

Cinergy Communications Company
8829 Bond Street
Overland Park, KS 66214
phone 913.492.1230
fax 913.492.1684

January 19, 2005



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, Case No. 2004-00501**

RECEIVED
JAN 24 2005
PUBLIC SERVICE
COMMISSION

Dear Ms. O'Donnell:

Enclosed please find the original and ten (10) copies of Comments of Cinergy Communications Company for filing in the above-referenced docket. I have also enclosed a return copy and a self-addressed stamped envelope. Please return a filed stamped copy for our records.

If you have any questions, please do not hesitate to contact me directly at (913) 754-3333.

Very truly yours,



Robert A. Bye

Vice President and
General Counsel

cc: Service List

Enclosure

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

RECEIVED
JAN 24 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)	

COMMENTS OF CINERGY COMMUNICATIONS COMPANY

Cinergy Communications Company (“CCC”), by and through counsel, hereby submits the following comments in opposition to BellSouth’s Petition.

I. INTRODUCTION

BellSouth’s Petition in this case is only the latest in a series of expensive and time-consuming legal maneuvers devised to avoid its contractual and legal obligations to CCC. BellSouth first appealed this Commission’s Arbitration Order in Case No. 2001-00432 to the U.S. District Court for the Eastern District of Kentucky. The Court upheld the Commission’s Order and the Interconnection Agreement (“ICA”) between CCC and BellSouth. *BellSouth Telecommunications, Inc. v. Cinergy Communications Company*, 297 F.Supp.2d 946 (E.D.Ky. 2003). BellSouth then appealed that decision to the U.S. Court of Appeals for the Sixth Circuit.

Soon thereafter, BellSouth filed a preemption petition at the FCC which sought to usurp the regulatory authority of this Commission as well as overturn the Commission’s

Order and the District Court's Order.¹ BellSouth then sought and received a letter from the Sixth Circuit Clerk advising that the appeal will be held in abeyance pending a decision from the FCC. BellSouth has also recently sought forbearance from the FCC relieving it of its regulatory obligation to provide wholesale DSL access pursuant to tariff.² Now, BellSouth is coming to this Commission effectively requesting that it act immediately to reverse its own Arbitration Order because the courts and the FCC will not.

BellSouth's urgency regarding an amendment to the ICA flies in the face of its own behavior relative to the change of law process in general. Although BellSouth's own tariff and FCC regulations require "commingling" of wholesale DSL and UNEs purchased pursuant to an interconnection agreement, BellSouth refuses to provide commingling or engage in good faith change of law negotiations regarding commingling.³ The DSL over UNE-P issue at the heart of this proceeding raises issues also related to commingling, a regulatory requirement that did not exist until the relevant FCC rules became effective in September, 2003. BellSouth's tariff requires that contract language be amended before it will offer commingling. Section 2.10.1 of the current ICA contains all the terms necessary to implement commingling. In fact, CCC has offered 2.10.1 as a proposed commingling amendment in the entire BellSouth region.⁴ To the extent substantially similar contract language is required by Federal law and BellSouth's

¹ *In the Matter of BellSouth Telecommunications, Inc. Request for Declaratory Ruling that State Commissions May Not Regulate Broadband Internet Access Services By Requiring BellSouth to Provide Wholesale or Retail Broadband Services to CLEC UNE Voice Customers*, FCC WC Docket No. 03-251.

² *In the Matter of Petition of BellSouth Telecommunications, Inc. For Forbearance Under 47 U.S.C. § 160(c) From Application of Computer Inquiry and Title II Requirements*. FCC WC Docket 04-405. Filed October 27, 2004.

³ See correspondence between CCC and BellSouth regarding commingling attached hereto as Exhibit "A."

⁴ *Id.* See Letter of September 30, 2003 from Mr. Bye of CCC to Ms. Bracy of BellSouth which requests a change of law amendment based upon commingling. Attached to this correspondence as an exhibit is a copy of Section 2.10.1 of the ICA to be used as a starting point for good faith negotiations.

own tariff, no Kentucky statute can materially conflict with the federal scheme and adversely effect the ICA. Therefore, no “change of law” amendment is necessary or required here.

