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Sent: Wednesday, August 25, 2004 5:36 PM
To: Filings@psc.state.fl.us
Cc: Victor McKay; Jeff Bates; Hazzard, Michael
Subject: Docket No. 040779-TP : Notice of the Adoption Existing Interconnection, Unbundling, Resale and Collocation Agreement between BellSouth Telecommunications, Inc. and Network Telephone Corporation by Z-Tel Communications, Inc.

Please see Confidentiality Notice before reading email..
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Dear Mrs.Bayo:

Attached for electronic filing please find Z-Tel Communications, Inc.'s Reply to BellSouth's Opposition in the above-referenced proceeding. Please note that the document is 17 pages.

Please do not hesitate to contact the undersigned counsel if you have any questions regarding this filing.

Respectfully submitted,

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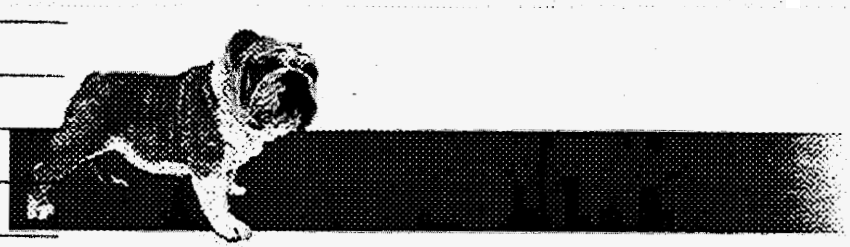

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August 25, 2004

Via Electronic Filing

Mrs. Blanca S. Bayo
Director, Division of Commission Clerk and Administrative Services
Florida Public Service Commission
2450 Shumard Oak Boulevard
Tallahassee, Florida 32399

Re: Docket No. 040779-TP ; Notice of the Adoption Existing Interconnection, Unbundling, Resale and Collocation Agreement between BellSouth Telecommunications, Inc. and Network Telephone Corporation by Z-Tel Communications, Inc.

Dear Mrs. Bayo:

Attached for electronic filing please find Z-Tel Communications, Inc.'s Reply to BellSouth's Opposition in the above-referenced proceeding. Also, please be advised that the correct address for the undersigned counsel is as follows:

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Kindly update your records accordingly. Please do not hesitate to contact me if you have any questions regarding this filing.

Respectfully submitted,

s/ Michael B. Hazzard

cc: All parties of Record (via overnight mail)
Thomas (Jeff) Bates, Div. of Competitive Markets & Enforcement (via email)

Certificate of Service

I, Edilma Carr, hereby certify that a true and correct copy of the foregoing document in Docket No. 040779-TP " Reply of Z-Tel Communications, Inc. to BellSouth's Opposition" was delivered by Fedex overnight mail this 25th August 2004 to the individuals on the following list:

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s/ Edilma M. Carr

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Notice of the Adoption of Existing Interconnection, Unbundling, Resale and Collocation Agreement between BellSouth Telecommunications, Inc. and Network Telephone Corporation by Z-Tel Communications, Inc.	))))))	Docket No.: 040779-TP Filed August 25, 2004

REPLY OF Z-TEL COMMUNICATION, INC.
TO BELLSOUTH'S OPPOSITION

Z-Tel Communications, Inc. ("Z-Tel"), through counsel, hereby submits its reply to BellSouth Telecommunications, Inc.'s ("BellSouth's") August 5, 2004 Opposition to Z-Tel's adoption of the existing interconnection agreement in its entirety between BellSouth and Network Telephone Corporation ("Network Telephone Agreement" or "Agreement").

I. INTRODUCTION AND SUMMARY

BellSouth recognizes that the "primary purpose" of section 252(i) is to "prevent the illegal discrimination that would occur if one party were allowed to operate under an agreement that was not available to another, similarly situated party."[1] Yet that is precisely what BellSouth wants to do – it wants to prevent Z-Tel from interconnecting with BellSouth pursuant to the precise terms that it currently is providing interconnection and access to Network Telephone. Z-Tel's "opt-in" to the year-old Network Telephone Interconnection Agreement is fully consistent with section 252(i) and the FCC's new "all-or-nothing" rule. The Commission should not countenance BellSouth's attempt to discriminate against Z-Tel. Instead, the Commission should approve the interconnection agreement adoption filed by Z-Tel.

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[1] BellSouth Opposition at 5; *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, First Report and Order, 11 FCC Rcd 15499, ¶ 1296 (1996) (subsequent history omitted) ("Local Competition Order").

