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DOUGLAS F. BRENT
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May 27, 2004

Ms. Elizabeth O'Donnell
Executive Director
Public Service Commission
P.O. Box 615
Frankfort, KY 40602

Case 2004-00204

RE: Emergency Petition for Declaratory Ruling

Dear Ms. O'Donnell:

Enclosed please find an original and ten copies of CompSouth's Emergency Petition for Declaratory Ruling concerning the obligations of interconnecting carriers.

Please return one "FILED" stamped copy of this letter in the enclosed envelope.

Sincerely yours,

Douglas F. Brent

Drop Box

COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

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

PETITION OF COMPSOUTH FOR EMERGENCY DECLARATORY RULING

The Competitive Carriers of the South, Inc. ("CompSouth") [1], by its undersigned counsel and pursuant to KRS 278.040 and 278.280 hereby requests that the Kentucky Public Service Commission ("Commission") issue an Emergency Declaratory Ruling[2] which declares that the obligations of parties to interconnection agreements filed with this Commission remain in effect unless and until those interconnection agreements are amended, filed with and approved by the Commission. CompSouth's Petition seeks expeditious consideration and an Order to maintain the status quo under existing interconnection agreements because the deadline for the end of the stay of the *United*

[1] The members of CompSouth include: Access Integrated Networks, Inc., Access Point Inc., AT&T, Birch Telecom, Covad Communications Company, IDS Telecom LLC, ITC^DeltaCom, KMC Telecom, LecStar Telecom, Inc., MCI, Momentum Business Solutions, Network Telephone Corp., NewSouth Communications Corp., NuVox Communications Inc., Talk America Inc., Xspedius Communications, and Z-Tel Communications. DSLnet Communications LLC also joins this petition.

[2] Insofar as there are multiple Kentucky ILECs who interconnect with CompSouth members pursuant to Commission approved interconnection agreements, a declaratory order is requested so that the obligations of all Kentucky ILECs will be clear. In the alternative, CompSouth requests the Commission treat this petition as a formal complaint against BellSouth pursuant to KRS 278.260. BellSouth's actions described herein raise issues of anticipatory repudiation of interconnection agreements with CompSouth members. A copy of this petition is being served on BellSouth.

States Telecom Association v. FCC, 359 F.3d 554 (D.C. Cir. 2004) (*"USTA II"*) decision is June 15, 2004 – approximately 19 days from today.

I. INTRODUCTION

CompSouth and its members are concerned that BellSouth and other Kentucky ILECs may erroneously attempt to rely on *USTA II* as a basis for unilaterally undermining or impeding CLECs' access to UNEs, which in turn could cause considerable disruption in the local market in Kentucky, especially for mass market customers. This may happen directly, *e.g.*, if an ILEC attempts to deny access to UNEs and/or UNE-based services outright, or indirectly, if an ILEC attempts to impose a system of rates, charges and administrative costs that make it impossible for CLECs to continue to provide services in the local market at competitive prices. While this disruption could be caused by any ILEC, CompSouth's immediate concern relates to BellSouth.

In particular, the actions and statements of BellSouth since the date of D.C. Circuit Court of Appeals decision vacating portions of the FCC's Triennial Review Order on March 2, 2004 have created confusion and uncertainty among CompSouth members and within the CLEC community[3] as to whether BellSouth intends to honor its binding

[3] CompSouth is authorized to represent that these additional companies and national trade associations are in full support of this filing: The Association for Local Telecommunications Services, the leading trade association representing facilities-based local telecommunications carriers, comprised of 33 CLEC members operating throughout the U.S. including in every state in the BellSouth region; CompTel/Ascent Alliance, a national trade association representing facilities-based carriers, providers using unbundled network elements, global integrated communications companies and their supplier partners.
CompTel/Ascent's membership includes companies of all sizes and profiles that provide voice, data and video services in the U.S. and around the world; the PACE Coalition, with 16 member companies who use unbundled network elements throughout the country; DSLnet Communications, LLC, and BroadRiver Communication Corporation.

contractual obligations. As a result of this uncertainty, Kentucky consumers are being harmed today because BellSouth's actions make it difficult for competitive providers in Kentucky to develop and implement business plans to offer competitive services and pricing and to expand their marketing efforts for existing competitive services to Kentucky consumers.