II. COMMINGLING OF WHOLESALE DSL WITH UNE-P

BellSouth repeatedly ignores 47 CFR § 51.309 regarding commingling of UNEs and wholesale services.⁵ This rule is Federal law which became effective October 2, 2003. It has never been appealed and is, therefore, valid and enforceable. BellSouth has nominally complied with this rule by amending its tariff. However, this is merely form over substance because BellSouth refuses to voluntarily comply with its own tariff.

Section 2.2.3(A) of BellSouth FCC Tariff No. 1 which became effective October 17, 2003, provides:

Except as provided in Section 51.318 of the Federal Communications Commission’s rules, telecommunications carriers who obtain unbundled network elements (UNEs) or combinations of UNEs [e.g. UNE-P] pursuant to a Statement of Generally Available Terms, under Section 252 of the Act, or pursuant to an interconnection agreement with the Telephone Company, may connect, combine or otherwise attach such UNEs or combinations of UNEs to Access services purchased under this Tariff except to the extent such agreement explicitly:

- (1) prohibits such commingling; or
- (2) requires the parties to complete the procedures set forth in the agreement regarding change of law prior to implementing such commingling.⁶

“Commingling” is defined in Section 2.6 of BellSouth’s Access Tariff as, “the connecting, attaching, or otherwise linking of an unbundled network element (UNE), or a combination of unbundled network elements (UNEs), to one or more facilities or services

⁵ See 47 CFR § 51.309 attached hereto as Exhibit “B.”

⁶ See December 16, 2003 letter from CCC to BellSouth attaching copy of tariff section and requesting compliance with the tariff in Exhibit “A.”

that a requesting telecommunications carrier has obtained at wholesale from an incumbent LEC, or the combining of an UNE, or a combination of UNEs, with one or more such facilities or services.”

DSL transport is one of the access services that CCC purchases out of BellSouth’s FCC No. 1. Pursuant to the plain language of the tariff, CCC is allowed to connect, combine, or otherwise attach UNE-P and UNE-L to DSL transport purchased at wholesale out of the tariff. BellSouth included language in its tariff which requires the parties to implement the change of law procedures in an interconnection agreement prior to taking advantage of commingling.

CCC requested access to commingling and properly served notice. BellSouth refused to voluntarily amend its ICA to comply with its tariff anywhere in its region, and refuses to provide commingling of DSL over UNE-L in Kentucky. Fortunately, CCC has Section 2.10.1 in the ICA so commingling of DSL and UNE-P is currently available in Kentucky. The state statute cannot preempt BellSouth’s federal obligation to provide this service to CCC under the tariff and Section 252.

III. COUNTERCLAIM FOR CHANGE OF LAW ARBITRATION BASED UPON COMMINGLING TO INCLUDE WHOLESALE DSL OVER UNE-L

Pursuant to 47 CFR § 51.309 and BellSouth’s FCC Tariff No. 1, CCC is not only entitled to DSL over UNE-P as outlined above, but also DSL over UNE-L. Based upon this change of law, CCC has provided BellSouth written notice which was properly served pursuant to the ICA. CCC attempted to engage in good faith negotiations to amend the ICA, but those efforts were rebuffed. To date, BellSouth has failed to explain why the commingling language of its tariff would not apply to DSL purchased from that

tariff. BellSouth will not voluntarily amend its agreement. For all of these reasons, CCC hereby Petitions the Public Service Commission of Kentucky to arbitrate this issue between the parties pursuant to the terms of the ICA, BellSouth's FCC Tariff No. 1 and Section 252.

CCC submits that the only amendment necessary to accommodate this new law is the addition of "and UNE-L" where appropriate in Section 2.10.1 of the ICA.

IV. MOTION TO CONSOLIDATE

CCC requests that BellSouth's change of law request regarding the Kentucky Broadband Act be consolidated with all other change of law issues which must be addressed in light of the FCC's forthcoming USTA II Remand Order and the TRO. This is only one of perhaps two dozen issues that will need to be arbitrated based upon change of law, including:

1. Commingling wholesale DSL with UNE-L.
2. Establishment of "just and reasonable" and "nondiscriminatory" rates, terms and conditions for UNEs and combinations of UNEs pursuant to Sections 271 and 201.
3. Commingling of Section 271 UNE loop, UNE switching and/or wholesale DSL.
4. UNE combinations of Section 271 UNE loops and Section 271 UNE switching operationally identical to UNE-P utilizing current systems, but with pricing based upon "just and reasonable" and "nondiscriminatory" as opposed to TELRIC.
5. Terms and conditions for hot cut conversions from UNE-P to UNE-L.
6. Procedures to be followed for returning customers to BellSouth when UNE-P is no longer available and UNE-L is not an option.

