

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

REVIEW OF FEDERAL COMMUNICATIONS)	
COMMISSION'S TRIENNIAL REVIEW ORDER)	CASE NO.
REGARDING UNBUNDLING REQUIREMENTS)	2003-00379
FOR INDIVIDUAL NETWORK ELEMENTS)	

O R D E R

This Order addresses pending procedural motions. On January 26, 2004, BellSouth Telecommunications, Inc. ("BellSouth") filed additional discovery requests sent to 12 telecommunications utilities. According to BellSouth, this discovery was filed pursuant to its motion of January 6, 2004, which requested a delay in filing data requests. The entities from which BellSouth seeks additional discovery are AT&T Communications of the South Central States, Inc.; Cinergy; Dominion Telecom, Inc.; Level 3 Communications, LLC; Qwest; Wiltel Local Network, LLC; XO Long Distance Services, Inc.; Xspedius Management Company; Telcove; SBC Telecom, Inc.; ICG Telecom Group, Inc.; and Kentucky ALLTEL, Inc.

Moreover, on January 30, 2004, BellSouth filed a motion to compel certain entities to respond to BellSouth's requests for discovery. In conjunction with this request, BellSouth also asks that the procedural schedule be adjusted to accommodate this discovery. BellSouth asserts that it has issued discovery requests to various competitive local exchange carriers ("CLECs") that may be providing local exchange service to mass market customers in Kentucky through the CLECs' own facilities.

BellSouth has requested this Commission to compel responses from the following entities: Dialog Telecommunications, Inc.; East Kentucky Network, LLC; e-Tel, LLC; ICG Telecom Group, Inc.; Kentucky Data Link, Inc. d/b/a Cinergy Networks; NewSouth Communications Corp.¹ ("NewSouth"); North Central Communications, Inc.; Adelphia Business Solutions, d/b/a Telcove; Electric and Water Plant Board of the City of Frankfort; Xspedius Management Company of Louisville, LLC; Bardstown City of Cable TV; Bowling Green Municipal Utilities; Hopkinsville Electric System; Murray Electric System; Owensboro Municipal Utilities; Paducah Power System; and Henderson Municipal Power and Light.

In addition, BellSouth asserts that it is involved in discussions with Brandenburg Telecom, LLC, Lightyear Telecommunications, LLC, and South Central Telcom, LLC regarding the provision of this information. BellSouth should notify the Commission if there is a breakdown of these discussions.

BellSouth requests this Commission to compel these entities, some of whom are not jurisdictional to this Commission, to respond to documents which BellSouth entitles First Set of Discovery, filed October 10, 2003, and Second Set of Discovery, filed November 24, 2003. These two documents total more than 80 pages of interrogatories and requests for production.

On February 3, 2004, NewSouth filed a motion for full intervention. NewSouth has supplied information to BellSouth and has participated in the January 14, 2004

¹ BellSouth's motion to compel responses from NewSouth was subsequently withdrawn.

informal conference. The Commission finds that NewSouth has an interest and should be allowed to intervene.

On February 6, 2004, Competitive Carriers of the South, Inc. ("CompSouth") responded to BellSouth's motion, stating that granting BellSouth all of the time it requested would harm CompSouth's preparation for the hearing.

While the Commission is sensitive to BellSouth's need to have information available to it to make its showing of no impairment by competitive carriers, the Commission cannot compel those persons listed herein by BellSouth to respond to more than 80 pages of nonspecific, non-tailored data requests. BellSouth indicates that, as an ILEC, it already has certain information regarding switches, high-capacity loops, and dedicated transport. Moreover, BellSouth indicates that it has purchased data from a third party entitled GeoResults, Inc.² However, BellSouth contends that CLECs are the best source of information regarding the specifics of their respective networks, their serving arrangements, and their customers.

The Commission herein finds that BellSouth may propound specific and non-burdensome requests specifically tailored to the utility from which information is requested and that these utilities should be compelled to respond to such specifically tailored requests. For those entities who are non-jurisdictional to this Commission, BellSouth may obtain subpoenas from this Commission pursuant to KRS 278.320, KRS 278.330, and 807 KAR 5:001, Section 6, and BellSouth must serve those subpoenas on these persons.

² Motion to Compel at 2.

The procedural requests granted herein necessitate changing the procedural schedule in this matter. Accordingly, IT IS THEREFORE ORDERED that:

1. The February 3, 2004 motion of NewSouth to intervene is hereby granted.

2. The January 26, 2004 request for additional discovery on 12 entities is hereby granted, with responses due March 1, 2004. The 12 entities are: AT&T Communications of the South Central States, Inc.; Cinergy; Dominion Telecom, Inc.; Level 3 Communications, LLC; Qwest; Wiltel Local Network, LLC; XO Long Distance Services, Inc.; Xspedius Management Company; Telcove; SBC Telecom, Inc.; ICG Telecom Group, Inc.; and Kentucky ALLTEL, Inc.

3. The January 30, 2004 motion of BellSouth to compel certain entities to respond to requests for discovery is hereby denied, but only to the extent that BellSouth has failed to propound specific and non-burdensome requests to those utilities jurisdictional to this Commission. Specific requests, tailored to each utility, may be filed no later than 7 days from the date of this Order, with responses due no later than March 1, 2004.

4. For those entities that are non-jurisdictional to this Commission, BellSouth's motion is inappropriate and is hereby denied; however, BellSouth may subpoena these entities and serve such subpoenas on the entities in question.

5. Direct testimony regarding switching issues shall be due February 11, 2004, as currently scheduled.

6. Direct testimony regarding loop and transport issues shall be due March 10, 2004.

7. All prefiled rebuttal testimony shall be due March 31, 2004.
8. Any surrebuttal testimony from all parties shall be due no later than April 13, 2004.

Done at Frankfort, Kentucky, this 9th day of February, 2004.

By the Commission

ATTEST:


Executive Director