MEREDITH MAYS
Senior Regulatory Counsel

BellSouth Telecommunications, Inc.
150 South Monroe Street
Suite 400
Tallahassee, Florida 32301
(404) 335-0750

June 17, 2004

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

Re: Docket No. 040520-TP; Emergency Petition of FCCA, AT&T and MCI to Require ILECs to Continue to Honor Existing Interconnection Obligations

Dear Ms. Bayo:

Enclosed are an original and fifteen copies of BellSouth Telecommunications, Inc.'s, Response in Opposition and Motion to Dismiss the Petition of FCCA, AT&T & MCI for Emergency Declaratory Ruling, which we ask that you file in the above referenced docket.

A copy of this letter is enclosed. Please mark it to indicate that the original was filed and return the copy to me. Copies have been served to the parties shown on the attached Certificate of Service.

Sincerely,

Meredith E. Mays /RH

Meredith E. Mays

cc: All Parties of Record
Marshall M. Criser III
R. Douglas Lackey
Nancy B. White
541615

CERTIFICATE OF SERVICE
DOCKET NO. 040520-TP

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

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ateitzma@psc.state.fl.us

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Meredith Mays/RH
MEREDITH MAYS

BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

In Re: Emergency Petition of	)	
FCCA, AT&T, and MCI	)	
To Require ILECs To Continue to Honor	)	Docket No. 040520-TP
Existing Interconnection Obligations	)	Filed: June 17, 2004
	)	

BELLSOUTH TELECOMMUNICATIONS, INC.'S RESPONSE IN OPPOSITION AND MOTION TO DISMISS THE PETITION OF FCCA, AT&T & MCI FOR EMERGENCY DECLARATORY RULING

INTRODUCTION

BellSouth Telecommunications, Inc. ("BellSouth") respectfully submits this Response in Opposition and Motion to Dismiss the Petition for Emergency Declaratory Ruling ("Complaint") filed by the Florida Competitive Carriers Association, AT&T, and MCI (collectively, "Petitioners") on or about May 28, 2004. Petitioners seek an "emergency, expedited" order asking the Florida Public Service Commission ("Commission") to require BellSouth to "maintain the status quo and to honor existing interconnection agreements." *See* Complaint at 18. More specifically, Petitioner ask the Commission to enter an "emergency" order requiring BellSouth to "continue to honor the obligations contained in [its] Interconnection Agreements," and it asks the Commission to dictate one and only one manner of amending those agreements to conform to the D.C. Circuit Court's opinion[1] now that the stay of the court's mandate has expired. *Id.* Finally, Petitioners ask the Commission to preclude BellSouth "from taking any unilateral actions" to restrict Competitive Local Exchange Carriers' ("CLECs") access to unbundled network elements. For the reasons set forth below, Petitioners' Complaint has no substantive merit. BellSouth respectfully requests that the Commission dismiss the Complaint, or in the alternative, given that the issues related to an orderly transition in light of the D.C. Circuit Court's mandate

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[1] *USTA v. FCC*, 359 F.3d 554 (D.C. Cir. 2004) (*"USTA II"*).

are not going to go away, hold this Complaint in abeyance and address appropriate issues for the industry as a whole rather than on a piecemeal basis.

DISCUSSION

I. THERE IS NO "EMERGENCY," AND THERE IS NO MERIT TO PETITIONERS' COMPLAINT, BECAUSE BELLSOUTH HAS CLEARLY, CONSISTENTLY, AND WITHOUT EXCEPTION STATED THAT IT WILL HONOR ITS EXISTING INTERCONNECTION AGREEMENTS.

The Complaint appears to be based on Petitioners' unfounded fear that when the Federal Communications Commission's ("FCC") unbundling rules are vacated, BellSouth may no longer honor its existing Interconnections Agreements with CLECs. Several sources, including at least one of the Exhibits to Petitioners' Complaint, clearly demonstrate that Petitioners' fear is unfounded.

Exhibit 3 to Petitioners' Complaint, for example, is a Carrier Notification Letter issued by BellSouth and dated May 24, 2004. This Letter states without equivocation that "BellSouth will not unilaterally breach its interconnection agreements." The letter says that BellSouth "does intend to pursue modification, reformation or amendment of existing interconnection Agreements . . . to properly reflect the Court's mandate," and it specifically assures the CLECs that "BellSouth will not, as a result of the vacatur, unilaterally disconnect services being provided to any CLEC under the CLEC's interconnection Agreement." *Id.* (emphasis added).

Beyond that, Petitioners apparently are aware of BellSouth's May 7, 2004 letter to Cbeyond, which is another CLEC.[2] This letter refers to BellSouth's Carrier Notification Letter dated April 22, 2004 (which is attached as Exhibit 2 to Petitioners' Complaint and which

[2] Attachment 1 to this Response is a copy of this letter. Petitioners apparently is aware of this letter because in a similar Petition it filed with the Georgia Public Service Commission on May 28, 2004, Petitioners states that it supports the Petition for Declaratory Ruling that Cbeyond filed with the Georgia Commission in Docket 18889-U (which the Georgia Commission recently voted unanimously to dismiss). BellSouth's May 7, 2004 letter to Cbeyond was attached the Cbeyond Petition that Petitioners says it supports.

purports to support Petitioners's claim of "confusion"), and it clearly states that "[n]owhere in BellSouth's [April 22, 2004 Carrier Notification Letter] is there any discussion or indication that BellSouth will unilaterally breach the Interconnection Agreement and it is not BellSouth's intent to do so." *See* Attachment 1 at p. 1 (emphasis added). Further, rather than giving any suggestion that BellSouth would act unilaterally when the vacatur became effective, BellSouth's letter states that "BellSouth is well aware of its obligations under the existing Interconnection Agreements and will pursue the legal and regulatory options available to it once the vacatur becomes effective." *Id.* (emphasis added). Nowhere does BellSouth suggest that it would act unilaterally, and indeed BellSouth has repeatedly assured the industry that it will not act unilaterally with regard to its interconnection agreements once the vacatur becomes effective.[3] These letters of May 7 and May 24, 2004 are more that sufficient to demonstrate that the fears that led Petitioners to file its "emergency" Complaint are unfounded.

Nonetheless, BellSouth would like to address the proceedings here and in North Carolina that are referenced in Petitioners's Complaint. *See* Complaint at 6, 8. Attachment 2 to this Response is a copy of a letter BellSouth filed with the North Carolina Utilities Commission on May 28, 2004, following the teleconference of May 26, 2004 that is referenced on page 11 of the Complaint. In that letter, BellSouth states, without equivocation, that:

> If the D.C. Circuit issues its mandate on June 15, 2004, BellSouth will continue to accept and process new orders for services (including switching, high capacity transport, and high capacity loops) and will bill for those services in accordance with the terms of existing interconnection agreements, until such time as those agreements have been amended, reformed, or modified consistent with the D.C. Circuit's decision pursuant to established legal processes. As it is legally entitled to do, BellSouth reserves all rights, arguments, and remedies it has under the law with respect to the rates, terms and conditions in the agreements.

See Attachment 2 (emphasis added).

[3] In light of such assurances, the Georgia Commission recently voted unanimously to dismiss a petition (filed by Cbeyond) that is similar to Petitioners' Complaint here.

Similarly, on May 28, 2004, BellSouth filed a letter with this Commission in Docket No. 040489-TP, a copy of which is included as Attachment 3. Counsel for FCCA represents XO in that docket and, as a result, received a copy of that letter. Specifically addressing the May 24, 2004 Carrier Notification Letter, BellSouth's letter to plainly states that "BellSouth will not 'unilaterally disconnect services being provided to any CLEC under the CLEC's Interconnection Agreement.'" *See* Attachment 3. BellSouth's letter then states that "BellSouth will effectuate changes to its interconnection agreements via established legal procedures." *Id.* (emphasis added) BellSouth concluded by saying that "[w]ith respect to new or future orders, 'BellSouth will not unilaterally breach its interconnections agreements.'" *Id.* (emphasis added).[4]

It is difficult to see how it could be any clearer. BellSouth will honor its existing interconnection agreements until those agreements have been conformed consistent with the D.C. Circuit's mandate. BellSouth intends to utilize the "change of law" process in its interconnection agreements to effectuate such changes. Although BellSouth had not made this decision previously, BellSouth has clearly, consistently, and without exception stated that it will not act unilaterally to modify or change the existing agreements. As a result, it should be clear that contrary to Petitioners' unfounded assertions, there simply is no "emergency" and there is no substantive merit to Petitioners' Complaint.[5]

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[4] On June 1, 2004, BellSouth filed a declaration with the United States Court of Appeals for the D.C. Circuit that is consistent with the letters discussed in this Response. Attachment 4 to this Response is a copy of that declaration.

