BellSouth Telecommunications, Inc.
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General Counsel/Kentucky

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IN 2

June 8, 2004

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

2004-00204

Re: Petition of CompSouth for Emergency Declaratory Ruling

Dear Ms. O'Donnell:

On May 27, 2004, Competitive Carriers of the South, Inc. ("CompSouth"), filed what it styled as a Petition for an "Emergency" Declaratory Ruling ("the Petition"). In the Petition, CompSouth requests expedited action from this Commission due to CompSouth's alleged perception of an imminent service disruption. Although ordinarily BellSouth files a formal response to a complaint only after a Commission order directing the filing of a response, BellSouth is filing its response in advance of such an order. BellSouth believes that filing its formal response at this time may be of assistance to the Commission. As indicated in this letter and in BellSouth's formal response to CompSouth's request for emergency relief, attached hereto, no emergency relief is necessary or appropriate.

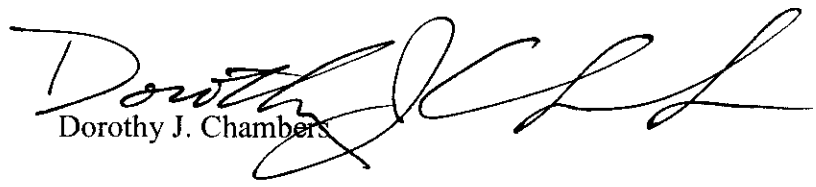
As provided in BellSouth's May 24, 2004 Carrier Letter Notification, Exhibit 4 to CompSouth's Petition, BellSouth has assured CLECs it will not "unilaterally disconnect services being provided to any CLEC under the CLEC's Interconnection Agreement." Consequently, there will be no "chaos" as CompSouth alleges. BellSouth will effectuate changes to its interconnection agreements via established legal procedures.

Further, with respect to new or future orders, BellSouth has assured CLECs it will not unilaterally breach its interconnection agreements. If the D.C. Circuit issues its mandate on June 15, 2004, BellSouth will continue to accept and process new orders for services (including switching, high capacity transport, and high capacity loops) and will bill for those services in accordance with the terms of existing interconnection agreements, until such time as those agreements have been amended, reformed, or modified consistent with the D.C. Circuit's decision pursuant to established legal processes. As it is legally entitled to do, BellSouth

reserves all rights, arguments, and remedies it has under the law with respect to the rates, terms, and conditions in the agreements.

Enclosed for filing is the original and ten (10) copies of BellSouth's Response in Opposition to the Petition of CompSouth for Declaratory Ruling. Thank you for your assistance in this matter.

Very truly yours,



Dorothy J. Chambers

Attachments

cc: Parties of Record

539935

BEFORE THE
KENTUCKY PUBLIC SERVICE COMMISSION

In Re: Request of the Competitive Carriers of the South, Inc. for an Emergency Declaratory Ruling	)))	Docket No. 2004-00204

BELLSOUTH TELECOMMUNICATIONS, INC.'S RESPONSE IN OPPOSITION TO THE PETITION OF COMPSOUTH FOR DECLARATORY RULING

BellSouth Telecommunications, Inc. ("BellSouth"), by counsel, respectfully submits this response in opposition to the Petition for Emergency Declaratory Ruling filed by the Competitive Carriers of the South, Inc. ("CompSouth") on May 27, 2004.

CompSouth's request for an "emergency" declaratory ruling should be denied as unnecessary. There is no reasonable basis for CompSouth to believe BellSouth will not honor its existing interconnection agreements or that it will take unilateral action to restrict Competitive Local Exchange Carriers' ("CLECs") access to unbundled network elements. In fact, BellSouth has provided many assurances, and herein reaffirms, that it will honor its existing interconnection agreements and will not take any actions, as a result of the vacatur, to unilaterally disconnect services to any CLEC under the CLEC's Interconnection Agreement. CompSouth's Petition requesting emergency declaratory relief, therefore, should be denied.

The essence of CompSouth's Petition appears to be an unfounded concern that BellSouth would no longer honor its existing Interconnections Agreements with the CLECs if the Federal Communications Commission's ("FCC") unbundling rules are vacated on June 16, 2004. That fear is unfounded, as demonstrated by a number of sources, including at least one of the attachments CompSouth has included with its Petition.

Specifically, Exhibit 4 to CompSouth's Petition, a Carrier Notification Letter issued by BellSouth, dated May 24, 2004, states without equivocation **"BellSouth will not unilaterally breach its interconnection agreements."** [Emphasis added.] The letter continues on to say that BellSouth "does intend to pursue modification, reformation or amendment of existing Interconnection Agreements . . . to properly reflect the Court's mandate." The letter also specifically assures CLECs that **"BellSouth will not, as a result of the vacatur, unilaterally disconnect services being provided to any CLEC under the CLEC's interconnection Agreement."** [Emphasis added.]

In addition, on June 1, 2004, BellSouth again confirmed in a Declaration under oath that no service to CLEC customers will be terminated by BellSouth because of issuance of the mandate of U.S. Court of Appeals for the District of Columbia. See, Declaration, Exhibit A, paragraph 4. This Declaration was filed with the Appellate Court and was sworn to by Keith Cowan, President-Interconnection Services, and Jerry D. Hendrix, Assistant Vice President-Interconnection Marketing. The Declaration provides information about BellSouth's action if the Appellate Court's mandate issues and specifically confirms BellSouth will not disrupt any CLEC's service as a result of the mandate's issuance.

As noted, BellSouth has made clear it has no intention of unilaterally disconnecting services as a result of issuance of the D.C. Circuit Court's mandate. Nevertheless, CompSouth creates the implication BellSouth might unilaterally disconnect CLECs and suggests this Commission already has ruled on a carrier's right to terminate a service due to a change in law. See, CompSouth Petition at 12-13.[1] BellSouth repeatedly has assured it will not unilaterally

[1]The Commission's orders in the Brandenburg Telecom and South Central Telecom arbitration cases, cited by CompSouth, see CompSouth Petition at 12-13, concerned provisions to be adopted in the interconnection agreements at issue in those cases. The present circumstance concerns how changes to existing interconnection agreements may be effectuated.

disconnect services being provided pursuant to an interconnection agreement as a result of the issuance of the Court's mandate. BellSouth also has assured CLECs it will accomplish any and all changes to those agreements pursuant to established legal procedures. Accordingly, CompSouth's petition for emergency relief should be denied.

Since CompSouth has made reference to other proceedings in North Carolina and Florida, including specific reference to a teleconference held on May 26, 2004, this Commission may wish to note that, following that teleconference, BellSouth stated, without equivocation, in a letter filed on May 28, 2004 with the North Carolina Utilities Commission, that:

> If the D.C. Circuit issues its mandate on June 15, 2004, BellSouth will continue to accept and process new orders for services (including switching, high capacity transport, and high capacity loops) and will bill for those services in accordance with the terms of existing interconnection agreements, until such time as those agreements have been amended, reformed, or modified consistent with the D.C. Circuit's decision pursuant to established legal processes. As it is legally entitled to do, BellSouth reserves all rights, arguments, and remedies it has under the law with respect to the rates, terms and conditions in the agreements.

A copy of this letter is attached as Exhibit B.

Similarly, on May 28, 2004, BellSouth filed a letter with the Florida Public Service Commission stating, with specific regard to the May 24, 2004 Carrier Notification Letter, that "BellSouth will not unilaterally disconnect services being provided to any CLEC under the CLEC's Interconnection Agreement." BellSouth also confirmed it "will effectuate changes to its interconnection agreements via established legal procedures." BellSouth concluded by saying, "With respect to new or future orders 'BellSouth will not unilaterally breach its interconnection agreements.'" A copy of this letter is attached as Exhibit C.

