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April 17, 2006

VIA HAND DELIVERY

Filed Electronically in Docket Office on 04/17/06 @ 11:09am

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

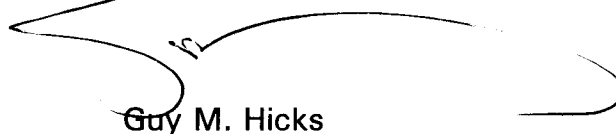
Re: *Telepak Networks, Inc.'s Petition for Arbitrating of Certain Terms and Conditions of a Proposed Interconnection Agreement with BellSouth Telecommunications, Inc. Pursuant to Section 252 of the Communications Act of 1934*
Docket No. 06-00072

Dear Chairman Jones:

Enclosed are the original and four copies of BellSouth's Answer in the captioned matter.

An electronic copy is being provided to the Authority and counsel of record.

Very truly yours,

A handwritten signature in black ink, appearing to be "Guy M. Hicks", written over a horizontal line.

Guy M. Hicks

GMH:ch

BEFORE THE TENNESSEE REGULATORY AUTHORITY
Nashville, Tennessee

In Re: *Telepak Networks, Inc.'s Petition for Arbitrating of Certain Terms and Conditions of a Proposed Interconnection Agreement with BellSouth Telecommunications, Inc. Pursuant to Section 252 of the Communications Act of 1934*

Docket No. 06-00072

BELLSOUTH TELECOMMUNICATIONS, INC.'S
RESPONSE TO TELEPAK NETWORKS, INC.'S
PETITION FOR ARBITRATION

Pursuant to 47 U.S.C. § 252(b)(3), BellSouth Telecommunications, Inc. ("BellSouth"), responds to the Petition for Arbitration ("Petition") filed by Telepak Networks, Inc. ("Telepak") and states the following:

Sections 251 and 252 of the Telecommunications Act of 1996 ("1996 Act") encourage negotiations between parties to reach local interconnection agreements. Section 251(c)(1) of the 1996 Act requires incumbent local exchange companies to negotiate the particular terms and conditions of agreements to fulfill the duties described in Sections 251(b) and 251(c)(2)-(6).

As part of the negotiation process, the 1996 Act allows a party to petition a state commission for arbitration of unresolved issues.¹ The petition must identify the issues resulting from the negotiations that are resolved, as well as those that are unresolved.² The petitioning party must submit along with its petition "all relevant documentation concerning: (i) the unresolved issues; (ii) the position of

¹ 47 U.S.C. § 252(b)(2).

² See *generally*, 47 U.S.C. §§ 252 (b)(2)(A) and 252 (b)(4).

each of the parties with respect to those issues; and (iii) any other issues discussed and resolved by the parties.”³ A non-petitioning party to a negotiation under this section may respond to the other party’s petition and provide such additional information as it wishes within twenty-five days after a commission receives the petition.⁴ The 1996 Act limits a commission’s consideration of any petition (and any response thereto) to the unresolved issues set forth in the petition and in the response.⁵ Further, an ILEC can only be required to arbitrate and negotiate issues related to Section 251 of the 1996 Act, and the Authority can only arbitrate non-Section 251 issues to the extent that they are required for implementation of the interconnection agreement.⁶

Through the arbitration process, a commission must resolve the unresolved issues ensuring that the requirements of Sections 251 and 252 of the 1996 Act are met. The obligations contained in those sections of the 1996 Act are the obligations that form the basis for negotiation, and if negotiations are unsuccessful, then form the basis for arbitration. Issues or topics not specifically related to these areas are outside the scope of an arbitration proceeding.

BellSouth and Telepak previously entered into an interconnection agreement that has expired. Although BellSouth and Telepak negotiated in good faith as to the terms and conditions for a new interconnection agreement, the parties have been unable to reach agreement on some of the issues raised during the

³ 47 U.S.C. § 252(b)(2).

⁴ 47 U.S.C. § 252(b)(3).

⁵ 47 U.S.C. § 252(b)(4).

⁶ *Conserve Limited Liab. Corp. v. Southwestern Bell Tel.*, 350 F.3d 482, 487 (5th Cir. 2003); *MCI Telecom., Corp. v. BellSouth Telecom., Inc.*, 298 F.3d 1269, 1274 (11th Cir. 2002).

negotiations and, as a result, Telepak filed its Petition. The only issues identified by Telepak are issues the Authority is already considering in its change of law docket.

Telepak's Petition claims that it would be appropriate for the Authority to make determinations with respect to "[s]uch other issues as the parties may identify at a later date."⁷ The 1996 Act makes clear that a party petitioning for arbitration must identify *all* disputed issues and the parties' positions with respect to each "at the same time as it submits the petition."⁸ The 1996 Act likewise states that "The State commission *shall* limit its consideration of any petition ... to the issues set forth in the petition and in the response, if any...."⁹ Thus, notwithstanding Telepak's claim to the contrary, the Authority is not permitted to consider interconnection agreement issues that Telepak may "identify at a later date."

The simple fact is that there are no outstanding issues regarding the parties' new interconnection agreement other than those that are being addressed as part of the Authority's generic change of law proceeding (Docket No. 04-00381). There is no need for the Authority to devote its limited resources to unnecessarily maintaining this docket. Based on Telepak's failure to identify in its Petition a single issue for arbitration not already being addressed by the Authority in its change of law docket, the Authority should dismiss the Petition.

⁷ Petition, ¶ 18.

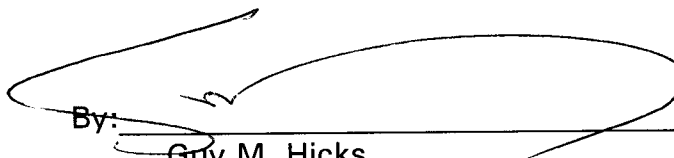
⁸ *Id.*

⁹ *Id.* § 252(b)(4) (emphasis added).

Based on the foregoing, there is no reason for BellSouth to respond to the specific allegations in the Petition.¹⁰ If the Authority does not dismiss the Petition for the reasons set forth above, BellSouth notes that Telepak has nonetheless requested in its Petition that the Authority should stay this proceeding "pending the Authority's ruling in the generic proceeding, with the parties being allowed to plead as necessary following such ruling."¹¹ If the Authority subsequently orders BellSouth to further respond Telepak's Petition, BellSouth will do so.

Respectfully submitted,

BELLSOUTH TELECOMMUNICATIONS, INC.

By: 

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¹⁰ Nothing stated herein should be inferred to mean that BellSouth agrees with and/or admits all of the allegations set forth in the Petition. It does not. There is no reason, however, to further use Authority and Staff resources by disputing factual issues, since the Petition is deficient as a matter of law.

¹¹ Petition, p. 6

CERTIFICATE OF SERVICE

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

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

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