[5] The state commissions of Tennessee, North Carolina and Louisiana agree that there is no "emergency", as the Tennessee Regulatory Authority voted to dismiss an analogous docket filed by XO Tennessee, Inc. on June 7, 2004. In addressing a complaint filed by CompSouth in Louisiana, that Commission decided on June 9, 2004 that expedited relief was not needed, and held CompSouth's Complaint in abeyance. On June 11, 2004, the North Carolina Utilities Commission entered an order denying emergency relief (Attachment 5). In Mississippi and Kentucky BellSouth has filed letters (Attachments 6 and 7) with the commissions similar to the letter previously filed in Florida, and as a result, the parties also jointly agreed that the Commission should hold CompSouth's Complaint (and BellSouth's Answer) in abeyance and keep this docket open until such time as the parties requested the Commission to take further action. In light of the foregoing, it should be abundantly clear that there is certainly no "emergency" in Florida.

II. THE COMMISSION SHOULD REJECT PETITIONERS'S IMPROPER ATTEMPTS TO LIMIT THE MANNER IN WHICH THE VACATUR CAN BE ADDRESSED TO CHANGE OF LAW PROVISIONS AS MOOT.

Petitioners' Complaint raises a matter of further concern. Petitioners have not merely requested that BellSouth honor its existing interconnection agreements. Petitioners also have asked the Commission to declare that the one and only way that the interconnection agreements can be changed to conform to the D.C. Circuit Court's ruling is through the "change of law" process contained in the individual interconnection agreements. This aspect of Petitioners' request is moot because BellSouth intends to utilize the change of law process in existing interconnection agreements. Nonetheless, the Commission should be mindful that this process may result in issues that will need to be resolved on an industry-wide basis.

For example, in the event that negotiations under the change of law provisions prove unsuccessful, ordering the relief requested in Petitioners' Complaint would require individual modification of every contract to conform to the requirements of the D.C. Circuit's mandate and the Commission's work could be brought to a standstill. Currently, there are hundreds of interconnection agreements that have been filed with and approved by this Commission. The changes wrought by the D.C. Circuit will, in large measure, be applicable across the board to all approved interconnection agreements. Most "change of law" provisions in the interconnection agreements require the parties to negotiate changes and to then pursue the contractually required dispute resolution process if agreement cannot be reached. It seems unlikely that this Commission, or any regulatory agency for that matter, would want to bind itself potentially to hundreds of dispute resolution proceedings, when a simple, single generic proceeding could resolve the disputed issues for all carriers. This issue will not need to be addressed unless and

until negotiations between carriers fail; consequently, there is no need to grant the Petitioners' request.

Interestingly, Petitioners' Complaint is plainly inconsistent with positions previously espoused by Petitioner AT&T in other forums. For example, in Docket 14361-U before the Georgia Public Service Commission, AT&T Communications of the Southern States, LLC ("AT&T") and various other CLECs filed a pleading in which they contended that the adoption of new rates to be incorporated into the parties' interconnection agreements did not require any "negotiation" under applicable change of law provisions:

> Rather, all that is required to amend these agreements is to insert a new table containing the new cost-based UNE rates, having both parties sign the amendment and filing the amendment with this Commission. That is a purely ministerial function, not something that requires extensive negotiation.

See Attachment 8 at p. 6. This same reasoning would apply now that the D.C. Circuit's mandate has taken effect – all that is required is for the parties to remove the language concerning unbundled network elements that the D.C. Circuit has held do not satisfy the impairment standard. This is purely ministerial function not requiring extensive negotiation.

Indeed, several of the FCCA's members in Georgia went so far as to contend that because "negotiations are not necessary to implement the [Georgia] Commission's UNE rate order," the change-of-law provisions in the parties' interconnection agreements were "inapplicable in this instance." *See* Attachment 9 at p. 4, n.3. Although the Georgia Commission did not adopt this position, Petitioners make no attempt to explain its sudden change of heart about the sanctity of the change-of-law provisions in the parties' interconnection agreements when it comes to the D.C. Circuit's mandate.

Additionally, Petitioners' position that any amendment to conform existing interconnection agreements to the D.C. Circuit's mandate should not be effective until such

amendment has been "filed with and approved by the Commission" also is inconsistent with positions taken by FCCA members in Georgia. There, AT&T and other CLECs asked the Georgia Commission to clarify that any amendment incorporating the Georgia Commission's new UNE rates should take effect on March 18, 2003, which is the date of the Georgia Commission's vote, regardless of when the parties' actually amended their respective interconnection agreements. According to Petitioners' members, such clarification was necessary "[t]o prevent the discriminatory impact of some CLECs implementing the Commission ordered rates prior to other CLECs or BellSouth delaying implementing the rates until some unspecified time in the future ...." *See* Attachment 9 at p. 4.

Under such reasoning, and to be consistent, Petitioners presumably should agree that any amendment implementing the D.C. Circuit's mandate should take effect as of the date the mandate was issued. Of course, now that the shoe is on the other foot, Petitioners are not concerned about consistency and could care less about possible discrimination or delay associated with implementing the D.C. Circuit's mandate. In any event, as indicated above Petitioners' entire arguments concerning the change of law provisions are moot. BellSouth intends to utilize the change of law provisions in individual CLECs' interconnection agreements to effectuate the *USTA II* decision, and no Commission action is needed.

III. BELLSOUTH RESPECTFULLY REQUESTS THAT THE COMMISSION DISMISS THE COMPLAINT BUT CONTINUE TO HOLD THESE DOCKETS OPEN.

As explained above, there is simply no substantive basis, either in fact or in law, to grant any aspect of Petitioners' Complaint. BellSouth has stated that it has no intention of taking action unilaterally to cut off service, or to deny new service to CLECs with which it has existing interconnection agreements. The Carrier Notification Letters attached to Petitioners' Complaint

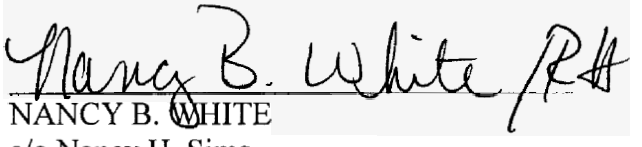
and the additional documents attached to this Response clearly explain what BellSouth's position is and will be vis-à-vis carriers with which BellSouth has no interconnection agreement, but there is no basis to conclude that BellSouth would intentionally violate its existing interconnection agreements in any respect. Consequently, there is no emergency and no basis for this Commission to grant the relief sought by Petitioners.

CONCLUSION

There are now four separate proceedings in Florida that raise issues relating to *USTA II*. BellSouth has or will file its formal responses to each of these dockets, however, it is clear that issues related to an orderly transition of the *USTA II* mandate are not going to go away. Accordingly, the Commission should dismiss the Petitioners' Complaint, but hold one of the dockets open to consolidate appropriate issues into a single proceeding, which would allow the Commission to resolve such issues for the industry as a whole, rather than on a piecemeal basis.

Respectfully submitted, this 17th day of June, 2004.

BELLSOUTH TELECOMMUNICATIONS, INC.



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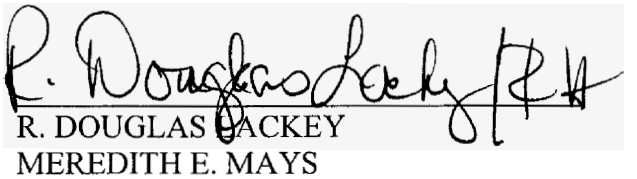

R. DOUGLAS LACKEY
MEREDITH E. MAYS
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675 West Peachtree Street, N.E.
Atlanta, GA 30375
(404) 335-0750

540872v.2

040520-TP

BELLSOUTH'S
ATTACHMENT 1

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

Jerry Hendrix
404 927-7503
FAX: 404 529-7839

Sent Via Certified Mail

May 7, 2004

Ms. Julia Strow
Vice President
Cbeyond Communications, LLC
320 Interstate North Parkway, SE
Suite 300
Atlanta, GA 30339

Dear Ms. Strow:

This is in response to your letter dated May 5, 2004, regarding Carrier Notification letter SN91084063 dated April 22, 2004, announcing BellSouth's offer of a transition from high-capacity loops, interoffice channels and dark fiber Unbundled Network Elements (UNE) to tariffed offerings of BellSouth or offerings available from others. I am sorry that you misunderstood BellSouth's letter regarding its actions that will take place after the D.C. Circuit Court's vacatur becomes effective. Nowhere in BellSouth's letter is there any discussion or indication that BellSouth will unilateral breach the Interconnection Agreement and it is not BellSouth's intent to do so.

While BellSouth appreciates Cbeyond taking the time to express its position regarding an Incumbent Local Exchange Carrier's (ILEC's) obligation to provide high capacity dedicated transport and high capacity loops at UNE pricing once the vacatur becomes effective, BellSouth respectfully disagrees with Cbeyond's position. The D.C. Circuit Court's Opinion explicitly vacated the Federal Communications Commission's (FCC) national findings of impairment with respect to high capacity dedicated transport and high capacity loops such that these elements are no longer required to be provided at UNE pricing. As a result, once vacatur becomes effective, ILECs will no longer have an obligation under Section 251 of the Telecommunications Act to offer these elements as UNEs. As stated previously, BellSouth is well aware of its obligations under the existing Interconnection Agreements, and will pursue the legal and regulatory options available to it once the vacatur becomes effective. Furthermore, although ILECs presumably will retain an obligation to offer high capacity dedicated transport and high capacity loops pursuant to Section 271 of the Telecommunications Act, such offerings will not be subject to UNE Total Element Long-Run Incremental Cost (TELRIC)-based pricing.

