CINERGY.

Cinergy Corp.
139 East Fourth Street
Rm 25 AT II
P.O. Box 960
Cincinnati, OH 45201-0960
tel 513.287.3601
fax 513.287.3810
jfinnigan@cinergy.com

John J. Finnigan, Jr.
Senior Counsel

VIA OVERNIGHT MAIL

January 16, 2006

Ms. Brenda Talley
Division of Filings
Kentucky Public Service Commission
211 Sower Boulevard
P.O. Box 615
Frankfort, KY 40602-0615

Re: In the Matter of the Application of The Union Light, Heat and Power Company for an Order to Enter into up to $25,000,000 Principal Amount of Capital Lease Obligations, Case No. 2004-00434
Meter Lease Report

Dear Ms. Talley:

I have enclosed a copy of a lease entered into between Banc of America Leasing & Capital, LLC and The Union Light, Heat and Power Company for gas and electric meters.

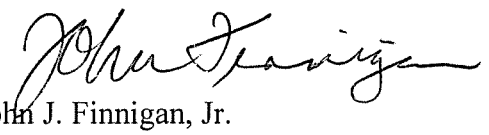
Under the Commission's December 17, 2004 Order in the present case, ULH&P is required to file this lease with the Commission. The information required by the Commission's December 17, 2004 Order is as follows:

Starting Date of Lease:	December 30, 2005
Period of Lease:	December 30, 2005 through December 30, 2015
Description of Property:	Gas and electric meters.
Name / Address of Lessor:	Banc of America Leasing & Capital, LLC One Financial Plaza Providence, Rhode Island 02903-2305
Dollar Amount of Lease:	$2,079,030.95

Interest Rate:	The lease interest rate is 4.1943%.
Fees and Expenses:	ULH&P pays taxes, insurance and maintenance expenses
Participation Agreements:	None

Please accept this capital lease agreement for filing. Please return a file-stamped copy of this letter in the enclosed envelope. Thank you for your cooperation in this matter.

Very truly yours,



John J. Finnigan, Jr.
Senior Counsel

JJF/sew

Bank of America

LEASE SCHEDULE NO. 40307-11500-007
(True Lease Schedule)

One Financial Plaza
Providence, Rhode Island 02903-2305

Lessee: THE UNION LIGHT, HEAT AND POWER COMPANY
Address: 139 East Fourth Street
Cincinnati, OH 45202

1. This Lease Schedule No. 40307-11500-007 dated as of December 28, 2005 is entered into pursuant to and incorporates by this reference, all of the terms and provisions of that certain Master Equipment Lease Agreement No. 32862 dated as of February 11, 1999 (the "**Master Lease**"), for the lease of the Equipment described in **Schedule A** attached hereto. This Lease Schedule shall constitute a separate, distinct and independent lease of the Equipment and the contractual obligation of Lessee. References to the "**the Lease**" or "**this Lease**" shall mean and refer to this Lease Schedule, together with the Master Lease and all exhibits, addenda, schedules, certificates, riders and other documents and instruments executed and delivered in connection with this Lease Schedule, all as the same may be amended or modified from time to time. All capitalized terms used herein and not defined herein shall have the meanings set forth or referred to in the Master Lease. To the extent the terms and provisions of this Lease Schedule differ with the terms and provisions of the Master Lease, the terms and provisions of this Lease Schedule shall control. By its execution and delivery of this Lease Schedule, Lessee hereby reaffirms all of the representations, warranties and covenants contained in the Master Lease, as of the date hereof, and further represents and warrants to Lessor that no Event of Default, and no event or condition which with notice or the passage of time or both would constitute an Event of Default, has occurred and is continuing as of the date hereof.

2. **ACQUISITION COST.** The Acquisition Cost of the Equipment is: $2,079,030.95.

3. (a) **INITIAL TERM.** The Initial Term shall commence on the date hereof and shall continue for a period of 120 months after the "Lease Term Commencement Date" set forth in the Acceptance Certificate applicable to this Lease Schedule. The Equipment shall be deemed to have been accepted by Lessee for all purposes under this Lease upon Lessor's receipt of an Acceptance Certificate with respect to such Equipment, executed by Lessee after receipt of all other documentation required by Lessor with respect to such Equipment. The "Lease Term" of this Lease shall be comprised of the Initial Term, plus any renewal or extended term applicable in accordance with the terms of the Lease.

(b) **RENTAL PAYMENTS.** Lessee shall pay Lessor 120 consecutive rental payments in the amounts set forth in the schedule below ("Rental Payments), plus any applicable sales/use taxes, commencing on the "Rental Payment Commencement Date" set forth in the Acceptance Certificate and MONTHLY thereafter for the remaining Lease Term. Each Rental Payment shall be payable on the same day of the month as the Rental Payment Date in each succeeding rental period during the remaining Lease Term (each, a "**Rental Payment Date**"):

Number of Rental Payments	**Amount of Each Rental Payment**
120	$21,241.67

4. **EQUIPMENT LOCATION(S).** The Equipment will be located at the location(s) specified in **Schedule A** hereto. Lessee shall promptly upon request of Lessor provide a written report detailing the location of each unit of Equipment subject to this Lease.

5. Lessor will invoice Lessee for all sales, use and/or personal property taxes as and when due and payable in accordance with applicable law, unless Lessee delivers to Lessor a valid exemption or self assessment certificate with respect to such

taxes. Delivery of such certificate shall constitute Lessee's representation and warranty that no such taxes shall become due and payable with respect to the Equipment, and Lessee shall indemnify and hold harmless Lessor from and against any and all liability or damages, including late charges and interest which Lessor may incur by reason of the assessment of such taxes.5

6. The Rental Payments may change for Equipment accepted after December 30, 2005.

Dated as of: December 28, 2005

BANC OF AMERICA LEASING & CAPITAL, LLC SUCCESSOR-BY-MERGER TO FLEET CAPITAL CORPORATION	**THE UNION LIGHT, HEAT AND POWER COMPANY**
By: Annemarie L. Warren	By: Wendy L. Aumiller
Name: Annemarie L. Warren	Name: Wendy L. Aumiller
Title: Vice President	Title: Treasurer

Bank of America

SCHEDULE A EQUIPMENT

The following documents are attached to and made a part hereof: True Lease Schedule No.: 40307-11500-007, Acceptance Certificate, Warranty Bill of Sale and UCC Financing Statement

with: **THE UNION LIGHT, HEAT AND POWER COMPANY**

Recovery Period: 5 Years

TRANS QTY	FULL DESCRIPTION	mfgpart#/qr	
25	METER, GAS SERVICE, DIAPHRAGM, 1000, TERMPERATURE COMPENSATED, VISUAL, 25, 45 LT HUB, ANSI B-109, KENTUCKY	BFDB9N1A4SD409	AMERICAN METER CO
7	METER, GAS SERVICE, ROTARY, 11M, TEMPERATURE COMPENSATED, VISUAL, 175 LBS MAX, FLANGED, ANSI B-109, KENTUCKY	055221- 43	DRESSER ROOT METER
	KIT, GAS, 175/250	***	NOT AVAILABLE
75	METER, GAS SERVICE, DIAPHRAGM, 250 C.F.H., TEMPERATURE COMPENSATED, VISUAL, 5 LBS, 10 LT, ANSI B-109, KENTUCKY	AMC4AL62AFS4411	AMERICAN METER CO
	KIT, GAS, 175/250	***	NOT AVAILABLE
	KIT, GAS, 175/250	***	NOT AVAILABLE
125	METER, GAS SERVICE, DIAPHRAGM, 250, 2LB., VISUAL, 5 LBS, 10 LT HUB, ANSI B-109, KENTUCKY-2LB	AMC4AS62AF54412	AMERICAN METER CO
	KIT, GAS, 175/250	***	NOT AVAILABLE
	KIT, GAS, 175/250	***	NOT AVAILABLE
75	METER, GAS SERVICE, DIAPHRAGM, 250, 2LB., VISUAL, 5 LBS, 10 LT HUB, ANSI B-109, KENTUCKY-2LB	AMC4AS62AF54412	AMERICAN METER CO
1	METER, GAS SERVICE, ROTARY, 5 M, TEMPERATURE COMPENSATED, VISUAL, 175 LBS MAX, FLANGED, ANSI B-109, KENTUCKY	055229-021	DRESSER ROOT METER
	KIT, GAS, 175/250	***	NOT AVAILABLE
110	METER, GAS SERVICE, DIAPHRAGM, 250, TEMPERATURE COMPENSATED, A.M.R., 5 LBS, 10 LT HUB, ANSI B-109, KENTUCKY	AMC4AFK2AFSS413	AMERICAN METER CO
46	METER, GAS SERVICE, DIAPHRAGM, 425 C.F.H., TEMPERATURE COMPENSATED, VISUAL, 10 LBS, 20 LT HUB, ANSI B-109, KENTUCKY	AEF4BF62AFS4411	AMERICAN METER CO
1	METER, GAS SERVICE, ROTARY, 5 M, TEMPERATURE COMPENSATED, VISUAL, 175 LBS MAX, FLANGED, ANSI B-109, KENTUCKY	055229-021	DRESSER ROOT METER
	KIT, GAS, 175/250	***	NOT AVAILABLE
1	METER, GAS SERVICE, ROTARY, 5 M, TEMPERATURE COMPENSATED, VISUAL, 175 LBS MAX, FLANGED, ANSI B-109, KENTUCKY	055229-021	DRESSER ROOT METER

Bank of America

SCHEDULE A EQUIPMENT

The following documents are attached to and made a part hereof: True Lease Schedule No.: 40307-11500-007, Acceptance Certificate, Warranty Bill of Sale and UCC Financing Statement

with: **THE UNION LIGHT, HEAT AND POWER COMPANY**

Recovery Period: 5 Years

TRANS QTY	FULL DESCRIPTION	mfgpart_str	
70	METER, GAS SERVICE, DIAPHRAGM, 425 C.F.H., TEMPERATURE COMPENSATED, VISUAL, 10 LBS, 20 LT HUB, ANSI B-109, KENTUCKY	AEF4BF62AFS4411	AMERICAN METER CO
3	METER, GAS SERVICE, ROTARY, 16M, TEMPERATURE COMPENSATED, VISUAL, 175 LBS MAX, FLANGED, ANSI B-109, KENTUCKY	055223-044	DRESSER ROOT METER
4	METER, GAS SERVICE, ROTARY, 7 M, TEMPERATURE COMPENSATED, VISUAL, 175 LBS MAX, FLANGED, ANSI B-109, KENTUCKY	055219-43	DRESSER INC
15	METER, GAS SERVICE, ROTARY, 5 M, TEMPERATURE COMPENSATED, VISUAL, 175 LBS MAX, FLANGED, ANSI B-109, KENTUCKY	055229-021	DRESSER ROOT METER
55	METER, GAS SERVICE, DIAPHRAGM, 425 C.F.H., TEMPERATURE COMPENSATED, VISUAL, 10 LBS, 20 LT HUB, ANSI B-109, KENTUCKY	AEF4BF62AFS4411	AMERICAN METER CO
	KIT, GAS, 175/250	***	NOT AVAILABLE
	KIT, GAS, 175/250	***	NOT AVAILABLE
14	METER, GAS SERVICE, ROTARY, 3 M, TEMPERATURE COMPENSATED, VISUAL, 175 LBS MAX, FLANGED, ANSI B-109, KENTUCKY	055215-042	DRESSER ROOT METER
1	METER, GAS SERVICE, ROTARY, 16M, TEMPERATURE COMPENSATED, VISUAL, 175 LBS MAX, FLANGED, ANSI B-109, KENTUCKY	055223-044	DRESSER ROOT METER
1	METER, GAS SERVICE, ROTARY, 7 M, TEMPERATURE COMPENSATED, VISUAL, 175 LBS MAX, FLANGED, ANSI B-109, KENTUCKY	055219-43	DRESSER INC
55	METER, GAS SERVICE, DIAPHRAGM, 425 C.F.H., TEMPERATURE COMPENSATED, VISUAL, 10 LBS, 20 LT HUB, ANSI B-109, KENTUCKY	AEF4BF62AFS4411	AMERICAN METER CO
4	METER, GAS SERVICE, ROTARY, 11M, TEMPERATURE COMPENSATED, VISUAL, 175 LBS MAX, FLANGED, ANSI B-109, KENTUCKY	055221- 43	DRESSER ROOT METER
	KIT, GAS, 175/250	***	NOT AVAILABLE
4	METER, GAS SERVICE, ROTARY, 3 M, TEMPERATURE COMPENSATED, VISUAL, 175 LBS MAX, FLANGED, ANSI B-109, KENTUCKY	055215-042	DRESSER ROOT METER
250	KIT, GAS, 175/250	***	NOT AVAILABLE

