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Joelle J Phillips
Attorney

615 214 6311
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December 3, 2004

VIA HAND DELIVERY

Hon. Pat Miller, 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 Miller:

Enclosed are the original and fourteen copies of BellSouth's *Response to Motion of CompSouth to Dismiss BellSouth's Petition to Establish Generic Docket*. Copies of the enclosed are being provided to counsel of record.

Cordially,

Joelle Phillips

JJP ch

BEFORE THE TENNESSEE REGULATORY AUTHORITY
Nashville, Tennessee

In Re: *Petition to Establish Generic Docket to Consider Amendments to Interconnection Agreements Resulting from Changes of Law*

Docket No. 04-00381

BELLSOUTH TELECOMMUNICATIONS, INC.'S RESPONSE TO MOTION OF COMPSOUTH TO DISMISS BELLSOUTH'S PETITION TO ESTABLISH GENERIC DOCKET

BellSouth Telecommunications Inc. ("BellSouth") files this response in opposition to the *Motion* of the Competitive Carriers of the South, Inc. ("CompSouth) and respectfully shows the Tennessee Regulatory Authority ("TRA" or "Authority") as follows:

INTRODUCTION

All players in the telecommunications market have watched with great interest and concern the developments since the issuance of the Federal Communications Commission's ("FCC") *Triennial Review Order* ("TRO") and the subsequent District of Columbia Circuit Court ("DC Circuit") *Opinion* and FCC *Interim Rules Orders* ("IRO"). In Tennessee, just as elsewhere in the country. It is clear from those orders that changes in existing Interconnection agreements are required, and must be implemented. The issue that BellSouth, the CLECs, and the various state commissions face is how those changes are going to be implemented. That is, will we proceed in an efficient, timely fashion, or will we spread the process out over months in hundreds of separate hearings. The answer should be obvious, and the CLECs' objections to using the most efficient manner of accomplishing this task is not only inconsistent with prior positions

taken by the CLECs, but is intended solely to delay changes that are simply not favorable to the CLECs.

The present position of the CLECs is clearly inconsistent with their past view of what the law allowed or required when they perceived a generic proceeding to be in their own interests. For instance, on May 21, 2004, XO filed a *Motion for a Declaratory Judgment* in Tennessee to require BellSouth to follow certain change of law proceedings in order to involve the TRA in the modifications to interconnection agreements in light of the *TRO* and DC Circuit *Opinion*. CompSouth subsequently filed a *Petition to intervene* in support of XO's *Motion*. While the Authority correctly dismissed XO's *Motion,* arguments the CLECs made during the Authority's deliberation on that *Motion*, however, are quite relevant to this case.

As the Authority well remembers, at the time of the *Declaratory Judgment Petition* in June of this year, the CLECs insisted that BellSouth was planning to implement changes arising from these developments in federal law without the involvement of the TRA and that all the CLECs were trying to accomplish was to insure that the TRA would be involved in the implementation of these new developments in federal law. ***In fact, many members of CompSouth, during that hearing, specifically said that they did not object to a generic change of law proceeding.*** These statements are explicitly cited in the discussion below.

So, on that day in June, when it was convenient, the CLECs cast their effort as nothing more than an attempt to include the TRA in the process. In June, when it served their purpose, they agreed to participate in a generic change of law docket. With its *Motion to Dismiss*, however, CompSouth makes clear that in fact what it wants today

is something quite different. Now, CompSouth seeks to delay by embroiling the TRA in numerous successive and redundant hearings to implement the outcome of the *Triennial Review Order*, the *Interim Rules Order* and the DC Circuit *Opinion*. It is now painfully clear that what the CLECs seek is not the involvement of the TRA but, instead, to bury the TRA in numerous proceedings in order to delay the implementation of these federal decisions. CompSouth's various "legal" arguments, as discussed below, are not persuasive. Instead, they seek to force the TRA into wasteful and duplicative decisions as if the TRA had no choice but to proceed in that fashion. This is simply not the case. The TRA is well within its jurisdiction and legal authority to proceed in this case by a generic docket, open to all interested parties.

