

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

PETITION TO ESTABLISH DOCKET TO	)	
CONSIDER AMENDMENTS TO	)	CASE NO.
INTERCONNECTION AGREEMENTS	)	2004-00501
RESULTING FROM CHANGE OF LAW,	)	
KENTUCKY BROADBAND ACT	)	

O R D E R

On May 23, 2005, Cinergy Communications Company (“Cinergy”) filed a motion for rehearing of the Commission’s April 29, 2005 Order or, in the alternative, a clarification of the Order to ensure compliance with the Federal Communications Commission’s (“FCC”) transition period for the UNE-P “embedded customer base.” BellSouth Telecommunications, Inc. (“BellSouth”) filed a reply to the Cinergy petition on June 3, 2005.

Cinergy argues that the Commission should grant rehearing because existing contracts have not been abrogated or overturned by a court of competent jurisdiction. Cinergy asserts that the issue of BellSouth providing DSL over UNE-P is within the exclusive jurisdiction of the United States Court of Appeals for the Sixth Circuit, because the Order allowing DSL over UNE-P is currently on appeal in the Sixth Circuit. Cinergy argues that the Commission has no authority to modify or amend an Order for which judicial review is pending. BellSouth replies that the Order currently on appeal in the

Sixth Circuit is actually in Case No. 2001-00432,<sup>1</sup> a different proceeding, and that, therefore, the Commission does have jurisdiction to issue its Order in this case.

In addition, Cinergy argues that the Kentucky Broadband Act does not and could not mandate the result reached by the Commission. Cinergy states that the Commission's determination that "interconnection agreements in question in this proceeding must be altered" is unlawful and not warranted. Cinergy argues that the FCC's decision was intended to be used by ILECs in pending judicial proceedings and also that the Kentucky Broadband Act is not meant to be applied retroactively to abrogate existing agreements. Cinergy argues that, because its contract is still effective, it should not be changed. BellSouth responds that the legislative intent was expressly declared in the language "[a]ny requirement imposed upon broadband service in existence as of July 15, 2004, is hereby voided." KRS 278.5462(2).

Cinergy asks, in the alternative, that the Commission clarify its Order to state that it will reject any contract language that would have the effect of undermining the transition rates for the "embedded customer base." Cinergy explains that many of its business customers order several voice lines and also order DSL-based Internet access. BellSouth's method of provisioning DSL over UNE-P has been actually to provide DSL over resale lines. BellSouth then issues credits to Cinergy for the difference in price between the two rates. Even if only one line for that customer may have DSL, all lines are provisioned as resale. Cinergy understands the proposed contract language of BellSouth to mean that BellSouth may remove monthly credits on

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<sup>1</sup> Case No. 2001-00432, Petition of Cinergy Communications Company for Arbitrations of an Interconnection Agreement With BellSouth Telecommunications, Inc. Pursuant To U.S.C. Section 252.

resale lines of not only those that have DSL but also those in the same group that do not have DSL. BellSouth responds that it will not remove credits from lines that do not carry DSL which would have otherwise been UNE-P lines. BellSouth further commits that it will work with Cinergy to convert lines and not impose non-recurring charges. These lines will be treated as embedded lines and not new UNE-P orders.

Having considered Cinergy's motion and BellSouth's response thereto, the Commission finds that rehearing should be denied. Cinergy has raised no issue which has not previously been considered by this Commission. However, the Commission will grant Cinergy's alternative request. BellSouth must continue to treat those lines which, but for the presence of DSL, would have been UNE-P in a manner that prices those at the UNE-P rates during this transition period. The Commission advises all carriers that they should mutually agree on the methodology to accomplish this end without any material effect on or disruption of service to end-users.

The Commission HEREBY ORDERS that:

1. Cinergy's motion for rehearing is denied.
2. Cinergy's request for alternative relief regarding the rates for lines which, but for the presence of DSL, would have been UNE-P lines is granted.

Done at Frankfort, Kentucky, this 13<sup>th</sup> day of June, 2005.

By the Commission

ATTEST:



Executive Director