COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

PETITION BY AT&T COMMUNICATIONS OF THE SOUTH CENTRAL STATES, INC. AND TCG OHIO FOR ARBITRATION OF CERTAIN TERMS AND CONDITIONS OF A PROPOSED AGREEMENT WITH BELLSOUTH TELECOMMUNICATIONS, INC. PURSUANT TO 47 U.S.C. SECTION 252	)))))	CASE NO. 2000-465

O R D E R

On October 5, 2000, AT&T Communications of the South Central States, Inc. and TCG Ohio (collectively "AT&T") petitioned for arbitration of several issues concerning their proposed interconnection agreement with BellSouth Telecommunications, Inc. ("BellSouth"). BellSouth filed its response to the petition, the parties agreed to a procedural schedule, and a public hearing was held February 26, 2001. AT&T's petition indicated that there were 27 issues to be arbitrated. By the time of the hearing, only 13 issues remained. The other issues were settled or deferred to later proceedings, at the parties' request. The disputed issues, and the Commission's resolution of each, are discussed below.

Issue 1: Should calls to Internet Service Providers ("ISPs") be treated as local traffic for the purpose of reciprocal compensation?

AT&T has requested reciprocal compensation for terminating calls initiated by a BellSouth customer to its customers that are ISPs. BellSouth asserts that such compensation is unwarranted, but has agreed to abide by the Commission's Order in

Case No. 99-218,[1] in the ICG Telecom Group, Inc. ("IGC") arbitration case. In that case, the Commission ordered BellSouth to pay reciprocal compensation to ICG for terminating ISP-bound traffic.[2] The Commission found that in the absence of reciprocal compensation for ISP-bound traffic, competitive local exchange carriers ("CLECs") would be terminating many minutes of calls from BellSouth's customers without compensation.[3] The Commission determined that reciprocal compensation should be paid for ISP-bound traffic, pending a final determination by the Federal Communications Commission ("FCC"). The Commission stated as follows:

> Equity precludes this Commission from denying ICG any compensation from BellSouth for carrying BellSouth's traffic on ICG's local network. Furthermore, it is logical to consider a call to an ISP to be a call that is "terminated" locally, at the ISP server, because a protocol conversion occurs before the information is passed on to the Internet. In the wake of the FCC's pending determination, the most reasonable method for compensation is at the current rate for local calls. However, in addition the parties should track the minutes of use for calls to ISPs and be prepared to "true-up" the compensation consistent with the FCC's decision. Thus, the compensation ordered herein for ISP-bound traffic should be retroactively "trued-up" to the level of compensation ultimately adopted by the FCC.[4]

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[1] BellSouth's Post Hearing Brief at 2, referencing Case No. 99-218, A Petition by ICG Telecom Group, Inc. for Arbitration of an Interconnection Agreement with BellSouth Telecommunications, Inc. Pursuant to Section 252(b) of the Telecommunications Act of 1996, Order entered March 2, 2000.

[2] Chairman Martin J. Huelsmann dissented in the affirmation of this decision in Case No. 2000-404, The Petition of Level 3 Communications, LLC for Arbitration with BellSouth Telecommunications, Inc. Pursuant to Section 252(b) of the Communications Act of 1934, as Amended by the Telecommunications Act of 1996, Order dated March 14, 2001.

[3] Case No. 99-218, March 2, 2000 Order at 2.

[4] Id. at 3.

However, since the instant case was submitted to the Commission, the FCC has entered an order regarding reciprocal compensation.[5] In essence, the FCC has preempted this Commission from ordering reciprocal compensation for ISP-bound traffic. Accordingly, although the decision is almost certain to be appealed, for the time being, the parties should pay reciprocal compensation in accordance with the FCC's most recent determination. Any request for relief regarding these requirements should be directed to the FCC.

> Issues 4 and 5: What does "currently combines" mean as that phrase is used in 57 C.F.R. § 51.315(b) and should BellSouth be permitted to charge AT&T a "glue charge" when BellSouth combines network elements?

AT&T requests that BellSouth be required to combine UNEs for AT&T when BellSouth ordinarily combines the requested elements in its own network. Moreover, AT&T asserts that BellSouth should not be allowed to charge a "glue charge" when combining those elements. AT&T argues that the U.S. Supreme Court supports its view. According to the Court in AT&T Corporation v. Iowa Utilities Board, 525 U.S. 366 (1999), the Telecommunications Act of 1996

> "[f]orbids incumbents to sabotage network elements that are provided in discreet pieces, and thus assuredly contemplated that elements may be requested and provided in this form (which the Commission's rules do not prohibit). But it does not say, or even remotely imply, that elements must be provided only in this form and never in combined form."

