Legal Department

NANCY B. WHITE
General Counsel - FL

BellSouth Telecommunications, Inc.
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December 17, 2004

Mrs. Blanca S. Bayó
Director, Commission Clerk and
Administrative Services
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

Re: Docket No. 040604-TL
In re: Adoption of the National School Lunch Program and an income-based criterion at or below 135% of the Federal Poverty Guidelines as eligibility criteria for the Lifeline and Link-Up programs

Dear Ms. Bayó:

Enclosed is an original and fifteen copies of BellSouth Telecommunications, Inc.'s Rebuttal Testimony of James R. DeYonker, which we ask that you file in the captioned docket.

Copies have been served to the parties shown on the attached Certificate of Service.

Sincerely,

Nancy B. White

Nancy B. White

cc: All Parties of Record
Marshall M. Criser III
R. Douglas Lackey

CERTIFICATE OF SERVICE
DOCKET NO. 040604-TL

I HEREBY CERTIFY that a true and correct copy of the foregoing was served via Electronic Mail and U.S. Mail this 17th day of December, 2004 to the following:

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Nancy B. White

BELLSOUTH TELECOMMUNICATIONS, INC.

REBUTTAL TESTIMONY OF JAMES R. ("Rod") DEYONKER

BEFORE THE FLORIDA PUBLIC SERVICE COMMMISSION

DOCKET NO. 040604-TL

DECEMBER 17, 2004

Q. PLEASE STATE YOUR NAME, YOUR POSITION WITH BELLSOUTH TELECOMMUNICATIONS, INC. ("BELLSOUTH"), AND YOUR BUSINESS ADDRESS.

A. My name is James R. ("Rod") DeYonker. I am employed by BellSouth as Director – Regulatory & External Affairs for the nine-state BellSouth region. My business address is 675 West Peachtree Street, Atlanta, Georgia 30375.

Q. ARE YOU THE SAME ROD DEYONKER WHO FILED DIRECT TESTIMONY IN THIS PROCEEDING?

A. Yes, I filed direct testimony on November 17, 2004.

Q. WHAT IS THE PURPOSE OF YOUR REBUTTAL TESTIMONY?

A. The purpose of my testimony is to rebut certain issues contained in the direct testimony of other parties in this proceeding. Specifically, I will discuss certain points in the testimony of Commission staff witness John E. Mann, IV and Sprint witness Sandra A. Khazraee.

Q. COMMISSION WITNESS JOHN E. MANN, IV STATES THAT FLORIDA IS AN ANNUAL NET CONTRIBUTOR OF APPROXIMATELY $30.6 MILLION DOLLARS INTO THE USF LOW INCOME SUPPORT MECHANISM. WHAT IS BELLSOUTH'S POSITION ON THIS STATISTIC?

A. While it may be true that Florida is a net contributor as it relates to the Federal Low-income Assistance program of the Universal Service Fund, that fact is merely a function of how the fund is structured. The formula for calculating how much citizens of a specific state contribute to the various USF programs has nothing whatsoever to do with the formulas that determine how much support is distributed from each program. The intent of universal service is to promote the availability of basic telephone service across the nation at affordable and comparable rates. The USF is, by design, a national 'pool', whereby some customers pay slightly more for telephone service (i.e., USF contributions) so that other targeted customers (e.g., low-income customers) may pay less for service. It would be purely coincidental that the Lifeline payments within a given state would match up with the Lifeline support flowing to citizens within that same state. While it would be misguided to try to increase support simply in order to match contributions, it is reasonable and advisable to take steps to ensure that the objectives of the low-income program are achieved. That alone should be the focus.

Q. MR. MANN BELIEVES THAT THE CURRENT PROCESS IS IN NEED OF REVISION, STATING THAT, "ETCs OFTEN PERFORM ADDITIONAL

ANALYSES AND HAVE ADDITIONAL REQUIREMENTS TO DETERMINE WHETHER THE CONSUMER WILL BE GIVEN LIFELINE CREDITS." HOW DO YOU RESPOND?