BellSouth has made abundantly clear that it will honor its existing Interconnection Agreements until such time as established legal processes confirm BellSouth is relieved of those

obligations. That may occur through the "change of law" provisions in the Interconnection Agreements themselves, by a generic proceeding held by the appropriate state or federal agencies, or by a proceeding filed in the appropriate court. However, as BellSouth has stated repeatedly, clearly, and without exception, it will not act unilaterally to modify or change the existing agreements. As a result, it is clear there is no "emergency" and further there is no substantive merit to CompSouth's Petition.[2]

In its May 27, 2004 Petition, CompSouth has not merely requested that BellSouth honor its existing Interconnection Agreements. It also has asked the Commission to declare that the only way that the Interconnection Agreements can be changed is through the "change of law" process contained in the individual Interconnection Agreements. CompSouth's request for such a ruling not only is premature but ill-advised. If the Commission were to adopt CompSouth's position and require individual modification of every contract to conform to the requirements of the mandate of the D.C. Circuit Court of Appeals, this Commission's work could be brought to a standstill. Currently, there are more than 300 Interconnection Agreements that have been approved by or are pending with, this Commission. The changes wrought by the D.C. Circuit will, in large measure, be applicable across the board to all approved Interconnection Agreements. Most "change of law" provisions in the interconnection agreements require the parties to negotiate changes and then pursue the contractually required dispute resolution process if agreement cannot be reached. It seems unlikely that this Commission, or any regulatory

[2] That there is no "emergency" was confirmed recently by the decision of CompTel/ASCENT, AT&T, MCI, and other CLECs to withdraw, without prejudice, their request for emergency relief filed with the Michigan Public Service Commission seeking to ensure continued access to unbundled network elements from SBC and Verizon should the D.C. Circuit's mandate take effect. *See* "CLECs Alter Petition to Ensure UNE Access," *Telecommunications Reports* (June 3, 2004). According to press reports, the CLECs said "they no longer feel the PSC needs to move on their request for emergency relief" because the CLECs "will take the ILECs at their word" that they "do not intend to take unilateral action in abrogation of the CLECs' rights under their respective interconnection agreements and tariffs." *Id.*

agency for that matter, would want to bind itself potentially to hundreds of dispute resolution proceedings, when a simple, single generic proceeding could suffice.

Similarly, entering the order requested by CompSouth could be viewed as an attempt to interfere with the jurisdiction of a court that has the personal and subject matter jurisdiction to determine whether these contracts had validity in the first instance, since they were entered into pursuant to rules of the FCC that the courts have now found to be unlawful. *See AT&T Communications of the Southern States, Inc. v. BellSouth Telecommunications, Inc.*, 229 F.3d 457, 465 (4th Cir. 2000) (noting that "many so-called 'negotiated' provisions represent nothing more than an attempt to comply with the requirements of the 1996 Act"). There is no legal basis, and CompSouth has cited none, that suggest this Commission should or could preclude a judicial challenge to these contracts, but that is precisely what the Petition asks the Commission to do.

It also is worth noting that CompSouth's Petition, to the extent it seeks to suggest that each individual Interconnection Agreement would have to be amended by invoking the Interconnection Agreement's "change of law" provisions, is inconsistent with positions previously espoused by CompSouth's members in proceedings in another state. For example, before the Georgia Public Service Commission, AT&T Communications of the Southern States, LLC ("AT&T") and various other CompSouth members filed a response to BellSouth's Motion for Reconsideration and Clarification or, in the Alternative for a Stay, in which they contended that the adoption of new rates to be incorporated into the parties' Interconnection Agreements did not require any "negotiation" under applicable change of law provisions:

> Rather, all that is required to amend these agreements is to insert a new table containing the new cost-based UNE rates, having both parties sign the amendment and filing the amendment with this Commission. That is a purely ministerial function, not something that requires extensive negotiation.

See, Docket 14361-U, In Re: Generic Proceeding to Review Cost Studies, Methodologies, Pricing Policies and Cost-Based Rates for Interconnection and Unbundling of BellSouth Telecommunications, Inc.'s Network. See, AT&T Response at 6, filed July 10, 2003, Ex. D. Indeed, CompSouth members AT&T, DIECA Communications, Inc. d/b/a Covad Communications Company, NewSouth Communications Corp., and Access Integrated Networks, Inc. went so far as to contend before the Georgia Commission that because "negotiations are not necessary to implement the Commission's UNE rate order," the change-of-law provisions in the parties' Interconnection Agreements were "inapplicable in this instance." Motion for Clarification at 4, n.3 (filed July 3, 2003). CompSouth's position on the change-of-law provisions in the parties' Interconnection Agreements should be equally applicable to the D.C. Circuit's mandate; that is, all that is required is for the parties to remove the language concerning unbundled network elements that the D.C. Circuit has held do not satisfy the impairment standard. Under the approach previously advocated by CompSouth's members, this is purely a ministerial function not requiring extensive negotiation.

Furthermore, CompSouth's position that any amendment to conform existing Interconnection Agreements to the D.C. Circuit's mandate should not be effective until such amendment has been "filed with and approved by the Commission" is inconsistent with the position espoused by CompSouth members in this proceeding before the Georgia Public Service Commission. In that case, AT&T asked the Georgia Commission to clarify that any amendment incorporating the Georgia Commission's new UNE rates should take effect on March 18, 2003, which is the date of the Commission's vote, regardless of when the parties' actually amended

their respective Interconnection Agreements. According to CompSouth's members, such clarification was necessary "[t]o prevent the discriminatory impact of some CLECs implementing the rates ordered by the Georgia Commission prior to other CLECs or BellSouth delaying implementing the rates until some unspecified time in the future . . . ." See, Docket #14361-U, AT&T's Motion for Clarification at 4, Ex. E. Consistent with CompSouth's reasoning in that case, CompSouth should agree that implementation of the D.C. Circuit's mandate be handled in the same manner advocated by CompSouth members and adopted by the Georgia Commission directing that the "rates ordered in the Commission's June 24, 2003 Order be available to CLECs on June 24, 2003, unless the interconnection agreement indicates that the parties intended otherwise." See, Docket 14361-U, August 29, 2003 Order at 3, Ex. F. The same approach should be applicable here.

In conclusion, there is no substantive basis, either in fact or in law, to grant any aspect of CompSouth's Petition. BellSouth has stated unequivocally that it has no intention of taking action to cut off services to CLECs unilaterally, or to deny new service to any CLECs, with which it has existing interconnection agreements. The Carrier Notification Letters attached to CompSouth's complaint clearly state BellSouth's position vis-à-vis carriers with which BellSouth has no Interconnection Agreement. There is no basis to conclude that BellSouth would intentionally violate its existing Interconnection Agreements in any respect. Consequently, there is no emergency as alleged by CompSouth, and certainly no basis for this Commission to grant any of the relief sought by CompSouth.

BellSouth recognizes that in the event the D.C. Circuit's mandate takes effect on June 16, 2004, issues referenced in CompSouth's petition relating to an orderly transition ultimately will require resolution. Accordingly, the Commission should consider holding these actions in

abeyance and consolidating appropriate issues in a single proceeding. Such an approach would allow this Commission to conserve its administrative resources and to resolve these issues in an efficient manner for the industry as a whole rather than on a piecemeal basis.

Respectfully submitted, this 8th day of June, 2004.

BELLSOUTH TELECOMMUNICATIONS, INC.

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Telephone No. (502) 582-8219

R. DOUGLAS LACKEY
BellSouth Center – Suite 4300
675 West Peachtree Street, N.E.
Atlanta, Georgia 30375
(404) 335-0747

CERTIFICATE OF SERVICE

This is to certify that on this 8th day of June, 2004, I served a copy of the within and foregoing, upon known party of record, via electronic mail as follows:

C. Kent Hatfield
Douglas F. Brent
Stoll, Keenon & Park, LLP
2650 AEGON Center
400 West Market Street
Louisville, KY 40202
e-mail: hatfield@skp.com
brent@skp.com

Dorothy J. Chambers

540355

Exhibit A

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

Nos. 00-1012 *et al.*

UNITED STATES TELECOM ASSOCIATION, *et al.*,
Petitioners,

v.

