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General Counsel/Kentucky

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June 22, 2004

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PUBLIC SERVICE
COMMISSION

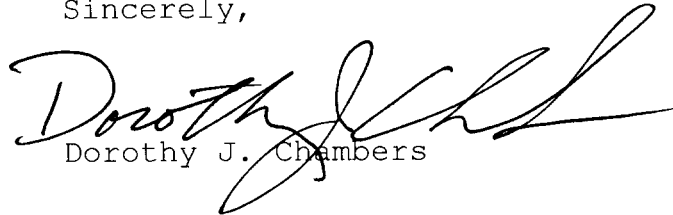
Ms. Beth O'Donnell
Executive Director
Public Service Commission
211 Sower Boulevard
P. O. Box 615
Frankfort, KY 40602

Re: Adoption of Interconnection Agreement Between
BellSouth Telecommunications, Inc. and MCI Worldcom
Communications, Inc. by Universal Telecom, Inc.
PSC 2004-00172

Dear Ms. O'Donnell:

Enclosed for filing in the above-captioned case is an original and ten (10) copies of BellSouth Telecommunications, Inc.'s Response to Universal Telecom, Inc.'s Motion to Compel.

Sincerely,


Dorothy J. Chambers

Enclosures

cc: Parties of Record

542045

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ADOPTION OF INTERCONNECTION)
AGREEMENT BETWEEN BELLSOUTH)
TELECOMMUNICATIONS, INC. AND) CASE NO. 2004-00172
MCI WORLDCOM COMMUNICATIONS,)
INC., BY UNIVERSAL TELECOM, INC.)

BELLSOUTH TELECOMMUNICATIONS, INC.'S RESPONSE TO
UNIVERSAL TELECOM, INC.'S MOTION TO COMPEL

BellSouth Telecommunications, Inc., ("BellSouth"), by counsel, hereby responds to the Motion of Universal Telecom, Inc. ("Universal Telecom") designated "Motion to Compel" filed on June 17, 2004. In its Motion to Compel, Universal Telecom seeks for this Commission to compel BellSouth to "take all necessary actions" to allow Universal Telecom to place orders under the interconnection agreement recently adopted by Universal Telecom. As explained below, the Motion to Compel is unnecessary as BellSouth is complying with the Commission's June 14, 2004 Order and has been actively engaged with Universal Telecom, and has now executed an appropriate amendment to the parties' existing interconnection agreement that is consistent with the Commission's June 14, 2004 Order. As such, Universal Telecom's Motion to Compel should be denied.

BACKGROUND

Universal Telecom filed a request to adopt an Interconnection Agreement between BellSouth and MCI WorldCom on May 11, 2004. The Commission issued an Order, dated May 19, 2004, allowing Universal Telecom to adopt this agreement. Because BellSouth had not received a copy of Universal Telecom's request to adopt in sufficient time to allow it to respond prior to the Commission's Order, the Commission's May 19, 2004 Order was issued without the Commission having received any comments from BellSouth. As a result, on May 24, 2004, BellSouth filed a Motion to Reconsider the Commission's May 19, 2004 Order. BellSouth noted therein that the BellSouth/MCI Interconnection Agreement is not compliant with current law and therefore it is contrary to controlling federal law and regulations for the Commission to allow Universal Telecom to adopt the BellSouth/MCI Interconnection agreement in its present format.¹

For example, BellSouth noted that the intercarrier compensation provisions for ISP traffic in the interconnection attachment of the agreement in question had not been conformed to the FCC's ISP remand Order.² BellSouth also noted that the UNE attachment of the Agreement had not been conformed to the

¹ See 47 C.F.R. Section 51.809(c).

² Order On Remand and Report and Order, in the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Intercarrier Compensation for ISP-Bound Traffic, CC Docket Nos. 96-98, 99-68, 16 FCC Rcd 9151 (April 18, 2001) ("ISP Remand Order").

new rates, terms and conditions set forth in the FCC's TRO³ and the D.C. Circuit Court Opinion.⁴ Of course, as of June 16, 2004, the mandate of the U.S. Court of Appeals for the District of Columbia now has issued and as a result, certain unbundling rules adopted by the Federal Communications Commission ("FCC") in the Triennial Review Order of October 2, 2003 have been vacated.

