



BellSouth Telecommunications, Inc  
333 Commerce Street  
Suite 2101  
Nashville, TN 37201-3300

guy.hicks@bellsouth.com

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T.R.A. DOCKET ROOM

Guy M. Hicks  
General Counsel  
615 214 6301  
Fax 615 214 7406

January 17, 2006

VIA HAND DELIVERY

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

Re: *Complaint of Telepak Networks, Inc. to Enforce its Interconnection  
Agreement with BellSouth Telecommunications, Inc.*  
Docket No. 05-00342

Dear Chairman Jones:

Enclosed are the original and fourteen copies of BellSouth's *Answer* in the referenced docket.

A copy is being provided to counsel of record.

Very truly yours,

A handwritten signature in black ink, consisting of a large, stylized loop that starts under the word "Very", goes up and around, and then loops back down to the word "Hicks".

Guy M. Hicks

GMH:ch

BEFORE THE TENNESSEE REGULATORY AUTHORITY  
Nashville, Tennessee

In Re: *Complaint of Telepak Networks, Inc. to Enforce its Interconnection Agreement with BellSouth Telecommunications, Inc.*

Docket No. 05-00342

**ANSWER OF BELL SOUTH TELECOMMUNICATIONS, INC.**

BellSouth Telecommunications, Inc. ("BellSouth") responds to the Complaint filed by Telepak Networks, Inc. ("Telepak") asking the Tennessee Regulatory Authority ("TRA" or "Authority") to resolve a dispute regarding the volume and term provisions contained in an amendment to the Interconnection Agreement between BellSouth and Telepak ("V&T Agreement").

**SUMMARY**

Telepak is not entitled to the relief sought in its Complaint. Telepak misinterprets the V&T Agreement. The V&T Agreement is clear that the volume and term discount is a percentage reduction applied to the resale rate, which is calculated by multiplying the Authority-approved resale discount by the applicable tariff rate. The V&T Agreement does not, as Telepak now contends, state that the volume and term discount will be added to the state-specific resale discount before it is multiplied by the retail rate.

Telepak communicated to BellSouth in discussions leading up to the execution of the V&T Agreement that Telepak's understanding was that the volume and term discount would be applied in the manner that BellSouth is applying it, which is consistent with the unambiguous language of the contract. Telepak's after-the-fact interpretation to support its claim for money to which it is not entitled is inconsistent with both the plain language of the contract and the parties' expressed intent.

### **SPECIFIC RESPONSE**

Responding to the numbered paragraphs of Telepak's Complaint, BellSouth alleges and states as follows:

1. BellSouth admits the allegations in paragraph 1 of the Complaint, on information and belief.

2. BellSouth admits the allegations in paragraph 2 of the Complaint.

3. The allegations contained in Paragraph 3 of the Complaint require no response from BellSouth. BellSouth affirmatively states that communications regarding BellSouth's Answer to this Complaint should be directed to:

Guy M. Hicks  
Joelle Phillips  
333 Commerce Street, Suite 2101  
Nashville, TN 37201  
(615) 213-6301  
[guy.hicks@bellsouth.com](mailto:guy.hicks@bellsouth.com)  
[joelle.phillips@bellsouth.com](mailto:joelle.phillips@bellsouth.com)

Andrew D. Shore  
BellSouth Center – Suite 4300  
675 W. Peachtree Street, N.E.  
Atlanta, GA 30375  
(404) 335-0750  
[andrew.shore@bellsouth.com](mailto:andrew.shore@bellsouth.com)

4. BellSouth admits that the Authority has jurisdiction over this Complaint, but does not admit that all of the statutes cited by Telepak provide such jurisdiction.

5. BellSouth admits the allegations in paragraph 5 of the Complaint.

6. BellSouth admits the allegations in paragraph 6 of the Complaint.

7. BellSouth admits that Appendix II to the V&T Agreement sets forth the Discount Level BellSouth is required, pursuant to the V&T Agreement, to apply to the resale rate, which resale rate is determined by multiplying the resale discount by BellSouth's tariffed retail rate for the resold service and subtracting the product from the tariffed retail rate for the service. BellSouth further admits that for purposes of its Discount Level, Telepak committed to a Tier 3 revenue target for 2002, for which a Discount Level of 10.5% would be applicable. Except as specifically admitted, BellSouth denies the allegations contained in paragraph 7 of the Complaint.

8. BellSouth admits that a dispute exists between the parties because Telepak is attempting to ascribe an interpretation to the V&T Agreement which is inconsistent with both the plain meaning of the contract and with Telepak's prior expressed understanding of the V&T Agreement.