BellSouth's UNE transport transition offering in Carrier Notification Letter SN91084063 is in response to FCC Chairman Powell's call for carriers to enter into commercial negotiations. To provide stability and assurances for CLECs, BellSouth is offering a transition plan for CLECs' continued access to high capacity dedicated transport and high capacity loops during the transition period in hopes that its CLEC customers will consider BellSouth as their provider of these special access services. As such, a carrier notification letter is the appropriate vehicle to

communicate such an offering to all CLECs on a nondiscriminatory basis and at just and reasonable rates.

BellSouth looks forward to the opportunity to successfully negotiate an agreement that will create a viable long-term service arrangement with Cbeyond. Please contact Mr. Dwight Bailey at 404.927.7552 to set up a meeting.

Sincerely

Shelley W. Padgett for Jerry Hendrix

Jerry Hendrix
Assistant Vice President
Interconnection Services

040520-TP

BELLSOUTH'S
ATTACHMENT 2

Edward L. Rankin, III
General Counsel - North Carolina

BellSouth Telecommunications, Inc.
1521 BellSouth Plaza
P. O. Box 30188
Charlotte, North Carolina 28230
Telephone: 704-417-8833
Facsimile: 704-417-9389

May 28, 2004

Ms. Geneva S. Thigpen
Chief Clerk
North Carolina Utilities Commission
4325 Mail Service Center
Raleigh, NC 27699-4325

Re: Docket No. P-100, Sub 133q and Sub 133s

Dear Ms. Thigpen:

On May 26, 2004, this Commission held a teleconference to discuss the above-listed dockets. During this conference, BellSouth clarified its position concerning the D.C. Circuit Court of Appeals decision vacating portions of the *Triennial Review Order*. BellSouth also posted a Carrier Notification Letter on May 24, 2004 to set forth its position.

BellSouth intended to alleviate apparent uncertainty on the part of some carriers. Apparently, some carriers purport to remain confused. As provided in BellSouth's May 24, 2004 Carrier Letter Notification, BellSouth will not "unilaterally disconnect services being provided to any CLEC under the CLEC's Interconnection Agreement." Consequently, there will be no chaos as the CLECs allege. BellSouth will effectuate changes to its interconnection agreements via established legal procedures.

With respect to new or future orders, "BellSouth will not unilaterally breach its interconnection agreements." If the D.C. Circuit issues its mandate on June 15, 2004, BellSouth will continue to accept and process new orders for services (including switching, high capacity transport, and high capacity loops) and will bill for those services in accordance with the terms of existing interconnection agreements, until such time as those agreements have been amended, reformed, or modified consistent with the D.C. Circuit's decision pursuant to established legal processes. As it is legally entitled to do, BellSouth reserves all rights, arguments, and remedies it has under the law with respect to the rates, terms, and conditions in the agreements.

I trust this additional information adequately addresses any remaining questions that CLECs have raised in connection with these dockets. Please stamp the extra copy of

this letter "Filed" and return it to me in the usual manner. Thank you for your assistance in this matter.

Sincerely,

Edward L. Rankin, III

ELR/db
cc: Parties of record

539478

040520-TP

BELLSOUTH'S
ATTACHMENT 3

Legal Department

NANCY B. WHITE
General Counsel-Florida

BellSouth Telecommunications, Inc.
150 South Monroe Street
Suite 400
Tallahassee, Florida 32301
(305) 347-5558

May 28, 2004

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

Re: Docket No. 040489-TP; *Joint CLECs' Emergency Complaint Seeking an Order Requiring BellSouth and Verizon to Continue to Honor Existing Interconnection Agreements*

Dear Ms. Bayo:

On May 21, 2004, XO Florida, Inc. and Allegiance Telecom of Florida, Inc. ("Joint CLECs") filed an Emergency Complaint, which purports to require expedited action from this Commission due to the Joint CLECs' perception of an imminent service disruption. BellSouth will file its formal response to this Complaint on or before June 10, 2004; in the meantime this letter responds to the Joint CLECs' request for expedited relief. As set forth more fully herein, such emergency relief is not necessary.

During this Commission's May 11, 2004 teleconference in Docket Nos. 030851-TP and 030852-TP, BellSouth clarified its position concerning the D.C. Circuit Court of Appeals decision vacating portions of the *Triennial Review Order*. BellSouth also posted a Carrier Notification Letter on May 24, 2004 to set forth its position, which is attached hereto.

BellSouth intended to alleviate apparent uncertainty on the part of some carriers. Apparently, some carriers purport to remain confused. As provided in BellSouth's May 24, 2004 Carrier Letter Notification, BellSouth will not "unilaterally disconnect services being provided to any CLEC under the CLEC's Interconnection Agreement." Consequently, there will be no chaos as the Joint CLECs allege. BellSouth will effectuate changes to its interconnection agreements via established legal procedures.

With respect to new or future orders, "BellSouth will not unilaterally breach its interconnection agreements." If the D.C. Circuit issues its mandate on June 15, 2004, BellSouth will continue to accept and process new orders for services (including switching, high capacity transport, and high capacity loops) and will bill for those services in accordance with the terms of existing interconnection agreements, until such time as those agreements have been amended, reformed, or modified consistent with the D.C. Circuit's decision pursuant to established legal processes. As it is legally entitled to do, BellSouth reserves all rights, arguments, and remedies it has under the law with respect to the rates, terms, and conditions in the agreements.

I trust this information adequately addresses the Joint CLECs' concerns relating to service disruption and demonstrates that expedited action by this Commission is unnecessary. If I can be of further assistance, please let me know.

Sincerely,

Nancy B. White/VF

Nancy B. White

cc: Parties of Record
Beth Keating

[illegible]

BELLSOUTH

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

040520-TP

BELLSOUTH'S
ATTACHMENT 4

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

Nos. 00-1012 *et al.*

UNITED STATES TELECOM ASSOCIATION, *et al.*,
Petitioners,

v.

FEDERAL COMMUNICATIONS COMMISSION
and UNITED STATES OF AMERICA,
Respondents.

Declaration of Keith O. Cowan and Jerry D. Hendrix

1. I am Keith O. Cowan. I am employed by BellSouth as its President-Interconnection Services. In this position, I have responsibility for BellSouth's services to wholesale customers, including competitive local exchange carriers ("CLECs").

2. I am Jerry D. Hendrix. I am employed by BellSouth as Assistant Vice President-Interconnection Marketing in the Interconnection Services organization. I have been connected to the Interconnection Services organization since the passage of the Telecommunications Act of 1996 (the "Act"). During that time, I have had experience in a variety of roles related to our wholesale operations, including sales, product development, contract negotiation, pricing, and testifying before public service commissions.

3. The purpose of this Declaration is to provide information about BellSouth's actions if this Court's mandate issues. Specifically, it explains that:

(a) there will be no service disruption to CLECs as a result of the mandate's issuance;

(b) during the eight years of FCC rule uncertainty, any changes arising out of regulatory or judicial determinations have been handled successfully, and changes necessitated by this mandate will be no different;

(c) BellSouth has an attractive commercial offer for CLECs that desire commercial certainty.

4. No service to CLEC customers will be terminated by BellSouth because of issuance of the Court's mandate. As described in further detail below, after the mandate issues, BellSouth will continue to provide an equivalent service to wholesale customers that currently obtain mass market switching, high-capacity loops and transport, and dark fiber from BellSouth as unbundled network elements, assuming they wish to continue receiving such service.

5. BellSouth has explained the actions that it will take through dissemination of a Carrier Notification Letter (Attachment 1) and a press release (Attachment 2) to all CLECs in its service territory. The notification letter provides, in pertinent part: "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." The press release affirms that statement, as does this Declaration.

6. Since passage of the Act, there has been substantial litigation and often considerable uncertainty surrounding the rules for unbundled network elements. But BellSouth and other members of the telecommunications industry have successfully managed the changes resulting from judicial decisions and the FCC's promulgation of new UNE rules. For example, the FCC in 1999 essentially eliminated incumbents' obligation to unbundle operator services and directory assistance, which it had required incumbents to unbundle in its original UNE list, established in 1996. Nonetheless, BellSouth continued to provide operator service and directory assistance service to CLECs that desired to obtain it from BellSouth, at "just and reasonable" rates. Similarly, in the *Triennial Review Order*, the FCC eliminated incumbents' obligation to unbundle circuit switching for enterprise customers (subject to conditions that BellSouth satisfied), and CLECs that desired that service have continued to receive it from BellSouth. In every case, the industry has found an orderly legal process available to successfully manage the changes, and customer service was not disrupted. These same orderly processes are still available, and if necessary will be used by BellSouth to effect any changes to contracts or requests for relief that are occasioned by the issuance of the mandate. Provided our CLEC customers

demonstrate the good faith that has characterized BellSouth's previous responses to change, customer service will be unaffected by the issuance of the mandate.

