

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

BRANDENBURG TELECOM LLC)	
)	
COMPLAINANT)	
)	
v.)	CASE NO. 2006-00447
)	
BELLSOUTH TELECOMMUNICATIONS, INC.)	
)	
DEFENDANT)	

ORDER TO SATISFY OR ANSWER

BellSouth Telecommunications, Inc. ("BellSouth") is hereby notified that it has been named as defendant in a formal complaint filed on October 12, 2006, a copy of which is attached hereto.

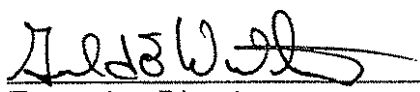
Pursuant to 807 KAR 5:001, Section 12, BellSouth is HEREBY ORDERED to satisfy the matters complained of or file a written answer to the complaint within 10 days from the date of service of this Order.

Should documents of any kind be filed with the Commission in the course of this proceeding, the documents shall also be served on all parties of record.

Done at Frankfort, Kentucky, this 20th day of October, 2006.

ATTEST:

By the Commission


for Executive Director

COMMONWEALTH OF KENTUCKY
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RECEIVED

OCT 12 2006

PUBLIC SERVICE
COMMISSION

In the Matter of:

BRANDENBURG TELECOM LLC)
Complainant)
v.)
BELLSOUTH TELECOMMUNICATIONS,)
INC.)
Defendant)
_____)

Case No. 2006-00447

FORMAL COMPLAINT

Brandenburg Telecom LLC ("Brandenburg Telecom"), by counsel, for its formal complaint against BellSouth Telecommunications Inc. ("BellSouth"), pursuant to KRS 278.260 and 807 KAR 5:001 sec. 12, hereby states as follows.

1. The full name and address of Brandenburg Telecom is Brandenburg Telecom LLC, 502 West Dixie Avenue, Elizabethtown, Kentucky, 42701. Brandenburg Telecom is a competitive local exchange carrier providing service to all or parts of Breckenridge, Grayson and Hardin Counties, Kentucky.

2. The full name and address of BellSouth is BellSouth Telecommunications, Inc., 601 W. Chestnut Street, Louisville, KY 40203. BellSouth is an incumbent local exchange carrier ("ILEC") under the Telecommunications Act of 1996 (the "Act") providing service in numerous counties in Kentucky.

3. The facts supporting this complaint are set forth more fully below; but briefly, this complaint concerns BellSouth's refusal to pay Brandenburg Telecom's switched access tariff rates in violation of the Kentucky Revised Statues.

APPLICABLE LAW

4. Pursuant to KRS 278.040, the Kentucky Public Service Commission (the "Commission") has jurisdiction "over the regulation of rates and service of utilities" within the Commonwealth.

5. Pursuant to KRS 278.280(2), the Commission shall prescribe rules for the performance of any service or the furnishing of any commodity of the character furnished or supplied by the utility, and, *on proper demand and tender of rates*, the utility shall furnish the commodity or render the service within the time and upon the conditions provided in the rules." (Emphasis added.)

STATEMENT OF THE FACTS

6. On April 26, 2005, and pursuant to Section 252(i) of the Act, the Commission approved Brandenburg Telecom's adoption of the interconnection agreement between BellSouth and Kentucky Data Link, Inc (the "Agreement").

7. By its terms, the Agreement is limited to "BellSouth territory in the state(s) of . . . Kentucky . . ." (Agreement, General Terms and Conditions, p.3) and governs the exchange of competitive traffic between BellSouth and Brandenburg Telecom, as well as the provision of transit traffic between Brandenburg Telecom and third-party local service providers.

8. The Agreement does not govern the parties' relationship in exchanges where Brandenburg Telecom does not provide services in competition with BellSouth.

9. Pursuant to the Agreement, in those exchanges in which Brandenburg Telecom provides services in competition with BellSouth, each party charges the other party BellSouth's switched access tariff rates for terminating intraLATA toll traffic.

For terminating its intraLATA toll traffic on the other Party's network, the originating Party will pay the terminating Party

BellSouth's current intrastate or interstate, whichever is appropriate, terminating switched access tariff rates as set forth in BellSouth's Access Services Tariffs as filed and in effect with the FCC or appropriate Commission. The appropriate charges will be determined by the routing of the call. Additionally, if one Party is the other Party's End User's presubscribed interexchange carrier or if one Party's End User uses the other Party as an interexchange carrier on a 101XXXX basis, the originating party will charge the other Party the appropriate BellSouth originating switched access tariff rates as set forth in BellSouth's Intrastate or Interstate Access Services Tariff as filed and in effect with the FCC or appropriate Commission.