FEDERAL COMMUNICATIONS COMMISSION
and UNITED STATES OF AMERICA,
Respondents.

Declaration of Keith O. Cowan and Jerry D. Hendrix

1. I am Keith O. Cowan. I am employed by BellSouth as its President-Interconnection Services. In this position, I have responsibility for BellSouth's services to wholesale customers, including competitive local exchange carriers ("CLECs").

2. I am Jerry D. Hendrix. I am employed by BellSouth as Assistant Vice President-Interconnection Marketing in the Interconnection Services organization. I have been connected to the Interconnection Services organization since the passage of the Telecommunications Act of 1996 (the "Act"). During that time, I have had experience in a variety of roles related to our wholesale operations, including sales, product development, contract negotiation, pricing, and testifying before public service commissions.

3. The purpose of this Declaration is to provide information about BellSouth's actions if this Court's mandate issues. Specifically, it explains that:

(a) there will be no service disruption to CLECs as a result of the mandate's issuance;

(b) during the eight years of FCC rule uncertainty, any changes arising out of regulatory or judicial determinations have been handled successfully, and changes necessitated by this mandate will be no different;

(c) BellSouth has an attractive commercial offer for CLECs that desire commercial certainty.

4. No service to CLEC customers will be terminated by BellSouth because of issuance of the Court's mandate. As described in further detail below, after the mandate issues, BellSouth will continue to provide an equivalent service to wholesale customers that currently obtain mass market switching, high-capacity loops and transport, and dark fiber from BellSouth as unbundled network elements, assuming they wish to continue receiving such service.

5. BellSouth has explained the actions that it will take through dissemination of a Carrier Notification Letter (Attachment 1) and a press release (Attachment 2) to all CLECs in its service territory. The notification letter provides, in pertinent part: "if the rules are vacated, BellSouth will not, as a result of the vacatur, unilaterally disconnect

services being provided to any CLEC under the CLEC's Interconnection Agreement." The press release affirms that statement, as does this Declaration.

6. Since passage of the Act, there has been substantial litigation and often considerable uncertainty surrounding the rules for unbundled network elements. But BellSouth and other members of the telecommunications industry have successfully managed the changes resulting from judicial decisions and the FCC's promulgation of new UNE rules. For example, the FCC in 1999 essentially eliminated incumbents' obligation to unbundle operator services and directory assistance, which it had required incumbents to unbundle in its original UNE list, established in 1996. Nonetheless, BellSouth continued to provide operator service and directory assistance service to CLECs that desired to obtain it from BellSouth, at "just and reasonable" rates. Similarly, in the *Triennial Review Order*, the FCC eliminated incumbents' obligation to unbundle circuit switching for enterprise customers (subject to conditions that BellSouth satisfied), and CLECs that desired that service have continued to receive it from BellSouth. In every case, the industry has found an orderly legal process available to successfully manage the changes, and customer service was not disrupted. These same orderly processes are still available, and if necessary will be used by BellSouth to effect any changes to contracts or requests for relief that are occasioned by the issuance of the mandate. Provided our CLEC customers

demonstrate the good faith that has characterized BellSouth's previous responses to change, customer service will be unaffected by the issuance of the mandate.

7. BellSouth has attractive commercial offers for CLEC customers that prefer the certainty of a commercial arrangement. For customers that currently purchase the unbundled network element platform (UNE-P), BellSouth offers an equivalent, replacement service that permits existing customers to continue their current service without any price increase for the remainder of 2004, and with a gradual increase to a market-based rate over the remainder of the offer's 42 month term. For customers that desire high-capacity dedicated transport, loops, and dark fiber, BellSouth offers a transition plan from the current UNE service to other BellSouth regulated offerings or to other alternative facilities. We have executed eight commercial agreements for the UNE-P replacement service, and have entered into two separate transition agreements regarding high capacity transport and high capacity loops.

8. Two mischaracterizations of the new equivalent replacement offer also require correction. (*See Motion of CLEC Petitioners and Intervenors, Exhibit A-Declaration of AT&T, p. 27, ¶ 61, and Exhibit D-Declaration of MCI, p.8, ¶ 15).* First, neither the new equivalent nor the existing UNE-P is comparable to BellSouth's basic residential retail service. A CLEC customer purchasing today's UNE-P or tomorrow's

equivalent service receives all the features that are part of BellSouth's highest premium residential retail service, including all switch features for caller ID, call waiting, and similar services, and in addition receives termination of calls to all points within the Local Access and Transport Area (LATA) in which the end-user customer's service is located. None of these premium features is part of BellSouth's basic residential retail service, which renders misleading the attempted comparison and accompanying anti-competitive allegations of AT&T and MCI. (*see id.*). The BellSouth premium residential retail service that compares most closely with UNE-P and the new equivalent service is uniformly priced above the rate for each wholesale service. Even that comparison shortchanges the CLECs' revenue opportunity, however, because subscription to UNE-P or the new equivalent service permits CLECs to collect wholesale revenue from long distance carriers terminating calls over the service. Finally, of course, every retail residential telecommunications service of BellSouth can be purchased by wholesale customers for less than the retail price because of the wholesale discount required by the Act and prescribed by state public service commissions.

9. In addition, the new offer of service equivalent to the UNE-P in Georgia is priced based on the most recent Georgia Public Service Commission rates that have not been invalidated by the courts. The reference in at least one filing (*see AT&T Declaration, pp.27-28, ¶¶62-63*) to a "Georgia exception" (AT&T's pejorative phrase for BellSouth's

proposed use of the most recent Georgia PSC-adopted rates not determined to be unlawful) ignores a federal district court's recent holding that the Georgia PSC acted unlawfully when it set new rates in 2003. The court's determination that the Georgia PSC acted unlawfully is final, although litigation continues over the specific remedy imposed by the district court. Thus, Georgia is not an exception; it fits the proposal's discipline of using the latest rates not found unlawful.

This concludes the Declaration.

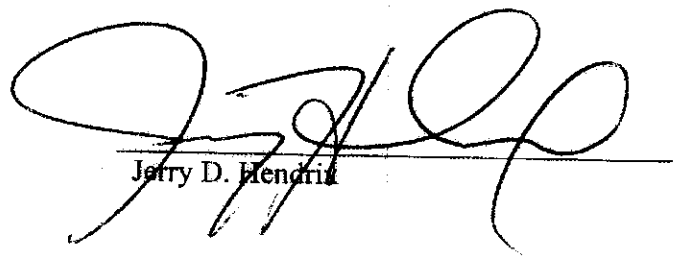
I, Keith O. Cowan, declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct to the best of my knowledge.

Executed May 28, 2004

Keith O. Cowan

I, Jerry D. Hendrix, declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct to the best of my knowledge.

Executed May 28, 2004



Jerry D. Hendrix

ATTACHMENT 1

BELLSOUTH

BellSouth Interconnection Services
675 West Peachtree Street
Atlanta, Georgia 30375

Carrier Notification
SN91084106

Date: May 24, 2004

To: Facility-Based Competitive Local Exchange Carriers (CLEC)

Subject: Facility-Based CLECs – (Business/Operations Process) - Provision of Service to CLECs Post-Vacatur

The District of Columbia Circuit Court of Appeals' March 2, 2004, Opinion vacating certain Federal Communications Commission (FCC) Unbundled Network Element (UNE) rules is scheduled to become effective on June 16, 2004. This letter is to affirm that BellSouth will not unilaterally breach its interconnection agreements. Upon vacatur of the rules, BellSouth does intend to pursue modification, reformation or amendment of existing Interconnection Agreements (with the exception of new commercial and transition agreements) to properly reflect the Court's mandate. Rumors have been circulating that, upon vacatur, services that BellSouth now provides to CLECs under their Interconnection Agreements will be disconnected. Contrary to such rumors, if the rules are vacated, BellSouth will not, as a result of the vacatur, unilaterally disconnect services being provided to any CLEC under the CLEC's Interconnection Agreement.