In July, Z-Tel took the step of "opting-in" to the Network Telephone Agreement with a single, simple purpose in mind: to avoid unnecessary duplication of work and wheel-spinning that would have been necessary if the parties had attempted to renegotiate their pending Agreement at a time when the legal requirements of unbundling and interconnection were in considerable flux. Z-Tel has, in fact, informed BellSouth of that purpose and intent. Indeed, at the time BellSouth first requested renegotiations on January 21, 2004, both BellSouth and Z-Tel had pending legal challenges to the FCC's Triennial Review Order. Z-Tel notified BellSouth that given these pending appeals, Z-Tel believed it would not be a productive use of scarce resources to negotiate new interconnection terms.

Similarly, BellSouth admits that over the next several months, it presented Z-Tel with a moving target of requested terms and conditions, virtually on a monthly basis. Z-Tel responded to those requests with the same response – its belief that negotiating against a moving target at a time of considerable legal uncertainty would be unlikely to lead to a mutually-agreeable result. Far from providing no response as BellSouth alleges, Z-Tel spoke with BellSouth's contract personnel several times each month. One such conversation took place on January 21, the date of the BellSouth request. Others occurred on March 12, March 25, April 7, April 13, April 19, April 21, May 5, May 25, June 11, July 30, and August 2, 2004. Some of these conversations included negotiations of a follow-on, commercial agreement, negotiations which were ultimately unsuccessful.[2] BellSouth seemed content with the approach suggested by Z-Tel, as on June 30, 2004, BellSouth let the 160-day arbitration window close on its January 21, 2004 request for negotiations without filing for arbitration before this Commission.

[2] Z-Tel's representatives in these discussions were Peggy Rubino and in some cases Don Davis. BellSouth representatives included at various times Lynn Allen-Flood, Kristin Rowe, and Jerry Hendrix.

Z-Tel did not adopt the Network Telephone Agreement to avoid the impact of changes in law – it adopted the Agreement so that the parties can efficiently and effectively address these issues *as soon as* they are all sorted out. As of this writing, several of the FCC's section 251 unbundling rules have been vacated, others have been modified, and others may be in the process of being changed. Moreover, as recently as Friday, August 20, 2004 the FCC released "interim" unbundling rules that will stay in effect for a short time pending the development of permanent rules, which also will need to be distilled into an agreement. Z-Tel believes that it is ludicrous for it, a small CLEC, to attempt to negotiate and redline ever-changing 500-page documents of terms and conditions of interconnection at a time when network access rules just changed and may again change in a matter of months.

Z-Tel is well within its statutory rights to opt-in to the Network Telephone Agreement in its entirety. Section 252(i) of the federal Communications Act ("Act"), 47 U.S.C. § 252(i), requires incumbents, such as BellSouth, to enable Z-Tel and others to operate "upon the same terms and conditions as those provided in" an existing interconnection agreement. BellSouth principally argues that it can discriminate against Z-Tel and refuse to offer Z-Tel the terms of the year-old Network Telephone Agreement, regardless of Z-Tel's statutory rights under section 252(i) because federal unbundling rules have changed. With regard to many rules, that argument is incorrect. At the time it voluntarily negotiated and voluntarily signed the Network Telephone Agreement (the Spring and Summer of 2003), BellSouth claims that the UNE Remand Order unbundling rules were vacated by the D.C. Circuit. At that time, the FCC's 1999 UNE Remand rules had not been replaced by the still-to-be-released Triennial Review Order rules (Opposition at 6). In other words, the context in which BellSouth negotiated the Network

Telephone Agreement is substantially the same as that which exists today – that is, the absence of any settled network element unbundling regime. Far from being a "pre-existing, noncompliant agreement" (Opposition at 12), the Network Telephone Agreement was negotiated and approved precisely during a period of time analogous to the present, while the FCC was establishing new rules. The fact that BellSouth might now wish it had acted differently last year is of no matter – BellSouth is providing interconnection and access to Network Telephone pursuant to this Agreement today, and BellSouth has no choice but to offer nondiscriminatory access to Z-Tel.

BellSouth raises several other arguments, including its claims that Z-Tel's existing interconnection agreement forecloses Z-Tel from adopting another agreement,[3] that section 252(i) does not permit competitors to adopt existing interconnection agreements in their entirety,[4] and that Z-Tel did not adopt the Network Telephone Agreement "within a reasonable time."[5] BellSouth is wrong on all counts. Indeed, careful review of BellSouth's Opposition demonstrates that, although its Opposition is full of citations, none of the legal "authority" it relies upon supports BellSouth's multiplicity of positions.

