COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

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| PETITION OF SPRINT COMMUNICATIONS COMPANY, L.P. FOR ARBITRATION WITH BELLSOUTH TELECOMMUNICATIONS, INC. PURSUANT TO SECTION 252(b) OF THE TELECOMMUNICATIONS ACT OF 1996 | ) ) ) ) ) | CASE NO. 2000-480 |

# O R D E R

On October 24, 2000, Sprint Communications Company, L.P. ("Sprint") petitioned for arbitration concerning its proposed interconnection agreement with BellSouth Telecommunications, Inc. ("BellSouth"). BellSouth filed its response to the petition, and a public hearing was held April 12, 2001. The petition originally contained 71 issues to be resolved. However, the parties have now resolved all but 11 issues. The disputed issues, and the Commission's resolutions of each, are discussed below.

1. Provision of co-carrier cross connects.

By letter dated May 3, 2001, Sprint notified the Commission that a section of the draft interconnection agreement, previously negotiated and agreed to, had been unilaterally deleted by BellSouth. This issue regarding co-carrier cross connects was not submitted earlier by the parties, because Sprint had understood that the matter had been resolved. By letter received May 18, 2001, BellSouth explains that it omitted the previously agreed-upon portion from the arbitration agreement in response to GTE Service Corp. v. FCC, 205 F. 3d 416 (D.C. Cir. 2000), in which the court had vacated

the Federal Communications Commission's ("FCC") rule requiring BellSouth to allow co-carrier cross connects between two or more competitive local exchange carriers' ("CLEC") collocation arrangements.

Cross connects, according to BellSouth, are pieces of wire or cable that are used in a central office to connect two facilities. Collocated CLECs may use these facilities to connect directly to each other within BellSouth's central office. From an engineering standpoint, carrier cross connects are highly efficient. This Commission believes that the physical collocation requirement of BellSouth should be extended to include the permissible connection of two collocated carriers. BellSouth may thereby be bypassed by the carriers. BellSouth has shown insufficient reason for prohibiting such carrier cross connects.

This Commission finds that co-carrier cross connects are not only efficient but are reasonable. BellSouth should be compensated for the use of its facilities and the performance of any necessary collocation functions for cross connects to be implemented. BellSouth shall reincorporate Section 5.6 and 5.61 of attachment 4 of its previously negotiated interconnection agreement with Sprint.

2. Should BellSouth make its custom calling features available for resale on a stand-alone basis? (Issue 2)

Sprint asks that it be permitted to purchase BellSouth's custom calling services, or vertical services, on a "stand-alone" resale basis at the applicable wholesale discount, without also purchasing the basic local service for resale. The parties agree that any BellSouth obligation in this regard arises under 47 U.S.C. § 251(c)(4), which requires BellSouth to "offer for resale at wholesale only rates any telecommunications service that the carrier provides at retail to subscribers who are not telecommunications

carriers." Since BellSouth does not provide custom calling features to end-users that do not take BellSouth service, then BellSouth reasons that this service need not be made available for resale on a stand-alone basis. To support its contention that the tariff restriction is not an unreasonable restriction upon resale in violation of 47 U.S.C. § 251 (c)(4), BellSouth asserts that the local competition order does not require wholesale offerings of any service that the incumbent local exchange carrier ("ILEC") does not offer to retail customers and does not impose on an ILEC the obligation to desegregate a retail service into more discreet services.[1] Thus, BellSouth contends that applicable law merely requires that any retail services offered to end-use customers be made available for resale.[2]

Sprint, on the other hand, declares that in the Local Competition Order the FCC held that resale restrictions are presumptively unreasonable, even if those restrictive conditions appear in the ILEC's tariff.[3] Sprint asserts that BellSouth's condition for the purchase of the vertical services, i.e. the purchase of the local line from BellSouth, is therefore unreasonable.

The Commission finds that BellSouth's tariff restriction on the resale of vertical services as applied to CLECs should stand. Vertical services are a subset of offerings

[1] In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, First Report and Order, CC Docket Nos. 96-98, 95-185, FCC No. 96-325 (August 8, 1996)(Local Competition Order) at Paragraphs 872 and 877.

