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VIA HAND DELIVERY

Hon. Ron Jones, Chairman
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, TN 37238

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

Dear Chairman Jones:

BellSouth files this letter in response to the December 14, 2005, filing on behalf of CompSouth. That letter omits key facts about a November 30, 2005 Maine Court decision ("Maine Decision").

First, the case itself is not a final decision on the merits. It is a decision disposing of a preliminary injunction motion in a docket that remains open and is certain to result in further activity. Second, the case is factually distinguishable because it all relates back to Verizon's wholesale tariff and the Maine Commission's perception that Verizon made a voluntary commitment to file 271 obligations in its wholesale tariff. The district court expressly found that Section 271 "was not intended by the Congress to exclude the PUC ***in the circumstances of this case*** from all activity in setting rates under § 271." Maine Decision, p. 16 (emphasis supplied). Moreover, with all due respect to the Maine district court, the case is inconsistent with the three federal district court cases rendered much closer to home in Mississippi and Kentucky, both of which correctly acknowledged that Section 271 explicitly places enforcement authority with the FCC. It is also inconsistent with the court's decision in Montana, which held that Section 252 did not authorize a state commission to approve an agreement containing elements or services that are not mandated by Section 251.

The Maine Decision is also based on faulty reasoning with respect to the relationship between the states and the FCC pursuant to Section 271. Section 271 is not a ratemaking provision; rather it involves applications for certain authority under federal law. Section 271 does not have to include the words "preemption;" state commissions have limited authority under Section 252 to ensure Section 251 compliance. Because section 271 is part of federal law, there is no baseline state authority to preempt -- states only have the authority to implement federal law that Congress gave them, and *USTA II* has made quite clear the limits on further FCC delegation to the states. Moreover, with respect to Section 271 Congress gave the relevant authority to the FCC and elsewhere expressly limited state authority to section 251 rates.

As to whether section 271 requires TELRIC, the FCC itself explained that the just and reasonable requirement does not mandate TELRIC in the *TRO*, and that ruling was affirmed on that in *USTA II*. The Maine district court's attempt to minimize that is unpersuasive. The FCC's decision not to mandate unbundling under 251 for certain UNEs becomes meaningless if states can require the very same unbundling at the very same rates under 271. The result is no different than adding UNEs where the FCC has refused to require unbundling.

Finally, CLECs have attempted to raise this case as precedence in other dockets. The TRA's recent 2-1 decision in the Deltacom case rejecting BellSouth's motion for reconsideration of its decision to accept a DeltaCom-proposed interim rate for enterprise switching does not provide a basis to resurrect de-listed UNE-P or loop and transport under the 271 theory urged by the CLECs. In fact, that same 271 theory was rejected by the Authority in the context of the "no new adds" issues, in which CLECs attempted to evade the FCC's deadlines by arguing they could continue ordering new UNE-P under the 271 theory.

Cordially,

Joelle Phillips

CERTIFICATE OF SERVICE

I hereby certify that on December 19, 2005, a copy of the foregoing document was served on the following, via the method indicated:

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