7. BellSouth has attractive commercial offers for CLEC customers that prefer the certainty of a commercial arrangement. For customers that currently purchase the unbundled network element platform (UNE-P), BellSouth offers an equivalent, replacement service that permits existing customers to continue their current service without any price increase for the remainder of 2004, and with a gradual increase to a market-based rate over the remainder of the offer's 42 month term. For customers that desire high-capacity dedicated transport, loops, and dark fiber, BellSouth offers a transition plan from the current UNE service to other BellSouth regulated offerings or to other alternative facilities. We have executed eight commercial agreements for the UNE-P replacement service, and have entered into two separate transition agreements regarding high capacity transport and high capacity loops.

8. Two mischaracterizations of the new equivalent replacement offer also require correction. (*See Motion of CLEC Petitioners and Intervenors, Exhibit A-Declaration of AT&T, p. 27, ¶ 61, and Exhibit D-Declaration of MCI, p.8, ¶ 15).* First, neither the new equivalent nor the existing UNE-P is comparable to BellSouth's basic residential retail service. A CLEC customer purchasing today's UNE-P or tomorrow's

equivalent service receives all the features that are part of BellSouth's highest premium residential retail service, including all switch features for caller ID, call waiting, and similar services, and in addition receives termination of calls to all points within the Local Access and Transport Area (LATA) in which the end-user customer's service is located. None of these premium features is part of BellSouth's basic residential retail service, which renders misleading the attempted comparison and accompanying anti-competitive allegations of AT&T and MCI. (*see id.*). The BellSouth premium residential retail service that compares most closely with UNE-P and the new equivalent service is uniformly priced above the rate for each wholesale service. Even that comparison shortchanges the CLECs' revenue opportunity, however, because subscription to UNE-P or the new equivalent service permits CLECs to collect wholesale revenue from long distance carriers terminating calls over the service. Finally, of course, every retail residential telecommunications service of BellSouth can be purchased by wholesale customers for less than the retail price because of the wholesale discount required by the Act and prescribed by state public service commissions.

9. In addition, the new offer of service equivalent to the UNE-P in Georgia is priced based on the most recent Georgia Public Service Commission rates that have not been invalidated by the courts. The reference in at least one filing (*see AT&T Declaration, pp.27-28,* ¶¶*62-63*) to a "Georgia exception" (AT&T's pejorative phrase for BellSouth's

proposed use of the most recent Georgia PSC-adopted rates not determined to be unlawful) ignores a federal district court's recent holding that the Georgia PSC acted unlawfully when it set new rates in 2003. The court's determination that the Georgia PSC acted unlawfully is final, although litigation continues over the specific remedy imposed by the district court. Thus, Georgia is not an exception; it fits the proposal's discipline of using the latest rates not found unlawful.

This concludes the Declaration.

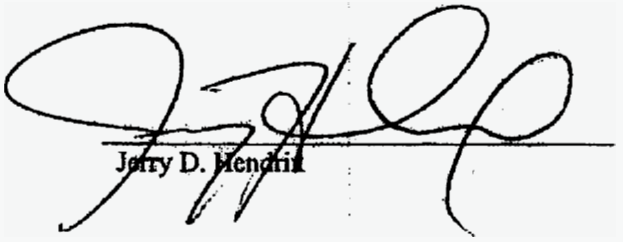
I, Keith O. Cowan, declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct to the best of my knowledge.

Executed May 28, 2004

Keith O. Cowan

I, Jerry D. Hendrix, declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct to the best of my knowledge.

Executed May 28, 2004



Jerry D. Hendrix

ATTACHMENT 1

BELLSOUTH

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

ATTACHMENT 2

BellSouth Confirms To Wholesale Customers That Services Will Continue Even As Rules Change

For Immediate Release:

May 26, 2004

ATLANTA -- BellSouth (NYSE: BLS) today confirmed that there would be no disruption of service if current rules on wholesale leasing of BellSouth unbundled network elements (UNEs) are vacated next month.

Under a District of Columbia Circuit Court of Appeals order due to go into effect on June 16, BellSouth will **no longer be required to lease certain portions of its networks** to its wholesale customers.

In a letter to its customers on May 24, BellSouth pledged to take no unilateral action to disconnect service to its wholesale customers as a result of the court's vacatur. (http://interconnection.bellsouth.com/notifications/carrier/carrier_pdf/91084106.pdf)

To ensure a smooth and fair transition to the new market environment, BellSouth will use established legal and regulatory processes to implement the D.C. Circuit Court's decision.

"We are committed to going through the appropriate process," said Keith Cowan, President of BellSouth Interconnection Services. "This is not a new process. The process has been successfully utilized multiple times since the passage of the Act when the FCC previously removed network elements from the list."

"In those cases, no wholesale customers lost service as a result of the elements' removal from interconnection agreements," Cowan explained. "For example, switching for enterprise customers in certain large markets was previously removed from the mandated list. Over a hundred of BellSouth's wholesale customers entered into commercial agreements for market priced switching for enterprise end user customers. The transition from the regulated environment to the competitive environment was smooth with complete service continuity."

"In addition, BellSouth will continue to negotiate commercial agreements with all interested wholesale customers," said Cowan. "We have posted an attractive proposal on our website that offers Competitive Local Exchange Carriers (CLECs) a DS0 wholesale local voice platform service to replace the current unbundled switching arrangement with no price increase through the remainder of 2004."

"We have already signed seven commercial agreements and believe we can achieve additional commercial agreements, especially if we are in a position where neither side has a regulatory advantage in the negotiations," he added. "These negotiations must be done in good faith. We pledge to continue to do that."

A transition plan has also been proposed to transfer wholesale customers from the current arrangement with UNE high-capacity dedicated transport, loops, and dark fiber, currently purchased under the competitor's government-mandated interconnection agreement, to BellSouth tariffed and regulated offerings or to other alternative facilities.

BellSouth's approach will allow all CLECs acting in good faith to continue uninterrupted service to their customers during the transition to a changed regulatory environment.

"BellSouth is committed to continue providing quality wholesale service and urges its wholesale customers to consider the proposals we have made," said Cowan.

# # #

For more information contact:

Al Schweitzer, BellSouth
al.schweitzer@bellsouth.com
(404) 829-8741

About BellSouth Corporation

BellSouth Corporation is a Fortune 100 communications company headquartered in Atlanta, Georgia, and a parent company of Cingular Wireless, the nation's second largest wireless voice and data provider.

Backed by award winning customer service, BellSouth offers the most comprehensive and innovative package of voice and data services available in the market. Through BellSouth Answers^{SM}, residential and small business customers can bundle their local and long distance service with dial up and high speed DSL Internet access, satellite television and Cingular® Wireless service. For businesses, BellSouth provides secure, reliable local and long distance voice and data networking solutions. BellSouth also offers online and directory advertising through BellSouth® RealPages.com^{SM} and The Real Yellow Pages®.

More information about BellSouth can be found at http://www.bellsouth.com.

NOTE: For more information about BellSouth, visit the BellSouth Web page at http://www.bellsouth.com.

A list of BellSouth Media Relations Contacts **is available in the** Corporate Information Center.

040520-TP

BELLSOUTH'S
ATTACHMENT 5

STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH

DOCKET NO. P-100, SUB 133t

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of		
Request of the Competitive Carriers of the South, Inc., for an Emergency Declaratory Ruling	)))	ORDER DENYING EMERGENCY RELIEF

BY THE COMMISSION: On May 27, 2004, Competitive Carriers of the South, Inc. (CompSouth)[1] filed a petition for an emergency declaratory ruling "that the obligations of parties to interconnection agreements filed with the Commission remain in effect unless and until those interconnection agreements are amended, filed with and approved by the Commission." CompSouth requested an expedited ruling because the mandate in *U.S. Telecom Ass'n v. FCC*, 359 F.3d 554 (D.C. Cir. 2004) (*USTA II*) will issue on June 15, 2004, and, for various reasons set forth in its petition, CompSouth is concerned that once the mandate issues, BellSouth Telecommunications, Inc. (BellSouth) may refuse to honor interconnection agreements with Competing Local Providers (CLPs). *USTA II* vacates certain portions of the Federal Communications Commission's (FCC's) *Triennial Review Order* (TRO).

