BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Emergency Petition of FCCA, AT&T, and MCI To Require ILECs To Continue to Honor Existing Interconnection Obligations

DOCKET No. 040520-TP

Filed: May 28, 2004

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EMERGENCY PETITION SEEKING AN ORDER REQUIRING BELLSOUTH AND VERIZON TO CONTINUE TO HONOR EXISTING INTERCONNECTION OBLIGATIONS

The Florida Competitive Carriers Association (FCCA)[1], AT&T Communications of the Southern States, LLC, (AT&T), and MCImetro Access Transmission Services, LLC and MCI WORLDCOM Communications, Inc. (collectively "MCI"), pursuant to rules 25-22.036 and 28-106.201, Florida Administrative Code, request the Florida Public Service Commission (Commission) to enter an order requiring BellSouth Telecommunications, Inc. (BellSouth) and Verizon Florida, Inc. (Verizon) (collectively, the ILECs) to continue to honor their existing obligations, under state and federal law, as set forth in Commission-approved interconnection agreements (ICAs). Specifically, Petitioners seek an order requiring ILECs to continue to provide unbundled switching, loops and transport on existing terms and conditions and to follow procedures prescribed within the ICAs for amendments based on any alleged change of law pending judicial review of the Federal Communications Commission's (FCC's) Triennial Review Order

[1] The members of FCCA include (in addition to AT&T and MCI) Access Integrated Networks, Inc., ICG Communications, Inc., IDS Telcom LLC, ITC DeltaCom, Inc., KMC Telecom, Network Telephone Corporation, NewSouth Communications, Inc., Supra Telecommunications and Information Systems, Inc., and Z-Tel Communications, Inc. With the exceptions of Supra and ICG, each of these members, is also a member of the Competitive Carriers of the South, Inc. (CompSouth).

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(TRO)[2] and any resulting FCC action or additional Commission action. Because the deadline for the end of the stay of the decision in *United States Telecom Association v. FCC* 359 F.3d 554 (D.C. Cir. 2004) (*"USTA II")* is June 15, 2004 – approximately eighteen (18) days from today-- the FCCA, AT&T, and MCI request the Commission to expedite its consideration of this matter and process the petition on an emergency basis.

I. PARTIES

The Florida Competitive Carriers Association, is a Florida not-for-profit corporation with offices at 117 South Gadsden Street, Tallahassee, Florida 32301, and whose members provide competitive telecommunications services in the state.

AT&T Communications of the Southern States, LLC is a competitive local exchange company in the state of Florida. Its office is located at 101 N. Monroe Street, Suite 700, Tallahassee, FL 32301.

MCImetro Access Transmission Services, LLC, and MCI WORLDCOM Communications, Inc. are competitive local exchange companies in the state of Florida. Their offices are located at 6 Concourse Parkway, Suite 600, Atlanta, Georgia, 30328.

BellSouth Telecommunications, Inc. is an incumbent local exchange carrier and a Regional Bell Operating Company (RBOC), as defined by 47 U.S.C. § 251(h)(1) and 47 U.S.C. § 153(4), respectively. Its offices are located at 675 W. Peachtree Street, Atlanta, Georgia 30375.

Verizon Florida, Inc. is an incumbent local exchange carrier as defined by 47 U.S.C. § 251(h)(1). Its offices are located at 600 Hidden Ridge, Texas 75038.

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[2] *In re Review of Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, et al.*, CC Docket Nos. 01-338, 96-98 & 98-147, Report and Order and Order on Remand (rel. Aug. 21, 2003).

All pleadings, notices and other documents related to this proceeding should be provided to:

FCCA

Joseph A. McGlothlin
Vicki Gordon Kaufman
McWhirter Reeves
McGlothlin Davidson Kaufman
& Arnold, PA
117 South Gadsden Street
Tallahassee, FL 32301
850-222-2525
vkaufman@mac-law.com
jmcglothlin@mac-law.com

AT&T Communications of the Southern States, LLC
Tracy Hatch
101 N. Monroe Street
Suite 700
Tallahassee, FL 32301
thatch@att.com

AT&T Communications of the Southern States, LLC
Lisa Sapper
1200 Peachtree Street., N.E.
8th Floor
Atlanta, GA 30309
lisariley@att.com

MCI
Donna Canzano McNulty
1203 Governors Square Blvd.
Suite 201
Tallahassee, FL 32301
donna.mcnulty@mci.com

MCI
Dulaney O'Roark, III
6 Concourse Parkway
Suite 600
Atlanta, GA 30328
de.oroark@mci.com

II. JURISDICTION

The Commission has jurisdiction to hear this matter pursuant to Chapter 120, Florida Statutes; §364.01, Florida Statutes, which provides the Commission with the power to regulate telecommunication companies, promote competition, and prevent anticompetitive behavior; 47 U.S.C. § 252(e)(3); and 47 U.S.C. § 253 (b). The Telecommunications Act of 1996 (Act) confers jurisdiction on the Commission to adjudicate disputes arising out of interconnection agreements.

