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March 16, 2005

RECEIVED

MAR 17 2005

PUBLIC SERVICE
COMMISSION

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

Re: Petition to Establish Docket to Consider Amendments to Interconnection
Agreements Resulting from Change of Law, Kentucky Broadband Act
KPSC 2004-00501

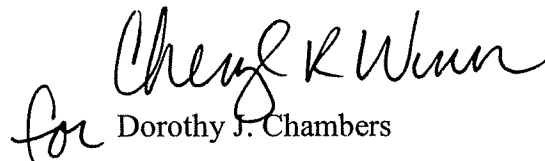
Dear Ms. O'Donnell:

Enclosed for filing in the above-captioned case is BellSouth's Reply to CLEC Additional Comments and Cinergy's Procedural Proposal.

Exhibits A, B, and C to the Affidavit of Cynthia A. Clark are confidential commercial, proprietary information and, pursuant to 807 KAR 5:001, Section 7, enclosed is BellSouth's Confidentiality Petition. In addition, the Exhibits contain customer proprietary network information ("CPNI") and pursuant to Federal Law should not be disclosed without the approval of the individual customers. Accordingly, because the Exhibits are CPNI in their entirety, there are no edited copies.

A copy of the proprietary information is provided to the Commission. Requisite edited copies of the filing are also provided to the Commission for the public file. Each CLEC is receiving a proprietary version of its own information.

Sincerely,


for Dorothy J. Chambers

Enclosures

cc: Parties of Record

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COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

RECEIVED

MAR 17 2005

PUBLIC SERVICE
COMMISSION

In the Matter of:

PETITION TO ESTABLISH DOCKET)
TO CONSIDER AMENDMENTS TO)
INTERCONNECTION AGREEMENTS) CASE NO. 2004-00501
RESULTING FROM CHANGE OF LAW,)
KENTUCKY BROADBAND ACT)

**BELLSOUTH'S REPLY TO CLEC ADDITIONAL
COMMENTS AND CINERGY'S PROCEDURAL PROPOSAL**

BellSouth Telecommunications, Inc. ("BellSouth"), by counsel, and in response to CLEC additional comments and Cinergy Communications Company's ("Cinergy") procedural proposal, respectfully submits its reply. This docket presents a single legal issue, the implementation of the Kentucky Broadband Act. As BellSouth will briefly demonstrate below, despite repeated attempts the CLECs once again have raised no relevant factual issues. Accordingly, there is no need for an evidentiary hearing or a discovery schedule in this docket. BellSouth is entitled to the relief it is seeking: the lawful and overdue implementation of the Kentucky Broadband Act. BellSouth again requests the Kentucky Public Service Commission ("Commission") to put an end to unnecessary delay and issue an order implementing the terms of the Act.

I. Aero, Cinergy and SETel have all received credits effectively treating the resale lines as UNE-P.

BellSouth currently provisions DSL to the affected CLECs over resale lines and pursuant to the terms of its Interconnection Agreements with these CLECs, BellSouth issues credits to these CLECs to effectively treat the resale lines as UNE-P. In their March 7, 2005 comments, Aero, Cinergy Communications and Southeast Telephone all allege that BellSouth is not

complying with the terms of the interconnection agreements by withholding these credits and use this as a basis to claim BellSouth has unilaterally implemented the Broadband Act. The plain truth is that BellSouth has in the past and continues to provide these credits according to the terms of interconnection agreements. Exhibit 1, Affidavit of Cynthia A. Clark. BellSouth through this change of law proceeding is asking this Commission to implement the Broadband Act by requiring these CLECs to amend their agreements with the amendments provided as Exhibit "B" to BellSouth's petition. These amendments do nothing more than eliminate the credits being applied to these resale lines.

II. There Are No Relevant Factual Issues Necessitating a Discovery Schedule or an Evidentiary Hearing.

In support of its request for a discovery schedule and evidentiary hearing, Cinergy raises no relevant factual issues which would justify delaying the implementation of the Broadband Act. The following table lays bare Cinergy's supposed rationale as to why their claim is relevant:

Cinergy Claim	Why this is not germane.
Technical configuration of wholesale DSL service provided under BellSouth's tariff FCC No. 1, including provision over (i) unbundled loops and (ii) UNE-P;	BellSouth's FCC tariffed DSL service is provided over retail or resale lines, not unbundled loops or UNE-P lines. Further, Cinergy has been ordering BellSouth's DSL service for over 2 years. To do so requires that they are familiar with the technical configuration of BellSouth's wholesale DSL service.
Technical aspects concerning the process to convert an existing end user from UNE-P to an arrangement involving an unbundled loop combined with switching provided by the CLEC or another party;	The action described here by Cinergy is better known as Line Splitting. Line splitting involves a dial tone that is provided by a company other than the ILEC (BellSouth). This is simply a sleight of hand used by Cinergy to have this Commission believe that line splitting is somehow involved in this proceeding. Under the terms of the interconnection agreements in question, BellSouth's DSL is not and never has been provided via line splitting. BellSouth's DSL is provided over a retail or resale line. Neither of which are a basis for line splitting.