Indeed, the TRA has entertained numerous generic proceedings relating to 252 obligations in the past. Many of CompSouth's members participated in such proceedings such as the Generic UNE docket in which the TRA established generally available rates for UNEs under Section 252. (*Petition to Convene a Contested Case Proceeding to Establish "Permanent Prices" for Interconnection and Unbundled Network Elements*, Docket No. 97-01262). Likewise the TRA has engaged in generic proceedings to establish rules for arbitrations under Section 252. CLECs have also sought generic proceedings, such as the petition addressing the rate for switching filed by "the UNE-P Coalition" of CLECs (*Petition of Tennessee UNE-P Coalition to Open a Contested Case Proceeding to Declare Switching an Unrestricted Unbundled Network Element;* Docket No. 02-00207). As these precedential proceedings made clear, the TRA is well within its authority and jurisdiction to commence a generic change of law proceeding just as the Utility

Commissions of North Carolina and Georgia have already decided to do – ***and, importantly, just as CompSouth advocated to the TRA in Tennessee in June.***

For these reasons and the reasons discussed more fully below, BellSouth urges the Authority to deny the *Motion* of CompSouth to dismiss BellSouth's *Petition* to establish this generic docket and to instead take up these issues in this reasonable format, a format where ***all affected parties*** may participate in one practicable process. To do otherwise would simply permit CompSouth to force the TRA to expend needless time in administrative resources all in the name of delay, rather than in an effort to implement (not avoid) these significant federal decisions.

DISCUSSION

I. CompSouth's Discussion Of "Background Facts" Is Misleading.

CompSouth attempts to suggest, in its recitation of so-called "facts", that BellSouth is proceeding in an incorrect fashion. BellSouth corrects these statements of facts in this section.

First, BellSouth engaged in a significant amount of negotiation with CLECs in order to implement the changes in federal law relevant to their interconnection agreements. BellSouth has clearly abided by the dispute resolution processes in place in those agreements. BellSouth has sent letters giving notice of the change of law. During this negotiation period, the CompSouth CLECs have not even agreed to negotiate.[1] Attached as Exhibit A are examples of letters received by BellSouth making the outrageous claim that the *Orders* on which these change of law notifications were

[1] Bellsouth has reached agreement on change of law contract language with certain CLECs. *See*, for example, BellSouth Interconnection Agreements with Time Warner Telecom (Docket No. 04-00157, approved July 26, 2004), One Point Communications-Georgia, LLC (Docket No 04-00064, approved April 12, 2004), and NOW Communications, Inc. (Docket No. 04-00080, approved May 10, 2004).

based did not constitute a change of law. Far from seeking to avoid the change of law process, as CompSouth suggests, BellSouth seeks the Authority's assistance in getting the change of law process on the right track and moving. CompSouth, on the other hand, contrary to their representations at the TRA back in June, seeks to avoid TRA involvement unless, that is, they can use the TRA's involvement to entangle the matter into numerous successive duplicative proceedings all designed to delay, not implement, these important changes.

Attempting to suggest (wrongly) that other states are not proceeding on generic dockets, CompSouth also grossly mischaracterized the November 10, 2004 *Order* of the Chairman of the North Carolina Utilities Commission by characterizing it as an *Order* dismissing BellSouth's *Petition*. Quite the contrary, the *Order,* which is attached as Exhibit B to this *Response,* ***specifically opens a generic docket***, orders BellSouth to provide additional information and clearly states that a schedule for that proceeding will be set for a later date. Further, the CompSouth *Motion* fails to note that proceedings have been set and are currently scheduled for January 26-28, 2005 in Georgia.

Most importantly, the CompSouth *Motion* completely fails to recognize its members' former actions and statements in support of a generic change of law docket in Tennessee and elsewhere.

II. The Authority Is Well Within Its Jurisdiction To Entertain A Generic Docket On This Matter.

As an initial matter BellSouth notes that, if the CLECs really wanted the TRA to be involved in this matter, then the CLECs could certainly ***agree*** to the generic proceeding sought by BellSouth clearly resolving any legal or jurisdictional issue.

Moreover, during the June 7, 2004 Authority Conference, counsel for XO ***did agree*** to a generic proceeding:

> As long as we can maintain the status quo and protect consumers' rates in the interim, we would have no objection to a generic docket so that all parties could come forward and be heard. We're not trying to just make this exclusive to XO. The issues are difficult issues to answer. They are issues that affect all carriers -- CLEC carriers and all consumers. We would have no opposition to a generic docket so long as we could get that assurance. (Tr. at 49)

Further, counsel for CompSouth echoed this statement, saying:

> Director Kyle, to echo what Ms. Shaffer said, I am also here on behalf of CompSouth. **And the whole CLEC industry agrees that we need to have one proceeding, and we need to do this together.** (Tr. at 51) (emphasis added.)

In light of these comments, the TRA could reasonably conclude that these parties have ***already agreed*** to proceed in exactly the manner that BellSouth seeks.

