

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

JANUARY 18, 2002

IN RE:)
)
PETITION FOR APPROVAL OF THE) **DOCKET NO.**
AMENDMENT TO THE) **01-00477**
INTERCONNECTION AGREEMENT)
NEGOTIATED BETWEEN BELL SOUTH)
TELECOMMUNICATIONS, INC. AND XO)
TENNESSEE, INC. PURSUANT TO THE)
TELECOMMUNICATIONS ACT OF 1996)

ORDER

This docket came before the Tennessee Regulatory Authority ("Authority") at the August 7, 2001 Authority Conference upon the *Petition for Approval of the Amendment to the Interconnection Agreement Negotiated Between BellSouth Telecommunications, Inc. and XO Tennessee, Inc. Pursuant to the Telecommunications Act of 1996* filed by BellSouth Telecommunications, Inc. on June 1, 2001.

I. Procedural and Factual History

On November 5, 1999, BellSouth Telecommunications, Inc. ("BellSouth") and NEXTLINK Tennessee, Inc. ("NEXTLINK")¹ filed an arbitrated Interconnection Agreement in Docket No. 98-00123. The parties filed a modification to the Agreement on December 6, 1999. At a regularly scheduled Authority Conference on March 28, 2000, the Authority conditionally approved the

¹ During the course of the proceedings described herein, NEXTLINK Tennessee, Inc. changed its name to XO Tennessee, Inc. For ease of reference, NEXTLINK Tennessee, Inc. and XO Tennessee, Inc. will be referred to as "NEXTLINK."

parties' Agreement. In an Order entered on August 29, 2000 memorializing the March 28, 2000 decision, the Authority stated:

The Interconnection Agreement submitted by the parties on November 5, 1999 and amended on December 6, 1999 is approved upon the condition that [the] parties shall delete reference to Docket No. 98-00118 from the definition of local traffic contained in the Interconnection Agreement and shall replace the reference to Docket No. 98-00118 with a reference to Docket No. 99-00797² and cause the provisions of the Interconnection Agreement with respect to reciprocal compensation to read consistently with the Arbitrators' decision in Docket No. 99-00797³

On October 3, 2000, BellSouth filed a *Complaint and Petition for Judicial Review* in the United States District Court for the Middle District of Tennessee. BellSouth argued the Court should declare the Authority's August 29, 2000 Order unlawful because it violates federal law and is arbitrary and capricious. Several months later, BellSouth and NEXTLINK negotiated a settlement of the federal court action.⁴

On January 30, 2001, in response to a data request from the Authority, BellSouth and NEXTLINK submitted an Amendment to the Agreement in accordance with the Authority's August 29, 2000 Order. The Amendment contained the following definition of local traffic:

Local Traffic is defined as any telephone call that originates in one exchange and terminates in either the same exchange or a corresponding Extended Area Service ("EAS") exchange. The terms Exchange, and EAS exchange are defined and specified in Section A3[] [o]f BellSouth's General Subscriber Service Tariff.

² On March 14, 2000, the Directors, acting as Arbitrators, reached a final decision in Docket No. 99-00797, the arbitration between BellSouth and Time Warner Telecom of the Mid-South, L.P. In that docket, the Arbitrators ordered that "reciprocal compensation is the appropriate interim method to be used to recover the costs associated with the delivery of ISP-bound traffic pending completion of the FCC's rulemaking with regard to this traffic." See *In re: Petition for Arbitration of the Interconnection Agreement Between BellSouth Telecommunications, Inc. and Time Warner Telecom of Mid-South, L.P. Pursuant to Section 252(b) of the Telecommunications Act of 1996*, Docket No. 99-00797, *Final Order of Arbitration Award*, p. 5 (Aug. 4, 2000).

³ *In re: Petition of NEXTLINK Tennessee L.L.C. for Arbitration of Interconnection with BellSouth Telecommunications, Inc.*, Docket No. 98-00123, *Order Denying BellSouth's Motion to Reject Certain Provisions of Interconnection Agreement and Approving Interconnection Agreement, as Amended*, pp. 11-12 (Aug. 29, 2000) (footnote 2 added).

⁴ The District Court entered an order on May 31, 2001 dismissing the Complaint based on the parties' representation that they had "reached an agreement to settle the claims in this action based upon a recent decision of the Federal Communications Commission." *BellSouth Telecommunications, Inc. v. NEXTLINK Tennessee, Inc.*, No. 3-00-0922, Order (M.D. Tenn. May 31, 2001).

Consistent with the Tennessee Regulatory Authority's decision in Docket No. 99-00797, traffic that originated from or terminates to an enhanced service provider or information service provider shall be treated as Local Traffic for purposes of reciprocal compensation.⁵

The Authority approved the Amendment at a regularly scheduled Authority Conference on February 21, 2001. The Authority found the Amendment was in the public interest, was not discriminatory, and complied with the Authority's condition for approval set forth in the August 29, 2000 Order.⁶

On April 16, 2001, BellSouth and NEXTLINK again filed Amendments to their Agreement. This filing was assigned Docket No. 01-00336. The Amendments added technical requirements for unbundled copper loops, set terms and conditions for loop conditioning, and changed NEXTLINK Tennessee, Inc.'s name to XO Tennessee, Inc. The Authority approved the Amendments on June 26, 2001.⁷

On June 1, 2001, the parties filed the Amendment that is the subject of this docket. The Amendment revises the definition of local traffic and addresses inter-carrier compensation for ISP-bound traffic. Additionally, the Amendment modifies the parties' existing description of Multiple Tandem Access.