<p>Information concerning the use and location of remote terminals/DSLAMS in the BellSouth network;</p>	<p>This level of detail is not germane to how BellSouth provides its DSL service. BellSouth's DSL is provided as a complete service from the end users location to the terminating network regardless of whether a remote terminal is involved along the way.</p> <p>The irony of the claim for needing this type of information is that it has absolutely nothing to do with how BellSouth provides its DSL service to its customers and yet would be the type of discovery request aimed at seeking further regulation of BellSouth broadband facilities, an action prohibited by the Broadband Act.</p>
<p>Factual investigation into the meaning of "in service telephone company provided exchange line facility" for purposes of FCC tariff No. 2, and whether unbundled copper loops meet this definition.</p>	<p>There is no need for this "factual" investigation of an "in service telephone company provided exchange line facility". As this wording is taken from BellSouth's No. 1 tariff, a company provided exchange line is a line provided by BellSouth. Simply put, it is a BellSouth retail dial tone line or a resale dial tone line. A line provided by a CLEC (whether via UNE-P or its own switch facility) is just that, a CLEC provided exchange line.</p>

Again, as with Cinergy's request to combine this distinct legal issue into a docket involving hundreds of parties and concerning a multitude of issues¹, this is nothing more than a further attempt to delay implementation of the Broadband Act. Through its many tactics, Cinergy is effectively creating its own filibuster of the Broadband Act. None of these issues impacts the crucial inquiry in this docket: implementation of the Kentucky Broadband Act and its impact on the interconnection agreements with the affected CLECs. This Commission should recognize and reject the CLEC attempts at further delay.

III. Cinergy's proposed discovery plan is nothing more than an attempt to delay implementation of the Kentucky Broadband Act.

Cinergy proposes a discovery schedule that does nothing to aid in the crucial determination before this Commission, i.e., implementation of the Broadband Act. Indeed, the

¹ See January 19, 2005 Cinergy Comments at 5.

only purpose for the procedural schedule is to further delay implementation of the Broadband Act and ensure that nearly one year will have passed from the effective date of the law. Only one issue is legitimately before the Commission in this docket: implementation of the Kentucky Broadband Act. Accordingly, the Commission should end the delay and implement the Broadband Act. In the alternative, the Commission should set an expedited briefing schedule and, should it find it helpful, oral argument. The delays subvert Kentucky law and this Commission should end the delay.

IV. **Aero Communications comments should be stricken from this docket and Aero prohibited from further participation in this docket until it retains Kentucky counsel.**

Kentucky law requires corporations appearing before the Kentucky Public Service Commission to be represented by counsel. 807 KAR 5:001(12). In addition to the requirement that a corporation be represented by counsel, this Commission requires counsel to be a member of the Kentucky Bar or to engage co-counsel who is a member of the Kentucky Bar. Specifically, this Commission has stated:

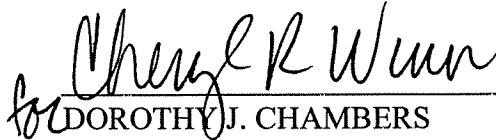
[A]ny attorney who is not licensed to practice in the State of Kentucky and who seeks to represent a client or employer before this Commission, must engage a member of the Kentucky Bar Association.

Administrative Case No. 249, *Practice Before the Commission by Attorneys Non-Licensed in the Commonwealth of Kentucky* (Ky. P.S.C. June 15, 1981) at 2. Aero Communications is a limited liability corporation. Aero is represented by counsel, Kristopher Twomey. Upon information and belief, Mr. Twomey is not licensed to practice law in the Commonwealth of Kentucky, nor has it retained local counsel. BellSouth previously raised this issue at the informal conference and again objects to Aero's continued participation in this docket without Kentucky counsel.

CONCLUSION

For the foregoing reasons, as well as those set forth in BellSouth's Telecommunications, Inc.'s petition and its responses to the CLECs' comments, the Commission should issue an Order directing the parties to this proceeding to implement the terms of the Kentucky Broadband Act by executing an appropriate interconnection agreement amendment that conforms with the amendment attached as Exhibit "B" to BellSouth's Petition. In the alternative, the Commission should set a briefing and/or oral argument schedule in this docket.