While the first paragraph of CompSouth's petition appears to seek a general determination of the rights and obligations of "parties to interconnection agreements," the remainder of the petition deals exclusively with facts specific to BellSouth. In light of this ambiguity and the potential precedential ramifications a declaratory ruling could have, the Commission provided all interested Incumbent Local Exchange Carriers (ILECs) and the Public Staff an opportunity to file comments regarding CompSouth's petition. By Order dated May 28, 2004, the Commission ordered all such comments to be filed by June 4, 2004. BellSouth, Carolina Telephone and Telegraph Company, Central Telephone Company and Sprint Communications Company L.P. (collectively Sprint), Verizon South, Inc. (Verizon) and the Public Staff each filed comments in response to the Commission's Order.

Having reviewed and considered CompSouth's petition and all comments filed, the Commission finds that no cause exists at this time to issue a declaratory ruling of the rights and obligations of the parties, i.e., BellSouth and CLPs, under existing, Commission-approved interconnection agreements. BellSouth has given assurance, through a May 24, 2004 Carrier Letter Notification, a May 28, 2004 letter filed with the

[1] The members of CompSouth include: Access Integrated Networks, Inc., Access Point Inc., AT&T, Birch Telecom, Covad Communications Company, IDS Telecom LLC, ITC^DeltaCom, KMC Telecom, LecStar Telecom, Inc., MCI, Momentum Business Solutions, Network Telephone Corp., NewSouth Communications Corp., NuVox Communications Inc., Talk America Inc., Xspedius Communications, and Z-Tel Communications. DSLnet Communications LLC also joined in the CompSouth petition.

Commission in Docket Nos. P-100, Sub 133q and Sub 133s, and a May 26, 2004 conference call convened in the same dockets by Commission Order dated May 21, 2004, that if the *USTA II* mandate issues on June 15, (1) it will not unilaterally disconnect or change rates for service being provided to a CLP under an existing interconnection agreement; (2) it will seek to effectuate changes that become permissible as a result of *USTA II* "via established legal procedures;" and, (3) it "will continue to accept and process new orders for services (including switching, high capacity transports, and high capacity loops) and will bill for those services in accordance with the terms of existing interconnection agreements, until such time as those agreements have been amended, reformed or modified consistent with the D. C. Circuit's decision pursuant to established legal processes." In addition, in its comments filed in this docket, BellSouth states that it "has repeatedly assured the industry that it will not act unilaterally with regard to its Interconnection Agreements once the vacatur [of TRO by *USTA II*] becomes effective." These assurances suggest that the requested emergency relief is not required by the vacatur of portions of the FCC's TRO becoming effective on June 15, 2004.

The Commission believes that BellSouth's acts of assurance are good faith attempts to allay fears that it would take unilateral actions contrary to its obligations under existing interconnection agreements with CLPs. While the Commission recognizes BellSouth's statement in its May 28th letter that "as it is legally entitled to do, BellSouth reserves all rights, arguments, and remedies it has under the law with respect to rates, terms, and conditions in the agreements" and its statement in the May 24th Carrier Notification Letter that it intends to pursue amendment, reformation or modification of existing interconnection agreements consistent with the *USTA II* Court's mandate, the Commission does not believe these statements necessitate granting emergency relief. In its filed comments, BellSouth states that it may be relieved of its contractual obligations "through the 'change of law' provisions in the Interconnection Agreements themselves, by a generic proceeding held by the appropriate state or federal agencies, or by a proceeding filed in the appropriate court." This explanation by BellSouth of the processes it would use to seek relief from its existing contractual obligations suggests to the Commission that CompSouth and other CLPs face no imminent threat with respect to their rights under interconnection agreements with BellSouth.

Accordingly, the Commission finds no cause to grant emergency declaratory relief at this time and, to the extent the CompSouth petition seeks an emergency ruling, the petition is denied. However, and in accordance with the comments of both BellSouth and the Public Staff, the Commission finds it appropriate to hold this docket open pending further order as it is anticipated that CompSouth and CLPs generally will continue to have concerns relating to their rights and the availability of unbundled network elements should the *USTA II* mandate take effect on June 15, 2004 or any time thereafter. Moreover, it is also possible that circumstances may change and warrant further consideration of the issues raised by the CompSouth petition at a later time—a particular possibility given that *USTA II* may still be heard on appeal to the United States Supreme Court. Finally, the Commission reminds all interested parties of its keen

interest in this matter and its desire that legitimate disputes between the parties be resolved in an orderly fashion that will not result in the sudden, unexpected interruption of telecommunication service to the citizens of North Carolina.

IT IS, THEREFORE, SO ORDERED.

ISSUED BY ORDER OF THE COMMISSION.

This the 11th day of June, 2004.

NORTH CAROLINA UTILITES COMMISSION

Gail L. Mount

Gail L. Mount, Deputy Clerk

tb060904.01

040520-TP

BELLSOUTH'S
ATTACHMENT 6

BellSouth Telecommunications, Inc.
175 East Capitol Street, Suite 790
Post Office Box 811
Jackson, MS 39205

Thomas B. Alexander
General Counsel-Mississippi

601 961 1700
Fax 601 961 2397

June 11, 2004

HAND-DELIVERED

FILED

JUN 1 1 2004

MISS. PUBLIC SERVICE COMMISSION

Mr. Brian U. Ray
Executive Secretary
Mississippi Public Service Commission
2nd Floor, Woolfolk Building
Jackson, Mississippi 39201

Re: MPSC Docket No. 2004-AD-0366; CompSouth's Complaint for an Emergency Relief and Motion for Cease and Desist Order against BellSouth

Dear Brian:

At the Special Hearing held yesterday, June 10, 2004, by the Mississippi Public Service Commission ("Commission") on Competitive Carriers of the South, Inc.'s ("CompSouth") Motion for Emergency Temporary Cease and Desist Order ("Motion"), CompSouth moved to withdraw its Motion and BellSouth Telecommunications, Inc. ("BellSouth") agreed to submit a letter similar to the letter that was read into the record before the Louisiana Public Service Commission the day before. CompSouth and BellSouth also jointly agreed that the Commission should hold CompSouth's Complaint (and BellSouth's Answer) in abeyance and keep this docket open until such time as the parties requested the Commission to take further action. These requests were agreed to by the Commission at the Hearing on yesterday. Accordingly, BellSouth submits the following letter.

On May 27, 2004, CompSouth filed a Complaint for Emergency Relief which included a Motion for Temporary Cease and Desist Order, both of which requested expedited action from this Commission based upon CompSouth's perception of an imminent service disruption. BellSouth filed its Response to the Motion on June 7, 2004 and BellSouth filed its Answer to the Complaint on June 9, 2004.

On May 24, 2004, BellSouth posted a Carrier Notification Letter to set forth BellSouth's position concerning the D.C. Circuit Court of Appeals' decision that vacated portions of the Federal Communications Commission's *Triennial Review* Order. A copy of this Carrier Notification Letter is attached hereto. BellSouth intended to alleviate apparent uncertainty on the part of some carriers. Apparently, some carriers remain confused. This letter is intended to alleviate any such confusion. As provided in

BellSouth's May 24, 2004 Carrier Letter Notification, BellSouth will not "unilaterally disconnect services being provided to any CLEC under the CLEC's Interconnection Agreement." Consequently, there will be no chaos as CompSouth alleges. BellSouth will not unilaterally change its interconnection agreements; rather, it will effectuate changes to its interconnection agreements via established legal procedures.

With respect to new or future orders, "BellSouth will not unilaterally breach its interconnection agreements." If the D.C. Circuit issues its mandate on June 15, 2004, BellSouth will continue to accept and process new orders submitted pursuant to existing interconnection agreements including those orders for unbundled network elements (UNEs), combinations, and services (including unbundled switching, unbundled high capacity transport, and unbundled high capacity loops) and will bill for those services in accordance with the rates, terms and conditions of existing interconnection agreements, until such time as those agreements have been amended, reformed, or modified consistent with the D.C. Circuit's decision pursuant to established legal processes. As it is legally entitled to do, BellSouth reserves all rights, arguments, and remedies it has under the law with respect to the rates, terms, and conditions in the agreements.

I trust this information adequately addresses CompSouth's concerns relating to service disruption and demonstrates that expedited action by this Commission is completely unnecessary. If I can be of further assistance, please let me know.

Sincerely,

Tom Alexander

Thomas B. Alexander

TBA/kws

Attachment

cc: Chairman, Bo Robinson (w/attachment)
Vice Chairman, Nielsen Cochran (w/attachment)
Commissioner, Michael Callahan (w/attachment)
Robert G. Waites, Esq. (w/attachment)
George M. Fleming, Esq. (w/attachment)
David L. Campbell, Esq. (w/attachment)
Allison Fry, Esq. (w/attachment)
James L. Halford, Esq. (w/attachment)
Robert P. Wise, Esq. (w/attachment)

540939

BELLSOUTH

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

040520-TP

BELLSOUTH'S
ATTACHMENT 7

BellSouth Telecommunications, Inc.
601 W. Chestnut Street
Room 407
Louisville, KY 40203

Dorothy.Chambers@BellSouth.com

Dorothy J. Chambers
General Counsel/Kentucky

502 582 8219
Fax 502 582 1573

June 14, 2004

Ms. Beth O'Donnell
Executive Director
Kentucky Public Service Commission
P.O. Box 615
211 Sower Boulevard
Frankfort, KY 40602

Re: Petition of CompSouth for Emergency Declaratory Ruling
PSC 2004-00204

Dear Ms. O'Donnell:

On June 10, 2004, a teleconference meeting was held by the Kentucky Public Service Commission ("Commission") on Competitive Carriers of the South, Inc.'s ("CompSouth") Petition for Emergency Declaratory Ruling ("Petition"). CompSouth agreed to withdraw its Petition and BellSouth Telecommunications, Inc. ("BellSouth") agreed to submit a letter similar to the letter that was read into the record before the Louisiana Public Service Commission on June 9, 2004. CompSouth and BellSouth also jointly agreed that the Commission should hold CompSouth's Petition (and BellSouth's Answer) in abeyance and keep this docket open until such time as the parties requested the Commission to take further action. These requests were agreed to by the Commission during the June 10 teleconference meeting. Accordingly, BellSouth submits the following letter.

