

BEFORE THE TENNESSEE REGULATORY AUTHORITY AT

NASHVILLE, TENNESSEE

April 26, 2001

IN RE:

**PETITION FOR APPROVAL OF THE)
AMENDMENT TO THE)
INTERCONNECTION AGREEMENT)
NEGOTIATED BY BELL SOUTH)
TELECOMMUNICATIONS, INC. AND XO)
TENNESSEE, INC. F/K/A NEXTLINK)
TENNESSEE, INC. PURSUANT TO)
SECTIONS 251 AND 252 OF THE)
TELECOMMUNICATIONS ACT OF 1996)**

DOCKET NO. 98-00123

**ORDER APPROVING AMENDMENT TO THE
INTERCONNECTION AGREEMENT**

This matter came before the Tennessee Regulatory Authority (the "Authority" or "TRA") upon the Petition for Approval of the Amendment to the Interconnection Agreement (the "Amendment") negotiated by and between BellSouth Telecommunications, Inc. ("BellSouth") and XO Tennessee, Inc. f/k/a NEXTLINK Tennessee, Inc. ("NEXTLINK" or "XO") filed on January 30, 2001. The Petition for approval of the Amendment came before the Authority pursuant to 47 U.S.C. §§ 251-252. The Amendment was considered at a regularly scheduled Authority Conference held on February 21, 2001.

Background:

On November 5, 1999, BellSouth and NEXTLINK submitted their arbitrated interconnection agreement (the "Agreement") to the Authority for approval in this docket. During evaluation of the Agreement, the Authority discovered that the section of the Agreement dealing with "Pick and Choose" did not conform to the Supreme Court decision that reinstated "Pick and

Choose” on an individual section by section basis.¹ The discovery of that discrepancy prompted the Authority to initiate a discussion with both parties regarding the issue. The parties agreed to submit a replacement page containing the language that allows “Pick and Choose” in a manner that is consistent with the Supreme Court decision. The replacement page was filed with the Authority on December 6, 1999. The Agreement was scheduled to be considered by the Directors at the regularly scheduled Authority Conference on December 7, 1999. On December 6, 1999, BellSouth also filed a *Motion to Reject Certain Provisions of Interconnection Agreement* (“Motion”).

BellSouth’s Motion listed two (2) provisions of the Agreement that BellSouth requested the Authority to reject. The first issue is an arbitrated issue that dealt with the definition of local traffic. The arbitrated definition mandated that ISP-bound traffic will be treated as local traffic for purposes of reciprocal compensation consistent with the Authority’s decision in the Brooks Fiber proceeding (TRA Docket No. 98-00118).

The second issue is not an arbitrated issue and dealt with term and conditions associated with the provision of Multiple Tandem Access (MTA) Interconnection. Disagreement by the parties over this issue started before the parties signed the Agreement but after the arbitration proceeding commenced. Therefore, the issue was not considered during arbitration. The parties claimed they could not resolve this issue despite the fact that they had been negotiating since August of 1999. Neither party raised either of the two issues outlined above when the Agreement was filed for approval by the Authority on November 5, 1999.

On December 6, 1999 NEXTLINK filed a Response to BellSouth’s Motion stating that the Motion should be denied. NEXTLINK also stated that because of the short time interval in which to respond, all of the arguments defending its position could not be stated.

¹ *Iowa Util. Bd. v. Federal Communications Comm’n*, 525 U.S. 366, 395, 119 S.Ct. 721, 738, 142 L.Ed.2d 835 (1999).

This matter came before the Directors for consideration of the Agreement and BellSouth's Motion at a regularly scheduled Authority Conference on December 7, 1999. During the Conference the parties agreed to waive the thirty-day requirement for approval of an arbitrated interconnection agreement. The Authority then voted not to take action on the Agreement and to allow NEXTLINK time to respond to BellSouth's Motion. NEXTLINK filed its brief in response to BellSouth's Motion on January 18, 2000. On March 27, 2000, BellSouth filed a reply memorandum in support of its Motion. The Authority considered and denied BellSouth's Motion at a regularly scheduled Authority Conference on March 28, 2000.

