

Creighton E. Mershon, Sr.
Attorney At Law

May 24, 2006

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PUBLIC SERVICE
COMMISSION


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

Re: Petition of MCImetro Access Transmission Services, LLC for Arbitration of
Certain Terms and Conditions of Proposed Agreement with BellSouth
Telecommunications, Inc. Concerning Interconnection and Resale Under
the Telecommunications Act of 1996
PSC 2005-00371

Dear Ms. O'Donnell:

Enclosed for filing in the above-captioned case are the original and ten (10)
copies of Direct Testimony of Pam Tipton, BellSouth's witness in this case.

Sincerely,


Creighton E. Mershon, Sr.

Enclosure

cc: Parties of Record

635091

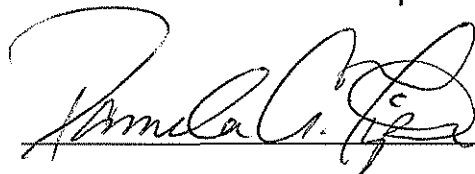
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COUNTY OF FULTON

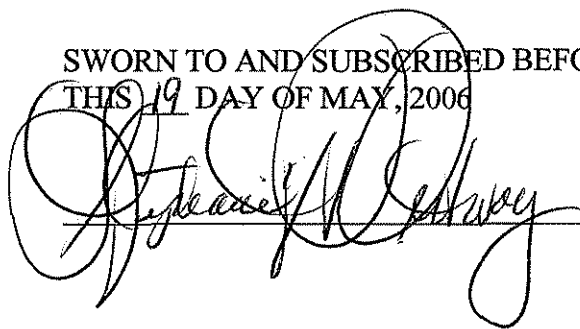
BEFORE ME, the undersigned authority, duly commissioned and qualified in and for the State and County aforesaid, personally came and appeared Pamela A. Tipton, who, being by me first duly sworn deposed and said that:

She is appearing as a witness before the Kentucky Public Service Commission in Case No. 2005-00371, Petition of MCIMetro Access Transmission Services, LLC for Arbitration of Certain Terms and Conditions of Proposed Agreement With BellSouth Telecommunications, Inc. Concerning Interconnection and Resale Under the Telecommunications Act of 1996, and if present before the Commission and duly sworn, her testimony would be set forth in the annexed testimony consisting of 24 pages and 2 exhibits.



Pamela A. Tipton

SWORN TO AND SUBSCRIBED BEFORE ME
THIS 19 DAY OF MAY, 2006



Notary Public

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BELLSOUTH TELECOMMUNICATIONS, INC.
DIRECT TESTIMONY OF PAM TIPTON
BEFORE THE KENTUCKY PUBLIC SERVICE COMMISSION
DOCKET NO. 2005-371
MAY 24, 2006

Q. PLEASE STATE YOUR NAME, YOUR POSITION WITH BELLSOUTH TELECOMMUNICATIONS, INC. ("BELLSOUTH"), AND YOUR BUSINESS ADDRESS.

A. My name is Pam Tipton. I am employed by BellSouth Telecommunications, Inc., as a Director, Regulatory and External Affairs, responsible for regulatory policy implementation in BellSouth's nine-state region. My business address is 675 West Peachtree Street, Atlanta, Georgia 30375.

Q. PLEASE SUMMARIZE YOUR BACKGROUND AND EXPERIENCE.

A. I received a Bachelor of Arts in Economics from Agnes Scott College in 1986, and a Masters Certification in Project Management from George Washington University in 1996. I have over 18 years experience in telecommunications, with my primary focus in the areas of process development, services implementation, product management, marketing strategy and regulatory policy implementation. I joined

1 Southern Bell in 1987, as a manager in Interconnection Operations,
2 holding several roles over a 5-year period including process
3 development and execution, quality controls and services
4 implementation. In 1994, I became a Senior Manager with
5 responsibility for End User Access Services and implementation of
6 Virtual and (later) Physical Collocation. In 2000, I became Director,
7 Interconnection Services, responsible for development and
8 implementation of Unbundled Network Element ("UNE") products, and
9 later development of marketing and business strategies. In June 2003,
10 I became responsible for implementation of state and federal regulatory
11 mandates for Local and Access markets, the development of regulatory
12 strategies and the management of the switched services product
13 portfolio. I assumed my current responsibilities on August 1, 2005.

14

15 Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?

16

17 A. The purpose of my testimony is to provide BellSouth's position for the
18 remaining, unresolved policy issues identified in the Petition for
19 Arbitration filed with the Kentucky Public Service Commission ("KPSC"
20 or "Commission") by MCI Access Transmission Services, LLC
21 ("MCI/Verizon Access").

22

23 Q. PLEASE IDENTIFY THE UNRESOLVED ISSUES YOU ADDRESS IN
24 YOUR DIRECT TESTIMONY.

25

1 A. The unresolved issues addressed in my Direct Testimony are Issue
2 Nos. 12, 21, 26, and 34.

3

4 Q. DO YOU HAVE ANY PRELIMINARY COMMENTS?

5

6 A. Yes. There are unresolved issues in this arbitration that have
7 underlying legal arguments. Because I am not an attorney, I am not
8 offering a legal opinion on these issues. I respond to these issues
9 purely from a policy perspective. BellSouth will address all legal
10 arguments in its post-hearing brief.

11

12

ISSUE 12

13

14 ***Issue 12: Should MCI/Verizon Access Be Required To Indemnify***
15 ***BellSouth For BellSouth's Negligence for Claims by Third Parties who***
16 ***are not MCI/Verizon Access Customers in Conjunction With BellSouth's***
17 ***Provision Of PBX Locate Service to MCI/Verizon Access?***

18

19 Q. WHAT IS BELLSOUTH'S POSITION ON ISSUE 12?

20

21 A. MCI/Verizon Access should be required to indemnify BellSouth for
22 claims by third parties who are not MCI/Verizon Access customers in
23 conjunction with BellSouth's provision of its PBX Locate Service to
24 MCI/Verizon Access. With this position, BellSouth is only asking that
25 MCI/Verizon Access be subject to the same terms and conditions that
26 BellSouth's retail end users are subject to when purchasing the retail
27 equivalent service.