A. BellSouth disagrees with Mr. Mann that the current certification process is broken and is in need of fixing. We do not believe our current process of requiring evidence of participation in eligible programs is a significant deterrent preventing large numbers of eligible customers from obtaining telephone service. To the extent that the current process somehow deters customers from obtaining Lifeline benefits, it is worthwhile to note that the FCC's self-certification process is simpler and less costly to administer than is the process outlined in the Commission's Order. Further, Mr. Mann suggests that ETCs unfairly subject prospective Lifeline customers to additional requirements that somehow act as a deterrent to Lifeline subscription. Other than to ensure that only one Lifeline benefit is provided to each eligible recipient based on program or income eligibility and to provide a means to verify that eligibility, the so-called additional requirements are no different for Lifeline customers than we apply to non-Lifeline customers. Finally, Mr. Mann states that current processes ***may*** be obstacles to participation, and that ***another*** certification process should be made available to Florida consumers. Yet, he cites no evidence that the current processes are obstacles nor does he provide any support of the degree to which the Commission's self-certification process will be effective in achieving the Commission's long-term Lifeline goals.

Q. MR. MANN FURTHER STATES IN HIS TESTIMONY THAT THE SELF-CERTIFICATION PROCESS CONTAINED IN COMMISSION'S ORDER IS CONSISTENT WITH THE FCC's SELF-CERTIFICATION PROCESS. DO YOU AGREE?

A. No. While there may be similarities with the FCC's process, the Order's self-certification process differs in several material respects:

1. The Order provides for different benefit amounts to be paid depending on whether the customer self-certifies or uses the current certification process, while the FCC's self-certification process assumes that all customers will qualify using self-certification and applies identical benefits to all customers qualifying for its Lifeline program and is based on the consumer's participation in eligible programs.

2. The Order requires ETCs to apply Lifeline benefits before receiving the signed certification form back from customers, and to implement a process whereby benefits are terminated to customers who do not return their form within 60 days. Under the FCC's process, benefits are applied to the customer's account only upon receipt of their signed certification form.

3. The Order requires ETCs to implement an annual re-certification process. The FCC does not require re-certification.

As stated in my testimony, the Order's self-certification process is discriminatory, inefficient, and costly.

Q. IN SUPPORT OF THE TWO-TIER BENEFIT PAYMENT SCHEME CONTAINED IN THE COMMISSION'S ORDER, MR. MANN POINTS TO A BIFURCATED LIFELINE PROGRAM IN CINCINNATI BELL TELEPHONE IN OHIO THAT HAS BEEN IN EFFECT SINCE 1998. WHAT IS YOUR RESPONSE?

A. The Cincinnati Bell bifurcated program offers two benefit levels--$7.09 and $12.34--as does the Florida Order, which are $8.25 and $13.50. However, the following provisions of Cincinnati Bell's bifurcated program differ from the Commission's Florida Order:

1. The Cincinnati Bell program requires self-certification for both levels of support without proof of eligibility;

2. Under the lower ($7.09) credit, subscribers certify participation in Section 8 Housing; Medicaid; food stamps; Supplemental Security Income (SSI); or, Low Income Home Energy Assistance Program (LIHEAP);

3. In order to receive the higher ($12.34) credit, subscribers must either participate in Social Security Disability Income (SSDI) or certify that

household income is at or below ***150%*** of the federal poverty guidelines; and,

4. Also, to receive the higher ($12.34) discount, subscribers are not permitted to subscribe to premium services such as Caller ID, Call Waiting, etc.

In contrast, the bifurcated Lifeline benefit program of the Florida PSC provides a lower level, $8.25 credit, if the potential subscriber self-certifies, as opposed to receiving the higher, $13.50 credit when the potential subscriber provides proof of eligibility in a qualifying program.

