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March 16, 2004

VIA HAND DELIVERY

Hon. Deborah Taylor Tate, Chairman
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, TN 37238

Re: *Petition of LoadPoint, LLC for Arbitration with BellSouth Telecommunications, Inc. Pursuant to 47 U.S.C. § 252*
Docket No. 04-00060

Dear Chairman Tate

Enclosed are the original and fourteen copies of BellSouth's *Response to LoadPoint, Inc.'s Petition for Arbitration*. For Exhibit B to the *Response*, which is the proposed interconnection agreement between the parties, we are providing six paper copies and a CD Rom. Copies of the enclosed are being provided to counsel of record

Cordially,

Joelle Phillips

JJP:ch

BEFORE THE TENNESSEE REGULATORY AUTHORITY
Nashville, Tennessee

In Re: *Petition of LoadPoint, LLC for Arbitration with BellSouth Telecommunications, Inc. Pursuant to 47 U.S.C. § 252*

Docket No. 04-00060

BELLSOUTH TELECOMMUNICATIONS, INC.'S RESPONSE TO LOADPOINT, LLC'S PETITION FOR ARBITRATION

Pursuant to 47 U.S.C. § 252(b)(3), BellSouth Telecommunications, Inc. ("BellSouth"), responds to the Petition for Arbitration ("Petition") filed by LoadPoint, LLC ("LoadPoint") and says:

I. LEGAL OBLIGATIONS FOR §252 ARBITRATIONS

Sections 251 and 252 of the Telecommunications Act of 1996 ("1996 Act") encourage negotiations between parties to reach local interconnection agreements. Section 251(c)(1) of the 1996 Act requires incumbent local exchange companies to negotiate the particular terms and conditions of agreements to fulfill the duties described in Sections 251(b) and 251(c)(2)-(6).

As part of the negotiation process, the 1996 Act allows a party to petition a state commission for arbitration of unresolved issues.[1] The petition must identify the issues resulting from the negotiations that are resolved, as well as those that are unresolved.[2] The petitioning party must submit along with its petition "all relevant documentation concerning: (1) the unresolved issues; (2) the position of each of the parties with respect to those issues; and (3) any other issues discussed

[1] 47 U.S.C. § 252(b)(2)
[2] *See generally,* 47 U S C §§ 252 (b)(2)(A) and 252 (b)(4).

and resolved by the parties."[3] A non-petitioning party to a negotiation under this section may respond to the other party's petition and provide such additional information as it wishes within 25 days after a commission receives the petition.[4] The 1996 Act limits a commission's consideration of any petition (and any response thereto) to the unresolved issues set forth in the petition and in the response.[5]

Through the arbitration process, a commission must resolve the unresolved issues ensuring that the requirements of Sections 251 and 252 of the 1996 Act are met. The obligations contained in those sections of the 1996 Act are the obligations that form the basis for negotiation, and if negotiations are unsuccessful, then form the basis for arbitration. Issues or topics not specifically related to these areas are outside the scope of an arbitration proceeding.

II. HISTORY OF NEGOTIATIONS, INCLUDING LOADPOINT'S FAILURE TO NEGOTIATE IN GOOD FAITH

BellSouth and LoadPoint previously entered into an Interconnection Agreement ("Agreement") in Tennessee which expired, through mutual extensions, on February 20, 2004. The history of this negotiation begins almost 2 years ago, on May 22, 2002 when BellSouth sent its first official renegotiations request to LoadPoint. After almost four months (and three follow-up letters from BellSouth), LoadPoint finally responded on September 13, 2002 to BellSouth's first official renegotiations request. On October 8, 2002, BellSouth sent LoadPoint a copy of BellSouth's SGAT as a starting point for negotiations.

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[3] 47 U S C. § 252(b)(2).
[4] 47 U.S C § 252(b)(3)
[5] 47 U S C § 252(b)(4).

