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 May 16, 2001, the Commission entered an Order addressing all disputed issues related to the interconnection agreement between AT&T Communications of the South Central States, Inc. and TCG Ohio (collectively "AT&T") and BellSouth Telecommunications, Inc. ("BellSouth"). On June 5, 2001, BellSouth filed a motion for reconsideration of certain issues and clarification of certain others. AT&T has responded. The Commission's resolution of each issue on rehearing is discussed below.

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?

BellSouth claims that it cannot lawfully be required to combine elements for a specific customer, if those elements are not already combined, and reminds this Commission that the Eighth Circuit Court of Appeals, on remand from the United States Supreme Court in *Iowa Utilities Board v. Federal Communications Commission*, 525 U.S. 366 (1999), determined that the incumbent carrier is not, pursuant to a literal reading of the Telecommunications Act of 1996 (the "Act"), required to combine network

elements "'in any manner'" requested by another carrier.[1] We see no conflict between our Order and the Eighth Circuit's opinion; we have not required BellSouth to combine elements in "any manner." We have required only the combining of elements when such combinations *currently exist in BellSouth's network.* Furthermore, as BellSouth points out, the words of 47 U.S.C. § 251(c)(3) require it to provide elements "in a manner that *allows requesting carriers to combine* such elements in order to provide such telecommunications service."[2] (Emphasis added.) The same literal reading of the Act that BellSouth asserts frees it from the obligation of combining the elements also explicitly states that the "requesting carriers" are to "combine such elements." Accordingly, absent the requirement that BellSouth combine such elements, a requesting carrier would have to be allowed access to the BellSouth network to do its own combining of the elements if those elements are not already provided in combination to a customer. This would probably not be an efficient means of interconnection and could jeopardize network integrity.

Accordingly, we conclude that "currently combines," as set forth in Federal Communications Commission ("FCC") Rule 315(b), should be given the same meaning as "ordinarily combines," and BellSouth should combine for AT&T requested UNEs *if* those UNEs are ordinarily combined in BellSouth's network. In short, CLECs must be permitted to order from BellSouth UNE combinations even if the UNEs to serve a

[1] BellSouth's Motion for Reconsideration of May 16, 2001 Order ("BellSouth Motion") at 4 quoting *Iowa Utilities Bd. v. FCC*, 120 F.3d 753 (8th Cir. 1997), rev'd in part, 525 U.S. 366 (1999), cert. granted, 121 S.Ct. 878 (2001).

[2] BellSouth Motion at 4.

particular customer are not already combined, if such UNEs are the sort that BellSouth currently or typically combines in its network.

In so ruling, we do not rely solely on our reading of the FCC's rules. Instead, our ruling reaffirms our previous holdings regarding the necessity that new entrants to the local telecommunications market be permitted to obtain UNEs in combination. We base this, as we have based our previous rulings, on the Act's clear expression of congressional intent to ensure that competition in local telecommunications moves forward. Provision of the UNE-P in ways that do not hobble new market entrants will effectuate that intent. As the Georgia Commission has pointed out, even if "currently combines" in the "network" were read to mean "currently combined" to the particular customer the CLEC wishes to serve, CLECs would still be able to obtain the same UNE combinations. However, they would be required to submit two orders (for special access and then for conversion to UNEs).[3] There is no reasoned justification for requiring so circuitous and cumbersome a process to achieve the same end result – particularly as BellSouth does not, in fact, refuse to combine elements. Instead, it states it will provide those elements in combined form, but only at the price it believes it is entitled to set without regulatory oversight.[4] It asserts that TELRIC pricing is not appropriate because it "bears no necessary relationship to the current cost of doing such work."[5] BellSouth is in error. The "glue charge" ordered by this Commission for

[3] Docket No. 10692-U (Ga. PSC. Order dated 2-1-00), at 12.

[4] BellSouth Motion at 5.

[5] BellSouth Motion at 5.

the work of combining elements is explicitly based on the actual cost to BellSouth,[6] as are the other TELRIC prices set by this Commission.[7]

BellSouth also errs in concluding, as it apparently does, that its price for combining elements should not be set by this Commission. The law provides that state commissions are to "establish any rates of interconnection, services, or network elements" at issue between the parties in the course of an arbitration. 47 U.S.C. § 252(c). The combining of UNEs is clearly a "service" at issue in an arbitration. In addition, KRS 278.190, as well as other statutes in KRS Chapter 278, authorizes this Commission to set fair, just, and reasonable rates for Kentucky's regulated utilities. Accordingly, pursuant to both state and federal law, the just and reasonable amount BellSouth may charge for providing the service of combining elements is properly set in this proceeding. BellSouth must, therefore, file its cost-based "glue charges," with adequate documentation demonstrating cost-based justification for those charges, within 20 days of the date of this Order.

[6] May 16, 2001 Order at 5 (explicitly requiring the "glue charge" to be "cost-based," and noting that 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").

[7] *See MCI Telecommunications Corp. v. BellSouth Telecommunications, Inc.*, 40 F.Supp.2d 416 9E.D. Ky. 1999); *AT&T Communications of the South Central States v. BellSouth Telecommunications, Inc.*, 20 F.Supp.2d 1097 (E.D. Ky. 1998) (upholding this Commission's TELRIC prices because they are based on BellSouth's actual costs rather than on hypothetical costs).