Tennessee is not the only state in which CompSouth members have indicated their willingness to proceed with a generic docket. It is particularly noteworthy that many of the members of CompSouth have actually ***sought*** the opening of generic dockets in other states. For example, in Florida, ITC^DeltaCom, Birch, Covad and FDN have petitioned the Florida PSC to convene a generic proceeding to set rates and terms for hot cuts and batch hot cuts. These same CLECs cannot seriously expect to argue that this sort of generic proceeding is illegal while, from the other side of their collective mouths, seeking the opening of such dockets in other states.[2]

[2] In addition, CompSouth members Access Integrated, Birch, ITC^DeltaCom, Momentum, and TalkAmerica have intervened in Georgia Docket No. 19341-U, *Generic Proceeding to Examine Issues Related to BellSouth's Obligations to Provide Unbundled Network Elements* without any objection to that Commission proceeding in such a fashion and have filed a matrix of proposed issues. These CompSouth members have proposed a number of issues that address

In Tennessee, parties have, on several occasions, agreed to proceed in a unique fashion in order to address special circumstances. For example, parties have consented to multi-party arbitrations, which the TRA has ruled are not permitted except when parties have agreed. Were the CLECs truly interested in TRA assistance to resolve, rather than delay, these issues, they would be recognizing their earlier agreement to use a generic proceeding rather than attempting to dismiss it. Even without such an agreement, however, the Authority is free to proceed.

BellSouth's proposed generic docket is not a novel approach. The Authority has entertained generic proceedings related to 252 issues on numerous occasions. (*Petition to Convene a Contested Case Proceeding to Establish "Permanent Prices" for Interconnection and Unbundled Network Elements,* Docket No. 97-01262). The *Pacific Bell v. PacWest Telecom* decision cited and relied upon by CompSouth does not prohibit all such proceedings. Unlike the action of the California Commission at issue in that case, the TRA is not being asked to interpret any "standard" agreement. Instead, these proceedings, like the generic UNE docket, would simply resolve the common questions of law and fact relating to the *TRO*, *IRO* and DC Circuit *Opinion*. Under the rationale in CompSouth's *Motion*, the TRA would have also been prohibited from holding a generic UNE rate docket, a position which clearly would not be advanced by these CLECs who have participated in such dockets in Tennessee.

Likewise, the Sixth Circuit case cited by CompSouth is equally inapplicable. This generic proceeding does not seek to create an alternative route around the negotiation and arbitration process required in the 1996 Act. BellSouth has initiated and followed

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interconnection agreement changes. Apparently, CompSouth is amenable to proceedings in Georgia, but finds a similar docket objectionable in Tennessee.

the change of law process outlined in existing Interconnection Agreements. In seeking this generic proceeding BellSouth is simply asking the Authority to resolve common questions of law relating to these federal decisions that follow from the change of law letters that have been sent, rather than conducting hundreds of separate proceedings to achieve that same result. BellSouth has complied with the interconnection agreements of CompSouth members regarding change of law process. The CLECs' disingenuous suggestion that allowing negotiations in dispute resolutions processes to play out would somehow narrow issues is outrageous. In fact, the Authority is well aware that these recent federal decisions have made dramatic changes in rules invalidated by the courts that BellSouth has been forced to live under for eight years. The CLECs are now attempting to string out as long as possible the implementation of changes in the law, which are inevitable.

III. The Petition For A Generic Docket Is Not Premature And, In Fact Is Now More Pressing Than Ever In Light Of The Decision Of The Hearing Officer In The Joint CLECS Arbitration.

As BellSouth explained in its *Motion* to establish the docket, time is of the essence. The first six month period established by the FCC in its *Interim Rules Order*, will expire in March, 2005, or earlier in the event that the FCC's final unbundling rules become effective prior to that date. In its *Interim Rules Order*, the FCC explicitly noted that ILECs were free to initiate change of law proceeding, which "presume the absence of unbundling requirements for switching, enterprise market loops, and dedicated transport, so long as they reflect the transition regime" set forth in that *Order*. IRO at ¶ 23. The FCC noted that this process would enable these changes to "take effect quickly." IRO at ¶ 23. For that

reason, BellSouth respectfully requested that the Authority accept its Petition, establish a procedural schedule, and hear this Petition in an expeditious matter so that at the appropriate time, the necessary modifications to existing interconnection agreements can be made without further delay.

This matter is now even more pressing in Tennessee. In the now-pending Joint CLEC Arbitration (Docket No. 04-00046), the Hearing Officer has ruled that supplemental issues arising from the FCC and DC Circuit decisions will not be heard in that arbitration. It was clear from the Hearing Officer's discussion of this issue, during the recent status conference in that arbitration, that the availability of a Tennessee generic docket, in which to address these issues, influenced the decision to exclude those issues from the arbitration.