1

2 Q. CAN YOU DESCRIBE THE PBX LOCATE SERVICE AS IT RELATES
3 TO THE ISSUE?

4

5 A. Yes. This issue involves the situation where MCI/Verizon Access
6 provides a PBX or PBX-like service to its end user and there is a call for
7 emergency services at some point behind the MCI/Verizon Access
8 PBX. A good example would be the situation where there is an office
9 campus, consisting of several buildings, all served by the same PBX. If
10 someone on that campus dials "911," BellSouth offers a service that
11 identifies the exact physical location of the call in the multi-building
12 environment served by the PBX. BellSouth provides this service to its
13 own retail end user customers through its PinPoint Service and
14 voluntarily offers the same service to its wholesale customers, like
15 MCI/Verizon Access, via its PBX Locate Service. Both products allow
16 emergency personnel to locate the specific PBX station (e.g. in a
17 campus/hotel/hospital environment) from which a 911 call was
18 originated.

19

20 Q. PLEASE DESCRIBE THE DISPUTE BETWEEN THE PARTIES.

21

22 A. The issue for the Commission's consideration is not whether or how
23 BellSouth should provide its PBX Locate service; instead, it is a liability
24 issue. That is, the issue is whether MCI/Verizon Access should be
25 subject to essentially the same indemnification terms and conditions

1 that BellSouth's PinPoint retail customers are subject to when
2 MCI/Verizon Access purchases BellSouth's PBX Locate service.

3

4 Q. DOES BELLSOUTH HAVE A SECTION 251 OBLIGATION TO
5 PROVIDE PBX-LOCATE SERVICE?

6

7 A. No. BellSouth does not have a Section 251 obligation to provide PBX
8 Locate Service.

9

10 Q. WHAT IS THE BASIS FOR BELLSOUTH'S POSITION?

11

12 A. BellSouth is already fulfilling its on-going obligation to provide
13 Competitive Local Exchange Carriers ("CLECs") with unbundled access
14 to its 911 database. MCI/Verizon Access has no legal right to receive,
15 as part of BellSouth's obligation to provide 911 services on an
16 unbundled basis, the specific PBX Locate Service. BellSouth
17 voluntarily makes available to MCI/Verizon Access its PBX Locate
18 Service, which is identical to BellSouth's retail product, PinPoint.
19 Because PinPoint is a retail offering that BellSouth provides to its
20 wholesale customers through PBX Locate Service, MCI/Verizon Access
21 should obtain PBX Locate Service pursuant to the same terms and
22 conditions that apply to BellSouth's retail customers for PinPoint
23 pursuant to its tariffs, including the retail customers' indemnification
24 obligations. In other words, BellSouth should not be compelled, as
25 MCI/Verizon Access is attempting to do, to put MCI/Verizon Access in a

1 better position than BellSouth's end users.

2

3 Q. WHAT LIMITATION OF LIABILITY PROVISIONS ARE CONTAINED IN
4 BELLSOUTH'S RETAIL PINPOINT SERVICE OFFERING?

5

6 A. BellSouth's own retail PinPoint customers are subject to the same
7 limitation of liability provisions that BellSouth is asking this Commission
8 to apply to MCI/Verizon Access. BellSouth's GSST at §
9 A13.27.8(B)(10-11), attached hereto as Exhibit PAT-1, states the
10 following in § 10:

11

12 10. The Company's entire liability to any person for
13 the interruption of failure of 9-1-1 PinPoint Service
14 shall be limited to the terms set forth in this Section
15 and other Sections of this Tariff. The Company
16 shall neither be liable for damages resulting from or
17 in connection with its provision of 9-1-1 PinPoint
18 Service to any customer subscribing to 9-1-1
19 PinPoint Service **or any person accessing or**
20 **using 9-1-1 PinPoint Service** and nor shall the
21 Company be liable for its provision of any
22 telephone number, address, or name to any entity
23 providing 911 service or to a public safety
24 answering point, unless the company acted with
25 malicious purpose or in the manner exhibiting
26 wanton and willful disregard of safety or property in
27 providing such services. (emphasis added)

28

29 The above indemnification tariff language and BellSouth's proposed
30 language in this arbitration both simply recognize that 911 service
31 providers should be protected from liability. Thus, BellSouth should not
32 be compelled, as MCI/Verizon Access is attempting to do, to put

1 MCI/Verizon Access in a better position than BellSouth's retail end
2 users.

3

4 Q. CAN YOU ADDRESS MCI/VERIZON ACCESS' OBJECTION TO
5 BELLSOUTH'S PROPOSED LANGUAGE?

6

7 A. It appears that MCI/Verizon Access' objection to BellSouth's language
8 and position is that MCI/Verizon Access should not be required to
9 indemnify BellSouth for its own negligence for claims brought by third
10 parties. However, as discussed above, BellSouth's retail PinPoint
11 customers are subject to an almost identical obligation. This
12 indemnification obligation and the requested obligation here both simply
13 recognize that 911 service providers should be protected from liability.
14 Likewise, the law limits BellSouth's liability for damages arising from
15 negligence relating to the provisioning of 911 services.

16

17 Q. DOES MCI/VERIZON ACCESS HAVE GENERAL LIMITATION OF
18 LIABILITY LANGUAGE IN ITS KENTUCKY TARIFFS THAT LIMITS
19 ITS EXPOSURE TO CLAIMS BY THIRD PARTIES WHO ARE NOT
20 MCI/VERIZON ACCESS CUSTOMERS IN THE PROVISION OF 911
21 SERVICES?

22

23 A. Yes. In its Kentucky *Local Exchange Service* tariff¹, MCI/Verizon

¹ See MCImetro ACCESS TRANSMISSION SERVICES, LLC *Local Exchange Service*,
K.P.S.C. Tariff No. 3 at Section 2.1.4.14(a), attached as Exhibit PAT-2

1 Access includes a limitation of liability statement with respect to
2 Emergency Number 911 Service that specifically limits its liability for
3 claims made by third parties who are not MCI/Verizon Access
4 customers:

5
6 This service is offered solely as an aid in handling
7 assistance calls in connection with fire, police and
8 other emergencies. The Company is not responsible
9 for any losses, claims, demands, suits or any liability
10 whatsoever, whether suffered, made, instituted or
11 asserted by the Customer **or by any other party or**
12 **person** for any personal injury to or death of any
13 person or persons, and for any loss, damage or
14 destruction of any property, whether owned by the
15 Customer **or others**, caused or claimed to have been
16 caused by: (1) mistakes, omissions, interruptions,
17 delays, errors or other defects in the provision of this
18 service, or (2) installation, operation, failure to
19 operate, maintenance, removal, presence, condition,
20 location or use of any equipment and facilities
21 furnishing this service. (emphasis added)

22
23 Thus, even MCI/Verizon Access recognizes in its own tariffs the need to
24 limit its exposure to claims from third parties in the provision of 911
25 services. BellSouth, as a wholesale supplier to MCI/Verizon Access, is
26 merely seeking the same protection.

