



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

May 24, 2004

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

RECEIVED

MAY 25 2004

PUBLIC SERVICE
COMMISSION

Re: Adoption of Interconnection Agreement Between
BellSouth Telecommunications, Inc. and MCI Worldcom
Communications, Inc. by Universal Telecom, Inc.
PSC 2004-00172

Dear Ms. O'Donnell:

Enclosed for filing in the above-captioned case is an original and ten (10) copies of BellSouth Telecommunications, Inc.'s Motion for Reconsideration of the May 19, 2004 Order.

Sincerely,

Dorothy J. Chambers
for Dorothy J. Chambers

Enclosures

cc: Parties of Record

539231

RECEIVED

MAY 25 2004

PUBLIC SERVICE
COMMISSION

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ADOPTION OF INTERCONNECTION)
AGREEMENT BETWEEN BELLSOUTH)
TELECOMMUNICATIONS, INC. AND) CASE NO. 2004-00172
MCI WORLDCOM COMMUNICATIONS, INC.)
BY UNIVERSAL TELECOM, INC.)

BELLSOUTH TELECOMMUNICATIONS, INC.'S MOTION FOR
RECONSIDERATION OF THE COMMISSION'S MAY 19, 2004, ORDER

BellSouth Telecommunications, Inc., ("BellSouth"), pursuant to KRS 278.410 respectfully moves this Commission to reconsider its May 19, 2004, Order whereby the Commission granted that the request of Universal Telecom to adopt the interconnection agreement between BellSouth and MCI WorldCom Communications, Inc. ("MCI WorldCom").

On May 11, 2004, Universal Telecom filed a request to adopt what it referred to as the currently effective interconnection agreement between BellSouth and MCI WorldCom. The Commission's May 19, 2004, Order, allowing Universal Telecom to adopt the BellSouth/MCI interconnection agreement, was entered just eight (8) days after Universal Telecom's request to adopt was filed with the Commission and within one or two days within which BellSouth first received a copy of Universal Telecom's request to adopt. BellSouth files this Motion because BellSouth has not

had the opportunity to file with the Commission an opposition to Universal Telecom's request to adopt this Agreement, and there are substantial problems with Universal Telecom attempting to adopt a non-compliant and outdated MCI agreement.

BACKGROUND

On March 15, 2004, Universal Telecom requested negotiations with BellSouth. BellSouth proposed the then current BellSouth standard interconnection agreement offered to competitive local exchange carriers. BellSouth received a response from Universal Telecom on April 12, 2004, requesting an adoption of Z-Tel's interconnection agreement with BellSouth. BellSouth advised Universal Telecom that its request was not appropriate because it was requesting to adopt an already adopted agreement (MCI's agreement was the underlying agreement). As requested by Universal Telecom on April 24, 2004, BellSouth again forwarded to Universal Telecom the then current standard interconnection agreement. On April 30, 2004, John Hamman, BellSouth Interconnection Services Negotiator, received a call from a Universal Telecom representative and its attorney requesting to adopt MCI's interconnection agreement with BellSouth. At that time, Universal Telecom also rejected BellSouth's proposal to use BellSouth's standard interconnection agreement. On May 3, 2004, Mr. Hamman advised Universal Telecom that BellSouth was proposing that Universal adopt all of the rates, terms and

conditions of the MCI-BellSouth interconnection agreement with a few modifications that included language incorporating the FCC's Triennial Review Order¹, the DC Circuit Court's Opinion² and the FCC's ISP Remand Order.³ Following the discussion on May 3, 2004, BellSouth did not hear back from Universal Telecom until it received Universal Telecom's Notice to Adopt which had been filed at the Kentucky Public Service Commission on or about May 11, 2004.