Following Universal Telecom's Response, filed on or about June 1, 2004, this Commission issued an Order on June 14, 2004, wherein it denied BellSouth's Motion for Reconsideration and ordered Universal Telecom's adoption of the Agreement, effective May 19, 2004. The Commission, however, noted that Universal Telecom had stated that it did not seek to provide ISP service and thus was not seeking to adopt that particular provision of the MCI Agreement. In short, the Commission's June 14, 2004 Order denied BellSouth's motion for reconsideration and narrowed the scope of the Commission's May 19, 2004 Order.

³ *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, CC Docket Nos. 01-338 et al., FCC 03-36, 18 FCC Rcd 16978 (Aug. 21, 2003) ("TRO").

⁴ *UNITED STATES TELECOM ASSOCIATION v. FEDERAL COMMUNICATIONS COMMISSION and United States of America* (359 F.3d 554) March 2, 2004 ("DC Circuit Order").

ARGUMENT

BellSouth respectfully advises the Commission that BellSouth is complying with the Commission's Order and has every intention of fully complying with all PSC orders. As an initial matter, the plain terms of the existing interconnection agreement is contrary to Universal Telecom's claim that nothing needs to be signed to effectuate the adoption of a new interconnection agreement.⁵ Further, the Commission's June 14, 2004 Order modified the Commission's original Order allowing Universal Telecom to adopt the BellSouth/MCI interconnection agreement. Without question, a contract amendment is necessary and appropriate to conform an existing contract to the terms of a Commission Order (or in this case, Orders) regarding amending such contract.⁶

⁵ The pertinent provision of the Interconnection Agreement provides as follows: "26.1 No provision of this Agreement shall be deemed waived, amended or modified by either Party unless such a waiver, amendment, or modification is in writing, dated, and signed by both parties."

⁶ The changes proposed to Universal Telecom were items which could and should have been resolved between the parties without the need for filing a motion to compel. Of the proposed changes, two were minor administrative matters, two were changes beneficial to the CLEC, and one change concerned the ISP compensation provision which was not applicable to Universal Telecom. Item 1 was to change out the term language to make it terminate based on BellSouth's standard agreement. Item 2 was to remove the 45 day notice provision. Both of these administrative changes have been accepted by CLECs in other adoptions in Kentucky and approved by this Commission. As noted, Item 3 made the correction for ISP compensation. Item 4 removed the LNP rate. BellSouth is preparing to change the tariff that recovers the LNP charge. Removal of the LNP rate would benefit Universal Telecom. Item 5 was to add the melded tandem rate to correct a billing error when a UNE-P call goes through a tandem office. This also would have resulted in a lesser rate for Universal Telecom. None of these proposed changes in any way was an attempt to circumvent or avoid complying with the Commission's June 14, 2004 Order.

Notwithstanding the fact BellSouth has assured Universal Telecom that the effective date of the new agreement will be May 19, 2004 (date of original Commission Order), Universal Telecom has taken issue with BellSouth's request to have up to 30 days to load rates into a new interconnection agreement. At best, Universal Telecom's concern regarding the loading of rates is premature as BellSouth expressly advised Universal Telecom, as discussed below, that BellSouth intended to expedite the period for loading the rates and would complete the process as quickly as possible.

BellSouth also notes that its Motion for Rehearing pursuant to KRS 278.400 is a statutorily prescribed process under which a party may seek rehearing of a determination by the Commission. It is well settled in Kentucky law that this Commission retains authority to modify its orders and that the determination of when a matter is completed rests exclusively with the Commission. See, for example, Mayfield Gas Co., Inc. v. Public Service Commission, 259 S.W.2d 8, 10 (Ky. App. 1953).

Since the time of the Commission's June 14, 2004 Order, BellSouth has been in contact with Universal Telecom representatives in an attempt to complete the necessary work to implement this Agreement. Although BellSouth disagrees with the Commission's June 14, 2004 Order and reserves its legal rights, BellSouth fully intends to comply with the Commission's Order.