If you have any questions, please contact your BellSouth contract manager.

Sincerely,

ORIGINAL SIGNED BY KRISTEN ROWE FOR JERRY HENDRIX

Jerry Hendrix – Assistant Vice President
BellSouth Interconnection Services

ATTACHMENT 2

BellSouth Confirms To Wholesale Customers That Services Will Continue Even As Rules Change

For Immediate Release:

May 26, 2004

ATLANTA -- BellSouth (NYSE: BLS) today confirmed that there would be no disruption of service if current rules on wholesale leasing of BellSouth unbundled network elements (UNEs) are vacated next month.

Under a District of Columbia Circuit Court of Appeals order due to go into effect on June 16, BellSouth will no longer be required to lease certain portions of its networks to its wholesale customers.

In a letter to its customers on May 24, BellSouth pledged to take no unilateral action to disconnect service to its wholesale customers as a result of the court's vacatur. (http://interconnection.bellsouth.com/notifications/carrier/carrier_pdf/91084106.pdf)

To ensure a smooth and fair transition to the new market environment, BellSouth will use established legal and regulatory processes to implement the D.C. Circuit Court's decision.

"We are committed to going through the appropriate process," said Keith Cowan, President of BellSouth Interconnection Services. "This is not a new process. The process has been successfully utilized multiple times since the passage of the Act when the FCC previously removed network elements from the list."

"In those cases, no wholesale customers lost service as a result of the elements' removal from interconnection agreements," Cowan explained. "For example, switching for enterprise customers in certain large markets was previously removed from the mandated list. Over a hundred of BellSouth's wholesale customers entered into commercial agreements for market priced switching for enterprise end user customers. The transition from the regulated environment to the competitive environment was smooth with complete service continuity."

"In addition, BellSouth will continue to negotiate commercial agreements with all interested wholesale customers," said Cowan. "We have posted an attractive proposal on our website that offers Competitive Local Exchange Carriers (CLECs) a DSO wholesale local voice platform service to replace the current unbundled switching arrangement with no price increase through the remainder of 2004."

"We have already signed seven commercial agreements and believe we can achieve additional commercial agreements, especially if we are in a position where neither side has a regulatory advantage in the negotiations," he added. "These negotiations must be done in good faith. We pledge to continue to do that."

A transition plan has also been proposed to transfer wholesale customers from the current arrangement with UNE high-capacity dedicated transport, loops, and dark fiber, currently purchased under the competitor's government-mandated interconnection agreement, to BellSouth tariffed and regulated offerings or to other alternative facilities.

BellSouth's approach will allow all CLECs acting in good faith to continue uninterrupted service to their customers during the transition to a changed regulatory environment.

"BellSouth is committed to continue providing quality wholesale service and urges its wholesale customers to consider the proposals we have made," said Cowan.

# # #

For more information contact:

Al Schweitzer, BellSouth
al.schweitzer@bellsouth.com
(404) 829-8741

About BellSouth Corporation

BellSouth Corporation is a Fortune 100 communications company headquartered in Atlanta, Georgia, and a parent company of Cingular Wireless, the nation's second largest wireless voice and data provider.

Backed by award winning customer service, BellSouth offers the most comprehensive and innovative package of voice and data services available in the market. Through BellSouth Answers℠, residential and small business customers can bundle their local and long distance service with dial up and high speed DSL Internet access, satellite television and Cingular® Wireless service. For businesses, BellSouth provides secure, reliable local and long distance voice and data networking solutions. BellSouth also offers online and directory advertising through BellSouth® RealPages.com℠ and The Real Yellow Pages®.

More information about BellSouth can be found at http://www.bellsouth.com.

NOTE: For more information about BellSouth, visit the BellSouth Web page at http://www.bellsouth.com.

A list of BellSouth Media Relations Contacts **is available in the** Corporate Information Center.

Exhibit B

Edward L. Rankin, III
General Counsel - North Carolina

BellSouth Telecommunications, Inc.
1521 BellSouth Plaza
P. O. Box 30188
Charlotte, North Carolina 28230
Telephone: 704-417-8833
Facsimile: 704-417-9389

May 28, 2004

Ms. Geneva S. Thigpen
Chief Clerk
North Carolina Utilities Commission
4325 Mail Service Center
Raleigh, NC 27699-4325

Re: Docket No. P-100, Sub 133q and Sub 133s

Dear Ms. Thigpen:

On May 26, 2004, this Commission held a teleconference to discuss the above-listed dockets. During this conference, BellSouth clarified its position concerning the D.C. Circuit Court of Appeals decision vacating portions of the *Triennial Review Order*. BellSouth also posted a Carrier Notification Letter on May 24, 2004 to set forth its position.

BellSouth intended to alleviate apparent uncertainty on the part of some carriers. Apparently, some carriers purport to remain confused. As provided in BellSouth's May 24, 2004 Carrier Letter Notification, BellSouth will not "unilaterally disconnect services being provided to any CLEC under the CLEC's Interconnection Agreement." Consequently, there will be no chaos as the CLECs allege. BellSouth will effectuate changes to its interconnection agreements via established legal procedures.

With respect to new or future orders, "BellSouth will not unilaterally breach its interconnection agreements." If the D.C. Circuit issues its mandate on June 15, 2004, BellSouth will continue to accept and process new orders for services (including switching, high capacity transport, and high capacity loops) and will bill for those services in accordance with the terms of existing interconnection agreements, until such time as those agreements have been amended, reformed, or modified consistent with the D.C. Circuit's decision pursuant to established legal processes. As it is legally entitled to do, BellSouth reserves all rights, arguments, and remedies it has under the law with respect to the rates, terms, and conditions in the agreements.

I trust this additional information adequately addresses any remaining questions that CLECs have raised in connection with these dockets. Please stamp the extra copy of

this letter "Filed" and return it to me in the usual manner. Thank you for your assistance in this matter.

Sincerely,

Edward L. Rankin, III /km

ELR/db
cc: Parties of record

539478

Exhibit C

Legal Department

NANCY B. WHITE
General Counsel-Florida

BellSouth Telecommunications, Inc.
150 South Monroe Street
Suite 400
Tallahassee, Florida 32301
(305) 347-5558

May 28, 2004

Mrs. Blanca S. Bayó
Director, Division of the Commission Clerk and
Administrative Services
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

Re: Docket No. 040489-TP; *Joint CLECs' Emergency Complaint Seeking an Order Requiring BellSouth and Verizon to Continue to Honor Existing Interconnection Agreements*

Dear Ms. Bayo:

On May 21, 2004, XO Florida, Inc. and Allegiance Telecom of Florida, Inc. ("Joint CLECs") filed an Emergency Complaint, which purports to require expedited action from this Commission due to the Joint CLECs' perception of an imminent service disruption. BellSouth will file its formal response to this Complaint on or before June 10, 2004; in the meantime this letter responds to the Joint CLECs' request for expedited relief. As set forth more fully herein, such emergency relief is not necessary.

During this Commission's May 11, 2004 teleconference in Docket Nos. 030851-TP and 030852-TP, BellSouth clarified its position concerning the D.C. Circuit Court of Appeals decision vacating portions of the *Triennial Review Order*. BellSouth also posted a Carrier Notification Letter on May 24, 2004 to set forth its position, which is attached hereto.

BellSouth intended to alleviate apparent uncertainty on the part of some carriers. Apparently, some carriers purport to remain confused. As provided in BellSouth's May 24, 2004 Carrier Letter Notification, BellSouth will not "unilaterally disconnect services being provided to any CLEC under the CLEC's Interconnection Agreement." Consequently, there will be no chaos as the Joint CLECs allege. BellSouth will effectuate changes to its interconnection agreements via established legal procedures.