When there is a regulatory sea change such as we now have, it should be expected that there will be myriad issues that must be resolved before the relationship between two competitors can be reduced to contract language.

It is an enormous waste of time, money, legal resources and Commission resources to isolate the single, narrow issue raised by BellSouth in this docket from all other change of law issues that must be resolved by the Commission. In the interest of judicial economy and more efficient use of limited legal resources, CCC requests that all issues which require an amendment to the ICA based upon change of law be consolidated into a single docket for arbitration.

Moreover, if separate dockets are created for various change of law issues, it is unclear what appeal route the parties would take. Section 252 envisions a single arbitration between the ILEC and CLEC(s) with a single order that can be appealed to U.S. District Court. The appeals would likely be joined at some point, but the procedural thicket created by multiple appeals from a single agreement would be cumbersome and expensive.

CCC has been added as a party to Docket No. 2004-00427 *Petition of BellSouth Telecommunications, Inc. to Establish Generic Docket to Consider Amendments to Interconnection Agreements Resulting from Changes of Law*. CCC does not concede that this docket is procedurally proper and reserves any and all rights it may have to contest that proceeding. The FCC's USTA II Remand Order will supersede any interim rules, but the Order has not yet been issued and become effective. Therefore, there has not yet been a change of law that requires the type of amendment requested in that docket. Following publication of the USTA II Remand Order, the parties have an obligation to

negotiate in good faith to amend the ICA. It is only proper to file for arbitration after negotiations do not result in voluntary agreement. Therefore, BellSouth's Petition in 2004-00427 lacks ripeness for adjudication under the procedure set forth in the ICA.

Regardless of which procedural vehicle the Commission decides is appropriate for arbitration, CCC respectfully requests that all issues between it and BellSouth be decided in a single arbitration as contemplated in Section 252. BellSouth's tactic of opening as many dockets as possible will unjustly increase CCC's cost. However, the Commission should not allow BellSouth to engage in a war of attrition that only the incumbent monopolist can win. Instead, the Commission should force BellSouth to resolve this dispute on a playing field that is level for both parties.

V. MOTION FOR INJUNCTIVE RELIEF TO ENFORCE TERMS OF INTERCONNECTION AGREEMENT UNTIL AMENDED

BellSouth is required to issue CCC credits pursuant to Sections 2.10.1.6 and 2.10.1.6.1 of the ICA. BellSouth is unilaterally withholding those credits in violation of the ICA.⁷ BellSouth has also implied that it will prevent CCC from placing new orders or making changes to its existing customer base. All of these unilateral actions are prohibited under the ICA. The Commission should prevent this type of anticompetitive activity by enforcing the terms of the ICA.

The change of law provisions of the ICA at Section 17 incorporate by reference the dispute resolution provisions of Section 11 which provide:

The aggrieved party shall petition the Commission for resolution of the dispute. . .However, each Party reserves any rights it may have to seek

⁷ BellSouth issued credits on a more or less regular basis through September of 2004. Since that time, BellSouth has calculated the credits, but the credits do not appear on CCC's invoices. To date, the credits owed CCC total \$251,894.00.

judicial review of any ruling made by the Commission concerning this Agreement. Furthermore, the *Parties agree to carry on their respective obligations under this Agreement, while any dispute resolution is pending.* (Emphasis added).

Under the terms of Section 11, BellSouth is required to carry on its obligations to issue credits as well as accept orders while any dispute resolution is pending. CCC specifically negotiated this language into the ICA to prevent monopolistic behavior such as withholding credits or shutting off service in the middle of a dispute. BellSouth agreed to this language and it was approved by this Commission and a Federal Court. BellSouth should not be allowed to unilaterally violate it.

