. Approximately 30 of the customers contacted were left messages regarding the termination of service and need to obtain a new carrier. eLEC does not have access to BellSouth's system to determine any loss of line information, further such loss of line information would not yet be useful as it is usually a few weeks behind.

As for my statement that eLEC is not going out of business in Kentucky, what I mean is that eLEC will not be surrendering its authority granted by the PSC to provide telecommunications services. At this time, we will not be taking any new customers as we do not have an underlying carrier. In the future, however, should eLEC make arrangements with another underlying carrier and begin to procure customers I will notify you and the commission.

Should you have any other questions please feel free to contact me at 914-633-3343. Please note I will be leaving at 2:00pm today.

Thank you.

Maria

-----Original Message-----

**From:** aedougherty@mail.state.ky.us [mailto:aedougherty@mail.state.ky.us]  
**Sent:** Wednesday, July 24, 2002 5:11 PM  
**To:** mabbagnaro@elec-corp.com  
**Subject:** RE: BellSouth's letter

Please explain how you are not going out of business and give me a status of your operations to notify your KY customers ASAP. Thanks.

-----Original Message-----

**From:** Maria [mailto:mabbagnaro@elec-corp.com]  
**Sent:** Thursday, July 18, 2002 3:39 PM  
**To:** aedougherty@mail.state.ky.us  
**Subject:** RE: BellSouth's letter

we are referring our customers to other telecommunication carriers. we are not going out of business in KY, however we used BellSouth as our underlying carrier in KY, therefore we will no longer have any customers.

-----Original Message-----

**From:** aedougherty@mail.state.ky.us [mailto:aedougherty@mail.state.ky.us]  
**Sent:** Thursday, July 18, 2002 3:35 PM  
**To:** mabbagnaro@elec-corp.com  
**Subject:** BellSouth's letter

Hope this helps. Did you find an acquirer or are you going out of business in KY?

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