

ORIGINAL

Matilda Sanders

From: Vicki Gordon Kaufman [vkaufman@moytelaw.com]
Sent: Friday, March 04, 2005 3:38 PM
To: Filings@psc.state.fl.us
Cc: Adam Teitzman; Nancy White; Michael Gross; Ken Hoffman; dana.shaffer@xd.com; wmontano@usiec.com; Donna McNulty; de.oroark@mcl.com; Tracy Hatch; jenethan_audt@stis.com; GWatkins@Covad.COM; nedwards@fcdelta.com; prubino@trifile.com; Margaret Ring@networktelephone.net; Ann Shaker

Attachments: Letter_ Ex_A_ Ex_B.pdf

Pursuant to the Commission's procedures for e-filing, the Competitive Carriers of the Southeast (CompSouth) provide the following information. (This is the same filing previously made, contained in one document, as requested by Records & Reporting)

a. The attorney responsible for the filing is:

Vicki Gordon Kaufman
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 The Perkins House
 118 North Gadsden Street
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b. The document is to be filed in Docket No. 041269-TP, Petition to Establish Generic Docket for Consideration of Amendments to Interconnector Agreements Resulting from Changes of Law

c. The document is filed on behalf of CompSouth

d. The document is 9 page long, consisting of a letter and Exhibit A (RCA excerpts) & Exhibit B (BellSouth May 28, 2004 letter to the Florida Commission)

e. The document is letter in support of MCF's Motion for Relief Regarding UNE-P and the Petition for Emergency Relief filed by NuVox, Xpedius and KMG

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RECEIVED NUMBER DATE

02277 MAR 4 8

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3/4/2005

ORIGINAL

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March 4, 2005

VIA ELECTRONIC FILING

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

**RE: Docket No. 041269-TP Petition to Establish Generic Docket to Consider
Amendments to Interconnection Agreements Resulting From Changes of
Law**

Dear Ms. Bayo:

This letter is filed on behalf of the Competitive Carriers of the South ("CompSouth")¹, who hereby express their unreserved support for MCI's Motion for Relief Regarding UNE-P filed on March 3, 2005, and the Petition for Emergency Relief filed by NuVox, Xpedius, and KMC on March 1, 2005. ITC^DeltaCom filed its letter regarding BellSouth's proposed actions to breach its interconnection agreement with this Commission on February 25, 2005.

Each member of CompSouth participating in this filing has similar contract language to that contained in the MCI/Nuvox interconnection agreements that requires BellSouth to negotiate any material change of law.² Each member of CompSouth participating in this filing has similar Dispute Resolution provisions in their interconnection agreement. BellSouth's proposed action to unilaterally discontinue provision of UNE-P, high capacity loop and transport outside of the change of law process is an affront to procedural and substantive rights of competitive carriers and to the authority of this Commission, violates the express directions of the FCC's Triennial

¹ The member companies of CompSouth participating in this filing include: DIECA Communications, Inc. d/b/a/ Covad Communications Company, ITC^DeltaCom Communications, Inc., LecStar Telecom, Inc., Network Telephone Corporation, Navigator Telecommunications, LLC., Supra Telecom, and Trinsic. Several members of CompSouth are filing separate pleadings.

² Each members' contract language is included as Exhibit A. We would also bring to the attention of this Commission that the choice of law provision for each agreement is Georgia.

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Ms. Blanca S. Bayo
March 4, 2005
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Review Remand Order and would result in harm to the residential and small business consumers in Florida.

As you no doubt recall, BellSouth previously informed this Commission that it would abide by the change of law provisions in the interconnection agreements on file and approved by this Commission. On May 28, 2004, BellSouth sent a letter (a copy is attached hereto as Exhibit B) to the Florida Public Service Commission promising that "BellSouth will not 'unilaterally disconnect services being provided to any CLEC under the CLEC's Interconnection Agreement.'" BellSouth further promised:

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.

We urge the Commission to act quickly and to grant the MCI and NuVox Motions for Relief and to issue an order requiring BellSouth to adhere to the terms of the interconnection agreement change of law process for all CLECs until this Commission has had such time to review the matter in this docket.³

Sincerely,

s/Vicki Gordon Kaufman

Vicki Gordon Kaufman
Attorneys for Competitive Carriers of the
Southeast

Cc: Parties of Record

³ As of the date of the filing of this letter two state commissions have addressed this matter, the Alabama PSC and the Georgia PSC. Alabama has required BellSouth to continue under the interconnection agreements post March 11, 2005, until it sets oral argument and will rule at the next available Agenda meeting (April 5th). Georgia adopted its Staff recommendation on March 1, 2005, requiring BellSouth to adhere to the change of law process. Several pleadings have been filed with all nine BellSouth state commissions.

Exhibit A

Network Telephone Corporation/BellSouth

General Terms and Conditions, Sec. 14.3

14.3 In the event that any effective legislative, regulatory, judicial or other legal action materially affects any material terms of this Agreement, or the ability of Network Telephone or BellSouth to perform any material terms of this Agreement, Network Telephone or BellSouth may, on thirty (30) days' written notice, require that such terms be renegotiated, and the Parties shall renegotiate in good faith such mutually acceptable new terms as may be required. In the event that such new terms are not renegotiated within ninety (90) days after such notice, the Dispute may be referred to the Dispute Resolution procedure set forth in this Agreement.