In short, the CLECs cannot have it both ways. Back in June, they argued that is was necessary for the TRA to immediately jump in to ensure that it would be involved in any changes to CLECs contracts resulting from these federal decisions. In June, they suggested a generic proceeding was warranted. Now they argue instead that the TRA should wait – that the TRA should not even hear argument about how to proceed until January. Such delay will require BellSouth to live for even more time under a set of rules that have been held to be illegal. It will place Tennessee out-of-synch and behind other states who are moving ahead on generic dockets.

If the CLECs truly want the TRA's involvement, it is time for them to step up to the plate and work reasonably for that involvement. If, on the other hand, the CLECs continue to argue to delay the implementation of these federal decisions, then the

Authority should again consider whether it even has the jurisdiction to address elements no longer required as a result of the DC Circuit *Opinion*.

CONCLUSION

For all the reasons discussed above, BellSouth respectfully urges the Authority deny CompSouth's *Motion* and instead to set a schedule as requested by BellSouth in its *Motion* of November 23, 2004.

Respectfully submitted,

BELLSOUTH TELECOMMUNICATIONS, INC.

By: _____

Guy M. Hicks
Joelle J. Phillips
333 Commerce Street, Suite 2101
Nashville, TN 37201-3300
615/214-6301

R. Douglas Lackey
James Meza
675 W. Peachtree St., NE, Suite 4300
Atlanta, GA 30375

EXHIBIT A

ACCESS INTEGRATED

Access
Phone Serv ce Made Simple™

4885 Riverside Drive
Suite 107
Macon, Georgia 31210

Tel 478 475 9800
Toll Free 888 275 0777
www accesscomm com

11/11/2004

Ms. Trish Cartwright
Manager – Interconnection Services
BellSouth Interconnection Services
675 West Peachtree Street, NE
Room 34S91
Atlanta, Georgia 30375

Dear Ms Cartwright

This acknowledges your letter of November 9, 2004 concerning change of law issues respective to the Interconnection Agreement and MBR Agreements of September 10, 2004, between this company and BellSouth.

We recognize our contractual obligation pursuant to Section 14.4 of the GT&C of the Interconnection Agreement to negotiate any required change of law revisions (vacatur related) to that Agreement. We are willing to proceed to do so now as expeditiously as may be convenient

We do not see that the FCC's Interim Rules Order triggers any change of law issues as it is, in fact, only a temporary arrangement to be succeeded next month, we believe, by permanent FCC rules.

We further believe that the anticipated permanent rules will significantly impact the vacatur issues and that despite the contract provisions of Section 14.4, the parties would be better served to await these rules before negotiating the vacatur issues.

If you still wish to proceed with change of law negotiations to create vacatur related amendments, please give us several suggested dates and times to begin work. We recommend that we alternate meetings at the offices of each party.

I remain,

Very truly yours,

William T. Wright, Chairman

WTW:lpt

cc: Vincent Oddo
D. Mark Baxter
Sharyl Fowler

BELLSOUTH

675 W. Peachtree Street, NE
34S91
Atlanta, Georgia 30375

Trish Cartwright
Phone: (404) 927-2060
FAX: (404) 529-7839

Sent Via Certified Mail

FINAL DRAFT/11-15-04

November 15, 2004

Mr. Vincent Oddo
President CEO
Access Integrated Networks, Inc
4885 Riverside Drive, Suite 202
Macon, GA 31210

Dear Mr Oddo:

This is in response to your letter of November 11, 2004, which is in response to my letter of November 9, 2004, regarding the Change of Law notification obligation outlined in the General Terms and Conditions, Section 14.4, of the Interconnection Agreement.

Access Integrated Networks, Inc's position that the Federal Communications Commission's (FCC) Interim Rules Order did not trigger any change of law issues, but rather it is a temporary arrangement to be succeeded in December 2004, by permanent FCC rules, is both legally and factually incorrect. In its Order, the FCC imposes additional rights and obligations on the parties and does not merely maintain the status quo. Among other things, the Order adopts interim rules and requires BellSouth to continue to provide mass market switching, high capacity loops, and high capacity transport under the rates, terms and conditions that had previously applied under Access Integrated's Interconnection Agreement, which expired November 17, 2003, and it also establishes a transition for those elements for which impairment has not been found as of the end of the interim period described in the Interim Rules Order.

At this time, BellSouth is obligated to negotiate vacatur and it is my proposal that Access Integrated provide redlines or an issues list as soon as possible regarding the negotiation. I also propose that we hold a teleconference to discuss those issues or redlines that you provide to us on Wednesday, November 17, 2004, at 10 00 AM EST. Please provide redlines or an issues list without delay, and let me know if you will be available for the proposed teleconference and whether you will have legal counsel attend.