With respect to new or future orders, "BellSouth will not unilaterally breach its interconnection agreements." If the D.C. Circuit issues its mandate on June 15, 2004, BellSouth will continue to accept and process new orders for services (including switching, high capacity transport, and high capacity loops) and will bill for those services in accordance with the terms of existing interconnection agreements, until such time as those agreements have been amended, reformed, or modified consistent with the D.C. Circuit's decision pursuant to established legal processes. As it is legally entitled to do, BellSouth reserves all rights, arguments, and remedies it has under the law with respect to the rates, terms, and conditions in the agreements.

I trust this information adequately addresses the Joint CLECs' concerns relating to service disruption and demonstrates that expedited action by this Commission is unnecessary. If I can be of further assistance, please let me know.

Sincerely,

Nancy B. White/V.F.

Nancy B. White

cc: Parties of Record
Beth Keating

539595

Exhibit D

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July 10, 2003

BY HAND DELIVERY

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Georgia Public Service Commission
244 Washington Street
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Re: Generic Proceeding to Review Cost Studies, Methodologies, Pricing Policies and Cost Based Rates for Interconnection and Unbundling of BellSouth Telecommunications, Inc.'s Network; Docket No. 14361-U

Dear Mr. McAlister:

Enclosed please find an original and fifteen (17) copies of "**AT&T Communications of the Southern States, LLC ("AT&T"), Access Integrated Networks, Allegiance Telecom, AccuTel of Texas, L.P. dba 1-800-4-A-PHONE and WorldCom, Inc.'s Response to BellSouth's Motion for Reconsideration/ Clarification and Stay**".

I have also enclosed a diskette containing the document. After filing the originals, please return two additional copies stamped "filed".

Thank you for your assistance in this matter.

Very truly yours,

Suzanne W. Ockleberry

Enclosures
cc: Parties of Record

Recycled Paper

BEFORE THE

GEORGIA PUBLIC SERVICE COMMISSION

In re: Generic Proceeding to Review Cost Studies Methodologies, Pricing Policies and Cost Based Rates for Interconnection and Unbundling of BellSouth Telecommunications, Inc.'s Network	:	Docket No. 14361-U

AT&T COMMUNICATIONS OF THE SOUTHERN STATES, LLC, ACCESS INTTEGRATED NETWORKS, ALLEGIANCE TELECOM, ACCUTEL OF TEXAS DBA 1-800-4-A-PHONE AND WORLDCOM, INC.'s RESPONSE TO BELLSOUTH'S MOTION FOR RECONSIDERATION/CLARIFICATION/STAY

COMES NOW AT&T Communications of the Southern States, LLC ("AT&T"), Access Integrated Networks, Allegiance Telecom, AccuTel of Texas, L.P. dba 1-800-4-A-PHONE and WorldCom, Inc. and files this Response to BellSouth's Motion for Reconsideration/Clarification and Stay and requests that this Commission deny BellSouth's Motion.

BellSouth has previously addressed the Commission regarding the issues raised in the Motion on at least three (3) separate occasions prior to the issuance of the written order in this proceeding. Because the Commission has repeatedly considered and rejected BellSouth's arguments, there is no basis upon which to grant BellSouth's request for reconsideration or to grant a stay of the order pending appeal. The Commission must also reject BellSouth's attempt to bootstrap its arguments by attempting to introduce additional evidence into the record through the Affidavit of Daonne Caldwell, submitted in support of BellSouth's Motion. Commission Rule 515-12-1-.08 bars the introduction of additional evidence unless, and until, the Commission determines that the record in this docket should be reopened. Therefore, the Commission should not consider and should strike Ms. Caldwell's affidavit from the record. For the foregoing

reasons, as more fully discussed herein, this Commission should deny BellSouth's Motion in its entirety.

DISCUSSION

A. BellSouth Provides No Basis to Reconsider the Commission's Decision in this Docket

After the Staff's Recommendation in this docket was presented on February 13, 2003, BellSouth argued against its adoption at three (3) separate Commission Telecommunications Committee meetings. At the March 13, 2003 meeting, the Commission set aside two (2) hours solely to consider comments and arguments any party had regarding the Staff's recommendation. During that particular meeting, BellSouth addressed the merits of the recommendation, distributed handouts to illustrate points made during its argument and presented rebuttal argument to the points raised by other parties. BellSouth's Motion raises the same issues that it previously aired at the three (3) separate Telecommunications Committee meetings; namely, cost of capital, depreciation, growth adjustment, investment allocation, and the treatment of vertical features. The Commission heard those arguments and issued its decision. There is nothing new for this Commission to reconsider.

BellSouth's disagreement with the Commission's decision cannot overcome the substantial record upon which the order is based. As acknowledged by BellSouth's counsel, "thousands of pages of discovery" were propounded to and answered by BellSouth. In addition, the Commission conducted a workshop, the parties filed extensive testimony, hearings were held, and briefs were filed, all prior to the Commission's adoption of the Staff's Recommendation. BellSouth prefiled direct and rebuttal testimony on the appropriate cost of capital and depreciation lives. AT&T/WorldCom's witnesses contradicted BellSouth's testimony on these issues by establishing that the current cost of capital for BellSouth should be 9.18 and that the Federal Communication Commission ("FCC") depreciation lives were appropriate for

use in this proceeding. BellSouth also prefiled testimony on why growth should not be considered when setting UNE rates. AT&T/WorldCom filed testimony disputing this point and provided evidence upon which this Commission relied when it decided to reflect growth in determining the rates and how it could do so to ensure that BellSouth does not over recover its costs during the time that the UNE rates in this docket will be in effect. BellSouth also prefiled testimony on how shared investments should be allocated and its views on the recovery of the cost for vertical features. AT&T/WorldCom's filed testimony refuted these arguments. The parties in this proceeding thoroughly briefed all of these issues with citations to the record supporting the various arguments. Furthermore, the Commission Staff analyzed the evidence for almost one (1) year ***before*** issuing its recommendation. The Commission considered all of the evidence and arguments and issued its decision. Clearly, the issues BellSouth raises yet again in its Motion have received careful consideration by this Commission and BellSouth has offered no basis for reconsidering the sound decision that the Commission reached based on the record in this docket. In short, BellSouth has presented nothing new that would warrant reconsideration.

B. The Affidavit of Daonne Caldwell Should be Stricken From the Record

The Commission should strike the Affidavit of Daonne Caldwell, submitted with BellSouth's Motion, for several reasons. First, BellSouth does not have the unilateral right to supplement the existing record through filing of an affidavit in support of its motion for reconsideration. Commission Rule 515-2-1-.08 contemplates that the Commission will review additional evidence ***if and only if*** it first determines that good cause for reconsideration has been alleged in the motion. BellSouth has provided no such basis in its motion; instead it has simply rehashed issues already considered and decided. Unless and until the Commission determines that BellSouth has presented a sufficient basis upon which reconsideration of the Order in this docket should be granted, it cannot consider additional evidence and the Affidavit of Daonne

Caldwell with all of the additional evidence offered therein should be disregarded and stricken. BellSouth is barred by this Rule and cannot, as it has attempted to do, rely upon the Affidavit as a ***basis*** to grant the motion. Rather, additional evidence is allowed only if the Commission decides that BellSouth's motion, standing on its own, presents "errors" that deserve reconsideration. The motion, as AT&T has previously indicated, fails to pass this first hurdle. If the Commission decides that BellSouth's motion is meritorious and justifies reconsideration of the decision (which it should not given the content of BellSouth's motion), the Affidavit of Daonne Caldwell alone cannot be the only evidence added; the record must be reopened by providing appropriate notice to all parties along with the right to introduce additional evidence of their own. *See* Commission Rule 515-2-1-.08. BellSouth does not have the unilateral right to supplement the existing record through filing of an affidavit in support of its motion for reconsideration.