Bank of America

SCHEDULE A EQUIPMENT

The following documents are attached to and made a part hereof: True Lease Schedule No.: 40307-11500-007, Acceptance Certificate, Warranty Bill of Sale and UCC Financing Statement

with: **THE UNION LIGHT, HEAT AND POWER COMPANY**

Recovery Period: 5 Years

TRANS QTY	FULL DESCRIPTION	mfgpart_30	
500	KIT, GAS SERVICE METER BRACKET, 8IN W.C., F/USE IN KENTUCKY	ADVANCE ENGINEERING CORP.	50104232
500	KIT, GAS SERVICE METER BRACKET, 8IN W.C., F/USE IN KENTUCKY	ADVANCE ENGINEERING CORP.	50104232
50	KIT, GAS SERVICE METER BRACKET, 2 LB., 175/250, W/RED CLOSING CAP, F/USE IN KENTUCKY ONLY	ADVANCE ENGINEERING CORP.	50104235
50	KIT, GAS SERVICE METER BRACKET, 2 LB., 175/250, W/RED CLOSING CAP, F/USE IN KENTUCKY ONLY	ADVANCE ENGINEERING CORP.	50104235
1	REGULATOR, GAS, 3IN, 150 LB FLANGE, 50% GRID 60 DURO, 5-15IN WATER COLUMN, 20 L BRONZE PILOT W/SS TUBING, F/KENTUCKY	DRESSER, INC.-MOONEY CONT	FG16
40	KIT, GAS, 175/250	NOT AVAILABLE	***
140	VALVE, RELIEF, 1FT INLET, 300 LB. MAX, 25 LB. SET, -20 DEG F TO 160 DEG F, 25-30 PSIG, THD, BRASS, DISC-NITRILE, SPRING-SST, SPRING OPERATED KIT, GAS, 175/250	FISHER CONTROLS INTN'L IN NOT AVAILABLE	2-H203-KY ***
360	KIT, GAS, 175/250	NOT AVAILABLE	***
400	VALVE, RELIEF, 1FT INLET, 300 LB. MAX, 25 LB. SET, -20 DEG F TO 160 DEG F, 25-30 PSIG, THD, BRASS, DISC-NITRILE, SPRING-SST, SPRING OPERATED KIT, GAS, 175/250	FISHER CONTROLS INTN'L IN NOT AVAILABLE	2-H203-KY ***
360	KIT, GAS, 175/250	NOT AVAILABLE	***
(700)	KIT, GAS SERVICE METER BRACKET, 8IN W.C., F/USE IN KENTUCKY	ADVANCE ENGINEERING CORP.	50104232
1,500	KIT, GAS SERVICE METER BRACKET, 8IN W.C., F/USE IN KENTUCKY	ADVANCE ENGINEERING CORP.	50104232
700	KIT, GAS SERVICE METER BRACKET, 8IN W.C., F/USE IN KENTUCKY	ADVANCE ENGINEERING CORP.	50104232
2	REGULATOR, GAS, 3IN, 150 LB FLANGE, 50% GRID 60 DURO, 5-15IN WATER COLUMN, 20 L BRONZE PILOT W/SS TUBING, F/KENTUCKY	DRESSER, INC.-MOONEY CONT	FG16
24	REGULATOR, GAS, 1-1/4IN X 1-1/4IN, FPT, 1/4IN, 8IN WATER COLUMN, KENTUCKY	SCHLUMBERGER RMS	R12213-B31R
500	KIT, GAS, 175/250	NOT AVAILABLE	***
1,000	KIT, GAS SERVICE METER BRACKET, 8IN W.C., F/USE IN KENTUCKY	ADVANCE ENGINEERING CORP.	50104232
400	KIT, GAS SERVICE METER BRACKET, 2 LB., 175/250, W/RED CLOSING CAP, F/USE IN KENTUCKY ONLY	ADVANCE ENGINEERING CORP.	50104235
1,300	KIT, GAS SERVICE METER BRACKET, 8IN W.C., F/USE IN KENTUCKY	ADVANCE ENGINEERING CORP.	50104232

Bank of America

SCHEDULE A EQUIPMENT

The following documents are attached to and made a part hereof: True Lease Schedule No.: 40307-11500-007, Acceptance Certificate, Warranty Bill of Sale and UCC Financing Statement

with: **THE UNION LIGHT, HEAT AND POWER COMPANY**

Recovery Period: 5 Years

TRANS QTY	FULL DESCRIPTION	mfrpart str	
	KIT, GAS SERVICE METER BRACKET, 8IN	ADVANCE ENGINEERING	
1,000	W.C., F/USE IN KENTUCKY	CORP.	50104232
550	KIT, GAS, 175/250	NOT AVAILABLE	***
400	KIT, GAS, 175/250	NOT AVAILABLE	***
550	KIT, GAS, 175/250	NOT AVAILABLE	***
	VALVE, RELIEF, 1FT INLET, 300 LB. MAX, 25 LB. SET, -20 DEG F TO 160 DEG F, 25-30 PSIG, THD, BRASS, DISC-NITRILE, SPRING-SST, SPRING OPERATED	FISHER CONTROLS INTN'L IN	2-H203-KY
50	KIT, GAS, 175/250	NOT AVAILABLE	***
288	METER, ELECTRICAL SERVICE, NON		
288	METER, ELECTRICAL SERVICE, NON		
8	METER, ELECTRICAL SERVICE, NO		
20	METER, ELECTRICAL SERVICE, TRA		
	PLATE, , HUB CLOSING, STEEL, 3		
	PLATE, , HUB CLOSING, STEEL, 3		
384	METER, ELECTRICAL SERVICE, NON		
288	METER, ELECTRICAL SERVICE, NON		
68	METER, ELECTRICAL SERVICE, KWH		
	RELAY, , PULSE ISOLATION, 90-3		
	RELAY, , PULSE ISOLATION, 90-3		
	RELAY, , PULSE ISOLATION, 90-3		
	RELAY, , PULSE ISOLATION, 90-3		
480	METER, ELECTRICAL SERVICE, NON		
	PLATE, , HUB CLOSING, STEEL, 3		
4	METER, ELECTRICAL SERVICE, LOA		
52	METER, ELECTRICAL SERVICE, KWH		
36	METER, ELECTRICAL SERVICE, TRA		
576	METER, ELECTRICAL SERVICE, NON		
192	METER, ELECTRICAL SERVICE, NON		
480	METER, ELECTRICAL SERVICE, NON		
288	METER, ELECTRICAL SERVICE, NON		
96	METER, ELECTRICAL SERVICE, NO		
480	METER, ELECTRICAL SERVICE, NON		
	ADAPTER, , METER BASE, PLASTIC		
	ADAPTER, , METER BASE, PLASTIC		
96	METER, ELECTRICAL SERVICE, KWH		
96	METER, ELECTRICAL SERVICE, NON		
	PLATE, , HUB CLOSING, STEEL, 3		
	PLATE, , HUB CLOSING, STEEL, 3		
	U0067175719		
24	METER, ELECTRICAL SERVICE, LOA		
	U0072508113		
28	METER, ELECTRICAL SERVICE, TRA		
96	METER, ELECTRICAL SERVICE, NON		
20	METER, ELECTRICAL SERVICE, NO		
	U0072508113-CR		

Bank of America

SCHEDULE A EQUIPMENT

The following documents are attached to and made a part hereof: True Lease Schedule No.: 40307-11500-007, Acceptance Certificate, Warranty Bill of Sale and UCC Financing Statement

with: **THE UNION LIGHT, HEAT AND POWER COMPANY**

Recovery Period: 5 Years

TRANS QTY	FULL DESCRIPTION	mfg/part_str

WITH ALL STANDARD AND ACCESSORY EQUIPMENT

BANC OF AMERICA LEASING & CAPTITAL, LLC SUCCESSOR BY MERGER TO FLEET CAPITAL CORPORATION

By: Annemarie R. Warren
Name: Annemarie L Warren
Title: Vice President

THE UNION LIGHT, HEAT AND POWER COMPANY

By: Wendy L. Aumiller
Name: Wendy L. Aumiller
Title: Treasurer

Bank of America

ACCEPTANCE CERTIFICATE

One Financial Plaza
Providence, Rhode Island 02903-2305

This Acceptance Certificate (this "**Acceptance Certificate**") is attached to and made a part of that certain Lease Schedule No. 40307-11500-007, dated as of DECEMBER 28, 2005 (the "**Lease Schedule**"), by and between the undersigned parties. All capitalized terms used herein and not defined herein shall have the meanings set forth or referred to in the Lease Schedule. To the extent the terms set forth in this Acceptance Certificate differ or conflict with any of the terms set forth in the Lease, the terms set forth in this Acceptance Certificate shall control.

1. Lessee acknowledges and agrees that each item of Equipment set forth on Schedule A hereto (collectively, the "**Equipment**") is hereby unconditionally and irrevocably accepted by Lessee for all purposes under the Lease at the locations specified in Schedule A hereto, and hereby agrees to faithfully perform all of its obligations under the Lease as of the date hereof (the "**Acceptance Date**"). Lessee hereby authorizes and directs Lessor (a) to make payment to each vendor of the Equipment pursuant to such vendor's invoice or any purchase order, purchase agreement or supply contract with such vendor, receipt and approval of which are hereby reaffirmed by Lessee, and/or (b) if Lessee has previously paid such vendors such amounts pursuant to any Agency Agreement between Lessor and Lessee, to reimburse Lessee in accordance with such Agency Agreement in lieu of paying such vendor invoices and for Lessee's actual installation costs of the Equipment which are reasonably acceptable to Lessor.

2. By its execution and delivery of this Acceptance Certificate, Lessee hereby reaffirms all of the representations, warranties and covenants contained in the Lease as of the date hereof, and further represents and warrants to Lessor that no Event of Default, and no event or condition which with notice or the passage of time or both would constitute an Event of Default, has occurred and is continuing as of the date hereof. Lessee further certifies to Lessor that Lessee has selected the Equipment and has received and approved the purchase order, purchase agreement or supply contract under which the Equipment will be acquired for all purposes of the Lease.

3. Lessee hereby represents and warrants that the Equipment has been delivered and is in operating condition or in a condition capable of operating and performing the operation for which it is intended to the satisfaction of the Lessee.