Q. IN THE TESTIMONY OF SPRINT WITNESS SANDRA KHAZRAEE, SHE MAKES REFERENCE TO POSSIBLE REQUIREMENTS FOR ETCs TO DISCLOSE LIFELINE CERTIFICATION OPTIONS TO ALL CALLERS, AND EXPRESSES SPRINT'S CONCERN THAT ETCs MAY FACE EXTRAORDINARY COSTS TO COMPLY. WHAT IS BELLSOUTH'S POSITION?

A. BellSouth does not agree with Sprint's interpretation of the Order that BellSouth and the other ETCs would be required to change our current practice of discussing and disclosing Lifeline options only when a prospective customer inquires about Lifeline or when the ETC, during discussions with the customer, believes the customer may qualify for Lifeline. If, however, Sprint's interpretation is correct, BellSouth agrees with Ms. Khazraee's comments.

Q. DOES THIS CONCLUDE YOUR REBUTTAL TESTIMONY?

A. Yes.

EXHIBIT A

ACCESS INTEGRATED

Access
Phone Service Made Simple™

4885 Riverside Drive
Suite 107
Macon, Georgia 31210

Tel. 478.475.9800
Toll Free 888.275.0777
www.accesscomm.com

11/11/2004

Ms. Trish Cartwright
Manager – Interconnection Services
BellSouth Interconnection Services
675 West Peachtree Street, NE
Room 34S91
Atlanta, Georgia 30375

Dear Ms. Cartwright:

This acknowledges your letter of November 9, 2004 concerning change of law issues respective to the Interconnection Agreement and MBR Agreements of September 10, 2004, between this company and BellSouth.

We recognize our contractual obligation pursuant to Section 14.4 of the GT&C of the Interconnection Agreement to negotiate any required change of law revisions (vacatur related) to that Agreement. We are willing to proceed to do so now as expeditiously as may be convenient.

We do not see that the FCC's Interim Rules Order triggers any change of law issues as it is, in fact, only a temporary arrangement to be succeeded next month, we believe, by permanent FCC rules.

We further believe that the anticipated permanent rules will significantly impact the vacatur issues and that despite the contract provisions of Section 14.4, the parties would be better served to await these rules before negotiating the vacatur issues.

If you still wish to proceed with change of law negotiations to create vacatur related amendments, please give us several suggested dates and times to begin work. We recommend that we alternate meetings at the offices of each party.

I remain,

Very truly yours,

William T. Wright, Chairman

WTW:lpt

cc: Vincent Oddo
D. Mark Baxter
Sharyl Fowler

BELLSOUTH

675 W. Peachtree Street, NE
34891
Atlanta, Georgia 30375

Trish Cartwright
Phone: (404) 927-2060
FAX: (404) 529-7839

Sent Via Certified Mail

FINAL DRAFT/11-15-04

November 15, 2004

Mr. Vincent Oddo
President CEO
Access Integrated Networks, Inc.
4885 Riverside Drive, Suite 202
Macon, GA 31210

Dear Mr. Oddo:

This is in response to your letter of November 11, 2004, which is in response to my letter of November 9, 2004, regarding the Change of Law notification obligation outlined in the General Terms and Conditions, Section 14.4, of the Interconnection Agreement.

Access Integrated Networks, Inc's position that the Federal Communications Commission's (FCC) Interim Rules Order did not trigger any change of law issues, but rather it is a temporary arrangement to be succeeded in December 2004, by permanent FCC rules, is both legally and factually incorrect. In its Order, the FCC imposes additional rights and obligations on the parties and does not merely maintain the status quo. Among other things, the Order adopts interim rules and requires BellSouth to continue to provide mass market switching, high capacity loops, and high capacity transport under the rates, terms and conditions that had previously applied under Access Integrated's Interconnection Agreement, which expired November 17, 2003, and it also establishes a transition for those elements for which impairment has not been found as of the end of the interim period described in the Interim Rules Order.

