

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

BRANDENBURG TELECOM LLC)	
)	
COMPLAINANT)	
)	CASE NO.
v.)	2002-00143
)	
VERIZON SOUTH, INC.)	
)	
DEFENDANT)	

O R D E R

The case before us arises from a Complaint of Brandenburg Telecom LLC (Brandenburg Telecom) against Verizon South, Inc. (Verizon) and implicates issues concerning the obligations of an incumbent local exchange carrier (ILEC) under the Telecommunications Act of 1996 (the Act); the obligations of Verizon, pursuant to its interconnection agreement with Brandenburg Telecom; and the policies of this Commission concerning the promotion of competition in the local telecommunications market. In this Order, we address the merits of the Complaint itself; the motion filed by Verizon for reconsideration of our initial Order in this case requiring emergency relief; and the motion filed by Brandenburg to seek enforcement of the emergency relief order.

Brandenburg Telecom alleges that its customers receive inferior service due to the failure of Verizon to transit calls from Brandenburg Telecom customers to the 304 NXX on a local basis. In order to complete these calls on a local basis the calls must be transited to a BellSouth tandem. Currently Brandenburg Telecom customers, unlike Verizon customers, must reach the 304 NXX by means of a ten-digit toll call. The 300

NXX will soon have the same dialing configuration. Other NXXs appear similarly affected. Brandenburg Telecom claims that Verizon is required by law and by its contract to provide transit that will enable Brandenburg Telecom customers to receive local calling to this NXX. Brandenburg Telecom also states that it is perfectly willing to reimburse Verizon for all costs Verizon incurs in transporting traffic to the 304 NXX by means of Verizon's Elizabethtown tandem pursuant to Section 12.5 of the parties interconnection agreement.¹

Verizon disputes Brandenburg Telecom's characterizations of both the law and the parties' agreement, and has filed a motion to dismiss the complaint.² The parties contract, Verizon asserts, does not specifically provide for the tandem-to-tandem service Brandenburg Telecom seeks.³ Verizon depends upon Section 12.1 of the parties' agreement, which defines Tandem Transit Traffic as traffic that originates on Brandenburg Telecom's network and is transported through a Verizon Tandem to the central office of a CLEC, ILEC other than Verizon, Commercial Mobile Radio Service (CMRS) carrier, or other LEC, *that subtends the relevant Verizon Tandem to which BTLCC delivers such traffic.*⁴ The definition further provides that Subtending Central Offices shall be determined in accordance with and as identified in the Local Exchange Routing Guide (LERG). Verizon asserts that, as the LERG identifies the subtending

¹ Post-Hearing Brief of Brandenburg Telecom at 3-4.

² Verizon South, Inc.'s Post Hearing Memorandum and Motion to Dismiss the Complaint of Brandenburg Telecom LLC (Verizon Brief).

³ Verizon Brief at 1.

⁴ Verizon Brief at 3, quoting the Agreement, Section 12.1 (emphasis supplied).

office of the BellSouth tandem in Louisville as that of Sprint Spectrum rather than that of Verizon, it has no obligation to transit, via its own Elizabethtown tandem, Brandenburg Telecom customers calls to the 304 NXX.⁵ Verizon further declares that it does not offer the service Brandenburg Telecom demands to any CLEC and that it had no intention to offer it to Brandenburg Telecom.⁶ Brandenburg Telecom, Verizon argues, should contact BellSouth or Sprint, the carriers whose networks Brandenburg Telecom customers calls must traverse, and negotiate its own agreement to provide its customers with toll-free calling to the 304 NXX.⁷ Further, Verizon claims that, as Verizon's access tandem in Elizabethtown and BellSouth's tandem in Louisville do not generate terminating records, Verizon cannot separate its own traffic to the 304 NXX from Brandenburg Telecom's and provide billing. Verizon claims that its expenses to provide this service to Brandenburg Telecom could even include legal expenses resulting from breach of its contracts with BellSouth and Sprint.⁸ Further, Verizon asserts that it has no obligation to exchange all traffic that is local to Brandenburg Telecom's customers; and that Brandenburg Telecom, not Verizon, is responsible for ensuring that its customers receive service at parity with that provided by Verizon.

We conclude that Verizon misreads the Act, and that its highly technical parsing of a single section of the parties contract fails to override three key considerations: [1]

⁵ Verizon Brief at 3.

⁶ Verizon Brief at 5.

⁷ Verizon Brief at 6.

⁸ Verizon Brief at 7.