4. The **LEASE TERM COMMENCEMENT DATE** is the 30th day of December, 2005.

5. The **RENTAL PAYMENT COMMENCEMENT DATE** is the 30th day of January, 2006.

6. All terms and provisions of the Lease Schedule shall remain in full force and effect, except as otherwise provided below:

- **ACQUISITION COST:** $_____.

- **LEASE TERM:** _____ months.

- **RENTAL PAYMENTS:** **Number of Rental Payments** **Rental Payment Amount**

Dated:
Agreed and Accepted: December 30, 2005

BANC OF AMERICA LEASING & CAPITAL, LLC SUCCESSOR-BY-MERGER TO FLEET CAPITAL CORPORATION

By: Genevieve L. Warren

Name: Genevieve L. Warren

Title: Vice President

THE UNION LIGHT, HEAT AND POWER COMPANY

By: Wendy L. Aumiller

Name:: Wendy L. Aumiller

Title: Treasurer

Bank of America

EARLY PURCHASE OPTION RIDER
(single option)

One Financial Plaza
Providence, Rhode Island 02903-2448

This Early Purchase Option Rider (this "**Rider**") is attached to and made a part of that certain Lease Schedule No. 40307-11500-007, dated as of December 28, 2005 (the "**Lease Schedule**"), by and between the undersigned parties.

So long as no Event of Default has occurred and is continuing under the Lease, and upon at least 90 days prior written notice to Lessor, Lessee shall have the right to terminate the Lease Term for all but not less than all of the Equipment on the Rental Payment Date for Rental Payment Number 108 (the "**Termination Date**"). Lessee shall pay to Lessor on the Termination Date an amount equal to: (a) all Rental Payments, late charges and other amounts due and owing under the Lease; plus (b) all taxes, assessments and other charges due or payable in connection with the sale of the Equipment to Lessee; plus (c) 16.90000% of the Acquisition Cost of the Equipment.

Provided that Lessor shall have received all amounts payable hereunder on the Termination Date, and that no Event of Default then exists and is continuing under the Lease, Lessor shall convey all of its right, title and interest in and to the Equipment to Lessee on the Termination Date, on an **"AS-IS," "WHERE-IS" BASIS WITHOUT REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED**, and without recourse to Lessor, except that the Equipment shall be free and clear of all liens created by Lessor.

In the event Lessee shall not pay all amounts due hereunder on the Termination Date, then the Lease Term for the Equipment shall continue in full force and effect, and this Rider shall be null and void and of no further force and effect.

All capitalized terms used herein and not defined herein shall have the meanings set forth or referred to in the Lease Schedule. Except as specifically set forth herein, all of the terms and conditions of the Lease shall remain in full force and effect and are hereby ratified and affirmed. To the extent that the provisions of this Rider conflict with any provisions contained in the Lease, the provisions of this Rider shall control.

Dated as of: December 28, 2005

BANC OF AMERICA LEASING & CAPITAL, LLC SUCCESSOR-BY-MERGER TO FLEET CAPITAL CORPORATION

By: _____

Name: _____

Title: Vice President

THE UNION LIGHT, HEAT AND POWER COMPANY

By: _____

Name: Wendy L. Aumiller

Title: Treasurer

Bank of America

PURCHASE OPTION RIDER

One Financial Plaza
Providence, Rhode Island 02903-2448

This Purchase Option Rider (this **"Rider"**) is attached to and made a part of that certain Lease Schedule No. 40307-11500-007, dated as of DECEMBER 28, 2005 (the **"Lease Schedule"**), by and between the undersigned parties.

1. Purchase Option. If no Event of Default (or event or condition which, with the passage of time or giving of notice, or both, would become such an Event of Default) shall have occurred and be continuing, and the Lease shall not have been earlier terminated, Lessee shall have the option to purchase (the **"Purchase Option"**) all, but not less than all, of the Equipment at the expiration of the Lease Term for an amount, payable in immediately available funds on the last day of the Lease Term, equal to: (a) all Rental Payments, late charges and other amounts due and owing under the Lease; plus (b) all taxes, assessments and other charges due or payable in connection with the sale of the Equipment to Lessee; plus (c) the Purchase Option Price (hereinafter defined).

Provided that Lessor shall have received all amounts payable hereunder on the last day of the Lease Term, and that no Event of Default then exists and is continuing under the Lease, Lessor shall convey all of its right, title and interest in and to the Equipment to Lessee on the last day of the Lease Term, on an **"AS-IS," "WHERE-IS" BASIS WITHOUT REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED,** and without recourse to Lessor, except that the Equipment shall be free and clear of all liens created by Lessor. If Lessee intends to exercise the Purchase Option, Lessee shall give irrevocable written notice to Lessor (the **"Option Notice"**) not more than 240 days, nor less than 180 days, prior to the expiration of the Lease Term. If Lessee fails to give such written notice to Lessor, it shall be conclusively presumed that Lessee has elected not to exercise the Purchase Option.

2. Purchase Option Price. If Lessee has elected to exercise the Purchase Option, then the **"Purchase Option Price"** shall be the Fair Market Value (hereinafter defined) of the Equipment. As soon as practicable following Lessor's receipt of the Option Notice, Lessor and Lessee shall agree on the Fair Market Value of the Equipment as of the end of the Lease Term. **"Fair Market Value"** of the Equipment shall be the amount determined on the basis of, and equal in value to, the amount which would be obtained in an arm's-length transaction between an informed and willing buyer-user (other than a buyer-user currently in possession or a used equipment or scrap dealer) and an informed and willing seller, under no compulsion to buy or sell, provided, however, that in such determination (i) costs of removal from the location of current use shall not be a deduction from such value, (ii) it shall be assumed (whether or not the same be true) that the Equipment has been maintained and would have been returned to Lessor in compliance with the requirements of the Lease, and (iii) if any item of Equipment has been attached to or installed on or in any other property leased or owned by Lessee, then the fair market value of such item of Equipment shall be determined on an installed basis, in place and in use.

If Lessor and Lessee fail to agree upon Fair Market Value on or before one hundred sixty (160) days prior to the expiration of the Lease Term, then such value shall be determined by the Appraisal Procedure (as set forth in Section 3 below), at Lessee's sole cost and expense.

3. Appraisal Procedure. On the earlier of 160 days prior to the end of the Lease Term or the date on which either party hereto shall have given written notice to the other requesting determination of the Fair Market Value of the Equipment by this Appraisal Procedure (the **"Appraisal Notice"**), the parties shall consult for the purpose of appointing a qualified American Society of Appraisers (**"ASA"**) certified appraiser by mutual agreement. If no such appraiser is so appointed within ten (10) business days after the Appraisal Notice is given, each party shall appoint a certified ASA appraiser and the two appraisers shall attempt to

jointly agree on the Fair Market Value of the Equipment. If the two appraisers cannot so agree, then the two appraisers so appointed shall appoint a third certified ASA appraiser. If the two appraisers have been unable to agree on the Fair Market Value and on a third appraiser within thirty (30) days after the date of their appointment, Lessor may apply to the ASA or the American Arbitration Association to make such appointment, and both parties shall be bound by any such appointment. Any appraiser or appraisers appointed pursuant to this Appraisal Procedure shall be bound to determine the Fair Market Value of the Equipment within thirty (30) days after the appointment of the final appraiser to be employed pursuant to this Appraisal Procedure. If the parties shall have appointed a single appraiser, his or her determination of value shall be final, binding and conclusive on the parties. If the parties have appointed two appraisers, then their jointly agreed determination of value shall be final, binding and conclusive on the parties. If three appraisers shall be appointed, the values determined by the three appraisers shall be averaged, the appraisal having a value furthest from the average shall be discarded and the remaining two appraised values shall be averaged, and the average of the remaining two appraised values shall be final, binding and conclusive on the parties.

All capitalized terms used herein and not defined herein shall have the meanings set forth or referred to in the Lease Schedule. Except as specifically set forth herein, all of the terms and conditions of the Lease shall remain in full force and effect and are hereby ratified and affirmed. To the extent that the provisions of this Rider conflict with any provisions contained in the Lease, the provisions of this Rider shall control.

Dated as of: DECEMBER 28, 2005

BANC OF AMERICA LEASING & CAPITAL, LLC SUCCESSOR-BY-MERGER TO FLEET CAPITAL CORPORATION

By: Annamarie L. Warren

Name: Annamarie L. Warren

Title: Vice President

THE UNION LIGHT, HEAT AND POWER COMPANY

By: Wendy L. Aumiller

Name: Wendy L. Aumiller

Title: Treasurer

Bank of America

RENEWAL OPTION RIDER

One Financial Plaza
Providence, Rhode Island 02903-2448

This Renewal Option Rider (this "**Rider**") is attached to and made a part of that certain Lease Schedule No. 40307-11500-007 dated as of December 28, 2005 (the "**Lease Schedule**"), by and between the undersigned parties.

1. Renewal Option. If no Event of Default (or event or condition which, with the passage of time or giving of notice, or both, would become such an Event of Default) shall have occurred and be continuing, and the Lease shall not have been earlier terminated, Lessee shall have the option to renew and extend the Lease Term (the "**Renewal Option**") for all, but not less than all, of the Equipment for not more than one consecutive twelve-month renewal term (, a "**Renewal Term**") following the end of the Lease Term, provided that Lessee shall have notified Lessor in writing (the "**Option Notice**") of Lessee's intention to exercise the Renewal Option not more than 240 days, nor less than 180 days, prior to the expiration of the Lease Term, which notice shall be irrevocable. If Lessee does not furnish the Option Notice to Lessor as provided herein, Lessee shall be irrevocably deemed to have elected not to exercise the Renewal Option, and the Lease shall terminate on the last day of the Lease Term.

During a Renewal Term, the Lease shall continue in full force and effect on the same terms, covenants and conditions set forth herein, provided, however, that the Rental Payments payable by Lessee on each Rental Payment Date during a Renewal Term shall be an amount equal to the Fair Market Rental Value (defined in Section 2 below).

2. Fair Market Rental Value. "**Fair Market Rental Value**" of the Equipment shall be the amount determined on the basis of, and equal in value to, the amount which would be obtained in an arm's-length transaction between an informed and willing lessee (other than a lessee currently in possession) and an informed and willing lessor, each under no compulsion to lease, provided, however, that in such determination (i) costs of removal from the location of current use shall not be a deduction from such value (ii) and it shall be assumed (whether or not the same be true) that the Equipment has been maintained and would have been returned to Lessor in compliance with the requirements of the Lease, and (iii) if any item of Equipment has been attached to or installed on or in any other property leased or owned by Lessee, then the fair market rental value of such item of Equipment shall be determined on an installed basis, in place and in use.

As soon as practicable following Lessor's receipt of the Option Notice, Lessor and Lessee shall agree on the Fair Market Rental Value of the Equipment as of the end of the Lease Term. If Lessor and Lessee fail to agree upon Fair Market Rental Value on or before one hundred sixty (160) days prior to the expiration of the Lease Term, then such value shall be determined by the Appraisal Procedure (as set forth in Section 3 below), at Lessee's sole cost and expense.