Furthermore, the Affidavit itself corroborates the feeble attempt by BellSouth to unilaterally supplement the record. Paragraph 3 of Ms. Caldwell's Affidavit indicates that the purpose "...is to provide ***additional information*** that the Commission should consider in evaluating certain issues raised in BellSouth's Motion..." This is a bald attempt to supplement the record with additional information that BellSouth has already had ample opportunity to present to the Commission on how to arrive at the appropriate UNE rates for Georgia. Ms. Caldwell, an expert witness offered by BellSouth, filed direct, supplemental direct and surrebuttal testimony. She also was subject to extensive cross-examination during the hearing in May, 2002. The issues discussed in the Affidavit are not new issues for BellSouth. Growth, xDSL related elements and collocation power have been raised by parties in other cost proceedings throughout the region. Even if BellSouth did not anticipate the issues that competitive local exchange carriers ("CLECs") would raise in cost proceedings in other states and cover those issues in its direct testimony, BellSouth had ample opportunity in surrebuttal

testimony to provide evidence ***in the record*** on how the FCC rules should be interpreted or why CLECs should be charged for loop conditioning. The record in this proceeding is closed. The motion for reconsideration must be evaluated based upon the existing record, not new *and* additional evidence that BellSouth alone offers. Therefore, this Commission should reject the Affidavit of Daonne Caldwell and strike it from the record in this docket. This is just one more attempt by BellSouth to forestall the effectiveness of cost-based UNE rates in Georgia.

C. BellSouth's Request for a Stay Should be Denied.

The Order of this Commission clearly indicated: "... a motion for reconsideration, rehearing, or oral argument or any other motion ***shall not stay the effective date of this Order,*** unless otherwise ordered by the Commission." (Order, p. 69, emphasis added.) Clearly, the Commission contemplated that motion for reconsideration or rehearing could be filed. However, the Commission's language clearly indicates that such a motion would not stay the effectiveness of the Order absent some compelling circumstance. BellSouth has not demonstrated such a compelling circumstance. There is no reason for this Commission to grant a stay and allow BellSouth to further delay implementing these cost-based rates for UNEs set forth in the order.

BellSouth provides no basis that would suggest that it will prevail on the merits of any appeal necessitating the Commission granting a stay of the Order in this docket. The standard for appellate review is whether the Commission decision is procedurally and substantially in compliance with the Telecommunications Act of 1996. This is a question of law that is reviewed de novo. If the decision is in compliance with the Telecommunications Act and implementing regulations, the application by the Commission of the law (Telecommunications Act of 1996 and FCC Rules and Regulations implementing the Act) to the facts (testimony filed by the parties) will not be reversed unless the Commission's decision is arbitrary or capricious. AT&T Communications of the Southern States, Inc. v. BellSouth Telecommunications, Inc., 7

F.Supp.2d 661,668 (E.D.N.C., 1998); MCI Telecommunications Corp. v. BellSouth Telecommunications, Inc. 40 F. Supp.2d 416, 422 (E.D.Ky. 1999); AT&T Communications of the Southern States, LLC v. BellSouth Telecommunications, Inc., 122 F.Supp.2d 1305 (N.D. Fla. 2000). The reviewing court is not allowed to substitute its judgment for that of this Commission as to the weight of evidence on questions of fact and substantial deference is given to the Commission's application of the law to the facts. Bell Atlantic-Delaware, Inc v. McMahon, 80. F.Supp.2d 218 (D. Del. 2000). Based on the foregoing, there is a substantial likelihood that BellSouth will ***not*** prevail on appeal. Thus, there is no valid reason to stay implementation of the Commission's Order. The only party who benefits from a stay is BellSouth. CLECs, who have waited almost two (2) years since the inception of this docket to obtain lower cost-based UNE rates, have been forced to continue to pay "significant sums of money" to BellSouth because the current rates are outdated, allow BellSouth to over recover its costs and prevent consumers from receiving the benefits of additional and expanded services that are possible and come with reduced UNE rates.

BellSouth can seek judicial review of the Commission Order without the stay. Although BellSouth contends that absent a stay numerous interconnection agreements would have to be amended to incorporate the new UNE rates, BellSouth has, to date, failed to incorporate the new rates into ***any*** interconnection agreement despite a final order from this Commission. Contrary to BellSouth's argument, incorporating the rates into the interconnection agreements should not be a major undertaking requiring "negotiation." Rather, all that is required to amend those agreements is to insert a new table containing the new cost-based UNE rates, having both parties sign the amendment and filing the amendment with this Commission. That is a purely ministerial function, not something that requires extensive negotiation. In fact, a standard form could be utilized to accomplish this task. By failing to promptly comply with the order and preventing CLECs from enjoying the benefits of the new cost-based UNE rates, BellSouth has

unilaterally accomplished implementation of a stay of the Commission order. BellSouth has done so without any order from this Commission authorizing such a delay. BellSouth's failure to comply with the order in this docket should not be condoned by this Commission. Instead of issuing a stay, this Commission should require BellSouth to expeditiously incorporate the rates into the interconnection agreements, effective on the date determined by this Commission[1], so that competing firms can take advantage of the benefits they produce and Georgia consumers can realize the greater choices of services and features that they will enable.

CONCLUSION

BellSouth's Motion for Reconsideration/Clarification/Stay is nothing more than a rehashing of the same BellSouth arguments that have been previously considered and rejected by this Commission. BellSouth's attempt to bootstrap its motion by attempting unilaterally to supplement the record with an unauthorized affidavit should be rejected by this Commission and the affidavit should be stricken from the record. Finally, because of the likelihood that BellSouth will not prevail on appeal and because BellSouth has unilaterally blocked attempts by CLECs to enjoy the benefits of the new cost-based rates by refusing to incorporate them into their interconnection agreements, BellSouth's request for a stay should not only be summarily denied, but the Commission should direct that BellSouth update the interconnection agreements with these new cost-based rates as of the effective date of the Order.

This day of July, 2003.

Suzanne W. Ockleberry, Esquire
Senior Regional Attorney
AT&T Communications of the Southern States, LLC

[1] AT&T , Covad, New South and filed a Motion for Clarification on July 3, 2003 requesting that this Commission clarify that the effective date of the Order is March, 18, 2003

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CERTIFICATE OF SERVICE

This certifies that I have this day served a true and correct copy of the within and foregoing **AT&T COMMUNICATIONS OF THE SOUTHERN STATES, LLC, ACCESS INTTEGRATED NETWORKS, ALLEGIANCE TELECOM, AND ACCUTEL OF TEXAS DBA 1-800-4-A-PHONE AND WORLDCOM, INC's RESPONSE TO BELLSOUTH'S MOTION FOR RECONSIDERATION/CLARIFICATION/STAY** was served upon all counsel of record by depositing same in the United States Mail, with adequate first-class postage affixed thereto, addressed as follows:

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Office of the Attorney General
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This 10th day of July, 2003.

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Exhibit E

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July 3, 2003

BY HAND DELIVERY

Mr. Reece McAlister
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Georgia Public Service Commission
244 Washington Street
Atlanta, GA 30334

Re: Generic Proceeding to Review Cost Studies, Methodologies, Pricing Policies and Cost Based Rates for Interconnection and Unbundling of BellSouth Telecommunications, Inc.'s Network; Docket No. 14361-U

Dear Mr. McAlister:

Enclosed please find an original and fifteen (15) copies of "**AT&T Communications of the Southern States, LLC ("AT&T"), DIECA Communications, Inc. d/b/a Covad Communications Company, NewSouth communications Corp, ACCESS Integrated Networks, Inc. and Allegiance Telecom of Georgia, Inc.'s Motion for Clarification**".

I have also enclosed a diskette containing the document. After filing the originals, please return two additional copies stamped "filed".

Thank you for your assistance in this matter.