On May 27, 2004, CompSouth filed a Petition for an Emergency Declaration Ruling which requested expedited action from this Commission based upon CompSouth's perception of an imminent service disruption. BellSouth filed its Response (a letter and a pleading) on June 8, 2004.

On May 24, 2004, BellSouth posted a Carrier Notification Letter to set forth BellSouth's position concerning the D.C. Circuit Court of Appeals' decision that vacated portions of the Federal Communications Commission's *Triennial Review* Order. A copy of this Carrier Notification Letter is attached hereto. BellSouth intended to alleviate apparent uncertainty on the part of some carriers. Apparently, some carriers remain confused. This letter is intended to alleviate any such confusion. As provided in BellSouth's May 24, 2004, Carrier Letter Notification, BellSouth will not "unilaterally disconnect services being provided to any CLEC

under the CLEC's Interconnection Agreement." Consequently, there will be no chaos as CompSouth alleges. BellSouth will not unilaterally change its interconnection agreements; rather, it will effectuate changes to its interconnection agreements via established legal procedures.

With regard to new or future orders, "BellSouth will not unilaterally breach its interconnection agreements." If the D.C. Circuit issues its mandate on June 15, 2004, BellSouth will continue to accept and process new orders submitted pursuant to existing interconnection agreements including those orders for unbundled network elements (UNEs), combinations, and services (including unbundled switching, unbundled high capacity transport, and unbundled high capacity loops) and will bill for those services in accordance with the rates, terms and conditions of existing interconnection agreements, until such time as those agreements have been amended, reformed, or modified consistent with the D.C. Circuit's decision pursuant to established legal processes. As it is legally entitled to do, BellSouth reserves all rights, arguments, and remedies it has under the law with respect to the rates, terms, and conditions in the agreements.

We trust this information adequately addresses CompSouth's concerns relating to service disruption and demonstrates that expedited action by this Commission is completely unnecessary. Thank you for your assistance in this matter.

Very truly yours,

Cheryl R Winn

for Dorothy J. Chambers

Attachment

cc: C. Kent Hatfield, Esq.

541195

BELLSOUTH

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

040520-TP

BELLSOUTH'S
ATTACHMENT 8

Suzanne W. Ockleberry
Senior Regulatory Attorney
Law & Government Affairs

Suite 8100
1200 Peachtree Street, N E
Atlanta, GA 30309-3579
404 810-7175
FAX 404 877-7645
sockleberry@att com

July 10, 2003

BY HAND DELIVERY

Mr. Reece McAlister
Executive Secretary
Georgia Public Service Commission
244 Washington Street
Atlanta, GA 30334

Re: Generic Proceeding to Review Cost Studies, Methodologies, Pricing Policies and Cost Based Rates for Interconnection and Unbundling of BellSouth Telecommunications, Inc.'s Network; Docket No. 14361-U

Dear Mr. McAlister:

Enclosed please find an original and fifteen (17) copies of "**AT&T Communications of the Southern States, LLC ("AT&T"), Access Integrated Networks, Allegiance Telecom, AccuTel of Texas, L.P. dba 1-800-4-A-PHONE and WorldCom, Inc.'s Response to BellSouth's Motion for Reconsideration/ Clarification and Stay**".

I have also enclosed a diskette containing the document. After filing the originals, please return two additional copies stamped "filed".

Thank you for your assistance in this matter.

Very truly yours,

Suzanne W. Ockleberry

Enclosures
cc: Parties of Record

BEFORE THE

GEORGIA PUBLIC SERVICE COMMISSION

In re: Generic Proceeding to Review Cost Studies Methodologies, Pricing Policies and Cost Based Rates for Interconnection and Unbundling of BellSouth Telecommunications, Inc.'s Network	: : : :	Docket No. 14361-U

AT&T COMMUNICATIONS OF THE SOUTHERN STATES, LLC, ACCESS INTTEGRATED NETWORKS, ALLEGIANCE TELECOM, ACCUTEL OF TEXAS DBA 1-800-4-A-PHONE AND WORLDCOM, INC.'s RESPONSE TO BELLSOUTH'S MOTION FOR RECONSIDERATION/CLARIFICATION/STAY

COMES NOW AT&T Communications of the Southern States, LLC ("AT&T"), Access Integrated Networks, Allegiance Telecom, AccuTel of Texas, L.P. dba 1-800-4-A-PHONE and WorldCom, Inc. and files this Response to BellSouth's Motion for Reconsideration/Clarification and Stay and requests that this Commission deny BellSouth's Motion.

BellSouth has previously addressed the Commission regarding the issues raised in the Motion on at least three (3) separate occasions prior to the issuance of the written order in this proceeding. Because the Commission has repeatedly considered and rejected BellSouth's arguments, there is no basis upon which to grant BellSouth's request for reconsideration or to grant a stay of the order pending appeal. The Commission must also reject BellSouth's attempt to bootstrap its arguments by attempting to introduce additional evidence into the record through the Affidavit of Daonne Caldwell, submitted in support of BellSouth's Motion. Commission Rule 515-12-1-.08 bars the introduction of additional evidence unless, and until, the Commission determines that the record in this docket should be reopened. Therefore, the Commission should not consider and should strike Ms. Caldwell's affidavit from the record. For the foregoing

reasons, as more fully discussed herein, this Commission should deny BellSouth's Motion in its entirety.

DISCUSSION

A. BellSouth Provides No Basis to Reconsider the Commission's Decision in this Docket

After the Staff's Recommendation in this docket was presented on February 13, 2003, BellSouth argued against its adoption at three (3) separate Commission Telecommunications Committee meetings. At the March 13, 2003 meeting, the Commission set aside two (2) hours solely to consider comments and arguments any party had regarding the Staff's recommendation. During that particular meeting, BellSouth addressed the merits of the recommendation, distributed handouts to illustrate points made during its argument and presented rebuttal argument to the points raised by other parties. BellSouth's Motion raises the same issues that it previously aired at the three (3) separate Telecommunications Committee meetings; namely, cost of capital, depreciation, growth adjustment, investment allocation, and the treatment of vertical features. The Commission heard those arguments and issued its decision. There is nothing new for this Commission to reconsider.

BellSouth's disagreement with the Commission's decision cannot overcome the substantial record upon which the order is based. As acknowledged by BellSouth's counsel, "thousands of pages of discovery" were propounded to and answered by BellSouth. In addition, the Commission conducted a workshop, the parties filed extensive testimony, hearings were held, and briefs were filed, all prior to the Commission's adoption of the Staff's Recommendation. BellSouth prefiled direct and rebuttal testimony on the appropriate cost of capital and depreciation lives. AT&T/WorldCom's witnesses contradicted BellSouth's testimony on these issues by establishing that the current cost of capital for BellSouth should be 9.18 and that the Federal Communication Commission ("FCC") depreciation lives were appropriate for

use in this proceeding. BellSouth also prefiled testimony on why growth should not be considered when setting UNE rates. AT&T/WorldCom filed testimony disputing this point and provided evidence upon which this Commission relied when it decided to reflect growth in determining the rates and how it could do so to ensure that BellSouth does not over recover its costs during the time that the UNE rates in this docket will be in effect. BellSouth also prefiled testimony on how shared investments should be allocated and its views on the recovery of the cost for vertical features. AT&T/WorldCom's filed testimony refuted these arguments. The parties in this proceeding thoroughly briefed all of these issues with citations to the record supporting the various arguments. Furthermore, the Commission Staff analyzed the evidence for almost one (1) year ***before*** issuing its recommendation. The Commission considered all of the evidence and arguments and issued its decision. Clearly, the issues BellSouth raises yet again in its Motion have received careful consideration by this Commission and BellSouth has offered no basis for reconsidering the sound decision that the Commission reached based on the record in this docket. In short, BellSouth has presented nothing new that would warrant reconsideration.