3. Appraisal Procedure. On the earlier of 160 days prior to the end of the Lease Term or the date on which either party hereto shall have given written notice to the other requesting determination of the Fair Market Rental Value of the Equipment by this Appraisal Procedure (the "**Appraisal Notice**"), the parties shall consult for the purpose of appointing a qualified American Society of Appraisers ("**ASA**") certified appraiser by mutual agreement. If no such appraiser is so appointed within ten (10) business days after the Appraisal Notice is given, each party shall appoint a certified ASA appraiser and the two appraisers shall attempt to jointly agree on the Fair Market Rental Value of the Equipment. If the two appraisers cannot so agree, then the two appraisers so appointed shall appoint a third certified ASA appraiser. If the two appraisers have been unable to agree on the Fair Market Rental Value and on a third appraiser within thirty (30) days after the date of their appointment, Lessor may apply to the ASA or the American Arbitration Association to make such appointment, and both parties shall be bound by any such appointment. Any appraiser or appraisers appointed pursuant to this Appraisal Procedure shall be bound to determine the Fair Market Rental Value of the Equipment within thirty (30) days after the appointment of the final appraiser to be employed pursuant to this Appraisal Procedure. If the parties shall have appointed a single appraiser, his or her determination of value shall be final, binding and conclusive on the parties. If the parties have appointed two appraisers, then their jointly agreed determination of value shall be final, binding and conclusive on the parties. If three appraisers shall be appointed, the values determined by the three appraisers shall be averaged, the appraisal having a value furthest from the average shall be discarded and the remaining two appraised values shall be averaged, and the average of the remaining two appraised values shall be final, binding and conclusive on the parties.

All capitalized terms used herein and not defined herein shall have the meanings set forth or referred to in the Lease Schedule. Except as specifically set forth herein, all of the terms and conditions of the Lease shall remain in full force and effect and are hereby ratified and affirmed. To the extent that the provisions of this Rider conflict with any provisions contained in the Lease, the provisions of this Rider shall control.

Dated as of: December 28, 2005

BANC OF AMERICA LEASING & CAPITAL, LLC SUCCESSOR-BY-MERGER TO FLEET CAPITAL CORPORATION

By: Genevieve R. Warren

Name: Genevieve R. Warren

Title: Vice President

THE UNION LIGHT, HEAT AND POWER COMPANY

By: Wendy L. Aumiller

Name: Wendy L. Aumiller

Title: Treasurer

Bank of America

STIPULATED LOSS VALUE SCHEDULE

One Financial Plaza
Providence, Rhode Island 02903-

This Stipulated Loss Value Schedule (this "**Schedule**") is attached to and made a part of that certain Lease Schedule No. 40307-11500-007 dated as of December 28, 2005 (the "**Lease Schedule**"), by and between the undersigned parties.

The following Stipulated Loss Values shall be used to calculate final liquidated damages under Section 13 of the Master Lease and payments owed by Lessee upon loss, destruction, theft or irreparable damage to the Equipment under Section 5 of the Master Lease. The Stipulated Loss Value with respect to any item of Equipment on any Rental Payment Date during the Lease Term shall be an amount equal to the sum of: (a) all Rental Payments and other amounts then due and owing to Lessor under the Lease, together with all accrued interest and late charges thereon, calculated through and including the date of payment; plus (b) the product of the Acquisition Cost of the such Equipment multiplied by the percentage set forth below as of such Rental Payment Date.

Rental Payment Date for Rental Payment Number	Percentage of Acquisition Cost	Rental Payment Date for Rental Payment Number	Percentage of Acquisition Cost
0	104	60	63.81
1	103.5	61	63
2	102.99	62	62.2
3	102.47	63	61.38
4	101.95	64	60.56
5	101.42	65	59.74
6	100.89	66	58.92
7	100.34	67	58.1
8	99.79	68	57.27
9	99.23	69	56.44
10	98.66	70	55.61
11	98.09	71	54.78
12	97.51	72	53.93
13	96.92	73	53.1
14	96.33	74	52.25
15	95.73	75	51.4
16	95.12	76	50.55
17	94.51	77	49.69
18	93.9	78	48.83
19	93.27	79	47.98
20	92.65	80	47.11
21	92.02	81	46.25
22	91.38	82	45.38
23	90.74	83	44.51
24	90.09	84	43.63
25	89.43	85	42.75
26	88.77	86	41.87
27	88.11	87	40.98
28	87.44	88	40.09
29	86.77	89	39.2
30	86.1	90	38.3
31	85.42	91	37.41
32	84.73	92	36.51

33	84.04	93	35.6
34	83.35	94	34.7
35	82.65	95	33.79
36	81.95	96	32.87
37	81.24	97	31.95
38	80.53	98	31.03
39	79.82	99	30.11
40	79.1	100	29.18
41	78.38	101	28.25
42	77.65	102	27.31
43	76.91	103	26.38
44	76.18	104	25.44
45	75.44	105	24.49
46	74.69	106	23.55
47	73.94	107	22.6
48	73.18	108	21.64
49	72.42	109	20.68
50	71.66	110	19.72
51	70.89	111	18.76
52	70.12	112	17.79
53	69.34	113	16.82
54	68.56	114	15.85
55	67.78	115	14.88
56	66.99	116	13.91
57	66.2	117	12.93
58	65.41	118	11.96
59	64.61	119	10.98
		120	10

All capitalized terms used herein and not defined herein shall have the meanings set forth or referred to in the Lease Schedule. Except as specifically set forth herein, all of the terms and conditions of the Lease shall remain in full force and effect and are hereby ratified and affirmed.

Dated as of: December 28, 2005

BANC OF AMERICA LEASING & CAPITAL, LLC SUCCESSOR-BY-MERGER TO FLEET CAPITAL CORPORATION

By: Genevieve L Warren

Name: Genevieve L Warren

Title: Vice President

THE UNION LIGHT, HEAT AND POWER COMPANY

By: Wendy L. Aumiller

Name: Wendy L. Aumiller

Title: Treasurer

Bank of America

WARRANTY BILL OF SALE

One Financial Plaza
Providence, Rhode Island 02903-2448

THE UNION LIGHT, HEAT AND POWER COMPANY ("**Seller**") of 139 East Fourth Street, Cincinnati, OH 45202, in consideration of the sum of $2,079,030.95 Dollars, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, does hereby sell, transfer and assign to Banc of America Leasing & Capital, LLC, Successor-By-Merger to Fleet Capital Corporation ("**BALC**") a Rhode Island corporation having its principal office at One Financial Plaza, Providence, Rhode Island 02903, the equipment set forth in Schedule A hereto (the "**Equipment**").

Seller hereby covenants with and warrants to BALC that Seller is the lawful owner of the Equipment and has the right to sell the Equipment, and that the Equipment is free and clear of all rights, claims, liens, charges, security interests or encumbrances of any other person. Seller will forever indemnify, defend and warrant all of the rights of FCC in and to the Equipment transferred hereunder against the claims and demands of all other persons.

IN WITNESS WHEREOF, Seller has duly executed this Bill of Sale this 30th day of December, 2005.

THE UNION LIGHT, HEAT AND POWER COMPANY

By: Wendy L. Aumiller

Name: Wendy L. Aumiller

Title: Treasurer

State of Ohio

County of Hamilton

Subscribed and sworn before me this 30th day of December, 2005.

Cecilia A. Temple
Notary Public

My Commission expires: 9/28/08

(SEAL)

NOTARY PUBLIC STATE OF OHIO

CECILIA A. TEMPLE
Notary Public, State of Ohio
My Commission Expires
September 28, 2008

Bank of America

PAY PROCEEDS LETTER

One Financial Plaza
Providence, Rhode Island 02903-2448

We, the undersigned, hereby authorize Banc of America Leasing & Capital, LLC, Successor-By-Merger to Fleet Capital Corporation to pay the following Payee(s) from the proceeds of financial accommodations provided to us by BALC as evidenced by that certain TRUE LEASE SCHEDULE No. 40307-11500-007 dated as of DECEMBER 28, 2005. Make disbursements directly to said Payee(s) as follows:

PAYEE	Amount of Payment
THE UNION LIGHT, HEAT AND POWER COMPANY	$ 2,079,030.95
TOTAL:	$ 2,079,030.95

Dated as of: December 30, 2005

THE UNION LIGHT, HEAT AND POWER COMPANY

By: Wendy L. Aumiller

Name: Wendy L. Aumiller

Title: Treasurer

Bank of America.

NOTICE AND ACKNOWLEDGMENT OF ASSIGNMENT

December 30, 2005

The Union Light, Heat and Power Company
139 East Fourth Street
Cincinnati, OH 45202

Reference is hereby made to that certain Lease Schedule No. 40307-11500-007 (the "Designated Schedule") issued pursuant to and incorporating the terms of Master Equipment Lease Agreement No. 32862 dated as of February 11, 1999 (the "Master Lease"), by and between BANC OF AMERICA LEASING & CAPITAL, LLC (successor-by-merger to Fleet Capital Corporation) ("Assignor"), and THE UNION LIGHT, HEAT AND POWER COMPANY ("Lessee").

Assignor hereby gives Lessee notice, and Lessee hereby acknowledges receipt of notice, that effective as of December 30, 2005 (the "Effective Date"), Assignor has assigned to WINMARK LIMITED FUNDING, LLC ("Winmark"), whose offices are at 2 Hampshire Street, Suite 101, Foxboro, MA 02035, all rights, title, interests, obligations and liabilities of Assignor to the extent accruing on or after the Effective Date in, under and with respect to (a) the Designated Schedule, (b) solely to the extent incorporated in the Designated Schedule by reference, the Master Lease, and (c) solely to the extent related to the Designated Schedule, all of the other documents, instruments, agreements, certificates and filings executed and/or delivered to Lessor pursuant to the Master Lease (together with the Designated Schedule, the "Lease Documents") . Winmark will subsequently assign, grant a security interest in, or otherwise transfer its legal and/or beneficial interest in the Equipment and the Lease Documents to an affiliate in connection with a financing involving the Equipment and the Lease Documents (such assignments, grants and other transfers, and Winmark, such Winmark Affiliates and any such agent or entity are collectively referred to herein as "Assignee"). From and after the date of this Notice and Acknowledgment of Assignment, all payments of rent and other sums now or hereafter becoming due pursuant to the Designated Schedule or with respect to the equipment described on the Designated Schedule (the "Equipment") shall be paid to **Assignor as fiscal agent for Assignee or**, upon receipt of notice from Assignee of the termination of such fiscal agency, to **Assignee as directed in Assignee's invoices.**

In recognition of each Assignee's reliance upon this Notice, Lessee certifies, confirms and agrees as follows:

1. The Master Lease, the Designated Schedule and the other Lease Documents have been duly authorized, executed and delivered by Lessee; constitute the legal, valid and binding obligation of Lessee, enforceable against Lessee in accordance with the terms thereof; are in full force and effect on the date of execution of this notice by Lessee; are not subject to any defenses, set-offs, claims, counterclaims, or any right to cancellation or termination; constitute the entire agreement between Assignor and Lessee regarding the leasing of the Equipment and the terms and conditions of the Designated Schedule with respect to the Equipment, and there are no other documents or agreements binding upon or affecting the Equipment; and no default by Assignor or Lessee or event which, with the passage of time or the giving of notice, or both, would constitute a default by Assignor or Lessee under the Designated Schedule has occurred. All names, addresses, signatures, amounts and other facts contained in the Master Lease, the Designated Schedule and the other Lease Documents are correct.

2. There are no modifications, amendments or supplements to the Master Lease which relate to the Designated Schedule or any of the other Lease Documents; and any future modification, termination, amendment or supplement to the Designated Schedule, the Master Lease which relates to the Designated Schedule or any of the other Lease Documents, or settlement of amounts due thereunder which relates to the Designated Schedule or any of the other Lease Documents, shall be ineffective without Assignee's prior written consent.

3. The Equipment has been delivered to and accepted by Lessee and is in good working order and suitable for Lessee's purposes in all respects. The Equipment is in Lessee's possession and is located at the location specified in the Designated Schedule. No casualty has occurred with respect to the Equipment.