As demonstrated below, BellSouth's actual goal is obvious: discriminate against Z-Tel and prevent it from operating under the same terms and conditions that BellSouth voluntarily provides to Network Telephone. Put another way, even though BellSouth is voluntarily operating and continues to operate with Network Telephone under the Agreement that Z-Tel has filed with the Commission – a fact that BellSouth does not dispute – BellSouth wants

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3 *See* BellSouth Opposition at 1.

4 *Id.*

5 *Id.*

to preclude Z-Tel from operating under this identical interconnection agreement. Of course, this is just the type of patent discrimination that section 252(i) is designed to preclude. "Given the primary purpose of section 252(i) of preventing discrimination,"[6] the Commission should reject BellSouth's Opposition, and approve Z-Tel's adoption of the Network Telephone Agreement.

II. BELLSOUTH HAS NO AUTHORITY TO LIMIT Z-TEL'S SECTION 252(I) RIGHTS TO OPT-IN TO A VOLUNTARILY-NEGOTIATED INTERCONNECTION AGREEMENT

Fundamentally, BellSouth appears to believe that it has the authority to restrict Z-Tel's ability to operate under the existing Network Telephone Agreement. This simply is not the case. Rather, as noted above, the purpose section 252(i) is to prevent discrimination, and not promote discrimination, as BellSouth would have it.

BellSouth makes much of the FCC's all-or-nothing rule, which requires that Z-Tel and other competitors "must adopt an agreement in its entirety."[7] Of course, this is exactly what Z-Tel has done. In its filing with the Commission, Z-Tel adopted in its entirety the **currently existing interconnection agreement** between BellSouth and Network Telephone that BellSouth voluntarily negotiated and executed last year. BellSouth does not dispute this fact. Accordingly, there can be no doubt that Z-Tel's filing with the Commission is a proper exercise of Z-Tel's rights under section 252(i).

If allowed to persist, BellSouth's course of conduct would result in exactly the kind of discrimination that section 252(i) is designed to prevent. Subsequent to Z-Tel's filing with the Commission, BellSouth proposed terms pursuant to which it would "modify" the existing Network Telephone Agreement for adoption. Of course these "modifications"

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6 Local Competition Order at ¶ 1315.

7 BellSouth Opposition at 4-5.

essentially involve replacing the entire Agreement with BellSouth's new template, including a replacement Attachment 2 for UNEs, a replaced amendment, and an approximately 500 page document styled as a "Market Based Rate Agreement."[8] Obviously, BellSouth is determined to preclude Z-Tel from operating under the Network Telephone Agreement as it exists today, which unequivocally violates section 252(i) of the Act.

BellSouth's desire to rewrite the entire Network Telephone Agreement conflicts directly with section 252(i), and if allowed to persist, would result in patent discrimination against Z-Tel. Indeed, BellSouth lobbied this very position at the FCC, only to have it expressly rejected in the FCC's All Or Nothing Order:

> [W]e reject BellSouth's argument that "an agreement in its entirety" does not include general terms and conditions, such as dispute resolution or escalation provisions. Under the all-or-nothing rule, all terms and conditions of an interconnection agreement will be subject to the give and take of negotiations, and therefore, all terms and conditions of the agreement, to the extent that they apply to interconnection, services, or network elements, must be included within an agreement available for adoption in its entirety under section 252(i).[9]

In spite of having its policy position expressly rejected by the FCC, BellSouth continues to take the position that it may rewrite the Network Telephone Agreement prior to letting Z-Tel adopt it. There can simply be no doubt, however, that BellSouth's effort to foreclose the availability of the Network Telephone Agreement as it existed at the time of Z-Tel's filing with the Commission

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[8] Due to the voluminous nature of BellSouth's "proposal," Z-Tel has not attached it hereto, but will provide it to the Commission upon request.

[9] *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, Second Report and Order, CC Docket No. 01-338, FCC 04-164 at n. 105 (rel. July 13, 2004) (citation omitted) ("All Or Nothing Order").

(and as it continues to exist as far as Z-Tel can tell) runs directly counter to the plain language of the section 252(i) and the FCC's implementing rules.