[5] FCC 01-131, Implementation of the Local Competition Provisions of the Telecommunications Act of 1996 (CC Docket No. 96-98) and Intercarrier Compensation for ISP-Bound Traffic (CC Docket No. 99-68), Order on Remand and Report and Order, released April 27, 2001.

Moreover, AT&T asserts that the 47 CFR 51.309(a) supports its position. The rule provides that:

> An incumbent LEC shall not impose limitations, restrictions or requirements on requests for, or the use of unbundled network elements that would impair the ability of a requesting telecommunications carrier to offer a telecommunications service in the manner the requesting telecommunications carrier intends.

BellSouth, on the other hand, believes that recent rulings have eliminated the requirement that it provide combined elements. The Commission disagrees.

A competitor's right to obtain combinations of UNEs has been one of the more contentious issues arising from the passage of the Act and the rules originally promulgated by the FCC to implement the requirements of the Act. The rules of this Commission and of the FCC governing UNE combinations have their genesis in 47 U.S.C. § 251(c)(3) which imposes on ILECs:

> The duty to provide, to any requesting telecommunications carrier for the provision of a telecommunications service, nondiscriminatory access to network elements on an unbundled basis at any technically feasible point on rates, terms, and conditions that are just, reasonable, and nondiscriminatory in accordance with the terms and conditions of the agreement and the requirements of this section and section 252. An incumbent local exchange carrier shall provide such unbundled network elements in a manner that allows requesting carriers to combine such elements in order to provide such telecommunications service.

In short, BellSouth's competitors must have equal ability to provide services by means of UNEs. BellSouth consents to providing combined UNEs if the charge for combining them is "market-based."[6] However, the Commission has previously ordered

[6] BellSouth Brief at 8.

such fee, or "glue charge," to be cost-based, rather than market-based.[7] We affirm that decision here. Unless the "glue charge" is cost-based, BellSouth has created an unwarranted limitation on the use of UNEs that impairs the ability of AT&T to offer services. The "glue charge" shall be based on a TELRIC methodology. BellSouth shall file such cost-based charges for Commission review within 20 days of the date of this Order.

BellSouth next asserts that it will combine UNEs only when the requested network elements (i.e. the loop and the port) have been previously combined in its own network. AT&T argues that BellSouth should combine network elements for AT&T if BellSouth ordinarily, or typically, combines such elements for itself. The Commission agrees. Otherwise, BellSouth would be able to force unnecessary costs on its competitors, thus, impairing their ability to offer services. If the network elements are not currently combined then AT&T, or any competitor, would be forced to collocate facilities with BellSouth in order to serve the customer. BellSouth is not harmed by combining elements that are typically combined in its network if it is compensated by the CLECs for combining the elements.

Issue 6: Under what rates, terms, and conditions may AT&T purchase network elements or combinations to replace services currently purchased from BellSouth tariffs?

AT&T requests that it be allowed to convert the use of special access tariffed services to UNEs or to combinations of UNEs without incurring the "termination liability charge" contained in BellSouth's tariff. AT&T is asking that a current service be

[7] Case No. 99-348, Investigation Regarding Compliance of the Generally Available Terms of BellSouth Telecommunications, Inc. With Section 251(d) and Section 252(d) of the Telecommunications Act of 1996, Order dated October 5, 1998.

changed to a different rate structure; AT&T is not terminating any service. BellSouth, on the other hand, argues that AT&T has been receiving the benefit of term and volume discounts under the tariff and should not escape its termination charge liability.

AT&T wishes simply to change its service from the access tariff to a UNE when the UNE becomes available. No service is terminated and, thus, the Commission finds that the termination liability charge should not be assessed unless BellSouth can demonstrate a TELRIC-based cost for the conversion from the access tariff to the UNE.

Issue 7: How should AT&T and BellSouth interconnect their networks in order to originate and complete calls to end-users?

The disagreement between BellSouth and AT&T in this interconnection issue is whether BellSouth should bear the costs of carrying calls from its own customers to AT&T's customers. The Commission recently addressed this issue in the arbitration proceeding between Level 3 Communications, LLC ("Level 3") and BellSouth.[8] The Commission determined that Level 3 had a right to establish a minimum of one point of interconnection ("POI") per LATA. The Commission also recognized the potential for abuse in that arrangement and required the CLEC to establish another POI when the amount of traffic passing through a BellSouth access tandem switch reached a DS-3 level.