After another month went by without any contact from LoadPoint, BellSouth sent, on November 13, 2002, a second official renegotiations request to LoadPoint, which officially re-started the negotiations clock. By telephone call the next day, LoadPoint advised BellSouth that LoadPoint was reviewing the SGAT and was a week or two away from signing a new Interconnection Agreement. On February 20, 2003 (again after three follow-up letters from BellSouth), LoadPoint called and requested to adopt the XO of Tennessee, Inc. Agreement, which was also being renegotiated. Because the term of the existing XO of Tennessee, Inc. Agreement had been extended until December 31, 2003, BellSouth agreed to an extension of LoadPoint's existing Interconnection Agreement, subject to LoadPoint agreeing to amend certain language in the Interconnection Agreement. LoadPoint agreed and (again after BellSouth having to make repeated follow-up contacts) on April 18, 2003, BellSouth finally received the signed amendment from LoadPoint.

The renegotiation process was again invoked by BellSouth (consistent with the terms of the Interconnection Agreement) on July 3, 2003. On August 27, 2003 (after the parties exchanged a few e-mails and letters), LoadPoint sent a request to BellSouth asking how to begin the process of negotiations. BellSouth responded the next day, outlining various possibilities, including adopting the SGAT or adopting an eligible interconnection agreement. BellSouth did not hear from LoadPoint again until October 15, 2003, after BellSouth advised LoadPoint (back on October 3, 2003) that any adoption of an interconnection agreement must include a TRO amendment.

On December 1, 2003, after an exchange of e-mails over the previous few weeks concerning the implementation of TRO language into the new interconnection agreement, BellSouth provided TRO language to LoadPoint which consisted of TRO-compliant Attachments 2 and 6. After reviewing BellSouth's proposed TRO language, LoadPoint, on December 8, 2003, sent BellSouth an e-mail reflecting twelve questions/comments on the Attachment 2 language and two questions/comments on the Attachment 6 language. BellSouth responded to LoadPoint's questions/comments on December 16, 2003.

On December 23, 2003 the parties reached an agreement, in writing, whereby BellSouth would agree to a sixty (60) day extension of the negotiation window in exchange for LoadPoint sending back proposed revisions to BellSouth's TRO language.[6] On January 14, BellSouth sent a reminder to LoadPoint that BellSouth had still not received any proposed language revisions from LoadPoint. LoadPoint finally sent the promised proposed revisions to BellSouth's TRO language on January 19, 2004.

Over the next few weeks, the parties discussed LoadPoint's proposed revisions and BellSouth agreed, once again, to extend the negotiations window; this time until February 20, 2004. On February 9, 2004, LoadPoint indicated that the sole remaining issue was whether LoadPoint could have ninety (90) days to convert services as opposed to the thirty (30) days proposed by BellSouth.[7]

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[6] A copy of the executed agreement is attached hereto as Exhibit "A."

[7] Instructive, and indicative of LoadPoint's bad faith negotiation tactics, is the fact that LoadPoint apparently does not have any existing circuits that would have to be converted. In other words, LoadPoint is using this irrelevant (to them) issue as the basis upon which they would not agree to the TRO-compliant language proposed by BellSouth.

BellSouth addressed (through an e-mail dated February 11, 2004) LoadPoint's questions and concerns regarding the time allowed to convert circuits. On February 18, 2004 (just two days prior to the deadline for filing the arbitration), LoadPoint reneged on its written agreement to negotiate TRO language and, instead, insisted on adopting the interconnection agreement between Time Warner and BellSouth.

On February 19, 2004, BellSouth reiterated to LoadPoint that the Time Warner/BellSouth Interconnection Agreement had not yet been amended to incorporate TRO language and it was, therefore, unavailable for adoption. BellSouth again advised LoadPoint that the following options were available: (1) adopt the Time Warner/BellSouth Interconnection Agreement, but replace Attachments 2 and 6 with TRO-compliant language (that the parties had been negotiating); (2) execute the new Interconnection Agreement that the parties had been negotiating; or (3) allow the current Interconnection Agreement to expire and convert to the BellSouth standard interconnection agreement beginning February 21, 2004. Apparently rejecting these proposals, LoadPoint filed for arbitration on February 20, 2004 raising only the issue of its ability to adopt the Time Warner/BellSouth Interconnection Agreement.