B. The Affidavit of Daonne Caldwell Should be Stricken From the Record

The Commission should strike the Affidavit of Daonne Caldwell, submitted with BellSouth's Motion, for several reasons. First, BellSouth does not have the unilateral right to supplement the existing record through filing of an affidavit in support of its motion for reconsideration. Commission Rule 515-2-1-.08 contemplates that the Commission will review additional evidence ***if and only if*** it first determines that good cause for reconsideration has been alleged in the motion. BellSouth has provided no such basis in its motion; instead it has simply rehashed issues already considered and decided. Unless and until the Commission determines that BellSouth has presented a sufficient basis upon which reconsideration of the Order in this docket should be granted, it cannot consider additional evidence and the Affidavit of Daonne

Caldwell with all of the additional evidence offered therein should be disregarded and stricken. BellSouth is barred by this Rule and cannot, as it has attempted to do, rely upon the Affidavit as a ***basis*** to grant the motion. Rather, additional evidence is allowed only if the Commission decides that BellSouth's motion, standing on its own, presents "errors" that deserve reconsideration. The motion, as AT&T has previously indicated, fails to pass this first hurdle. If the Commission decides that BellSouth's motion is meritorious and justifies reconsideration of the decision (which it should not given the content of BellSouth's motion), the Affidavit of Daonne Caldwell alone cannot be the only evidence added; the record must be reopened by providing appropriate notice to all parties along with the right to introduce additional evidence of their own. *See* Commission Rule 515-2-1-.08. BellSouth does not have the unilateral right to supplement the existing record through filing of an affidavit in support of its motion for reconsideration.

Furthermore, the Affidavit itself corroborates the feeble attempt by BellSouth to unilaterally supplement the record. Paragraph 3 of Ms. Caldwell's Affidavit indicates that the purpose "...is to provide ***additional information*** that the Commission should consider in evaluating certain issues raised in BellSouth's Motion..." This is a bald attempt to supplement the record with additional information that BellSouth has already had ample opportunity to present to the Commission on how to arrive at the appropriate UNE rates for Georgia. Ms. Caldwell, an expert witness offered by BellSouth, filed direct, supplemental direct and surrebuttal testimony. She also was subject to extensive cross-examination during the hearing in May, 2002. The issues discussed in the Affidavit are not new issues for BellSouth. Growth, xDSL related elements and collocation power have been raised by parties in other cost proceedings throughout the region. Even if BellSouth did not anticipate the issues that competitive local exchange carriers ("CLECs") would raise in cost proceedings in other states and cover those issues in its direct testimony, BellSouth had ample opportunity in surrebuttal

testimony to provide evidence ***in the record*** on how the FCC rules should be interpreted or why CLECs should be charged for loop conditioning. The record in this proceeding is closed. The motion for reconsideration must be evaluated based upon the existing record, not new *and* additional evidence that BellSouth alone offers. Therefore, this Commission should reject the Affidavit of Daonne Caldwell and strike it from the record in this docket. This is just one more attempt by BellSouth to forestall the effectiveness of cost-based UNE rates in Georgia.

C. BellSouth's Request for a Stay Should be Denied.

The Order of this Commission clearly indicated: "... a motion for reconsideration, rehearing, or oral argument or any other motion ***shall not stay the effective date of this Order***, unless otherwise ordered by the Commission." (Order, p. 69, emphasis added.) Clearly, the Commission contemplated that motion for reconsideration or rehearing could be filed. However, the Commission's language clearly indicates that such a motion would not stay the effectiveness of the Order absent some compelling circumstance. BellSouth has not demonstrated such a compelling circumstance. There is no reason for this Commission to grant a stay and allow BellSouth to further delay implementing these cost-based rates for UNEs set forth in the order.

BellSouth provides no basis that would suggest that it will prevail on the merits of any appeal necessitating the Commission granting a stay of the Order in this docket. The standard for appellate review is whether the Commission decision is procedurally and substantially in compliance with the Telecommunications Act of 1996. This is a question of law that is reviewed de novo. If the decision is in compliance with the Telecommunications Act and implementing regulations, the application by the Commission of the law (Telecommunications Act of 1996 and FCC Rules and Regulations implementing the Act) to the facts (testimony filed by the parties) will not be reversed unless the Commission's decision is arbitrary or capricious. AT&T Communications of the Southern States, Inc. v. BellSouth Telecommunications, Inc., 7

F.Supp.2d 661,668 (E.D.N.C., 1998); MCI Telecommunications Corp. v. BellSouth Telecommunications, Inc. 40 F. Supp.2d 416, 422 (E.D.Ky. 1999); AT&T Communications of the Southern States, LLC v. BellSouth Telecommunications, Inc., 122 F.Supp.2d 1305 (N.D. Fla. 2000). The reviewing court is not allowed to substitute its judgment for that of this Commission as to the weight of evidence on questions of fact and substantial deference is given to the Commission's application of the law to the facts. Bell Atlantic-Delaware, Inc v. McMahon, 80. F.Supp.2d 218 (D. Del. 2000). Based on the foregoing, there is a substantial likelihood that BellSouth will ***not*** prevail on appeal. Thus, there is no valid reason to stay implementation of the Commission's Order. The only party who benefits from a stay is BellSouth. CLECs, who have waited almost two (2) years since the inception of this docket to obtain lower cost-based UNE rates, have been forced to continue to pay "significant sums of money" to BellSouth because the current rates are outdated, allow BellSouth to over recover its costs and prevent consumers from receiving the benefits of additional and expanded services that are possible and come with reduced UNE rates.

BellSouth can seek judicial review of the Commission Order without the stay. Although BellSouth contends that absent a stay numerous interconnection agreements would have to be amended to incorporate the new UNE rates, BellSouth has, to date, failed to incorporate the new rates into ***any*** interconnection agreement despite a final order from this Commission. Contrary to BellSouth's argument, incorporating the rates into the interconnection agreements should not be a major undertaking requiring "negotiation." Rather, all that is required to amend those agreements is to insert a new table containing the new cost-based UNE rates, having both parties sign the amendment and filing the amendment with this Commission. That is a purely ministerial function, not something that requires extensive negotiation. In fact, a standard form could be utilized to accomplish this task. By failing to promptly comply with the order and preventing CLECs from enjoying the benefits of the new cost-based UNE rates, BellSouth has

unilaterally accomplished implementation of a stay of the Commission order. BellSouth has done so without any order from this Commission authorizing such a delay. BellSouth's failure to comply with the order in this docket should not be condoned by this Commission. Instead of issuing a stay, this Commission should require BellSouth to expeditiously incorporate the rates into the interconnection agreements, effective on the date determined by this Commission[1], so that competing firms can take advantage of the benefits they produce and Georgia consumers can realize the greater choices of services and features that they will enable.

CONCLUSION

BellSouth's Motion for Reconsideration/Clarification/Stay is nothing more than a rehashing of the same BellSouth arguments that have been previously considered and rejected by this Commission. BellSouth's attempt to bootstrap its motion by attempting unilaterally to supplement the record with an unauthorized affidavit should be rejected by this Commission and the affidavit should be stricken from the record. Finally, because of the likelihood that BellSouth will not prevail on appeal and because BellSouth has unilaterally blocked attempts by CLECs to enjoy the benefits of the new cost-based rates by refusing to incorporate them into their interconnection agreements, BellSouth's request for a stay should not only be summarily denied, but the Commission should direct that BellSouth update the interconnection agreements with these new cost-based rates as of the effective date of the Order.

This day of July, 2003.

Suzanne W. Ockleberry, Esquire
Senior Regional Attorney
AT&T Communications of the Southern States, LLC

[1] AT&T , Covad, New South and filed a Motion for Clarification on July 3, 2003 requesting that this Commission clarify that the effective date of the Order is March, 18, 2003

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This certifies that I have this day served a true and correct copy of the within and foregoing **AT&T COMMUNICATIONS OF THE SOUTHERN STATES, LLC, ACCESS INTTEGRATED NETWORKS, ALLEGIANCE TELECOM, AND ACCUTEL OF TEXAS DBA 1-800-4-A-PHONE AND WORLDCOM, INC's RESPONSE TO BELLSOUTH'S MOTION FOR RECONSIDERATION/CLARIFICATION/STAY** was served upon all counsel of record by depositing same in the United States Mail, with adequate first-class postage affixed thereto, addressed as follows:

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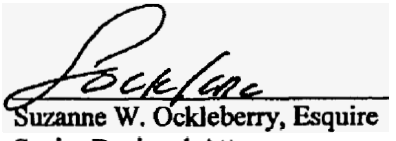
This 10th day of July, 2003.



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BELLSOUTH'S
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July 3, 2003

BY HAND DELIVERY

Mr. Reece McAlister
Executive Secretary
Georgia Public Service Commission
244 Washington Street
Atlanta, GA 30334

Re: Generic Proceeding to Review Cost Studies, Methodologies, Pricing Policies and Cost Based Rates for Interconnection and Unbundling of BellSouth Telecommunications, Inc.'s Network; Docket No. 14361-U

Dear Mr. McAlister:

Enclosed please find an original and fifteen (15) copies of "**AT&T Communications of the Southern States, LLC ("AT&T"), DIECA Communications, Inc. d/b/a Covad Communications Company, NewSouth communications Corp, ACCESS Integrated Networks, Inc. and Allegiance Telecom of Georgia, Inc.'s Motion for Clarification**".