The stay of the D.C. Circuit Court of Appeals decision will be lifted on June 15, 2004 and the competitive providers in Kentucky must have some certainty that the underpinnings for the rates, terms and conditions of their service delivery platforms – the binding interconnection agreements to which they and BellSouth have agreed and/or arbitrated and were approved by this Commission – will remain effective. As a result, CompSouth files this Petition for Emergency Declaratory Ruling requesting the Commission direct BellSouth to maintain the status quo unless and until the Commission approves any modifications to its interconnection agreements with CompSouth members.

II. STATEMENT OF FACTS

A. BellSouth's Contradictory Actions and Statements Have Created Uncertainty within the CLEC Community That Harms Kentucky Consumers.

USTA II vacated and remanded certain portions of the FCC's Triennial Review Order ("TRO") regarding the FCC's nationwide finding of impairment for mass market switching and certain dedicated transport elements. In that decision, the Court stayed the effective date of its Order until the later of (1) the denial of any petition for rehearing or rehearing en banc or (2) 60 days from March 2, 2004. As a result of *USTA II*, this Commission cancelled the public hearing in Case No. 2003-00379, which had been initiated to implement the TRO as directed by the FCC. On April 1, 2004, the D.C.

Circuit Court granted the FCC's unopposed motion to extend the stay for an additional 45 days to permit carriers to engage in commercial negotiations, until June 15, 2004.

B. BellSouth's Contradictory Actions and Statements since *USTA II*

- At a hearing before the North Carolina Utilities Commission ("NCUC") on March 23, 2004, BellSouth and CompSouth were requested by the NCUC to appear and discuss the effects of the *USTA II* decision on existing interconnection agreements. At that hearing, BellSouth was asked to state its position on the effect of the D.C. Circuit Court's decision in *USTA II* on existing interconnection agreements. Counsel for BellSouth responded that there "is a school of thought that says these contracts are not enforceable because they were entered into under a mistake of law or mistake of fact." However, BellSouth's counsel indicated that BellSouth had not yet decided whether it would take this position. BellSouth's counsel went on to say that "assuming the change of law provision [in the interconnection agreements] applies" there would be a notice period of 30-45 days and a subsequent 90-day negotiation period following which either party could petition the Commission for resolution of any dispute regarding such things as "whether the law has changed, what the change of law is and what the contract ought to say."
- On that same day, March 23, 2004, BellSouth released its Carrier Notification letter (SN91084043, attached as Exhibit 1) to all CLECs regarding its proposed "Commercial Agreement for BellSouth DS0 Wholesale Local Voice Platform Service". In that Carrier Notification letter, BellSouth stated that *USTA II* "vacated the FCC's rules associated with, among other things, mass-market

switching thereby eliminating BellSouth's obligation to provide unbundled switching and, therefore, Unbundled Network Elements-Platform (UNE-P) at TELRIC rates." (emphasis added) BellSouth's Carrier Notification letter further noted that the Court's Order eliminating its obligation to provide UNE-P will become effective on May 1, 2004. On April 26, 2004, BellSouth released an additional, related Carrier Notification letter (SN91084073, attached as Exhibit 2) reminding CLECs that its proposed "Commercial Agreement for BellSouth DS0 Wholesale Local Voice Platform Service" offer is only available until May 1, 2004, notwithstanding the fact that an additional 45 day stay had been granted by the D.C. Circuit Court of Appeals on April 1, 2004.

- Earlier, on April 22, 2004, BellSouth released another Carrier Notification letter (SN91084063, attached as Exhibit 3) to all CLECs regarding its proposed "Commercial Offering for BellSouth Unbundled Network Element (UNE) Transport Transition." In that Carrier Notification letter, BellSouth stated that "[u]pon the DC Circuit Courts's effective vacatur of the FCC's Triennial Review Order, BellSouth's obligation to provide dedicated transport and high capacity loops as an unbundled network element pursuant to Section 251 of the Telecommunications Act will be eliminated. As such, and due to regulatory uncertainty, BellSouth is preparing to offer its dedicated transport and high capacity loops solely via its access tariffs." (emphasis added)[4]
- On May 11, 2004, BellSouth was again asked to state whether it intended to honor the contractual obligations contained in existing interconnection agreements after

[4] This BellSouth statement is particularly egregious, because the *USTA II* decision does not vacate the national finding by the FCC that CLECs are impaired without access to high capacity loops.