The Order Denying BellSouth's Motion to Reject Certain Provisions of Interconnection Agreement and Approving Interconnection Agreement, As Amended, was issued by the Authority on August 29, 2000 in this docket.² The ordering clause stated at pages 11 through 12:

The Interconnection Agreement submitted by the parties on November 5, 1999 and amended on December 6, 1999 is approved upon the condition that 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. 99-00797 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

² On September 28, 2000, BellSouth filed a Complaint and Petition for Judicial Review in the U.S. District Court for Middle Tennessee (U.S.D.C. No. 3-00-0922) seeking review of the Authority's approval of Interconnection Agreement which required BellSouth and NEXTLINK to treat traffic originating from and terminating to an ISP as local traffic for the purposes of payment of reciprocal compensation.

³ As stated in the *Final Order of Arbitration Award*, entered in Docket No. 99-00797 on August 4, 2000, 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." *In re: Petition for Approval of the Interconnection Agreement negotiated by BellSouth Telecommunications, Inc. and Time Warner Telecom Pursuant to Sections 251 and 252 of the Telecommunications Act of 1996*, Docket No. 99-00797, *Final Order of Arbitration Award*, p. 5 (August 4, 2000). The Order further states that "[a]ny amendments to this agreement with regard to reciprocal compensation rates for ISP-bound traffic shall be submitted to the Authority for approval." *Id.* at p. 5.

On January 30, 2001, in response to a data request from the Authority, the parties submitted an Amendment to the Agreement in accordance with the Authority's Order of August 29, 2000.

The Amendment filed by the parties in this docket provides 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. Of BellSouth's General Subscriber Service Tariff. 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.

The Authority has jurisdiction over public utilities pursuant to Tenn. Code Ann. § 65-4-104 *et seq.* Based upon the Petition, the record in this matter, and the standards for review set forth in 47 U.S.C. § 251-252, the Directors unanimously approved the Amendment and made the following findings and conclusions:

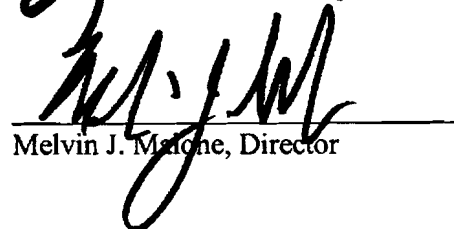
- 1) The Amendment and Agreement are in the public interest as they provide consumers with alternative sources of telecommunications services with the BellSouth service area;
- 2) The Amendment is not discriminatory to telecommunications service providers that are not parties thereto;
- 3) No party has sought intervention in this docket;
- 4) The Amendment complies with the Authority's Order of August 29, 2000;
- 5) Approval of the Amendment is consistent with previous Authority decisions and orders; and
- 6) The Amendment and the Interconnection Agreement are reviewable by the Authority pursuant to 47 U.S.C. §§ 251-252 and Tenn. Code Ann. § 65-4-104 *et seq.*

IT IS THEREFORE ORDERED THAT:

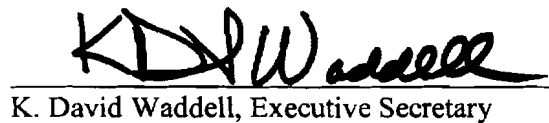
The Amendment to the Interconnection Agreement negotiated by and between BellSouth Telecommunications, Inc. and XO Tennessee, Inc. f/k/a NEXTLINK Tennessee, Inc. is approved and is subject to the review of the Authority as provided herein.


Sara Kyle, Chairman


H. Lynn Greer, Jr., Director


Melvin J. Malone, Director

ATTEST:


K. David Waddell, Executive Secretary