BOULT ▪ CUMMINGS®
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March 10, 2005

Director Deborah T. Tate
Tennessee Regulatory Authority
460 James Robertson Pkwy.
Nashville, TN 37243

Re: *Petition to Establish Generic Docket to Consider Amendments to Interconnection Agreements Resulting from Changes of Law*
Docket Number: 04-00381

Dear Director Tate :

Attached are orders released by various state commissions in the region in the above-captioned proceeding. Additionally attached is a notice to CLECs from Quest advising they will continue to process new orders after March 11, 2005 subject to a true-up provision.

Very truly yours,

BOULT, CUMMINGS, CONNERS & BERRY, PLC

By: Henry Walker

HW/djc

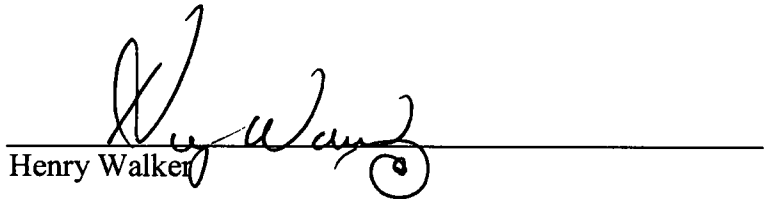
1032696 v1
104724-012
3/10/2005

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been forwarded electronically and via U.S. Mail, postage prepaid, to:

Guy M. Hicks
BellSouth Telecommunications, Inc.
333 Commerce Street
Suite 2101
Nashville, TN 37201-3300

on this the 10th day of March, 2005.



Henry Walker

MISSISSIPPI
PUBLIC SERVICE COMMISSION
JACKSON, MISSISSIPPI

March 09, 2005

2005-AD-139

MISSISSIPPI PUBLIC SERVICE COMMISSION

IN RE:
ORDER ESTABLISHING GENERIC DOCKET TO CONSIDER CHANGE-OF-LAW TO EXISTING INTERCONNECTION AGREEMENTS.

NOTICE

Notice is hereby given that on the 9th day of March, 2005, the Mississippi Public Service, on its own motion, established the above referenced matter.

Any person desiring to participate in or receive further notice of these proceedings is required under Rule 6J of the Commission's Public Utility Rules of Practice and Procedure to file a written petition to intervene on or before twenty (20) days from the date of this notice.

This cause is returnable to the next regular meeting of the Commission to be held at 10:00 A.M.,Tuesday, April 5, 2005, at the Mississippi Public Service Commission, 1st Floor, Woolfolk State Office Building, Jackson, Mississippi. This cause may be subject to being set for disposition on a hearing date not less than twenty (20) days from the date of publication of this Notice. If protest, answer or other appropriate pleading is on file in response to this matter, the Commission will consider same on said hearing date.

WITNESS MY HAND AND THE OFFICIAL SEAL of the Mississippi Public Service Commission, on this, the 9th day of March, 2005.

MISSISSIPPI PUBLIC SERVICE COMMISSION * SEAL

Brian U. Ray
Executive Secretary

BEFORE THE PUBLIC SERVICE COMMISSION
OF
THE STATE OF MISSISSIPPI

IN RE:	)	**DOCKET NO. 2005-AD-139**
	)	
Order Establishing Generic Docket to Consider Change-of-Law To Existing Interconnection Agreements	)	

ORDER ESTABLISHING GENERIC DOCKET

COMES NOW, the Mississippi Public Service Commission ("Commission"), *sua sponte*, and directs the Executive Secretary to issue a notice to BellSouth Telecommunications, Inc. (BellSouth) and to all Competitive Local Exchange Carriers (CLECs) certificated by the Commission that the Commission hereby institutes a generic proceeding to address changes that may be required to existing approved interconnection agreements (ICAs) between BellSouth and various certificated CLECs as a result of decisions issued by the FCC and the reviewing court. These decisions include the FCC's *Triennial Review Order* (TRO) issued August of 2003; the *United States Court of Appeals for the District of Columbia Circuit Decision* (USTA II) issued March 2, 2004; the *FCC's Order Establishing Interim Rules* (Interim Rules) issued August 20, 2004; and the FCC's *Triennial Review Remand Order* (TRRO) recently issued on February 4, 2005.

The Commission takes note of the fact that on October 29, 2004, in Docket No. 2004-AD-0724, BellSouth filed a Petition to Establish Generic Docket. In that filing BellSouth requests the Commission to "institute a generic proceeding to consider what changes recent decisions from the FCC and DC Circuit require in existing approved interconnection agreements." The Commission did not establish the generic docket at that time because the TRRO had not been issued.

On March 1, 2005, a Joint Petition for Emergency Relief (Joint Petition) was filed by certain CLECs in Docket No 2005-AD-138 seeking emergency declaratory relief. The Joint Petition is incorporated herein by reference. The Joint Petition was prompted by BellSouth's February 11, 2005, and February 25, 2005, Carrier Notification letters, stating, *inter alia*, that certain provisions of the FCC's

TRRO regarding new orders for certain elements are "self-effectuating" as of March 11, 2005, and that CLECs would not be able to order "new adds" for the "self-effectuating" elements. The letters indicated that BellSouth plans to unilaterally refuse to provide certain elements and to change certain pricing as of March 11, 2005, the effective date of the TRRO.[1] It appears from the letters and the Joint Petition that BellSouth's position is that the TRRO supersedes certain provisions of existing ICAs, and in particular, the "change-of-law" provisions in each ICA.

A standard "change-of-law" provision[2] is included in each ICA that the Commission has approved. This provision states, that in the event of a "change-of-law" – which the TRRO obviously is – the parties will negotiate revisions to the ICAs. If the parties cannot agree, the issues will then be presented to this Commission for a resolution. The applicable standard contractual language is as follows:

> 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 <<customer_short_name>> or BellSouth to perform any material terms of this Agreement, <<customer_short_name>> 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 forty-five (45) days after such notice, and either Party elects to pursue resolution of such amendment, such Party shall pursue the Dispute Resolution procedure set forth in this Agreement.
>
> ...if any dispute arises as to the interpretation of any provision of this Agreement or as to the proper implementation of this Agreement, the aggrieved party shall petition the Commission for a resolution of the dispute...Furthermore, the Parties agree to carry on their respective obligations under this Agreement, while any dispute resolution is pending.

The preceding discussion requires the Commission to establish an orderly proceeding where any needed revisions to the ICAs can be accomplished. The Commission has determined that the most efficient means to address the issues raised is to consider the "change-of-law" issues in this docket,

[1] It should be noted that on March 7, 2005, BellSouth circulated another Carrier Notification letter advising that "BellSouth will continue to accept CLEC orders for these 'new adds' until the earlier of (1) an order from an appropriate body, either a commission or a court, allowing BellSouth to reject these orders; or (2) April 17, 2005."
[2] The Commission finds that said Agreements contain identical or substantially similar contractual terms, with some variance of time periods to negotiate.

instead of opening approximately 300 separate arbitration dockets, should the parties involved be unable to negotiate an agreement. The Commission finds that conducting individual "change-of-law" proceedings for each ICA would be impractical, unduly burdensome, duplicative, and wasteful of this Commission's limited resources and the resources of the signatories to each ICA.