At this time, BellSouth is obligated to negotiate vacatur and it is my proposal that Access Integrated provide redlines or an issues list as soon as possible regarding the negotiation. I also propose that we hold a teleconference to discuss those issues or redlines that you provide to us on Wednesday, November 17, 2004, at 10:00 AM EST. Please provide redlines or an issues list without delay, and let me know if you will be available for the proposed teleconference and whether you will have legal counsel attend.

If you have additional questions regarding this matter, please feel free to call me.

Sincerely,

Trish Cartwright
Manager - Interconnection Services

cc: Tom Wright

Mark Baxter
Steve Brown

CINERGY COMMUNICATIONS

Cinergy Communications Company
8829 Bond Street
Overland Park, KS 66214
phone 913.492.1230
fax 913.492.1684

September 28, 2004

CINERGY. COMMUNICATIONS

Ms. Amy Hindman
BellSouth Interconnection Services
675 West Peachtree Street, NE
Room 34S91
Atlanta, GA 30375

Re: FCC Interim Rules

Dear Amy:

This responds to your letter of September 23, 2004 requesting that Cinergy Communications enter into an Amendment based upon the FCC's recently released Interim Rules. We respectfully decline your invitation to amend our existing interconnection agreement.

The interim rules provide for the status quo to remain in effect until March of 2005. Presumably, the FCC will issue Final Rules prior to that date. Once those rules are issued, we can begin negotiating an amendment to our current agreement. However, until final rules are issued, there is no change of law that would require an amendment under our interconnection agreement.

Cinergy Communications has a unique agreement which requires BellSouth to continue providing all services under the agreement until an amendment is completed and filed with the commission. It also states that BellSouth may not seek a true-up for services provided under the agreement. Therefore, until a new Interconnection Agreement is filed, the parties must continue their obligations under the existing agreement.

Very truly yours,

Robert A. Bye

Vice President and
General Counsel

BellSouth Interconnection Services
675 West Peachtree St., NE
Room 34S91
Atlanta, Georgia 30375

Amy Hindman
(404) 927-8998
FAX: 404 529-7839

FINAL DRAFT/10-07-04

Sent Via Certified Mail and Electronic Mail

October 7, 2004

Mr. Robert A. Bye
Vice President and General Counsel
Cinergy Communications Company
8829 Bond Street
Overland Park, KS 66214

Re: Federal Communications Commission's (FCC) Order on Interim Rules

Dear Bob:

This is in response to your letter of September 28, 2004, regarding BellSouth's proposed amendment to Cinergy Communications Company's (Cinergy) Interconnection Agreement pursuant to the FCC's Order and Notice of Proposed Rulemaking (Order) in Docket 04-313 that became effective on September 13, 2004.

BellSouth disagrees with your statement that "until final rules are issued, there is no change of law that would require an amendment under our interconnection agreement." Importantly, the Order clearly establishes in Paragraph 23 the Incumbent Local Exchange Carrier's, (ILEC) rights to pursue change of law immediately, so long as the rules for the Interim Period and the following transition period are incorporated into the amendment, to allow CLECs and ILECs to put in place the FCC's transition requirements and to ensure that the FCC's final unbundling rules are implemented upon the effective date thereof. The FCC could not have been clearer that the interim rules would provide the opportunity for ILECs to invoke change of law provisions in their interconnection agreement.

Also contrary to your statement, the Order imposes additional rights and obligations on the parties and does not merely maintain the status quo. Among other things, the Order adopts interim rules and requires BellSouth to continue to provide mass market switching, high capacity loops, and high capacity transport under the rates, terms and conditions that applied under Cinergy's Interconnection Agreement as of June 15, 2004. These rates, terms and conditions shall remain in effect only until the earlier of March 12, 2005, or the effective date of the FCC's permanent rules (the "Interim Period"). The Order also establishes a transition period for the six (6) months following the Interim Period. BellSouth has every right to amend the interconnection agreement to incorporate the transition period. Cinergy's agreement is not unique in this respect.