BellSouth advised Universal Telecom of its intent to execute the agreement under protest. BellSouth also has advised Universal Telecom of certain administrative work which must be performed to effectuate the Commission's Order, that is, loading new rates to set up Q accounts so that Universal Telecom's Order may be accepted by BellSouth's system. In addition, as the Commission noted, Universal Telecom expressly stated it had no intention of seeking to adopt the ISP compensation provision of the MCI Agreement. BellSouth requested that Universal Telecom execute an agreement conformed to this revision. A copy of BellSouth's proposed agreement and cover letter submitting the agreement is attached hereto as Exhibit "A". BellSouth's good faith efforts have resulted in execution of appropriate contractual documentation necessary for the adopted interconnection agreement to be effective as of May 19, 2004.⁷

As noted, there also is a certain amount of work required to load rates to make an executed agreement operational. BellSouth representatives have indicated to Universal Telecom representatives that loading of rates for Universal Telecom would be expedited, so that even though the normal process requires 30 days to load the rates, BellSouth is making every

⁷ Universal Telecom's representative now has provided BellSouth with a signed copy of the Agreement, by facsimile, on June 21, 2004. BellSouth is proceeding with processing this Agreement on an expedited basis. See Exhibit B.

effort to do this in a shorter time period. Finally, in any event, pursuant to the Commission's June 14, 2004 Order, BellSouth has taken the steps necessary to execute and is proceeding to implement the agreement, effective May 19, 2004, in full compliance with the Commission's Order.

CONCLUSION

BellSouth is fully complying with all Commission Orders and has entered into an interconnection agreement with Universal Telecom pursuant to the Commission's June 14, 2004 Order. Accordingly, Universal Telecom's Motion to Compel is unnecessary and should be denied.

Respectfully submitted,



Dorothy J. Chambers
601 W. Chestnut Street, Room 407
P. O. Box 32410
Louisville, KY 40232
Telephone No. (502) 582-8219

R. Douglas Lackey
Robert A. Culpepper
Suite 4300, BellSouth Center
675 West Peachtree Street, NE
Atlanta, GA 30375
Telephone No. (404) 335-0841

COUNSEL FOR BELLSOUTH
TELECOMMUNICATIONS, INC.

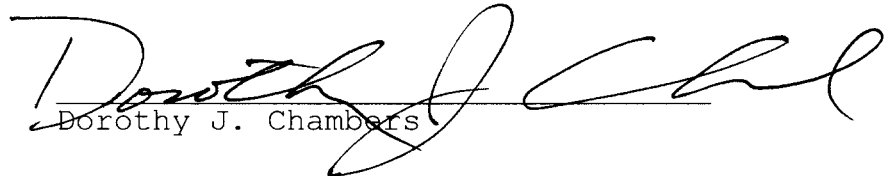
CERTIFICATE OF SERVICE

It is hereby certified that a true and correct copy of the foregoing was served on the following individuals by mailing a copy thereof, this 22nd day of June, 2004.

Hon. John E. Selent
Hon. Holly C. Wallace
Dinsmore & Shohl, LLP
1400 PNC Plaza
500 West Jefferson Street
Louisville, KY 40202

Melissa L. Burris
Staff Specialist
MCI Worldcom Communications, Inc.
6 Concourse Parkway
Suite 3200
Atlanta, GA 30328

Mr. Stacey Freeman
Vice President
Universal Telecom, Inc.
P.O. Box 679
LaGrange, KY 40031


Dorothy J. Chambers

BellSouth Interconnection Services

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



John M. Hamman
(404)-927-1992
Fax: (404) 529-7839

Sent Via Email and Certified Mail

June 18, 2004

Jennifer Sibray-Manager
210 South First Street, P.O. Box 679
LaGrange, Kentucky 40031

Dear Jennifer:

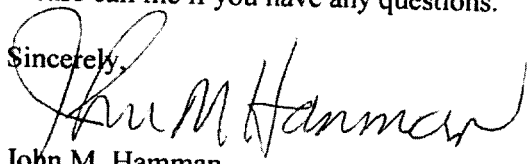
Attached for your review and signature is the requested Adoption of MCI Kentucky as the Interconnection Agreement between BellSouth Telecommunications and Universal Telecom, Inc. (UTI).

For execution, please print one full original agreement and a duplicate signature page. The full original will become your file copy of the agreement. I will print BellSouth's original from the file attached to this email. Please execute both original signature pages and return only those pages to my attention within fourteen (14) calendar days. These will be executed on behalf of BellSouth and I will return one fully executed original signature page to you for inclusion in your files. BellSouth will file the signed agreement with the Kentucky Public Service Commission (KPSC). If more than 14 days elapse, please contact me before signing and returning.