CCC has been working for the past two years on building a facilities-based network. CCC has installed switches in Louisville and Evansville, IN which are capable of serving the entire state. CCC initially focused on enterprise customers which can be serviced via UNE DS1s purchased out of the ICA. CCC must now invest significant capital to upgrade its current collos to accommodate POTS service to small business and residential customers. CCC cannot implement this business plan if BellSouth is successful in shutting off customers or tying up lines of credit. CCC requests that the Commission issue an Order requiring BellSouth to “carry on [its] obligations” under the ICA until all disputes related to the ICA are resolved and all resulting orders have become final, including any appeal.

VI. CONCLUSION


For all of the above and foregoing reasons, CCC respectfully requests that the Commission dismiss the Petition in Case No. 2004-00501 without prejudice. Thereafter, BellSouth may raise this issue with all other change of law issues that must be arbitrated.

In the alternative, CCC submits its counterclaim based upon commingling of wholesale DSL and UNE-L for the Commission's consideration in this docket. CCC further requests that the Commission enter an Order requiring BellSouth to carry on its obligations, specifically including but not limited to the payment of all credits and the acceptance of all new orders under the current rates, terms and conditions, until the dispute is finally resolved.

Respectfully submitted,

CINERGY COMMUNICATIONS COMPANY

By


Robert A. Bye
Vice President and General Counsel
8829 Bond St.
Overland Park, KS 66214
(913) 754-3333
(812) 759-1732 Facsimile

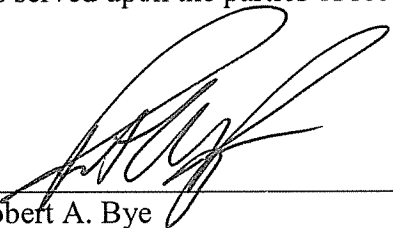
And

C. Kent Hatfield
STOLL, KEENON & PARK, LLP
2650 AEGON Center
400 West Market St.
Louisville, KY 40202-3377
(502) 568-9100
(502) 568-5700 Facsimile

ATTORNEYS FOR RESPONDENT
CINERGY COMMUNICATIONS COMPANY

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing Comments of Cinergy Communications Company was served upon the parties of record this 19th day of January, 2004.



Robert A. Bye

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

Honorable David M. Benck
Vice President/General Counsel
Momentum Telecom, Inc.
2700 Corporate Drive
Suite 200
Birmingham, AL 35243

Robert Culpepper
BellSouth Interconnection Services
675 West Peachtree St., N.E.
Suite 430
Atlanta, GA 30375

Jean Houck
ITC^DeltaCom Communications, Inc.
7037 Old Madison Pike
Suite 400
Huntsville, AL 35806

Honorable Kristopher E. Twomey
Attorney at Law
2501 Ninth St., Suite 102
Berkeley, CA 94710

Kyle Coats
EveryCall Communications, Inc.
10500 Coursey Boulevard
Suite 306
Baton Rouge, LA 70816

Ms. Nanette Edwards
Senior Manger – Regulatory Attorney
ITC^DeltaComm Communications, Inc.
4092 S. Memorial Parkway
Huntsville, AL 35802

Honorable Dennis G. Howard II
Assistant Attorney General
Office of the Attorney General
Utility & Rate Intervention Division
1024 Capital Center Drive
Suite 200
Frankfort, KY 40601-8204

Honorable Dorothy J. Chambers
General Counsel/Kentucky
BellSouth Telecommunications, Inc.
601 West Chestnut Street, Room 410
P.O. Box 32410
Louisville, KY 40232

Alan Creighton
Momentum Telecom, Inc.
2700 Corporate Drive
Suite 200
Birmingham, AL 35243

Todd Heinrich
Aero Communications, LLC
1301 Broadway
Suite 100
Paducah, KY 42001

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

EXHIBIT “A”

Cinergy Communications Company
8829 Bond Street
Overland Park, KS 66214
phone 913.492.1230
fax 913.492.1684

September 10, 2003



Via Federal Express

Ms. Nicole Bracy
Manager, Interconnection Services
BELLSOUTH INTERCONNECTION SERVICES
675 W. Peachtree Street, NE
Room 34S91
Atlanta, GA 30375

**Re: Request for amendment to Interconnection agreement
due to change in law**

Dear Nicole:

As I indicated to you in our conversation of September 5, 2003, this letter is to request an amendment to the Interconnection Agreement between Cinergy Communications Company and BellSouth for the states of Alabama, Florida, Georgia, Louisiana, North Carolina, and South Carolina effective as of February 26, 2003. This request shall serve as the fifteen (15) day written notice, pursuant to paragraph 16.3 of the aforementioned agreement, requesting a renegotiation due to a change in law.