27
28 ***Issue 21: For intraLATA toll traffic originated by an ICO, carried over***
29 ***BellSouth's network and then terminated by MCI/Verizon Access: A)***
30 ***what rate is MCI/Verizon Access entitled to charge BellSouth, if at all and***
31 ***B) what records should be used to bill BellSouth?***
32

33 Q. CAN YOU PLEASE DESCRIBE THE RELATIONSHIP BETWEEN
34 BELLSOUTH AND THE KENTUCKY ICOS WITH RESPECT TO

1 INTRALATA TOLL TRAFFIC?

2

3 A. Yes. BellSouth and the majority of Kentucky's Independent Companies
4 ("ICOs") exchange intraLATA toll traffic pursuant to an arrangement
5 called the Kentucky Restructured Settlement Plan ("KRSP")—a plan
6 that is similar in nature to the Primary Carrier Plans ("PCPs") in effect in
7 other BellSouth states. Under the KRSP, BellSouth functions as the
8 intraLATA toll provider for traffic originated by certain KRSP ICO end
9 users. In doing so, BellSouth pays the KRSP ICO originating switched
10 access and the KRSP ICO bills and collects intraLATA toll charges from
11 its end user and passes this revenue to BellSouth. Thus, under the
12 KRSP, where the end user has not selected another toll provider,
13 BellSouth acts as the intraLATA toll provider for ICO end users with
14 BellSouth (1) receiving toll revenue from the KRSP ICO end user
15 pursuant to BellSouth's intraLATA toll tariff rates; and (2) compensating
16 the originating KRSP ICO for the call pursuant to the KRSP ICO
17 originating switched access rates.

18

19 Q. DO ALL KRSP ICO END USERS SELECT BELLSOUTH AS THEIR
20 INTRALATA TOLL PROVIDER?

21

22 A. No. An ICO could remain a KRSP participant, yet could have few, if
23 any, end users who utilize BellSouth's intraLATA toll services. Because

1 many interexchange carriers, including MCI/Verizon Access, provide
2 both interLATA and intraLATA toll services in ICO territory, KRSP ICOs
3 may have very few end users who utilize BellSouth as the intraLATA toll
4 provider. Accordingly, a single KRSP ICO may generate a substantial
5 number of minutes of use ("MOUs") that BellSouth transits to
6 MCI/Verizon Access as local traffic, and only a small number of MOUs
7 for which BellSouth acts as a toll provider. Thus, the fact that an ICO
8 remains a KRSP participant does not mean that all ICO originated
9 traffic delivered to MCI/Verizon Access from BellSouth is toll traffic for
10 which BellSouth is responsible for payment.

11

12 Q. CAN YOU PLEASE DESCRIBE SUBPART (A) OF THE ISSUE?

13

14 A. Yes. The issue relates to the rate that MCI/Verizon Access can bill
15 BellSouth for ICO end user traffic switched and transported by
16 BellSouth to MCI/Verizon Access for termination. When BellSouth is
17 the intraLATA toll provider pursuant to the KRSP, the Parties agree that
18 MCI/Verizon Access should bill BellSouth the appropriate terminating
19 switched access rate pursuant to MCI/Verizon Access' tariff. However,
20 MCI/Verizon Access also wants to charge BellSouth access charges
21 even when BellSouth is not the intraLATA toll provider.

22

23

1 Q. WHAT IS BELL SOUTH'S POSITION AS TO SUBPART (A)?

2

3 A. MCI/Verizon Access should only charge BellSouth terminating switched
4 access when BellSouth is the toll provider for a particular ICO end user
5 pursuant to the KRSP. Where BellSouth is not the toll provider and is
6 simply transiting the call from the ICO to MCI/Verizon Access,
7 MCI/Verizon Access should not charge BellSouth anything. Indeed, if
8 BellSouth is transiting a KRSP ICO end user call for which toll charges
9 were not billed to the end user, such a call would be local in nature
10 (either mandatory extended area service or optional area calling plan
11 service). Accordingly, MCI/Verizon Access must seek any
12 compensation for terminating the call directly from the ICO. BellSouth
13 provides industry standard call detail records to MCI/Verizon Access
14 that identifies the ICO in such a scenario.

15

16 Q. CAN YOU PLEASE DESCRIBE THE SUBPART (B) OF THE ISSUE?

17

18 A. The Parties disagree as to whether MCI/Verizon Access' switch
19 recordings provide MCI/Verizon Access with adequate information to
20 determine the volume of ICO originated and MCI/Verizon Access
21 terminated minutes for which BellSouth acted as the intraLATA toll
22 provider pursuant to the KRSP.

23

1 Q. WHAT IS BELLSOUTH'S POSITION AS TO SUBPART (B)?

2

3 A. MCI/Verizon Access should use the records and toll traffic ratio
4 provided by BellSouth to bill BellSouth for intraLATA toll traffic
5 originated by a KRSP ICO end user and terminated to MCI/Verizon
6 Access. The records and ratio that BellSouth provides to MCI/Verizon
7 Access enables MCI/Verizon Access to determine when BellSouth is
8 actually the toll provider pursuant to the KRSP. MCI/Verizon Access
9 switch recordings alone are not sufficient to generate this information.