This Adoption of the MCI Kentucky agreement by UTI to become the BellSouth-UTI Interconnection Agreement is provided to UTI under protest, and BellSouth does not believe this agreement complies with applicable law that includes, but is not limited to, the FCC's Triennial Review Order and the DC Circuit Court of Appeals Order both of which have significantly changed the rules to which the underlying MCI Kentucky agreement was negotiated. As a result, the MCI Kentucky agreement contains provisions related to certain elements that BellSouth is no longer required to provide to carriers at TELRIC pricing. BellSouth reserves its rights to seek all legal and equitable remedies available to it to remedy this situation including, but not limited to, a true-up of effected rates, as permitted. Notwithstanding the foregoing, and pursuant to the KPSC's Order in Case No. 2004-00172, dated June 14, 2004, BellSouth is entering this agreement with UTI effective May 19, 2004.

Please call me if you have any questions.

Sincerely,


John M. Hamman
Manager, Interconnection Services

¹ Report and Order and Order on Remand and Further Notice of Proposed Rulemaking, Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, 18 FCC RCD 16978 (2003) ("Triennial Review Order").

² United States Telecom. Ass'n v. FCC, Nos. 00-1012, et al. (D.C. Cir Mar 2, 2004) (USTA II).

BELLSOUTH[®] / CLEC Agreement

Customer Name: Universal Telecom, Inc.

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Signature Page	7
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By and Between
BellSouth Telecommunications, Inc.
And
Universal Telecom, Inc.

AGREEMENT

This Agreement, which shall become effective May 19, 2004, (Effective Date), is entered into by and between Universal Telecom, Inc. (UTI), a Kentucky corporation on behalf of itself, and BellSouth Telecommunications, Inc., (BellSouth), a Georgia corporation, having an office at 675 W. Peachtree Street, Atlanta, Georgia, 30375, on behalf of itself and its successors and assigns.

WHEREAS, the Telecommunications Act of 1996 (the "Act") was signed into law on February 8, 1996; and

WHEREAS, section 252(i) of the Act requires BellSouth to make available any interconnection, service, or network element provided under an agreement approved by the appropriate state regulatory body to any other requesting telecommunications carrier upon the same terms and conditions as those provided in the agreement in its entirety; and

WHEREAS, UTI has requested that BellSouth make available the interconnection agreement in its entirety executed between BellSouth and MCI WorldCom Communications, Inc. dated July 29, 2002 for the state of Kentucky, and

WHEREAS, the Kentucky Commission has ordered in Docket Number 2004-00172 that this agreement be made effective as of May 19, 2004, and

NOW, THEREFORE, in consideration of the promises and mutual covenants of this Agreement, UTI and BellSouth hereby agree as follows:

1. With the exceptions noted in Items 2 – 6, UTI and BellSouth shall adopt the MCI Interconnection Agreement dated July 29, 2002 and any and all amendments to said agreement executed and approved by the appropriate state regulatory commission as of the date of the execution of this Agreement. The MCI Interconnection Agreement and all amendments are attached hereto as Exhibit 1 and incorporated herein by this reference. The adoption of this agreement with amendment(s) and associated Adoption Exhibits consist of the following:

ITEM	NO. PAGES
Adoption Papers	6
Title Page	1
Exhibit 1-MCI WorldCom Communications, Inc. Kentucky Agreement dated 7/29/2002	717
• Table of Contents	
• General Terms and Conditions	
• Attachment 1	

• Attachment 2	
• Attachment 3	
• Attachment 4	
• Attachment 5	
• Attachment 6	
• Attachment 7	
• Attachment 8	
• Attachment 9	
• Attachment 10	
• Amendment dated KY Port Amendment	3
• Amendment dated UNE Combo Reinstatement-KY	2
• Amendment dated KY Expedite Rate and Notices Change	3
• Amendment dated PLF Factor, Recip Comp and Transit Traffic Amendment-KY	5
• Amendment dated Billing Dispute Payment Amendment-KY	3
Subtotal of Exhibit 1 w/amendments	733
TOTAL	740

2. The Parties further agree to delete in Attachment 4, Section 9.4.7 through 9.4.7.9 and replace with the following:

9.4.7 ISP-bound Traffic is defined as calls to an information service provider or Internet service provider (ISP) that are dialed by using a local dialing pattern (7 or 10 Digits) by a calling party in one Local Calling Area to an ISP server or modem in the same Local Calling Area. ISP-bound Traffic is not Local Traffic subject to reciprocal compensation, but instead is information access traffic subject to the FCC's jurisdiction.