The Commission finds that Mississippi consumers currently benefiting from the services CLECs offer could be negatively impacted by BellSouth's proposed course of action ("self-effectuating position"). The Commission finds that the public interest requires it to establish this docket and create an orderly process to amend existing ICAs. It should be noted, that establishing this docket does not relieve the parties of their obligation to seek resolution through the "change-of-law" or § 252 provisions requiring negotiation. Both the "change-of-law" and § 252 provisions direct that this Commission be the final arbiter in the event that negotiations fail. The Commission, in this instance, will accomplish this through the medium of this generic docket.

The Commission finds that BellSouth should be directed to continue accepting and provisioning CLECs orders, as provided for in the ICAs. Additionally, BellSouth should be directed to maintain the same pricing that is established in the ICAs.

The Commission takes official notice that BellSouth, in its filings with other state commissions on this issue, has contended it will suffer financial harm if it cannot implement what it refers to as the "self-effectuating" provisions of the TRRO. Before the other commissions, BellSouth has sought a "true-up mechanism" to protect itself from financial harm arising from potential lost revenues. Balancing the public interest, with the interests of BellSouth and the CLECs, the Commission will, at a later time, if necessary, direct that there be a true-up proceeding that will determine how rates and charges will be adjusted retroactively to March 11, 2005.

IT IS THEREFORE, ORDERED, that BellSouth, in accordance with the terms of this Order, honor all valid existing ICAs approved by this Commission until the "change-of-law" issues raised herein have been addressed by this Commission or through negotiation.

IT IS FURTHER ORDERED, that the Executive Secretary of this Commission shall immediately issue notice to BellSouth and all CLECs of this proceeding and that all certificated CLECs who desire to participate in this proceeding shall file a Notice of Intervention no later than twenty (20) days from the receipt of notice.

IT IS FURTHER ORDERED, that a Scheduling Order will be forthcoming.

IT IS FURTHER ORDERED, that BellSouth file a comprehensive "Issues Matrix" designating the issues to be addressed in this docket no later than twenty (20) days from the date of issuance. The "Issues Matrix" shall be annotated with specific legal authority (TRO, USTA II, Interim Rules and/or TRRO) supporting BellSouth's position. CLECs who intervene in this proceeding, shall respond to BellSouth's "Issues Matrix" and may also provide a proposed "Issues Matrix" no later than twenty (20) days from the filing of BellSouth's "Issues Matrix".

IT IS FURTHER ORDERED, that this Order is effective upon issuance.

SO ORDERED, this the 9th day of March, 2005.

MISSISSIPPI PUBLIC SERVICE COMMISSION

Bo Robinson, Chairman

Nielsen Cochran, Vice-Chairman

Michael Callahan, Commissioner

ATTEST: A True Copy

Brian U. Ray
Executive Secretary

EXHIBIT B

Georgia Public Service Commission

244 WASHINGTON STREET, S.W.
ATLANTA, GEORGIA 30334-5701

(404) 656-4501
(800) 282-5813

FAX: (404) 656-2341
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Docket No. 19341-U

In Re: **Generic Proceeding to Examine Issues Related to BellSouth's Obligations to Provide Unbundled Network Elements**

ORDER ON MCI'S MOTION FOR EMERGENCY RELIEF CONCERNING UNE-P ORDERS

On February 21, 2005, MCI MetroAccess Transmission Services, LLC ("MCI") filed with the Georgia Public Service Commission ("Commission") a Motion for Emergency Relief Concerning UNE-P Orders ("Motion"). The Motion asked for the following relief:

(1) Order BellSouth Telecommunications, Inc. ("BellSouth") to continue accepting and processing MCI's unbundled network platform ("UNE-P") orders under the rates, terms and conditions of the parties' interconnection agreement ("Agreement");

(2) Order BellSouth to comply with the change of law provisions of the Agreement with regard to the implementation of the *Triennial Review Remand Order* ("TRRO");

(3) Order such further relief as the Commission deems just and appropriate.

BellSouth filed its Response in Opposition ("Response") on February 23, 2005.

MCI's Motion was in response to Carrier Notification Letters received from BellSouth. The Carrier Notification Letters, in turn, were in response to the February 4, 2005, Triennial Review Remand Order issued by the Federal Communications Commission ("FCC"). The FCC determined on a nationwide basis that incumbent local exchange carriers ("ILECs") are not obligated to provide unbundled local switching pursuant to section 251(c)(3) of the Federal Telecommunications Act ("Federal Act"). (TRRO ¶ 199). For the embedded customer base, the FCC adopted a twelve-month transition period, but specified that this transition period would not permit competitive LECs ("CLECs") to add new customers using unbundled access to local circuit switching. *Id.*

The FCC also made non-impairment findings with regard to dedicated loop and transport. For DS3-capacity loops, requesting carriers were found not to be impaired at any location within the service area of a wire center containing 38,000 or more business lines and four or more fiber-based collocators. (TRRO ¶146). The FCC found that "requesting carriers are not impaired without access to DS-1 capacity loops at any location within the service area of a wire center containing 60,000 or more business lines and four or more fiber-based collocators." *Id.* The FCC's non-impairment finding with respect to dark fiber loops applied to any instance. *Id.*

For DS1 transport, the FCC concluded that competing carriers were not impaired "on routes connecting a pair of wire centers, each of which contains at least four fiber-based collocators *or* 38,000 or more business lines." (TRRO ¶ 66) (emphasis in original). Competing carriers were also found to be not impaired without access to DS3transport "on routes connecting a pair of wire centers, each of which contains at least three fiber-based collocators *or* at least 24,000 business lines." *Id.* (emphasis in original). For dark fiber transport, competing carriers were found not to be impaired "without access on routes connecting a pair of wire centers, each of which contains at least three fiber-based collocators *or* at least 24,000 business lines." *Id.* (emphasis in original). The FCC made an across the board non-impairment finding for entrance facilities. *Id.*

I. MCI Motion

MCI asserted that its interconnection agreement with BellSouth includes a provision that specifies the necessary steps to be taken in the event of a change in law. (Motion, p. 4). MCI states that on February 8, 2005, and then on February 11, 2005, it received from BellSouth Carrier Notification Letters stating that as a result of the TRRO it was no longer required to provide unbundled local switching at Total Element Long Run Incremental Cost rates or unbundled network platform and as of that date, BellSouth will no longer accept orders that treat those items as unbundled network elements. *Id.* at 7-8.

On February 18, 2005, MCI sent a letter to BellSouth asserting that the actions referenced in its Carrier Notification Letters would constitute breach of the parties' agreement. *Id.* at 8. Specifically, MCI claims that the actions would breach the agreement (i) by rejecting UNE-P orders that BellSouth is obligated by the Agreement to accept and process; and (ii) by refusing to comply with the change of law procedure established by the Agreement. *Id.* at 1. MCI argues that the TRRO does not purport to abrogate the parties' rights under their interconnection agreement. *Id.* at 6. Therefore, MCI contends that BellSouth is required to follow the steps set forth in the parties' interconnection agreement. *Id.* at 9. The change of law provision states that in the event that "any effective and applicable . . . regulatory . . . or other legal action materially affects any material terms of this Agreement . . . or imposes new or modified rights or obligations on the Parties . . . [MCI] 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." (Agreement, Part A, § 2.3.)

MCI also argues that BellSouth is obligated to provide UNE-P under state law. *Id.* at 10. Finally, MCI states that section 271 of the Federal Act independently supports MCI's right to obtain UNE-P from BellSouth at the just and reasonable rates set forth in the Agreement. *Id.* at 14.