June 15, 2004. At a status conference conducted by the Florida Public Service Commission, BellSouth stated that it was "considering all options" and refused to state whether it would honor existing interconnection agreements after June 15, 2004; refused to state whether it would consider such contracts to be void; would not rule out unilateral action to repudiate the interconnection agreements and "couldn't say" whether it would follow any change of law provisions of existing interconnection agreements. BellSouth further stated that it might permit existing arrangements to continue after June 15, 2004 but may elect to bill the CLEC rates that it considered appropriate rather than the rates in the existing interconnection agreements.

- On May 24, 2004, BellSouth filed a response with the North Carolina Utilities Commission to CompSouth's May 17, 2004 letter Request that a status conference be scheduled to address the issue of whether BellSouth intended to abide by its contractual obligations post June 15th. CompSouth's Request recited the actions and statements of BellSouth (as stated above) in sending out Carrier Notification letters stating that its obligations to provide certain UNEs would be "eliminated" upon *USTA II* becoming effective as the basis for that request. In its May 24th response, BellSouth stated that "in the event that any of CompSouth's member companies are laboring under a genuine misunderstanding[5] about the

[5] It is apparent that CompSouth members' "genuine misunderstanding" about BellSouth's intent was also shared by the FCC. In the FCC's Motion to the DC Circuit Court of Appeals for a stay of the mandate in *USTA II,* filed on May 24, 2004, the FCC stated, "During the periods following vacatur and remand of the Commission's impairment and unbundling rules [in the past], the Bell operating companies agreed to abide by the vacated unbundling rules pending the adoption of permanent rules. But none of the ILECs have made such voluntary commitments in this case." Citing the BellSouth April 22, 2004 Carrier Notification letter, the FCC stated, "To the contrary, many of the largest ILECs have indicated that they will immediately stop providing certain network elements at TELRIC rates, notwithstanding the terms of existing interconnection agreements." *See United States Telecom Ass'n v. FCC,* D.C. Cir. No. 00-1012,

meaning of BellSouth's Carrier Notification Letter, BellSouth has posted another Carrier Notification letter to clarify its position."

- In its May 24, 2004 Carrier Notification letter, (SN91084106, attached as Exhibit 4 and referenced in BellSouth's Response to the North Carolina Utilities Commission) BellSouth states that the letter is to "affirm that BellSouth will not unilaterally breach its interconnection agreements". BellSouth goes on to state that upon vacatur, it will pursue "modification, reformation or amendment of existing Interconnection Agreements" and "contrary to rumors... BellSouth will not, as a result of the vacatur, unilaterally disconnect services being provided to any CLEC under CLEC's Interconnection Agreement."
- On May 26, 2004, BellSouth and CompSouth participated in a Status Conference call convened by the North Carolina Utilities Commission. On that Conference call, counsel for CompSouth indicated that while the BellSouth May 24, 2004 Carrier Notification letter cleared up some matters, CompSouth members were concerned about what was "not" stated in that letter regarding BellSouth's intentions concerning the rates to be charged for UNEs and whether BellSouth would continue to process new UNE orders. Counsel for BellSouth indicated that there will be no unilateral action taken by BellSouth on June 16, 2004; that BellSouth would continue to accept and process UNE orders and will not unilaterally change rates. BellSouth counsel, however, would not agree to modify the Carrier Notification letter to put these further commitments in writing nor would BellSouth commit to pursue interconnection contract amendments through

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Motion of the Federal Communications Commission to Stay the Mandate Pending the Filing of a Petition for a Writ of Certiorari, dated May 24, 2004,("FCC Motion") at 11.

the provisions of those agreements for contract amendments resulting from a "change in law".

III. ARGUMENT

Because BellSouth has refused to provide clear and affirmative written commitments that it will maintain the status quo regarding rates, terms and conditions and honor existing interconnection agreements, including the contractual obligations of those agreements prescribing how they may be amended after June 15, 2004, it is necessary for this Commission to affirmatively act to direct BellSouth to do so.

