

**BEFORE THE TENNESSEE REGULATORY AUTHORITY**

**NASHVILLE, TENNESSEE**

**November 26, 2007**

<b>IN RE:</b>	)	
	)	
<b>GENERIC DOCKET TO ESTABLISH A RATE</b>	)	<b>DOCKET NO.</b>
<b>FOR SWITCHING PROVIDED PURSUANT TO</b>	)	<b>06-00080</b>
<b>REQUIREMENTS OTHER THAN 47 U.S.C. 251</b>	)	

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**ORDER CLOSING DOCKET**

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This matter came before Chairman Sara Kyle, Director Pat Miller and Director Ron Jones of the Tennessee Regulatory Authority (the "Authority"), the voting panel assigned to this docket, at a regularly scheduled Authority Conference held on January 23, 2007 to consider closing the docket.

**BACKGROUND**

An order issued by the Authority on October 20, 2005 memorialized the decision of the panel assigned to Docket No. 03-00119 to have "the Chair open a generic docket to adopt a rate for switching outside of 47 U.S.C. § 251 requirements."<sup>1</sup> On March 22, 2006, Chairman Ron Jones filed a memorandum with the Authority's Docket Manager directing that a generic docket be opened, thereby establishing Docket No. 06-00080.

Currently, the parties to this docket include BellSouth and Momentum Telecom, Inc. A petition to intervene filed on October 27, 2006 from AT&T and TCG MidSouth remains outstanding. During a status conference held on October 23, 2006, the hearing officer ordered

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<sup>1</sup> See *In re: Petition for Arbitration of ITC^DeltaCom Communications, Inc. with BellSouth Telecommunications, Inc. Pursuant to the Telecommunications Act of 1996*, Docket No. 03-00119, *Final Order of Arbitration Award*, pp. 38-39 (October 20, 2005).

the parties to brief issues, including whether it is appropriate to proceed with this docket and the legal requirements of setting a market rate.

BellSouth argued vehemently that this docket should be closed because (1) BellSouth has reached agreements with DeltaCom, Momentum, and numerous of the CLECs as to a switching rate; (2) since the issuance of the final arbitration award, multiple federal district courts have determined that state commissions lack authority to set Section 271 rates; (3) there is a lack of interest among CLECs in this docket; and (4) the Authority should not expend its resources, given the lack of interest and likelihood of being overturned on appeal. In addition, BellSouth contends that if the Authority is to go forward, they must identify the legal requirements that will govern the outcome of this docket. Lastly, BellSouth contends that this proceeding should be conducted as a rulemaking if it were to go forward.

Momentum argues in favor of moving forward with this docket. Momentum asserts that the Authority has determined that it has jurisdiction to establish a 271 rate, and until a court says otherwise, the TRA's decision on the jurisdictional issue is final. Momentum notes that the majority in Docket No. 03-00119 relied on both state and federal law and that no reviewing court has addressed the preemption issue in regard to Tennessee's state laws. Momentum also asserts that the number of intervenors in this docket and the fact that it has reached an agreement with BellSouth are irrelevant to whether the docket should remain open. Momentum explains that it may challenge the reasonableness of BellSouth's rates and require BellSouth to offer those rates in a Section 251 interconnection agreement. Finally, Momentum contends that BellSouth is well aware of the standard for setting a non-251 switching rate, and by statute, the fixing of rates shall be deemed a contested case, not a rulemaking.

**JANUARY 23, 2007 AUTHORITY CONFERENCE**

During the January 23, 2007 Authority Conference, Director Miller agreed that the TRA has jurisdiction to set a 271 switching rate. In this case, however, the parties have settled on a rate which satisfies one of the criteria outlined in Docket No. 03-00119.<sup>2</sup> Therefore, Director Miller moved to close this docket. Director Kyle seconded this motion based on the agreed rate fulfilling the criteria. Based on the foregoing, a majority of the panel voted to close this docket.

**IT IS SO ORDERED.**

  
Sara Kyle, Chairman

 11-26-07  
Pat Miller, Director

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Ron Jones, Director<sup>3</sup>

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<sup>2</sup> See *In re: Petition for Arbitration of ITC^DeltaCom Communications, Inc. with BellSouth Telecommunications, Inc. Pursuant to the Telecommunications Act of 1996*, Docket No. 03-00119, *Final Order of Arbitration Award* (October 20, 2005).

<sup>3</sup> Director Jones did not vote with the majority and filed a separate opinion explaining his position.