BEFORE THE TENNESSEE REGULATORY AUTHORITY
NASHVILLE, TENNESSEE

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May 23, 2005

T.R.A. DOCKET ROOM

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

MOTION FOR CLARIFICATION

Cinergy Communications Company ("Cinergy") respectfully submits this Motion For Clarification in order to clarify the ruling made by the panel at the Tennessee Regulatory Authority's ("TRA") regularly scheduled agenda conference on Monday, May 16, 2005. In support of this motion, Cinergy submits the following.

ARGUMENT

During the May 16th conference agenda, the TRA ruled that BellSouth may refuse orders from CLECs to serve ***new*** customers through UNE-P. The TRA, however, did not address whether BellSouth may refuse to process orders to serve ***existing*** CLEC customers who are in the "embedded customer base" for whom the FCC provided a one-year transition period.

BellSouth's obligation to serve Cinergy's embedded customer base remains unchanged throughout the transition period. ***See In the Matter of Review of Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers,*** Order on Remand, WC Docket No. 04-313, CC Docket No. 01-338 (Feb. 4, 2005) (the "Triennial Review Remand Order," or "TRRO"). However, Cinergy is concerned that BellSouth may attempt to use any ambiguity in the TRA's ruling to refuse to process moves, adds, or change orders for Cinergy's existing customers. To avoid such problems, Cinergy seeks clarification on this point.

In describing the embedded base, the FCC repeatedly referred to "customers" rather than "lines." The FCC wrote,

> 199.... Finally, we adopt a transition plan that requires competitive LECs to submit orders to convert their UNE-P ***customers*** to alternative arrangements within twelve months of the effective date of this order. This transition period shall apply only to the ***embedded customer base***... During the twelve-month transition period, which does not supersede any alternative arrangements that carriers voluntarily have negotiated on a commercial basis, competitive LECs will continue to have access to UNE-P priced at TELRIC plus one dollar until the incumbent LEC successfully migrates ***those UNE-P customers*** to the competitive LECs' switches or to alternative access arrangements negotiated by the carriers.
>
> 216. We also note that concerns about incumbent LECs' ability to convert the ***embedded base of UNE-P customers*** in a timely manner are rendered moot by the transition period we adopt in this order....within that twelve-month [transition] period, incumbent LECs must continue providing access to mass market unbundled local circuit switching at a rate of TELRIC plus one dollar for the competitive LEC to ***serve those customers*** until the incumbent LECs successfully convert ***those customers*** to the new arrangements.

TRRO at ¶¶ 199, 216 (emphasis added). This reference to "customers" instead of "lines" implies that the FCC's purpose was to prevent a CLEC from adding new UNE-P customers but not to prohibit, for example, adding a new line for an existing customer. In other words, although Cinergy may not obtain new UNE-P customers, Cinergy may continue providing service to existing customers and may add a new line, change the type of service, or move the service to another location, as long as the customer does not change.

Numerous state utility commissions, while ending CLEC access to Section 251 UNEs for *new* customers, have nonetheless ordered incumbent carriers to continue processing orders for moves, adds, and changes to serve a CLECs' *existing* UNE-P customers. Some of these commission decisions have already been provided to the TRA by BellSouth and cited as authority supporting BellSouth's position on the "new adds" issue. These same orders support Cinergy's request for clarification. For example:

North Carolina

> Finally, there is the question of how far the ban on "new adds" should extend as applied to the embedded customer base. The Commission believes the better view is that ILECs like BellSouth should continue to process orders for the existing base of CLP customers pending completion of the transition process....[T]he Commission believes that the bright line that the FCC was drawing was between those *inside* the embedded customer base and those *outside* of it. After all, the TRRO focuses on the "embedded customer base," not on existing access lines. The Commission does not believe that it was the FCC's intent to impede or otherwise disrupt the ability of CLPs to adequately serve their existing base of customers in the near term.... [T]hese [business] customers would be baffled and impatient if they were to discover that adding a new line or even simply a new feature in the near term was impossible with their current provider. They may very well lose confidence in that provider. This is not good for competition which is the overarching purpose of the Telecommunications Act.

In the Matter of Complaints Against BellSouth Telecommunications, Inc. Regarding Implementation of the Triennial Review Remand Order, Docket No. P-55, Sub 1550, at 12 (North Carolina Utilities Commission April 25, 2005).

Michigan

> ILECs must honor new orders to serve a CLEC's embedded customer base.

