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Re *Petition to Establish Generic Docket to Consider Amendments to Interconnection Agreements Resulting from Changes of Law*
Docket No 04-00381

Dear Henry·

This is in response to your letter of May 11, 2005 on behalf of CompSouth In that letter you claim, disingenuously, that CompSouth has made a good faith proposal to negotiate a resolution of issues emanating from the TRO and TRRO Your letter also continues CompSouth's pattern of mischaracterizing what Directors Tate and Jones decided on April 11, 2005

CompSouth's settlement "proposal" is misleading. First, CompSouth is presenting a settlement "offer" that it knows is unacceptable and a nonstarter on its face. For example, your letter asks for a response to proposed language on commingling which would unlawfully resurrect UNE-P in clear violation of the TRRO, an issue fundamentally incapable of being resolved by agreement Indeed, you will recall that during the most recent status conference, counsel for Covad, a member of CompSouth, candidly acknowledged this fundamental difference of opinion over commingling and Section 271, and admitted that negotiations will not resolve that issue (" Director Tate, just so you hear from the CLECs on that, I believe Mr Lackey is accurate about the fact that it appears, having talked about it at different times, that we will never be meeting in the middle BellSouth's negotiators under the *CoServ* case are kind of precluded from negotiating with us about 271 . "[1]) Given that realization of

[1] *See* p 29-30 of Transcript of May 2, 2005 status conference As explained during the status conference, the *CoServ* case from the Fifth Circuit Court of Appeals may be read to mean that if BellSouth engages in substantive negotiations with a CLEC over an issue outside of Section 251-252, such as a 271 issue, that BellSouth will be obligated to arbitrate an issue for which a state commission would have otherwise had no jurisdiction to arbitrate *Coserv LLC v Southwestern Bell Tel Co* , 350 F 3d 482 (5th Cir 2003) As a practical matter, therefore, CompSouth's invitation for BellSouth to exchange

both sides, it is ironic that CompSouth takes the posture that we should spend valuable time negotiating what has finally been recognized as being non-negotiable

Second, CompSouth's proposal flies in the face of the great weight of legal authority and would require BellSouth to agree to language inconsistent with FCC orders Since the hearing on April 11th, as you know, all three federal courts in BellSouth's nine-state region that have examined the "no new adds" issue have reached the same conclusion – that the FCC has ordered an end to UNE-P and that BellSouth has no obligation to continue to process new orders for UNE-P switching beyond March 11, 2005 The U S District Court in Kentucky further found that enforcement authority for Section 271 lies with the FCC, not the state commissions Most recently, on May 3, 2005, the Alabama Commission voted unanimously to end the UNE-P regime The Alabama Commission also rejected the CLECs attempt to resurrect UNE-P based on commingling.[2]

If CompSouth truly wants to negotiate a reasonable resolution to these TRO and TRRO issues, BellSouth is willing to do so. BellSouth has proven it is both willing and able to do so One has only to look at the success that BellSouth has had in negotiating both interconnection agreements and commercial agreements with numerous CLECs throughout its nine-state region This would indicate the problem with reaching an agreement rest not with BellSouth but with CompSouth To expect BellSouth to agree to CompSouth's proposal and ignore the great weight of legal authority as a condition precedent to reach an agreement is not, in BellSouth's view, a good faith effort to resolve these issues

If CompSouth will be candid and acknowledge that it is not willing to settle certain issues upon which we are at complete opposite ends of the spectrum absent a finding on the law, then it should recognize, as it did when agreeing to the issues list in this docket, that these issues need to be decided by the Authority This recognition that certain issues such as commingling are unlikely to settle is evidenced by the parties having spent considerable time negotiating and agreeing to both an issues list and a regional procedural schedule in this docket Further, as agreed during the May 2 Status Conference, the procedural schedule in Tennessee will also allow parties to file substantive motions addressing threshold legal and jurisdictional issues, such as commingling

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proposed contract language on commingling/271 is nothing more than a transparent attempt to lure BellSouth into a trap – a tactic which the Authority should not encourage

[2] *Petition of the Competitive Carriers of the South, Inc for Declaratory Ruling*, Alabama Public Service Commission Docket No 29393(G) BellSouth will file a copy of the Alabama Commission's written order as soon as it becomes available

BellSouth also wishes to respond to what we believe is a mischaracterization of what Directors Tate or Jones decided on April 11. It is BellSouth's belief that the "no new adds" issue has been decided and is not a "change of law" issue Director Tate, correctly recognizing authority from other jurisdictions (and not even taking into account the recent decisions of the North Carolina, Louisiana and Alabama commissions, the U S District Court in Mississippi, the U.S District Court in Kentucky and the 11th Circuit Court of Appeals' decision not to stay the injunction issued by the U S District Court in Georgia), stated that it was clear that the FCC had ordered an end to UNE-P, and that there will be no new adds In other words, it is only a matter of when BellSouth stops taking UNE-P orders for those CLECs that have not entered into commercial agreements, not if The TRA simply did not have most of this legal authority before them on April 11, and it is not fair to overstate the scope of their deliberations as CompSouth continues to do. Again, the FCC clearly said that the "no new adds" is an FCC mandate, not a change of law issue to be negotiated. BellSouth does not believe that Directors Tate and Jones intended to allow CompSouth to amend its interconnection agreements based only on holdings in the TRO and TRRO favorable to CompSouth

BellSouth has taken seriously Directors Tate and Jones' request that the parties negotiate during the 30-day period BellSouth continues to negotiate with a number of CLECs, including some of your individual clients. CLECs, including XO, DeltaCom, Cinergy, and others, are engaged in negotiations with BellSouth. Most CLECs prefer private, two party negotiations. Such negotiations, unlike the posturing in your letter, often prove successful

The record is clear that BellSouth has successfully negotiated both TRO and TRRO interconnection agreement amendments with numerous CLECs There is also no dispute that BellSouth has negotiated commercial arrangements with more than 100 CLECs

BellSouth remains open to discussing reasonable, lawful offers of settlement with CompSouth

Very truly yours,

Guy M Hicks

GMH:ch
cc: Hon Sara Kyle, Director
Hon Deborah Taylor Tate, Director
Hon Ron Jones, Director

CERTIFICATE OF SERVICE

I hereby certify that on May 12, 2005, a copy of the foregoing document was served on the following, via the method indicated:

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