[2] Id. at Paragraph 977.

[3] Id. at Paragraph 939.

that involve line-side service that should not be available at a wholesale discount to CLECs on a stand-alone basis.

3. Should BellSouth be required to charge Sprint cost-based rates for dedicated OS/DA trunking? (Issue 3)

Sprint requests a determination that the rates for dedicated trunking from each BellSouth end-office identified by Sprint for the provision of operator services/director assistance ("OS/DA") should be cost-based rates for dedicated trunking rather than market-based rates. Sprint contends that BellSouth has not been relieved of its obligation to provide interoffice transmission facilities as an unbundled network element ("UNE") despite the fact that customized routing exempts it from having to provide unbundled OS/DA. The Commission has recently accepted BellSouth's assertion that customized routing is available and therefore does not currently require BellSouth to offer OS/DA access as a UNE.[4] BellSouth contends that, because it has avoided providing OS/DA on an unbundled basis, it need not provide unbundled interoffice transport facilities necessary for CLECs to reach its OS/DA platform. The Commission disagrees.

47 C.F.R. 51.319(d) requires that "an incumbent LEC shall provide non-discriminatory access, in accordance with Section 51.311 and Section 251(c)(3) of the Act, to interoffice transmission facilities on an unbundled basis to any requesting telecommunications carrier for the provision of a telecommunications service." Sprint correctly asserts that interoffice transmission facilities are a telecommunications service

[4] Case No. 2000-465, 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, Order dated May 16, 2001 at 10 and 11.

and, accordingly, must be provided as a UNE based on total element long-run incremental cost ("TELRIC") rates.

> 4. Should BellSouth be required to provide Sprint at TELRIC rates combinations of UNEs that BellSouth typically combines for its own retail customers, whether or not the specific UNEs have already been combined? (Issue 4) Should BellSouth be required to universally provide access to EELs that it ordinarily and typically combines in its network at UNE rates? (Issue 6)

Sprint requests that the Commission require BellSouth to provide it UNEs that BellSouth ordinarily combines in its own network rather than only those that are already actually combined. Sprint also requests that the specific combination of the loop and transport to provide enhanced extended loops ("EELs") should also be required of BellSouth. BellSouth, on the other hand, argues that "currently combined" means that it must supply combined UNEs only where the UNEs are actually combined in its own network to provide service to a particular customer.

This Commission has recently ruled that BellSouth must combine network elements for Sprint or any CLEC if BellSouth ordinarily or typically combines such elements for itself.[5] This same outcome is applicable to Sprint's request for EELs.[6] The rationale for the Commission's long-standing determination that BellSouth must combine previously uncombined UNEs for a cost-based glue charge (or other similar alternative) is that UNE combinations are necessary to the development of a

[5] Case No. 2000-465, Order dated May 16, 2001 at 5.

[6] Case No. 99-218, The Petition of 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 dated March 2, 2000 at 6 and 9.

competitive market in Kentucky. "Currently combines," as set forth in FCC Rule 315(b), should be given the same meaning as "ordinarily combines," and BellSouth should combine for Sprint 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 particular customer are not already combined, if such UNEs are the sort that BellSouth currently or typically combines in its network. 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.

Otherwise, BellSouth would be able to force unnecessary costs on its competitors, thus impairing their ability to offer services. Absent the requirement that BellSouth combine network elements, Sprint or any competitor would be forced to collocate facilities with BellSouth in order to serve the customer. BellSouth is in no way harmed by combining elements that are typically combined in its network if it is compensated by the CLECs for combining the elements.

5. Should BellSouth be able to designate the network point of interconnection for delivery of BellSouth's local traffic? (Issue 9)

Sprint argues that it has a right to designate the point of interconnection ("POI") for both the receipt and the delivery of local traffic at any technically feasible location in BellSouth's network. BellSouth, on the other hand, asserts that it should be able to determine the POI for delivery of its originated local traffic. The Commission has

recently addressed this issue.[7] Neither Sprint nor BellSouth has provided any evidence or arguments to alter the Commission's previous determinations. Thus, the Commission finds that Sprint has the right to designate the POI for both the receipt and delivery of local traffic of BellSouth at any technically feasible location within BellSouth's network. It appears undisputed at this point that Sprint has a right to establish a minimum of 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 originates on the LEC's 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.