The change in law results from the release of the Triennial Review Order ("TRO") and the related federal rules which become effective October 2, 2003. The relevant new rules are 47 CFR § 51.309(e) and (f) which provide:

- (e) Except as provided in § 51.318, an incumbent LEC shall permit a requesting telecommunications carrier to commingle an unbundled network element or a combination of unbundled network elements with wholesale services obtained from an incumbent LEC.
- (f) Upon request, an incumbent LEC shall perform the functions necessary to commingle an unbundled network element or a combination of network elements with one or more facilities or services that a requesting telecommunications carrier has obtained at wholesale from an incumbent LEC.

"Commingling" is a newly defined term in the regulations: Commingling means the connecting, attaching, or otherwise linking of an unbundled network element, or a

combination of unbundled network elements, to one or more facilities or services that a requesting telecommunications carrier has obtained at wholesale from an incumbent LEC, or the combining of an unbundled network element, or a combination of unbundled network elements, with one or more such facilities or services.

Based upon the foregoing, Cinergy Communications is requesting the ability to commingle UNE-P and wholesale DSL transport. As a means of avoiding operational delays, Cinergy Communications will agree to extend the DSL over UNE-P language agreed to in the parties' Kentucky agreement to the nationwide agreement. For your convenience, I have attached a copy of the previously agreed-to language as Exhibit "A." Since this interim solution appears to be working in Kentucky between the parties, it seems reasonable to extend this experience into the remainder of the BellSouth territory.

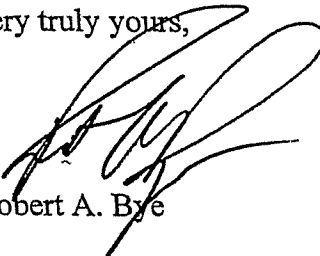
Cinergy Communications is also requesting an amendment to both the Kentucky and nationwide interconnection agreements with BellSouth to include a commingling of UNE-P with BellSouth's wholesale voicemail product, as well as any other tariffed offering provided by BellSouth.

For further information on the commingling issue, see paragraphs 579 through 584 of the TRO. It makes clear that BellSouth must revise its tariffs to allow for commingling.

Cinergy Communications reserves the right to a future true-up to allow for this change in law. Nothing herein shall be construed as a waiver of any other rights to which Cinergy Communications may be entitled as a result of the TRO or other change in law. This request is limited to the issue of commingling. In the event BellSouth will not agree to an amendment as requested herein with fifteen (15) days, Cinergy Communications reserves all rights it may have to pursue civil damages and other penalties for denial of commingling rights.

I look forward to working with you to reach an amicable resolution of this matter. If you have any questions, or wish to discuss this in detail, please do not hesitate to give me a call.

Very truly yours,



Robert A. Bye

Vice President and
General Counsel

cc:

BellSouth Telecommunications, Inc.
BellSouth Local Contract Manager
600 North 19th Street, 8th Floor
Birmingham, Alabama 35203

and

BellSouth Telecommunications, Inc.
ICS Attorney
Suite 4300
675 W. Peachtree St.
Atlanta, GA 30375

available, Cinergy Communications Company may utilize the Unbundled Loop Modification process or the Special Construction process, as applicable, to obtain the Loop type ordered.