AT&T and BellSouth have provided no additional evidence or differing circumstances justifying a changed outcome. Thus, the Commission affirms its previous rulings in the Level 3 case. However, AT&T has agreed to establish at least

[8] Case No. 2000-404, Order dated March 14, 2001 at 1-4, Order dated April 23, 2001 at 1-2.

two physical POIs within each LATA where BellSouth provides service unless there is a de minimus volume of traffic across the LATA.[9]

AT&T may chose to provide two POIs per LATA, but based on the rationale contained in the Level 3 orders referenced herein, AT&T is required to provide only one POI per LATA. The Commission's decision complies with the standards set forth in 47 C.F.R. 51.703(b), which states that "[a] LEC may not assess charges on any other telecommunications carrier for local telecommunications traffic that originate on the LECs network." It also complies with the standards of 47 U.S.C. § 251(c)(2)(B), which requires BellSouth to interconnect at any "technically feasible point."

Issue 9: Should AT&T be permitted to charge tandem rate elements when its switch serves a geographic area comparable to that served by BellSouth's tandem switch?

AT&T seeks to charge tandem rate elements when its switch serves a geographic area comparable to that served by BellSouth's tandem switch. AT&T uses a single switching platform to transfer calls between multiple ILEC central offices, as well as to transfer calls between AT&T and the ILEC network. A tandem switch connects trunks and is an intermediate connection between the originating telephone call location and the final destination of the call. AT&T's switch performs many of the same functions that BellSouth's tandem switch performs.

According to AT&T, the only requirement for recovery of the tandem interconnection rate is that its switch serve a geographic area comparable to that served by BellSouth's switch. BellSouth, on the other hand, contends that AT&T's switch must not only serve a comparable geographic area but must also perform the same tandem

[9] AT&T Post Hearing Brief at 28, footnote 21.

switching functions as BellSouth's switch. BellSouth contends that the functionality of a CLEC's switch must be considered on a case-by-case basis. AT&T has, however, presented information to demonstrate that its switch performs similar functions to those performed by BellSouth's tandem switch.

Moreover, 47 C.F.R. 51.711 (a)(3) states that:

> "[w]here the switch of a carrier other than an incumbent LEC serves a geographic area comparable to the area served by the incumbent LEC's tandem switch, the appropriate rate for the carrier other than an incumbent LEC is the ILEC's tandem interconnection rate."[10]

Accordingly, AT&T should be compensated at the tandem interconnection rate.

Issue 13: What is the appropriate treatment of outbound voice calls over Internet Protocol telephony, as it pertains to reciprocal compensation?

AT&T asks this Commission to determine the appropriate treatment for outbound voice calls over Internet Protocol ("IP") telephony. IP telephony refers to the method of hauling and switching a telephone call. Traditional voice calls are analog calls and have been handled by the end office switch as analog signals. As a call is handled by the network, typically there is an analog to digital conversion, which occurs within the network. Then the packetized traffic will be hauled and later converted from digital back to analog.

AT&T agrees that traffic that originates at an end-user's premises as packetized traffic is appropriate for reciprocal compensation. As AT&T asserts, IP technology can

[10] Case Number 99-218, March 2, 2000 Order at 4.

support the use of the packet network to transmit voice service. A much more likely use will be that of a hybrid service that combines voice and data capability.[11]

BellSouth asserts that AT&T should not be allowed to avoid paying access charges or assessing reciprocal compensation from BellSouth when the packet switch technology has been used merely as a substitute for conventional long-distance services.[12]

This issue appears to be more hypothetical than actual. The Commission declines to address the issue of IP telephony in the absence of a more complete record focused on individual service offerings. The Commission needs an opportunity to analyze and consider this issue in greater detail. Either party may petition the Commission to address this issue should the use of IP telephony become more frequent.

Issue 16: Is conducting a statewide investigation of criminal history records for each AT&T employee or agent being considered to work on a BellSouth premises a security measure that BellSouth may impose on AT&T?

AT&T argues that it is unreasonable for BellSouth to require AT&T employees to have criminal background checks prior to being allowed unescorted access to BellSouth's central offices and other premises. BellSouth argues, on the other hand, that the criminal background checks for these employees or agents of AT&T is a necessary security measure. AT&T has been conducting such criminal background checks on its employees hired since April 1999. The dispute between the parties

[11] AT&T Brief at 61 through 64.

[12] BellSouth Brief at 26.

covers the period of January 1, 1995, the hiring date after which BellSouth requires AT&T's employees to undergo the criminal background check, and April 1999, the date on which AT&T began conducting criminal background checks of its own employees.