If you have additional questions regarding this matter, please feel free to call me

Sincerely,

Trish Cartwright
Manager - Interconnection Services

cc: Tom Wright

Mark Baxter
Steve Brown

CINERGY COMMUNICATIONS

Cinergy Communications Company
8829 Bond Street
Overland Park, KS 66214
phone 913 492 1230
fax 913 492 1684

September 28, 2004

CINERGY. COMMUNICATIONS

Ms. Amy Hindman
BellSouth Interconnection Services
675 West Peachtree Street, NE
Room 34S91
Atlanta, GA 30375

Re: FCC Interim Rules

Dear Amy:

This responds to your letter of September 23, 2004 requesting that Cinergy Communications enter into an Amendment based upon the FCC's recently released Interim Rules. We respectfully decline your invitation to amend our existing interconnection agreement.

The interim rules provide for the status quo to remain in effect until March of 2005. Presumably, the FCC will issue Final Rules prior to that date. Once those rules are issued, we can begin negotiating an amendment to our current agreement. However, until final rules are issued, there is no change of law that would require an amendment under our interconnection agreement.

Cinergy Communications has a unique agreement which requires BellSouth to continue providing all services under the agreement until an amendment is completed and filed with the commission. It also states that BellSouth may not seek a true-up for services provided under the agreement. Therefore, until a new Interconnection Agreement is filed, the parties must continue their obligations under the existing agreement.

Very truly yours,

Robert A. Bye

Vice President and
General Counsel

BellSouth Interconnection Services
675 West Peachtree St , NE
Room 34S91
Atlanta, Georgia 30375

Amy Hindman
(404) 927-8998
FAX 404 529-7839

FINAL DRAFT/10-07-04

Sent Via Certified Mail and Electronic Mail

October 7, 2004

Mr Robert A Bye
Vice President and General Counsel
Cinergy Communications Company
8829 Bond Street
Overland Park, KS 66214

Re· Federal Communications Commission's (FCC) Order on Interim Rules

Dear Bob:

This is in response to your letter of September 28, 2004, regarding BellSouth's proposed amendment to Cinergy Communications Company's (Cinergy) Interconnection Agreement pursuant to the FCC's Order and Notice of Proposed Rulemaking (Order) in Docket 04-313 that became effective on September 13, 2004.

BellSouth disagrees with your statement that "until final rules are issued, there is no change of law that would require an amendment under our interconnection agreement." Importantly, the Order clearly establishes in Paragraph 23 the Incumbent Local Exchange Carrier's, (ILEC) rights to pursue change of law immediately, so long as the rules for the Interim Period and the following transition period are incorporated into the amendment, to allow CLECs and ILECs to put in place the FCC's transition requirements and to ensure that the FCC's final unbundling rules are implemented upon the effective date thereof The FCC could not have been clearer that the interim rules would provide the opportunity for ILECs to invoke change of law provisions in their interconnection agreement

Also contrary to your statement, the Order imposes additional rights and obligations on the parties and does not merely maintain the status quo. Among other things, the Order adopts interim rules and requires BellSouth to continue to provide mass market switching, high capacity loops, and high capacity transport under the rates, terms and conditions that applied under Cinergy's Interconnection Agreement as of June 15, 2004 These rates, terms and conditions shall remain in effect only until the earlier of March 12, 2005, or the effective date of the FCC's permanent rules (the "Interim Period") The Order also establishes a transition period for the six (6) months following the Interim Period. BellSouth has every right to amend the interconnection agreement to incorporate the transition period. Cinergy's agreement is not unique in this respect.

Although BellSouth does not necessarily agree with the FCC's requirements as set forth in the Order, BellSouth intends to comply with effective laws and expects Cinergy to do the same BellSouth forwarded to Cinergy on September 23, 2004 a proposed amendment to incorporate

the Interim Rules Order into the Interconnection Agreement. Should the parties be unable to agree to the terms of an amendment, or should Cinergy breach the interconnection agreement by refusing to negotiate, the parties are free to follow the dispute resolution provisions of the agreement to resolve these issues.

Should you have questions, please contact me at 404 927.8998

Sincerely,

Amy Hindman
Manager - Interconnection Services

cc John Cinelli—Cinergy (via electronic mail)
John Chuang—Cinergy (via electronic mail)

INLINE

October 26, 2004

VIA ELECTRONIC MAIL

Alessandra Richmond
BellSouth Interconnection Services
675 West Peachtree St., NE
Room 34S91 BellSouth Center
Atlanta, GA 30375

Re: Interim Rules Amendment

Dear Alessandra:

I am writing to respond to the Interim Rules Amendment offered by BellSouth to Contact Network, Inc. d/b/a InLine on October 1, 2004. It is Contact Network, Inc. d/b/a InLine's position that the Interim Rules merely oblige the parties to maintain their contractual relationship regarding mass market switching, transport and high capacity loops as those contractual relationships existed on June 15, 2004. As a consequence, no amendment is necessary as there has been no change in law materially affecting the terms of our interconnection agreement or the parties' obligations under it (see section 14.3 of the Contact Network, Inc. d/b/a InLine-BellSouth Interconnection Agreement).