9.4.7.1 Notwithstanding the definitions of Local Traffic and ISP-bound traffic above, and pursuant to the FCC's Order on Remand and Report and Order in FCC Docket 99-68 released April 27, 2001 (ISP Order on Remand), BellSouth and Springboard agree to the rebuttable presumption that all combined circuit switched Local and ISP-bound Traffic delivered to BellSouth or Springboard that exceeds a 3:1 ratio of terminating to originating traffic on a statewide basis shall be considered ISP-bound traffic for compensation purposes. BellSouth and Springboard further agree to the rebuttable presumption that all combined circuit switched Local and ISP-bound Traffic delivered to BellSouth or Springboard that does not exceed a 3:1 ratio of terminating to originating traffic on a statewide basis shall be considered Local Traffic for compensation purposes.

9.4.7.2 Neither Party shall pay compensation to the other Party for per minute of use rate elements associated with the Call Transport and Termination of ISP-bound Traffic.

3. In the event that UTI consists of two (2) or more separate entities as set forth in the preamble to this Agreement, all such entities shall be jointly and severally liable for the obligations of UTI under this Agreement.

4. The term of this Agreement shall be from the Effective Date as set forth above and shall expire as set forth in section 3 of the MCI Interconnection Agreement. For the purposes of determining the expiration date of this Agreement pursuant to section 3 of the MCI Interconnection Agreement, the effective date shall be July 29, 2002.

5. UTI shall accept and incorporate any amendments to the MCI Interconnection Agreement executed as a result of any final judicial, regulatory, or legislative action.

6. Every notice, consent, approval, or other communications required or contemplated by this Agreement shall be in writing and shall be delivered in person or given by postage prepaid mail, address to:

BellSouth Telecommunications, Inc.

BellSouth Local Contract Manager
600 North 19th St., 8th floor
Birmingham, AL 35203

and

ICS Attorney
Suite 4300
675 W. Peachtree St.
Atlanta, GA 30375

Universal Telecom, Inc.>>

Jennifer Sibray-Manager
210 South First Street
P.O. Box 679
LaGrange, Kentucky 40031

or at such other address as the intended recipient previously shall have designated by written notice to the other Party. Where specifically required, notices shall be by certified or registered mail. Unless otherwise provided in this Agreement, notice by mail shall be effective on the date it is officially recorded as delivered by return receipt or equivalent,

and in the absence of such record of delivery, it shall be presumed to have been delivered the fifth day, or next business day after the fifth day, after it was deposited in the mails.

IN WITNESS WHEREOF, the Parties have executed this Agreement through their authorized representatives.

BellSouth Telecommunications, Inc.

Universal Telecom, Inc.

By: _____

By: _____

Name: Kristen E. Rowe _____

Name: _____

Title: Director _____

Title: _____

Date: _____

Date: _____

EXHIBIT 1

BELLSOUTH / CLEC Agreement**Customer Name: Universal Telecom, Inc.**

Universal Telecom, Inc. Adoption of MCI WorldCom-KY	2
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Birmingham, AL 35203

and

ICS Attorney
Suite 4300
675 W. Peachtree St.
Atlanta, GA 30375

Universal Telecom, Inc.>>

David Wigginton-President
210 South First Street
P.O. Box 679
LaGrange, Kentucky 40031

or at such other address as the intended recipient previously shall have designated by written notice to the other Party. Where specifically required, notices shall be by certified or registered mail. Unless otherwise provided in this Agreement, notice by mail shall be effective on the date it is officially recorded as delivered by return receipt or equivalent,

and in the absence of such record of delivery, it shall be presumed to have been delivered the fifth day, or next business day after the fifth day, after it was deposited in the mails.

IN WITNESS WHEREOF, the Parties have executed this Agreement through their authorized representatives.

BellSouth Telecommunications, Inc.

By: 

Name: Kristen E. Rowe

Title: Director

Date: 6/21/04

Universal Telecom, Inc.

By: 

Name: David W. Wigginton

Title: President

Date: June 21, 2004

EXHIBIT 1