The Commission finds that there should be parity for security measures enforced from one company to another. Thus, if BellSouth conducts the criminal investigation background check for its own employees from the hiring date of January 1995 forward, then it is reasonable to impose the same requirement on AT&T's employee access. The scope, nature, and applicability of such criminal background checks must be identical between AT&T's employees that seek access to BellSouth's facilities and BellSouth's employees with similar access.

Issue 18: Has BellSouth provided sufficient customized routing in accordance with state and federal law to allow it to avoid providing Operator Services/Directory Assistance as a UNE?

The FCC has stated that, in order to avoid providing Operator Services/Directory Assistance ("OS/DA"), an ILEC must provide to all competitors access to alternate OS/DA providers. The ILEC may choose the method of access. If the ILEC provides customized routing as part of the local switching element, it is not required to provide this access as a UNE.

BellSouth argues that it provides two means of access: (1) the routing of OS/DA calls through the end-office switch using Line Class Codes ("LCC"), and (2) using the Advanced Intelligent Network ("AIN") to perform switch-based functions in on-line databases.

AT&T disputes the availability of these services and argues that BellSouth has not actually provided customized routing to any competitor in its service territory.

Furthermore, to bolster its argument, AT&T asserts the lack of business rules, provisioning intervals, stated prices or any terms and conditions for a competitor who wishes to obtain customized routing by either the AIN or LCC method. BellSouth, however, asserts that customized routing is available.

The Commission will not order BellSouth to offer OS/DA access as a UNE at this time. However, BellSouth must provide AT&T with a workable process to effectively utilize LCCs or the AIN. This process shall include, but not be limited to, documentation, processing intervals, pricing, and terms and conditions.

Issue 19: What procedure should be established for AT&T to obtain loop-port combinations (UNE-P) using both Infrastructure and Customer Specific Provisioning?

AT&T requests customized routing of OS/DA calls in conjunction with loop-port combination ("UNE-P") orders. AT&T requests the ability to establish a general "footprint" order that would apply absent any identified, customer-specific service arrangements. Additionally, AT&T wishes to specify different OS/DA routing for specific customer orders.

AT&T claims that BellSouth has not provided sufficient information to develop systems that will support "footprint" orders and argues that BellSouth requires a costly and complex ordering process utilizing LCCs to change OS/DA routing from the "footprint" for specific customers.

BellSouth argues that AT&T's ability to establish a "footprint" order has been resolved and maintains that service orders requesting different routing than the "footprint" requires correct LCCs as part of the customer order.

Both parties refer to the FCC determination in the Louisiana II order.[13] AT&T claims that the FCC requires BellSouth to allow AT&T to select more than one OS/DA routing option and prohibits BellSouth from requiring AT&T to supply actual LCCs in order to obtain OS/DA. BellSouth agrees only that the FCC requires a region-wide default OS/DA routing for CLECs.

First, the Commission finds that BellSouth should supply sufficient information for AT&T to develop the systems necessary to establish the proper procedures for "footprint" orders. This information should be supplied to AT&T within 90 days of this Order.

Second, the Commission finds that BellSouth should provide for the ability of AT&T to specify OS/DA routing for specific customer orders. BellSouth shall either (1) establish an "indicator," as opposed to LCCs, that AT&T can use on specific orders to change OS/DA routing for a customer; or (2) provide AT&T full and complete access to the necessary databases so that AT&T can efficiently and accurately determine the appropriate LCCs for a specific customer order.

Issue 22: Should the Change Control Process be sufficiently comprehensive to ensure that there are processes to handle certain specified situations?

AT&T requests certain alterations to the change control process ("CCP") to address various alleged problems. BellSouth advises that CCP is ever-evolving and regional in scope; that the CCP works; and that the Commission should not establish

[13] Application of BellSouth Corporation, BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc., for Provision of In-Region, InterLATA Services in Louisiana, FCC 98-271, CC Docket No. 98-121 (Released October 13, 1998).

state-specific processes. BellSouth also asserts that there are sufficient provisions for escalating disputes.

The Commission finds that the specific changes to the CCP recommended by AT&T are not warranted at this time. However, deficiencies in the CCP should be escalated as provided and, if necessary, brought before this Commission pursuant to the formal complaint process.

Issue 23: What should be the resolution of certain OSS issues currently pending in the Change Control Process but not yet provided?

AT&T asks the Commission to resolve certain OSS issues concerning (1) parsed customer service records for pre-ordering; (2) ability to submit orders electronically for all services and elements; (3) electronic processing after electronic ordering without subsequent manual processing by BellSouth personnel.[14] AT&T claims that the absence of these specific capabilities results in discriminatory access to OSS functions in violation of the 1996 Act and jeopardizes the development of competition. BellSouth responds that the capabilities sought by AT&T are either under consideration (item 1) or are not required for nondiscriminatory access to OSS functionality.

