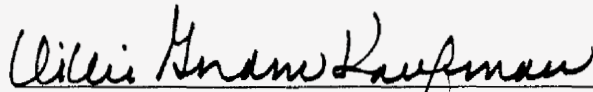


**BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION**

In the Matter of:)	
Petition to Establish Generic Docket to Consider)	Docket No. 041269-TP
Amendments to Interconnection)	Filed: August 16, 2005
Agreements Resulting from Changes of Law)	
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REQUEST FOR OFFICIAL RECOGNITION

The Competitive Carriers of the South, Inc. (CompSouth), through its undersigned counsel, pursuant to rule 90.202, Florida Rules of Evidence, and section 120.569(2)(i), Florida Statutes, requests Official Recognition of the Order Denying Summary Judgment Motions, issued by the North Carolina Utilities Commission in Docket No. P-55, SUB 1549, *In the Matter of: Proceeding to Consider Amendments to Interconnection Agreements Between BellSouth Telecommunications, Inc. and Competing Local Providers Due to Change Of Law*, on August 15, 2005.



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DOCUMENT NUMBER-DATE

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FPSC-COMMISSION CLERK

CERTIFICATE OF SERVICE

I **HEREBY CERTIFY** that a true and correct copy of the foregoing Request for Official Recognition was served by (*) hand delivery and U.S. Mail this 16th day of August, 2005 to the following:

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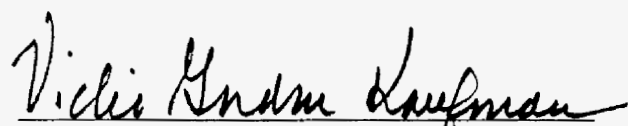
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**STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH**

DOCKET NO. P-55, SUB 1549

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of		
Proceeding to Consider Amendments to)	
Interconnection Agreements Between)	ORDER DENYING SUMMARY
BellSouth Telecommunications, Inc. and)	JUDGMENT MOTIONS
Competing Local Providers Due to Change)	
Of Law)	

BY THE COMMISSION: On February 24, 2005, at the behest of and in consultation with the principal parties to this docket, the Commission issued an Order Establishing Procedural Schedule herein to consider change-of-law amendments to interconnection agreements between BellSouth Telecommunications, Inc. (BellSouth) and various competing local providers (CLPs) "arising out of FCC Docket No. 04-313." That Order provided for a hearing to be held beginning on September 19, 2005, with direct prefiled testimony to be submitted on August 1st and prefiled rebuttal testimony on August 29th. The Commission characterized the change-of-law proceedings as "analogous to an arbitration."

On June 2, 2005, BellSouth filed a Motion for Summary Judgment, or, in the Alternative, Motion for Declaratory Ruling in this docket as to a number of issues. BellSouth divided those issues into (I) those issues that it believed should be resolved in their entirety as a matter of law and (II) those for which partial summary judgment should be granted or, alternatively, issues that the Commission can address by issuing a declaration setting forth the applicable law, so that the parties may efficiently present the factual disputes.

As to I, BellSouth identified the following issues: Nos. 6 (HDSL Capable Copper Loops), 7 (high capacity loops and transport/changed circumstances), 8(a) (Section 271 elements in an interconnection agreement), 8(b) (state commission establishment of 271 UNE rates), 17 (line sharing), 20 (subloop concentration), 21 (packet switching), 23 (greenfield areas), 24 (hybrid loops), 25 (end user premises), 30 (entire agreement rule), and 32 (binding nature of Commission Order).

As to II, BellSouth identified the following issues: Nos. 2 (TRRO transition plan), 11 (UNEs that are not converted), 14 (commingling), 19 (line-splitting), 22 (call-related databases), 26 (routine network modifications), 28 (fiber-to-the-home), and 29 (enhanced extended link audits).

BellSouth argued that resolving these issues in whole or in part by summary judgment would expedite the hearing and decision-making involved in this case. Summary judgment is appropriate to dispose of litigation where there is no genuine issue of material fact and the undisputed facts warrant judgment as a matter of law.

CLP REPLIES

Sprint Communications Company, LP (Sprint) filed a response with reference to Joint Issues Matrix No. 6 (HDSL-capable copper loops); Joint Issues Matrix Nos. 2 (TRRO transition plan) and 11 (UNEs not converted); and Joint Issues Matrix 20(a) (Subloop concentration). Sprint requested the Commission to adopt Sprint's recommendations as to these issues and deny BellSouth's Motion to the extent requested.