As BellSouth's North Carolina counsel stated, most, if not all, of its interconnection agreements have very clear provisions prescribing how a party may seek to amend an interconnection agreement to incorporate any alleged change in law. These provisions typically require notice, negotiations and, failing agreement, activation of the dispute resolution provisions of the contract including resolution by the Commission. That is the process by which BellSouth must be required to seek any changes to its interconnection agreements, which, as the FCC recognized, "embody the respective rights and obligations of competitors and incumbents respecting unbundled elements." FCC Motion at 9.

A. *USTA II* Presents No Unique Circumstances Permitting BellSouth To Unilaterally Invalidate its Interconnection Obligations.

The *USTA II* Order and its vacatur of portions of the TRO present no unique circumstances that would permit BellSouth to unilaterally avoid its obligations under existing interconnection agreements, or to ignore the change of law provisions in those

agreements. Indeed, representations made by counsel representing BellSouth and the other BOCs during the oral argument before the DC Circuit Court of Appeals that preceded the *USTA II* decision *acknowledged* that BellSouth remains obligated by its interconnection agreements regardless of any court vacatur of the FCC's TRO rules.[6]

The FCC's rules implementing the unbundling and access requirements of the federal Telecommunications Act of 1996 have been the subject of appellate review and agency reconsideration almost continually since 1996. This litigation has covered the FCC rules defining which network elements must be unbundled, the terms and conditions applicable to such unbundling[7] and the rates incumbent carriers may demand for those elements.[8] As a result, interconnection agreements have long contained "change of law" provisions to address any such situations.

One of the central purposes of the "change of law provisions" in the Commission-approved interconnection agreements is to minimize the chaos and uncertainty created by an unsettled regulatory environment. And critically, the change of law provisions are designed to minimize negative impacts on consumers and competition. Such provisions are often mutually agreed upon by the parties and are intended to address the very

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[6] *See USTA v. FCC*, D.C. Circuit Nos. 00-1012, 00-1015, Transcript of Oral Argument, January 28, 2004, at 7-11 (*e.g.*, when asked by the Court "Where does that [a vacatur] leave your clients, in your view, with respect to the precise matters that are at issue?" the RBOCs' counsel replied "*[W]e are subject to a number of agreements in the states, and the states will continue to require us to provide elements pursuant to those agreements*," to which the Court responded, "Right" (emphasis added))

[7] *See* First Report & Order, *Implementation of the Local Competition Provisions in the Telecomms. Act of 1996*, 11 FCC Rcd 15499 (1996) ("*Local Competition Order*"), *vacated in part by Iowa Utilities Bd.*, 525 U.S. 366, *decision on remand*, Third Report & Order & Fourth Further Notice of Proposed Rulemaking, *Implementation of the Local Competition Provisions of the Telecomms. Act of 1996*, 16 FCC Rcd. 1724 (1999), *vacated in part by United States Telecom. Ass'n v. FCC*, 290 F.3d 415 (D.C. Cir. 2002) ("*USTA I*"), *on remand to TRO*, 18 FCC Rcd. 16,978, vacated in part by USTA II, 359 F.3d 554.

[8] *Local Competition Order*, 11 FCC Rcd 15499, *vacated in part by Iowa Utils. Bd. v. FCC*, 219 F.3d 744 (8th Cir. 2000), *reversed by Verizon Communications, Inc. v. FCC*, 535 U.S. 467, 476 (2002).

situation facing the industry today. For example, the change of law provision found in the AT&T-BellSouth interconnection agreement provides that,

> in the event that any final legislative, regulatory, judicial or other legal action materially affects any material terms of this Agreement, or the ability of AT&T or BellSouth to perform any material terms of this Agreement, AT&T or BellSouth may, on ninety (90) days' written notice . . . require that such terms be renegotiated, and the Parties shall renegotiate in good faith such mutually acceptable new terms as may be required.

If the change of law provisions of interconnection agreements could be avoided -- a position that BellSouth refuses to disclaim -- it would render these contractual provisions meaningless. The Commission should always favor reading some meaning and effect into all the provisions of approved interconnection agreements.

B. The FCC has Directed that Any Changes Required by the TRO be Implemented through Amendments to Interconnection Agreements as Specified in those Agreements.