Application of Competitive Local Exchange Carriers to Initiate a Commission Investigation of Issues related to the Obligation of Incumbent Local Exchange Carriers in Michigan to Maintain Terms and Conditions for Access to Unbundled Network Elements or other Facilities Used to Provide Basic Local Exchange and Other Telecommunications Services in Tariffs and Interconnection Agreements Approved by the Commission, Pursuant to the Michigan Telecommunications Act, the Telecommunications Act of 1996, and Other Relevant Authority, Case No. U-14303 (and consolidated cases), at 9 (Mich. P.S.C. March 29, 2005).

Kansas

> The CLEC Coalition argues the "embedded customer base" referred to in the TRRO to which the transition period applies refers to customers, not existing lines. ... SWBT takes the opposite position, arguing that the embedded customer base to which the transition period applies does not permit the CLEC to add new elements.... The commission agrees with the CLEC Coalition regarding the meaning of "embedded customer base." ... [B]ased on the language of the regulation adopted by the FCC's TRRO... it is the intent of the FCC that the transition period apply to customers, not lines.

In the Matter of a General Investigation to Establish a Successor Standard Agreement to the Kansas 271 Interconnection Agreement, Also Known as the K2A, Docket No. 04-SWBT-763-GIT, at 5 (Kansas State Corporation Commission, March 10, 2005).

Texas

> ...[U]ntil a final determination of this issue, SBC Texas shall have an obligation to provision new UNE-P lines to CLECs' embedded customer-base, including moves, changes and additions of UNE-P lines for such customer base at new physical locations.

Arbitration of Non-Costing Issues for Successor Interconnection Agreements to the Texas 271 Agreement, Docket No. 28821 (TX P.U.C. March 9, 2005).

Indiana

> We would expect an embedded base customer to be able to acquire or remove any feature associated with circuit switching during the transition period.

Complaint of Indiana Bell Telephone Company, Inc. d/b/a SBC Indiana for Expedited Review of a Dispute With Certain CLECs Regarding Adoption of an Amendment to Commission Approved Interconnection Agreements, Cause No. 42749 (Indiana Utility Regulatory Commission, March 9, 2005).

As the North Carolina Utilities Commission put it, interim provisioning for existing CLEC customers is necessary to prevent the very disruption the FCC sought to avoid with its one-year transition period for the "embedded customer base." Without that transition period, even the smallest change to a CLEC customer's existing service – for example, a customer's hiring of a new employee and resulting need for a new line for that employee – would require a CLEC serving that customer to refuse to provide the line or to surrender the customer. Similar disruption would result if a customer moves to a new address – even if it is only next door.

BellSouth may counter that there is no harm here because the CLEC can simply order an additional line as resale instead of UNE-P. However, upon closer inspection, this is simply not true. Businesses, almost without exception, subscribe to a feature known as "hunting." Using this feature, a busy signal on the main line causes the incoming call to roll to the next successive line – or "hunt." In this fashion, the business prospect does not receive a busy signal and is unaware that the main line is tied up. Although there is no technical limitation, BellSouth's policies forbid "hunting" between UNE-P and resale lines. Therefore, the additional resale line would be stranded and out of synch with the main business number advertised and published in directories by the business – making the additional line practically useless. The only alternative is to convert all of the customer's lines to resale. Cinergy loses money on the resale platform. Therefore, prudent business judgment would dictate that Cinergy surrender the lines back to BellSouth rather than lose money over the next 11 months.

Such disruption is unnecessary; it is anti-competitive; and it is in violation of the FCC's explicit instruction in the TRRO to continue for one year Section 251 UNE-P access for CLECs' "embedded customer base."

For the foregoing reasons, Cinergy respectfully requests that the TRA clarify its ruling and expressly hold that BellSouth is required to continue providing service to Cinergy's embedded base, including moves, adds, and change orders, when requested by the customer.

Respectfully submitted,

BOULT, CUMMINGS, CONNERS & BERRY, PLC

By: Henry Walker lac

Henry M. Walker, Esq.
1600 Division Street, Suite 700
P.O. Box 340025
Nashville, Tennessee 37203
(615) 252-2363

CERTIFICATE OF SERVICE

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

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

James Murphy
Boult, Cummings, Conners & Berry
1600 Division Street, Ste. 700
Nashville, TN 37203

Ed Phillips
United Telephone –Southeast
1411 Capitol Blvd.
Wake Forest, NC 27587

H. LaDon Baltimore
Farrar & Bates
211 7th Avenue North, Ste. 320
Nashville, TN 37219-1823

John Heitmann
Kelley, Drye & Warren
1900 19th Street NW, Ste. 500
Washington, DC 20036

Charles B. Welch
Farris, Mathews, et al.
618 Church Street, Ste. 300
Nashville, TN 37219

Dana Shafer
XO Communications, Inc.
105 Malloy Street, Ste. 100
Nashville, TN 37201

on this the 23rd day of May, 2005.

Henry Walker lac
Henry M. Walker