10

11 Q. HOW DO THE RECORDS AND THE TRAFFIC RATIO ALLOW
12 MCI/VERIZON ACCESS TO CORRECTLY BILL BELLSOUTH?

13

14 A. The records provide MCI/Verizon Access with the number of MOUs
15 originated by ICOs, transited by BellSouth, and terminated by
16 MCI/Verizon Access. The ratio is established by comparing the total
17 MOUs generated by an ICO with the percentage of these MOUs billed
18 by the ICO to BellSouth as intraLATA toll under the KRSP.
19 Accordingly, with the ratio, the parties can determine what percentage
20 of the total MOUs originated by the ICO and terminated by MCI/Verizon
21 Access is toll traffic subject to access charges. Thus, use of
22 BellSouth's records and ratio will assure that BellSouth will compensate
23 MCI/Verizon Access at its terminating access rate for intraLATA toll

1 calls and not for local calls where BellSouth merely acts as a transit
2 provider.

3

4

ISSUE 26

5

6 ***Issue 26: Is BellSouth Obligated To Act As A Transit Carrier? If So,***
7 ***What Is The Appropriate Transit Rate?***

8

9 Q. WHAT IS BELL SOUTH'S POSITION ON ISSUE 26?

10

11 A. BellSouth's position is that it is not required to provide the transit traffic
12 function because such a function is not a Section 251 obligation under
13 the 1996 Act. Notwithstanding its position, BellSouth is willing to
14 continue to provide the transit function. With respect to the rates
15 charged, BellSouth's position is that it be permitted to perform the
16 transit function at rates, terms, and conditions that are negotiated
17 between the parties. With transit traffic, BellSouth provides a value-
18 added service for which it is entitled to be compensated at commercial
19 rates; and, in any event, the CLEC has the ability and, indeed, the right
20 and responsibility pursuant to Section 251(a) of the 1996 Act to request
21 direct interconnection with other carriers.²

22

23

² Section 251(a)(1) imposes a duty on every telecommunications carrier (including without limitation ICOs, ILECs, and CLECs) to "...interconnect directly or indirectly with the facilities and equipment of other telecommunications carriers..." This section clearly does not require every telecommunications carrier in the country to provide a transiting function to any other carrier that asks for it.

1 Q. HAS THIS COMMISSION PREVIOUSLY ADDRESSED THE ISSUE
2 OF WHETHER BELLSOUTH MUST PROVIDE THE TRANSIT
3 FUNCTION AND THE RATES IT MUST CHARGE?
4

5 A. Yes. In its Order issued September 26, 2005 in the Joint Petitioners
6 arbitration proceeding, Case No. 2004-00044, Issue 65, the
7 Commission found that it has not been precluded by the FCC from
8 requiring BellSouth to transit traffic under the circumstances requested
9 by the Joint Petitioners and that it may continue to require BellSouth to
10 transit such traffic. With respect to pricing for transit services, the
11 Commission found that, in the absence of FCC preemption of state
12 commissions in this matter, the KPSC has jurisdiction over transit traffic
13 rates and that the rates previously charged should be contained in the
14 new interconnection agreements until and unless BellSouth justifies its
15 Tandem Intermediary Charge ("TIC") additive.

16

17 In its reconsideration Order in the same arbitration, issued March 14,
18 2006, the Commission reaffirmed its decision in the original Order.

19

20 BellSouth acknowledges the Commission's rulings on this issue, but
21 reserves its rights to appeal such rulings. Further, BellSouth requests
22 that the Commission take note of the parties' agreement that BellSouth
23 is not obligated to serve as a transit provider, and that several state
24 commissions have reached this same conclusion and, for the most part,
25 have determined that TELRIC rates are not appropriate for transit

1 traffic. I will discuss each of these facts more fully below.

2

3 Q. DOES MCI/VERIZON ACCESS AGREE THAT BELLSOUTH HAS NO
4 SECTION 251 OLBIGATION TO PROVIDE THE TRANSIT
5 FUNCTION?

6

7 A. Yes. In its response to an interrogatory from the Florida Public Service
8 Commission ("FPSC") Staff,³ MCI/Verizon Access provided the
9 following response to the FPSC Staff:

10

11 **Interrogatory No. 30:** c. Has MCI/Verizon Access
12 concluded that transiting is not an unbundled
13 network element? Please explain.

14

15 **Response:** Yes, MCI/Verizon Access has
16 concluded that transiting is not an unbundled
17 network element.

18

19 Q. IF THE PARTIES AGREE THAT BELLSOUTH HAS NO SECTION 251
20 OBLIGATION TO ACT AS A TRANSIT CARRIER, DOES THE
21 COMMISSION NEED TO ADDRESS THE FIRST PART OF ISSUE 26?

22

23 A. No. BellSouth has already agreed to offer transit service. As noted in
24 the recent supplemental testimony filed by MCI/Verizon Access witness
25 Don Price in Florida, North Carolina, Tennessee, and Georgia, the rate
26 for transit service is the sole remaining dispute for Issue 26.

³See Florida Public Service Commission Docket No. 050419-TP, *MCI/VERIZON ACCESS' Objections and Responses to Staff's First Set of Interrogatories (NOS. 1-43)* at p. 20, Interrogatory No. 30(c).

1 Accordingly, from BellSouth's perspective, to resolve this Issue, the
2 Commission does need to address whether or not BellSouth has an
3 obligation to act as a transit carrier (i.e. the first part of Issue 26).

4
5 Q. WHAT IS MCI/VERIZON ACCESS' POSITION REGARDING THE
6 APPROPRIATE RATE FOR TRANSIT SERVICE?

7
8 A. MCI/Verizon Access agrees that transit should not have to be provided
9 at TELRIC rates. In response to BellSouth's interrogatory No. 75 in
10 Florida, MCI/Verizon Access states:

11
12 As a preliminary matter, Verizon Access does not take the
13 position that transit traffic must be provided at TELRIC.⁴
14

15
16 Q. HAVE ANY OTHER STATE COMMISSIONS IN BELLSOUTH'S
17 REGION ADDRESSED THIS ISSUE?

18
19 Yes. The Georgia Public Service Commission determined that
20 BellSouth does not have to provide the transit function at TELRIC rates
21 and has ordered CLECs to pay a non-TELRIC composite transit charge
22 of \$.0025 as an interim, composite rate.⁵ Similarly, the Florida Public
23 Service Commission addressed this issue in the Florida Joint Petitioner

⁴See Florida Public Service Commission Docket No. 050419-TP, *MCI/VERIZON ACCESS' Response to Staff's Third Set of Interrogatories*, Interrogatory No. 75.