Although BellSouth does not necessarily agree with the FCC's requirements as set forth in the Order, BellSouth intends to comply with effective laws and expects Cinergy to do the same. BellSouth forwarded to Cinergy on September 23, 2004 a proposed amendment to incorporate

the Interim Rules Order into the Interconnection Agreement. Should the parties be unable to agree to the terms of an amendment, or should Cinergy breach the interconnection agreement by refusing to negotiate, the parties are free to follow the dispute resolution provisions of the agreement to resolve these issues.

Should you have questions, please contact me at 404.927.8998.

Sincerely,

Amy Hindman
Manager - Interconnection Services

cc: John Cinelli—Cinergy (via electronic mail)
John Chuang—Cinergy (via electronic mail)

INLINE

October 26, 2004

VIA ELECTRONIC MAIL

Alessandra Richmond
BellSouth Interconnection Services
675 West Peachtree St., NE
Room 34S91 BellSouth Center
Atlanta, GA 30375

Re: Interim Rules Amendment

Dear Alessandra:

I am writing to respond to the Interim Rules Amendment offered by BellSouth to Contact Network, Inc. d/b/a InLine on October 1, 2004. It is Contact Network, Inc. d/b/a InLine's position that the Interim Rules merely oblige the parties to maintain their contractual relationship regarding mass market switching, transport and high capacity loops as those contractual relationships existed on June 15, 2004. As a consequence, no amendment is necessary as there has been no change in law materially affecting the terms of our interconnection agreement or the parties' obligations under it (see section 14.3 of the Contact Network, Inc. d/b/a InLine-BellSouth Interconnection Agreement).

Additionally, Contact Network, Inc. d/b/a InLine also opposes, on the same ground, two particular elements of BellSouth's proposed amendment: 1) section 1.11 through section 1.15.1.4 addressing what BellSouth defines as "the Transition Period"; and 2) section 1.15.1.1 through 1.19 addressing various hypothetical changes in law related to "Eliminated Elements". With regard to the "Transition Period", the FCC's brief in opposition to the USTA Mandamus Petition makes it clear that the "Transition Period" BellSouth wishes to amend into the interconnection agreement is a "proposal" from the FCC – not a change in law:

> For the six-month period immediately following the interim period for which the FCC preserved the terms in effect under existing interconnection agreements, the Commission ***proposed*** and sought comment on additional transitional requirements. Under the Commission's ***proposal***, in the absence of a Commission ruling requiring unbundling of a particular element under section 251(c)(3), ILECs would be required for six months after the interim period to continue to lease the element in question, but at a Commission-prescribed rate that is higher than the current rate. *Order* ¶ 29.[1]

[1] USTA v. FCC, D.C. Circuit, Case No. 00-1012, *Opposition of Respondents to Petition for a Writ of Mandamus*, filed September 16, 2004, pp. 7-8 (emphasis added).

Similarly, BellSouth wishes to create numerous "automatic" changes to the interconnection agreement based on various hypothetical changes in law, including "[t]o the extent the FCC issues an effective Intervening Order . . ." (section 1.16); "in the event that the Interim Rules are vacated" (section 1.17); "to the extent any rates, terms or requirements set forth in such Final FCC Unbundling Rules are in conflict . . ." (section 1.18); and "[i]n the event that any Network Element, other than those already addressed above, is no longer required to be offered . . ." (section 1.19). Hypothetical changes in law do not trigger Section 14.3 of the interconnection agreement, which requires "legislative, regulatory, judicial or other legal action" to "materially affect material terms of this Agreement."

The use of terms like "in the event" and "to the extent" are contrary to the requirements of section 14.3 that there be "action" materially affecting material terms before a change in law is triggered under our interconnection agreement. The terms BellSouth now seeks to insert into the interconnection agreement constitute new change in law provisions, not changes in law themselves. While the Interim Rules do allow for certain presumptions in a properly triggered contractual change in law proceeding, such proceeding must be consistent with the existing change in law provision. BellSouth's proposed amends are not consistent with our interconnection agreement change in law provision.