LoadPoint should not be allowed to avoid the changes in the law brought about by the FCC in the TRO. Further, the Authority should not condone LoadPoint's flagrant disregard of the written agreement to negotiate TRO-compliant language with BellSouth. BellSouth relied on this written agreement as the basis for granting multiple extensions to the negotiations window and LoadPoint should

be required to fulfill its portion of that bargain. The Authority should admonish LoadPoint for engaging in bad faith negotiations and require LoadPoint to fulfill its written agreement to negotiate TRO-compliant language. As set forth below, BellSouth has raised in this proceeding the sole remaining issue from the parties' negotiations and requests that the Authority resolve that issue consistent with §252 of the 1996 Act.

III. BELLSOUTH'S RESPONSE TO THE SPECIFIC ALLEGATIONS IN LOADPOINT'S PETITION FOR ARBITRATION

BellSouth responds below to each of the separately numbered paragraphs of LoadPoint's Petition:

PARTIES

1. The allegations in Paragraph 1 of the Petition require no response from BellSouth.

2. The allegations in Paragraph 2 of the Petition require no response from BellSouth.

3. BellSouth admits the allegations in Paragraph 3 of the Petition.

FACTUAL BACKGROUND

4. The referenced TRA Order (Docket No. 02-00467) speaks for itself and requires no response from BellSouth. Upon information and belief, the TRA approved the referenced XO of Tennessee, Inc. Agreement on March 28, 2000; not November 21, 2000 as alleged by LoadPoint. BellSouth admits the remaining allegations in Paragraph 4 the Petition.

5. BellSouth admits that the parties have been involved in negotiations, but denies that LoadPoint has exhibited good faith in those negotiations. BellSouth admits the remaining allegations in Paragraph 5 of the Petition.

6. BellSouth admits the first sentence in Paragraph 6 of the Petition. BellSouth admits that it offered the referenced Time Warner Agreement to LoadPoint with the condition that, prior to adoption, LoadPoint negotiate an amendment to Attachments 2 and 6 of the Time Warner Agreement that would reflect the current state of the law consistent with the FCC's Triennial Review Order ("TRO"). BellSouth denies any remaining allegations in Paragraph 6 of the Petition.

7. BellSouth admits that the parties have been unable to agree to TRO language, although the LoadPoint stopped negotiating when the parties were only a single issue away from having a completed interconnection agreement. BellSouth denies the remaining allegations in Paragraph 7 of the Petition.

8. BellSouth admits the allegations in Paragraph 8 of the Petition.

DISCUSSION

9. BellSouth avers that the referenced provision of the 1996 Act speaks for itself and requires no response from BellSouth. BellSouth denies any remaining allegations in Paragraph 9 of the Petition.

10. BellSouth avers that the referenced FCC Rule 47 C.F.R. § 51.809(a) speaks for itself and requires no response from BellSouth. BellSouth denies any remaining allegations in Paragraph 10 of the Petition.

11. BellSouth admits the first two sentences in Paragraph 11 of the Petition. BellSouth denies the remaining allegations in Paragraph 11 of the Petition.

12. The referenced provisions of the Time Warner Agreement speak for themselves and require no response from BellSouth. BellSouth denies the remaining allegations in Paragraph 12 of the Petition.

CONCLUSION

13. BellSouth denies the allegations in the Conclusion section of the Petition. BellSouth affirmatively avers that the Authority should reject LoadPoint's positions on each and every one of the issues set forth herein and, instead, adopt BellSouth's positions on those issues.

14. BellSouth notes that national and state telecommunications law and policy is in a state of flux and could potentially impact even those provisions of the parties' Interconnection Agreement that are not currently in dispute. In the event changes and/or clarifications of the law impact the disputed and/or undisputed provisions of the parties' Interconnection Agreement (and the parties are unable to agree on how any such changes and/or clarifications are to be incorporated into the parties' Interconnection Agreement), BellSouth reserves the right to seek further redress from the Authority on those issues.