⁵See BellSouth's Petition for a Declaratory Ruling Regarding Transit Traffic, Docket No. 16772-U, Order on Transit Traffic Involving Competitive Local Exchange Carriers and Independent Telephone Companies, G.P.S.C. (Mar. 24, 2005).

1 arbitration proceeding and found that “a TELRIC rate is inappropriate
2 because transit service is not a § 251 UNE.”⁶ Additionally, the
3 Louisiana Public Service Commission (“LPSC”) addressed transit traffic
4 rates in its Order in Docket U-28042.⁷ While the LPSC did not make an
5 explicit finding with respect to the applicability of TELRIC principles to
6 transit traffic, it ordered a graduated schedule of rates that ends in Year
7 5 at a rate of \$0.0020. Thus, it is apparent to BellSouth that the LPSC
8 implicitly rejected the applicability of TELRIC-based rates to transit
9 traffic. And, an arbitration panel duly appointed by the Mississippi
10 Public Service Commission ruled that, “...there is no support for the
11 proposition that BellSouth must provide this transit function under
12 Section 251. Accordingly, we adopt BellSouth’s position and language
13 for this issue.”⁸
14

⁶See Florida Public Service Commission *Final Order Regarding Petition for Arbitration*, Docket No. 040130-TP, issued October 11, 2005 at p52.

⁷See LPSC Docket No. U-28042 *In re: Joint Petition for dispute resolution between the rural ILECs and BellSouth Telecommunication, Inc. concerning transit traffic*, issued June 24, 2005 at p3

⁸See Mississippi Public Service Commission Arbitration Panel *Recommendation of the Arbitration Panel to the Mississippi Public Service Commission*, Case No. 2004-AD-094, issued December 13, 2005 at p29. Additionally, in its Final Order in the Joint Petitioner arbitration, the North Carolina Utilities Commission denied BellSouth’s position on a similar issue, but reaffirmed its earlier decision that “...the tandem transit function may also involve a billing intermediary function, and the rates for providing this service are not required to be TELRIC based.” (emphasis added) The rate BellSouth seeks to charge via the TIC compensates BellSouth not only for the value-added service it provides by acting as an intermediary, but also for billing functions associated with acting as an intermediary.

1 Q. BECAUSE BELL SOUTH HAS NO SECTION 251 OBLIGATION TO
2 PROVIDE ITS TRANSIT SERVICE, IS A TOTAL ELEMENT LONG
3 RUN INCREMENTAL COST ("TELRIC") RATE APPROPRIATE?
4

5 A. No. The FCC in the *TRO* made it clear that "section 252(d)(1) is quite
6 specific [in] that it only applies for the purposes of implementation of
7 section 251(c)(3) – meaning only where there has been a finding of
8 impairment with regard to a given network element." *TRO* at ¶ 657.
9 The D.C. Circuit affirmed this TELRIC limitation in *USTA II*, wherein it
10 held: "... we see nothing unreasonable in the Commission's decision to
11 confine TELRIC pricing to instances where it has found impairment."⁹
12 Thus, because BellSouth has no Section 251(c) obligation to provide its
13 transit service, the KPSC has no authority to order that it must be priced
14 at TELRIC. The Commission should decline to require BellSouth to
15 provide service at TELRIC rates because it is not encompassed within
16 BellSouth's obligations under the Act.
17

18 Accordingly, the overwhelming federal precedent, in conjunction with
19 numerous state commission decisions on this issue, establishes that
20 there is insufficient authority to support a finding that BellSouth must
21 provide transit service and that transit service must be priced by
22 BellSouth at TELRIC.
23
24

⁹*United States Telecom Association v. FCC*, 359 F.3d 554 (D.C. Cir. 2004) at 589 ("*USTA II*").

1 Q. ARE CLECs REQUIRED TO USE BELLSOUTH'S TRANSIT
2 SERVICE?

3

4 A. No. CLECs can connect directly with other carriers in order to
5 exchange traffic or they can use the services of other transit providers.
6 They do not need BellSouth to pass such traffic for them. For whatever
7 efficiencies they gain, many CLECs have elected to have BellSouth
8 perform a transit traffic function for them. CLECs that elect to have
9 BellSouth perform this function should negotiate the rates, terms, and
10 conditions of transit traffic in a separate agreement.

11

12 Q. WHEN PERFORMING A TRANSIT FUNCTION, DOES BELLSOUTH
13 INCUR COSTS THAT IT WOULD NOT OTHERWISE INCUR FOR
14 TRAFFIC TERMINATED TO ITS OWN END USERS?

15

16 A. Yes. BellSouth incurs costs in sending records to the terminating
17 carrier identifying the originating carrier, the costs of ensuring that
18 BellSouth is not being billed for a third-party's transit traffic, and the
19 costs that BellSouth has incurred and continues to incur due to disputes
20 arising from the failure on the part of the CLECs to enter into traffic
21 exchange arrangements with terminating carriers.

22

23

ISSUE 34

24

25 ***Issue 34: What Process Should be Used for the Discontinuing***
26 ***of Service?***

1

2 Q. WHAT IS BELLSOUTH'S POSITION ON ISSUE 34?

3

4 A. If MCI/Verizon Access receives a notice of suspension or termination
5 from BellSouth as a result of MCI/Verizon Access' failure to pay timely,
6 then MCI/Verizon Access should be required to pay all undisputed
7 amounts that are past due as of the due date of the pending
8 suspension or termination action.

9

10 Q. PLEASE PROVIDE SUPPORT FOR YOUR POSITION.

11

12 A. By definition, the collections process is triggered when a customer does
13 not pay its bills according to the terms of the Agreement. Once a CLEC
14 fails to meet its financial obligations and the matter is referred to
15 collections, the risk (or financial exposure) associated with providing
16 service to the customer is higher, based on the customer's own
17 behavior. Under MCI/Verizon Access' proposed language, BellSouth
18 would be limited to collecting only the amount that was stated in the
19 past due letter regardless of MCI/Verizon Access' payment
20 performance for subsequent bill cycles and BellSouth could only
21 terminate service for the specific account that was not paid.