US LEC of North Carolina, Inc. (US LEC) filed Comments in which it requested the Commission not to issue summary judgment in these matters but follow the agreed-upon process already in motion. BellSouth's Motion should therefore be held in abeyance.

Later, in response to CompSouth's statements (see below) about the withdrawal of certain issues, US LEC stated that it did not object to the withdrawal of those issues, but noted that numerous issues, including Issue 7, are the subject of a motion for reconsideration filed with the FCC by a number of CLPs, including US LEC, in the FCC's TRRO docket. There is also a forbearance petition filed with the FCC in the TRRO docket that addresses similar issues, and the FCC is seeking comments on the petition on September 12, 2005.

CompSouth, an association of various CLPs, submitted comments and filed a cross-motion for summary judgment or declaratory ruling. CompSouth opposed BellSouth's Motion and urged the necessity and desirability of the Commission hearing factual testimony, arguing that the Commission would find that the "resolution of specific disputes between the parties on that contract language...will drive this case much more than broad policy determinations." BellSouth's Motion is an invitation for the Commission to do its work twice and has a tendency to confuse rather than illuminate the issues.

CompSouth argued that BellSouth has erroneously claimed that the following issues can be resolved in their entirety as a matter of law: Nos. 6, 8(a), 8(b), 17, 20, 23, 24, 25, 28, 30, and 32. CompSouth also disputed BellSouth's arguments in favor of partial summary judgment or declaratory ruling in relation to Issues Nos. 2, 11, 14(a), 19, 22, 26, 28, and 29.

CompSouth noted that it had not responded to BellSouth's Motion on Issues 7, 14(b), and 21, because it believes that there is no live dispute between the parties requiring resolution, and CompSouth agrees to removing these issues from the Issues List prior to the filing of testimony.

In summary, CompSouth asked the Commission to deny BellSouth's Motion and, if and only if the Commission decides to resolve issues by summary judgment or by declaratory ruling, BellSouth's Motion should be likewise denied and CompSouth's cross-motion for summary judgment or declaratory ruling should be granted.

BELLSOUTH RESPONSE

BellSouth generally responded that its Motion was not premature and that CompSouth's Cross-Motion should be denied. BellSouth then proceeded to discuss in some detail Issue 8 and Issue 17—Section 271 and line sharing. Upon review of CompSouth's filing, BellSouth believed that the vast majority of issues raised had been fully and dispositively addressed in its opening brief.

WHEREUPON, the Commission reaches the following

CONCLUSIONS

After careful consideration, the Commission concludes that good cause exists to deny the various Motions for Summary Judgment or Declaratory Ruling and to consider such matters, as originally envisioned, in the context of the hearing and subsequent briefing. The Commission does, however, believe that, based on the comments of the parties, that Issues 7, 14(b), and 21 can be removed from consideration in this docket.

It is evident from the filings of parties that legal positions which some view as so crystal-clear as to compel belief are viewed by others in the opposite light. Such issues include some of the most contentious and controverted issues in telecommunications today, such as line-sharing and the 271 UNEs. Indeed, with the exceptions noted above, CompSouth and BellSouth dispute every single issue set forth by BellSouth. Moreover, the Commission has not yet had the benefit of the views of the Public Staff, which represents the interests of the using and consuming public, on these issues. It is generally recognized that summary judgment is a drastic remedy that should be used cautiously. The Commission cannot say, at this point, that the issues presented for summary judgment lack factual components that would bear on decision making. Even matters argued to be "purely legal" may benefit from factual contextualization.

While the Commission appreciates the good intentions of the Movants in seeking to expedite this docket, the Commission believes that to rule on these Motions at this stage would have a tendency to complicate, rather than to simplify, matters. Prefiled direct testimony has already been received; rebuttal testimony will soon follow; and the hearing itself is scheduled to begin on September 19th. The Commission and the parties are no strangers to considering legal and factual matters together in the context

of arbitrations, and this proceeding is very similar to those. The Commission therefore wishes to proceed on this matter according to the original schedule and plan and, therefore, the various Motions are denied.

IT IS, THEREFORE, SO ORDERED.

ISSUED BY ORDER OF THE COMMISSION.

This the 15th day of August, 2005.

NORTH CAROLINA UTILITIES COMMISSION

Gail L. Mount

Gail L. Mount, Deputy Clerk

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