II. BellSouth Response

BellSouth argues that the TRRO is self-effectuating, and that as of March 11, 2005 (effective date of TRRO), it does not have any obligation to provide unbundled mass market local switching. (Response, p. 3). BellSouth construes the TRRO to abrogate the change of law provisions of the parties' agreements. BellSouth argues that under the *Mobile-Sierra* doctrine the FCC has the authority to negate any contract terms of regulated carriers, under the condition that it makes adequate public findings of interest. *Id.* at 5.

BellSouth argues that MCI is not entitled to UNE-P under state law. First, BellSouth argues that the Commission has not held the necessary impairment proceedings. *Id.* at 8-9. Second, BellSouth argues the Commission is preempted from granting the relief sought by MCI on this issue. *Id. at* 9-11. Third, BellSouth states that state law does not provide for the combination of unbundled network elements. *Id.* at 11.

Finally, BellSouth rebuts MCI's section 271 arguments. BellSouth claims that although it is obligated to provide unbundled local switching under section 271, switching under this code section is not combined with a loop, is subject to exclusive FCC jurisdiction and is not provided via interconnection agreements. *Id.*

III. Conclusions of Law

A. Parties must abide by the change of law provisions in their interconnection agreements to implement the terms of the *Triennial Review Remand Order* ("TRRO").

At this time, there is no dispute between the parties as to the meaning or purpose of the change of law provision. The difference between the parties is over whether the TRRO alters the parties' rights under their interconnection agreement. That is, whether the TRRO should be construed to negate the change of law provision so that as of the effective date of the TRRO the parties rights under their agreement change. The first step in this analysis is to determine whether the FCC has the authority to issue an order that would alter the parties' rights under the interconnection agreements. If this question is answered in the affirmative, then the next question is whether the FCC exercised that authority in the TRRO with regard to the change of law provision.

BellSouth cites to the *Mobile-Sierra* doctrine in its Response. This doctrine allows for the modification to the terms of a contract upon a finding that such modification will serve the public need, and it has been held that the FCC has the authority to employ the doctrine. Cable & Wireless, P.L.C. v. FCC, 166 F.3d 1224, 1231-32 (D.C. Cir. 1999). Therefore, it appears that the answer to the first question is that the FCC does have the authority under the proper circumstances to amend agreements between private parties.

In order to determine whether the FCC intended to employ the doctrine in this instance it is necessary to examine more closely what is required for its application. In a case involving the Federal Energy Regulatory Commission ("FERC"), the D.C. Circuit Court of Appeals held that it

is a violation of the *Mobile-Sierra* doctrine for an agency to modify a contract without "making a particularized finding that the public interest requires modification . . ." Atlantic City Electric Company, et al. v. FERC, et al., 295 F.3d 1, 40-41 (2002). In Texaco Inc. and Texaco Gas Marketing Inc. v. FERC et al., 148 F.3d 1091 (1998), the Court of Appeals for the D.C. Circuit expanded on the high public interest standard necessary to invoke the *Mobile-Sierra* doctrine. The Court explained that the finding of public interest necessary to override the terms of a contract is "more exacting" than the public interest that FERC served when it promulgated its rules. 148 F.3d at 1097. The Court held that the public interest necessary to alter the terms of a private contract "is significantly more particularized and requires analysis of the manner in which the contract harms the public interest and of the extent to which abrogation or reformation mitigates the contract's deleterious effect." *Id.* Therefore, in order to determine whether the FCC intended to invoke the *Mobile-Sierra* doctrine, it is necessary to examine the analysis, if any, that the FCC conducted to decide whether modification of the agreements satisfied the public interest.

BellSouth's Response does not include a single reference to a statement in the TRRO that modification of the agreements was in the public interest, much less a citation to analysis of why such reformation would be in the public interest. In fact, BellSouth does not cite to any express language in the TRRO at all that says that the FCC intends to reform the contracts. Instead, BellSouth quotes the FCC's statement that the transition period "shall apply only to the embedded customer base, and does not permit competitive LECs to add new customers using unbundled access to local circuit switching." (BellSouth Response, p. 4, *quoting* TRRO ¶ 199). BellSouth follows this quotation with the question, "How much clearer could the FCC be?" (Response, p. 4). The answer to this question is provided in the very order cited by BellSouth later in its brief for support that the FCC has the authority to invoke the *Mobile-Sierra* doctrine. In its *First Report and Order,* prior to addressing contracts between ILECs and commercial mobile radio service providers, the FCC explained the basis for its authority to modify contracts when such modifications served the public interest. BellSouth does not cite to any language in the TRRO even approaching that level of clarity.

Even if the strict standard did not apply, the TRRO could not be read to abrogate the rights of the parties related to the change in law provisions of their agreements. To the contrary, parties are directed to implement the rulings of the TRRO into their agreements through negotiation.

> We expect that incumbent LECs and competing carriers will implement the Commission's findings as directed by section 252 of the Act. Thus, carriers must implement changes to their interconnection agreements consistent with our conclusions in this Order. We note that the failure of an incumbent LEC or a competitive LEC to negotiate in good faith under section 251(c)(1) of the Act and our implementing rules may subject that party to enforcement action. Thus, the incumbent LEC and competitive LEC must negotiate in good faith regarding any rates, terms and conditions necessary to implement our rule changes. We expect that parties to the negotiating process will not unreasonably delay implementation of the conclusions adopted in this Order. We encourage the state commissions to

monitor this area closely to ensure that parties do not engage in unnecessary delay.

(TRRO § 233, footnotes omitted).

If the FCC had not intended for parties to negotiate amendments related to their interconnection agreements related to new customers, then it seems likely that it would have made that exception clear in the above paragraph.

To support its position, BellSouth first cites to a portion of the order that states the requirements of the TRRO shall take effect March 11, 2005. (BellSouth Response, p. 2, citing TRRO, ¶ 235). However, examination of that paragraph makes it clear that all the FCC is addressing is that the TRRO would be effective March 11, 2005, "rather than 30 days after publication in the Federal Register." (TRRO, ¶ 235). It is not reasonable to construe this language as indicative of intent to abrogate the parties' interconnection agreements. Next, BellSouth claims that the FCC expressly stated that the TRRO would not supersede "any alternative arrangements that carriers voluntarily have negotiated on a commercial basis . . ." (BellSouth Response, pp. 2-3, quoting TRRO ¶199). BellSouth reasons that the express exemption for commercial agreements must mean that the lack of exemption for conflicting provisions in interconnection agreements means they are superseded. (Response, p.3). The flaw in BellSouth's analysis is that it fails to characterize the TRRO correctly. The FCC did not state that the TRRO would not supersede the commercial agreements; it stated that the *transition period* would not supersede the commercial agreements. (TRRO, ¶ 199). Nothing about the transition period has any bearing on the application of the change of law provision to the question of "new adds" after March 11. Consequently, supersession is not an issue between the transition period and this application of the change of law provision.

BellSouth also relies upon the use of the term "self-effectuating" in paragraph 3 of the TRRO. However, BellSouth does not characterize this paragraph accurately. BellSouth states that the use of the term "self-effectuating" refers only to "new adds." (Response, p. 2). That is not a distinction the FCC makes. The FCC simply states that the impairment framework is, *inter alia,* "self-effectuating." (TRRO, ¶3). BellSouth must acknowledge, at minimum, that for the embedded customer base subject to the transition period the order recognizes the need for negotiations to implement the provisions into interconnection agreements. Therefore, unless it can link the FCC's use of the term "self-effectuating" solely to the "new adds," its argument cannot prevail. It cannot do so convincingly; however, and its argument on this issue must fail.