22

23 Q. WHY SHOULD MCI/VERIZON ACCESS PAY ALL UNDISPUTED
24 AMOUNTS THAT BECOME PAST DUE AFTER RECEIVING NOTICE
25 OF NONPAYMENT?

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A. Often, after receipt of a notice of past-due charges, the parties will enter into discussions related to payment arrangements in an effort to resolve the matter without the need for suspension or termination. During this time, while BellSouth works with the CLEC to avoid disruption of access to ordering systems or disruption of service to end users (even though the CLEC has not paid for the services), BellSouth is continuing to provide service to the CLEC and any additional payments that become past due subsequent to the first past due notice should be rectified by the CLEC at the same time as it pays for the original past due charges.

Again, this situation only arises when a CLEC fails to fulfill its most fundamental contractual obligation—paying for the services it receives in a timely manner. BellSouth has the right and responsibility to protect itself from the higher risk associated with non-payment by ensuring that customers are not allowed to increase the likelihood of bad debt.

Q. IS THERE ANY GUESSWORK INVOLVED WITH BELLSOUTH'S POSITION?

A. No. A CLEC that fails to timely pay undisputed amounts that are past due is provided with a (i) written notice of the amount that must be paid to avoid suspension or termination; and (ii) a spread sheet (also known as an aging report) that shows, by billing account number, the current amount owed, the past due amount owed, disputed amounts, and for

1 the CLECs' convenience, the total amount that has or will become due,
2 less disputed and current charges. Additionally, the CLEC and
3 BellSouth are in constant communication during the cure period
4 regarding the nonpayment of past due amounts. Thus, there is no
5 guesswork by the CLEC regarding how much has to be paid in order to
6 avoid suspension or termination.

7
8 Q. CAN YOU ADDRESS MCI/VERIZON ACCESS' BELIEF THAT ANY
9 TERMINATION RIGHTS SHOULD BE LIMITED TO THE SPECIFIC
10 SERVICES THAT WERE NOT PAID?

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12 A. Yes. MCI/Verizon Access believes that BellSouth's termination rights
13 for nonpayment of undisputed past due billings should be limited to the
14 specific services that were not paid and not to all of the services that
15 MCI/Verizon Access purchases from BellSouth. In effect, MCI/Verizon
16 Access argues that it should be allowed to continue to receive services
17 even though it fails to pay for some services rendered. Thus, under
18 MCI/Verizon Access' proposal, assuming hypothetically that
19 MCI/Verizon Access had 100 accounts in Kentucky and MCI/Verizon
20 Access failed to timely pay 50, 75, or even 99 of those accounts,
21 BellSouth would still be obligated to provide service to MCI/Verizon
22 Access in Kentucky. Not only does this concept defy basic business
23 practices but it also could provide MCI/Verizon Access the latitude to
24 manipulate and game the payment process by shifting their payment
25 obligations to BellSouth from state to state to avoid disconnection.

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Q. DO YOU HAVE ANY OTHER CONCERNS ABOUT MCI/VERIZON ACCESS' PROPOSAL?

A. Yes. MCI/Verizon Access, the entity, is BellSouth's customer. When MCI/Verizon Access is in default on its payment obligations, BellSouth should be able to limit its financial exposure caused by MCI/Verizon Access, the entity, regardless of whether the nonpayment is limited to a specific state or a specific set of services. Simply put, nonpayment is nonpayment and BellSouth's rights for nonpayment should not be limited and subject to potential gaming by MCI/Verizon Access.

Q. CAN YOU ADDRESS MCI/VERIZON ACCESS' CONCERN THAT, WITH BELLSOUTH'S PROPOSAL, BELLSOUTH COULD TERMINATE ALL OF MCI/VERIZON ACCESS' SERVICE FOR NONPAYMENT OF A MINOR AMOUNT THAT WAS OVERLOOKED BY MISTAKE?

A. Yes. MCI/Verizon Access' primary rationale for its position is not based in fact or the experiences of the parties, which definitively establishes that BellSouth and MCI/Verizon Access are in constant contact regarding the payment of bills; BellSouth and MCI/Verizon Access work together to make sure bills and accounts are reconciled and paid; and BellSouth would not terminate all of MCI/Verizon Access' services for nonpayment of a minor amount that was overlooked by mistake. Accordingly, MCI/Verizon Access' concern rings hollow.

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2 Q. DOES THIS CONCLUDE YOUR DIRECT TESTIMONY?

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4 A. Yes.

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6 DM # 633968

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MCImetro ACCESS TRANSMISSION SERVICES, LLC.

K.P.S.C. TARIFF NO. 3
ORIGINAL PAGE NO. 29

LOCAL EXCHANGE SERVICE

2. Regulations (Cont'd)

2.1 Undertaking of the Company (Cont'd)

2.1.4 Liability of the Company (Cont'd)

2.1.4.14 With respect to Emergency Number 911 Service:

(a) This service is offered solely as an aid in handling assistance calls in connection with fire, police and other emergencies. The Company is not responsible for any losses, claims, demands, suits or any liability whatsoever, whether suffered, made, instituted or asserted by the Customer or by any other party or person for any personal injury to or death of any person or persons, and for any loss, damage or destruction of any property, whether owned by the Customer or others, caused or claimed to have been caused by: (1) mistakes, omissions, interruptions, delays, errors or other defects in the provision of this service, or (2) installation, operation, failure to operate, maintenance, removal, presence, condition, location or use of any equipment and facilities furnishing this service.