Finally, Contact Network, Inc. d/b/a InLine must reiterate that BellSouth is obligated to maintain section 271 competitive checklist items 4, 5, and 6 (loops, switching and transport) in section 252 interconnection agreements unless and until the FCC grants a petition for forbearance under section 160. As a consequence, even if BellSouth insists on pressing for arbitration of its proposed Interim Rules Amendment, and even if BellSouth is successful in convincing a Commission to accept the BellSouth proposed language, there remains a legal obligation to address loops, switching and transport section 271 obligations in the arbitration.

As always, if you have any questions or need additional information, please feel free to call me.

Sincerely,

Martin Costa
President

BELLSOUTH

BellSouth Interconnection Services
675 West Peachtree Street, NE
Room 34S91
Atlanta, Georgia 30375

Alessandra Richmond
(404)-927-0149
Fax: (404) 529-7839

REVISED FINAL DRAFT/11-11-04

Sent Via E-mail and Certified Mail

November 11, 2004

Mr. Martin Costa
President
Contact Network, Inc. d/b/a Inline
219 Oxmoor Circle
Birmingham, AL 35209

Dear Martin:

This is in response to your letter dated October 26, 2004, regarding BellSouth proposed Amendment provided to InLine on October 1, 2004, to incorporate the Federal Communications Commission's (FCC) Order and Notice of Proposed Rulemaking (Order) in Docket 04-313 into the Parties' Interconnection Agreement.

InLine's position that the "Interim Rules merely oblige the parties to maintain their contractual relationship" as of June 15, 2004 and that "there has been no change in law materially affecting the terms of our interconnection agreement" is both legally and factually incorrect. In its Order, the FCC imposes additional rights and obligations on the parties and does not merely maintain the status quo. Among other things, the Order adopts interim rules and requires BellSouth to continue to provide mass market switching, high capacity loops, and high capacity transport under the rates, terms and conditions that applied under InLine's Interconnection Agreement as of June 15, 2004. These rates, terms and conditions shall remain in effect only until the earlier of March 12, 2005, or the effective date of the FCC's permanent rules (the "Interim Period"). Contrary to your assertion, the Order also establishes a transition period for the six (6) months following the Interim Period, and the transition period will take effect for any of the aforementioned elements for which, at the end of the Interim Period, the FCC has not required unbundling, regardless of whether or not final unbundling rules have become effective. BellSouth has every right to amend the interconnection agreement to incorporate both the Interim Period as established by the FCC and the subsequent transition period.

In addition, the Order clearly establishes in Paragraph 23 the Incumbent Local Exchange Carrier's (ILEC) rights to pursue change of law immediately, so long as the rules for the Interim Period and the following transition period are incorporated into the amendment, to allow Competitive Local Exchange Carriers (CLECs) and ILECs to put in place the FCC's transition requirements and to ensure that the FCC's final unbundling rules are implemented upon the effective date thereof. The FCC could not have been clearer that the interim rules would provide the opportunity for ILECs to invoke change of law provisions in their interconnection agreement.

BellSouth is well aware of its obligations pursuant to Section 271 of the Act. However, your argument that switching, loops and transport must continue to be offered in a Section 251 interconnection agreement unless the FCC forebears from such 271 requirements is not

consistent with statutory law and regulation. Neither the Act nor any rule or order of the FCC or any court has required that elements offered under Section 271 of the Act be included in an interconnection agreement that is negotiated, filed and approved pursuant to Sections 251 and 252 of the Act. Elements provided under Section 271 of the Act are within the jurisdiction of the FCC, not each individual state public service commission, and are subject to different pricing and other requirements. Thus, the position that BellSouth must be required to offer network elements at cost based rates in a Section 251 interconnection agreement when those elements are no longer required to be unbundled pursuant to Section 251 is wholly without merit.