III. INTRODUCTION

Since March 2, 2004, the date of the decision of the D.C. Circuit Court of Appeals vacating portions of the FCC's Triennial Review Order, the actions and statements of BellSouth and Verizon have created confusion and uncertainty among FCCA members and within the CLEC community[3] as to whether these ILECs intend to honor their respective binding contractual obligations. As a result of this uncertainty, Florida consumers are being harmed today. The ILECs' actions make it difficult for competitive providers in Florida to develop and implement business plans designed to offer competitive services and pricing and to expand their efforts to market existing

[3] FCCA is authorized to represent that the following additional companies and national trade associations are in full support of this filing: The Association for Local Telecommunications Services, the leading trade association representing facilities-based local telecommunications carriers, comprised of 33 CLEC members operating throughout the U.S. including in every state in the BellSouth region; CompTel/Ascent Alliance, a national trade association representing facilities-based carriers, providers using unbundled network elements, global integrated communications companies and their supplier partners. CompTel/Ascent's membership includes companies of all sizes and profiles that provide voice, data and video services in the U.S. and around the world; the PACE Coalition, with 16 member companies who use unbundled network elements throughout the country; DSLnet Communications, LLC, BroadRiver Communication Corporation, and McGraw Communications, Inc.

competitive services to Florida consumers. Furthermore, FCCA and its members are concerned that BellSouth and Verizon may erroneously attempt to rely on *USTA II* as a basis for unilaterally undermining or impeding CLECs' access to UNEs, which in turn could cause considerable disruption in the local market in Florida, especially for mass market customers. This may happen directly, *e.g.*, if the ILECs attempt to deny access to UNEs and/or UNE-based services outright, or indirectly, if BellSouth or Verizon attempts to impose rates, charges and administrative costs that would make it impossible for CLECs to continue to provide services in the local market at competitive prices.

The stay of the decision of the D.C. Circuit Court of Appeals currently is scheduled to be lifted on June 15, 2004. In light of the ambiguity created by the ILECs,the competitive providers in Florida must have some certainty that the underpinnings for the rates, terms and conditions of their service delivery platforms – the binding interconnection agreements to which they and the ILECs have agreed and/or arbitrated and were approved by this Commission – will remain effective. As a result, FCCA, AT&T, and MCI file this Emergency Petition to require the ILECs to continue to honor their existing interconnection obligations and to maintain the status quo unless and until the Commission approves any modifications to their interconnection agreements with FCCA members.

IV. STATEMENT OF FACTS

A. BellSouth's and Verizon's Contradictory Actions and Statements Have Created Uncertainty within the CLEC Community That Harms CLECs and their Florida Consumers.

USTA II vacated and remanded certain portions of the FCC's Triennial Review Order ("TRO") regarding the FCC's nationwide finding of impairment for mass-market switching and certain dedicated transport elements. In that decision, the Court stayed the effective date of its Order until the later of (1) the denial of any petition for rehearing or rehearing en banc or (2) 60 days from March 2, 2004. As a result of *USTA II*, this Commission suspended its procedural schedule in Dockets Nos. 030851-TP and 030852-TP, which had been initiated to implement the TRO as directed by the FCC. On April 1, 2004, the D.C. Circuit Court granted the FCC's unopposed motion to extend the stay for an additional 45 days to permit carriers to engage in commercial negotiations, until June 15, 2004. On May 24, 2004, the FCC, the National Association of Regulatory Utility Commissioners (NARUC) as well as a substantial number of CLECs filed motions in the D.C. Circuit seeking a stay of the *USTA II* mandate pending the filing and disposition of petitions for certiorari.