Finally, the Commission's decision is consistent with the conclusion it reached in Docket No. 14361-U related to the effective date of the rates in that proceeding. In its September 2, 2003 Order on Reconsideration, the Commission held that "the rates ordered in the Commission's June 24, 2003 Order are available to CLECs on June 24, 2003, *unless the interconnection agreement indicates that the parties intended otherwise.*" (Order on Reconsideration, p. 4) (emphasis added). That this ordering paragraph contemplated consideration of change of law provisions was demonstrated in Docket No. 17650-U, *Complaint of AT&T Communications of the Southern States, LLC of the Southern States, LLC Against BellSouth Telecommunications, Inc.* In its Order Adopting Hearing Officer's Initial Decision, the Commission concluded that the change of law provision in the parties' interconnection

agreement applied, and justified an effective date other than June 24, 2003. In its brief in that docket, BellSouth, then in a position to benefit from the application of the change of law provision, stated that, "The change-in-law provision contains specific steps which the parties must follow to change the terms, when a regulatory action materially affects any material terms of the Agreement." (BellSouth Brief in Support of its Motion to Dismiss and Response to Complaint and Request for Expedited Review, p. 3). The Commission agreed with this argument raised by BellSouth in that docket, and concludes that such reasoning applies in this instance as well.

While MCI's Motion was entitled "Motion for Emergency Relief Concerning UNE-P Orders," the relief sought included could apply to both mass market local switching and dedicated loop and transport. MCI asked that BellSouth be ordered to implement the TRRO using the change of law provisions in the Agreement. In addition, MCI asked that the Commission order the relief it deemed just and reasonable. The Commission finds it just and reasonable to order parties to abide by the change of law provisions in their interconnection agreements for all changes, regardless of whether the change is on UNE-P or loops and transport. The analysis illustrating that the FCC did not intend to abrogate the parties' rights under their contracts applies as well to dedicated loop and transport.

In addition, the Commission concludes that it is just and reasonable to impose the requirement that parties abide by the terms of their interconnection agreements to implement the TRRO on all parties and the modification of all interconnection agreements. The question of whether the TRRO must be implemented pursuant to the parties' interconnection agreements must be resolved on an expedited basis. This same threshold question applies equally to all carriers. There is no reason why the TRRO would be deemed to abrogate some parties' contractual rights and not others. In light of the preceding, the most just and administratively efficient manner to resolve MCI's Motion is to apply the conclusions to the implementation of the TRRO in all interconnection agreements.

B. Issues related to a possible true-up mechanism should be decided at a later time.

The Commission finds that it is prudent to defer ruling on the question of a true-up mechanism until after it has had the opportunity to consider the issues more closely. This matter was brought before the Commission on an expedited basis. While it is necessary for the Commission to resolve the issue related to the change of law provisions prior to March 11, 2005, the same urgency does not apply to the issue of a true-up mechanism. The Commission determines that it may be of assistance for the Commission to confirm, prior to voting on this issue, that it has the benefit of all the arguments related to the appropriateness and operation of a true-up mechanism as well as any other potential issues involved.

C. Issues related to BellSouth's obligations to continue to provide mass market unbundled local switching under either Georgia law or section 271 should be resolved by the Commission in the regular course of this docket.

The Order Initiating Docket set forth among the issues to be addressed: "whether BellSouth is obligated to provide Unbundled Network Elements ("UNEs") under section 271 of

the Telecommunications Act of 1996," and "whether BellSouth is obligated to provide UNEs under Georgia State Law." Because those issues as well do not need to be decided prior to March 11, the Commission will decide those issues in the regular course of this docket.

IV. Ordering Paragraphs

WHEREFORE IT IS ORDERED, parties must abide by the change of law provisions in their interconnection agreements to implement the terms of the Triennial Review Remand Order and this condition applies to all carriers, not just MCI and BellSouth, and to all changes, regardless of whether the change is on UNE-P or loops and transport.

ORDERED FURTHER, that issues related to a possible true-up mechanism should be decided at a later time.

ORDERED FURTHER, that issues related to BellSouth's obligations to continue to provide mass market unbundled local switching or dedicated loop and transport under either Georgia law or Section 271 should be resolved by the Commission in the regular course of this docket.

ORDERED FURTHER, that all findings, conclusions and decisions contained within the preceding sections of this Order are adopted as findings of fact, conclusions of law, and decisions of regulatory policy of this Commission.

ORDERED FURTHER, that any motion for reconsideration, rehearing or oral argument shall not stay the effectiveness of this Order unless expressly so ordered by the Commission.

ORDERED FURTHER, that jurisdiction over this proceeding is expressly retained for the purpose of entering such further order or orders as this Commission may deem just and proper.

The above by action of the Commission in Administrative Session on the 1st day of March, 2005.

Reece McAlister
Executive Secretary

Date: 3-8-05

Angela Elizabeth Speir
Chairman

Date: 3/8/05

STATE OF ALABAMA

ALABAMA PUBLIC SERVICE COMMISSION
P O BOX 304260
MONTGOMERY ALABAMA 36130-4260

JIM SULLIVAN PRESIDENT
JAN COOK ASSOCIATE COMMISSIONER
GEORGE C WALLACE JR ASSOCIATE COMMISSIONER

WALTER L THOMAS JR
SECRETARY

COMPETITIVE CARRIERS OF THE SOUTH, INC., **DOCKET 29393**

Petitioners

TEMPORARY STANDSTILL ORDER AND ORDER SCHEDULING ORAL ARGUMENT

BY THE COMMISSION:

I. Introduction and Background

This Docket was originally established to address the May 27, 2004 Petition of the Competitive Carriers of the South, Inc ("CompSouth")[1] wherein CompSouth requested that the Alabama Public Service Commission (the "Commission") issue a Declaratory Ruling pursuant to Rule 22 of the Commission's Rules of Practice holding that the obligations of parties to interconnection agreements filed with the Commission should remain in effect unless and until such agreements are modified by amendments filed with, and approved by, the Commission. CompSouth asserted that the relief requested in its May 27, 2004 Petition was necessary due to various actions and statements by BellSouth Telecommunications, Inc ("BellSouth") following the issuance of the opinion of the United States Court of Appeals for the D C Circuit in *United States Telecom Association v. FCC*, 359 F 3d 554 (D.C Cir 2004) ("*USTA II*" and sometimes "D C Circuit Decision")

CompSouth specifically asserted that certain statements made by BellSouth in various state commission proceedings and in carrier notification letters had created a question as to whether BellSouth intended to continue to honor its existing interconnection agreements with respect to the provision of certain Unbundled Network Elements ("UNEs")[2] CompSouth accordingly requested that the Commission issue an Emergency Declaratory Ruling specifying that: (1) BellSouth must continue to honor the

[1] CompSouth represented that its members included Access Integrated Networks, Inc ; Access Point, Inc ; AT&T; Birch Telecom; Covad Communications Company; IDS Telecom, LLC; ITC DeltaCom; KMC Telecom; LecStar Telecom, Inc ; MCI; Momentum Business Solutions; Network Telephone Corp , NewSouth Communications Corp ; NuVox Communications, Inc ; Talk America, Inc.; Xspedius Communications, and Z-Tel Communications DSLnet Communications, LLC also joined the Petition of CompSouth

obligations contained in its interconnection agreements, including its obligation to seek amendments to such agreements through the processes spelled out therein to effectuate changes in law, unless and until the Commission approves any modifications to those agreements; and (2) BellSouth may not undertake unilateral actions under color of *USTA II* to restrict the access of CLECs to UNEs or to change prices for UNEs unless and until the Commission approves such changes