Very truly yours,

Suzanne W. Ockleberry

Enclosures
cc: Parties of Record

Recycled Paper

BEFORE THE

GEORGIA PUBLIC SERVICE COMMISSION

In re: Generic Proceeding to Review Cost Studies Methodologies, Pricing Policies and Cost Based Rates for Interconnection and Unbundling of BellSouth Telecommunications, Inc.'s Network	:	Docket No. 14361-U

AT&T COMMUNICATIONS OF THE SOUTHERN STATES, LLC, DIECA COMMUNICATIONS, INC. D/B/A COVAD COMMUNICATIONS COMPANY, NEWSOUTH COMMUNICATIONS CORP, ACCESS INTERGRATED NETWORKS, INC. AND ALLEGIANCE TELECOM OF GEORGIA, INC.

MOTION FOR CLARIFICATION

COMES NOW AT&T Communications of the Southern States, LLC ("AT&T"), DIECA Communications, Inc. d/b/a Covad Communications Company, NewSouth communications Corp, ACCESS Integrated Networks, Inc., Allegiance Telecom of Georgia, Inc. ("Petitioners") pursuant to Commission Rule 515-2-1-.08 and files this Motion for Clarification regarding the effective date for the rates the Commission established in the above referenced proceeding.

SUMMARY

Almost two (2) years ago the Commission initiated this proceeding. See *First Procedural and Scheduling Order* (August 27, 2001). The Commission held hearings in May, 2002 and the Staff Recommendation was presented to the Commission on February 13, 2003. This Commission approved the Staff Recommendation on March 18, 2003. However, because the complexity of this issue and the time needed by the Commission Staff to prepare the UNE order, the written order was not released until three months after the Commission's March 18, 2003 decision. Therefore, Petitioners seek clarification that the effective date of the approved

order is March 18, 2003. Both the plain language of the Order and the policies underlying the UNE order support this conclusion.[1]

ARGUMENT

1. The UNE Rates Should be effective March 18, 2003

The plain language of the order indicates that March 18, 2003 is the appropriate effective date. The Commission's order indicates that approval of the new unbundled network element ("UNE") rates for BellSouth was "*..by action* of the Commission in Administrative Session on *the 18th day of March, 2003.*" (See Order, p. 69). In addition, one of the ordering paragraphs provides as follows:

> "ORDERED FURTHER, the cost based rates determined by the Commission in this Order (Attachment A) **are established as the rates** for BellSouth's unbundled network elements. BellSouth shall submit such compliance filings as are necessary to reflect and implement the rates and policies established by this Order."

Order, p. 69.

There is no indication in the Order that rates are effective on any date **other than** March 18, 2003, the date the Commission voted to adopt the Staff's recommendation. Although the order allows BellSouth 30 days from the date of the order to file a revised Statement of Generally Available Terms and Conditions (SGAT) to reflect and implement the order, presumably, the thirty (30) days period allows BellSouth time to update the SGAT and make the necessary filings, not to delay implementation of the Order until the filing is made.

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[1] Although Commission Rule 515-2-1-.03 indicates that orders are effective from the date the actions are reduced to writing and signed by the Chair and Secretary, this rule must be read in conjunction with Commission Rule 515-2-1-.07. That rule requires final decisions to be rendered within thirty (30) days after the close of the record unless extended by order of the Commission. Clearly, Rule 515-2-1-.03 contemplates that a decision is reduced to writing and signed by the Chair and Secretary of the Commission within thirty (30) days of the proceeding. However, because the Commission did not reduce the order to writing within thirty (30) days of the close of the proceeding *or* issue an order extending the time period for a final decision, Commission Rule 515-2-1-.03 should be inapplicable to this proceeding.

The parties in this proceeding have waited almost two (2) years since the inception of this docket to obtain new UNE rates. Once the proceeding was concluded and the Staff recommendation was issued on February 13, 2003, the full Commission vote was delayed to afford BellSouth time to argue against adoption of the Staff's recommendation. It was only after BellSouth had three (3) separate opportunities to address the Commission that the matter was placed on the March 18, 2003 Commission agenda for a vote.[2] This additional month delay, in addition to the unavoidable delay in memorializing the Commission's March 18, 2003 Order, has benefited only one party to this proceeding– BellSouth. It would be nonsensical to issue an order and then have it delayed months upon end prior to it being effective. Granted, some of the delay was a result of the Staff taking the necessary time to reduce the Commission vote into writing, however, Competitive Local Exchange Carriers (CLECs) have altered and expanded their offerings on the basis of the Commission's March 18, 2003 wholehearted approval of the Staff's February 13, 2003 recommendation. Clearly, this Commission intended for the new UNE rates to spur competition in various areas of the State as well as incent competitors to provide innovative services to Georgia consumers. Delaying implementation of the rates until some future date subverts this goal and ultimately deprives consumers of the pro-competitive benefits that lower UNE prices can bring to the marketplace. Therefore, this Commission should clarify that the rates Competitive Local Exchange Carriers (CLECs) pay to BellSouth for UNEs should be based upon the order in this docket, effective March 18, 2003.

In addition, this Commission should also clarify that the new UNE rates are effective March 18, 2003 for all CLECs to ensure that all CLECs simultaneously enjoy the benefits of these new lower UNE rates. Because of the varying language in interconnection agreements regarding the effective date of regulatory orders, BellSouth may delay implementing the Commission's order until either the revised SGAT is filed or the change-of-law negotiation time

[2] The additional time granted to BellSouth only resulted in delaying approval. The Commission ultimately voted 5-

period to amend the interconnections agreements has lapsed.[3] Regardless of the language in the interconnection agreements, this Commission has the authority to specify the effective date of its orders. O.C.G.A. §50-13-17(b) provides:

> A final decision or order adverse to a party, other than the agency, in a contested case shall be in writing or stated in the record. A final decision shall include findings of fact and conclusions of law, separately stated and the effective date of the decision or order.

To prevent the discriminatory impact of some CLECs implementing the Commission ordered rates prior to other CLECs or BellSouth delaying implementing the rates until some unspecified time in the future, the order should be clarified to indicate that the effective date is March 18, 2003.

2. **UNEs with No Nonrecurring Charges Should Reflect a Rate of $0.00 in Attachment A**

For certain elements such as J.4.1 (Line Sharing Splitter — per Splitter System 96-Line Capacity in the Central Office), the Commission has a nonrecurring rate of $0.00 in Attachment A. For others, such as Element H.1.6 (Physical Collocation — Floor Space per Sq. Ft.), the Commission has left the nonrecurring rate blank. To avoid any possible confusion, the Commission should clarify Attachment A by revising it to show a nonrecurring rate of $0.00 for all elements where the nonrecurring rate is blank.

CONCLUSION

To ensure that the UNE rates adopted by this Commission are available to all CLECs in a timely manner, this Commission should clarify that the UNE order in this proceeding is effective as of March 18, 2003, the date the Commission unanimously approved the Staff recommendation

---

0 to accept the Staff's recommendation as presented.

[3] Several CLECs have interconnection agreements with BellSouth that provide for notice and renegotiation within 90 days of any regulatory action that materially affects the terms of the agreement. Petitioners' contend that negotiations are not necessary to implement the Commission's UNE rate order and that this provision is inapplicable in this instance.

in its entirety. In addition, the Commission should clarify Attachment A so that all blank non-recurring rates reflect $0.00.

This 3rd day of July, 2003.

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CERTIFICATE OF SERVICE

This certifies that I have this day served a true and correct copy of the within and foregoing AT&T COMMUNICATIONS OF THE SOUTHERN STATES, LLC (Et al) MOTION FOR CLARIFICATION was served upon all counsel of record by depositing same in the United States Mail, with adequate first-class postage affixed thereto, addressed as follows:

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This 3rd day of July, 2003.