BellSouth's and Verizon's Contradictory Actions and Statements since *USTA II*

- At a hearing before the North Carolina Utilities Commission ("NCUC") on March 23, 2004, BellSouth and members of CompSouth (to which most FCCA members belong) were requested by the NCUC to appear and discuss the effects of the *USTA II* decision on existing interconnection agreements. At that hearing,

BellSouth was asked to state its position on the effect of the D.C. Circuit Court's decision in *USTA II* on existing interconnection agreements. Counsel for BellSouth responded that there "is a school of thought that says these contracts are not enforceable because they were entered into under a mistake of law or mistake of fact." However, BellSouth's counsel indicated that BellSouth had not yet decided whether it would take this position. BellSouth's counsel went on to say that "assuming the change of law provision [in the interconnection agreements] applies" there would be a notice period of 30-45 days and a subsequent 90-day negotiation period following which either party could petition the Commission for resolution of any dispute regarding such things as "whether the law has changed, what the change of law is and what the contract ought to say."

- On that same day, March 23, 2004, BellSouth released its Carrier Notification SN91084043 letter (attached as Exhibit 1) to all CLECs regarding its proposed "Commercial Agreement for BellSouth DS0 Wholesale Local Voice Platform Service." In that Carrier Notification letter, BellSouth stated that *USTA II* "vacated the FCC's rules associated with, among other things, mass-market switching thereby eliminating BellSouth's obligation to provide unbundled switching and, therefore, Unbundled Network Elements-Platform (UNE-P) at TELRIC rates." (emphasis added) BellSouth's Carrier Notification letter further noted that the Court's Order eliminating its obligation to provide UNE-P will become effective on May 1, 2004. On April 26, 2004, BellSouth released a

second Carrier Notification letter SN91084073 reminding CLECs that its proposed "Commercial Agreement for BellSouth DS0 Wholesale Local Voice Platform Service" offer is only available until May 1, 2004, notwithstanding the fact that an additional 45 day stay had been granted by the D.C. Circuit Court of Appeals on April 1, 2004.

- On April 22, 2004, BellSouth released another Carrier Notification SN91084063 letter (attached as Exhibit 2) to all CLECs regarding its proposed "Commercial Offering for BellSouth Unbundled Network Element (UNE) Transport Transition." In that Carrier Notification letter, BellSouth stated that "[u]pon the D.C. Circuit Courts's effective vacatur of the FCC's Triennial Review Order, BellSouth's obligation to provide dedicated transport and high capacity loops as an unbundled network element pursuant to Section 251 of the Telecommunications Act will be eliminated. As such, and due to regulatory uncertainty, BellSouth is preparing to offer its dedicated transport and high capacity loops solely via its access tariffs." (emphasis added)[4]
- On May 11, 2004, BellSouth and Verizon were asked to state whether they intended to honor the contractual obligations contained in existing interconnection agreements after June 15, 2004. At a status conference conducted by the Florida Public Service Commission, BellSouth and Verizon both indicated that they were "considering all options" and refused to state whether they would honor existing interconnection agreements after June 15, 2004; refused to state whether they

[4] This BellSouth statement is particularly egregious, because the *USTA II* decision does not vacate the national finding by the FCC that CLECs are impaired without access to high capacity loops.

would consider such contracts to be void; would not rule out unilateral action to repudiate the interconnection agreements and "couldn't say" whether they would follow any change of law provisions of existing interconnection agreements. BellSouth further indicated that it might permit existing arrangements to continue after June 15, 2004 but may elect to bill the CLEC rates that it considered appropriate rather than the rates in the existing interconnection agreements.

- On May 24, 2004, BellSouth filed a response with the North Carolina Utilities Commission to CompSouth's May 17, 2004 letter Request that a status conference be scheduled to address the issue of whether BellSouth intended to abide by its contractual obligations post June 15th. In support of its Request CompSouth recited the actions and statements of BellSouth (as stated above) in sending Carrier Notification letters stating that its obligations to provide certain UNEs would be "eliminated" upon *USTA II* becoming effective. In its May 24th response, BellSouth stated that "in the event that any of CompSouth's member companies are laboring under a genuine misunderstanding[5] about the meaning of BellSouth's Carrier Notification Letter, BellSouth has posted another Carrier Notification letter to clarify its position."

[5] It is apparent that CompSouth's members' "genuine misunderstanding" about BellSouth's intent was also shared by the FCC. In the FCC's Motion to the DC Circuit Court of Appeals for a stay of the mandate in *USTA II,* filed on May 24, 2004, the FCC stated, "During the periods following vacatur and remand of the Commission's impairment and unbundling rules [in the past], the Bell operating companies agreed to abide by the vacated unbundling rules pending the adoption of permanent rules. But none of the ILECs have made such voluntary commitments in this case." Citing the BellSouth April 22, 2004 Carrier Notification letter, the FCC stated, "To the contrary, many of the largest ILECs have indicated that they will immediately stop providing certain network elements at TELRIC rates, notwithstanding the terms of existing interconnection agreements." *See United States Telecom Ass'n v. FCC,* D.C. Cir. No. 00-1012, Motion of the Federal Communications Commission to Stay the Mandate Pending the Filing of a Petition for a Writ of Certiorari, dated May 24, 2004, at 11.