Additionally, Contact Network, Inc. d/b/a InLine also opposes, on the same ground, two particular elements of BellSouth's proposed amendment: 1) section 1.11 through section 1.15.1.4 addressing what BellSouth defines as "the Transition Period"; and 2) section 1.15.1.1 through 1.19 addressing various hypothetical changes in law related to "Eliminated Elements". With regard to the "Transition Period", the FCC's brief in opposition to the USTA Mandamus Petition makes it clear that the "Transition Period" BellSouth wishes to amend into the interconnection agreement is a "proposal" from the FCC – not a change in law:

> For the six-month period immediately following the interim period for which the FCC preserved the terms in effect under existing interconnection agreements, the Commission ***proposed*** and sought comment on additional transitional requirements. Under the Commission's ***proposal***, in the absence of a Commission ruling requiring unbundling of a particular element under section 251(c)(3), ILECs would be required for six months after the interim period to continue to lease the element in question, but at a Commission-prescribed rate that is higher than the current rate. *Order* ¶ 29.[1]

[1] USTA v FCC, D.C Circuit, Case No 00-1012, *Opposition of Respondents to Petition for a Writ of Mandamus*, filed September 16, 2004, pp. 7-8 (emphasis added).

Similarly, BellSouth wishes to create numerous "automatic" changes to the interconnection agreement based on various hypothetical changes in law, including "[t]o the extent the FCC issues an effective Intervening Order . . ." (section 1.16); "in the event that the interim Rules are vacated" (section 1.17); "to the extent any rates, terms or requirements set forth in such Final FCC Unbundling Rules are in conflict . . ." (section 1.18); and "[i]n the event that any Network Element, other than those already addressed above, is no longer required to be offered . . ." (section 1.19). Hypothetical changes in law do not trigger Section 14.3 of the interconnection agreement, which requires "legislative, regulatory, judicial or other legal action" to "materially affect material terms of this Agreement."

The use of terms like "in the event" and "to the extent" are contrary to the requirements of section 14.3 that there be "action" materially affecting material terms before a change in law is triggered under our interconnection agreement. The terms BellSouth now seeks to insert into the interconnection agreement constitute new change in law provisions, not changes in law themselves. While the Interim Rules do allow for certain presumptions in a properly triggered contractual change in law proceeding, such proceeding must be consistent with the existing change in law provision. BellSouth's proposed amends are not consistent with our interconnection agreement change in law provision.

Finally, Contact Network, Inc. d/b/a InLine must reiterate that BellSouth is obligated to maintain section 271 competitive checklist items 4, 5, and 6 (loops, switching and transport) in section 252 interconnection agreements unless and until the FCC grants a petition for forbearance under section 160. As a consequence, even if BellSouth insists on pressing for arbitration of its proposed Interim Rules Amendment, and even if BellSouth is successful in convincing a Commission to accept the BellSouth proposed language, there remains a legal obligation to address loops, switching and transport section 271 obligations in the arbitration.

As always, if you have any questions or need additional information, please feel free to call me.

Sincerely,

Martin Costa
President

BellSouth Interconnection Services
675 West Peachtree Street, NE
Room 34S91
Atlanta, Georgia 30375

Alessandra Richmond
(404)-927-0149
Fax (404) 529-7839

REVISED FINAL DRAFT/11-11-04

Sent Via E-mail and Certified Mail

November 11, 2004

Mr Martin Costa
President
Contact Network, Inc d/b/a Inline
219 Oxmoor Circle
Birmingham, AL 35209

Dear Martin:

This is in response to your letter dated October 26, 2004, regarding BellSouth proposed Amendment provided to InLine on October 1, 2004, to incorporate the Federal Communications Commission's (FCC) Order and Notice of Proposed Rulemaking (Order) in Docket 04-313 into the Parties' Interconnection Agreement

InLine's position that the "Interim Rules merely oblige the parties to maintain their contractual relationship" as of June 15, 2004 and that "there has been no change in law materially affecting the terms of our interconnection agreement" is both legally and factually incorrect. In its Order, the FCC imposes additional rights and obligations on the parties and does not merely maintain the status quo Among other things, the Order adopts interim rules and requires BellSouth to continue to provide mass market switching, high capacity loops, and high capacity transport under the rates, terms and conditions that applied under InLine's Interconnection Agreement as of June 15, 2004. These rates, terms and conditions shall remain in effect only until the earlier of March 12, 2005, or the effective date of the FCC's permanent rules (the "Interim Period") Contrary to your assertion, the Order also establishes a transition period for the six (6) months following the Interim Period, and the transition period will take effect for any of the aforementioned elements for which, at the end of the Interim Period, the FCC has not required unbundling, regardless of whether or not final unbundling rules have become effective. BellSouth has every right to amend the interconnection agreement to incorporate both the Interim Period as established by the FCC and the subsequent transition period.