Although BellSouth does not necessarily agree with the FCC's requirements as set forth in the Order, BellSouth intends to comply with effective laws and expects InLine to do the same. BellSouth will be happy to discuss any changes you may have to the proposed amendment but fully expects InLine to take into account the full Order in any such proposal. Should the parties be unable to agree to the terms of an amendment, or should InLine refuse to negotiate a reasonable amendment, the parties are free to follow the dispute resolution provisions of the Agreement to resolve these issues. Additionally, InLine will be subject to the various generic proceedings that address issues related to implementation of the Order.

Should you have any questions, please feel free to contact me.

Sincerely,

Alessandra Richmond
Manager - Interconnection Services

BROADRIVER

BroadRiver™
Communication Corporation

1000 Hemphill Avenue
Atlanta GA 30318

Sent via Electronic Mail and Fedex

October 19, 2004

BellSouth Interconnection Services
Dwight Bailey
875 W. Peachtree Street NW
Room 34S91
Atlanta, GA 30375

Dear Mr. Bailey:

This letter is in reference to your letter, dated September 30th, 2004, concerning the ramifications of the FCC's Notice of Proposed Rulemaking (Order) in Docket 04-313 and Broadriver Communication Corporation's Interconnection Agreement with BellSouth. Broadriver is taking the position that the issues are not ripe for discussion and that the "status quo" is in effect until the FCC and state PUCS act upon new rules. Meaning, in essence, nothing has changed to require Broadriver's Interconnection Agreement with BellSouth to be amended or altered until the new UNE rules have been reviewed and put into effect.

We look forward to working with BellSouth on establishing a "win win" agreement once the rules of engagement are clearly defined and singed off by the FCC and individual state PUCs.

Sincerely,

Robert Turkel
Director of Legal/ Regulatory and CLEC Operations
BroadRiver Communication Corporation

BELLSOUTH

BellSouth Interconnection Services
675 West Peachtree Street, NE
Room 34S91
Atlanta, Georgia 30375

Dwight Bailey
(404)-927-7552
Fax: (404) 529-7839

Sent Via E-mail and Certified Mail **FINAL DRAFT/10-25-04**

October 25, 2004

Mr. Robert Turkel
Director of Legal/Regulatory and CLEC Operations
BroadRiver Communication Corporation
1000 Hemphill Avenue
Atlanta, GA 30318

Dear Mr. Turkel:

This is in response to your letter dated October 19, 2004, regarding the Federal Communications Commission's (FCC) Order and Notice of Proposed Rulemaking (Order) in Docket 04-313 that became effective on September 13, 2004.

BroadRiver's position that "the issues are not ripe for discussion and that the "statue quo" is in effect until the FCC and state PUCs act upon new rules" is both legally and factually incorrect. The Order triggered a change of law as set forth in the Parties' Interconnection Agreement at section 14 of the General Terms and Conditions. As the Order imposes additional rights and obligations on the parties and does not merely maintain the status quo, BellSouth requested on September 30, 2004, to amend the agreement to implement the Order. Among other things, the Order adopts interim rules and requires BellSouth to continue to provide mass market switching, high capacity loops, and high capacity transport under the rates, terms and conditions that applied under BroadRiver's Interconnection Agreement as of June 15, 2004. These rates, terms and conditions shall remain in effect only until the earlier of March 12, 2005, or the effective date of the FCC's permanent rules (the "Interim Period"). The Order also establishes a transition period for the six (6) months following the Interim Period, and the transition period will take effect for any of the aforementioned elements for which, at the end of the Interim Period, the FCC has not required unbundling, regardless of whether or not final unbundling rules have become effective. BellSouth has every right to amend the Interconnection Agreement to incorporate the interim and transition periods.

In addition, the Order clearly establishes in Paragraph 23 the Incumbent Local Exchange Carrier's (ILEC) rights to pursue change of law immediately as BellSouth has requested as much from BroadRiver. Specifically, Paragraph 23 points out that the Parties are to incorporate the rules for the Interim Period and the following transition period into the amendment, and to ensure that the FCC's final unbundling rules are implemented upon the effective date thereof. Contrary to your assertion, the FCC could not have been clearer that ILECs may invoke change of law provisions in their interconnection agreements to implement the terms of the Order.