- In its May 24, 2004 Carrier Notification SN91084106 letter, (Attached as Exhibit 3 and referenced in BellSouth's Response to the North Carolina Utilities Commission), BellSouth states that the letter is to "affirm that BellSouth will not unilaterally breach its interconnection agreements." BellSouth goes on to state that upon vacatur, it will pursue "modification, reformation or amendment of existing Interconnection Agreements" and "contrary to rumors… BellSouth will not, as a result of the vacatur, unilaterally disconnect services being provided to any CLEC under CLEC's Interconnection Agreement."
- On May 24, 2004, Verizon sent a letter to the South Carolina Commission indicating that it has given notice to CLECs that "as of August 22, 2004, Verizon will no longer accept new orders for (1) unbundled Enterprise Switching or, (2) unbundled shared transport for use with Enterprise Switching, as unbundled network elements under 47 U.S.C. § 251(c)(3)." Verizon further stated that,

  > The terms of existing interconnection agreements do not require Verizon to provide access to unbundled network elements that it is not required to provide under federal law. In accordance with those provisions, Verizon has provided notice of its intent to cease providing access to the unbundled network elements described above in 90 days. Verizon will continue to accept orders for those elements until that date.

  Verizon's letter to the South Carolina Public Service Commission makes it clear that Verizon does not intend to abide by the terms of its current interconnection agreements, including the change of laws provisions, if the stay of the DC Circuit's mandate is not maintained.

- In its May 24th Motion for a stay pending the filing of petitions for certiorari, the FCC noted that "many of the largest ILECs have indicated that once the mandate issues, they will immediately stop providing certain network elements at TELRIC rates, notwithstanding the terms of existing interconnection **agreements.[2]"** *See United States Telecom Ass'n v. FCC,* D.C. Cir. No. 00-1012, Motion of the Federal Communications Commission to Stay the Mandate Pending the Filing of a Petition for a Writ of Certiorari, dated May 24, 2004, at 11. The footnote refers to BellSouth's Carrier Notification SN91084043, discussed above. With respect to Verizon, the FCC noted Verizon's position in a New York proceeding that once the mandate "takes effect, Verizon will have no legal obligation to continue offering mass-market circuit switching or dedicated transport at TELRIC rates."[6]

- On May 26, 2004, BellSouth, Verizon, and CompSouth participated in a Status Conference call convened by the North Carolina Utilities Commission. On that Conference call, counsel for CompSouth indicated that while the BellSouth's May 24, 2004 Carrier Notification letter cleared up some matters, CompSouth members were concerned about what was "not" stated in that letter regarding BellSouth's intentions concerning the rates to be charged for UNEs and whether BellSouth would continue to process new UNE orders. Counsel for BellSouth indicated that there will be no unilateral action taken by BellSouth on June 16, 2004; that BellSouth would continue to accept and process UNE orders and will

[6] Reply Comments of Verizon New York before the New York Public Service Commission , Case 04-C-0420, April 23, 2004 at 3-14.

not unilaterally change rates. BellSouth counsel, however, would not agree to modify the Carrier Notification letter to put these further commitments in writing nor would BellSouth commit to pursue interconnection contract amendments through the provisions of those agreements for contract amendments resulting from a "change in law." On the same call, Verizon essentially took no position regarding these substantive issues.

V. ARGUMENT

Because BellSouth and Verizon have refused to provide clear and affirmative written commitments that they will maintain the status quo regarding rates, terms and conditions and honor existing interconnection agreements, including the provisions of those agreements prescribing how they may be amended after June 15, 2004, it is necessary for this Commission to act affirmatively and direct the ILECs to do so.

As BellSouth's North Carolina counsel stated, most, if not all, of BellSouth's interconnection agreements have very clear provisions prescribing how a party may seek to amend an interconnection agreement to incorporate any alleged change in law. Verizon's interconnection agreements typically contain similar change of law provisions. These provisions typically require notice, negotiations and, failing agreement, activation of the dispute resolution provisions of the contract including resolution by the Commission. That is the process by which the ILECs must be required to seek any changes to its interconnection agreements, which, as the FCC recognized, "embody the

respective rights and obligations of competitors and incumbents respecting unbundled elements." FCC Motion at 9.

A. *USTA II* Presents No Unique Circumstances Permitting Either BellSouth Or Verizon To Unilaterally Invalidate Its Interconnection Obligations.