6. Should BellSouth be required to provide Sprint with two-way trunks upon request and if so should BellSouth be required to use those two-way trunks for BellSouth originated traffic? (Issue 12)

This arbitrated issue is not whether BellSouth should provide two-way trunking upon request, but whether BellSouth should be required to use two-way trunking. Both parties accept 47 C.F.R. 51.305(f), which states "[i]f technically feasible, an incumbent LEC shall provide two-way trunking upon request."

Sprint petitions this Commission to require BellSouth to use two-way trunks for BellSouth-originated traffic. Sprint considers two-way trunks to be the preferred

[7] See 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 at 1-4, and Order dated April 23, 2001 at 1-2.

trunking arrangement in many cases because of the efficiencies gained in switching ports and interconnecting facilities. BellSouth's position is that it must provide two-way trunking, but is not obligated to use it if BellSouth's traffic studies support one-way trunking.

The Commission supports Sprint's position that two-way trunks cease to be two-way if BellSouth chooses not to use them. As a practical matter, BellSouth's position renders 47 C.F.R. 51.305(f) a nullity. BellSouth does not demonstrate technical infeasibility; therefore, BellSouth must use two-way trunks.

> 7. Upon denial of a Sprint request for physical collocation, what justification, if any, should BellSouth be required to provide to Sprint for space that BellSouth has preserved for itself or its affiliates at the requested premises? (Issue 19)

Sprint requests that the Commission order BellSouth to justify to Sprint its denial of collocation space when based on BellSouth's claim that the space is reserved for BellSouth's own use. Sprint specifically requests that the justification include demand and facility forecasts with at least 3 years of historical data and forecasted growth in 12 month increments by type of equipment, such as switching or power. Sprint agrees that such information would be subject to appropriate protective agreement. Sprint asserts that the engineering drawings usually provided by BellSouth do not provide sufficient basis for Sprint to evaluate the reasonableness of BellSouth's space reservation.

BellSouth asserts that the information Sprint seeks is not necessary to resolve these issues. Procedures regarding space denial have been established by the FCC and, according to BellSouth, are adequate for Sprint. Moreover, BellSouth contends that these issues are matters for the Commission to address. BellSouth notes that it permits CLECs collocated in its facilities also to reserve space, but Sprint is only

requesting the demand and facility forecast information from BellSouth and not from CLECs.

The Commission considers the information sought by Sprint to be extremely competitively sensitive. The provision of such information should not necessarily be disclosed to a CLEC on a routine basis. Moreover, the Commission finds that when such information is necessary it should be based on a complaint filed by a CLEC with this Commission to resolve the denial of collocated space. If in the future Sprint believes that such information is necessary in a specific instance, then it should file a complaint with this Commission, and this Commission will resolve denials of collocation space as expeditiously as possible.

> 8. Should Sprint be given space priority over other CLECs in the event that Sprint successfully challenges BellSouth's denial of space availability in a given central office, and the other CLECs who have been denied have not challenged? (Issue 22)

Sprint asks this Commission to establish a procedure whereby it would receive priority of assignment in collocated space over other CLECs if it successfully challenges BellSouth's denial of available space for a given central office. Sprint argues that "in the exceptional circumstances" where Sprint as a challenging party has not obtained space from BellSouth and then has successfully challenged BellSouth, then BellSouth's "first-come, first-served" method is inappropriate. BellSouth asserts that its position of always utilizing the "first-come, first-served" rule is consistent with the FCC determinations. 47 C.F.R. 51.323(f)(1) requires an ILEC to make "space available within or on its premises to requesting telecommunications carriers on a first-come, first-served basis."

The Commission believes that these issues should not be resolved here. They not only affect many more parties than those present in this proceeding; they are not ripe for review. Accordingly, we will not address them here. Should they arise in a specific complaint proceeding, we will revisit the issue.