15. BellSouth denies each and every allegation in the Petition not expressly admitted herein, and demands strict proof thereof.

IV. ADDITIONAL ARBITRATION ISSUES RAISED BY BELLSOUTH

In accordance with §§252(b)(3) and (4) of the 1996 Act, the non-petitioning party to a §252 Arbitration may raise issues that must be considered by, in this instance, the Authority. As discussed above, the parties were a single issue away from negotiating an entire interconnection agreement that could have been submitted to the Authority for approval. Thus, BellSouth submits the following issue for consideration by the Authority:

ISSUE 1: How much time should LoadPoint have to convert circuits that are no longer compliant with the law? (Attachment 2, § 1.8)

BELLSOUTH'S POSITION: LoadPoint should have 30 days to convert any circuit that is no longer compliant with the law. For instance, through the TRO the FCC has modified the prerequisites for a CLEC being able to obtain certain network elements, or combinations of network elements (hereinafter "circuits"). In those instances where a CLEC may have existing circuits that no longer meet the requirements of law, there can be no reasonable disagreement that the CLEC should convert those circuits to bring them into compliance with the law. BellSouth contends that thirty (30) days is ample time for LoadPoint, or any CLEC, to submit the necessary orders to bring the circuits into legal compliance. This is especially true in the case of LoadPoint which, as far as BellSouth can determine, has ***no*** existing circuits.[8] There is simply no reason to allow LoadPoint, or any

[8] LoadPoint may argue that since they have no existing circuits, BellSouth should not care whether the time frame is thirty (30) days or ninety (90) days If it were not for the fact that other CLECs, that may very well have existing non-compliant circuits, will be able to adopt this TRO-compliant Interconnection Agreement after approved by the Authority, then BellSouth would probably agree with such an argument by LoadPoint As discussed above, BellSouth contends that

CLEC, to continue having circuits that are non-compliant with the law for any more time than is absolutely necessary for LoadPoint to make the conversion. Therefore, BellSouth requests that the Authority adopt BellSouth's position on this issue and require LoadPoint to convert any non-compliant circuits in thirty (30) days.

LOADPOINT'S POSITION: LoadPoint does not appear to have a problem with the concept of converting circuits that are no longer compliant with the law. LoadPoint wants ninety (90) days to effectuate any such conversions.

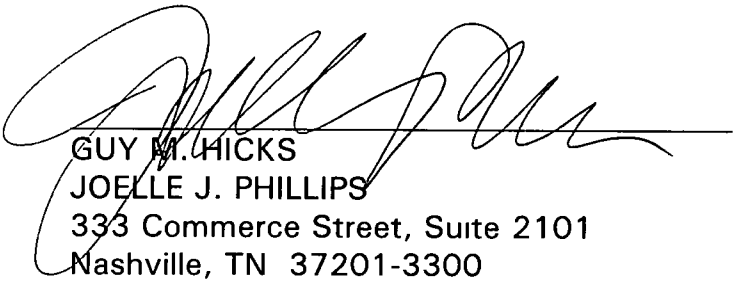
Consistent with prior negotiations between the parties (at least until LoadPoint unilaterally stopped negotiating) all other issues between the parties are resolved as reflected in the Interconnection Agreement, a copy of which is attached hereto as Exhibit "B." Because there are only two issues for resolution by the Authority, BellSouth did not prepare an Issues Matrix; however, if the Authority would like an Issues Matrix for this proceeding, BellSouth will be pleased to create one.

WHEREFORE, BellSouth respectfully requests that the Authority adopt BellSouth's position on the issue(s) presented herein.

LoadPoint is using this issue in a bad faith manner simply as an excuse to walk away from negotiations and avoid changes in the law brought about by the FCC

Respectfully submitted,

BELLSOUTH TELECOMMUNICATIONS, INC.



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