The *USTA II* Order and its vacatur of portions of the TRO present no unique circumstances that would permit BellSouth or Verizon to unilaterally avoid its obligations under existing interconnection agreements, or to ignore the change of law provisions in those agreements. Indeed, representations made by counsel for BellSouth, Verizon and the other BOCs during the oral argument before the DC Circuit Court of Appeals that preceded the *USTA II* decision *acknowledged* that BellSouth remains obligated by its interconnection agreements regardless of any court vacatur of the FCC's TRO rules.[7]

The FCC's rules implementing the unbundling and access requirements of the federal Telecommunications Act of 1996 have been the subject of appellate review and agency reconsideration almost continually since 1996. This litigation has covered the FCC rules defining which network elements must be unbundled, the terms and conditions

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[7] *See USTA v. FCC*, D.C. Circuit Nos. 00-1012, 00-1015, Transcript of Oral Argument, January 28, 2004, at 7-11 (*e.g.*, when asked by the Court "Where does that [a vacatur] leave your clients, in your view, with respect to the precise matters that are at issue?" the RBOCs' counsel replied "*[W]e are subject to a number of agreements in the states, and the states will continue to require us to provide elements pursuant to those agreements*," to which the Court responded, "Right" (emphasis added))

applicable to such unbundling[8] and the rates incumbent carriers may demand for those elements.[9] As a result, interconnection agreements have long contained "change of law" provisions to address any such situations.

One of the central purposes of the "change of law provisions" in the Commission-approved interconnection agreements is to minimize the chaos and uncertainty created by an unsettled regulatory environment. And critically, the change of law provisions are designed to minimize negative impacts on consumers and competition. Such provisions are often mutually agreed upon by the parties and are intended to address the very situation facing the industry today. For example, the change of law provision found in the AT&T-BellSouth interconnection agreement provides that,

> in the event that any final legislative, regulatory, judicial or other legal action materially affects any material terms of this Agreement, or the ability of AT&T or BellSouth to perform any material terms of this Agreement, AT&T or BellSouth may, on ninety (90) days' written notice . . . require that such terms be renegotiated, and the Parties shall renegotiate in good faith such mutually acceptable new terms as may be required.

If the change of law provisions of interconnection agreements could be avoided -- a position that BellSouth and Verizon refuse to disclaim -- it would render these contractual provisions meaningless. The Commission should always favor reading some meaning and effect into all the provisions of approved interconnection agreements.

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[8] *See* First Report & Order, *Implementation of the Local Competition Provisions in the Telecomms. Act of 1996*, 11 FCC Rcd 15499 (1996) ("*Local Competition Order*"), *vacated in part by Iowa Utilities Bd.*, 525 U.S. 366, *decision on remand*, Third Report & Order & Fourth Further Notice of Proposed Rulemaking, *Implementation of the Local Competition Provisions of the Telecomms. Act of 1996*, 16 FCC Rcd. 1724 (1999), *vacated in part by United States Telecom. Ass'n v. FCC*, 290 F.3d 415 (D.C. Cir. 2002) ("*USTA I*"), *on remand to TRO*, 18 FCC Rcd. 16,978, vacated in part by USTA II, 359 F.3d 554.

[9] *Local Competition Order*, 11 FCC Rcd 15499, *vacated in part by Iowa Utils. Bd. v. FCC*, 219 F.3d 744 (8th Cir. 2000), *reversed by Verizon Communications, Inc. v. FCC*, 535 U.S. 467, 476 (2002).

B. The FCC has Directed that Any Changes Required by the TRO be Implemented through Amendments to Interconnection Agreements as Specified in those Agreements.

The FCC required that the contract amendment process – and not unilateral action -- would be used to implement the provisions of the *TRO*. The FCC explicitly rejected requests by BellSouth and other Incumbent Local Exchange Carriers for approval to simultaneously abrogate all existing interconnection agreements to lessen incumbents' unbundling obligations. *See TRO* ¶ 701 ("[T]o the extent our decision in this Order changes carriers' obligations under section 251, we *decline* the request of several [incumbent carriers] that we override the section 252 process and unilaterally change all interconnection agreements to avoid any delay associated with renegotiation of contract provisions") (emphasis added). Instead, the FCC directed that any carriers seeking changes to their interconnection agreements must comply with their change of law provisions, which typically provide for voluntary negotiation followed by state commission action when the parties disagree. Indeed, the FCC concluded that such "voluntary negotiations for binding interconnection agreements is the very essence of section 251 and section 252" of the Act. *Id.* Rather than seeking changes "overnight," "individual carriers should be allowed the opportunity to negotiate specific terms and conditions necessary to translate our rules into the commercial environment, and to resolve disputes over any new agreement language arising from differing interpretations of our rules." *Id.* ¶ 700.