On May 28, 2004, BellSouth submitted its Initial Response to CompSouth's Petition for an Emergency Declaratory Ruling BellSouth noted in its May 28, 2004 Response that it would file a formal response as directed by the Commission, but sought to initially advise the Commission that the CLEC industry had either misunderstood or was affirmatively misrepresenting BellSouth's position concerning the D C Circuit Court of Appeals decision in *USTA II* BellSouth appended to its May 28, 2004 Initial Response a copy of a May 24, 2004 carrier notification letter in which BellSouth advised the CLEC industry that it would not "unilaterally disconnect services being provided to any CLEC under the CLEC's interconnection agreement" and would not "unilaterally breach its interconnection agreements"[3] BellSouth noted that the D C Circuit's issuance of a mandate in *USTA II* would not affect BellSouth's continued acceptance and processing of new orders for services including switched, high capacity transport and high capacity loops BellSouth noted that it would bill for such services in accordance with the terms of existing interconnection agreements until such time as those agreements were amended, reformed and/or modified in a manner consistent with the D.C Circuit's decision in *USTA II* and established legal processes[4] BellSouth did, however, reserve all rights, arguments and remedies available to it under the law with respect to the rates, terms and conditions in existing interconnection agreements

On June 22, 2004, BellSouth filed its formal Response in Opposition and Motion to Dismiss the Petition of CompSouth for an Emergency Declaratory Ruling. In said Response, BellSouth argued that there was no "emergency" with respect to the relief requested by CompSouth and no merit to CompSouth's Petition because BellSouth had clearly, consistently and without exception stated that it

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[2] CompSouth Petition for Emergency Delcaratory Ruling at pp. 1-7
[3] BellSouth's Initial Response at p 2
[4] *Id*

would honor its existing interconnection agreements. BellSouth reiterated its commitment to continue honoring its existing interconnection agreements until those agreements have been conformed to be consistent with the D C. Circuit's mandate in *USTA II* [5]

BellSouth also committed that it would not unilaterally increase the prices that it charged for mass market switching, high capacity dedicated transport, dark fiber, or high capacity loops for those carriers with existing interconnection agreements Furthermore, BellSouth noted that it intended to implement the D C Circuit's mandate in *USTA II* via the "change of law" provisions in each CLEC's interconnection agreement [6] BellSouth accordingly urged the Commission to dismiss the Petition of CompSouth, or in the alternative, to hold the Petition in abeyance [7]

Upon review of the foregoing pleadings, the Commission concluded that BellSouth had provided adequate assurances that it would not attempt to unilaterally modify existing interconnection agreements with respect to the provision of services including mass market switching, high-capacity dedicated transport, dark fiber and high-capacity loops The Commission further noted that BellSouth had conceded that its existing interconnection agreements must be amended in accordance with the "change of law" provisions in those agreements The Commission accordingly found that CompSouth's Petition for an Emergency Declaratory Ruling should be held in abeyance so long as BellSouth continued to act in accordance with the representations made in the pleadings submitted in Response to CompSouth's Petition for Emergency Relief The Commission did, however, afford the parties leave to submit supplemental pleadings in response to definitive rulings from the FCC and/or courts of competent jurisdiction with respect to the matters under review in this cause

II. BellSouth's February 15, 2005 Notice of Issuance of Triennial Review Remand Order and Posting of Carrier Letter

On February 15, 2005, BellSouth filed with the Commission a Notice of Issuance of Triennial Review Remand Order and Posting of Carrier Letter BellSouth therein advised the Commission that the Federal Communications Commission (the "FCC") had on February 4, 2005 released its permanent

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[5] *Id* at p 3
[6] *Id*
[7] *Id*

unbundling rules in its *Triennial Review Remand Order*.[8] BellSouth further advised the Commission that it had on February 11, 2005 issued a carrier notification advising that the FCC had identified a number of former Unbundled Network Elements that will no longer be available as of March 11, 2005 except as provided in the *TRRO*. In particular, BellSouth stressed that the February 11, 2005 notification advised carriers that with regard to each of the former UNEs discussed in the *TRRO*, the FCC had provided that no "new adds" will be allowed as of March 11, 2005.[9] BellSouth further asserted that the *TRRO*'s provisions as to "new adds" were effective March 11, 2005 without the necessity of formal amendments to any existing interconnection agreements [10]

In conclusion, BellSouth advised the Commission that in accordance with the terms of the *TRRO*, BellSouth had informed its carrier customers that effective March 11, 2005, BellSouth will no longer accept orders which treat the items affected by the *TRRO* as UNEs In particular, BellSouth notified the Commission that it had informed its customers that as of March 11, 2005, BellSouth is no longer required to provide high capacity UNE loops in certain central offices, to provide UNE transport between certain central offices, or to provide new UNE dark fiber loops or UNE entrance facilities.[11]

III. The February 25, 2005 Petition of MCI for Emergency Relief

By filing of February 25, 2005, MCImetro Access Transmission Services, LLC ("MCI") sought permission to intervene in this cause and Petitioned the Commission to issue a Declaratory Ruling requiring BellSouth to: (1) Continue accepting and processing MCI's UNE-P orders under the rates, terms and conditions of MCI's current interconnection agreement with BellSouth (the "MCI/BellSouth interconnection agreement"), and (2) Comply with the "change of law" provisions of the MCI/BellSouth interconnection agreement with regard to the implementation of the FCC's *TRRO* issued on February 4, 2005 As discussed in more detail below, MCI surmised that circumstances now exist that should cause this Commission to allow MCI to intervene and reactivate this matter [12]

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[8] *In the matter of Unbundled Access to Network Elements, Review of the §251 Unbundling Obligations of Incumbent Local Exchange Carriers*, WC Docket No 04-313 and CC Docket No 01-338, *Order on Remand*, FCC 04-290 (released February 4, 2005) (the *"TRRO"*).
[9] BellSouth Notice at pp. 1-2; *Citing TRRO* at ¶227
[10] *Id*, *Citing Attachment A*, p 2.
[11] *Id* at p. 2
[12] MCI's Petition to Intervene is hereby granted

MCI notes that it entered into an interconnection agreement with BellSouth on June 17, 2002 According to MCI, that agreement requires BellSouth to provide UNE combinations including "the combination of network element platform or UNE-P "[13] MCI asserts that said agreement further provides that "[t]he price for these combinations of network elements shall be based upon applicable FCC and Commission rules and shall be set forth in Attachment 1 of this agreement "[14] MCI maintains that those rates remain in effect today

MCI further asserts that the MCI/BellSouth agreement specifies the steps be taken if a party wishes to amend the MCI/BellSouth agreement because of a change in law When the parties are unable to agree on how to implement a change in the law, MCI notes that the MCI/BellSouth interconnection agreement sets forth a dispute resolution process that is to be followed.[15]

MCI does not dispute that the FCC in its February 4, 2005 *TRRO* determined on a nationwide basis that ILECs are not obligated to provide unbundled local switching pursuant to §251(c)3 of the Telecommunications Act of 1996 MCI also does not dispute that the FCC adopted a transition plan that calls for CLECs to move to alternative service arrangements within 12 months of the effective date of the *TRRO* and determined that the price for §251(c)3 unbundled switching during the transition period would be the higher of (i) the CLEC's UNE-P rate as of June 15, 2004 plus one dollar, or (ii) the rate established by a state commission between June 16, 2004 and the effective date of the *TRRO* plus one dollar [16]