9. BellSouth denies all of the allegations in paragraph 9 of the Complaint. BellSouth expressly denies that it has miscalculated the total

discount applicable to BellSouth services that Telepak resells or that it has overcharged Telepak for services as a result of the alleged miscalculation. BellSouth further denies that the total discount should be calculated by adding the resale discount to the 10.5% volume and term discount ("V&T Discount Level") and then multiplying the sum by the tariffed rate for the resold services. Rather, the V&T Discount Level should be applied to the resale rate, which is the product of multiplying the resale discount by the tariff rate subtracted from the tariffed retail rate.

10. BellSouth expressly denies that the V&T Discount Level applies to the tariff price of the resold service. The V&T Discount Level clearly applies to the resale rate. BellSouth admits that its position is that the unambiguous provisions of the V&T Agreement require that the V&T Discount Level must be applied to the resale rates for resold services. BellSouth also admits that in order to compute the appropriate price Telepak is required to pay for resold services pursuant to the parties' contract, BellSouth multiplies the V&T Discount Level by the resale rate and subtracts the result from the resale rate. BellSouth's methodology is clearly consistent with the express terms of the parties' V&T Agreement. BellSouth admits that the prices charged to Telepak are higher than they would be if BellSouth added the resale discount to the V&T Discount Level and multiplied the sum by the tariff rate.

11. BellSouth denies the allegations contained in paragraph 11 of the Complaint.

12. BellSouth admits that on or about January 8, 2003, Telepak filed a pleading denominated incorrectly as a "Petition for Arbitration" with the Mississippi Public Service Commission ("MPSC") to resolve its dispute in Mississippi.

13. BellSouth admits that the MPSC conducted a hearing on Telepak's Petition in Mississippi. BellSouth admits that the MPSC issued its Final Order on January 7, 2004, and that the Final Order speaks for itself. Except as specifically admitted, BellSouth denies the allegations contained in paragraph 13 of the Complaint.

14. BellSouth admits that it appealed the MPSC's Order to the United States District Court for the Southern District of Mississippi. BellSouth admits that the United States District Court for the Southern District of Mississippi issued its Memorandum and Order attached as Exhibit B to the Complaint on July 12, 2005, and that the Memorandum and Order speaks for itself. BellSouth admits that the United States District Court for the Southern District of Mississippi issued a Final Judgment attached as Exhibit C to the Complaint on July 28, 2005, and that the Judgment speaks for itself. BellSouth expressly denies that the federal court "ruled upon" or interpreted the V&T Agreement. Except as specifically admitted, BellSouth denies the allegations contained in paragraph 14 of the Complaint.

15. BellSouth admits that the V&T Agreement is clear on its face. The unambiguous language of the V&T Agreement fully supports BellSouth's position in this matter, and the Authority should issue a ruling to that effect. If the Authority determines that the V&T Agreement is ambiguous, however, it should, consistent with applicable law, examine extrinsic evidence as to the meaning of the V&T Agreement. Except as specifically admitted, BellSouth denies the allegations contained in paragraph 15 of the Complaint.

16. BellSouth denies the allegations in paragraph 16 of the Complaint. BellSouth expressly denies the allegations contained in the paragraphs styled "Requested Relief" and affirmatively states that Telepak is not entitled to any relief whatsoever.

BellSouth denies each and every allegation in the Complaint not expressly admitted herein, and demands strict proof thereof.

WHEREFORE, BellSouth respectfully requests that the Authority enter an Order:

1. Declaring that the V&T Discount Level applies to the resale rate in the manner BellSouth has applied it;
2. Denying all of the relief sought in Telepak's Complaint; and
3. Granting such further relief as the Authority deems fair and equitable.

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

Andrew D. Shore

675 W. Peachtree St., NE, Suite 4300

Atlanta, GA 30375



## CERTIFICATE OF SERVICE

I hereby certify that on January 17, 2006, a copy of the foregoing document was served on the following, via the method indicated:

- ☐ Hand
- ☐ Mail
- ☐ Facsimile
- ☐ Overnight
- ☒ Electronic

Henry Walker, Esquire  
Boult, Cummings, et al.  
P. O. Box 340025  
1600 Division St, #700  
Nashville, TN 37203  
[hwalker@boultcummings.com](mailto:hwalker@boultcummings.com)

- ☐ Hand
- ☐ Mail
- ☐ Facsimile
- ☐ Overnight
- ☒ Electronic

Charles L. McBride, Jr.  
Brunini, Grantham, et al.  
P. O. Drawer 119  
Jackson, MS 39205  
[cmcbride@brunini.com](mailto:cmcbride@brunini.com)

A handwritten signature in black ink, appearing to read 'C. McBride', is written over a horizontal line.