



BellSouth Telecommunications, Inc.
601 W. Chestnut Street
Room 407
Louisville, KY 40203

Dorothy.Chambers@BellSouth.com

Dorothy J. Chambers
General Counsel/Kentucky

502 582 8219
Fax 502 582 1573

November 8, 2004

RECEIVED
NOV 09 2004
PUBLIC SERVICE
COMMISSION

Ms. Beth O'Donnell
Executive Director
Public Service Commission
211 Sower Boulevard
P.O. Box 615
Frankfort, KY 40602

Re: Petition to Establish Generic Docket
to Consider Amendments to Interconnection
Agreements Resulting from Changes of Law
KPSC 2004-00427

Dear Ms. O'Donnell:

Attached is Certificate of Service certifying that BellSouth served the CLECs listed on the attached Service List with BellSouth's *Petition to Establish Generic Docket to Consider Amendments to Interconnection Agreements Resulting from Changes of Law* that was filed with this Commission on October 29, 2004. Enclosed for filing are the original and ten (10) copies of this letter and Certificate of Service.

Very truly yours,


Dorothy J. Chambers

Enclosures

cc: Individuals on the Attached Service List

555767



BellSouth Telecommunications, Inc.
601 W. Chestnut Street
Room 407
Louisville, KY 40203

Dorothy.Chambers@BellSouth.com

Dorothy J. Chambers
General Counsel/Kentucky

502 582 8219
Fax 502 582 1573

October 29, 2004

Ms. Beth O'Donnell
Executive Director
Public Service Commission
211 Sower Boulevard
P.O. Box 615
Frankfort, KY 40602

Re: Petition to Establish Generic Docket
to Consider Amendments to Interconnection
Agreements Resulting from Changes of Law

Dear Ms. O'Donnell:

Enclosed for filing are the original and ten (10) copies of BellSouth Telecommunications, Inc.'s Petition to Establish Generic Docket to Consider Amendments to Interconnection Agreements Resulting from Changes of Law.

Sincerely,


for Dorothy J. Chambers

Enclosures

555278

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

PETITION TO ESTABLISH GENERIC)
DOCKET TO CONSIDER AMENDMENTS)
TO INTERCONNECTION AGREEMENTS) CASE NO. _____
RESULTING FROM CHANGES OF LAW)

PETITION TO ESTABLISH GENERIC DOCKET

BellSouth Telecommunications, Inc. (“BellSouth”), by counsel, pursuant to KRS 278.040 and KRS 278.260, requests that the Kentucky Public Service Commission (“Commission”) institute a generic proceeding and hold an evidentiary hearing, as necessary, to determine what changes recent decisions from the Federal Communications Commission (“FCC”) and the United States Court of Appeals for the District of Columbia Circuit (“DC Circuit”) require in existing approved interconnection agreements between BellSouth and competitive local exchange carriers (“CLECs”) in Kentucky. In support of this Petition, BellSouth states as follows:

PARTIES

1. BellSouth’s official address for its Kentucky business operations is 675 West Peachtree Street, N.E., Suite 4300, Atlanta, Georgia 30375.
2. BellSouth’s principal place of business in Kentucky is 601 W. Chestnut Street, Louisville, KY 40203. Pleadings and process may be served upon:

Dorothy J. Chambers
601 W. Chestnut Street, Room 407
Louisville, KY 40203
(502) 582-8219
dorothy.chambers@bellsouth.com
kip.edenfield@bellsouth.com

3. BellSouth is a local exchange company providing local exchange and intraLATA toll service in Kentucky.

DISCUSSION

4. Over the past year, the rules governing the unbundling of network elements have been the centerpiece of various FCC orders, including legal challenges to those orders. For instance, on October 2, 2003, the FCC's Report and Order and Order on Remand and Further Notice of Proposed Rulemaking ("*Triennial Review Order*") became effective. The *Triennial Review Order* materially modified the rights and obligations of both incumbent local exchange carriers ("ILECs") and CLECs in numerous respects, including rights and obligations regarding the unbundling of network elements under §251 of the Telecommunications Act of 1996 ("1996 Act").

5. As a result of these changes, and pursuant to the interconnection agreements between BellSouth and the CLECs in Kentucky, BellSouth issued change of law requests to the CLECs requesting that the interconnection agreements be amended to reflect the changes brought about by the *Triennial Review Order*. BellSouth requested that the CLECs engage in negotiations with BellSouth to develop the appropriate amendments to the interconnection agreements.

6. Contemporaneous with these ongoing negotiations, both ILECs and CLECs appealed various aspects of the *Triennial Review Order* to the DC Circuit. On March 2, 2004, the DC Circuit decided these appeals, vacating certain portions of the *Triennial Review Order* and affirming others. In order to accommodate various procedural requests, the DC Circuit's decision did not go into effect until June 16, 2004. Pursuant to the interconnection agreements between BellSouth and the CLECs in Kentucky, BellSouth issued another change of law

notification advising the CLECs of the DC Circuit's decision and requested further negotiations regarding amendments to the interconnection agreements.