With respect to new UNE-P orders after the effective date of the *TRRO*, MCI notes that the FCC stated that: "the transition period shall apply only to the embedded customer base, and does not permit competitive LECs to add new UNE-P arrangements using unbundled access to local circuit switching pursuant to §251(c)3 except as otherwise specified in this order "[17] MCI argues, however, that the *TRRO* does not purport to abrogate the "change of law" provisions of carriers' interconnection agreements and in fact directs carriers to implement the rulings set forth in the *TRRO* by negotiating changes to those interconnection agreements [18]

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[13] MCI's Motion for Emergency Relief at p 3; *Citing MCI/BellSouth agreement at Attachment 3, §2 4*
[14] *Id*
[15] *Id* at p. 4; *Citing MCI/BellSouth agreement Part A, §§2 3 and 22 1*
[16] *Id* at pp. 5-6; *Citing TRRO at §§227 and 228*
[17] *Id* at p 6; *Citing TRRO §227*
[18] *Id* , *Citing TRRO at §233*

MCI points out that BellSouth issued a carrier notification dated February 8, 2005, wherein BellSouth noted the FCC's release of the *TRRO* and claimed that the *TRRO* precludes CLECs from adding new UNE-P lines starting March 11, 2005 [19] In an attempt to clarify BellSouth's intent, MCI asserts that on February 11, 2005, it sent a letter to BellSouth asking whether BellSouth intends to reject its UNE-P orders or charge a higher rate for new UNE-P lines in the event that MCI does not sign a "commercial agreement" with BellSouth by March 11, 2005 [20]

MCI notes that BellSouth issued a second carrier notification dated February 11, 2005 in which BellSouth expanded its interpretation of the *TRRO* According to MCI, BellSouth claimed that "the FCC's actions clearly constitute a generic self-effectuating change for all interconnection agreements with regard to 'new adds' for former UNEs "[21] MCI further notes that BellSouth's February 11, 2005 carrier notification went on to state that "effective March 11, 2005 for 'new adds,' BellSouth is no longer required to provide unbundled local switching at Total Element Long Run Incremental Cost ("TELRIC") rates for Unbundled Network Element Platform ("UNE-P") and as of that date, BellSouth will no longer accept orders that treat those items as UNEs "[22] According to MCI, BellSouth also issued a change request along with the February 11 carrier notification that creates a new edit in its Operations Support Systems to reject all new orders for UNE-P effective March 11, 2005 [23]

MCI represents that it notified BellSouth on February 18, 2005, that the actions BellSouth had proposed would constitute a breach of the MCI/BellSouth interconnection agreement MCI accordingly requested that BellSouth provide adequate assurances that it will perform pursuant to its existing interconnection agreements [24]

In conclusion, MCI argues that the MCI/BellSouth interconnection agreement requires BellSouth to provide UNE-P to MCI at the rates specified in the agreement unless and until the agreement is amended pursuant to the "change of law" process specified therein MCI thus asserts that BellSouth must continue to accept and provision MCI's UNE-P orders at the rates specified in the existing MCI/BellSouth

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[19] *Id*
[20] *Id* at p 7, *Citing Exhibit B*
[21] *Id* at p 7
[22] *Id*, *Citing Exhibit C*
[23] *Id*, *Citing Exhibit D*
[24] *Id* at pp 7-8

interconnection agreement By stating that it will not accept UNE-P orders beginning March 11, 2005, MCI asserts that BellSouth has breached the aforesaid agreement.[25]

MCI further concludes that the *TRRO* does not excuse or justify BellSouth's stated intention of refusing to accept MCI's UNE-P orders beginning March 11, 2005 To the contrary, MCI asserts that the *TRRO* requires that its rulings be implemented through changes to parties' interconnection agreements According to MCI, implementing the change of law with respect to new UNE-P orders will not be an academic exercise because the parties will need to address, among other issues, BellSouth's duty to continue to provide UNE-P to MCI at current rates under state law and under §271 of the federal act [26]

IV. The February 25, 2005 Joint Petition of NuVox, Xspedius and KMC for Emergency Relief[27]

On February 25, 2005, NuVox Communications, Inc ("NuVox"); Xspedius Management Company Switched Services, LLC on behalf of its operating subsidiaries Xspedius Management Company of Birmingham, LLC, Xspedius Management Company of Mobile, LLC and Xspedius Management Company of Montgomery, LLC (collectively referred to as "Xspedius"); KMC Telecom III, LLC ("KMC III") and KMC Telecom V, Inc ("KMC V"), (KMC III and KMC V are collectively referred to as "KMC") (collectively NuVox, Xspedius and KMC are referred to as the "Joint Petitioners") also jointly filed a Petition for Emergency Relief (the "Joint Petition for Emergency Relief") requesting that the Commission issue an Emergency Declaratory Ruling finding that BellSouth may not unilaterally amend or breach its existing interconnection agreements or the Ruling Granting Joint Motion to Hold Proceeding in Abeyance entered by the Commission in Docket 29242 on December 16, 2004 [28] The Joint Petitioners filed their request for relief in light of BellSouth's February 11, 2005 carrier notification wherein BellSouth stated that certain provisions of the FCC's *TRRO* regarding new orders for delisted UNEs ("new adds") are self-effectuating

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[25] *Id* at p 8.
[26] *Id*
[27] We note that ITC-DeltaCom Communications, Inc ("ITC-DeltaCom") filed a letter in support of this Joint Petition of NuVox, Xspedius and KMC for Emergency Relief on February 28, 2004. To the extent that ITC-DeltaCom, NuVox, Xspedius and KMC have not been granted permission to intervene in Docket 29393 in their individual, company capacities, that permission is hereby granted
[28] The proceedings in Docket 29242 concern the *Joint Petition of New South Communications Corp , et al for Arbitration with BellSouth Telecommunications, Inc* The Order entered herein is intended to address the generic issues raised in Docket 29393 regarding compliance with existing interconnection agreements and how those agreements must be amended in order to properly incorporate changes of law It is, however, recognized by the Commission that this Standstill Order and any final rulings entered in this Docket 29393 will have an impact on the arbitration being conducted pursuant to Docket 29242

as of March 11, 2005 The Joint Petitioners assert that BellSouth's pronouncement of February 11, 2005 is incorrect and based on a fundamental misreading of the *TRRO* [29] As with any change in law, the Joint Petitioners assert that the *TRRO* is a change in law that must be incorporated into existing interconnection agreements prior to being effectuated [30]

Contrary to BellSouth's position, the Joint Petitioners vehemently assert that the *TRRO* is not self-effectuating with regard to "new adds" or in any other respects including any changes in rates or the availability of access to UNES The Joint Petitioners in fact assert that the section of the *TRRO* entitled "Implementation of Unbundling Determinations" plainly states that "incumbent LECs and competing carriers will implement the Commission's findings as directed by §252 of the act " The Joint Petitioners note that §252 of the Telecommunications Act of 1996 requires negotiations and state commission arbitration of issues that cannot be resolved through negotiation [31]

The Joint Petitioners further assert that the FCC's decision to employ the traditional process by which changes of law are implemented is reflected in several other instances throughout the *TRRO*. By way of example, the Joint Petitioners note that with regard to high capacity loops, the FCC held that "carriers have twelve months from the effective date of this Order to modify their interconnection agreements, including completing any change of law processes "[32] The Joint Petitioners noted that the FCC reached similar conclusions with respect to modifications necessary to address high capacity transport and UNE-P arrangements.[33]

The Joint Petitioners also point out that in Alabama, the process for implementing the changes of law resulting from the *TRRO* are well underway in the Joint Petitioners' arbitration in Docket 29242 and the generic proceeding established by the Commission to address changes of law under Docket 29393 The Joint Petitioners assert that until these proceedings have been concluded and/or the parties reach negotiated resolution, the interconnection agreements in existence today must be abided by [34]

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[29] Joint Petition for Emergency Relief at pp 1-2
[30] *Id*
[31] Joint Petition for Emergency Relief at pp 9-10
[32] *Id* at p 10; *Citing TRRO at ¶196*
[33] *Id ; Citing TRRO at ¶143 and 227*
[34] *Id* at p 3.