BellSouth's statement that it "is not willing to include in Z-Tel's new interconnection agreement outdated terms and conditions that are inconsistent with the parties' rights and obligations under current law"[10] demonstrates that BellSouth is determined to ignore its section 252(i) obligations and discriminate against Z-Tel. The FCC's rules are designed to protect Z-Tel from just this kind of discrimination. As the FCC recently noted:

> We conclude that under an all-or-nothing rule, requesting carriers will be protected from discrimination, as intended by section 252(i). Specifically, an incumbent LEC will not be able to reach a discriminatory agreement for interconnection, services, or network elements with a particular carrier without making that agreement in its entirety available to other requesting carriers. If the agreement includes terms that materially benefit the preferred carrier, other requesting carriers will likely have an incentive to adopt that agreement to gain the benefit of the incumbent LEC's discriminatory bargain. **Because these agreements will be available on the same terms and conditions to requesting carriers, the all-or-nothing rule should effectively deter incumbent LECs from engaging in such discrimination.**[11]

All Z-Tel has done is adopt the currently existing Network Telephone Agreement – the same Agreement under which BellSouth presently is providing service to Network Telephone and possibly others. BellSouth's Opposition to Z-Tel's adoption of the entirety of the existing Network Telephone Agreement is therefore a transparent effort to discriminate against Z-Tel in violation of Z-Tel's section 252(i) rights.

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[10] BellSouth Opposition at 6.

[11] All Or Nothing Order at ¶ 19 (emphasis added).

III. Z-TEL'S PREVIOUS INTERCONNECTION AGREEMENT DOES NOT FORECLOSE Z-TEL FROM ADOPTING ANOTHER AGREEMENT

BellSouth next incorrectly asserts that "Z-Tel failed to follow the requirements of its interconnection agreement for ... an adoption."[12] In its entirety, the provision on which BellSouth relies (*i.e.*, section 2.5) provides as follows:

> BellSouth shall make available, pursuant to 47 U.S.C. § 252(i) and the FCC rules and regulations regarding such availability, to MCIm, at the same rates, and on the same terms and conditions, any interconnection, service or network element provided under any other agreement filed and approved pursuant to 47 U.S.C. § 252. The adopted interconnection, service, or network element and agreement shall apply to the same states as such other agreement for the identical term of such agreement. The adopted rates, terms, and conditions shall be effective as of the date the Parties sign an agreement or amendment incorporating such adopted rates terms and conditions.[13]

BellSouth's reliance on this provision is incorrect for at least two reasons. First, this provision speaks only in terms of BellSouth's obligations, not Z-Tel's obligations. Second, and perhaps more importantly, this provision clearly relates to "pick-and-choose" type adoptions, and not adoptions of agreements in their entirety. The FCC has eliminated "pick and choose" because the FCC "conclude[d] that the burdens of the ... pick-and-choose rule outweigh its benefits,"[14] and the so-called "all-or-nothing rule" applies to all effective interconnection agreements,[15] including the Network Telephone Agreement.

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12 BellSouth Opposition at 2.

13 A copy of this provision is attached hereto at Tab 2.

14 All Or Nothing Order at ¶ 10.

15 *Id.* (noting that "in order to allow this regime to have the broadest possible ability to facilitate compromise, the new all-or-nothing rule will apply to all effective interconnection agreements, including those approved and in effect before the date the new rule goes into effect").

Indeed, as BellSouth notes repeatedly in its Opposition, "a CLEC must adopt an agreement in its entirety."[16] Of course, that is all that Z-Tel has done. But rather than support Z-Tel's effort to comply with the FCC's all-or-nothing rule for adoptions, BellSouth is attempting to mire Z-Tel in the very problems that the FCC believes it has fixed. The FCC has made it entirely clear that a competitor, such as Z-Tel, is statutorily entitled to "to adopt an agreement in its entirety that the requesting carrier deems appropriate for its business needs."[17] BellSouth has made it entire clear that it wants to prevent carriers from doing so.

Although the FCC concluded that "the all-or-nothing rule should be much more easily administered,"[18] BellSouth is doing its level best to foreclose Z-Tel from availing itself of its statutory right. The Commission should put a stop to BellSouth's effort to place unilateral restrictions on carriers attempting to adopt existing interconnection agreements in their entirety and approve Z-Tel's adoption of the Network Telephone Agreement. Any other result would serve only to support BellSouth's effort to discriminate against competitors.