Although BellSouth does not necessarily agree with the FCC's requirements as set forth in the Order, BellSouth intends to comply with effective laws and expects BroadRiver to do the same. On September 30, 2004, BellSouth forwarded to BroadRiver a proposed amendment to incorporate the Interim Rules Order into the Interconnection Agreement. Should the parties be unable to agree to the terms of an amendment, or should BroadRiver breach the

Interconnection Agreement by refusing to negotiate, the parties are free to follow the dispute resolution provisions of the Agreement to resolve these issues.

Should you have any questions, please feel free to contact me.

Sincerely,

Dwight Bailey
Manager - Interconnection Services

EXHIBIT B

STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH

DOCKET NO. P-100, SUB 133U

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of		
Generic Proceeding to Consider	)	ORDER ESTABLISHING
Amendments to Interconnection Agreements	)	GENERIC DOCKET AND
Between BellSouth Telecommunications, Inc.	)	REQUIRING SUPPLEMENTAL
and Competing Local Providers Due to	)	INFORMATION
Changes of Law	)	

BY THE CHAIR: On November 4, 2004, BellSouth Telecommunications, Inc. (BellSouth) filed a Petition to Establish Generic Docket to determine the changes that recent decisions from the Federal Communications Commission (FCC) and the United States Court of Appeals for the District of Columbia Circuit (DC Circuit Court) will require in existing interconnection agreements between BellSouth and competing local providers (CLPs) in North Carolina. BellSouth argued that a single generic proceeding would be preferable to 250 separate change-of-law proceedings and suggested that such a proceeding should be scheduled as soon as possible.

WHEREUPON, the Chair reaches the following

CONCLUSIONS

After careful consideration, the Chair concludes that good cause exists to establish the generic proceeding requested by BellSouth but that BellSouth shall provide certain supplemental information before such proceeding is scheduled.

Three considerations figure into this approach. First, the FCC has represented that it desires to have final rules in place by the end of 2004, well before the interim rules order expires in 2005. It is obviously better, other things being equal, to have final rules in place rather than interim rules before one undertakes a comprehensive change-of-law proceeding.

Second, the Commission has a heavy telecommunications workload in the immediate period to come, not the least of which is a revision of BellSouth's own price plan. Scheduling a generic proceeding would be premature at this point, given the various contingencies involved.

Finally, while there is undoubtedly substantial overlap, the universe of CLPs may not be the same as the universe of CLPs with which BellSouth has interconnection agreements in need of change. Knowing the identity of the affected CLPs and other information about their interconnection agreements with BellSouth is important for setting up a generic docket that does not include unaffected parties. Accordingly, BellSouth is directed to provide to the Commission by no later than December 3, 2004, a report (1) listing the CLPs affected by the generic docket, (2) providing citations to relevant interconnection agreement provisions, and (3) listing the expiration dates of such agreements.

IT IS, THEREFORE, SO ORDERED.

ISSUED BY ORDER OF THE COMMISSION.

This the 10th day of November, 2004.

NORTH CAROLINA UTILITIES COMMISSION

Gail L. Mount

Gail L. Mount, Deputy Clerk

pb110904.02

CERTIFICATE OF SERVICE

I hereby certify that on December 3, 2004, a copy of the foregoing document was served on the following, via the method indicated:

[ ] Hand
[ ] Mail
[ ] Facsimile
[ ] Overnight
[X] Electronic

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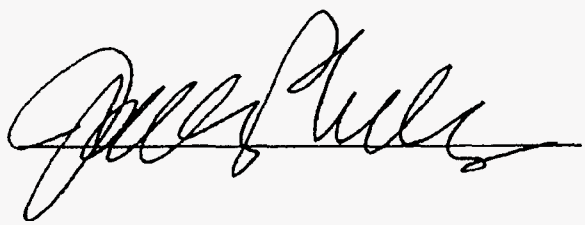

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