4. There has been no prepayment of rent or other sums payable under the Designated Schedule. Payments of any and all monies due under the Designated Schedule have been and will continue to be paid in strict accordance with the terms thereof. The Designated Schedule is current in all respects, including, but not limited to, the payment of any applicable sales, use and personal property taxes. As of the date hereof, there are One Hundred Twenty (120) rental payments, each in the amount of $21,241.67, remaining to be paid on the 30th day of each month under the Designated Schedule.

5. Lessee acknowledges and agrees that (i) Assignee shall be the owner of the Equipment (subject to the rights created in Lessee pursuant to the Designated Schedule) and Assignor shall have no interest or authority of any nature regarding the Equipment or the Designated Schedule, and Assignor shall be released from all obligations and liabilities thereunder and with respect to the other Lease Documents arising after the Effective Date to the extent the same have been assigned to, and accepted and assumed by Assignee, (ii) Lessee will deal exclusively with respect to the Designated Schedule with Winmark, as agent for the Assignee, and Lessee will deliver copies of all notices and other communications given or made by Lessee to Winmark, as agent for the Assignee, at the address listed above, (iii) so far as enforcement of the Designated Schedule is concerned, notwithstanding the existence of other schedules or supplements thereto, the Designated Schedule is separate and severable and Assignee may take enforcement action with respect to the Designated Schedule independently of other assignees, equipment owners or financing parties having an interest in the Master Lease and other lease schedules not included in the Designated Schedule, and (iv) Lessee will execute such other instruments and take such actions as Assignee reasonably may require to further confirm the vesting of rights under the Designated Schedule in Assignee and Assignee's ownership of the Equipment.

6. Lessee has not received any notice of, nor has Lessee caused or participated in, any prior sale, transfer, assignment, hypothecation or pledge of all or any portion of the Equipment, the Designated Schedule or the rents reserved thereunder.

7. Lessee will keep the Master Lease, the Designated Schedule and the Equipment free and clear of all liens and encumbrances (other than the interest of Assignor, Assignee or parties claiming by, through or under them).

8. All representations and duties of Assignor intended to induce Lessee to enter into the Designated Schedule, whether required by the Designated Schedule or otherwise, have been fulfilled.

9. Lessee has executed only one (1) original of the Designated Schedule which was delivered to Assignor.

10. Lessee agrees to promptly send to Assignee such financial statements and other notices as may be required to be sent to the lessor under the terms of the Master Lease, as assignee of Assignor's interest under the Designated Schedule, directly to Assignee at Assignee's address set forth hereinabove.

Accepted and agreed to on this 30th day of December, 2005.

BANC OF AMERICA LEASING & CAPITAL, LLC
(successor-by-merger to Fleet Capital Corporation)
Assignor

By: Janet E. Ganley

Name: JANET E. GANLEY
ASSISTANT VICE PRESIDENT

Title:

THE UNION LIGHT, HEAT AND POWER COMPANY

Lessee

By: Wendy L. Aumiller

Name: Wendy L. Aumiller

Title: Treasurer

WINMARK LIMITED FUNDING, LLC
Assignee

By: Rosemary Abbott

Name: Rosemary Abbott
Vice President

Title:

BELLSOUTH

BellSouth Telecommunications, Inc.
601 W. Chestnut Street
Room 407
Louisville, KY 40203

Dorothy.Chambers@BellSouth.com

Dorothy J. Chambers
General Counsel/Kentucky

502 582 8219
Fax 502 582 1573

January 16, 2006

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

Re: SouthEast Telephone, Inc., Complainant v. BellSouth Telecommunications, Inc., Defendant
PSC 2005-00533

Dear Ms. O'Donnell:

Enclosed for filing in the above-captioned case is the original and ten (10) copies of BellSouth Telecommunications, Inc.'s Answer.

Also enclosed for filing is the original and ten (10) copies of BellSouth Telecommunication's, Inc.'s Brief in Support of its Notice to Disconnect Service for Nonpayment. Exhibit 1 to BellSouth's Brief contains proprietary information. A Petition for Confidential Treatment is attached.

Very truly yours,

Dorothy J. Chambers

Enclosures

cc: Parties of Record

617774

COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

SOUTHEAST TELEPHONE, INC.	)	
	)	
COMPLAINANT	)	CASE NO.
	)	2005-00533
VS.	)	
	)	
BELLSOUTH TELECOMMUNICATIONS, INC.	)	
	)	
DEFENDANT	)	

BELLSOUTH TELECOMMUNICATIONS, INC.'S
MOTION FOR CONFIDENTIALITY

Petitioner, BellSouth Telecommunications, Inc. ("BellSouth"), by counsel, hereby moves the Public Service Commission of the Commonwealth of Kentucky (the "Commission"), pursuant to KRS 61.878 and 807 KAR 5:001, § 7, to classify as confidential the highlighted information contained in Confidential Exhibit 1 attached to BellSouth's Brief filed this date in the above-captioned case. The highlighted information contains information specific to SouthEast Telephone, Inc. ("SouthEast").

The Kentucky Open Records Act exempts certain information from the public disclosure requirements of the Act, including certain commercial and also information the disclosure of which is prohibited by federal law or regulation. KRS 61.787(1)(c)1 and 61.878(1)(k). To quality for the commercial information exemption and, therefore, keep the information confidential, a party must establish that disclosure of the commercial information would permit an unfair advantage to competitors and the

parties seeking confidentiality if openly discussed. KRS 61.878(1)(c)1; 807 KAR 5:001 § 7. The Commission has taken the position that the statute and rules require the party to demonstrate actual competition and the likelihood of competitive injury if the information is disclosed.

The highlighted information contains customer-specific information. Information provided to the Commission concerning specific customers is CPNI[1] and should not be publicly disclosed without the approval of the individual customers. Disclosure of customer-specific information is subject to obligations under Section 222 of the Federal Law. Federal law imposes the obligation to maintain the confidentiality of such information from public disclosure when the disclosure of such information or records is prohibited by federal law or regulation. Therefore, because CPNI is protected from disclosure by federal law, this information should be afforded proprietary treatment.

Public disclosure of the identified information would provide competitors with an unfair competitive advantage. The Commission should also grant confidential treatment to the information for the following reasons:

(1) The information for which BellSouth is requesting confidential treatment is not known outside of BellSouth;

(2) The information is not disseminated within BellSouth and is known only by those of BellSouth's employees who have a legitimate business need to know and act upon the information;

(3) BellSouth seeks to preserve the confidentiality of this information through appropriate means, including the maintenance of appropriate security at its offices; and

[1] Customer Proprietary Network Information

(4) By granting BellSouth's petition, there would be no damage to any public interest.

For the reasons states herein, the Commission should grant BellSouth's request for confidential treatment of the identified information.

Respectfully submitted,

Dorothy J. Chambers
601 W. Chestnut Street, Room 407
P. O. Box 32410
Louisville, KY 40232

Robert A. Culpepper
Suite 4300, BellSouth Center
675 W. Peachtree Street, N.E.
Atlanta, GA 30309

COUNSEL FOR BELLSOUTH
TELECOMMUNICATIONS, INC.

617783

COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

SOUTHEAST TELEPHONE, INC.	)	
	)	
COMPLAINANT	)	
	)	
v.	)	CASE NO. 2005-00533
	)	
BELLSOUTH TELECOMMUNICATIONS, INC.	)	
	)	
DEFENDANT	)	

ANSWER OF BELLSOUTH TELECOMMUNICATIONS, INC.

The Defendant, BellSouth Telecommunications, Inc. ("BellSouth"), by counsel, herewith files its answer to the Complaint and Request for Emergency Injunctive Relief ("Complaint") of SouthEast Telephone, Inc. ("SouthEast"), and states as follows:

FIRST DEFENSE

1. The Complaint fails to state a cause of action upon which relief can be granted.

SECOND DEFENSE

2. BellSouth states that the first sentence of the introductory paragraph requires no response. BellSouth denies the remainder of the introductory paragraph.

3. BellSouth admits that part of grammatical paragraph 1 insofar as it relates to SouthEast being a competitive local exchange carrier ("CLEC") which provides competitive telecommunications and Internet services in rural Kentucky. BellSouth is without sufficient knowledge to form a belief as to the remaining allegations in grammatical paragraph 1 and therefore denies same.

4. BellSouth admits grammatical paragraphs 2, 3 and 4.

5. BellSouth admits that part of grammatical paragraph 5 related to BellSouth being a Bell Operating Company as defined in Section 153(4) of the Act. BellSouth further admits that the Federal Communications Commission ("FCC") granted the joint application of BellSouth, BellSouth Corporation, and BellSouth Long Distance, Inc. to provide in-region, interLATA service in Kentucky. The cited portions of Section 271 of the Act speak for themselves and require no response from BellSouth.

6. BellSouth states with respect to grammatical paragraphs 6, 7, and 8, the Kentucky Revised Statutes and the Federal Communications Act speak for themselves. Notwithstanding the foregoing, BellSouth denies that the Commission has any Section 271 authority.

7. The allegations in Paragraph 9 of the Complaint are denied.

8. Responding to the allegations in Paragraph 10, BellSouth admits only that SouthEast buys services, including resale services and unbundled network elements ("UNEs"), from BellSouth in accordance with the parties' interconnection agreement, as amended from time to time ("ICA").

9. Responding to the allegations of grammatical paragraph 11, the TRRO speaks for itself and requires no response from BellSouth.

10. BellSouth admits that part of grammatical paragraph 12 related to BellSouth's announcement that, pursuant to the TRRO, BellSouth would cease accepting new orders for UNE-P effective March 11, 2005. With respect to the allegations in grammatical paragraph 12, related to Commission and Court Orders, BellSouth states consistent with the TRRO and the *BellSouth v. Cinergy Preliminary Injunction Order,* BellSouth ceased accepting new UNE-P orders in Kentucky as of April 27, 2005.

11. Responding to the allegations of paragraph 13 of the Complaint, BellSouth admits only that the parties have not executed a commercial agreement. BellSouth denies the remaining allegations of paragraph 13 of the Complaint.

12. Responding to the allegations of paragraph 14 of the Complaint, BellSouth admits only that BellSouth properly rejected SouthEast's attempts to place UNE-P orders following the issuance of the *BellSouth v. Cinergy Preliminary Injunction Order* and in response thereto SouthEast ordered resale services from BellSouth pursuant to the parties' ICA. BellSouth denies the remaining allegations of paragraph 14 of the Complaint.

13. BellSouth states, with respect to the allegations in grammatical paragraph 15, the *BellSouth v. SouthEast Final Order dated September 16, 2005,* speaks for itself. BellSouth appealed the Order to the 6th Circuit Court of Appeals on October 15, 2005. Regarding the dispute resolution provision of the ICA, BellSouth denies that such provision absolves SouthEast from its obligation to pay for the services it orders from BellSouth. BellSouth denies the remaining allegations of paragraph 15 of the Complaint.

14. Responding to the allegations of paragraph 16 of the Complaint, BellSouth admits only that BellSouth properly rejected SouthEast's attempts to place UNE-P orders following the issuance of the *BellSouth v. Cinergy Preliminary Injunction Order* and that SouthEast ordered resale services from BellSouth pursuant to the parties' ICA. BellSouth provisioned SouthEast's resale orders and correctly billed SouthEast for resale services. BellSouth denies the remaining allegations of paragraph 16 of the Complaint.