IV. BELLSOUTH CANNOT RESTRICT Z-TEL'S SECTION 252(I) RIGHTS ON "CHANGE OF LAW" GROUNDS

BellSouth next argues that "Z-Tel cannot use [s]ection 252(i) to compel BellSouth to execute a new interconnection agreement that does not comply with [s]ection 251 of the 1996 Act."[19] BellSouth again is mistaken. Section 252(i) and the FCC's implementing rules give Z-Tel an unequivocal right to "adopt an effective interconnection agreement in its entirety, taking

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16 BellSouth Opposition at 4.

17 All or Nothing Order at ¶ 30.

18 *Id.*

19 BellSouth Opposition at 5.

all rates, terms, and conditions of the adopted agreement."[20] The Network Telephone Agreement is "an effective interconnection agreement," and Z-Tel thus is well within its rights to adopt it.

Moreover, BellSouth voluntarily negotiated and executed the Network Telephone Agreement only last year – precisely at a time in which BellSouth believes the UNE Remand Order unbundling rules were "vacated" by the USTA I decision and had not yet been replaced by effective FCC rules (Opposition at 6). In other words, the issues faced by BellSouth and Network Telephone last Summer are eerily analogous to the issues facing BellSouth and Z-Tel this Summer. If BellSouth is correct in its belief that the UNE Remand Order rules were vacated by USTA I, the subsequent vacatur of Triennial Review Order unbundling rules in USTA II would logically bring the parties back to the place they were *ex ante*.

That said, whether the Agreement precisely tracks BellSouth's view of the current, existing law (to the extent it exists) is not relevant as to whether Z-Tel may adopt that agreement. The Network Telephone Agreement is effective, and BellSouth presently is providing service to Network Telephone and possibly others under that Agreement. Any effort by BellSouth to deny Z-Tel's adoption of the existing Network Telephone Agreement in its entirety violates the nondiscrimination requirements of section 252(i).

As stated above, by adopting the Network Telephone Agreement, Z-Tel does not seek to avoid the impact of changes of law, to the extent they are ripe. BellSouth argues as if section 251 were the only provisions of law in which a company like Z-Tel may seek access and interconnection in an Interconnection Agreement – an incorrect and incomplete assumption, as BellSouth has independent legal obligations under section 271 and state law to provide wholesale

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[20] All Or Nothing Order at ¶ 10.

access to Z-Tel that are to be included in these agreements. All Z-Tel seeks is a level of certainty that will provide it a framework to effectively and efficiently negotiate terms and conditions that meet with *all* components of operating law, and operating pursuant to the Network Telephone Agreement provides that framework at this time. To the extent BellSouth wishes to seek prospective changes to Z-Tel's adoption of the Network Telephone Agreement, BellSouth is welcome to propose them, and Z-Tel will negotiate in good faith with BellSouth. The fact of the matter is, however, Z-Tel is entitled to adopt in its entirety any currently effective interconnection agreement, and Z-Tel has elected to adopt the Network Telephone Agreement. BellSouth has absolutely no right to demand any changes to an existing interconnection agreement prior to adoption by Z-Tel or any other carrier.

BellSouth's effort to rely on section 252(e)(2)(B) of the Act, 47 U.S.C. § 252(e)(2)(B), is plainly incorrect.[21] Section 252(e)(2)(B) by its terms is limited to agreements reached through compulsory arbitration, *id.*, not interconnection agreement adoptions under section 252(i) of the Act. Moreover, the Network Telephone Agreement is a voluntary interconnection agreement that is not limited in its scope in the manner BellSouth argues. The plain fact of the matter is that Z-Tel is entitled by statute to *any* existing interconnection agreement, including the voluntarily-negotiated Network Telephone Agreement, and voluntarily-negotiated interconnection agreements are not limited to section 251 terms and conditions. BellSouth presently is providing service to Network Telephone under the Agreement, and BellSouth accordingly has no right to restrict Z-Tel from adopting that Agreement under section 252(i). To preserve section 252(i) as the primary tool to prevent discrimination, the Commission

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21 *Id.* at 9 and n. 7.

should reject BellSouth's Opposition and accept Z-Tel's adoption of the Network Telephone Agreement in its entirety.

