

**COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION**

In the Matter of:

Petition of BellSouth Telecommunications )  
To Establish a Generic Docket to )  
Consider Amendments to Interconnection )  
Agreements Resulting from Changes )  
of Law )

Case No. 2004-00427

FORMAL COMPLAINT

The Electric and Water Plant Board of the City of Frankfort, KY (Frankfort Plant Board or FPB), by counsel, requests resolution of a dispute with regard to its interconnection agreement with BellSouth Telecommunications, Inc. (BellSouth), through a formal complaint pursuant to KRS 278.260 and 807 KAR 5:001(12), and states as follows:

1. The full name and address of the Frankfort Plant Board is The Electric and Water Plant Board of the City of Frankfort, KY, P.O. Box 308, 317 W. Second Street, Frankfort, KY 40602. Frankfort Plant Board is a facilities-based competitive local exchange company (CLEC) which provides local exchange service to its customers in the Frankfort and Franklin County Kentucky area.
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) which provides local telephone service in the Frankfort and Franklin County Kentucky area.
3. The facts supporting this complaint are set forth more fully below, but briefly this complaint concerns BellSouth's requirement that the Frankfort Plant Board (or FPB) sign a proposed "Market Agreement". Among other things, that agreement contains rates for certain services that are significantly higher

than the rates for the same services as contained in FPB's present interconnection agreement with BellSouth effective May 3, 2003, that was filed with and approved by the Public Service Commission. FPB is requesting that the rates in its filed interconnection agreement continue to remain in effect for the term of that interconnection agreement, at which time they will be subject to negotiation. BellSouth states its proposed Market Agreement must be signed and the rates take effect immediately or it will discontinue the provision of such services on March 18, 2005.

### **APPLICABLE LAW**

4. Pursuant to KRS 278.030(1): "Every utility may demand, collect and receive fair, just, and reasonable rates for the services rendered or to be rendered by it to any person." KRS 278.030(2) requires BellSouth to "furnish adequate, efficient and reasonable service..." It may not demand unfair, unjust, and unreasonable rates for the services it renders. And, it may not discriminate in the rates charged for providing a "like and contemporaneous service under the same or substantially the same conditions." KRS278.170.
5. Pursuant to KRS 278.040, the Commission has jurisdiction "over the regulation of rates and services of utilities" within the Commonwealth,
6. Pursuant to KRS 278.260, the Commission is vested with the express authority to investigate and remedy "complaint as to rates or service of any utility."
7. Pursuant to KRS 278.040(3), the Commission may adopt, in keeping with KRS Chapter 13A, reasonable regulations to implement the provisions of KRS Chapter 278 and investigate the methods and practices of utilities to require them to conform to the laws of this state, and to all reasonable rules, regulations and orders of the commission not contrary to law.

## STATEMENT OF THE FACTS

8. The Frankfort Plant Board negotiated and signed an interconnection agreement with BellSouth that was filed with and approved by the Kentucky Public Service Commission. The date of the interconnection agreement is May 3, 2003.
9. The term of the interconnection agreement is for a period of three years.
10. Under the "General Terms and Conditions", Paragraph 9 "Resolution of Disputes", is the following provision:

"Except as otherwise stated in this Agreement, if any dispute arises as to the interpretation of any provision of this Agreement or as to the proper implementation of this Agreement, the aggrieved Party shall petition the Commission for a resolution of the dispute. However, each Party reserves any rights it may have to seek judicial review of any ruling made by the Commission concerning this Agreement."
11. The interconnection agreement contains rates, terms, and conditions applicable to the provision of unbundled network elements, operator services, and other services. Because the Frankfort Plant Board is a facilities-based competitive local exchange company (CLEC), only certain of the services provided under the interconnection agreement are required for its operation. Among such services are items related to the provision of directory assistance and operator services, as well as calling name query data.
12. On January 20, 2004, FPB signed an amendment to the interconnection agreement proposed by BellSouth "to modify provisions pursuant" to the FCC's Triennial Order. This amendment continues to provide those services used by FPB under the same rates as provided in its May, 2003 interconnection agreement. The amendment states: "All of the other provisions of the Agreement, dated May 2, 2003, shall remain in full force and effect."

