

**BEFORE THE TENNESSEE REGULATORY AUTHORITY  
NASHVILLE, TENNESSEE**

**APRIL 27, 2006**

*In re: Telepak Networks, Inc.'s Petition for* )  
*Arbitration 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

**REPLY OF TELEPAK TO BELL SOUTH'S RESPONSE**

Telepak Networks, Inc. ("Telepak") filed this arbitration petition on March 16, 2006. BellSouth Telecommunications, Inc. ("BellSouth") filed a "Response" on April 17, 2006, one week late.<sup>1</sup> Federal law contemplates, and the TRA rules require, that BellSouth's Response answer the legal and factual allegations raised in the Petition. See 47 U.S.C. §252(b)(3) and TRA Rule 1220-1-2-.03(1). BellSouth's Response answers none of those. Instead, the Response states that Telepak's Petition is "deficient as a matter of law" and should be dismissed. Response at 3 and fn. 10. But it is not clear if BellSouth intended its Response to be a Motion to Dismiss. It is not characterized or labeled as a "Motion to Dismiss" nor does it refer to TRA Rule 1220-1-2-.03(2) regarding such motions. Out of an abundance of caution, however, Telepak files this Reply to BellSouth's argument, stating as follows:

1. BellSouth's Response does not offer any legal reasons to support the request for dismissal. BellSouth simply asserts that, because the issues raised by Telepak are the same ones currently pending before the Authority in the generic "change-of-law" proceeding (TRA docket 04-00381), the Authority should save its "limited resources" by discarding Telepak's arbitration

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<sup>1</sup> The Response states, at p. 1, that it was filed pursuant to 47 U.S.C. §252(b)(3). That Section states that the Response must be filed twenty-five days after the Authority receives the Petition. The Petition was filed on March 16. The Response was due on April 10, not April 17.

petition. That, of course, is not a legal basis for denying Telepak its right under Section 252 to proceed with this arbitration.

2. BellSouth is well aware that Telepak only filed the Petition because BellSouth refused to extend the negotiation period until after the Authority had reached a decision in Docket 04-00381. Moreover, BellSouth itself agreed that the Petition, once filed, could be held in abeyance until after state regulators completed the generic docket. As BellSouth wrote on March 13, 2006, "Telepak can file its arbitration issues by March 16<sup>th</sup>, and the generic issues for the remaining states that haven't issued COL [change-of-law] orders, will punt to those COL generic proceedings." See Petition, Exhibit J, email from Julie O'Kelley to Ken Rogers. In other words, BellSouth not only forced Telepak to file this arbitration petition by refusing to wait for a decision in the generic docket but also agreed that Telepak could "punt" these issues to the other docket. Now, in a complete reversal, BellSouth argues that Telepak's Petition should be dismissed for no reason other than it raises the same issues that are pending in the generic proceeding.

3. All of this background information is set forth in Telepak's Petition and substantiated by the email correspondence between Telepak and BellSouth attached to the Petition. These are the "factual issues" which BellSouth's Response did not address, stating that "there is no reason . . . to further use Authority and staff resources by disputing factual issues" since the Petition "is deficient as a matter of law." Response, at fn. 10.

4. BellSouth's call for dismissal of the Petition has no legal basis; it does not even pretend to offer one. The agency should, however, understand the real reason BellSouth would make such a request. As explained in Telepak's Petition, but not mentioned in BellSouth's Response, Section 2.4 of the parties' current interconnection agreement provides that if "the Parties have not entered into a Subsequent Agreement and no arbitration proceeding has been

filed in accordance with Section 2.3 above, then either Party may terminate this Agreement upon sixty (60) calendar days written notice to the other Party.” On the other hand, if one party does file an arbitration petition, the parties may continue operating under the old agreement until the arbitration proceeding is complete. See Petition, paragraph 14. Therefore, once BellSouth refused to extend the arbitration window, Telepak had to file this arbitration in order to keep the existing interconnection agreement in effect. If BellSouth can persuade the Authority to dismiss the Petition, under the pretense that “unnecessarily maintaining this docket” will drain the agency’s “limited resources” (Response, at 3), BellSouth will presumably attempt to terminate the existing agreement and force Telepak to sign the BellSouth “standard” agreement in order to stay in business.

5. BellSouth has already demonstrated its willingness to engage in such gamesmanship in these Section 252 negotiations. Before Telepak filed its Petition, BellSouth offered to extend the arbitration window for another two weeks if Telepak would agree to substitute BellSouth’s standard agreement for the parties’ current agreement. See Petition, Exhibit J, email from Julie O’Kelley to John Rogers. This further demonstrates that the motive behind BellSouth’s unsupported request to dismiss is not to conserve the agency’s resources but to try to force Telepak off the parties’ current interconnection agreement and on to the BellSouth standard agreement. It was Telepak’s unwillingness to accept the standard agreement, which forced the carrier to file this Petition in the first place.

6. Finally, BellSouth objects because, as Telepak explained in its Petition, it is not possible for Telepak to identify with certainty all the issues that might be raised in the arbitration because BellSouth had failed to respond to Telepak’s most recent red-lined version of an interconnection agreement. Petition, paragraphs 17 and 18. Telepak sent its proposed language to BellSouth on March 6, 2006. BellSouth had not responded by the time the Petition was filed

on March 16 and, as of this date, has still not sent any response to Telepak. BellSouth cannot sit in silence and then blame Telepak for not being able to identify all the issues where the parties disagree. Telepak did, however, attach its most recent proposal to the arbitration Petition (Exhibit L) and believes, as stated in the Petition, that the Authority's decision in the generic docket will resolve all issues in this arbitration.

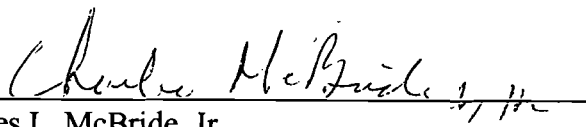
For those reasons, BellSouth's Response to the Petition should be disregarded and the request for dismissal denied. The Authority should hold this Petition in abeyance pending a final decision in Docket 04-00381.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing is being forwarded via U.S. mail, to:

Guy Hicks  
BellSouth Telecommunications, Inc.  
333 Commerce Street  
Nashville, TN 37219

on this the 27<sup>th</sup> day of April, 2006.

  
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Henry Walker