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Public Service Commission

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COMMISSION
CLERK

DATE: March 4, 2004

TO: Blanca S. Bayó, Commission Clerk and Administrative Services Director

FROM: Jerry M. Hallenstern, Government Analyst II, Division of Competitive Markets & Enforcement

RE: Docket 0000121A-TP

Attached are the Kentucky and Alabama Public Service Commissions' orders regarding BellSouth's motion to modify SEEM to remove penalties related to the provisioning of line sharing. Please file in Docket 000121A-TP.

- CMP _____
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- OTH _____

DOCUMENT NUMBER-DATE

04896 APR 27 2004

PPSC-COMMISSIONER'S OFFICE

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:


Executive Director



STATE OF ALABAMA
ALABAMA PUBLIC SERVICE COMMISSION
P O BOX 304260
MONTGOMERY, ALABAMA 36130-4260

JIM SULLIVAN, PRESIDENT
JAN COOK, ASSOCIATE COMMISSIONER
GEORGE C. WALLACE, JR., ASSOCIATE COMMISSIONER

WALTER L. THOMAS, JR.
SECRETARY

IN RE: Petition for Approval of a Statement of Generally Available Terms and Conditions Pursuant to §252(f) of the Telecommunications Act of 1996 and Notification of Intention to File a Petition for In-region InterLATA Authority with the FCC Pursuant to §271 of the Telecommunications Act of 1996.

DOCKET 25835

ORDER DENYING MOTION TO MODIFY SEEM PLAN

BY THE COMMISSION:

I. The BellSouth Motion to Modify

On October 17, 2003, BellSouth Telecommunications, Inc. ("BellSouth") filed a Motion to Modify the Self-Effectuating Enforcement Mechanism ("SEEM") Plan previously adopted in this proceeding. As grounds for its Motion, BellSouth noted that on August 21, 2003, the Federal Communications Commission (the "FCC") released its *Triennial Review Order* (or "TRO") which became effective on October 2, 2003.¹ BellSouth pointed out that among the many matters addressed in the TRO was the FCC's decision to eliminate line sharing as an unbundled network element ("UNE") that incumbent LECs are required to offer pursuant to Section 251 of the Telecom Act. For

that reason, BellSouth argued that it should be relieved of any further obligation to pay SEEM penalties that relate to the provision of line sharing.²

Although BellSouth recognized the FCC's decision to adopt a transitional/grandfathered phase out for new and existing line sharing arrangements, BellSouth nonetheless urged the Commission to immediately remove line sharing from the penalty provisions of the SEEM plan. BellSouth did not, however, propose to remove line sharing from the Service Quality Measurement ("SQM") Plan at the present time.³

II. The Joint CLEC Response

On November 20, 2003, AT&T Communications of the South Central States, LLC, MCI WorldCom Communications, Inc., MCImetro Access Transmission Services, LLC, and Covad Communications Co. (collectively "the CLECs") filed a Joint Response to the Motion of BellSouth (the "Joint CLEC Response"). The CLECs argued that because BellSouth remains obligated to provide non-discriminatory access to line sharing both under the *TRO* and Section 271 of the Telecom Act, premature abolition of the penalties associated with line sharing as proposed by BellSouth would be contrary to the *TRO*, the provisions of Section 271 and generally detrimental to competition and

¹ *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.*, Report and Order and Order on Remand and Further Notice of Proposed Rulemaking, FCC 03-36 (rel. Aug. 21, 2003).

² See BellSouth Motion to Modify at pp. 1-2.

³ *id.* at pp. 4-7.

Alabama consumers.⁴ The CLECs thus surmised that the public interest required that the penalties associated with line sharing should remain a part of the SEEM Plan.⁵

III. The BellSouth Reply

By filing of December 2, 2003, BellSouth submitted a Reply to the Joint CLEC Response. BellSouth argued in its Reply that the *TRO* reflected the FCC's clear intention to remove line sharing from the unbundling obligations of Section 251 of the Telecom Act. BellSouth accordingly renewed its argument that line sharing should also be removed from the SEEM Plan. BellSouth further disputed the CLEC claims that BellSouth has an independent obligation to continue providing line sharing pursuant to Section 271. BellSouth argued that it would be illogical for the FCC to have stated that line sharing is no longer required under Section 251, but remains a requirement pursuant to Section 271.⁶

IV. Discussion and Conclusions

Having reviewed the pleadings discussed above and the *TRO* in detail, we conclude that it would be premature to remove the penalties associated with line sharing from the BellSouth SEEM Plan at this juncture. BellSouth is correct in noting that the FCC concluded in its *TRO* that CLECs are no longer impaired without unbundled access to line sharing.⁷ In making that determination, however, the FCC also recognized that some CLECs have made substantial commitments to service

⁴ See Joint CLEC Response at pp. 1-3.

⁵ *Id.* at pp. 6-7.

⁶ See BellSouth Reply at p. 7.

⁷ *TRO* at ¶¶258-259.

arrangements based on the existence of line sharing.⁸ In order to prevent a degradation of service to consumers because of current CLEC reliance on the availability of line sharing, the FCC ordered a three year transition period for new line sharing arrangements and grandfathered existing line sharing arrangements on a limited basis. The FCC concluded that the aforementioned transitional/grandfather provisions would allow CLECs and their customers an adequate period of time to adjust to the newly implemented rules regarding line sharing.⁹

Based on the foregoing, we conclude that BellSouth's request to immediately eliminate the penalties associated with line sharing would be inconsistent with the reasoning underlying the FCC's implementation of a transitional/grandfather period for line sharing and is thus denied. We find that an elimination of the penalties associated with line sharing would, at this juncture, be contrary to the public interest.

We further note that nothing in our decision herein should be construed as an adoption or rejection of the CLEC argument that regardless of the FCC's *TRO Order*, BellSouth has an independent obligation under Section 271 to continue to provide line sharing. We will address that issue in future proceedings as necessary. Our decision herein to deny BellSouth's request to eliminate the penalties associated with line sharing from the SEEM Plan is, at this juncture, based exclusively on the requirement in the *TRO* that BellSouth continue to provide line sharing on a transitional/grandfathered basis.

⁸ *Id.* at ¶264.

⁹ *Id.*

DOCKET 25835 - #5

IT IS SO ORDERED BY THE COMMISSION.

IT IS FURTHER ORDERED BY THE COMMISSION, That jurisdiction in this cause is hereby retained for the issuance of any further order or orders as may appear to be just and reasonable in the premises.

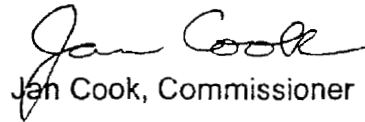
IT IS FURTHER ORDERED, That this Order shall be effective as of the date hereof.

DONE at Montgomery, Alabama, this 13th day of February, 2004.

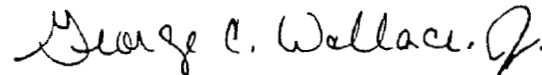
ALABAMA PUBLIC SERVICE COMMISSION



Jim Sullivan, President

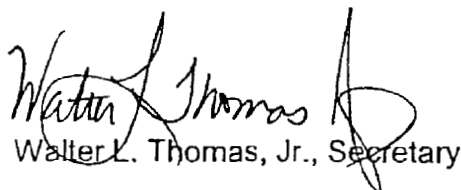


Jan Cook, Commissioner



George C. Wallace, Jr., Commissioner

ATTEST: A True Copy



Walter L. Thomas, Jr., Secretary