Finally, it is worth noting that voluntarily-negotiated interconnection agreements do not have to comport strictly with section 251 of the Act. Indeed, the Act recognizes that parties may voluntarily enter interconnection agreements "without regard to the standards set forth in subsection (b) and (c) of section 251." 47 U.S.C. § 251(a). Of course Z-Tel has no way of knowing exactly what transpired in the negotiations between BellSouth and Network Telephone, but the fact of the matter is that the parties negotiated an interconnection agreement, which the Commission approved. Because the agreement remains in effect, Z-Tel has every right under section 252(i) to adopt that Agreement, and Z-Tel has done so through its filing with the Commission.

V. BELLSOUTH CANNOT RESTRICT Z-TEL'S SECTION 252(I) RIGHTS ON "REASONABLE PERIOD OF TIME" GROUNDS

BellSouth's final argument is that it has a duty to make agreements available only for a "reasonable period of time."[22] Section 51.809(c) of the FCC's rules provides:

> Individual interconnection, service, or network element arrangements shall remain available for use by telecommunications carriers pursuant to this section for a reasonable period of time after the approved agreement is available for public inspection under section 252(f) of the Act.

47 C.F.R. § 51.809(c). Although Z-Tel knows of no instance where the precise meaning of this FCC rule has been litigated (and BellSouth does not identify one), any reasonable interpretation of the FCC's rule demonstrates that Z-Tel is well within its rights to adopt the Network Telephone Agreement.

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22 *Id.* at 11.

By its terms the Network Telephone Agreement became effective on or about June 21, 2003, and does not expire until three years later – June 21, 2006. BellSouth's position that an agreement that has approximately two thirds of its life remaining is no longer available for adoption is absurd. Even more absurd is BellSouth's effort to rely on the FCC's "ISP Order"[23] and the "Triennial Review Order."[24] Although BellSouth is correct that the FCC limited the ability of competitors to adopt reciprocal compensation provisions, the FCC did so expressly in order to limit what the FCC considered an "arbitrage" problem. The ISP Order is thus limited to its terms and does not establish any general principle in the ISP Order. Indeed, this is borne out by the Triennial Review Order, which BellSouth implicitly concedes did not place any restriction on the ability of a carrier to adopt an existing interconnection agreement under section 252(i). Rather, the Triennial Review Order recognized that parties could modify their agreements through change of law provisions.

Of course, even if the change of law provision of the Network Telephone Agreement has been invoked, it is BellSouth's obligation to negotiate an amendment with Z-Tel, not foreclose Z-Tel's adoption of the Network Telephone Agreement. BellSouth and Network Telephone to date have not executed an amendment to their existing agreement to implement the Triennial Review Order. Had they done so, Z-Tel obviously would have taken that amendment as part of adopting the Network Telephone Agreement "in its entirety." Z-Tel has the right under section 252(i) to take and existing agreement in its entirety, and that is precisely what Z-Tel has done.

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[23] *Id.* at 10.

[24] *Id.* at 11.

BellSouth's reliance on the Fourth Circuit's decision in *AT&T v. BellSouth*, 229 F.3d 457 (4th Cir. 2000) similarly is misplaced. As BellSouth concedes, that case involved conforming a newly arbitrated agreement to existing law, and had nothing to do with the adoption of an existing agreement under section 252(i). Moreover, there is no doubt that parties can agree to negotiate and arbitrate items outside of section 251(b) and (c). For example, the Fifth Circuit Court of Appeals has recently affirmed that parties to interconnection agreements negotiated pursuant to section 251 of the Act may (or may not, in their discretion) include within such negotiations subject matter that is outside the scope of the Act. *Coserv LLC et al. v. Southwestern Bell Tel. Co.*, 350 F.3d 482, 488 (2003).

In any event, this proceeding has nothing to do with interconnection agreement negotiations or arbitrations. Rather, this proceeding involves Z-Tel's right to adopt an interconnection agreement in its entirety. As noted repeatedly above, Z-Tel has an unequivocal right to adopt in its entirety an existing interconnection agreement, and that is exactly what Z-Tel did with its filing to the Commission. Any effort by BellSouth to change or otherwise limit Z-Tel's access to the Network Telephone Agreement is prohibited by the nondiscrimination provision contained in section 252(i). Accordingly, the Commission should reject BellSouth's Opposition and approved Z-Tel's adoption of the Network Telephone Agreement.

VI. CONCLUSION

Consistent with the foregoing, the Commission should reject BellSouth's Opposition, and permit Z-Tel's adoption of the Network Telephone Company agreement in its entirety take effect.

Respectfully submitted,

s/ Michael B. Hazzard
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Counsel to Z-Tel Communications, Inc.

August 25, 2004