II. Findings and Conclusions

The Telecommunications Act of 1996 requires that all interconnection agreements be submitted to the appropriate state commission for approval.⁸ The state commission may approve

⁵ *In re: Petition of NEXTLINK Tennessee L.L.C. for Arbitration of Interconnection with BellSouth Telecommunications, Inc.*, Docket No. 98-00123, *Petition for Approval of the Amendment to the Interconnection Agreement Negotiated Between BellSouth Telecommunications, Inc. and XO Tennessee, Inc. f/k/a NEXTLINK Tennessee, Inc. Pursuant to the Telecommunications Act of 1996*, Amendment to the Agreement between XO Tennessee, Inc. and BellSouth Telecommunications, Inc. Dated November 4, 1999, p. 1 (Jan. 30, 2001).

⁶ *See id.*, *Order Approving Amendment to the Interconnection Agreement*, p. 4 (Apr. 26, 2001).

⁷ *See In re: Petition for Approval of the Amendment to the Interconnection Agreement Negotiated between BellSouth Telecommunications, Inc. and NEXTLINK Tennessee, Inc. Pursuant to the Telecommunications Act of 1996*, Docket No. 01-00336, *Order Approving Amendments to Interconnection Agreement* (Jul. 20, 2001).

⁸ *See* 47 U.S.C. § 252(e)(1) (Supp. 2000).

or reject the agreement or it may choose not to act, under which circumstance the agreement will be deemed approved after a statutorily mandated period of time.⁹ Section 252(e)(2) provides that a state commission may reject an interconnection agreement if it “discriminates against a telecommunications carrier not a party to the agreement” or if the implementation of the agreement “is not consistent with the public interest, convenience, and necessity.”¹⁰

While neither ground for rejection specifically exists in this case, the Amendment contains language that is inconsistent with previous Authority orders, including the August 29, 2000 Order in Docket No. 98-00123. In the Amendment, the parties agreed that local traffic “is defined as any telephone call that originates and terminates in the same LATA and is billed by the originating party as a local call.”¹¹ The Amendment also provides:

The Parties have been unable to agree upon whether dial up calls to Information Service Providers (“ISPs”) should be considered Local Traffic for purposes of this Agreement. However, without prejudice to either Party’s position concerning the application of reciprocal compensation to ISP-bound traffic, the Parties agree for purposes of this Agreement only to compensate each other for the delivery of ISP-bound traffic as set forth in Section 8.1.2.¹² It is expressly understood and agreed that this compensation arrangement for ISP-bound traffic is being entered into in consideration for a waiver and release by each party for any and all claims for reciprocal compensation for ISP-bound traffic exchanged between the parties prior to December 31, 2000.¹³

These provisions are inconsistent with the Authority’s August 29, 2000 Order in that they do not reference Docket No. 97-00797 or recognize that the Authority determined in Docket No. 97-00797

⁹ See *id.* § 252(e)(4). A negotiated agreement is deemed approved ninety (90) days after its submission for approval, and an arbitrated agreement is deemed approved thirty (30) days after its submission for approval.

¹⁰ *Id.* § 252(e)(2).

¹¹ *Petition for Approval of Amendment to the Interconnection Agreement Negotiated between BellSouth Telecommunications, Inc. and XO Tennessee, Inc. Pursuant to the Telecommunications Act of 1996, Amendment to Master Interconnection Agreement between XO Tennessee, Inc. and BellSouth Telecommunications, Inc.*, para. 8.1.1 (Jun. 1, 2001).

¹² Paragraph 8.1.2 contains compensation rates for local traffic. See *id.* at para. 8.1.2.

¹³ *Id.* at para. 8.1.3 (footnote 12 added).

that reciprocal compensation applies to the delivery of ISP-bound traffic.¹⁴ Given the inconsistencies between the language of the Amendment and previous Authority rulings, a majority of the Directors voted to take no action on the Amendment.¹⁵

IT IS THEREFORE ORDERED THAT:

No action shall be taken on the *Petition for Approval of the Amendment to the Interconnection Agreement Negotiated between BellSouth Telecommunications, Inc. and XO Tennessee, Inc. Pursuant to the Telecommunications Act of 1996* filed by BellSouth Telecommunications, Inc. on June 1, 2001. By operation of Section 252(e)(4) of the Telecommunications Act of 1996, the Amendment to the Interconnection Agreement shall be deemed approved on August 30, 2001.

* * * *

Sara Kyle, Chairman



Lynn Green, Jr., Director



Melvin J. Malone, Director

ATTEST:



K. David Waddell, Executive Secretary

¹⁴ See *In re: Petition for Arbitration of the Interconnection Agreement Between BellSouth Telecommunications, Inc. and Time Warner Telecom of Mid-South, L.P. Pursuant to Section 252(b) of the Telecommunications Act of 1996*, Docket No. 99-00797, *Final Order of Arbitration Award*, p. 5 (Aug. 4, 2000).

¹⁵ Chairman Kyle did not vote with the majority. Instead, she voted in favor of approval.