C. The ILECs Are Wrong When They Assert That Their Obligations to Provide Certain UNEs Are "Eliminated" By *USTA II*

As discussed above, the FCCA, AT&T, and MCI are concerned that, in the absence of an Order from this Commission directing BellSouth and Verizon to maintain the full status quo under existing interconnection agreements, the ILECs may unilaterally attempt to use the vacatur of certain federal unbundling rules in *USTA II* to restrict the ongoing availability of UNEs at TELRIC rates in Florida before the Commission has resolved disputes as to the impact (if any) of *USTA II* on such agreements under the change of law provisions. Based on the BellSouth Carrier Notification letters and Verizon's letter to the South Carolina Commission, both ILECs take the position that their obligations to provide certain UNEs would be "eliminated" if *USTA II* becomes effective. That argument must be rejected. Even if *USTA II* does become effective, the *TRO* will be remanded to the FCC for further consideration. And, since the D.C. Circuit's ruling focuses only on perceived procedural and analytical insufficiencies in the FCC's *TRO*, nothing in *USTA II* requires the FCC to find that *any* current UNE may not continue to be required at TELRIC rates. Perhaps more importantly, nothing in *USTA II* invalidates *either* the unbundling requirements in the Telecommunications Act of 1996 *or* the terms of existing interconnection agreements, nor does it impact this Commission's authority to supervise the implementation of interconnection agreements or its authority to act pursuant to federal or Florida law to preserve competition. As the FCC notes, "[i]n the absence of binding federal rules, state commissions will be required to determine not only the effect of [*USTA II*] on the terms of existing agreements but also the extent to which mass market switching and dedicated transport should remain available under state law." FCC Motion at 9. And, of course, *USTA II* does not affect in any way the

propriety of TELRIC pricing, which was conclusively resolved by the Supreme Court in *Verizon Communications, Inc. v. FCC*, 535 U.S. 467 (2002).

VI. CONCLUSION

BellSouth's and Verizon's recent actions and statements have created enormous confusion. These ILECs are unwilling to expressly commit that they will maintain the status quo regarding rates, terms and conditions applicable to FCCA members', AT&T's, and MCI's agreements and to honor its contractual and statutory obligations, including their obligation to seek amendments to existing interconnection agreements through the processes contained in those agreements to effectuate changes in law. Competitive carriers must have certainty that the rates, terms and conditions contained in interconnection agreements will remain binding obligations after June 15 if they are to continue to market and develop innovative services and pricing and bring competitive benefits to Florida consumers.

In the past, BellSouth and Verizon have generally abided by the provisions of interconnection agreements that prescribe how those agreements can be amended when regulatory uncertainty exists. But their recent actions and statements call into question their current intentions. As stated by BellSouth's counsel, those provisions call for notice and negotiation and ultimately, resolution by the Commission of any disputes as "whether the law has changed, what the change of law is and what the contract ought to say." The ILECs' unwillingness to commit categorically to maintain the status quo and follow those same processes today is, in all likelihood, due to the different marketplace circumstances that exist today compared to those that existed during the prior litigations.

For example, BellSouth has now received all the benefits of the section 271 "trade off" and is now rapidly acquiring substantial market share in the long distance market as a result. Thus, BellSouth no longer has any incentive to act in a manner that is supportive of local competition. Without a section 271 hurdle to clear before entering the long-distance market, obligations, Verizon-Florida has never had an incentive to act in a manner supportive to competition.

For the foregoing reasons, FCCA, AT&T, and MCI request that the Commission declare that BellSouth and Verizon are required to maintain the status quo and to honor existing interconnection agreements and to issue an emergency order that (1) requires BellSouth and Verizon to continue to honor the obligations contained in their interconnection agreements, including their obligation to seek amendments to existing interconnection agreements through the processes contained in those agreements, to effectuate changes in law, unless and until the Commission approves any modifications to those agreements; and (2) prevents BellSouth and Verizon from taking any unilateral actions under color of *USTA II* to restrict CLECs' access to UNEs or to change prices for UNEs unless and until this Commission approves such changes.

