

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

SOUTH CENTRALTELECOM LLC)
)
COMPLAINANT)
)
v.) CASE NO. 2006-00448
)
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 13, 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
BEFORE THE PUBLIC SERVICE COMMISSION

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PUBLIC SERVICE
COMMISSION

In the Matter of:

SOUTH CENTRAL TELCOM LLC)
Complainant)
v.)
BELLSOUTH TELECOMMUNICATIONS,)
INC.)
Defendant)

Case No. 2006-00448

FORMAL COMPLAINT

South Central Telcom LLC ("South Central Telcom"), 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 South Central Telcom is South Central Telcom LLC, 1399 Happy Valley Road, Glasgow, KY 42141-1261. South Central Telcom is a competitive local exchange carrier ("CLEC") providing service to all or parts of Glasgow, 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 South Central Telcom'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. South Central Telcom provides competitive local exchange services in the Glasgow, KY area served by Windstream Kentucky East, Inc. ("Windstream").

7. According to its understanding of its obligations, South Central Telcom has made interconnection arrangements with WindStream pursuant to an interconnection agreement dated December 17, 2001, amended as of May 27, 2005, and approved by the Commission, as amended, on November 1, 2005.

8. BellSouth is not the incumbent service provider in South Central Telcom's competitive exchanges and the Parties exchange no traffic between them that is not interexchange and therefore subject to access fees.

9. South Central Telcom provides intrastate access pursuant to its intrastate access tariff effective on or about July 12, 2002.

10. South Central Telcom bills BellSouth and all interexchange carriers with whom it exchanges access traffic pursuant to its tariff.

11. BellSouth refuses to pay South Central Telcom its switched access tariff rates for switched access services. Instead, BellSouth claims that it will only pay for such services pursuant to an interconnection agreement between that Parties that would require South Central Telcom to provide favorable pricing to BellSouth by establishing rates set at something other than South Central Telcom's switched access tariff rates.

12. BellSouth representatives have stated that BellSouth will only pay South Central Telcom for BellSouth purchased access services if South Central Telcom agrees to its proposed interconnection agreement and, barring such agreement, will continue to withhold payment of billed access charges.

13. To date, BellSouth owes South Central Telcom \$52,886.13 in unpaid switched access tariff charges.

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

15. As a monopolist, however, BellSouth knows South Central Telcom is not in a position to terminate service to BellSouth because South Central Telcom could not do so without harming its own customers.

16. Thus, BellSouth is leveraging its monopolist power in an attempt to force South Central Telcom to accept less than its tariffed rates for switched access services. Even if South Central Telcom 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. South Central Telcom 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. 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.

22. Pursuant to *In the Matter of: Brandenburg Telecom LLC v. AT&T Communications of South Central States, Inc.*, Case No. 2002-00383, 2003 Ky. PUC LEXIS 351

(May 1, 2003), interexchange carriers are required to pay CLECs for switched access services pursuant to the respective CLEC's applicable access tariff.

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

24. Given BellSouth is receiving intraLATA switched access services from South Central Telcom, BellSouth is subject to South Central Telcom's switched access tariff rates.

25. To date, BellSouth owes South Central Telcom approximately \$52,886.13 in switched access charges pursuant to South Central Telcom's PSC KY Tariff No. 2 on file with the Commission.

WHEREFORE, South Central Telcom respectfully requests that the Commission take the following actions.

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

Respectfully submitted,



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