

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

February 11, 2002

IN RE:

PETITION FOR ARBITRATION OF THE
INTERCONNECTION AGREEMENT BETWEEN
BELLSOUTH TELECOMMUNICATIONS, INC.
AND INTERMEDIA COMMUNICATIONS, INC.
PURSUANT TO SECTION 252(b) OF THE
TELECOMMUNICATIONS ACT OF 1996

DOCKET NO. 99-00948

ORDER

This docket came before the Tennessee Regulatory Authority ("Authority") at the October 9, 2001 Authority Conference for consideration of the *Petition for Approval of the Interconnection Agreement Negotiated between BellSouth Telecommunications, Inc. and Intermedia Communications, Inc. Pursuant to the Telecommunications Act of 1996*.

I. Procedural and Factual History

BellSouth Telecommunications, Inc. ("BellSouth") filed a petition for arbitration of an interconnection agreement between it and Intermedia Communications, Inc. ("Intermedia") on December 7, 1999 pursuant to Section 252 of the Telecommunications Act of 1996. The Petition contained ten (10) issues with additional sub-issues. Intermedia responded on January 3, 2000 and listed forty-eight (48) issues for arbitration. The Directors appointed a Pre-Hearing Officer at the January 25, 1999 Authority Conference.

The Pre-Hearing Officer held a conference on March 2, 2000 and issued the *Report and Recommendation of Pre-Hearing Officer* ("Report") on March 6, 2000. The Pre-Hearing Officer concluded that BellSouth timely filed the petition for arbitration. In addition, the Pre-Hearing Officer noted that the parties agreed to: 1) waive the statutory period indefinitely for resolution of the issues; 2) participate in substantive mediation; and 3) file an updated joint matrix. The Pre-Hearing Officer concluded the Report by recommending that the Directors accept the petition for arbitration, appoint arbitrators, appoint a pre-arbitration officer, and direct the parties to go forward with mediation.

At the March 14, 2000 Authority Conference, the Pre-Hearing Officer summarized the Report, and the Directors determined there were no objections to the Report. Thereafter, the Directors voted unanimously to accept the Report.¹ The parties participated in mediation on April 19, 2000 and a telephonic status conference on June 2, 2000. The Arbitrators conducted a hearing in this matter on September 19 and 20, 2000. As a result of these three events, the parties resolved all issues except issues 2(a), 3, 6(a), 6(b), 7, 10, 12, 13(a), 18(c), 25, 26, 29, 30(a), 30(b), 39(a) – (d), and 48.

The Arbitrators deliberated the merits of all outstanding issues, except Issue 48, immediately following the regularly scheduled Authority Conference on February 6, 2001.² Immediately following the July 10, 2001 Authority Conference, the Arbitrators deliberated Issue 48, which involved performance measurements and enforcement mechanisms.³

¹ See *Order Adopting Pre-Hearing Officer Report, Accepting Arbitration, Appointing Pre-Arbitration Officer, and Directing Mediation* (May 18, 2000).

² See *Interim Order of Arbitration Award* (Jun. 25, 2001).

³ See *Final Order of Arbitration Award* (Sept. 7, 2001).

On August 9, 2001, BellSouth filed the *Petition for Approval of the Interconnection Agreement Negotiated between BellSouth, Inc. and Intermedia Communications, Inc. Pursuant to the Telecommunications Act of 1996* with the Interconnection Agreement attached thereto.

II. Findings and Conclusions

The Telecommunications Act of 1996 requires that all interconnection agreements be submitted to the appropriate state commission for approval.⁴ The state commission may approve 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.⁵ 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 or necessity.”⁶

While neither ground for rejection specifically exists in this case, the Agreement contains language that is inconsistent with previous Authority orders. Specifically, the section related to performance measures and enforcement mechanisms is inconsistent with the *Final Order of Arbitration Award*. In the *Final Order of Arbitration Award*, the Arbitrators unanimously voted to adopt BellSouth’s May 2000 Service Quality Measurements along with nineteen (19) Texas measurements.⁷ Additionally, the Arbitrators unanimously voted to adopt BellSouth’s VSEEMIII,⁸ including the “Liquidated Damages for Tier 1 Measures” and “Voluntary Payments for Tier 2 Measures.”⁹ The Arbitrators determined next that the VSEEMIII would be effective upon entry of

⁴ See 47 U.S.C. § 252(e)(1) (Supp. 2000).

⁵ 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.

⁶ *Id.* § 252 (e)(2).

⁷ See *Final Order of Arbitration Award*, pp. 3-4 (Sept. 7, 2001).

⁸ VSEEM is an acronym for Voluntary Self-Effectuating Enforcement Measures.

⁹ See *id.* at 4.

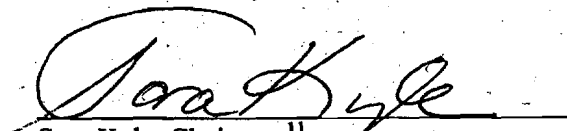
the *Final Order of Arbitration Award* and would not be contingent upon Section 271 approval.¹⁰

The negotiated interconnection agreement submitted for approval includes BellSouth's "Georgia Performance Metrics" dated April 6, 2001 and does not include the Texas measurements or liquidated damages for Tier 1 and Tier 2 measures. Given this inconsistency between the Interconnection Agreement and the *Final Order of Arbitration Award*, the Directors unanimously voted to take no action on the Interconnection Agreement.

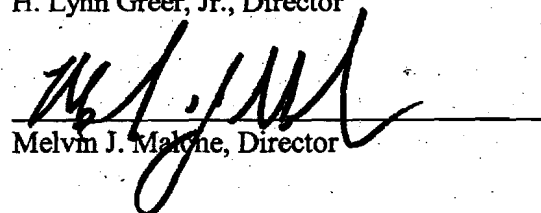
IT IS THEREFORE ORDERED THAT:

No action shall be taken on the *Petition for Approval of the Interconnection Agreement Negotiated between BellSouth, Inc. and Intermedia Communications, Inc. Pursuant to the Telecommunications Act of 1996* filed by BellSouth Telecommunications, Inc. on August 9, 2001.

By operation of Section 252(e)(4) of the Telecommunications Act of 1996, the Interconnection Agreement shall be deemed approved on November 7, 2001.


Sara Kyle, Chairman¹¹


H. Lynn Greer, Jr., Director


Melvin J. Malone, Director

ATTEST:


K. David Waddell, Executive Secretary

¹⁰ See *id.*

¹¹ Chairman Kyle moved that the "agreement be approved or ☐ be allowed to become effective upon the expiration of the 90-day period included in 47 USC Section 252(E)(4)." Transcript of Proceedings, Oct. 9, 2001, p. 8 (Authority Conference).