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June 1, 2004

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PUBLIC SERVICE
COMMISSION

VIA HAND DELIVERY

Hon. Beth O'Donnell
Executive Director
Kentucky Public Service Commission
211 Sower Blvd.
Frankfort, KY 40601

**Re: In the Matter of: Adoption of Interconnection Agreement Between BellSouth
Telecommunications, Inc. and MCI Worldcom Communications, Inc. by
Universal Telecom, Inc. - before the Public Service Commission of the
Commonwealth of Kentucky, Case No. 2004-00172**

Dear Ms. O'Donnell:

Enclosed is an original and 11 copies of Universal Telecom, Inc.'s Response to BellSouth Telecommunications, Inc.'s Motion for Reconsideration of the Commission's May 19, 2004 Order for filing in the above-styled matter.

Thank you, and please call me if you have any questions.

Very truly yours,

DINSMORE & SHOHL LLP


John E. Selent

JES/bmt
Enclosures

cc: All Parties of Record

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

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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.)

**UNIVERSAL TELECOM, INC.'S RESPONSE TO BELLSOUTH
TELECOMMUNICATIONS, INC.'S MOTION FOR
RECONSIDERATION OF THE COMMISSION'S MAY 19, 2004 ORDER**

Universal Telecom, Inc. ("Universal Telecom"), by counsel, hereby responds to BellSouth Telecommunications, Inc.'s ("BellSouth's") motion for reconsideration of the Commission's May 19, 2004 Order. BellSouth's motion ignores the plain language of 47 U.S.C. § 252(i) and 47 C.F.R. § 51.809(c) and the purposes behind those provisions. Therefore, it should be denied.

PROCEDURAL POSTURE

Universal Telecom filed its notice of intent to adopt interconnection agreement with the Kentucky Public Service Commission (the "Commission") on May 11, 2004, after its two prior, written requests to adopt the currently effective agreement between BellSouth and MCI WorldCom Communications, Inc. ("MCI") were rejected by BellSouth. Because 42 U.S.C. § 252(i) provides a clear mandate that BellSouth "shall" make this agreement available to requesting telecommunications carriers, like Universal Telecom, the Commission granted Universal Telecom's request on May 19, 2004.

Despite the May 19, 2004 Order from this Commission, BellSouth has refused to accept orders from Universal Telecom based upon the adopted agreement. Instead, it filed its motion to

reconsider on May 24, 2004, and has cited this motion as grounds to ignore the Commission's May 19, 2004 ruling and to compel negotiations between the parties.

ARGUMENT

1. The Law Supports the Commission's Order.

BellSouth's objections to the Commission's May 19, 2004 Order raised in its motion to reconsider are meritless. BellSouth concedes that it is obligated to make available to Universal Telecom "any interconnection, service, or network element provided under an agreement approved under this section to which it is a party" 47 U.S.C. § 252(i). It admits that it must make these agreements available for a "reasonable period of time" and, by implication, that Universal Telecom's request for adoption came within what is ordinarily considered a "reasonable period of time." 47 C.F.R. § 51.809(c). Its objection is simply that a "reasonable period of time" should mean something different here than it does in all other contexts.

In all previous instances, Universal Telecom understands that BellSouth interprets "reasonable period of time" to mean that an agreement can always be adopted so long as there are more than six months remaining on its term. This interpretation is also consistent with the interpretation given by this Commission and other states' public service commissions to that language. (*See* the Commission's Orders attached to Universal Telecom's Notice of Intent to Adopt Interconnection Agreement as Exhibits A and B.) BellSouth and MCI executed their agreement on July 29, 2002, and it is effective until approximately July 28, 2005. Therefore, Universal Telecom's request to adopt came within a "reasonable period of time."

Nevertheless, BellSouth argues that, in this instance, the fact that the Federal Communications Commission ("FCC") and the United States Circuit Court of Appeals for the District of Columbia have issued orders touching upon some of the issues addressed in

BellSouth's agreement with MCI results in the automatic expiration of a "reasonable period of time." This is an absurd and meritless argument that ignores both the plain language of the statutes and regulations and the purpose behind those provisions of the law.

Again, BellSouth is required to make the MCI agreement available to Universal Telecom pursuant to 47 U.S.C. § 252(i). Moreover, the agreement must be available for a "reasonable period of time," and that time has not, as a matter of law, expired. For these reasons, the Commission properly granted Universal Telecom's request to adopt the MCI agreement.

BellSouth's only source of support for its attempt to circumvent the plain language of these provisions is its citation to a footnote in a 2001 FCC Order. (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, 16 FCC Rcd 9151 (April 18, 2001)). In that Order, the FCC made changes to the manner in which ISP-bound traffic could be billed but specifically precluded the retroactive application of those changes to current agreements. However, the rule the FCC announced in footnote 155 was also specifically limited the circumstances of the matter before the FCC, and, in turn, the industry has responded by specifically carving out only the ISP provisions of prior agreements as being exempt from adoption. Thus, the FCC's Order does not support the contention that every term of an agreement that contains a non-compliant ISP provision is not adoptable by subsequent CLEC's. Instead, the other provisions of that agreement remain open to adoption, and the ISP provisions do not apply.