7. On August 20, 2004, while negotiations between BellSouth and the CLECs were ongoing, the FCC released its Order and Proposed Rulemaking ("*Interim Rules Order*"), again modifying the rights and obligations of ILECs and CLECs. Of particular relevance in the *Interim Rules Order* was the FCC's determination that:

In order to allow a speedy transition in the event we ultimately decline to unbundle switching, enterprise market loops, or dedicated transport, we expressly preserve incumbent LECs' contractual prerogatives to initiate change of law proceedings to the extent consistent with their governing interconnection agreements. To that end, we do not restrict such change-of-law proceedings from presuming an ultimate Commission holding relieving incumbent LECs of section 251 unbundling obligations with respect to some or all of these elements, but under any such presumption, the results of such proceedings must reflect the transitional structure set forth below.

* * *

... (W)e do *not* prohibit incumbents from initiating change of law proceedings that presume the absence of unbundling requirements for switching, enterprise market loops, and dedicated transport, so long as they reflect the transition regime set forth below, and provided that incumbents continue to comply with our interim approach until the earlier of (1) Federal Register publication of this Order or (2) the effective date of our forthcoming final unbundling rules. Thus, whatever alterations are approved or deemed approved by the relevant state commission may take effect quickly if our final rules in fact decline to require unbundling of the elements at issue, or if new unbundling rules are not in place by six months after Federal Register publication of this Order.

(*Interim Rules Order*, at ¶¶ 22, 23) (emphasis in original)

Pursuant to the interconnection agreements between BellSouth and the CLECs in Kentucky, BellSouth issued a supplemental change of law notification, advising the CLECs of the *Interim Rules Order* and requested further negotiations regarding amendments to the interconnection agreements.

8. To date, BellSouth and the majority of CLECs have not been able to agree on the specific modifications to the interconnection agreements that are required, if any, as a result of the *Triennial Review Order*, the DC Circuit's decision, and the *Interim Rules Order*. As this Commission is well aware, there are over 200 interconnection agreements that have been filed and approved in Kentucky. Thus, the options left to BellSouth are to either file over 200 separate change-of-law proceedings on the unresolved issues (and perhaps, three times that number, if separate disputes have to be filed for each of the three change of law letters that have been sent to the CLECs at this point), or attempt to address the necessary changes required by these decisions and orders in a single generic proceeding. BellSouth has attempted to work through this issue with various CLECs and CLEC associations, and while some consensus seems to exist supporting a generic proceeding, no final agreement has been reached.

9. As a consequence of its inability to reach a consensus about how these matters should proceed, BellSouth has filed this Petition. BellSouth submits that a single generic proceeding, addressing the impact of the referenced decisions and orders on existing interconnection agreements is a much better use of the Commission's time and resources than conducting 200 or even 600 separate proceedings and will allow the Commission to consider the issues from a broader industry perspective, rather than an individual ILEC/CLEC perspective. Furthermore, since the decisions and orders in question affect almost every interconnection agreement in the same way, the first decision the Commission reaches on these issues will no doubt set the standard for every agreement, so a generic proceeding should work to the benefit of the CLECs as well as the Commission and BellSouth, since everyone will have an opportunity to be heard on the issues before these matters are initially decided.

10. Attached to this Petition (Exhibit A) is an Issues Matrix that sets forth the unresolved issues that BellSouth believes should be resolved in this proceeding.

11. Attached to this Petition is a draft Interconnection Agreement Attachment 2 (Exhibit B), which contains the language that would be appropriate to implement BellSouth's position for most of the issues identified in Exhibit A. To facilitate this process, rather than simply provide isolated bits and parts of the appropriate Attachment 2, BellSouth has restated Attachment 2 in its entirety. BellSouth notes that the language of Attachment 2 indicates that the attachment will have three separate exhibits, but those exhibits will be CLEC-specific and so they are not included here. Finally, attached as Exhibit C to this Petition, is the remainder of the language that would implement BellSouth's positions on the issues that relate to sections of the CLEC interconnection agreements other than Attachment 2.

12. Time is of the essence. The first six month period established by the FCC in its *Interim Rules Order*, will expire in March, 2005, or earlier in the event that the FCC's final unbundling rules become effective prior thereto. Therefore, BellSouth respectfully requests that the Commission docket this matter, establish a procedural schedule, and hear this Petition in an expeditious matter so that at the appropriate time, the necessary modifications to existing interconnection agreements can be made without further delay.

CONCLUSION

13. BellSouth respectfully requests that the Commission institute a generic proceeding to consider what changes recent decisions from the Federal Communications Commission and the United States Court of Appeals for the District of Columbia Circuit require

in existing approved interconnection agreements. Further, BellSouth requests that the Commission issue a procedural order and set this matter for hearing as soon as is practical.

Respectfully submitted,

for Cheryl R. Wynn

Dorothy J. Chambers
601 W. Chestnut Street, Room 407
P. O. Box 32410
Louisville, KY 40232
Telephone No. (502) 582-8219

R. Douglas Lackey
E. Earl Edenfield, Jr.
Suite 4300, BellSouth Center
675 W. Peachtree Street, N.E.
Atlanta, GA 30375
Telephone No. (404) 335-0747

COUNSEL FOR BELL SOUTH
TELECOMMUNICATIONS, INC.

554413