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Docket No. 14361-U

In Re: **Review of Cost Studies, Methodologies, Pricing Policies, and Cost Based Rates for Interconnection, and Unbundling of BellSouth Telecommunications, Inc.'s Services**

ORDER ON RECONSIDERATION

I. INTRODUCTION

On June 24, 2003, the Georgia Public Service Commission ("Commission") issued its order in the above-styled docket. On July 3, 2003, a group of competitive local exchange companies ("CLECs") consisting of AT&T Communications of the Southern States, LLC, DIECA Communications, Inc., NewSouth Communications Corp. ("NewSouth"), ACCESS Integrated Networks, Inc. and Allegiance Telecom of Georgia (collectively "Joint CLECs") filed with the Commission a Motion for Clarification. On July 7, 2003, BellSouth Telecommunications, Inc. ("BellSouth") filed a Motion for Reconsideration and NewSouth filed a Petition for Clarification and Reconsideration.

The issues raised in the various motions concerned not only a number of the cost issues decided in the June 24, 2003 order, but also the date that the order should take effect. In this Order on Reconsideration, the Commission addresses only the latter category of these issues.

II. DISCUSSION

A. BellSouth Motion for Stay

BellSouth requested that the Commission stay the effective date of its order. The basis for this request is that, absent a stay, BellSouth would be obligated to amend several hundred interconnection agreements to conform to the Commission's June 24, 2003 Order. (BellSouth Motion, p. 20). BellSouth also argues that it would be irreparably harmed if the Commission did not stay its order.

The Staff recommended that the Commission deny BellSouth's Motion for a Stay. The Staff concluded that BellSouth did not adequately distinguish this proceeding from other orders of the Commission that are not stayed. Motions for reconsideration and clarification are not unusual for orders issued by the Commission that have a substantial impact on a large number of

parties. As to the necessary amendments to the numerous interconnection agreements, the burden of incorporating amendments that may change again pending the Commission's Order on reconsideration must be weighed against the interest in effectuating a Commission order in a reasonable time. The Staff recommended that the Commission find in this instance that the latter interest should be afforded greater weight. The Commission agrees with Staff's recommendation.

Without discounting the work involved in amending the interconnection agreements, the number of agreements that must be amended in response to the Commission Order demonstrates that the Order impacts many parties. As is reflected in the Joint CLEC Motion as well as the responses to BellSouth's Motion for a Stay, timing is a relevant consideration in the availability of the new Commission-ordered rates.

BellSouth asserts that it will be "irreparably harmed" if a stay is not granted because it could not recover the money in the interim should the Commission grant reconsideration. This argument is not persuasive given the timeframe that this proceeding has demanded. The complexity and number of issues addressed in this proceeding presented a variety of timing conundrums. For instance, the Commission voted on the Staff's recommendation on March 18, 2003, but the order was not signed until June 24, 2003. This delay resulted again from the size and complexity of the docket. In the Joint CLEC Motion, various CLEC parties complain that for the Commission to delay the effective date of the order to June 24 would be unfair because the CLECs would not reap the benefit of the reduced rates for months following the date that the Commission voted to approve them. In its response to the Joint CLEC Motion, BellSouth was predictably unsympathetic to this argument. But the harm alleged by BellSouth in its motion is similar to the harm alleged in the Joint CLEC Motion.

It boils down to that for some period of time the price that BellSouth is allowed to charge or a CLEC is obligated to pay, while in effect at that time, is not, or may not be, what the Commission ultimately determines is the appropriate rate. This situation is frustrating, but the Commission's treatment of it has been fair and even-handed. If not for the size and complexity of the docket, the Commission may have reached and committed to writing the same conclusions expressed in its June 24 Order at a much earlier date. This assumption does not justify making the order retroactive. Similarly, the size and complexity of the docket most likely also contributed to the number of issues that have been raised on reconsideration. That the Commission still must address the issues raised in the different motions does not warrant delaying implementation of the approved rates.

B. CLEC Motion Related to the Effective Date of the Order

1. March 18, 2003 vs. June 24, 2003

The Commission voted to adopt the Staff's recommendation in this docket at the March 18, 2003 Administrative Session. The order was signed on June 24, 2003. The parties to the Joint CLEC Motion requested that the Commission clarify that its order was effective March 18, 2003. The Joint CLECs argue that the Commission has the authority to specify the effective date of its orders under the Administrative Procedures Act. (Joint CLEC Motion, p. 4). Further, the

Joint CLEC Motion states that Commission Rule 515-2-1-.07 requires final decisions to be rendered within 30 days of the close of the record; therefore the Commission rules contemplate that the order will be reduced to writing and signed within 30 days of close of record. Id. at FN 1.

The Joint CLEC Motion requests that the Commission clarify that "the new UNE rates are effective March 18, 2003 for all CLECs" which is the date of the Administrative Session at which the Commission issued its vote in this docket. Id. at 3.

The Staff recommended that the Commission clarify that its order was effective the date it was signed on June 24, 2003. Commission Rule 515-2-1-.03(2) states that orders of the Commission "shall be effective from the date such actions are reduced to writing and are signed." The Commission signed the order June 24, 2003. The Joint CLECs' reliance on Commission Rule 515-2-1-.07 is not warranted. The rule does not provide that if the Commission fails to issue a decision within thirty days of an oral vote on a matter that the written order becomes effective the date of the oral vote. That is the precise result urged by the Joint CLEC Motion. Such an outcome is unsupported by the Commission rules.

The policy arguments raised in the Joint CLEC Motion have already been addressed in the discussion of BellSouth's motion for a stay. The Joint CLEC Motion is correct that it has been a long process to arrive at the rates ordered by the Commission. However, it is arbitrary for the Commission to decide that its rules should not apply because the process was particularly long. The Commission adopts Staff's recommendation on this issue.

2. Incorporation of Terms into Interconnection Agreements

The Joint CLECs also raise an issue concerning how these rates must be incorporated into interconnection agreements. The Joint CLECs request that the Commission clarify that regardless of language in interconnection agreements about the effective dates of regulatory orders, the rates take effect March 18, 2003. Because the Commission has already determined that the effective date of the Order is June 24, 2003, the Commission will address whether the rates should take effect on that date, as opposed to March 18.

The Joint CLECs argue that the Commission has the authority to specify the effective date of its orders. (Joint CLEC Motion, p. 4). BellSouth counters that the interconnection agreements should govern. BellSouth states that parties may agree within the context of an interconnection agreement to rates using a different methodology. (BellSouth Response, p. 7). Finally, BellSouth argues that in the Commission's prior cost dockets, Nos. 7061-U and 10692-U, the interconnection agreements governed. Id. at 8-9.

Staff recommended that the rates ordered in the Commission's June 24, 2003 Order be available to CLECs on June 24, 2003, unless the interconnection agreement indicates that the parties intended otherwise. The Commission adopts the Staff's recommendation.

III. ORDERING PARAGRAPHS

WHEREFORE IT IS ORDERED, that BellSouth's motion for a stay of the Commission's June 24, 2003 order is hereby denied.

ORDERED FURTHER, that the effective date of the Commission's order is the date it was signed and not the date that the Commission voted on the matter. Therefore, the effective date of the Commission order at issue is June 24, 2003.

ORDERED FURTHER, that the rates ordered in the Commission's June 24, 2003 Order are available to CLECs on June 24, 2003, unless the interconnection agreement indicates that the parties intended otherwise.

ORDERED FURTHER, that a motion for reconsideration, rehearing, oral argument, or any other motion shall not stay the effective date of this Order, unless otherwise ordered by the Commission.

ORDERED FURTHER, that jurisdiction over this matter is expressly retained for the purpose of entering such further Order(s) as this Commission may deem just and proper.

The above by action of the Commission in Administrative Session on the 19th day of August, 2003.

Reece McAlister
Executive Secretary

8-29-03
DATE

Robert B. Baker, Jr.
Chairman

Aug. 29, 2003
DATE