

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

March 5, 2003

IN RE:

**PETITION FOR APPROVAL OF
AMENDMENT TO INTERCONNECTION
AGREEMENT BETWEEN BELL SOUTH
TELECOMMUNICATIONS, INC. AND
BIRCH TELECOM OF THE SOUTH, INC.**

DOCKET NO. 02-01295

**ORDER APPROVING
AMENDMENT TO THE INTERCONNECTION AGREEMENT**

This matter came before Chairman Sara Kyle, Director Deborah Taylor Tate, and Director Ron Jones of the Tennessee Regulatory Authority (the "Authority"), the voting panel assigned to this docket, at a regularly scheduled Authority Conference held on February 3, 2003 to consider, pursuant to 47 U.S.C. § 252, the Petition for approval of the fifth amendment to the interconnection agreement negotiated between BellSouth Telecommunications, Inc. and Birch Telecom of the South, Inc.

The original interconnection agreement between these parties was filed on October 12, 2000 and was assigned Docket No. 00-00904. It was approved at a regularly scheduled Authority Conference on December 5, 2000. The first set of amendments was filed on January 19, 2001 under Docket No. 01-00074 and was approved at a regularly scheduled Authority Conference on March 20, 2001. The second amendment was filed on May 10, 2001 under Docket No. 01-00421 and was approved at a regularly scheduled Authority Conference on

July 10, 2001. The third amendment was filed on September 16, 2002 under Docket No. 02-01013 and was approved at a regularly scheduled Authority Conference on October 21, 2002. The fourth set of amendments was filed on October 3, 2002 under Docket No. 02-01109 and was approved at a regularly scheduled Authority Conference on November 18, 2002. The fifth amendment, which is the subject of this docket, was filed on December 12, 2002.

Based upon a review of the fifth amendment, the record in this matter, and the standards for review set forth in 47 U.S.C. § 252, the Directors unanimously granted the Petition and made the following findings and conclusions:

- 1) The Authority has jurisdiction over public utilities pursuant to Tenn. Code Ann. § 65-4-104.
- 2) The amendment is in the public interest as it provides consumers with alternative sources of telecommunications services within the BellSouth Telecommunications, Inc. service area.
- 3) The amendment is not discriminatory to telecommunications service providers that are not parties thereto.
- 4) 47 U.S.C. § 252(e)(2)(A) provides that a state commission may reject a negotiated agreement only if it “discriminates against a telecommunications carrier not a party to the agreement” or if the implementation of the agreement “is not consistent with the public interest, convenience or necessity.” Unlike arbitrated agreements, a state commission may not reject a negotiated agreement on the grounds that the agreement fails to meet the requirements of 47 U.S.C. §§ 251 or 252(d).¹ Thus, although the Authority finds that neither ground for rejection of a negotiated agreement exists, this finding should not be construed to mean that the amendment is consistent with §§ 251 or 252(d) or, for that matter, previous Authority decisions.

¹ See 47 U.S.C. § 252(e)(2)(B)(Supp. 2001).

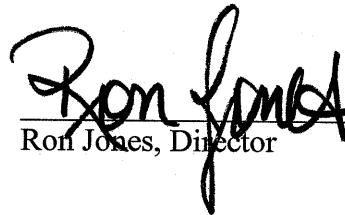
- 5) No person or entity has sought to intervene in this docket.
- 6) The amendment is reviewable by the Authority pursuant to 47 U.S.C. § 252 and Tenn. Code Ann. § 65-4-104.

IT IS THEREFORE ORDERED THAT:

The Petition is granted, and the fifth amendment to the interconnection agreement negotiated between BellSouth Telecommunications, Inc. and Birch Telecom of the South, Inc. is approved and is subject to the review of the Authority as provided herein.


Sara Kyle, Chairman


Deborah Taylor Tate, Director


Ron Jones, Director