LecStar/BellSouth:

(Agreement, General Terms and Conditions, § 15.3.)

“In the event of any effective legislative, regulatory, judicial or other legal action materially affects any material terms of this agreement, or the ability of Momentum (LecStar) to perform any material terms of this Agreement, LecStar or BellSouth may, upon written notice require that such terms be renegotiated, and the parties shall renegotiate in good faith such mutually acceptable new terms as may be required. In the event that such new terms be renegotiated, and the Parties shall renegotiate in good faith such mutually acceptable terms as may be required. In the event that such new terms are not renegotiated within ninety (90) days after such notice, the Dispute shall be referred to the Dispute Resolution procedure set forth in this Agreement.”

Supra/BellSouth:

(Section 9.3 of the General Terms and Conditions):

In the event that any final legislative, regulatory, judicial or other legal action materially affects any material terms of this Agreement, or the ability of Supra Telecom or BellSouth to perform any material terms of this Agreement, Supra Telecom or BellSouth may, on ninety (90) days' written notice (delivered not later than ninety (90) days following the date on which such action has become legally binding and has otherwise become final without regard to, the Parties rights to appeal) require that such terms be renegotiated, and the Parties shall renegotiate in good faith such mutually acceptable new terms as may be required. In the event that such new terms are not renegotiated within ninety (90) days after such notice, the dispute shall follow the dispute resolution procedures set forth in Section 16 of the General Terms and Conditions of this Agreement. To the extent such order involves new or modified rates, the amendment implementing such order shall be deemed effective as to such rates in accordance with the

Commission ruling, or in the absence of an ordered effective date, as of the effective date of the order.

ITCD and BTI/BellSouth: (See Letter Filed with FPSC on February 25, 2005, Exhibit A).

Covad/BellSouth:

(GTC, Section 16)

- 16.3 In the event that any effective legislative, regulatory, judicial or other legal action materially affects any material terms of this Agreement, or the ability of Covad or BellSouth to perform any material terms of this Agreement, Covad or BellSouth may, on thirty (30) days' written notice require that such terms be renegotiated, and the Parties shall renegotiate in good faith such mutually acceptable new terms as may be required. In the event that such new terms are not renegotiated within ninety (90) days after such notice, the Dispute shall be referred to the Dispute Resolution procedure set forth in this Agreement.

Trinsic/BellSouth (adopted MCI/BellSouth ICA)

(and the other Party shall likewise be excused from performance of its obligations on a day-to-day basis until the delay, restriction or interference has ceased); provided however, that the Party so affected shall use diligent efforts to avoid or remove such causes of non-performance and both Parties shall proceed whenever such causes are removed or cease.

13. Adoption of Agreements

BellSouth shall make available, pursuant to 47 USC § 252 and the FCC rules and regulations regarding such availability, to Navigator any interconnection, service, or network element provided under any other agreement filed and approved pursuant to 47 USC § 252, provided a minimum of six months remains on the term of such agreement. The Parties shall adopt all rates, terms and conditions concerning such other interconnection, service or network element and any other rates, terms and conditions that are legitimately related to or were negotiated in exchange for or in conjunction with the interconnection, service or network element being adopted. The adopted interconnection, service, or network element and agreement shall apply to the same states as such other agreement. The term of the adopted agreement or provisions shall expire on the same date as set forth in the agreement that was adopted.

14. Modification of Agreement

- 14.1 If Navigator changes its name or makes changes to its company structure or identity due to a merger, acquisition, transfer or any other reason, it is the responsibility of Navigator to notify BellSouth of said change and request that an amendment to this Agreement, if necessary, be executed to reflect said change.
- 14.2 No modification, amendment, supplement to, or waiver of the Agreement or any of its provisions shall be effective and binding upon the Parties unless it is made in writing and duly signed by the Parties.
- 14.3 In the event that any effective legislative, regulatory, judicial or other legal action materially affects any material terms of this Agreement, or the ability of Navigator or BellSouth to perform any material terms of this Agreement, Navigator or BellSouth may, on thirty (30) days' written notice require that such terms be renegotiated, and the Parties shall renegotiate in good faith such mutually acceptable new terms as may be required. In the event that such new terms are not renegotiated within ninety (90) days after such notice, the Dispute shall be referred to the Dispute Resolution procedure set forth in this Agreement.

15. Non-waiver of Legal Rights

Execution of this Agreement by either Party does not confirm or imply that the executing Party agrees with any decision(s) issued pursuant to the Telecommunications Act of 1996 and the consequences of those decisions on specific language in this Agreement. Neither Party waives its rights to appeal or otherwise challenge any such decision(s) and each Party reserves all of its rights to

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

cc: Parties of Record
Beth Keating

539595



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

**CERTIFICATE OF SERVICE
DOCKET NO. 040489-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 28th day of May, 2004 to the following:


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