(Agreement, Attachment 3, sec. 8.1.6.1.)

10. In those exchanges in which Brandenburg Telecom does *not* provide services in competition with BellSouth, each party charges the other its existing switched access tariff rates on file with the Commission for the provision of switched access services on either an interLATA or intraLATA basis.

11. BellSouth refuses to pay Brandenburg Telecom its switched access tariff rates for switched access services in exchanges where Brandenburg Telecom does not exchange competitive traffic with BellSouth. Rather, BellSouth claims Brandenburg Telecom should be charging BellSouth's switched access tariff rates.

12. BellSouth claims the Agreement governs the parties' exchange of traffic throughout BellSouth's nine-state region, including areas where the parties do not exchange competitive traffic, where the exchange is not within "BellSouth territory," and where the exchange is not within areas in which BellSouth is an incumbent local exchange carrier. Thus, BellSouth is attempting to convert the Agreement, which governs the exchange of competitive traffic, into a regional access agreement.

13. To date, BellSouth owes Brandenburg Telecom \$131,123.51 in unpaid switched access tariff charges.

14. Pursuant to 807 KAR 5:006, Brandenburg Telecom would be within its rights to provide BellSouth with written notice of termination based on BellSouth's refusal to pay Brandenburg Telecom's tariffed rates.

15. Because of BellSouth's market dominance, however, BellSouth knows Brandenburg Telecom is not in a position to terminate service to BellSouth because Brandenburg Telecom could not do so without harming its own customers.

16. Thus, BellSouth is leveraging its market dominant power in an attempt to force Brandenburg Telecom to accept less than its tariffed rates for switched access services. Even if Brandenburg Telecom were inclined to do so (which it is not), it could not do so without violating KRS 278.170 which prohibits discrimination with regard to rates or service. "No utility shall, as to rates or service, give any unreasonable preference or advantage to any person" *Id.*

COUNT I

FAILURE TO PAY TARIFFED CHARGES

17. Brandenburg Telecom restates and incorporates by reference each of the preceding allegations, as if fully set forth herein.

18. The filed-rate doctrine, codified at KRS 278.160, provides that telephone service provided in this Commonwealth shall be provided in accordance with a telephone utility's filed and approved tariff.

19. The Commission has interpreted this statute and doctrine to require that any "special contract that touches upon rates (or service)... [be] filed with the Commission in the same manner as the utility's generally available tariffs." *In the Matter of Kentucky Utilities Company Revised Special Contract with North American Stainless, L.P.*, Case No. 2003-00137, 2005 Ky. PUC LEXIS 885 (October 19, 2005); *see also* 807 KAR 5:011 § 13 (providing, "Every utility shall file true copies of

all special contracts entered into governing utility service which set out rates, charges or conditions of service not included in its general tariff.").

20. Thus, Kentucky law requires that telephone utilities provide service only in accordance with filed tariffs or filed contracts that specify the conditions and circumstances under which service will be furnished.

21. The Agreement, by its terms, is limited to BellSouth's service territory and governs the exchange of competitive traffic between BellSouth and Brandenburg Telecom. It does not govern the exchange of access services in exchanges where Brandenburg Telecom does not provide services in competition with BellSouth.

22. Pursuant to the filed-rate doctrine, compensation for these interLATA and intraLATA access services are governed by the parties' respective switched access tariffs on file with the Commission.

23. Brandenburg Telecom charges its customers for switched access services pursuant to Section 2, Rates and Charges, of its PSC KY Tariff No. 2 entitled "Regulations and Schedule of Intrastate Access Charges Within the Commonwealth of Kentucky."

24. Given BellSouth is receiving intraLATA switched access services from Brandenburg Telecom outside of areas governed by the Agreement, BellSouth is subject to Brandenburg Telecom's switched access tariff rates.

25. To date, BellSouth owes Brandenburg Telecom approximately \$131,123.51 in switched access charges pursuant to Brandenburg Telecom's PSC KY Tariff No. 2 on file with the Commission.

WHEREFORE, Brandenburg Telecom respectfully requests that the Commission take the following actions.

1. Declare that BellSouth is liable to Brandenburg Telecom for all past and future switched access service charges incurred pursuant to Brandenburg Telecom's tariff on file with the Commission;
2. Order BellSouth to pay all unpaid, tariffed charges due to Brandenburg Telecom; and
3. Grant Brandenburg Telecom any and all other legal and equitable relief to which it is entitled.

Respectfully submitted,



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