Upon receipt of the Commission's May 19, 2004, Order, BellSouth counsel conferred by telephone and electronic mail with counsel for Universal Telecom to see if the problems related to adoption of MCI's outdated Interconnection Agreement could be resolved. In accordance with a discussion on May 20, 2004, between attorneys for both parties, BellSouth provided on that same day via electronic mail to Universal Telecom a set of documents in both Word format and PDF, which taken as a whole, could be used to create the Universal Telecom/BellSouth interconnection agreement for Kentucky and which included the appropriate modifications so that the agreement is compliant

¹ *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, CC Docket Nos. 01-338 et al., FCC 03-36, 18 FCC Rcd 16978 (Aug. 21, 2003) ("TRO").

² *UNITED STATES TELECOM ASSOCIATION v. FEDERAL COMMUNICATIONS COMMISSION and United States of America* (359 F.3d 554) March 2, 2004 ("DC Circuit Order").

³ *Order On Remand and Report and Order*, in the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; *Intercarrier Compensation for ISP-Bound Traffic*, CC Docket Nos. 96-98, 99-68, 16 FCC Rcd 9151 (April 18, 2001) ("ISP Remand Order").

with current rules related to the FCC's Triennial Review Order, the D.C. Circuit Court's Opinion, and the FCC's ISP Remand Order. Counsel for both parties are continuing to discuss this matter in the hope of avoiding unnecessary regulatory proceedings and/or litigation. However, in the interest of preserving BellSouth's rights, it has filed this motion.

BellSouth has no objection to Universal Telecom adopting the BellSouth/MCI interconnection agreement so long as the agreement incorporates the provisions necessary for compliance with current law.⁴ The following provisions of the MCI agreement are not compliant with current law if Universal Telecom were to be allowed to adopt this agreement in its present format. First, the intercarrier compensation provisions for ISP traffic in the local interconnection attachment of the agreement must be conformed to the FCC's ISP Remand Order. Second, the UNE attachment of the agreement must be conformed to the new rates, terms, and conditions set forth in the FCC's TRO.

With respect to the ISP Remand Order, the FCC made clear in its Order that carriers that did not exchange ISP traffic with the ILEC in the first quarter of 2001 are not eligible to receive compensation for ISP traffic. Thus, in accordance with applicable law, that portion of the agreement concerning

⁴ Of course, BellSouth has no objection to Universal Telecom adopting any of the other TRO compliant interconnection agreements in Kentucky. See attached list.

compensation for ISP traffic must be amended for Universal Telecom. With respect to the TRO, the provisions of the agreement that must be conformed in this matter include, but are not limited to provisions relating to broadband loops, entrance facilities, call related databases and EELs. Since the mandate in the DC Circuit Order has not been issued, there is not yet a requirement to conform the agreement to the ruling of the DC Circuit Court of Appeals; however, there can be no doubt under the FCC's Orders that the agreements must be conformed to the ISP Remand Order and the TRO before adoption can be completed and in compliance with the current rules.

BellSouth acknowledges that it is obligated to make interconnection agreements available for 252(i) adoption "for a reasonable period of time after the approved agreement is available for public inspection". 47 C.F.R. § 51.809(c). The reasonable period of time to adopt the UNE attachment of an agreement without modification expired no later than October 2, 2003, the effective date of the TRO and perhaps as early as August 20, 2003, the date the TRO was released. At the latest, after October 2, 2003, portions of the UNE attachment of the agreement no longer were compliant with the law, and thus the reasonable adoption period for such a contract, without amendment to conform to the law, expired. In an effort to work with carriers, BellSouth has agreed that carriers may opt in to

non-compliant agreements until BellSouth provided its TRO compliance standard agreement. BellSouth provided to CLECs a proposal of a TRO complaint attachment in November of 2003.

