

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

INVESTIGATION CONCERNING THE)	
PROPRIETY OF PROVISION OF INTERLATA)	CASE NO.
SERVICES BY BELL SOUTH)	2001-00105
TELECOMMUNICATIONS, INC., PURSUANT)	
TO THE TELECOMMUNICATIONS ACT OF)	
1996)	

O R D E R

On December 5, BellSouth Telecommunications, Inc. (“BellSouth”) filed a motion to place certain Self-Effectuating Enforcement Mechanism (“SEEM”) payments in escrow. BellSouth had previously filed a motion to modify the SEEM plan which requested in part removal of any penalties related to the provision of line sharing. Many Competitive Local Exchange Carriers responded opposing this motion. BellSouth has replied and this motion is pending Commission review.

BellSouth requests that the payments for penalties regarding line sharing be placed in escrow pending the Commission’s determination on the motion to modify the SEEM plan itself. According to BellSouth, the Federal Communications Commission (“FCC”) determined in its Triennial Review Order¹ that line sharing is no longer an unbundling requirement that Incumbent Local Exchange Carriers are required to offer

¹ *Report and Order and Order on Remand and Further Notice of Proposed Rulemaking* (FCC-03-36). *In the Matter of Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, et al.*, CC Docket No. 01-338, *et al.*, FCC 03-36 (rel. Aug. 21, 2003)(“Triennial Review Order”).

pursuant to 47 U.S.C. Section 251. BellSouth contends that payments to be made as of December 15, 2003 which are applicable to penalties incurred during October 2003 should be placed in escrow. BellSouth asks, in the alternative, that it be permitted to offset future SEEM payments if the Commission subsequently determines that the line sharing penalties should not have been required for service rendered after October 2003.

On December 12, 2003, DIECA Communications, Inc., d/b/a Covad Communications Company ("Covad"), AT&T Communications of the South Central States, Inc. ("AT&T"), and MCImetro Access Transmission Services, LLC ("MCI") responded to the BellSouth motion. They object, stating that BellSouth seeks to enjoin the SEEM plan before any hearing or argument on the substantive motion to modify the plan. Covad, MCI and AT&T do not, however, oppose the alternative of allowing BellSouth to offset future SEEM payments with the line sharing penalties paid for service rendered during and after October 2003 should those penalties be determined inappropriate.

The Commission finds that BellSouth's motion to escrow funds associated with payment of line sharing penalties should be denied. The Triennial Review Order provides for a 3-year transition period for line sharing.² The rationale for creating the SEEM performance measures and penalties has not been altered by the Triennial Review Order. BellSouth is still required to provide new line sharing arrangements and maintain existing ones. The payment of penalties on a real-time basis provides appropriate incentives to BellSouth to treat its competitors fairly and compensate those

² Triennial Review Order at ¶¶ 264-269.

competitors for injuries sustained when service does not meet BellSouth's own predetermined standards.

The Commission does, however, find that it would be appropriate to offset future penalties with those attributable to line sharing penalties, if the Commission subsequently finds that the latter should be eliminated.

IT IS THEREFORE ORDERED that:

1. BellSouth's motion to place line sharing penalties in escrow beginning December 15, 2003 is denied.

2. BellSouth's proposal to offset future penalties with those attributable to line sharing penalties for service rendered during and after October 2003, should BellSouth prevail on the substantive issues, is granted.

Done at Frankfort, Kentucky, this 15th day of December, 2003.

By the Commission

ATTEST:

A handwritten signature in black ink, appearing to read "Thomas H. O'Dell", written over a horizontal line.

Executive Director