Respectfully submitted, this 16th day of March, 2005.



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COUNSEL FOR BELL SOUTH
TELECOMMUNICATIONS, INC.

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

PETITION TO ESTABLISH DOCKET)
TO CONSIDER AMENDMENTS TO)
INTERCONNECTION AGREEMENTS) CASE NO. 2004-00501
RESULTING FROM CHANGE OF LAW,)
KENTUCKY BROADBAND ACT)

CONFIDENTIALITY PETITION
PURSUANT TO 807 KAR 5:001 SECTION 7

Petitioner, BellSouth Telecommunications, Inc., (“BellSouth”), 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 information contained in the Attachments to BellSouth’s Response. The Attachments provide customer-specific billing information of Cinergy Communications Company, Aero Communications, LLC, and SouthEast Telephone, Inc.

The Kentucky Open Records Act exempts certain commercial information from the public disclosure requirements of the Act. KRS 61.878(1)(c)1. To qualify for this 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 Attachments contain customer-specific information. Information provided to the Commission concerning specific customers is CPNI¹ 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 (“the 222(a) obligation”). KRS 61.878(1)(k), specifically exempts records or 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.

The material for which BellSouth seeks confidential treatment in the portion of the Exhibits identified above contains commercially valuable information. All of the information identified herein has potential value to other participants in the local exchange market, such as incumbent local exchange carriers (ILECs), competitive access providers (CAPs), facilities-based competitive local exchange carriers (CLECs), cable companies who have developed or are contemplating the development of wholesale or retail network products, and wireless providers.

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.

¹ Customer Proprietary Network Information

- (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 all appropriate means, including the maintenance of appropriate security at its offices; and
- (4) By granting BellSouth's petition, there would be no damage to any public interest.

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

Respectfully submitted,

for Cheryl R. Winn

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TELECOMMUNICATIONS, INC.

**COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION**

In the Matter of:)	
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AFFIDAVIT OF CYNTHIA A. CLARK

1. My name is Cynthia A. Clark. I am a Manager in Account Receivable Management for BellSouth Telecommunications, Inc. (“BellSouth”). My business address is 2300 Northlake Center Drive, Suite 305, Tucker, GA. In my position as Manager, I am responsible for Wholesale Customers Accounts Receivables.

2. I understand that Aero Communications, LLC, Cinergy Communications Company, and Southeast Telephone, Inc. have filed Comments in this case and stated that “credits for wholesale provision of voice services have been withheld”.

3. Based upon my review of billing records, BellSouth has in fact provided those credits to Aero Communications, LLC, Cinergy Communications Company and Southeast Telephone, Inc.

4. Based upon my review of the billing records, these credits appear as Promotional Credits and appear in the “Detail Of Payments and Adjustments Applied Section” of the customer’s bill.

5. Based upon my review of the billing records, the credit has been identified as “Promotional Credit Resale” since October 2004.

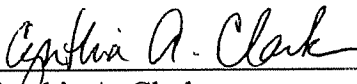
6. Based upon my review of the billing records that) prior to October 2004 the credit was identified as "CLEC Resale Adjustment".

7. See Exhibit A for copies of bills rendered to Aero Communications, LLC that include the credit provided to them.

8. See Exhibit B for copies of bills rendered to Cinergy Communications Company that include the credit provided to them.

9. See Exhibit C for copies of bills rendered to Southeast Telephone, Inc.


10. Based on the foregoing, I attest on behalf of BellSouth, that to the best of my knowledge and information, this information is accurate and correct.



Cynthia A. Clark
Manager

Personally appeared before me, Brian D. Wilson, Cynthia A. Clark, who swears and/or affirms that the information provided in this attestation is true and correct.

Signed and sworn to before me this 14th day of March, 2005.



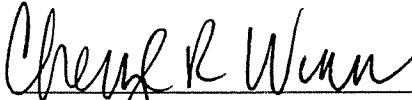
NOTARY PUBLIC

BRIAN D. WILSON
Notary Public, Gwinnett County, Georgia
My Commission Expires June 11, 2008

**EXHIBITS A, B, AND C ARE
PROPRIETARY IN THEIR
ENTIRETY. THERE ARE NO
EDITED COPIES.**

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served on the individuals on the attached Service List by mailing a copy thereof, this 16th day of March 2005.



Cheryl R. Winn

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