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Erik Sanchez
Tariff Administrator
201 Spear Street, 9TH Floor
San Francisco, CA 94105

BELLSOUTH
TELECOMMUNICATIONS, INC.
KENTUCKY
ISSUED: January 3, 2005
BY: E.C. Roberts, Jr., President - KY
Louisville, Kentucky

GENERAL SUBSCRIBER SERVICES TARIFF

PSC KY. TARIFF 2A
Sixth Revised Page 40
Cancels Fifth Revised Page 40
EFFECTIVE: February 3, 2005

A13. MISCELLANEOUS SERVICE ARRANGEMENTS

A13.27 Emergency Reporting Services (Cont'd)

A13.27.7 Reserved For Future Use

A13.27.8 BellSouth 9-1-1 PinPoint Service

(T)

A. General

1. 9-1-1 PinPoint Service allows a Private Branch Exchange (PBX) switch located on a customer's premises to be trunked directly into an E911 tandem office, delivering the telephone number and location of the PBX end user to the appropriate Public Safety Answering Point (PSAP). (T)
2. 9-1-1 PinPoint Service is available with BellSouth Primary Rate ISDN (PRI) or 9-1-1 Pinpoint Service Local Channels as described in this section. Pinpoint Local channels are not required if using BellSouth PRI service. (T)

B. Regulations

1. 9-1-1 PinPoint Service is furnished subject to the availability of facilities. (T)
2. Automatic Number Identification (ANI) which is passed to the Company's E911 tandem office by the PBX switch is read, processed and utilized in the manner as if it is provided by any other serving end office in the Company's E911 system. (T)
3. The emergency agency serving the area may also be involved to update the Master Street Address Guide (MSAG) and to determine the method in which emergency calls from 9-1-1 PinPoint Service locations will be handled. (T)
4. The following specifications must be met when provisioning this service:
 - a. Subscribers to 9-1-1 PinPoint Service must meet all BellSouth technical specifications. (T)
 - b. The PBX switch must be able to transmit ANI using multi-frequency signals. This may require the retro-fitting of existing PBX switches with interfaces which will work with the Company's E911 system.
 - c. The PBX switch owner/operator must supply the Company with the initial telephone number-to-address data as well as periodic updates.
 - d. 9-1-1 PinPoint Service is configured on a "per account" basis. All telephone numbers on a BellSouth Direct Inward Dial (DID) or Primary Rate ISDN (PRI) account equipped with 9-1-1 PinPoint Service must be provisioned with 9-1-1 PinPoint Service. The Customer cannot randomly select which telephone numbers on an account will have the service. (N)
 - e. Users of 9-1-1 PinPoint Service are prohibited from provisioning PBX station numbers outside the boundary of the E9-1-1 tandem serving the physical address of the main PBX location. 9-1-1 calls from any telephone numbers provisioned outside the boundary of the serving E9-1-1 tandem would be routed to an incorrect PSAP with no location information. An alternative arrangement could involve PRI terminations from multiple central offices to accommodate a wider geographic area. In that configuration, no PBX station numbers can be provisioned at addresses outside the boundary of the tandem serving the PRI host. The subscribing 9-1-1 PinPoint Service customer is responsible for ensuring that 9-1-1 PinPoint Service is provisioned in a compliant configuration that will ensure that 9-1-1 calls are routed correctly with the correct location information. (T)
 - f. The PBX switch must employ BellSouth Direct Inward Dial (DID) or BellSouth PRI station numbers. If the PBX is serving subscribers with multiple NPAs, a unique PBX trunk group will be needed for each NPA (whether it be 9-1-1 PinPoint Service Local Channels or PRI). 9-1-1 PinPoint Service is not available on Centrex or "Centrex-like" station numbers. (C)
 - g. It will be the responsibility of the vendor or PBX operator to maintain the data pertaining to each extension operating under such system. (T)

(M)

BELLSOUTH
TELECOMMUNICATIONS, INC.
KENTUCKY

GENERAL SUBSCRIBER SERVICES TARIFF

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Louisville, Kentucky

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A13. MISCELLANEOUS SERVICE ARRANGEMENTS

A13.27 Emergency Reporting Services (Cont'd)

A13.27.8 BellSouth 9-1-1 PinPoint Service (Cont'd)

B. Regulations (Cont'd)

5. The PBX switch owner/operator must install a minimum of two private E911 local channels (except for PRI) with the following specifications: (M)
- a. This voice grade local channel provides for a communications path between the demarcation point at the customer premises and the serving E911 tandem. (M)
- b. The PBX switch owner/operator is responsible for determining that their terminal equipment is compatible with this local channel. (M)
- c. Supervision on this 9-1-1 PinPoint Service Local Channel will be loop reverse battery. The battery source is located in the Company's network and will be a nominal -48V (-42.75V to -56.5V dc). (M)(T)
- d. The PBX will signal an off hook (or seizure) by providing a loop closure across tip and ring with a maximum resistance of 670 ohms. The Company's serving E911 tandem office will instruct the PBX to forward the called digits "911" or "11" with a momentary battery reversal (wink). The E911 tandem will instruct the PBX to send the calling station's number (ANI) information with a battery reversal (off hook). (M)
- e. Additional regulations may be applicable as described in Section B3. of the Company's Private Line Services Tariff. (M)
- f. Required network interfaces are located in Section A14. of this Tariff. (M)

Material appearing on this page previously appeared on page(s) 40 of this section.

All BellSouth marks contained herein and as set forth in the trademarks and servicemarks section of this Tariff are owned by BellSouth Intellectual Property Corporation.

BELLSOUTH
TELECOMMUNICATIONS, INC.
KENTUCKY
ISSUED: January 3, 2005
BY: E.C. Roberts, Jr., President - KY
Louisville, Kentucky

GENERAL SUBSCRIBER SERVICES TARIFF

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A13. MISCELLANEOUS SERVICE ARRANGEMENTS

A13.27 Emergency Reporting Services (Cont'd)

A13.27.8 BellSouth 9-1-1 PinPoint Service (Cont'd)