15. Responding to the allegations of paragraph 17 of the Complaint, BellSouth admits only that on or about October 20, 2005, SouthEast submitted correspondence to BellSouth wherein SouthEast claimed, among other things, a contractual right to continue ordering UNE-P. BellSouth denies the remaining allegations of paragraph 17 of the Complaint.

16. The allegations in Paragraph 18 of the Complaint are denied. Without limiting the foregoing, on October 28, 2005, BellSouth promptly and fully responded to SouthEast's correspondence dated October 20, 2005.

17. The allegations in Paragraph 19 of the Complaint are denied. Without limiting the foregoing, in accordance with the ICA, BellSouth has notified SouthEast of its intent to terminate service for non-payment.

18. Responding to the allegations of paragraph 20 of the Complaint, BellSouth admits only that on or about November 30, 2005, SouthEast responded to BellSouth's termination notice dated November 2, 2005. The contents of SouthEast's November 30, 2005 correspondence speaks for itself and requires no response from BellSouth.

19. BellSouth admits that the part of the allegations in grammatical paragraph 21 related to BellSouth mailing a letter dated December 2, 2005, to the Kentucky Public Service Commission notifying the Commission of the payment issues with SouthEast and that the letter was stamped as filed on December 6, 2005. Responding to the remaining allegations of paragraph 21 of the Complaint, BellSouth admits only that it provided SouthEast with a second termination notice dated November 29, 2005 and such notice speaks for itself. BellSouth denies the remaining allegations of paragraph 21 of the Complaint.

20. BellSouth states that with respect to grammatical paragraph 22 no response is required.

21. Responding to the allegations of paragraph 23 of the Complaint, BellSouth denies it acted in any unlawful manner. Rather, BellSouth has acted in accordance with the ICA and provided SouthEast with notice of BellSouth's intent to terminate service for nonpayment.

22. Responding to the allegations of paragraphs 24, 25, and 26 of the Complaint, the cited (or quoted) statutes and orders speak for themselves and require no response from BellSouth.

23. Responding to the allegations of paragraphs 27 and 28 of the Complaint, the cited FCC Orders speak for themselves and require no response from BellSouth. Without limiting the foregoing, BellSouth denies that the Commission has any Section 271 authority.

24. Responding to the allegations of paragraphs 29 of the Complaint, the cited Commission Order and BellSouth testimony speak for themselves and require no response from BellSouth.

25. With respect to the allegations in grammatical paragraph 30, the Commission's Order speaks for itself. BellSouth notes that this issue is included in BellSouth Motion for Reconsideration of the Commission's September 26, 2005, Order in Case No. 2004-00044.

26. BellSouth denies the allegations in grammatical paragraph 31.

27. BellSouth states that with respect to grammatical paragraph 32 no response is required.

28. The allegations of paragraph 33 of the Complaint are denied.

29. Responding to the allegations of paragraph 34 of the Complaint, the cited FCC Order speaks for itself and requires no response from BellSouth.

30. BellSouth states that with respect to grammatical paragraph 35 the Commission's Order speaks for itself; however, the cited portion of such Commission Order is subject to BellSouth's Motion for Rehearing and thus a final ruling has not been issued.

31. BellSouth denies the allegations in grammatical paragraph 36.

32. BellSouth states that grammatical paragraph 37 requires no response.

33. BellSouth denies the allegations in grammatical paragraph 38.

34. BellSouth denies the allegations contained in the first sentence of grammatical paragraph 39. With respect to the remaining allegations in grammatical paragraph 39, BellSouth states that the U.S. Supreme Court Opinion speaks for itself.

35. BellSouth denies the allegations contained in grammatical paragraph 40.

36. BellSouth states that grammatical paragraph 41 requires no response.

37. BellSouth denies the allegations contained in grammatical paragraph 42.

38. Responding to the allegations of paragraphs 43 and 44 of the Complaint, the cited FCC Orders and Federal statutes speak for themselves and require no response from BellSouth. Without limiting the foregoing, BellSouth denies acting in any manner that is inconsistent with such Orders and statutes.

39. Responding to the allegations of paragraph 45 of the Complaint, BellSouth denies acting in any manner that is inconsistent with the ICA. Rather, and in accordance with the ICA, BellSouth has notified SouthEast of its intent to terminate service for nonpayment.

40. Responding to the allegations of paragraph 46 of the Complaint, the cited BellSouth correspondence speaks for itself and requires no response from BellSouth. The remaining allegations of paragraph 46 of the Complaint are denied.

41. Responding to the allegations contained in paragraphs 47 and 48 of the Complaint, the cited (and quoted) portions of the ICA speak for themselves and require no response from BellSouth. Without limiting the foregoing, BellSouth denies acting in any manner that is inconsistent with the ICA. Rather, and in accordance with the ICA, BellSouth has notified SouthEast of its intent to terminate service for nonpayment.

42. The allegations of paragraph 49 of the Complaint are denied.

43. BellSouth states that grammatical paragraph 50 requires no response.

44. BellSouth denies the allegations in grammatical paragraph 51.

45. With respect to the allegations in grammatical paragraph 52 that relate to Kentucky law, BellSouth states that the statutes speak for themselves. BellSouth denies the remaining allegations in paragraph 52.

46. BellSouth denies that part of grammatical paragraph 53 alleging BellSouth's conduct constitutes an unreasonable or unjustly discriminatory utility practice. With respect to the remaining allegations in paragraph 53 relating to KRS 278.260, BellSouth states that the statute speaks for itself.

47. BellSouth denies the allegations in grammatical paragraph 54 alleging this case involves connection of a telephone company's exchange or lines with that of another telephone company's pursuant to KRS 278.530(1) and that KRS 278.530(2) authorizes the Commission to issue injunctions to compel such interconnection. Moreover, BellSouth denies state or federal law absolves SouthEast from its obligation to pay for services it orders under its ICA.

53. BellSouth denies the allegations in grammatical paragraphs 55, 56, 57, and 59.

54. BellSouth admits the allegations in grammatical paragraph 58 related to its revenues but denies the remaining allegations in paragraph 58.

55. BellSouth admits the allegations in grammatical paragraph 60 related to SouthEast serving rural Kentucky. BellSouth is without knowledge or information sufficient to admit or deny SouthEast's allegation as to the public interest and, therefore, denies the same.

56. All allegations contained in the Complaint not specifically admitted are denied.

THIRD DEFENSE

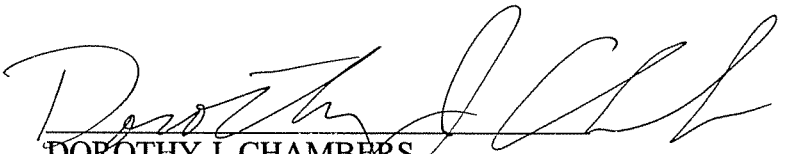
The Public Service Commission lacks jurisdiction to grant injunctive relief which must be sought from the Franklin Circuit Court or other court of competent jurisdiction pursuant to KRS 278.390.

FOURTH DEFENSE

The Public Service Commission lacks jurisdiction to enforce BellSouth's Section 271 obligations.

WHEREFORE, BellSouth respectfully requests that this Complaint be dismissed and held for naught and BellSouth be granted any and all other relief to which it may appear entitled.

Respectfully submitted,



DOROTHY J. CHAMBERS
601 W. Chestnut Street, Room 407
P. O. Box 32410
Louisville, KY 40232
(502) 582-1475

ROBERT A. CULPEPPER
675 W. Peachtree Street, NW
Atlanta, GA 30305
(404) 335-0841

COUNSEL FOR BELLSOUTH
TELECOMMUNICATIONS, INC.

616016

COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

SOUTHEAST TELEPHONE, INC.	)	
Complainant,	)	
	)	
v.	)	Case No. 2005-00533
	)	
BELLSOUTH TELECOMMUNICATIONS, INC.	)	
Defendant.	)	
	)	

BELLSOUTH'S BRIEF IN SUPPORT OF ITS NOTICE TO DISCONNECT SERVICE FOR NONPAYMENT

In accordance with the Commission's *Order,* dated December 16, 2005, BellSouth Telecommunications, Inc. ("BellSouth"), by counsel, submits this brief in support of its previously filed notice of its intent to disconnect SouthEast Telephone, Inc. ("SouthEast") for nonpayment. In response, to the disconnect notice, SouthEast filed a Complaint and Request for Emergency Injunctive Relief ("*Complaint*") wherein SouthEast requested the Commission to enjoin BellSouth from terminating service for nonpayment.

As explained below, it is undisputed that SouthEast has refused to pay for resale services that SouthEast has ordered under the parties' interconnection agreement ("ICA"). SouthEast's failure to pay for services rendered constitutes a material breach of contract and as a consequence thereof, BellSouth is authorized under the ICA to terminate service for nonpayment. SouthEast's contention that there is a billing dispute is nothing more than an attempt to continue operating under an unlawful unbundling regime (UNE-P). Moreover, SouthEast's claim that the parties' dispute resolution provision

absolves SouthEast of its obligation to pay for the services it orders is unsupported and borders on frivolous. Moreover, SouthEast's legal arguments, in addition to being erroneous, are irrelevant because SouthEast does not have the right in its ICA to require BellSouth to commingle network elements in a manner that would result in the resurrection of UNE-P. Accordingly, the Commission should dismiss SouthEast's Complaint.

FACTS

The following facts are undisputed. SouthEast is a competitive local exchange carrier ("CLEC") that provides local service in Kentucky. BellSouth provides services, including unbundled network elements ("UNEs") and resale services, to SouthEast pursuant to an ICA executed in 2001, as amended from time to time. Among other things, the ICA contains the rates, terms, and conditions that apply to: (i) BellSouth's obligation to provide resale services and UNEs ordered by SouthEast; and (ii) SouthEast's obligation to pay for the resale services and UNEs it orders.

The parties' ICA predates the Federal Communications Commission's ("FCC") *Triennial Review Order ("TRO")*[1] and *Triennial Review Remand Order ("TRRO").*[2] SouthEast has not executed a *TRO/TRRO*-compliant amendment to its ICA. Accordingly, none of the rights and obligations of CLECs and ILECs as described in the *TRO* or *TRRO* are contained in SouthEast's ICA, including but not limited to the commingling rights and obligations set forth in the *TRO*.

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[1] 18 FCC Rcd 16978 (2003), *vacated and remanded in part, aff'd in part, United States Telecom Ass'n v. FCC,* 359 F.3d 554 (D.C. Cir 2004).

[2] Order on Remand, *Unbundled Access to Network Elements; Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers.* WC Docket No. 04-313, CC Docket No. 01-338, FCC 04-290 (FCC rel. Feb. 4, 2005).

By its own admission, SouthEast primarily provides local service via the unbundled network element platform ("UNE-P"). *Complaint* at ¶ 10. UNE-P is the combination of an unbundled loop with unbundled switching and shared transport. *Id.; TRRO* at ¶ 5, 199. The FCC eliminated BellSouth's obligation to provide UNE-P pursuant to Section 251 of the Telecommunications Act of 1996 (the "Act"). *TRRO* at ¶¶ 5, 199. Specifically, the FCC established a twelve month transition plan for transitioning the embedded base of UNE-P customers to other service arrangements and prohibited CLECs from adding new UNE-P customers effective March 11, 2005 ("no new adds"). *Id.* Because the "no new adds" language in the *TRRO* clearly reflects the FCC's intent that those provisions, unlike other provisions of the *TRRO*, were to be self-effectuating, in accordance with the FCC's "no new adds" mandate, BellSouth notified all CLECs, including SouthEast, that effective March 11, 2005, and without the need to formally amend any existing interconnection agreement, BellSouth no longer would accept any new UNE-P orders.