> 9. Should Sprint and BellSouth have the ability to negotiate a demarcation point different from Sprint's collocation space, up to and including the conventional distribution frame? (Issue 23)

The demarcation point in a central office is the interconnection junction amidst individual carrier networks. Sprint petitions this Commission to allow Sprint the authority to determine the point in a central office where demarcation occurs.

BellSouth takes the position that to serve the plethora of CLECs in the market it must mark a position that is accessible to all competitors equally. BellSouth prefers to standardize the collocation process in order to timely and accurately provide collocation arrangements.

This Commission agrees with BellSouth that a standard distribution frame, accessible to all, provides the best overall service. This arrangement allows BellSouth and CLECs the opportunity to standardize construction needs when collocating in any given central office, while also addressing the sometimes capricious negotiation process.

10. When Sprint desires to add additional collocation equipment that would require BellSouth to complete additional space preparation work, should BellSouth be willing to commit to specific completion intervals for specific types of additions and augmentations to the collocation space? (Issue 24)

Sprint asks that BellSouth be required to comply with designated completion intervals for four categories of additions and augmentations to Sprint's collocation space. Sprint argues that additions and augmentations to collocation space should be handled by BellSouth in a shorter interval of time than the original collocation. Moreover, Sprint suggests that the case-by-case basis of addressing intervals would not allow parties certainty in addressing the issues. BellSouth asserts that the categories and time intervals proposed by Sprint are inappropriate because the tasks relating to additions and augmentations do not fit into categories per se. BellSouth also argues that Sprint's categories are not exhaustive though Sprint asserts that they are. BellSouth contends that the best solution is to allow it the maximum allowable time for a new collocation request with the understanding that BellSouth will endeavor to provide additions and augmentations in less time.

The Commission finds that the time intervals necessary to complete the provisions of additions and augmentations should reasonably be less than the maximum time needed to complete a new collocation request. The Commission declines, however, to implement the proposal of Sprint. The proposal does not apply to all circumstances. Collocation issues are varied and by their nature should be addressed on a case-by-case basis. This Commission expects BellSouth, however, to complete these requests in a reasonable period of time. If Sprint finds that additions

and augmentations are not provided in a reasonable period of time, it should file a complaint, pursuant to KRS 278.160, to address these issues.

> 11. Are there situations in which Sprint should be committed to convert in place when transitioning to a virtual collocation arrangement to a cageless physical collation arrangement? (Issue 25)

Sprint requests that it be allowed to convert in place its virtual collocation arrangements to cageless physical collocation arrangements when it does not request any additional changes in its collocation arrangement. Sprint asserts that if BellSouth is allowed to require relocation of equipment, then Sprint will incur additional costs and administrative burden. BellSouth asserts that the circumstance referenced by Sprint does not, and is not likely to, exist in Kentucky.

The Commission finds that the issue should be evaluated on a case-by-case basis if it actually arises in Kentucky. Thus, if an in-place conversion occurs and the parties cannot agree to the conditions and rates for such conversion, then Sprint may utilize the Commission's complaint process to resolve the issue at that time. At this point, the issue is not ripe for review.

The Commission, having considered Sprint's petition, BellSouth's response thereto, and all other evidence of record, and having been otherwise sufficiently advised, HEREBY ORDERS that:

1. BellSouth shall allow co-carrier cross connects and shall incorporate Sections 5.6 and 5.61 of Attachment 4 of its previously negotiated agreement with Sprint into the executed agreement herein ordered.

2. Custom calling features are not required to be available for resale on a "stand-alone" basis.

3. BellSouth shall provide interoffice transmission facilities associated with OS/DA on an unbundled basis at TELRIC rates.

4. BellSouth shall provide to Sprint at TELRIC rates combinations of UNEs, including EELs, that BellSouth typically combines for its own retail customers.

5. Sprint has the right to designate the POI for both receipt and delivery of the local traffic of BellSouth.

6. BellSouth shall both provide, and use, two-way trunking.

7. BellSouth may use a standard distribution frame as its demarcation point and need not allow Sprint to determine its own.

8. Within 30 days of the date of this Order, parties shall submit a signed agreement consistent with the mandates herein.

Done at Frankfort, Kentucky, this 13th day of June, 2001.

By the Commission

ATTEST:

Executive Director