6. Service charges, as specified in Section A4. of this Tariff, are applicable. (T)
7. General Regulations located in Section A2. of this Tariff will also apply to this service offering.
8. This service is offered solely as an aid in handling assistance calls in connection with fire, police and other emergencies and does not create any relationship or obligation, direct or indirect, to any person other than the customer contracting for 9-1-1 PinPoint Service. The provision of 9-1-1 PinPoint Service by the Company shall not be interpreted, construed, or regarded, either expressly or implied, as being for the benefit of or creating any Company obligation toward any third person or legal entity other than the customer. (T)
9. The rates charged for 9-1-1 PinPoint Service do not contemplate the constant monitoring or inspection of facilities to discover errors, defects and malfunctions in the service, nor does the Company undertake such responsibility. The customer shall make such operational tests as, in the judgment of the customer, are required to determine whether the service is functioning properly for its use. The customer shall promptly notify the Company in the event the service is not functioning properly. (T)
10. The Company's entire liability to any person for the interruption or failure of 9-1-1 PinPoint Service shall be limited to the terms set forth in this Section and other Sections of this Tariff. The Company shall neither be liable for damages resulting from or in connection with its provision of 9-1-1 PinPoint Service to any customer subscribing to 9-1-1 PinPoint Service or any person accessing or using 9-1-1 PinPoint Service and nor shall the Company be liable for its provision of any telephone number, address, or name to any entity providing 911 service or to a public safety answering point, unless the Company acted with malicious purpose or in the manner exhibiting wanton and willful disregard of safety or property in providing such services. (T)
11. Each customer agrees to release, indemnify, defend and hold harmless the Company from any and all loss, claims, demands, suits, or other action, or any liability whatsoever, whether suffered, made, instituted or asserted by the Customer or by any other party or person, for any personal injury to or death of any person or persons, or for any loss, damage or destruction of any property, whether owned by the Customer or others, or for any infringement or invasion of the right of privacy of any person or persons, caused or claimed to have been caused, directly or indirectly, by the installation, operation, failure to operate, maintenance, removal, presence, condition, location or use of 9-1-1 PinPoint Service features and the equipment associated therewith, or by any services which are or may be furnished by the Company in connection therewith, including but not limited to the identification of the telephone number, address or name associated with the telephone used by the party or parties accessing 911 services using 9-1-1 PinPoint Services hereunder, and which arise out of the negligence or other wrongful act of the Company, the Customer, its user agencies or municipalities or employees or agents of any one of them. (T)
12. Each Customer is responsible for assuring that its authorized users comply with the provisions of these terms and the tariffs and that unauthorized persons do not gain access to or use the Services through user names, passwords, or other identifiers assigned to the Customer pursuant to these terms. Specifically, each Customer must keep user IDs, passwords, and any security token(s) that may be provided secure from use by any unauthorized individual. The Customer shall also not use the Services in any way that would be or would assist any third party to be in violation of any law or these terms. Each Customer shall comply with all applicable laws, rules, and regulations in connection with the Services. Finally, the Customer shall provide such information and assistance as are reasonably requested by BellSouth for purposes of facilitating BellSouth's provision of Services to the Customer. (N)
13. When an order for 9-1-1 PinPoint Service and facilities or requests for additions, rearrangements, relocations or modifications or service and equipment are canceled in whole or in part, the customer may be required to reimburse the Company for all expenses incurred in handling the requests before notice of cancellation is received. Such charges, however, are not to exceed all charges which would apply if the work involved in complying with the request had been completed. (T)
14. When the use of service or facilities furnished by the Company is interrupted due to any cause other than the negligence or willful act of the subscriber or the failure of the facilities provided by the subscriber, a pro rata adjustment of the fixed monthly charges involved will be allowed as covered by Section A2. of this Tariff. (T)
15. In the event of any interruption of the service, the Company shall not be liable to any person, corporation or other entity for any loss or damage in an amount greater than an amount equal to the pro rata allowance of the tariff rate for the service or facilities provided to the customer for the time such interruption continues, after notice to the Company. No allowance shall be made if the interruption is due to the negligence or willful act of the customer of the service. (T)
16. Other Rules and Regulations located in A13.27.5. preceding will also apply to this service offering as appropriate. (T)

BELLSOUTH
TELECOMMUNICATIONS, INC.
KENTUCKY
ISSUED: January 3, 2005
BY: E.C. Roberts, Jr., President - KY
Louisville, Kentucky

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A13. MISCELLANEOUS SERVICE ARRANGEMENTS

A13.27 Emergency Reporting Services (Cont'd)

A13.27.8 BellSouth 9-1-1 PinPoint Service (Cont'd)

(T)

C. Payment Schedules

1. General

9-1-1 PinPoint Service is offered for a 60 month contract period at the rates and charges indicated in this sub-section. (T)
9-1-1 PinPoint Service disconnected prior to 60 months will be subject to cancellation charges.

2. Transfer of Contract

Service may be transferred to a new subscriber at the same location upon prior written concurrence by the new subscriber as specified in Section A2. of this Tariff.

3. Deferred Payment

Nonrecurring charges may be deferred or installment billed as specified in Section A2. of this Tariff.

4. Prepayment

Recurring charges may be prepaid as specified in Section A2. of this Tariff.

5. Cancellation Charges

Cancellation charges will be applied where service is removed prior to the expiration of the 60 month contract period.

6. Moves of Service

a. When the PBX owner/operator moves 9-1-1 PinPoint Service:

(T)

(1) Cancellation charges do not apply.

(2) 60 month rates in effect will continue uninterrupted.

(3) 9-1-1 PinPoint Service nonrecurring charges do not apply. (T)

(4) 9-1-1 PinPoint Service local channel charges apply as appropriate. (T)

D. Rates and Charges

1. 9-1-1 PinPoint Service

(T)

a. Installation Charge

(1) Per Customer

	Nonrecurring Charge	Monthly Rate	USOC
(a) Up to 1,000 station records, per customer	\$3,600.00	-	E8YN1
(b) 1,001 to 4,000 station records, per customer	4,800.00	-	E8YN2
(c) 4,001 or more station records, per customer	5,900.00	-	E8YN3

b. 60 Month Contract Period - Monthly Charges,

(1) per 1,000 records

(a) Up to 1,000 station records, per 1,000 records	-	\$178.00	E8Y61
(b) 1,001 to 4,000 station records, per 1,000 records	-	155.00	E8Y62
(c) 4,001 or more station records, per 1,000 records	-	130.00	E8Y63

2. 9-1-1 PinPoint Service Local Channels, per channel

(T)

(a) First channel, each	475.00	-	E8YCT
(b) Additional channels, each	105.00	-	E8YCU
(c) Each channel	-	55.00	E8YCV

3. Cancellation Charges

The following charge is incurred when a total disconnect of 9-1-1 PinPoint Service occurs during the 60 month contract period. (T)

(a) Per system disconnect	2,500.00	-	E8YDX
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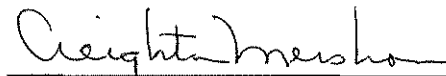
CERTIFICATE OF SERVICE

It is hereby certified that a true and correct copy of the foregoing was served on the following individuals by mailing a copy thereof, this 24th day of May 2006.

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