2.10.1 DSL TRANSPORT SERVICE ON UNE-P

2.10.1.1 For purposes of this Section 2.10.1.1, the term "DSL," "DSL transport," or "DSL Transport Services" shall mean that DSL transport service in the BellSouth F.C.C. Number 1 tariff in effect as of, July 12, 2002, the date of the Kentucky Public Service Commission's Order in Case No. 2001-00432. In order to comply with the Order, BellSouth shall not refuse to provide any DSL transport service to a network service provider pursuant to a request from such network service provider who serves, or desires to serve, an end-user that receives UNE-P based voice services from Cinergy Communications. However, BellSouth shall have no obligation to provide DSL transport on any loop that is not qualified for DSL, provided that BellSouth shall not make a change to any loop so as to make it not qualify for DSL on the basis of that such loop is being converted to UNE-P, rather than on the basis of architectural, mechanical, or physical limitations. 2.10.1.2 The Order in is predicated upon the ability of customers of Cinergy Communications to receive wholesale ADSL transport at the same price it was available pursuant to Bellsouth Tariff F.C.C. Number 1 on the date of that Order. In the event this offering is no longer available for any reason, BellSouth agrees to provide to Cinergy Communications a wholesale ADSL transport product for the duration of this interconnection agreement on the same pricing, terms and conditions as those in the BellSouth Tariff F.C.C. Number 1 as of the date of the Order subject to section 2.10.1.1 above. The terms and prices of BellSouth Tariff F.C.C. Number 1 as it existed on the date of the Order are incorporated herein by reference as necessary to comply with this section.

2.10.1.3 Notwithstanding the foregoing, BellSouth shall have no obligation to provide its retail, DSL-based high speed Internet access service, currently known as BellSouth® FastAccess® DSL service, to an end-user that receives UNE-P based voice services from Cinergy. To the extent BellSouth chooses to deny FastAccess to an end user, BellSouth shall not seek any termination penalties against, or in any other fashion seek to penalize, any such end-user that Cinergy identifies to BellSouth pursuant to a process to be agreed upon and reduced to writing. BellSouth shall also notify the aforementioned end-user at least ten (10) days prior to discontinuing its FastAccess service.

2.10.1.4 Cinergy shall make available to BellSouth at no charge the high frequency spectrum on UNE-P for purposes of enabling BellSouth to provision DSL transport on the same loop as the UNE-P based voice service.

- 2.10.1.5 When BellSouth provides tariffed DSL transport over Cinergy UNE-P, BellSouth shall have the right, at no charge, to access the entire loop for purposes of troubleshooting DSL-related troubles.
- 2.10.1.6 BellSouth shall not be obligated to provide tariffed DSL transport in accordance with this Section 2.10.1 until completion of the modification of systems and processes that will enable BellSouth to qualify Cinergy UNE-P lines for DSL as well as maintain and repair such DSL on Cinergy UNE-P lines. Until such time as BellSouth completes the aforementioned modification of systems and processes, BellSouth agrees to provide to Cinergy Communications wholesale DSL transport service over resale lines on the following conditions: (1) the underlying resale line and its features shall be provided by BellSouth to Cinergy Communications at the rate that Cinergy Communications normally pays for a UNE-P loop/port combination in the pertinent UNE Zone, specifically excluding subscriber line charges, and other charges normally associated with resale; (2) BellSouth shall bill and collect the access or other third party charges applicable to such lines, and shall remit to Cinergy monthly, as a surrogate for such access charges, an amount determined in accordance with the formula set forth in Section 2.10.1.6.1 below; (3) because BellSouth cannot provide hunting between resale and UNE-P lines, any other lines of the end-user served by Cinergy Communications shall also be converted to resale at no charge upon submission of an LSR for such conversion and provided pursuant to (1) and (2) above unless and until BellSouth agrees to provide hunting between resale and UNE-P platforms; and (4) once the aforementioned modification of systems and process is completed, BellSouth agrees to convert all end-user lines affected by this section to UNE-P at no charge upon Cinergy Communications' submission of an executable LSR for such conversion.
- 2.10.1.6.1 The parties agree that the amount payable to Cinergy as a surrogate for access charges in accordance with Section 2.10.1.6 above shall be determined by multiplying the average number of Cinergy resale lines with DSL service, and those lines included in a hunt group with such DSL resale lines in accordance with subsection 3 of Section 2.10.1.6 above, for the most recent three (3) billing cycles preceding the date of this agreement by \$12.00 per line. Such rate is based upon Cinergy's estimate of its access charges, including subscriber line charges, presubscribed interexchange carrier charges, and usage charges, on a per line basis. Within sixty (60) days following the date of this Agreement and upon BellSouth's request, the parties agree to true up this amount to conform with the average per line access charges Cinergy collects on its UNE-P lines. Cinergy shall provide supporting documentation to justify the true up amount.
- 2.10.1.6.2 The Parties agree that subject to Section 2.10.1.6.1, the rates charged pursuant to Section 2.10.1.6 above are not subject to true-up regardless of appeal or change in law. Any change to these rates or to the provisions of Section 2.10.1 et seq. shall