The FCC required that the contract amendment process – and not unilateral action -- would be used to implement the provisions of the *TRO*. The FCC explicitly rejected requests by BellSouth and other Incumbent Local Exchange Carriers for approval to simultaneously abrogate all existing interconnection agreements to lessen incumbents' unbundling obligations. *See TRO* ¶ 701 ("[T]o the extent our decision in this Order changes carriers' obligations under section 251, we *decline* the request of several [incumbent carriers] that we override the section 252 process and unilaterally change all interconnection agreements to avoid any delay associated with renegotiation of contract provisions") (emphasis added). Instead, the FCC directed that any carriers seeking changes to their interconnection agreements must comply with their change of law

provisions, which typically provide for voluntary negotiation followed by state commission action when the parties disagree. Indeed, the FCC concluded that such "voluntary negotiations for binding interconnection agreements is the very essence of section 251 and section 252" of the Act." *Id.* Rather than seeking changes "overnight," "individual carriers should be allowed the opportunity to negotiate specific terms and conditions necessary to translate our rules into the commercial environment, and to resolve disputes over any new agreement language arising from differing interpretations of our rules." *Id.* ¶ 700.

C. BellSouth's is Wrong that its Obligations to Provide Certain UNEs are "Eliminated" by *USTA II*

As discussed above, CompSouth is concerned that, in the absence of an Order from this Commission directing BellSouth to maintain the full status quo under existing interconnection agreements, BellSouth may unilaterally attempt to use the vacatur of certain federal unbundling rules in *USTA II* to restrict the ongoing availability of UNEs at TELRIC rates in Kentucky before the Commission has resolved disputes as to the impact (if any) of *USTA II* on such agreements under the change of law provisions. Based on the above-referenced Carrier Notification letters, BellSouth takes the position that its obligations to provide certain UNEs would be "eliminated" if *USTA II* becomes effective. That argument must be rejected. Even if *USTA II* does become effective, the *TRO* will be remanded to the FCC for further consideration. And, since the D.C. Circuit's ruling focuses only on perceived procedural and analytical insufficiencies in the FCC's *TRO* -- nothing in *USTA II* requires the FCC to find that *any* current UNE may not continue to be required at TELRIC rates. Perhaps more importantly, nothing in *USTA II* invalidates *either* the unbundling requirements in the Telecommunications Act of 1996 *or* the terms

of existing interconnection agreements, nor does it impact this Commission's authority to supervise the implementation of interconnection agreements or its authority to act pursuant to federal or Kentucky law to preserve competition. As the FCC notes, "[i]n the absence of binding federal rules, state commissions will be required to determine not only the effect of [*USTA II*] on the terms of existing agreements but als the extent to which mass market switching and dedicated transport should remain available under state law." FCC Motion at 9. And, of course, *USTA II* does not affect in any way the propriety of TELRIC pricing, which was conclusively resolved by the Supreme Court in *Verizon Communications, Inc. v. FCC*, 535 U.S. 467 (2002).

D. The Commission Has Already Ruled that Carriers May Not Unilaterally Terminate a Service Solely Due to a Change in Law.

The Commission has already anticipated the possibility that an ILEC might use a change in law as an excuse to unilaterally cease performance under an approved interconnection agreement. In Case No. 2001-224, an arbitration case involving Verizon, the Commission refused to approve Verizon's proposed interconnection provision concerning the effect of a change in law. Verizon attempted to use language that would have given it the ability to terminate "a service, payment or benefit" provided under the agreement, on 30 days' notice if, as a result of a change in the law, Verizon was no longer required to provide the service, payment or benefit. The interconnecting CLEC opposed these provisions, and specifically proposed that changes in law should merely require parties to negotiate amendments to bring an approved agreement into conformity with the changed law. The Commission agreed, supporting the concept of "a firm commitment from both parties." *Petition of Brandenburg Telecom,* (November 15,

2001). The Commission ordered that the agreement be modified to require a party to initiate negotiation upon a change in law. In addition, the Commission stated that such negotiations need not occur unless the change in law "actually renders a contractual provision *unlawful*." *Id.* (emphasis added). Finally, the Commission ruled that a change in law that merely reduces or removes an obligation is not cause for renegotiation during the term of the contract. *Id.*

The Commission reached the same conclusion in Verizon's arbitration with South Central Telecom. (Case No. 2001-00261, January 15, 2002). The Commission's reasoning in *Brandenburg* and *South Central Telecom* is applicable to the obligations arising from any effective interconnection agreement containing change of law language. No ILEC may use *USTA II* as an excuse to ignore obligations of an approved agreement.