13. On July 13, 2004, FPB received a request from BellSouth that it enter into an amendment of the interconnection agreement to be “in compliance with Vacatur/Remand of Triennial Review Order”. (Attached as Exhibit 1) The proposed amendment was characterized by BellSouth as necessary to reflect “changes pursuant to the Court ruling by removing rates, terms and conditions for services that are no longer required to be offered at TELRIC rates.” The letter also stated the following: “This notice, including the reminder of your opportunity to pursue the dispute resolution process, is consistent with BellSouth’s commitment to Chairman Powell and the FCC that it will not unilaterally increase prices for carriers with current interconnection agreements.”
14. FPB upon review of the proposed Market Agreement recognized that certain rates contained therein were being proposed at substantial increases compared to rates already being provided through its currently effective (May, 2003) interconnection agreement. As an example, the rate for a CNAM query was increased from \$.0010348 per query to \$.008 per query. The increase to this one rate element would result in an increased expense of over \$3,300 per month to FPB, based on FPB’s most recent monthly usage.
15. FPB sent correspondence (attached as Exhibit 2) to BellSouth on July 14, 2004 requesting that it provide a justification for the proposed rate increases and an explanation of how certain rate elements were to be applied under the proposed contract. BellSouth did not provide a response at that time.
16. From the time the BellSouth Market Agreement was proposed on July 13, 2004, until the present day, BellSouth has continued to bill FPB for these services under the rates contained in its May, 2003 interconnection agreement. Upon receipt of the BellSouth billing, FPB has continued to pay its BellSouth bills in a timely manner.
17. On February 16, 2005 BellSouth sent a letter (attached as Exhibit 3) to the Frankfort Plant Board requiring that it sign the proposed Market Agreement within thirty days. According to BellSouth, if the agreement is not signed within thirty days of the date of the letter (by March 18, 2005) “BellSouth will

discontinue Frankfort Plant Board's utilization of BellSouth Operator Services and Directory Assistance".

18. Notwithstanding the BellSouth letter of February 16, 2005, FPB maintains that BellSouth should be required to abide by the terms of the May, 2003 interconnection agreement until the three-year term of that agreement has expired and the parties have the opportunity to negotiate new terms.
19. Because of the FPB's concern that its customers will be denied certain essential services if it does not sign the BellSouth amendment forwarded to it on February 16, 2005, and because if these services are denied its customers, the FPB will suffer irreparable harm, FPB is requesting that the Commission order the current interconnection agreement remain in effect pending the final order in this matter.
20. The FPB also requests that the Commission determine that the proposed amendment is contrary to the existing interconnection agreement and applicable law and that it be disallowed. It should also require BellSouth to begin negotiating in good faith a new interconnection agreement with FPB.

WHEREFORE, for the above reasons the Frankfort Plant Board respectfully requests that the Commission take the following actions.

1. Prior to March 18<sup>th</sup>, the date of threatened termination of service, order BellSouth to continue to provide service under the terms of the currently effective interconnection agreement and prohibit termination of service or change in rates and services pending the resolution of this complaint.
2. Order that the current interconnection agreement, as amended, remain in full force and effect for the term of the agreement.
3. Disallow the BellSouth amendment proposed to FPB on July 13, 2004 as contrary to applicable law.
4. Grant FPB any and all other relief to which it is entitled.

Submitted by,

John N. Hughes  
124 West Todd St.  
Frankfort, KY 40601  
502 227-7270  
Attorney for the  
Frankfort Plant Board

Certificate:

I certify that a copy of this Complaint was mailed to Dorothy Chambers, BellSouth, 601 W. Chestnut St., Louisville, KY 40203 and on all parties electronically as provided by Commission orders on March 4<sup>th</sup>, 2005.

---

John N. Hughes