VII. REQUEST FOR RELIEF

WHEREFORE, based on the foregoing, the FCCA, AT&T, and MCI request the following relief:

A. That, given the serious potential for harm, the Commission process this request on an emergency, expedited basis;

B. That the Commission enter an order requiring the ILECs to continue to honor all of their obligations under existing state and federal law; to honor the obligations contained in their Interconnection Agreements, including their obligation to seek amendments to existing interconnection agreements through the processes contained in those agreements to effectuate changes in law; and to continue to provide access to UNEs under the current rates, terms, and conditions of their interconnection agreements, SGATs, and state law, including the provisioning of unbundled local switching (including UNE-P), transport, high capacity loops, and dark fiber at Commission-prescribed rates established under Section 252(d) standards, until final federal unbundling rules are in place or until the Commission can undertake a generic proceeding to determine the impact of the D.C. Circuit's decision on the ILECs' existing obligations to provide these UNEs; and

C. That the Commission grant such other or further relief as the Commission finds fair, just, reasonable, and sufficient.

Respectfully submitted this 28th day of May, 2004.

Joseph A. McGlothlin
Vicki Gordon Kaufman

McWhirter Reeves McGlothlin
Davidson Kaufman & Arnold, PA
117 South Gadsden Street
Tallahassee, FL 32301
850-222-2525
vkaufman@mac-law.com
jmcglothlin@mac-law.com
Attorneys for FCCA

Tracy Hatch /JAM
AT&T Communications of the
Southern States, LLC
Tracy Hatch
101 N. Monroe Street
Suite 700
Tallahassee, FL 32301
(850) 425-6360
thatch@att.com

Attorney for AT&T
Communications of the Southern
States, LLC

and

Donna McNulty /JAM
MCI
Donna Canzano McNulty
1203 Governors Square Blvd.
Suite 201
Tallahassee, FL 32301
(850) 219-1008
donna.mcnulty@mci.com

Dulaney O'Roark /JAM
MCI
Dulaney O'Roark, III
6 Concourse Parkway
Suite 600
Atlanta, GA 30328
(770) 284-5498
de.oroark@mci.com

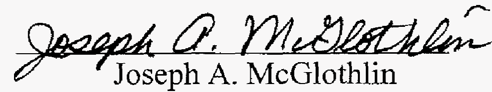
Attorneys for MCImetro Access
Transmission Services LLC and MCI
WORLDCOM Communications,
Inc.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Emergency Petition Seeking an Order Requiring Bellsouth and Verizon to Continue to Honor Existing Interconnection Obligations has been furnished (*) hand delivery and U.S. Mail this 28th day of May 2004, to:

(*)Beth Keating
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

(*)Nancy B. White
c/o Nancy H. Sims
BellSouth Telecommunications, Inc.
150 South Monroe Street, Suite 400
Tallahassee, FL 32301-1556


Joseph A. McGlothlin

Richard Chapkis
Verizon Florida Inc.
201 N. Franklin Street
FLTC717
P.O. Box 110
Tampa, FL 33601

Exhibit A

BellSouth Interconnection Services
675 West Peachtree Street
Atlanta, Georgia 30375

Carrier Notification
SN91084043

Date: March 23, 2004

To: All Competitive Local Exchange Carriers (CLEC)

Subject: CLECs (Product/Service) - Commercial Agreement for BellSouth DS0 Wholesale Local Voice Platform Service

On March 2, 2004, the United States Court of Appeals for the District of Columbia ("Court") issued its opinion (Order) in the appeal of the Federal Communication Commission's (FCC) Triennial Review Order (TR0). The Court vacated and/or remanded significant portions of the TRO. Specifically, the Court vacated the FCC's rules associated with, among other items, mass-market switching, thereby eliminating BellSouth's obligation to provide unbundled switching and, therefore, Unbundled Network Elements-Platform (UNE-P) at TELRIC rates. The Court's Order will become effective May 1, 2004, unless the Court grants a rehearing or issues a stay of the Order.

In light of the Court's Order, BellSouth is prepared to offer switching and DS0 loop/switching combinations (including what is currently known as UNE-P) at commercially reasonable and competitive rates. BellSouth will offer switching via a DS0 Wholesale Local Voice Platform Services commercial agreement. Consistent with the direction provided by FCC Chairman Michael Powell, BellSouth invites your company to enter into good faith negotiations of a market-based commercial agreement aimed at benefiting the end user, establishing stability in the industry and allowing real competition to continue throughout the BellSouth region. Entering into such an agreement will effect an efficient transition from switching under your existing Interconnection Agreement to switching offered on a commercial basis.

Highlights of this offer are as follows:

Availability:
This offer is available until May 1, 2004

Term:
Agreements executed before May 1, 2004, will be effective through December 31, 2007.