IV. CONCLUSION AND REQUEST FOR RELIEF

BellSouth's recent actions and statements have created enormous confusion. BellSouth is unwilling to expressly commit that it will maintain the status quo regarding rates, terms and conditions applicable to CompSouth members' agreements and to honor its contractual and statutory obligations, including its obligation to seek amendments to existing interconnection agreements through the processes contained in those agreements to effectuate changes in law. Competitive carriers must have certainty that the rates, terms and conditions contained in interconnection agreements will remain binding obligations after June 15 if they are to continue to market and develop innovative services and pricing and bring competitive benefits to Kentucky consumers.

In the past, BellSouth generally has abided by the provisions of interconnection agreements that prescribe how those agreements can be amended when regulatory

uncertainty exists. But its recent actions and statements call into question its current intentions. As stated by BellSouth's counsel, those provisions call for notice and negotiation and ultimately, resolution by the Commission of any disputes as "whether the law has changed, what the change if law is and what the contract ought to say." BellSouth's unwillingness to categorically commit to maintain the status quo and follow those same processes today is, in all likelihood, due to the different marketplace circumstances that exist today compared to those that existed during the prior litigations. BellSouth has now received the all the benefits of the section 271 "trade off" and is now rapidly acquiring substantial market share in the long distance market as a result. Thus, BellSouth no longer has any incentive to act in a manner that is supportive of local competition.

For the foregoing reasons, CompSouth requests that the Commission declare that BellSouth is required to maintain the status quo and to honor existing interconnection agreements and to issue an emergency declaratory ruling that (1) requires BellSouth to continue to honor the obligations contained in its Interconnection Agreements, including its obligation to seek amendments to existing interconnection agreements through the processes contained in those agreements, to effectuate changes in law, unless and until the Commission approves any modifications to those agreements; and (2) prevents BellSouth from taking any unilateral actions under color of *USTA II* to restrict CLECs' access to UNEs or to change prices for UNEs unless and until this Commission approves such changes.

Respectfully submitted this 27th day of May, 2004.

C. Kent Hatfield
Douglas F. Brent
STOLL, KEENON & PARK, LLP
2650 AEGON Center
400 West Market Street
Louisville, Kentucky 40202

Attorneys for CompSouth

BELLSOUTH

BellSouth Interconnection Services
675 West Peachtree Street
Atlanta, Georgia 30375

Carrier Notification
SN91084043

Date: March 23, 2004

To: All Competitive Local Exchange Carriers (CLEC)

Subject: CLECs (Product/Service) - Commercial Agreement for BellSouth DS0 Wholesale Local Voice Platform Service

On March 2, 2004, the United States Court of Appeals for the District of Columbia ("Court") issued its opinion (Order) in the appeal of the Federal Communication Commission's (FCC) Triennial Review Order (TR0). The Court vacated and/or remanded significant portions of the TRO. Specifically, the Court vacated the FCC's rules associated with, among other items, mass-market switching, thereby eliminating BellSouth's obligation to provide unbundled switching and, therefore, Unbundled Network Elements-Platform (UNE-P) at TELRIC rates. The Court's Order will become effective May 1, 2004, unless the Court grants a rehearing or issues a stay of the Order.

In light of the Court's Order, BellSouth is prepared to offer switching and DS0 loop/switching combinations (including what is currently known as UNE-P) at commercially reasonable and competitive rates. BellSouth will offer switching via a DS0 Wholesale Local Voice Platform Services commercial agreement. Consistent with the direction provided by FCC Chairman Michael Powell, BellSouth invites your company to enter into good faith negotiations of a market-based commercial agreement aimed at benefiting the end user, establishing stability in the industry and allowing real competition to continue throughout the BellSouth region. Entering into such an agreement will effect an efficient transition from switching under your existing Interconnection Agreement to switching offered on a commercial basis.

Highlights of this offer are as follows:

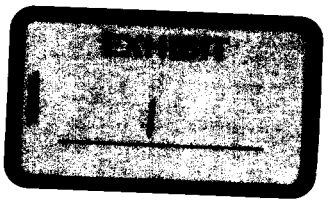
Availability:
This offer is available until May 1, 2004

Term:
Agreements executed before May 1, 2004, will be effective through December 31, 2007.