In addition, the Order clearly establishes in Paragraph 23 the Incumbent Local Exchange Carrier's (ILEC) rights to pursue change of law immediately, so long as the rules for the Interim Period and the following transition period are incorporated into the amendment, to allow Competitive Local Exchange Carriers (CLECs) and ILECs to put in place the FCC's transition requirements and to ensure that the FCC's final unbundling rules are implemented upon the effective date thereof. The FCC could not have been clearer that the interim rules would provide the opportunity for ILECs to invoke change of law provisions in their interconnection agreement.

BellSouth is well aware of its obligations pursuant to Section 271 of the Act. However, your argument that switching, loops and transport must continue to be offered in a Section 251 interconnection agreement unless the FCC forebears from such 271 requirements is not

consistent with statutory law and regulation Neither the Act nor any rule or order of the FCC or any court has required that elements offered under Section 271 of the Act be included in an interconnection agreement that is negotiated, filed and approved pursuant to Sections 251 and 252 of the Act. Elements provided under Section 271 of the Act are within the jurisdiction of the FCC, not each individual state public service commission, and are subject to different pricing and other requirements. Thus, the position that BellSouth must be required to offer network elements at cost based rates in a Section 251 interconnection agreement when those elements are no longer required to be unbundled pursuant to Section 251 is wholly without merit

Although BellSouth does not necessarily agree with the FCC's requirements as set forth in the Order, BellSouth intends to comply with effective laws and expects InLine to do the same. BellSouth will be happy to discuss any changes you may have to the proposed amendment but fully expects InLine to take into account the full Order in any such proposal. Should the parties be unable to agree to the terms of an amendment, or should InLine refuse to negotiate a reasonable amendment, the parties are free to follow the dispute resolution provisions of the Agreement to resolve these issues. Additionally, InLine will be subject to the various generic proceedings that address issues related to implementation of the Order.

Should you have any questions, please feel free to contact me.

Sincerely,

Alessandra Richmond
Manager - Interconnection Services

BROADRIVER

BroadRiver™
Communication Corporation

1000 Hemphill Avenue
Atlanta GA 30318

Sent via Electronic Mail and Fedex

October 19, 2004

BellSouth Interconnection Services
Dwight Bailey
875 W Peachtree Street NW
Room 34S91
Atlanta, GA 30375

Dear Mr Bailey

This letter is in reference to your letter, dated September 30th, 2004, concerning the ramifications of the FCC's Notice of Proposed Rulemaking (Order) in Docket 04-313 and Broadriver Communication Corporation's Interconnection Agreement with BellSouth Broadriver is taking the position that the issues are not ripe for discussion and that the "status quo" is in effect until the FCC and state PUCS act upon new rules Meaning, in essence, nothing has changed to require Broadriver's Interconnection Agreement with BellSouth to be amended or altered until the new UNE rules have been reviewed and put into effect

We look forward to working with BellSouth on establishing a "win win" agreement once the rules of engagement are clearly defined and singed off by the FCC and individual state PUCs.

Sincerely,

Robert Turkel
Director of Legal/ Regulatory and CLEC Operations
BroadRiver Communication Corporation

BellSouth Interconnection Services
675 West Peachtree Street, NE
Room 34S91
Atlanta, Georgia 30375

Dwight Bailey
(404)-927-7552
Fax (404) 529-7839

Sent Via E-mail and Certified Mail **FINAL DRAFT/10-25-04**

October 25, 2004

Mr. Robert Turkel
Director of Legal/Regulatory and CLEC Operations
BroadRiver Communication Corporation
1000 Hemphill Avenue
Atlanta, GA 30318

Dear Mr. Turkel

This is in response to your letter dated October 19, 2004, regarding the Federal Communications Commission's (FCC) Order and Notice of Proposed Rulemaking (Order) in Docket 04-313 that became effective on September 13, 2004.