Rates:
The Agreement establishes a rate schedule for the DS0 Wholesale Local Voice Platform Services and standalone DS0 switch ports for the entire contract period.

Mass Market (less than 4 DS0 lines per end user):
- $7 above existing state-ordered TELRIC UNE-P recurring rates*
- Discounts in 2004 result in a zero net increase above TELRIC*
- Transitional discounts in January 2005 through December 2006

* Rates ordered prior to June 24, 2003 in Georgia

Mass Market (cont.):

- Standalone DS0 switch ports at $7 increase over existing state-ordered TELRIC recurring rates* with no transitional discounts

Enterprise Market (four or more DS0 lines or where a DS1 is serving an end user):

- Provides a $10 increase over current DS0 state-ordered TELRIC UNE-P recurring rates* and applies to both DS0 Wholesale Local Voice Platform Services and standalone DS0 ports

Significant General Terms:

- Customer may continue to purchase standalone Loops or Resale Services under a BellSouth interconnection agreement and/or tariff.
- Guaranteed service metrics are offered through a service level commitment and are subject to payments by BellSouth to the customer for non-performance
- Prices, excluding discounts, for DS0 Wholesale Local Voice Platform Services will remain constant over the term of the Agreement.
- Damages will apply for non-compliance with the terms of the Agreement.

This offer is available only until May 1, 2004. Again, BellSouth invites you to enter into good faith negotiations of a commercial agreement as soon as possible in order to complete these negotiations by May 1.

To begin the negotiation process or obtain additional information, please contact Valerie Cottingham at 205-321-4970.

Sincerely,

Original signed by Jerry Hendrix

Jerry Hendrix – Assistant Vice President
BellSouth Interconnection Services

* Rates ordered prior to June 24, 2003 in Georgia

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BellSouth Interconnection Services
675 West Peachtree Street
Atlanta, Georgia 30375

Carrier Notification
SN91084063

Date: April 22, 2004

To: All Competitive Local Exchange Carriers (CLEC)

Subject: CLECs – (Product/Service) – Commercial Offering for BellSouth Unbundled Network Element (UNE) Transport Transition

Upon the DC Circuit Court's effective vacatur of portions of the FCC's Triennial Review Order, BellSouth's obligation to provide dedicated transport and high capacity loops as an unbundled network element pursuant to Section 251 of the Telecommunications Act of 1996 will be eliminated. As such, and due to general regulatory uncertainty, BellSouth is preparing to offer its dedicated transport and high capacity loops products solely via its access tariffs.

Until June 15, 2004, BellSouth is offering a two-party transition plan to effect an efficient and coordinated transition from UNE transport and high capacity loops under your company's existing Interconnection Agreement to transport offered via BellSouth's tariffs.

This offer is available only until June 15, 2004. BellSouth invites your company to enter into good faith negotiations of this plan as soon as possible in order to complete these negotiations by June 15, 2004.

To begin the negotiation process or obtain additional information, please contact Shemega Goodman at 404.927.7571.

Sincerely,

ORIGINAL SIGNED BY JERRY HENDRIX

Jerry Hendrix – Assistant Vice President
BellSouth Interconnection Services

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Exhibit C

BellSouth Interconnection Services
675 West Peachtree Street
Atlanta, Georgia 30375

Carrier Notification
SN91084106

Date: May 24, 2004

To: Facility-Based Competitive Local Exchange Carriers (CLEC)

Subject: Facility-Based CLECs – (Business/Operations Process) - Provision of Service to CLECs Post-Vacatur

The District of Columbia Circuit Court of Appeals' March 2, 2004, Opinion vacating certain Federal Communications Commission (FCC) Unbundled Network Element (UNE) rules is scheduled to become effective on June 16, 2004. This letter is to affirm that BellSouth will not unilaterally breach its interconnection agreements. Upon vacatur of the rules, BellSouth does intend to pursue modification, reformation or amendment of existing Interconnection Agreements (with the exception of new commercial and transition agreements) to properly reflect the Court's mandate. Rumors have been circulating that, upon vacatur, services that BellSouth now provides to CLECs under their Interconnection Agreements will be disconnected. Contrary to such rumors, if the rules are vacated, BellSouth will not, as a result of the vacatur, unilaterally disconnect services being provided to any CLEC under the CLEC's Interconnection Agreement.

If you have any questions, please contact your BellSouth contract manager.

Sincerely,

ORIGINAL SIGNED BY KRISTEN ROWE FOR JERRY HENDRIX

Jerry Hendrix – Assistant Vice President
BellSouth Interconnection Services

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