be prospective only in the event of a change in law as described in the General Terms and Conditions of this Agreement.

2.10.1.7 Cinergy Communications shall provide BellSouth with all current pertinent customer information necessary for BellSouth to comply with this section. Cinergy Communications authorizes BellSouth to access customer information on BellSouth systems as necessary for BellSouth to comply with this section. BellSouth shall provide Cinergy Communications with all current pertinent loop information necessary for Cinergy Communications to provide DSL over UNE-P, including but not limited to, loop qualification information for UNE-P lines.

2.10.1.8 If a request is made for DSL on an existing Cinergy Communications UNE-P line, Cinergy shall cooperate with BellSouth in an effort to determine loop make-up and qualification status. The parties shall mutually agree on a procedure and shall reduce same in writing.

3. High Frequency Spectrum Network Element

3.1 General

3.1.1 BellSouth shall provide Cinergy Communications Company access to the high frequency spectrum of the local loop as an unbundled network element only where BellSouth is the voice service provider to the end user at the rates set forth in this Attachment.

3.1.2 The High Frequency Spectrum is defined as the frequency range above the voiceband on a copper loop facility carrying analog circuit-switched voiceband transmissions. Access to the High Frequency Spectrum is intended to allow Cinergy Communications Company the ability to provide Digital Subscriber Line ("xDSL") data services to the end user for which BellSouth provides voice services. The High Frequency Spectrum shall be available for any version of xDSL complying with Spectrum Management Class 5 of ANSI T1.417, *American National Standard for Telecommunications, Spectrum Management for Loop Transmission Systems*. BellSouth will continue to have access to the low frequency portion of the loop spectrum (from 300 Hertz to at least 3000 Hertz, and potentially up to 3400 Hertz, depending on equipment and facilities) for the purposes of providing voice service. Cinergy Communications Company shall only use xDSL technology that is within the PSD mask for Spectrum Management Class 5 as found in the above-mentioned document.

3.1.3 Access to the High Frequency Spectrum requires an unloaded, 2-wire copper Loop. An unloaded Loop is a copper Loop with no load coils, low-pass filters, range extenders, DAMLs, or similar devices and minimal bridged taps consistent with ANSI T1.413 and T1.601.

Bob Bye

From: sysdeliv@fn3a.prod.fedex.com
Sent: Thursday, September 11, 2003 8:55 AM
To: bye@cinergycom.com
Subject: FedEx shipment 792325957808

Our records indicate that the shipment sent from SUSAN LOPEZ/CINERGY COMMUNICATIONS COMPA to ICS ATTORNEY/BELLSOUTH TELECOMMUNICATION has been delivered. The package was delivered on 09/11/2003 at 9:34 AM and signed for or released by W.SHAW.

The ship date of the shipment was 09/10/2003.

The tracking number of this shipment was 792325957808.

FedEx appreciates your business. For more information about FedEx services, please visit our web site at <http://www.fedex.com>

To track the status of this shipment online please use the following:
[http://www.fedex.com/cgi-bin/tracking?tracknumbers=792325957808
&action=track&language=english&cntry_code=us](http://www.fedex.com/cgi-bin/tracking?tracknumbers=792325957808&action=track&language=english&cntry_code=us)

Disclaimer

FedEx has not validated the authenticity of any email address.

Bob Bye

From: sysdeliv@fn3a.prod.fedex.com
Sent: Thursday, September 11, 2003 8:55 AM
To: bye@cinergycom.com
Subject: FedEx shipment 791496724486

Our records indicate that the shipment sent from SUSAN LOPEZ/CINERGY COMMUNICATIONS COMPA to MS. NICOLE BRACY, MANAGER/BELLSOUTH INTE has been delivered. The package was delivered on 09/11/2003 at 9:34 AM and signed for or released by W.SHAW.