SouthEast, along with other CLECs, challenged BellSouth's position that the "no new adds" portion of the *TRRO* was self-effectuating. Although the Commission ruled in favor of the CLECs on this issue,[3] the United States District Court for the Eastern District of Kentucky granted BellSouth's motion for a preliminary injunction, thus enjoining the Commission from requiring BellSouth to continue processing new orders for UNE-P. *BellSouth Telecommunications, Inc. v. Cinergy Communications, Co. Et Al.,* C/A NO. 3:05-CV-16-JMH (April 22, 2005)("*Preliminary Injunction Order*"). Consistent with the *Preliminary Injunction Order*, BellSouth notified all CLECs, including SouthEast, that

[3] Case No. 2004-00427, Order dated March 10, 2005.

effective April 27, 2005, BellSouth no longer would accept new service requests from CLECs for UNE-P in Kentucky. Carrier Notification SN1085094.

Thereafter, SouthEast continued to order UNE-P.[4] BellSouth rejected such orders. In response thereto, SouthEast ordered resale services pursuant to the resale provisions of the ICA. BellSouth provisioned resale services in accordance with the ICA, and billed SouthEast for resale services in accordance with the ICA. Despite ordering resale services, SouthEast has refused to pay BellSouth for such services. *See Complaint* at ¶ 17 ("In response to BellSouth's [resale] bills, SouthEast paid the full amount due and owing for such network elements [UNE-P]."); *Complaint* at ¶ 46. Stated more directly, SouthEast acknowledges it has chosen to pay only the amount it would have paid if SouthEast had ordered UNE-P instead of resale services. The accumulated difference between the amount billed for resale services and the amounts paid by SouthEast was approximately $1 million at the time SouthEast filed its *Complaint*, and such amount continues to grow. SouthEast currently owes BellSouth the amount shown on confidential Exhibit 1 attached hereto.

DISCUSSION

I. SouthEast is Obligated to Pay for the Services it Ordered.

Absent some service or provisioning-related problem, it is axiomatic that SouthEast has an obligation to pay for the services it orders from BellSouth. There is no allegation that the resale charges that SouthEast has refused to pay are not accurate for resale services or that there has been performance-related issues with such services. In short, ***SouthEast ordered resale services; BellSouth provided resale services; and***

[4] Rather than stating that it was placing orders for UNE-P, SouthEast alleges that it "attempted to place orders for the loop-switching-transport group of elements on several occasions, but BellSouth refused to accept those orders."

SouthEast has refused to pay for those resale services. Under such circumstances, a refusal to pay for services ordered constitutes a breach of contract.[5] Under the plain terms of the ICA, BellSouth has the right to terminate service for nonpayment.[6]

Indeed, SouthEast does not dispute that it ordered resale services; rather, it makes the unsupported claim that it did so under "duress" -- "SouthEast was compelled to submit orders into BellSouth's system for resale services. ***SouthEast submitted these resale orders*** under duress, even though what SouthEast intended to order (and was entitled to order) was the loop-switch-transport group of elements." *Complaint* at ¶ 14 (emphasis added).

The FCC and the United States District Court for the Eastern District of Kentucky have determined that SouthEast no longer has a right to continue ordering UNE-P.[7] The so-called "loop-switch-transport group of elements" that SouthEast wishes to continue ordering is UNE-P. And, as SouthEast has acknowledged in its complaint, SouthEast has paid at UNE-P rates. *Complaint* at ¶ 46. The Commission should not allow SouthEast's attempt to side-step the FCC's elimination of UNE-P by simply referring to UNE-P as the "loop-switch-transport group of elements." To allow SouthEast to continue its brazen practice of paying UNE-P rates for resale services, under the guise of another name, effectively undermines the clear directive of the FCC. As Kentucky courts have long recognized, "If it walks like a duck and quacks like a duck, it is a duck." Ky. Milk

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[5] The relevant portion of the Resale Attachment to SouthEast's ICA plainly provides that "SouthEast shall make payment for all services billed." ICA, Attachment 1, § 7.3; ICA, Attachment 7, § 1.3 ("Payment of all charges will be the responsibility of SouthEast."). Without question, SouthEast has breached its payment obligations.

[6] ICA, Attachment 1, § 8.2.2 ("BellSouth reserves the right to suspend or terminate service for nonpayment."); ICA, Attachment 7, § 1.7.1 (same).

[7] In its Complaint, SouthEast fails to mention the relevant time frame when BellSouth refused SouthEast's so-called "loop-switching-transport group of elements" orders, (i.e. UNE-P orders). Of course, BellSouth was well within it rights to refuse any UNE-P order in Kentucky on or after April 27, 2005.

Marketing and Antimonopoly Comm. v. The Kroger Co., 691 S.W.2d 893, 897 (Ky. 1985). SouthEast's continued refusal to pay a bill that is factually correct for the services ordered and provisioned, is a material breach of contract that gives BellSouth the right to terminate service to SouthEast for its nonpayment. And, most significantly, in light of SouthEast's continued payments for only UNE-P, for the Commission to grant SouthEast's request that BellSouth be required to continue to provision services results in SouthEast's being allowed to continue to place new orders at UNE-P rates, a result squarely contrary to Judge Hood's Injunction Order that there can be no new UNE-P orders for switching.

II. The Refusal to Pay an Accurate Bill Does Not Constitute a Valid Billing Dispute.

SouthEast does not dispute that it has ordered resale services from BellSouth. Rather, SouthEast claims that it has done so "under duress" and that the resale charges that SouthEast has refused to pay are subject to a "billing dispute." Both claims lack merit. SouthEast fails to explain how BellSouth's lawful refusal of UNE-P orders submitted after the issuance of Judge Hood's *Preliminary Injunction Order* constitutes "duress" or absolves SouthEast from its contractual obligation to pay for the services it has ordered.

SouthEast contends it was "compelled" to submit resale orders when BellSouth rejected SouthEast's attempt to order the "loop-switching-transport group of network elements," i.e. UNE-P, pursuant to Section 271 of the Act. Notably absent from SouthEast's assertions is any reference to any provision of the parties' ICA that would allow SouthEast to order Section 271 elements. To the contrary, and fatal to any claim that SouthEast has a right to order Section 271 elements under its current ICA, the first

sentence of Attachment 2 of the ICA plainly provides that "[t]his Attachment sets forth the unbundled network elements and combinations of unbundled network elements that BellSouth agrees to offer SouthEast in accordance with its obligations under Section *251(c)(3)* of the Act." ICA, Attachment 2, § 1.1 (emphasis added). See Exhibit 2.

Whether SouthEast has the right to continue to receive the "loop-switching-transport group of network elements," pursuant to Section 271 of the Act, is a legal issue that cannot be resolved by reference to the existing ICA. SouthEast is well aware of this fact as it is an active participant in Case No. 2004-00427 and thus also is well aware that whether the Commission can require BellSouth to include Section 271 elements in a Section 252 interconnection agreement is a pending issue before the Commission.[8] Rather than concede this fact, SouthEast has concocted a scheme to order resale services and claim those services are a "loop-switching-transport group of network elements." SouthEast then files a billing dispute, claiming that BellSouth has refused to provide the "loop-switching-transport group of network elements." BellSouth's refusal to provide services that are not contained in the ICA is not a valid basis for disputing a bill rendered for resale services that have been properly ordered, provisioned and billed. Analysis of the undisputed facts is straightforward and simple. There is no dispute as to this essential fact: SouthEast has refused to pay for resale services it has ordered. SouthEast has an obligation under the interconnection agreement to pay for the services it orders. SouthEast has breached that obligation by refusing to pay for the services it has ordered. Accordingly, under the ICA, BellSouth has the contractual and legal right to terminate service for non-payment.

[8] For the reasons set forth in BellSouth's post-hearing brief filed in Case No. 2004-00427, it is BellSouth's position that the Commission does not have the authority to force BellSouth to include Section 271 elements in a Section 252 interconnection agreement.

SouthEast asserts that it raised its billing dispute on October 20, 2005, and that BellSouth "never made any effort to resolve the dispute."[9] *Complaint* at ¶ 47. Attached as Exhibit 6 to SouthEast's *Complaint* is correspondence dated October 20, 2005, wherein SouthEast describes its billing dispute as follows: "Pursuant to our existing, effective interconnection agreement, SouthEast is entitled to continue ordering the Unbundled Network Element Platform ("UNE-P"), and is entitled to pay the established TELRIC rates for both pre-existing UNE-P lines and new orders until the resolution of the pending dispute between the two companies. ***We demand that you resume taking orders for UNE-P immediately.***" *Complaint,* Exhibit 6 (emphasis added). However, the U.S. District Court in the *Preliminary Injunction Order,* had granted BellSouth's motion for a preliminary injunction and enjoined the Commission "from enforcing the portion of the PSC orders dated March 10, 2005, that require BellSouth to continue to process new orders for UNE-P switching." *Id.* at 19. Thus, there is no dispute concerning BellSouth's obligation to accept orders for and provision UNE-P; the U.S. District Court has decided that dispute in BellSouth's favor. Not surprisingly, BellSouth rejected SouthEast's unlawful demand.

SouthEast cannot circumvent the federal court decision by claiming there is a billing dispute as a result of SouthEast's demand that BellSouth accept unlawful UNE-P orders and act in a manner completely at odds with the "no new adds" mandate established by the FCC in the *TRRO* and upheld by the District Court in the *Preliminary*

[9] Contrary to SouthEast's allegations, On October 28, 2005, BellSouth responded to SouthEast's so-called billing dispute and notified SouthEast that, consistent with the *TRRO* and the *Preliminary Injunction Order,* BellSouth would not resume taking UNE-P orders. (*Complaint,* Exhibit 5).

Injunction Order. In short, there is no valid or even colorable billing dispute.[10] To avoid service termination, SouthEast is obligated to pay for the services it ordered from BellSouth.

III. The Parties' Dispute Resolution Provision Does Not Absolve SouthEast from its Obligation to Pay for Services Rendered.

SouthEast's claim that the parties' dispute resolution provision somehow entitles SouthEast to place unlawful UNE-P orders or absolves SouthEast from its obligation to pay for services it orders borders on the frivolous. *See Complaint* ¶ 16. Indeed, SouthEast has bluntly (and erroneously) stated that "BellSouth is obligated to continue the interconnection agreement contractual pricing of the port/loop combinations ***(formerly known as UNE-P)*** until a dispute resolution has been reached." (SouthEast letter dated November 1, 2005, attached hereto as Exhibit 3). This position is contrary to the District Court's *Preliminary Injunction Order* and thus is meritless. The parties' dispute resolution provision provides in relevant part that "the Parties agree to carry on their respective obligations under this Agreement while any dispute resolution in pending." *Complaint,* Exhibit 9. Under the Agreement, SouthEast has an obligation to pay for the services that SouthEast orders. SouthEast has refused to pay for the resale services that is has ordered. Accordingly, SouthEast *has failed to carry on its payment obligations under the Agreement* and, thus, has failed to satisfy the express terms of the parties' dispute resolution provision. BellSouth, on the other hand, has met its contractual obligations by provisioning the resale services ordered by SouthEast.

[10] Moreover, BellSouth has acted in accordance with the ICA's billing dispute provisions. Specifically, the time frames set forth in the ICA are ***maximum*** timeframes for addressing legitimate billing disputes. Here, BellSouth promptly responded and rejected SouthEast's alleged billing dispute, i.e., a demand for BellSouth to accept UNE-P orders and thus completely disregard the *TRRO* and the *Preliminary Injunction Order. See* BellSouth correspondence dated October 31, 2005 attached hereto as Exhibit 4.