BroadRiver's position that "the issues are not ripe for discussion and that the "statue quo" is in effect until the FCC and state PUCs act upon new rules" is both legally and factually incorrect The Order triggered a change of law as set forth in the Parties' Interconnection Agreement at section 14 of the General Terms and Conditions As the Order imposes additional rights and obligations on the parties and does not merely maintain the status quo, BellSouth requested on September 30, 2004, to amend the agreement to implement the Order. Among other things, the Order adopts interim rules and requires BellSouth to continue to provide mass market switching, high capacity loops, and high capacity transport under the rates, terms and conditions that applied under BroadRiver's Interconnection Agreement as of June 15, 2004. These rates, terms and conditions shall remain in effect only until the earlier of March 12, 2005, or the effective date of the FCC's permanent rules (the "Interim Period"). The Order also establishes a transition period for the six (6) months following the Interim Period, and the transition period will take effect for any of the aforementioned elements for which, at the end of the Interim Period, the FCC has not required unbundling, regardless of whether or not final unbundling rules have become effective BellSouth has every right to amend the Interconnection Agreement to incorporate the interim and transition periods.

In addition, the Order clearly establishes in Paragraph 23 the Incumbent Local Exchange Carrier's (ILEC) rights to pursue change of law immediately as BellSouth has requested as much from BroadRiver. Specifically, Paragraph 23 points out that the Parties are to incorporate the rules for the Interim Period and the following transition period into the amendment, and to ensure that the FCC's final unbundling rules are implemented upon the effective date thereof Contrary to your assertion, the FCC could not have been clearer that ILECs may invoke change of law provisions in their interconnection agreements to implement the terms of the Order.

Although BellSouth does not necessarily agree with the FCC's requirements as set forth in the Order, BellSouth intends to comply with effective laws and expects BroadRiver to do the same On September 30, 2004, BellSouth forwarded to BroadRiver a proposed amendment to incorporate the Interim Rules Order into the Interconnection Agreement. Should the parties be unable to agree to the terms of an amendment, or should BroadRiver breach the

Interconnection Agreement by refusing to negotiate, the parties are free to follow the dispute resolution provisions of the Agreement to resolve these issues

Should you have any questions, please feel free to contact me.

Sincerely,

Dwight Bailey
Manager - Interconnection Services

EXHIBIT B

STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH

DOCKET NO P-100, SUB 133U

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Generic Proceeding to Consider Amendments to Interconnection Agreements Between BellSouth Telecommunications, Inc and Competing Local Providers Due to Changes of Law	))))))	ORDER ESTABLISHING GENERIC DOCKET AND REQUIRING SUPPLEMENTAL INFORMATION

BY THE CHAIR. On November 4, 2004, BellSouth Telecommunications, Inc (BellSouth) filed a Petition to Establish Generic Docket to determine the changes that recent decisions from the Federal Communications Commission (FCC) and the United States Court of Appeals for the District of Columbia Circuit (DC Circuit Court) will require in existing interconnection agreements between BellSouth and competing local providers (CLPs) in North Carolina. BellSouth argued that a single generic proceeding would be preferable to 250 separate change-of-law proceedings and suggested that such a proceeding should be scheduled as soon as possible.

WHEREUPON, the Chair reaches the following

CONCLUSIONS

After careful consideration, the Chair concludes that good cause exists to establish the generic proceeding requested by BellSouth but that BellSouth shall provide certain supplemental information before such proceeding is scheduled.

Three considerations figure into this approach First, the FCC has represented that it desires to have final rules in place by the end of 2004, well before the interim rules order expires in 2005 It is obviously better, other things being equal, to have final rules in place rather than interim rules before one undertakes a comprehensive change-of-law proceeding.

Second, the Commission has a heavy telecommunications workload in the immediate period to come, not the least of which is a revision of BellSouth's own price plan. Scheduling a generic proceeding would be premature at this point, given the various contingencies involved.

Finally, while there is undoubtedly substantial overlap, the universe of CLPs may not be the same as the universe of CLPs with which BellSouth has interconnection agreements in need of change Knowing the identity of the affected CLPs and other information about their interconnection agreements with BellSouth is important for setting up a generic docket that does not include unaffected parties. Accordingly, BellSouth is directed to provide to the Commission by no later than December 3, 2004, a report (1) listing the CLPs affected by the generic docket, (2) providing citations to relevant interconnection agreement provisions, and (3) listing the expiration dates of such agreements

IT IS, THEREFORE, SO ORDERED

ISSUED BY ORDER OF THE COMMISSION

This the 10th day of November, 2004

NORTH CAROLINA UTILITIES COMMISSION

Gail L. Mount

Gail L Mount, Deputy Clerk

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CERTIFICATE OF SERVICE

I hereby certify that on December 3, 2004, a copy of the foregoing document was served on the following, via the method indicated:

[ ] Hand
[ ] Mail
[ ] Facsimile
[ ] Overnight
[X] Electronic

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