The FCC's 2001 ISP Order did not announce any broad rule that the issuance of any order that touched upon provisions of currently-effective agreements would automatically terminate the "reasonable period of time" for their adoption. In fact, it is telling that the FCC

specifically did not make the same pronouncement in its August 21, 2003 Triennial Review Order to which BellSouth points in support of its refusal to comply with the Commission's May 19, 2004 Order. Obviously, the FCC is well-aware of the Section 252(i) requirement and of the fact that it is necessary, in certain circumstances, to state plainly that its ruling cuts off the "reasonable period of time" to adopt certain agreements. Despite this knowledge, the FCC did not believe that its Triennial Review Order required such an announcement, and the FCC made no such announcement.

BellSouth's position is absurd and would simply end the availability of Section 252(i). As the Commission well knows, telecommunications law is not static, and the legality and enforceability of certain provisions of telecommunications agreements are continuously being challenged, both in the courts and before the FCC and state regulatory commissions. Thus, if the issuance of a FCC or court order terminated the "reasonable period of time" to adopt an agreement for each agreement that was potentially affected by that order, CLEC's would have an extremely short and unpredictable amount of time to initiate adoption.

Moreover, as is evidenced by BellSouth's actions, this rule would, ominously, also put CLEC's at the mercy of BellSouth and other ILEC's to make their own determination of when a FCC or court order has affected an agreement *and* what changes are required to make the agreement comply with the new order. BellSouth has provided Universal Telecom with approximately 200 pages worth of documents that it asserts include the legally necessary modifications to the MCI WorldCom agreement. (See Exhibit A.) Thus, Universal Telecom can either go to great time and expense to review these 200 pages and negotiate changes or it can take it on blind faith that BellSouth's modifications accurately incorporate all (and only) legally necessary changes (despite the fact that MCI has apparently not yet agreed to the changes). This

is *precisely* the dilemma that Section 252(i) intends to avoid; Section 252(i) adoption should be swift and easy and not the equivalent of Section 252(a) negotiations. BellSouth's position would be the death of Section 252(i) adoption and would make everything a Section 252(a) negotiation. The Commission should deny BellSouth's motion to reconsider.

2. The Practical Considerations Support the Commission's Order.

BellSouth's overall objections to Universal Telecom's adoption of the MCI agreement are much ado about nothing. The bulk of BellSouth's complaints appear to be that the MCI WorldCom agreement does not yet comply with the three-year old FCC ISP Remand Order even though it was executed more than one year after that Order was released. (BellSouth's Motion for Reconsideration, pp. 3, 4-6.) In any event, Universal Telecom does not offer ISP service and has no interest in invoking this portion of the MCI agreement.

Moreover, BellSouth's agreement with MCI has already been adopted by Z-Tel Communications, Inc. ("Z-Tel") in March, 2003, *well after the issuance of the FCC's April 18, 2001 ISP Remand Order*. BellSouth cannot now therefore credibly claim that that Order somehow made the MCI agreement unadoptable. Consequently, there is no risk that Universal Telecom's adoption of the MCI agreement will place either of the parties at odds with current law.

3. The Facts do not Support BellSouth's Position.

BellSouth's motion for reconsideration contains a couple of inaccurate factual assertions regarding the procedural history of this matter. While most of these appear to be irrelevant to the clear legal issue before the Commission, they may be important to note for the Commission's understanding of how this issue arose.

First, BellSouth contends that Universal Telecom requested negotiations on March 15, 2004. (BellSouth's Motion for Reconsideration, p. 2.) However, Universal Telecom's request actually came three days earlier and was clearly for the "adoption" of the agreement between BellSouth and Z-Tel. (Exhibit B, March 12, 2004 email from Kerry Ingle to John Hamman.) This request also plainly cited Section 252(i) as its source, and thus, could not have been confused with a request for negotiations under Section 252(a).

Second, BellSouth also states that it initially denied Universal Telecom's April 12, 2004 request for adoption of the Z-Tel agreement because it inappropriately sought adoption of an already adopted agreement. (BellSouth's Motion for Reconsideration, p. 2.) There is absolutely no legal significance to this fact; CLEC's are not required by the law to conduct a quasi-title search for the original agreement. *See* 47 U.S.C. § 252(i)(BellSouth "shall make available *any . . . agreement approved under this section*")(emphasis supplied). The Z-Tel agreement has been approved by this Commission and thus it is available for adoption. In any event, Universal Telecom's April 12, 2004 request clearly invoked the original MCI agreement, but BellSouth continued to deny Universal Telecom's attempts to adopt either agreement. (Exhibit C, April 12, 2004 email from Kerry Ingle to John Hamman.) Also, Universal Telecom's notice of intent to adopt interconnection agreement plainly cited the MCI agreement, and thus, BellSouth has absolutely no grounds to raise this objection in its Motion.¹

CONCLUSION

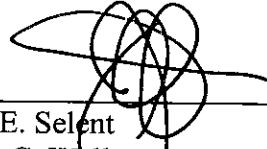
Universal Telecom respectfully requests that the Commission:

- A. Deny BellSouth's motion for reconsideration; and

¹ Apparently, BellSouth either has a policy to delay and thwart simple adoption requests under § 252(i) or it does not recognize the difference between a § 252(i) request for adoption and a § 252(a) request for negotiation. In either event, the Commission may, *sua sponte*, want to open a docket to investigate this matter.

B. Require BellSouth to immediately comply with the Commission's May 19, 2004 order by filling orders placed by Universal Telecom after they are placed with BellSouth.

Respectfully submitted,



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**COUNSEL TO UNIVERSAL
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CERTIFICATE OF SERVICE

It is hereby certified that the foregoing was served by mailing a copy of the same by First Class United States Mail, sufficient postage prepaid, to the following this 15th day of June, 2004:

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