The FCC's ISP Remand Order confirms that the "reasonable period of time" during which agreements may be adopted expires upon the publication of an FCC order altering the regulatory regime.⁵ In the ISP case Remand Order, the FCC established a new interim compensation regime for ISP traffic. The Commission recognized the danger of perpetuating the old regime via carriers opting into agreements that predated the Commission's decision. To prevent this inequitable result, the Commission held: "[w]e conclude that any 'reasonable period of time' for making available rates applicable to the exchange of ISP-bound traffic expires upon the Commission's adoption in this Order of an intercarrier compensation mechanism for ISP-bound traffic." ISP Remand Order at fn. 155. In conjunction with its holding, the Commission noted that "[t]o permit a carrier to opt into a reciprocal compensation rate higher than the caps we impose here [i.e. opt-in to an old non-compliant agreement] during that window would seriously undermine our effort to curtail regulatory arbitrage and to begin a transition from dependence

⁵ Order On Remand and Report and Order, in the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Intercarrier Compensation for ISP-Bound Traffic, CC Docket Nos. 96-98, 99-68, 16 FCC Rcd 9151 (April 18, 2001) ("ISP Order").

on intercarrier compensation and toward greater reliance on end-user recovery." *Id.* at fn. 154.

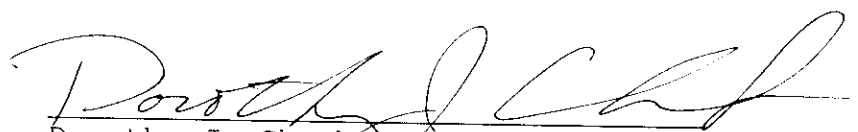
The same rationale controls the requested opt in for the case at hand, where Universal Telecom request to adopt MCI's current UNE attachment. The reasonable period of time to opt-in to pre-TRO agreements with provisions that are inconsistent with the effective portions of the TRO expired, at the latest, with the effective date of the TRO, and probably even earlier at its release date. To allow carriers to continue to opt-in to such portions of pre-TRO agreements that contain provisions that are non-compliant with current law would be contrary to public policy in that it would perpetuate a non-compliant regime and prevent the industry from moving forward under the new rules.

BellSouth has no objection to the Commission allowing Universal Telecom to adopt an agreement after it is conformed to the requirements of the ISP Remand Order and the TRO. In the alternative, Universal Telecom can take MCI's current agreement with the modifications incorporating BellSouth's TRO compliant attachments and, after execution, the parties can negotiate the attachments for the allotted times. The parties can then take any disputed issues to this Commission. However, it is not appropriate for Universal Telecom to attempt to adopt a non-compliant agreement such as they attempted in their May 11, 2004, filing. Under these circumstances, due process requires

that reconsideration be granted of this Commission's May 19, 2004, Order approving Universal Telecom's attempt to adopt a non-compliant agreement. In this case, the Commission's Order was adopted before BellSouth had the opportunity to advise the Commission of its position and of the significant legal issues and problems associated with Universal Telecom's request.

For these reasons, BellSouth respectfully requests that reconsideration be granted of the Commission's May 19, 2004, Order.

Respectfully submitted,



Dorothy J. Chambers
601 W. Chestnut Street, Room 407
P. O. Box 32410
Louisville, KY 40232
Telephone No. (502) 582-8219

COUNSEL FOR BELLSOUTH
TELECOMMUNICATIONS, INC.

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, 2004.

Hon. John E. Selent
Hon. Holly C. Wallace
Dinsmore & Shohl, LLP
1400 PNC Plaza
500 West Jefferson Street
Louisville, KY 40202

Melissa L. Burris
Staff Specialist
MCI Worldcom Communications, Inc.
6 Concourse Parkway
Suite 3200
Atlanta, GA 30328

Mr. Stacey Freeman
Vice President
Universal Telecom, Inc.
P.O. Box 679
LaGrange, KY 40031


Dorothy J. Chambers

TRO Compliant Interconnection
Agreements In Kentucky

- 1) ACN Communications Services, Inc., effective January 17, 2004
- 2) American Farm Bureau, Inc. d/b/a The Farm Bureau Connection, effective January 15, 2004
- 3) IDT America Corporation d/b/a IDT, effective October 15, 2003
- 4) New Access Communications, LLC, effective October 25, 2003
- 5) Qwest Communications Corporation, effective February 19, 2004