47 U.S.C. § 251(b)(3) unequivocally places upon Verizon, as an ILEC, [t]he duty to provide dialing parity to competing providers of telephone exchange service and telephone toll service. Parity does not exist when the CLEC's customers must dial 10 digits and incur toll charges to reach a local number an ILEC's customers may reach by dialing 7 digits without a toll charge. [2] 47 U.S.C. § 251(c)(2) just as unequivocally imposes upon Verizon the duty to provide, for the facilities and equipment of any requesting telecommunications carrier, interconnection that is at least equal in quality to that provided by the local exchange carrier. [3] While the parties' contract does not, as Verizon points out, expressly provide for the technical mechanism that would resolve the problem of Brandenburg Telecom and its customers, it does not *exclude* use of such a mechanism; and it strains credulity to believe that the parties intended their contract to provide merely a portion of the local exchange service enjoyed by Verizon's customers to those of Brandenburg Telecom.

In short, we do not accept Verizon's construction of the parties' contract. To do so would be to hold that a single section's lack of specificity regarding a single mechanism to provide parity of service overrides the intent of the entire contract: to enable Brandenburg Telecom to compete with the incumbent in return for a reasonable price pursuant to 47 U.S.C. § 251. As Brandenburg Telecom points out, its customers' inability to make a local call to an NXX that is local to the incumbent's customers, unless it incurs the expense to duplicate a network structure that already exists, is highly destructive to its ability to compete.

However, even if the contract could be construed as Verizon suggests, the contract itself would be in violation of federal law requiring an ILEC to provide

interconnection at parity to a requesting telecommunications carrier. Under such circumstances, reformation of the contract by this Commission would be an appropriate remedy, particularly as the LERG is subject to constant revision, and, under Verizon's interpretation, would enable it unilaterally to delete portions of the local area available to Brandenburg Telecom customers. To the extent that this isolated provision in the parties' contract can be construed to subject Brandenburg Telecom and its customers to such practices, it is in violation of Section 251 of the Act, the requirements of which we have been given responsibility to enforce by Section 252(c)(1). As a result, it is unenforceable.⁹ Finally, as the regulatory body charged by the General Assembly to ensure that Kentuckians receive adequate and nondiscriminatory utility service upon reasonable terms and conditions, we cannot countenance the penalty visited upon Brandenburg Telecom's customers by Verizon's refusal, *even if it receives compensation from Brandenburg Telecom*, to transit the traffic at issue here.

Our decision today will not negatively affect Verizon. It will be fairly compensated. Pursuant to the instant agreement, once Brandenburg's transit traffic exceeds a DS1 level, Brandenburg will necessarily have to make alternative arrangements for transport of its traffic, thereby limiting any impact on Verizon's network.

As a final matter, we address Verizon's concern that its acquiescence in Brandenburg Telecom's request will subject it to legal expenses due to alleged breach of its contract with BellSouth. First, we note that Verizon has presented no testimony

⁹ See *Kessler v. Jefferson Storage Corp.*, 125 F.2d108, 111 (6th Cir. 1941) (legal portions of a contract will be enforced while those which are illegal will not).

from BellSouth to the effect that it would object to the arrangements Brandenburg Telecom seeks. In addition, the provisions of the Verizon-BellSouth agreement expressly contemplate that the parties will act as intermediary transit providers for a third party's traffic. Section 1.7 of the Verizon-BellSouth Local Interconnection attachment establishes the means for these arrangements.

Having addressed the merits of the complaint, we now turn to the two pending motions. Verizon's motion for rehearing is denied based on the rationale contained in this Order. Brandenburg Telecom's motion for the Commission to seek enforcement of its emergency order in a court of general jurisdiction is held in abeyance pending Verizon's expected compliance with this Order.

Accordingly, the Commission, having considered Brandenburg Telecom's complaint and Verizon's response thereto and having heard testimony on all issues and being otherwise sufficiently advised, HEREBY ORDERS that:

1. Verizon shall, not later than 3 days from the date of this Order, begin transiting all Brandenburg Telecom traffic destined for telephone numbers within the same local calling exchange, including traffic destined to the 304 NXX customers.
2. Brandenburg Telecom shall record the traffic transited to the 304 NXX customers and other similarly situated customers and shall supply billing information to Verizon.
3. Verizon shall bill Brandenburg Telecom at the relevant reciprocal compensation rates and for any other incurred expenses.

4. Verizon's motion for reconsideration of the Commission's April 24, 2002

Order is denied.

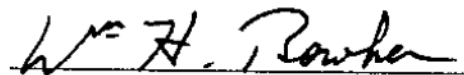
5. Brandenburg Telecom's motion to seek enforcement of the April 24, 2002

Order is held in abeyance.

Done at Frankfort, Kentucky, this 23rd day of May, 2002.

By the Commission

ATTEST:


Deputy Executive Director