In conclusion, the Joint Petitioners represent that the Commission must now act to prevent BellSouth from taking unilateral action on March 11, 2005, that will effectively breach and/or unilaterally amend the Joint Petitioners' existing interconnection agreements and most, if not all, other BellSouth Alabama interconnection agreements. The Joint Petitioners point out that for their operations, and those of other facilities-based carriers, essential UNEs such as high capacity loops and high capacity transport are jeopardized by BellSouth's February 11, 2005 carrier notification. The Joint Petitioners maintain that they and the Alabama consumers they serve will suffer imminent and irreparable harm if BellSouth is allowed to breach or unilaterally modify the terms of the parties' existing interconnection agreements The Joint Petitioners accordingly seek expeditious consideration of this matter and an order declaring, among other things, that the Joint Petitioners shall have full and unfettered access to BellSouth's UNEs provided for in their existing interconnection agreements on and after March 11, 2005 and/or until such time as those agreements are replaced by new interconnection agreements resulting from the arbitration proceedings in Docket 29242 or the final conclusions of the Commission in Docket 29393.[35]

V. Findings and Conclusions of the Commission

Having considered the foregoing pleadings, the findings and conclusions of the FCC in the *TRRO* and the conflicting language in the *TRRO* regarding implementation of the conclusions set forth therein, the Commission finds that the entire telecommunications industry in Alabama and the customers of that industry would be best served by further analysis of the issues set forth in the Petitions of MCI, NuVox, Xspedius and KMC In order to facilitate that further analysis, the Commission finds that the Emergency Relief requested by MCI, NuVox, Xspedius and KMC is due to be granted for all CLECs operating in Alabama pursuant to existing interconnection agreements that have been submitted to and approved by this Commission.

In summary, BellSouth shall continue to honor the entirety of the rates, terms and conditions set forth in its existing interconnection agreements with CLECs in Alabama provided the agreements in question have been submitted to and approved by this Commission BellSouth shall not, until further

[35] *Id* at pp. 3-4

notice from this Commission, cease the provision of any UNE required to be provided pursuant to an existing interconnection agreement and shall provide such UNEs according to the rates established or otherwise referenced in such agreements

In order to hasten a conclusion on the merits of the issues set forth in the foregoing pleadings,[36] BellSouth and the CLEC parties identified herein are hereby ordered to participate in Oral Arguments to be held on March 29, 2005, in the Main Hearing Room of the Commission's Chief Administrative Law Judge Carl L Evans Hearing Complex in Montgomery, Alabama. Said Arguments shall commence at 10:00 A M The various CLEC parties identified herein are collectively allotted a total of 45 minutes to initially argue in support of their position while BellSouth will be allowed an initial argument period of 25 minutes. The CLECs will be collectively allowed 15 minutes to rebut BellSouth's arguments while BellSouth will be allowed 10 minutes to rebut the arguments of the CLECs.

The parties are further advised that the Commission will endeavor to render a decision on the merits of the issues raised in the pleadings discussed herein and the Oral Arguments to be held on March 29, 2005 as soon as possible In the event that the Commission ultimately rules in favor of BellSouth regarding the provision of UNEs and/or "new adds" on and after March 11, 2005, the parties are advised to carefully track any and all UNEs/"new adds" provided by BellSouth on and after March 11, 2005 for purposes of truing up the UNEs/"new adds" so provided by BellSouth in accordance with the provisions of the *TRRO* or any superseding commercial agreements entered by and between BellSouth and the affected carriers

IT IS SO ORDERED BY THE COMMISSION

IT IS FURTHER ORDERED BY THE COMMISSION, That jurisdiction in this cause is hereby retained for the issuance of any further order or orders as may appear to be just and reasonable in the premises.

[36] The Commission notes that BellSouth has not yet filed a Pleading in response to the Petitions of MCI, NuVox, Xspedius and KMC BellSouth shall do so on or before March 22, 2005.

IT IS FURTHER ORDERED, That this Order shall be effective as of the date hereof

DONE at Montgomery, Alabama, this 9th day of March, 2005

ALABAMA PUBLIC SERVICE COMMISSION

Jim Sullivan, President

Jan Cook, Commissioner

George C. Wallace, Jr., Commissioner

ATTEST: A True Copy

Walter L. Thomas, Jr., Secretary

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 BellSouth Telecommunications, Inc. and Competing Local Providers Due to Changes of Law	)))))	ORDER ESTABLISHING PROCEDURAL SCHEDULE

BY THE CHAIR: On January 4, 2005, the Commission issued an Order Requesting Joint Report on Scheduling. Unfortunately, the parties were unable to reach agreement, and instead the Commission received three filings, one from BellSouth Telecommunications, Inc. (BellSouth), one from the Competitive Carriers of the South, Inc (CompSouth), and one from Southeastern Competitive Carriers Association (SECCA) While broadly similar, there were some distinct differences in the filings.

Public Staff Report

On February 22, 2005, the Public Staff filed a Report. The Public Staff noted that, on January 4, 2005, the Commission requested a joint report from the parties to this docket including a proposed procedural schedule to govern filing of testimony, discovery, hearing dates, confidentiality procedures, and other prehearing matters. After the parties were unable to reach agreement, the Public Staff held a conference call on February 14, 2005, with participation by all of the parties that had filed responses to the Commission's Order, to explore the possibility of reaching agreement on a schedule. As a result of that call, the parties agreed to the following schedule:

March 11	Effective date of final rules
March 14	BellSouth's Change of Law Notice to CLPs including proposed amendments. 90 day negotiation period begins
June 13	90 day negotiation period closes
June 30	Generic Issues Matrix, discovery schedule, and confidentiality agreements/proposed protective order jointly submitted by parties; discovery commences.

It is anticipated that at this point the Commission will issue a procedural order governing the filing of direct and rebuttal testimony and hearing dates. The parties suggest the following dates:

July 30	Direct testimony to be filed by all parties.
August 29	Rebuttal testimony to be filed by all parties.
September 19	Hearing begins.

All parties have acknowledged that there are issues, otherwise appropriate for a generic docket, to which some parties may feel compelled to seek more immediate resolution before the Commission All parties have agreed that participation in this generic docket will not imply waiver of any party's right to seek such relief

Public Staff Motion

On February 22, 2005, the Public Staff also filed a Motion stating the following:

1. Although this docket is captioned as "generic" following BellSouth's petition, and was assigned a P-100 docket number, this is not, in fact, a truly generic communications docket, inasmuch as it does not encompass all of any class of carriers, but rather is limited to BellSouth and those Competing Local Providers (CLPs) which currently have interconnection agreements with BellSouth. The Public Staff believes that this captioning could lead to confusion with respect to the identities of the parties to the docket who will be bound by any resulting Commission order. The Public Staff suggests that this potential confusion could be avoided if, at the proper time, the Commission issues an Order naming the CLPs to be parties and requiring each CLP to indicate whether it wishes to actively participate.