Further, BellSouth continued to carry on its obligation to provide UNE-P while the dispute over the "no new adds" provisions of the *TRRO* was pending. BellSouth provided new UNE-P services beyond the March 11, 2005, deadline established by the FCC, and only discontinued accepting UNE-P orders as of April 27, 2005 – after the District Court issued a preliminary injunction which relieved BellSouth of any Commission-imposed obligation to accept UNE-P orders. *Preliminary Injunction Order* at 19. Because there is no obligation in the ICA for BellSouth to provide a "loop-switching-transport group of network elements" other than UNE-P, there is no obligation for BellSouth to "carry on," and thus no valid dispute to excuse SouthEast from paying its bills.

IV. SouthEast's ICA Does Not Contain Any Commingling Provisions. Accordingly, there is no Contractual Basis for SouthEast to Request BellSouth to Commingle Certain Elements.

Without citing any portion of the parties' ICA, SouthEast asserts that the Commission has the authority to require BellSouth to commingle a Section 251 loop with Section 271 switching and transport elements. *Complaint* ¶¶ 31, 33; *see generally Complaint,* Counts One, Two and Three. Simply stated, SouthEast makes the erroneous assertion that the Commission has the authority to resurrect UNE-P. As an initial matter, the scope of BellSouth's commingling obligations as established in the *TRO,* and whether the Commission has the authority to require BellSouth to include Section 271 elements in a Section 252 interconnection agreement are issues pending before the Commission in

Case No. 2004-00427.[11] As such, the Commission does not need to address SouthEast's legal contentions in this case.

Regardless of whether the merits (or more accurately, the lack thereof) of SouthEast's legal arguments concerning commingling and Section 271 have merit, there is nothing in SouthEast's ICA that gives SouthEast the right to require BellSouth to commingle 251 and 271 elements. Again, SouthEast has not executed a *TRO/TRRO*-compliant amendment. Accordingly, the commingling obligations set forth in the *TRO* are not included in SouthEast's ICA. Further, and as previously noted, the UNE portion of SouthEast's ICA is specifically limited to network elements that BellSouth must provide pursuant to Section 251. ICA, Attachment 2, § 1.1. In short, SouthEast has no contractual right to the relief it seeks in its Complaint. Even if the Commission were to entertain SouthEast's argument that it should be allowed to obtain commingled elements under the existing ICA (which it should not), a decision as to that issue in no way would relieve SouthEast of its obligation to pay for the resale services it has ordered and received from BellSouth.

V. SouthEast Has Failed to Establish That it is Entitled to Injunctive Relief.

SouthEast has failed to establish that the Commission can grant the injunctive relief SouthEast seeks. Notably absent from SouthEast's Complaint is any reference to any Kentucky statute or case law that gives the Commission the right to grant injunctive

[11] In Case No. 2004-00044, the Commission granted BellSouth's motion for rehearing, including on commingling. Oral argument was held on November 30, 2005, and a Commission Order on BellSouth's motion for rehearing is pending. SouthEast's arguments in this matter confirm that if the Commission were to order the commingling of 251 and 271 elements, such an order would lead CLECs to attempt to resurrect UNE-P – a regime that the FCC expressly found to be illegal – under the guise of commingling.

relief. *Complaint* at ¶¶ 56-60. On the contrary, the exclusive jurisdiction to grant injunctive relief is vested in the courts:

> The Commission may compel obedience to its lawful orders by mandamus, injunction, or other proper proceedings in the Franklin Circuit Court or any other court of competent jurisdiction . . .

KRS 278.390. Section 112 of the Kentucky Constitution provides that the Circuit Court has "original jurisdiction of all justiciable causes not vested in some other court." The Circuit Court also by statute has original jurisdiction of all justiciable causes not vested in another court. KRS 23A.010(1). As Kentucky courts have long recognized, "jurisdiction of all matters, both in law and equity, of which jurisdiction is not exclusively delegated to some other tribunal, and that no statutes should be construed to divest it of jurisdiction of any matter unless it is in express terms or clearly so provided." *Commonwealth v. Prall,* 141 Ky. 560, 133 S.W. 217, 218 (1911). SouthEast has not, and cannot, identify any express injunctive authority delegated to the Commission. This Commission should reject SouthEast's blatant and overreaching request for injunctive relief. Such a request is without legal support. Moreover, the Commission should recognize SouthEast's request for what it is: a request that the Commission order BellSouth to provide new UNE-P orders, a request in violation of the *Preliminary Injunction Order* entered in the U.S. District Court.

CONCLUSION

SouthEast has refused to pay for resale services it has ordered from BellSouth. Under the plain terms of the parties' ICA, SouthEast's refusal to pay for services constitutes a breach of contract which authorizes BellSouth to terminate service to SouthEast for nonpayment. SouthEast's attempt to disguise or confuse the issues by

strained and erroneous arguments and claims for services other than resale, must be rejected for what they are: the attempt to order new UNE-P in violation of a federal court injunction. Accordingly, BellSouth respectfully requests the Commission to dismiss SouthEast's *Complaint* and acknowledge BellSouth has the right, in accordance with the Interconnection Agreement, to discontinue providing service to SouthEast, a CLEC that has refused to pay for over one million dollars in services it has ordered and received.

Respectfully submitted,

DOROTHY J. CHAMBERS
601 W. Chestnut Street, Room 407
P.O. Box 32410
Louisville, KY 40203
(502)582-8219
dorothy.chambers@bellsouth.com

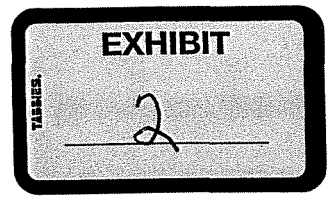
R. Douglas Lackey
Robert A. Culpepper
Suite 4300
675 W. Peachtree St., NE
Atlanta, GA 30375
(404) 335-0841

COUNSEL FOR BELLSOUTH
TELECOMMUNICATIONS, INC.

615932

CONFIDENTIAL
EXHIBIT 1

SouthEast currently owes BellSouth $.



INTERCONNECTION AGREEMENT BETWEEN BELLSOUTH TELECOMMUNICATIONS INC. AND SOUTHEAST TELEPHONE, INC.

IN WITNESS WHEREOF, the Parties have executed this Agreement the day and year written below.

BellSouth Telecommunications, Inc.

Signature

Patrick C. Finlen
~~G. R. Follensbee~~
Name

~~Senior~~ Director
Title

10-9-01
Date

SouthEast Telephone, Inc.

Signature

Darrell Maynard
Name

President
Title

10/2/2001
Date

ACCESS TO NETWORK ELEMENTS AND OTHER SERVICES

1. Introduction

1.1 This Attachment sets forth the unbundled network elements and combinations of unbundled network elements that BellSouth agrees to offer to SouthEast in accordance with its obligations under Section 251(c)(3) of the Act. The specific terms and conditions that apply to the unbundled network elements are described below in this Attachment 2. The price for each unbundled network element and combination of unbundled Network Elements are set forth in Exhibit C of this Agreement.

1.2 For purposes of this Agreement, "Network Element" is defined to mean a facility or equipment provided by BellSouth on an unbundled basis as is used by the CLEC in the provision of a telecommunications service. These unbundled network elements are consistent with the requirements of the FCC 51.319 rule. For purposes of this Agreement, combinations of Network Elements shall be referred to as "Combinations."

1.2.1 Except as otherwise required by law, BellSouth shall not impose limitation restrictions or requirements or request for the use of the network elements or combinations that would impair the ability of SouthEast to offer telecommunications service in the manner SouthEast intends.

1.2.2 Except upon request by SouthEast, BellSouth shall not separate requested network elements that BellSouth currently combines.

1.2.2.1 Unless otherwise ordered by an appropriate state or federal regulatory agency, currently combined Network Elements are defined as elements that are already combined within BellSouth's network to a given location.

1.3 BellSouth shall, upon request of SouthEast, and to the extent technically feasible, provide to SouthEast access to its network elements for the provision of SouthEast's telecommunications service. If no rate is identified in the contract, the rate for the specific service or function will be as set forth in the applicable BellSouth tariff or as negotiated by the Parties upon request by either Party.

1.4 SouthEast may purchase network elements and other services from BellSouth for the purpose of combining such network elements in any manner SouthEast chooses to provide telecommunication services to its intended users, including recreating existing BellSouth services. With the exception of the sub-loop elements which are located outside of the central office, BellSouth shall deliver the network elements purchased by SouthEast for combining to the designated

EXHIBIT
3

SouthEast Telephone

November 1, 2005

RE: Claim Number UNE01

Judge Hood's recent decision Case No. 04-84-JMH upheld the Amendment to the existing Interconnection Agreement dated November 5, 2004. SouthEast Telephone is exercising its right under Section 1 of the afore mentioned amendment which states, "Furthermore, the Parties agree to carry on their respective obligations under this Agreement, while any dispute resolution is pending."

Based upon Section 1, BellSouth is obligated to continue the interconnection agreement contractual pricing of the port/loop combinations (formerly known as UNE-P) until a dispute resolution has been reached. By forcing SouthEast Telephone to provision new sales on a resold basis, BellSouth has not fulfilled its contractual obligations under the Amendment.

A credit of $727,259 is due SouthEast Telephone. If you have any questions, call 606-432-3000 ex. 326.

Sincerely,

Tonya Taylor

Tonya Taylor, CPA
Finance

Voice 606-432-3000 PO Box 1001 - Pikeville, KY 41502 Fax 606-433-0500

EXHIBIT
4

DATE: October 31, 2005

Tonya Taylor
SouthEast Telephone

SUBJECT: Re Claim Number UNE01

BellSouth does not agree with SouthEast's contention that it is entitled to a credit of $727,259 for the difference between the resale rate and the UNE rate for the time period of May 2005 through September 2005.

The Federal Communications Commission ("FCC") is clear that "Incumbent LECs have no obligation to provide competitive LECs with unbundled network elements for access to mass market local switching. BellSouth has offered, and continues to offer, to SouthEast and to all competitive LECs, the ability to obtain the loop/port combination via resale and/or the execution of a commercial agreement. SouthEast has obtained such service via resale, and BellSouth has appropriately charged SouthEast for the service it has received.

BellSouth has met it's obligation to provide services as ordered by SouthEast Telephone. SouthEast Telephone, however, has not met it's obligation to pay the charges for the services provided by BellSouth. Your dispute references an order (Judge Hood case Case No. 04-84-JMH), however, BellSouth has reviewed Judge Hood's order and sees no relevance or legitimate reason for withholding payment for the Resale charges. Your dispute is denied and payment of past due amounts is required to avoid collection action.

BellSouth Accounts Receivable Management
Interconnection Billing & Collections

CERTIFICATE OF SERVICE – PSC 2005-00533

It is hereby certified that a true and correct copy of the foregoing was served on the following individuals by mailing a copy thereof, this 16th day of January 2006.

Darrell Maynard
SouthEast Telephone, Inc.
106 Power Drive
P. O. Box 1001
Pikeville, KY 41502-1001

Hon. Jonathon N. Amlung
AMLUNG Law Offices
616 S. 5th Street
Louisville, KY 40202

Bethany Bowersock
SouthEast Telephone, Inc.
106 Power Drive
P. O. Box 1001
Pikeville, KY 41502-1001

Hon. David L. Sieradzki
Hogan & Hartson, L.L.P.
555 Thirteenth Street, N.W.
Washington, DC 20004-1109

Dorothy J. Chambers