I have also enclosed a diskette containing the document. After filing the originals, please return two additional copies stamped "filed".

Thank you for your assistance in this matter.

Very truly yours,

Suzanne W. Ockleberry

Enclosures
cc: Parties of Record

BEFORE THE

GEORGIA PUBLIC SERVICE COMMISSION

In re: Generic Proceeding to Review Cost Studies Methodologies, Pricing Policies and Cost Based Rates for Interconnection and Unbundling of BellSouth Telecommunications, Inc.'s Network	: : : :	Docket No. 14361-U

AT&T COMMUNICATIONS OF THE SOUTHERN STATES, LLC, DIECA COMMUNICATIONS, INC. D/B/A COVAD COMMUNICATIONS COMPANY, NEWSOUTH COMMUNICATIONS CORP, ACCESS INTERGRATED NETWORKS, INC. AND ALLEGIANCE TELECOM OF GEORGIA, INC.

MOTION FOR CLARIFICATION

COMES NOW AT&T Communications of the Southern States, LLC ("AT&T"), DIECA Communications, Inc. d/b/a Covad Communications Company, NewSouth communications Corp, ACCESS Integrated Networks, Inc., Allegiance Telecom of Georgia, Inc. ("Petitioners") pursuant to Commission Rule 515-2-1-.08 and files this Motion for Clarification regarding the effective date for the rates the Commission established in the above referenced proceeding.

SUMMARY

Almost two (2) years ago the Commission initiated this proceeding. See *First Procedural and Scheduling Order* (August 27, 2001). The Commission held hearings in May, 2002 and the Staff Recommendation was presented to the Commission on February 13, 2003. This Commission approved the Staff Recommendation on March 18, 2003. However, because the complexity of this issue and the time needed by the Commission Staff to prepare the UNE order, the written order was not released until three months after the Commission's March 18, 2003 decision. Therefore, Petitioners seek clarification that the effective date of the approved

order is March 18, 2003. Both the plain language of the Order and the policies underlying the UNE order support this conclusion.[1]

ARGUMENT

1. The UNE Rates Should be effective March 18, 2003

The plain language of the order indicates that March 18, 2003 is the appropriate effective date. The Commission's order indicates that approval of the new unbundled network element ("UNE") rates for BellSouth was "*..by action* of the Commission in Administrative Session on *the 18th day of March, 2003.*" (See Order, p. 69). In addition, one of the ordering paragraphs provides as follows:

> "ORDERED FURTHER, the cost based rates determined by the Commission in this Order (Attachment A) **are established as the rates** for BellSouth's unbundled network elements. BellSouth shall submit such compliance filings as are necessary to reflect and implement the rates and policies established by this Order."

Order, p. 69.

There is no indication in the Order that rates are effective on any date **other than** March 18, 2003, the date the Commission voted to adopt the Staff's recommendation. Although the order allows BellSouth 30 days from the date of the order to file a revised Statement of Generally Available Terms and Conditions (SGAT) to reflect and implement the order, presumably, the thirty (30) days period allows BellSouth time to update the SGAT and make the necessary filings, not to delay implementation of the Order until the filing is made.

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[1] Although Commission Rule 515-2-1-.03 indicates that orders are effective from the date the actions are reduced to writing and signed by the Chair and Secretary, this rule must be read in conjunction with Commission Rule 515-2-1-.07. That rule requires final decisions to be rendered within thirty (30) days after the close of the record unless extended by order of the Commission. Clearly, Rule 515-2-1-.03 contemplates that a decision is reduced to writing and signed by the Chair and Secretary of the Commission within thirty (30) days of the proceeding. However, because the Commission did not reduce the order to writing within thirty (30) days of the close of the proceeding *or* issue an order extending the time period for a final decision, Commission Rule 515-2-1-.03 should be inapplicable to this proceeding.

The parties in this proceeding have waited almost two (2) years since the inception of this docket to obtain new UNE rates. Once the proceeding was concluded and the Staff recommendation was issued on February 13, 2003, the full Commission vote was delayed to afford BellSouth time to argue against adoption of the Staff's recommendation. It was only after BellSouth had three (3) separate opportunities to address the Commission that the matter was placed on the March 18, 2003 Commission agenda for a vote.[2] This additional month delay, in addition to the unavoidable delay in memorializing the Commission's March 18, 2003 Order, has benefited only one party to this proceeding– BellSouth. It would be nonsensical to issue an order and then have it delayed months upon end prior to it being effective. Granted, some of the delay was a result of the Staff taking the necessary time to reduce the Commission vote into writing, however, Competitive Local Exchange Carriers (CLECs) have altered and expanded their offerings on the basis of the Commission's March 18, 2003 wholehearted approval of the Staff's February 13, 2003 recommendation. Clearly, this Commission intended for the new UNE rates to spur competition in various areas of the State as well as incent competitors to provide innovative services to Georgia consumers. Delaying implementation of the rates until some future date subverts this goal and ultimately deprives consumers of the pro-competitive benefits that lower UNE prices can bring to the marketplace. Therefore, this Commission should clarify that the rates Competitive Local Exchange Carriers (CLECs) pay to BellSouth for UNEs should be based upon the order in this docket, effective March 18, 2003.

In addition, this Commission should also clarify that the new UNE rates are effective March 18, 2003 for all CLECs to ensure that all CLECs simultaneously enjoy the benefits of these new lower UNE rates. Because of the varying language in interconnection agreements regarding the effective date of regulatory orders, BellSouth may delay implementing the Commission's order until either the revised SGAT is filed or the change-of-law negotiation time

[2] The additional time granted to BellSouth only resulted in delaying approval. The Commission ultimately voted 5-

period to amend the interconnections agreements has lapsed.[3] Regardless of the language in the interconnection agreements, this Commission has the authority to specify the effective date of its orders. O.C.G.A. §50-13-17(b) provides:

> A final decision or order adverse to a party, other than the agency, in a contested case shall be in writing or stated in the record. A final decision shall include findings of fact and conclusions of law, separately stated and the effective date of the decision or order.

To prevent the discriminatory impact of some CLECs implementing the Commission ordered rates prior to other CLECs or BellSouth delaying implementing the rates until some unspecified time in the future, the order should be clarified to indicate that the effective date is March 18, 2003.

2. **UNEs with No Nonrecurring Charges Should Reflect a Rate of $0.00 in Attachment A**

For certain elements such as J.4.1 (Line Sharing Splitter — per Splitter System 96-Line Capacity in the Central Office), the Commission has a nonrecurring rate of $0.00 in Attachment A. For others, such as Element H.1.6 (Physical Collocation — Floor Space per Sq. Ft.), the Commission has left the nonrecurring rate blank. To avoid any possible confusion, the Commission should clarify Attachment A by revising it to show a nonrecurring rate of $0.00 for all elements where the nonrecurring rate is blank.

CONCLUSION

To ensure that the UNE rates adopted by this Commission are available to all CLECs in a timely manner, this Commission should clarify that the UNE order in this proceeding is effective as of March 18, 2003, the date the Commission unanimously approved the Staff recommendation

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0 to accept the Staff's recommendation as presented.

[3] Several CLECs have interconnection agreements with BellSouth that provide for notice and renegotiation within 90 days of any regulatory action that materially affects the terms of the agreement. Petitioners' contend that negotiations are not necessary to implement the Commission's UNE rate order and that this provision is inapplicable in this instance.

in its entirety. In addition, the Commission should clarify Attachment A so that all blank non-recurring rates reflect $0.00.

This 3rd day of July, 2003.

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This certifies that I have this day served a true and correct copy of the within and foregoing AT&T COMMUNICATIONS OF THE SOUTHERN STATES, LLC (Et al) MOTION FOR CLARIFICATION was served upon all counsel of record by depositing same in the United States Mail, with adequate first-class postage affixed thereto, addressed as follows:

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This 3rd day of July, 2003.

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STATE OF SOUTH CAROLINA)
) CERTIFICATE OF SERVICE
COUNTY OF RICHLAND)

The undersigned, Nyla M. Laney, hereby certifies that she is employed by the Legal Department for BellSouth Telecommunications, Inc. ("BellSouth") and that she has caused BellSouth Telecommunications, Inc.'s Response in Opposition to the Petition of CompSouth for Emergency Declaratory Ruling in Docket Nos. 2003-326-C and 2003-327-C to be served upon the following this June 4, 2004:

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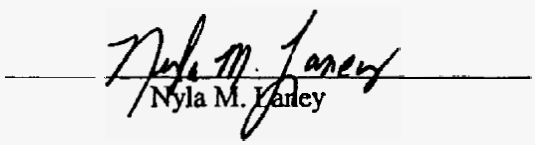

Nyla M. Laney

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