Rates:
The Agreement establishes a rate schedule for the DS0 Wholesale Local Voice Platform Services and standalone DS0 switch ports for the entire contract period.

Mass Market (less than 4 DS0 lines per end user):
- $7 above existing state-ordered TELRIC UNE-P recurring rates*
- Discounts in 2004 result in a zero net increase above TELRIC*
- Transitional discounts in January 2005 through December 2006

* Rates ordered prior to June 24, 2003 in Georgia



Mass Market (cont.):

- Standalone DS0 switch ports at $7 increase over existing state-ordered TELRIC recurring rates* with no transitional discounts

Enterprise Market (four or more DS0 lines or where a DS1 is serving an end user):

- Provides a $10 increase over current DS0 state-ordered TELRIC UNE-P recurring rates* and applies to both DS0 Wholesale Local Voice Platform Services and standalone DS0 ports

Significant General Terms:

- Customer may continue to purchase standalone Loops or Resale Services under a BellSouth interconnection agreement and/or tariff.
- Guaranteed service metrics are offered through a service level commitment and are subject to payments by BellSouth to the customer for non-performance
- Prices, excluding discounts, for DS0 Wholesale Local Voice Platform Services will remain constant over the term of the Agreement.
- Damages will apply for non-compliance with the terms of the Agreement.

This offer is available only until May 1, 2004. Again, BellSouth invites you to enter into good faith negotiations of a commercial agreement as soon as possible in order to complete these negotiations by May 1.

To begin the negotiation process or obtain additional information, please contact Valerie Cottingham at 205-321-4970.

Sincerely,

Original signed by Jerry Hendrix

Jerry Hendrix – Assistant Vice President
BellSouth Interconnection Services

* Rates ordered prior to June 24, 2003 in Georgia

BELLSOUTH

BellSouth Interconnection Services
675 West Peachtree Street
Atlanta, Georgia 30375

Carrier Notification
SN91084073

Date: April 26, 2004

To: Competitive Local Exchange Carriers (CLEC)

Subject: CLECs - (Product/Service) – **REMINDER** - Commercial Agreement for BellSouth DS0 Wholesale Local Voice Platform Services

This is a reminder that the negotiation timeframe for a Commercial Agreement for BellSouth's DS0 Wholesale Local Voice Platform Services outlined in **Carrier Notification Letter SN91084043**, posted on March 23, 2004, is only available until May 1, 2004.

Please refer to **Carrier Notification Letter SN91084043** for complete details.

Sincerely,

Original Signed by Jerry Hendrix

Jerry Hendrix – Assistant Vice President
BellSouth Interconnection Services

EXHIBIT
2

BELLSOUTH

BellSouth Interconnection Services
675 West Peachtree Street
Atlanta, Georgia 30375

Carrier Notification
SN91084063

Date: April 22, 2004

To: All Competitive Local Exchange Carriers (CLEC)

Subject: CLECs – (Product/Service) – Commercial Offering for BellSouth Unbundled Network Element (UNE) Transport Transition

Upon the DC Circuit Court's effective vacatur of portions of the FCC's Triennial Review Order, BellSouth's obligation to provide dedicated transport and high capacity loops as an unbundled network element pursuant to Section 251 of the Telecommunications Act of 1996 will be eliminated. As such, and due to general regulatory uncertainty, BellSouth is preparing to offer its dedicated transport and high capacity loops products solely via its access tariffs.

Until June 15, 2004, BellSouth is offering a two-party transition plan to effect an efficient and coordinated transition from UNE transport and high capacity loops under your company's existing Interconnection Agreement to transport offered via BellSouth's tariffs.

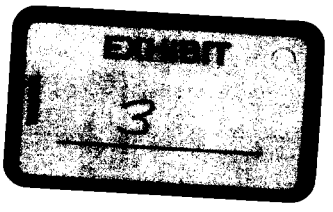
This offer is available only until June 15, 2004. BellSouth invites your company to enter into good faith negotiations of this plan as soon as possible in order to complete these negotiations by June 15, 2004.

To begin the negotiation process or obtain additional information, please contact Shemega Goodman at 404.927.7571.

Sincerely,

ORIGINAL SIGNED BY JERRY HENDRIX

Jerry Hendrix – Assistant Vice President
BellSouth Interconnection Services



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

EXHIBIT
1 4