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

BellSouth petitioned for rehearing of the Commission's determination on this issue, contending that it is entitled to assess a termination liability charge to AT&T when AT&T converts special access services into UNE-based service. BellSouth's position contains two flaws. First, when special access is converted to unbundled access, however, there is no "termination." The UNE combination continues to perform the same functions. Second, this issue arises, it appears, chiefly because BellSouth initially refused to provide the UNE combination to AT&T, and AT&T purchased special access instead. [8]

BellSouth asserts that purchasing UNEs is cheaper than purchasing special access services. This statement supports, rather than refutes, AT&T's claim that it would have purchased UNEs had BellSouth made them available to AT&T.[9] BellSouth should not benefit from the payment of termination liability charges for AT&T to convert to UNEs, when UNEs should long ago have been made available to AT&T. BellSouth has presented no new evidence to alter our previous decision. Thus, rehearing on this issue is denied.

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?

BellSouth seeks rehearing of the Commission's determination that AT&T should be compensated at the tandem interconnection rate for switching calls that originate

[8] AT&T's Opposition to BellSouth's Motion for Reconsideration at 7.

[9] AT&T's prefiled testimony of Follensbee at 21-22.

from BellSouth's subscribers and terminate to AT&T's subscribers. AT&T has a single switch for Kentucky located in Louisville. With that switch AT&T serves Kentucky. The geographical area served by AT&T's switch is comparable to that served by BellSouth's tandem switch. Thus, the FCC's requirement for obtaining the tandem interconnection rate is met,[10] and rehearing should be denied.

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?

Both parties have requested clarification of certain aspects of the Commission's decision on this issue. BellSouth has requested clarification of the Commission's requirement that it provide AT&T a workable process to effectively utilize line class codes ("LCCs") or the advance intelligent network ("AIN") as a means of accessing operator services/directory assistance ("OS/DA") providers. BellSouth contends that it provides routing of OS/DA calls through the end-office switch using LCCs and using the AIN to perform switch-based functions in on-line databases. It further states that it is "exploring the second option" of allowing AT&T to access its databases through AIN.[11] As BellSouth asserts that it is complying with the Order, it appears that no further clarification is needed.

AT&T asks that the Commission include in its Order explicit requirements that BellSouth provide documentation, processing intervals, pricing, and terms and

[10] See *In the Matter of Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92, Notice of Proposed Rulemaking (rel. April 27, 2001), at Paragraph 105.

[11] BellSouth Motion at 11.

conditions for utilizing the method it selects for ordering OS/DA. The Commission requires that BellSouth's documentation include complete and detailed business rules. The Commission advises that BellSouth is obligated to provide any and all information necessary for AT&T adequately and efficiently to utilize the resources supplied by BellSouth. If the documentation supplied by BellSouth does not contain the information needed by AT&T, then AT&T should make that known to the Commission through a separate complaint proceeding.

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

BellSouth requests clarification of the Commission's decision that it is not required to undertake any steps other than providing one of two alternatives for AT&T to specify OS/DA routing for specific customer orders. The two alternatives are either (1) to 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) to provide AT&T full and complete access to necessary databases so that AT&T can determine appropriate LCCs for a specific customer order. BellSouth is employing the alternative of providing AT&T access to its databases. Having described which of the two alternatives it chooses, BellSouth is in compliance with the Commission's Order.

AT&T requests that the Commission clarify its requirement that AT&T's orders for OS/DA routing for a customer must be handled electronically. The Commission finds that additional treatment of this issue is unnecessary at this time. The issue here is one of parity. BellSouth should supply to AT&T OS/DA routing electronically if electronic treatment of such routing is accorded to BellSouth itself.

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

BellSouth requests clarification of one aspect of the Commission's definition of non-discriminatory access to OSS. The Commission stated that the interfaces used by CLECs must be electronic.[12] BellSouth asserts that in handling complex orders for retail customers, BellSouth utilizes manual processing for its own orders just as it does for AT&T's orders. Thus, according to BellSouth, there is no discrimination in the way BellSouth's retail customer service units are treated when compared to the retail customer service orders of AT&T. Accordingly, the Commission clarifies this requirement as follows: the interfaces used by CLECs must be electronic if BellSouth can handle the identical order electronically for itself. If, however, BellSouth utilizes manual processing for the same type of order for its own customers, then it may utilize manual processing for a CLEC's customer order.

The Commission, having considered the motion of BellSouth, the response of AT&T, and having been otherwise sufficiently advised, HEREBY ORDERS that:

1. The parties requests for clarification are granted in part as described herein.

2. Within 20 days of the date of this Order, BellSouth shall file its cost-based "glue charges" for the combining of elements to specific customers when the combinations ordered by AT&T are currently found in BellSouth's network, such charges to be filed together with adequate documentation demonstrating justification for the charges.

[12] May 16, 2001 Order at 14.

3. Within 30 days of the date of this Order, BellSouth and AT&T shall submit their signed interconnection agreement complying with the Commission's mandates herein.

4. Except as specifically altered herein, the Order of May 16, 2001 remains in full force and effect.

Done at Frankfort, Kentucky, this 22nd day of June, 2001.

By the Commission

ATTEST:

Deputy Executive Director