2. Additionally, the Public Staff notes that the parties have indicated their desire to include in this docket any change of law issues arising out of the FCC's recently issued Order on Remand in WC Docket No 04-313, and to remove any issues rendered moot by that order. However the final rules under that order will not be effective until March 11, 2005, following which BellSouth will notify CLPs party to interconnection agreements of its proposed amendments. Only after those CLPs have an opportunity to respond to BellSouth will it be possible to identify with confidence all of the parties and issues for this proceeding.

Accordingly, the Public Staff moved that the Commission issue an Order clarifying the nature and scope of this docket, assigning an appropriate docket number, and that, at the appropriate time, the Commission require the CLPs to be bound by the outcome of this docket to indicate whether they will actively participate.

WHEREUPON, the Chair reaches the following

CONCLUSIONS

After careful consideration, the Chair concludes that good cause exists to adopt the schedule as generally proposed by the parties as set out in the Pubic Staff's Report

The subject matter of the proceeding shall extend to appropriate change of law issues arising out of FCC Docket No 04-313

The Chair further concludes that it is inappropriate to classify this proceeding as a P-100 generic docket, because it does not emcompass all of any class of carrier Rather, the real parties in interest are BellSouth and the CLPs with which it currently has interconnection agreements Moreover, being a proceeding to effect amendments to interconnection agreements pursuant to change of law provisions, it is analogous to an arbitration The Commission has followed the practice of excluding intervenors from arbitrations and instead has only allowed the real parties in interest to participate along with the Public Staff and Attorney General. Accordingly, SECCA and similar organizations will not be allowed as parties in this docket. Only the constituent CLPs, not the organization per se, are affected by the outcome of this docket.

This is not to say, however, that umbrella organizations like SECCA cannot have a role as facilitators We encourage the CLPs, to the extent that their interests converge, to utilize, among other things, common legal resources, submit common testimony, seek common discovery, and submit post-hearing filings in common.

IT IS, THEREFORE, ORDERED as follows.

1. That, on March 14, 2005, BellSouth may give Notice to CLPs under applicable change of law provisions of interconnection amendments,

2. That, provided that BellSouth has given such notices at that time, the negotiation period related to above shall begin on March 14, 2005, and close on June 13, 2005;

3. That the parties shall jointly submit on June 30, 2005, a generic issues matrix, a proposed discovery schedule, and confidentiality agreements/proposed protective order;

4 That on August 1, 2005, all parties shall file direct testimony,

5. That on August 29, 2005, all parties shall file rebuttal testimony,

6. That on September 14, 2005, the parties shall submit estimated cross-examination times and proposed order of witnesses;

7. That on September 19, 2005, a hearing shall begin in this docket beginning at 1 30 p.m., in Commission Hearing Room 2115, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, and

8. That this proceeding no longer be denominated as Docket No. P-100, Sub 133u but as Docket No P-55, Sub 1549 and the caption revised as set out above Parties to Docket No P-55, Sub 1549 shall be restricted to BellSouth, the CLPs with which BellSouth has interconnection agreements affected by this proceeding, the Public Staff and the Attorney General. The Chief Clerk shall send a copy of this Order to SECCA and CompSouth.

ISSUED BY ORDER OF THE COMMISSION

This the 24th day of February, 2005

NORTH CAROLINA UTILITIES COMMISSION

Gail L. Mount

Gail L. Mount, Deputy Clerk

Pb022405 01

Qwest
Spirit of Service™

Announcement Date:	**March 4, 2005**
Effective Date:	**Immediately**
Document Number:	**PROD.03.04.05.A.001317.TRO_Remand_UNE_Availability**
Notification Category:	**Product Notification**
Target Audience:	**CLECs**
Subject:	**Triennial Review Remand Order UNE Availability Impacts**

As you know, on February 4, 2005, the FCC released the *Triennial Review Remand Order* (FCC 04-290) ("*Remand Order*"), which modified the rules governing Qwest's obligation to make certain unbundled network elements (UNEs) available under Section 251(c)(3) of the Communications Act of 1934, as amended ("Act"). For those impacted UNEs, the *Remand Order* includes a moratorium on new orders, certain rate changes, and the requirement to migrate most services to alternative arrangements before March 11, 2006.[1]

The regulatory changes in the *Remand Order*, and the March 11, 2005, effective date of the *Remand Order* have caused uncertainty among the CLEC community regarding Qwest's implementation plans. At this time, Qwest intends to negotiate ICA amendments reflecting the new requirements of both the *Triennial Review Order ("TRO")* and *Remand Order* before implementing the changes in those Orders. The FCC expects ICA Amendments necessary to implement the *Remand Order* to be executed no later than March 11, 2006.

Prior to the effective date of a new or amended ICA incorporating the changes required by the *TRO* and *Remand Order,* the terms, conditions, and pricing of your existing ICA will govern. At the time your ICA Amendment is executed:

- All existing impacted UNEs will be subject to the transition periods established in the *Remand Order*. ICA Amendments will include a "true up" to the FCC-mandated transitional rate ($1.00 per port for UNE switching, including UNE-P,[2] 15% for DS1, DS3, and Dark Fiber loops and transport), retroactive to March 11, 2005, in those areas where the FCC has found a lack of impairment with respect to the affected UNEs. Attached is a list that identifies the Qwest wire centers that meet the "Tier 1" and "Tier 2" requirements of the *Remand Order*, and those that satisfy the non-impairment thresholds for DS1 and DS3 loops. Complete lists identifying those Qwest wire centers that meet the non-impairment criteria established in the *Remand Order* have been posted to the Qwest Wholesale web site at: http://www.qwest.com/wholesale/clecs/sgatswireline.html

- Qwest will continue to process new, conversion, and change service orders requests for impacted UNEs to the extent required by your existing ICA. Any new services provisioned after March 11, 2005, will be subject, at a minimum, to the same price true-up provisions applicable to pre-existing UNEs that are described above.

Qwest reserves the right to modify this policy upon written notice in the event that intervening events lead to a different interpretation of the *Remand Order* requirements. Such changes will

be prospective only and will not disrupt the use of any UNE that is operational at the time of the change in policy.

We look forward to working with our CLEC partners within the new framework required by the *Remand Order* and will soon be contacting you to begin the ICA Amendment process. Additionally, your Qwest Representative stands ready to answer any questions you may have and to assist you in determining alternative arrangements for those services that have been impacted by the *TRO* and/or *Remand Order*.

Qwest appreciates being your wholesale provider of choice in the highly competitive telecommunications landscape.

Sincerely,

Steve Hansen
Carrier Relations
Qwest Services Corporation

[1]The transition period for dark fiber loops and transport is 18 months, so the deadline for migrating those UNEs is September 11, 2006

[2]Commercially negotiated arrangements, including Qwest Platform Plus™ (QPP™) products, are not impacted by the transitional period or rates

Note: The Qwest Wholesale Web Site provides a comprehensive catalog of detailed information on Qwest products and services including specific descriptions on doing business with Qwest. All information provided on the site describes current activities and process. Prior to any modifications to existing activities or processes described on the web site, wholesale customers will receive written notification announcing the upcoming change.

If you would like to unsubscribe to mailouts please go to the "Subscribe/Unsubscribe" web site and follow the unsubscribe instructions. The site is located at:

http://www.qwest.com/wholesale/notices/cnla/maillist.html