May 13, 2005

Guy Hicks
BellSouth Telecommunications, Inc
333 Commerce Street
Suite 2101
Nashville, TN 37210

VIA ELECTRONIC MAIL

Re: ***In Re: BellSouth's Petition to Establish Generic Docket to Consider Amendments to Interconnection Agreements Resulting From Changes of Law***
Docket Number: 04-00381

Dear Guy

I am in receipt of you letter dated April 29, in response to my letter dated April 28th After reviewing your letter, I felt that is was important to address the various inaccuracies and allegations set forth therein First, as you are aware, I have, on behalf of XO, been attempting to negotiate "change of law" amendments with BellSouth since the date of the original TRO, October, 2003 XO and BellSouth have had numerous negotiation sessions, and, at all times, XO has sought to negotiate an amendment compliant with federal law At the same time, in a number of states, XO and BellSouth also have been renegotiating their entire interconnection agreements, including a new attachment 2, or UNE attachment, again, the goal has been to negotiate an attachment 2 that is compliant with federal law In fact, XO has even brought complaint proceedings in a number of states, including Tennessee, regarding BellSouth's refusal to comply with applicable federal law

With regard to the parties' negotiations since BellSouth sent its "proposed TRRO amendment during the middle of March " BellSouth has not, to date, sent any document simply amending the parties' current ICA in any state to address TRO/TRRO issues as contemplated by the change of law provisions of the underlying ICAs, but has sent entirely new attachment 2 documents in each case, based on BellSouth's standard attachment 2 While that may be appropriate in the context of the ICA renegotiations, such is not appropriate as an amendment to a current agreement not being renegotiated

As for your implication that I misinformed the hearing officer regarding the receipt of a Tennessee TRRO amendment from BellSouth, you will recall that, when I reported to the hearing officer on March 28th that XO had not received a Tennessee specific amendment, I also stated that I had received something for North Carolina, but not a TN specific amendment XO agreed to review that North Carolina language for use in our multi-state ICA renegotiations, but that document was not in any way a proposed amendment to our existing Tennessee interconnection agreement In fact, Doug Lackey indicated to me that he was not sure whether a Tennessee-specific amendment would differ from that proposal

My concern regarding the lack of a Tennessee-specific amendment was genuine, not an attempt to delay the start of the 90-day quiet period I did make an offer to Doug Lackey to use the receipt of the North Carolina notice as the start date for the 90-day quiet period, this was not an admission, but, rather, an attempt to move forward rather than argue over a difference of a few days with regard to the later receipt of the Tennessee notice As you are aware, XO sent BellSouth a negotiation notice for Tennessee that same week, to ensure that the 90-day quite period, and negotiations, started promptly Your statements characterizing my conduct as some sort of admission that I had misspoken or misrepresented anything to the hearing officer are simply inaccurate

Similarly, your statements indicating that XO had somehow delayed the negotiation of a TRRO amendment until April 28th are also misleading While April 28 was the first negotiation discussion XO and BellSouth had since XO's receipt of BellSouth's proposed attachment 2, it was not the date of XO's first response to BellSouth I, on behalf of XO, sent XO's redline of that proposal to BellSouth on April 9 The first phone call discussing that proposal was delayed until April 28th at the request of BellSouth
Finally, and most importantly, with regard to XO's proposal on the "new adds" issue, you wrongly suggest that XO delayed submitting a response to BellSouth's proposal, and that the response XO sent differs from the proposal XO sent on April 9, and, thus, represents an attempt to derail our negotiations Your letter states that, with regard to the 30-day negotiation regarding new adds, commingling, and conversions, BellSouth "wish[ed] we had received a response from you sooner," and that you were "informed that the proposal that [XO] sent differs from the language that [XO] and [BellSouth] discussed yesterday [April 28th] " First, BellSouth had agreed to send a proposal to the CLECs, and XO responded to such proposal <u>within one hour of receipt of such proposal</u> Since BellSouth failed to address the issues the TRA had instructed the parties to negotiate within the 30-day window, XO prepared and sent, on April 28th, a proposal that comported with the hearing officer's instructions to address new adds, conversions, and commingling XO's April 28th proposal on new adds, commingling and conversions is not substantively different from the language proposals previously made by XO in the negotiation of attachment 2, but is merely an excerpt, restated as an amendment, designed to address only the issues of new adds, commingling and conversions It neither conflicts with nor ignores any issues that were resolved on April 28th, in fact, the parties didn't even discuss

commingling or conversions in that session On May 6, after receiving your letter, I asked our BellSouth negotiator to indicate any discrepancies between the April 28th proposal I sent to address new adds, commingling and conversions and XO's previous proposal in these negotiations, to date, I have received neither a response to that question nor a redline or response to the proposal

Your implication that, by sending the April 28th proposal, XO is somehow trying to be an impediment, or trying to "reject the progress made" and the "fruitful negotiation session that both parties participated in" is simply wrong Either your letter is an intentional attempt to mislead the Authority, or is simply an inappropriate attempt to discredit XO or paint XO as uncooperative in order to convince the Authority to change course on its decision to strongly urge the parties to negotiate an agreement regarding new adds, commingling, and conversions

For the final time, whether the exact words or spacing on the page is identical or not, the proposal is consistent and simple that BellSouth, in implementing "no new adds," also implement commingling and conversions Whether that is done in a multi-page document, or in one simple paragraph, that is the essence of what I understood the parties were given 30 days to negotiate "No new adds" doesn't make sense in any other context the TRA was correct in observing that the FCC, in ordering "no new adds," would reasonably have expected that BellSouth had implemented the requirements of the 2003 TRO, particularly those that were not vacated or remanded Commingling and conversions are clearly related to the concept of "no new adds" at UNE pricing for high capacity loops and transport

As you are aware, I am not at liberty to disclose whether XO is discussing commercial switching arrangements with BellSouth I do, however, object to your characterizing XO as objecting to the implementation of "no new adds," or the appropriateness of commercial arrangements, or even to a true-up, if appropriate This is not just about UNE-P, and it's not about whether XO has a commercial agreement for switching, regardless of the existence of such agreement, the issue remains that "no new adds" – particularly no new adds for nonimpaired loops and transport -- should only be implemented in the context of BellSouth obligations to provide commingling and conversions

It was BellSouth that sought to implement "no new adds" before the conclusion of the docket addressing all issues, now BellSouth refuses to implement conversions and commingling short of resolution of all issues in the docket

I urge the Authority to see your letter for what it is – a wholly inaccurate and misleading attempt to garner support for BellSouth's position that it be allowed to implement "no new adds" without regard to whether it is providing commingling and conversions, as it is required to do XO has no intention of delaying any Order that would permit **BellSouth to implement "no new adds," but any such Order must also require that BellSouth provide commingling and conversions in order to properly implement**

such "no new add" policy, and in order to allow CLECs to properly plan their networks and ordering guidelines under a "no new add" policy.

Sincerely,

Dana Shaffer
Vice President, Regulatory Counsel

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Response was furnished by U S Mail to the following this 13th day of May, 2005

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