In regard to item 1, the Commission finds that the provisions of the CCP should be employed to resolve the parties' dispute. Once again, AT&T is advised that deficiencies in the CCP may be brought before this Commission through the formal complaint process. In regard to the remaining items, the Commission notes that the issues are under review in this and other BellSouth states as part of various inquiries

[14] See, e.g., Case No. 2001-105, Investigation Concerning the Propriety of InterLATA Services by BellSouth Telecommunications, Inc., Pursuant to the Telecommunications Act of 1996 (Kentucky PSC).

concerning whether BellSouth should be permitted to provide in-region, interLATA services pursuant to Section 271 of the 1996 Act. A full review of OSS issues in that proceeding, which is anticipated to include the adoption of performance standards and enforcement measures, will afford the Commission an opportunity to make comprehensive determinations regarding OSS matters. Accordingly, in this case, the Commission finds generally that BellSouth must provide nondiscriminatory access to its OSS functions at parity with the functionality it provides to itself.

Further, the Commission finds that non-discriminatory access to BellSouth's OSS functions at parity with the functionality that BellSouth provides to itself means that (1) the interfaces used by CLECs must be electronic; (2) the interfaces must provide the capability to perform functions with the same level of quality and efficiency as BellSouth provides to itself; (3) the interfaces must have adequate documentation to allow a CLEC to develop and deploy systems and processes, and to train its own employees; and (4) the interfaces must be able to meet the ordering demand of all CLECs with a response time equal to that which BellSouth provides itself.

Issue 24: Should BellSouth provide AT&T with the ability to access, via EBI/ECTA, the full functionality available to BellSouth from TAFI and WFA?

AT&T requests access through a machine-to-machine interface with the same functionality as TAFI. BellSouth, however, maintains that TAFI affords nondiscriminatory access to its maintenance and repair OSS and that no further access is required. Pending review in Case No. 2001-105, the Commission declines to decide this issue with specificity. However, it reiterates that the 1996 Act requires BellSouth to

provide nondiscriminatory access to its OSS functions at parity with the functionality BellSouth provides to itself.

The Commission, having considered AT&T's petition, BellSouth's response thereto, and all other evidence of record, and having been otherwise sufficiently advised, HEREBY ORDERS that:

1. Reciprocal compensation shall be paid for calls terminated to an ISP in accordance with FCC dictates, though this Commission has previously determined such traffic to be local in nature.

2. BellSouth shall combine for AT&T any UNEs that it typically combines for its own customers, but BellSouth may charge AT&T a TELRIC-based combining fee.

3. Within 30 days of the date of this Order, BellSouth shall file TELRIC-based combining fees.

4. BellSouth shall not assess AT&T a termination liability charge, where AT&T is converting tariffed special access services to UNEs or combinations of UNEs.

5. AT&T shall establish at least one POI per LATA and BellSouth shall pay to transport its own customers' originating traffic to that POI.

6. AT&T shall establish another POI when the amount of traffic passing through to a BellSouth access tandem reaches AT&T's network exceeds a DS-3 level.

7. BellSouth shall compensate AT&T for use of its switch at the tandem interconnection rate.

8. Until a more complete record focusing on individual service offerings has been developed, the Commission declines to address the appropriate treatment for outbound voice calls over IP telephony.

9. BellSouth shall impose on AT&T's employees no greater requirement for criminal records check, including the scope and applicability of the check, than it does for its own employees with similar access.

10. Based on BellSouth's assertions that customized routing is currently available, the Commission will not order BellSouth to offer OS/DA access as a UNE at this time; however, BellSouth shall, within 30 days of the date of this Order, submit to AT&T, with a copy to this Commission, a workable process to effectively utilize LLC or the AIN.

11. Within 90 days of the date of this Order, BellSouth shall supply sufficient information to AT&T, with a copy to the Commission, which will enable AT&T to develop the systems necessary to establish the proper procedures for "footprint" orders for loop-port combinations.

12. BellSouth shall provide either an "indicator" or access to necessary databases to AT&T so that AT&T may specify OS/DA routing for specific customer orders.

13. No change to the CCP is warranted at this time; however, if AT&T believes that the escalation process yields insufficient progress, then AT&T may file a complaint against BellSouth with this Commission.

14. BellSouth shall provide non-discriminatory access to its OSS functions at parity with the functionality it provides to itself, as described herein.

Done at Frankfort, Kentucky, this 16th day of May, 2001.

By the Commission

ATTEST:

Executive Director