The ship date of the shipment was 09/10/2003.

The tracking number of this shipment was 791496724486.

FedEx appreciates your business. For more information about FedEx services, please visit our web site at <http://www.fedex.com>

To track the status of this shipment online please use the following:
[http://www.fedex.com/cgi-bin/tracking?tracknumbers=791496724486
&action=track&language=english&cntry_code=us](http://www.fedex.com/cgi-bin/tracking?tracknumbers=791496724486&action=track&language=english&cntry_code=us)

Disclaimer

FedEx has not validated the authenticity of any email address.

BellSouth Interconnection Services

675 W. Peachtree Street, NE
34S91
Atlanta, Georgia 30375

Nicole Bracy
(404) 927-7596
FAX (404) 529-7839

Sent Via Email and U.S. Mail

September 17, 2003

Mr. Robert A. Bye
Cinergy Communications Company
8829 Bond Street
Overland Park, KS 66214

Re: Request for Amendment to Interconnection Agreement due to change in law

Dear Bob:

This is in response to your letter dated September 10, 2003, regarding Cinergy Communications Company's (Cinergy) request to amend its Interconnection Agreement for the states of Alabama, Florida, Georgia, Louisiana, North Carolina and South Carolina ("Region-wide Agreement") to include provisions for commingling Unbundled Network Element-Platform (UNE-P) with BellSouth's wholesale DSL transport. Cinergy is also requesting to amend its Kentucky and Region-wide Agreements to include provisions for commingling UNE-P with BellSouth's wholesale voice mail product, as well as any other tariffed offering provided by BellSouth.

The General Terms and Conditions in Section 16.3 of Cinergy's Region-wide Agreement and Section 17.3 of Cinergy's Kentucky Agreement states:

"In the event that any effective legislative, regulatory, judicial or other legal action materially affects any material terms of this Agreement, or the ability of Cinergy or BellSouth to perform any material terms of this Agreement, Cinergy or BellSouth may, on fifteen (15) days' written notice...."

Although the Federal Communications Commission's Triennial Review Order (TRO) has been released, it is not effective before October 2, 2003. Thus, the language allowing either party to request renegotiation of affected terms upon 15 days notice has not yet been triggered. Once the TRO has become effective, Cinergy will need to send an e-mail or written notice to BellSouth to invoke Sections 16.3 and 17.3 of the respective Agreements.

Once the Parties enter into negotiations for Cinergy's requests to commingle, we will address the substantive issues raised in your letter.

If you have any questions, please give me a call.

Sincerely,

A handwritten signature in black ink, reading "Nicole Bracy". The signature is written in a cursive, flowing style.

Nicole Bracy

Manager, Interconnection Services

Bob Bye

From: Bob Bye [bye@cinergycom.com]
Sent: Thursday, October 02, 2003 5:48 PM
To: 'Bracy, Nicole'; 'Lemoine, Annamarie'
Cc: 'John Cinelli'; 'Al Cinelli'; 'Pat Heck'; 'Henry Walker'; 'Bob Bye'
Subject: Request for amendment due to change in law

Nicole,

On September 10th, Cinergy Communications made its initial request for an amendment due to change in law. The contents of that letter are incorporated herein by reference. In addition, this is to also request commingling of DSL and UNE-P in KY. While we already have this right in Kentucky, I want to make sure that our ability to commingle is not taken away to the extent BellSouth wins its appeal of our arbitration decision. In your response of September 17, 2003, you directed me to submit an email on this date to again request the amendment. This email shall invoke Sections 16.3 and 17.3 of the respective agreements per your instructions and express waiver of the formal notice requirements contained in those agreements.

The new regulations at issue which require a change in law are 47 CFR 51.309(e) and (f) which provide:

(e) Except as provided in 51.318, an incumbent LEC shall permit a requesting telecommunications carrier to commingle an unbundled network element or combination of unbundled network elements with wholesale services obtained from an incumbent LEC.

(f) Upon request, an incumbent LEC shall perform the functions necessary to commingle an unbundled network element or a combination of unbundled network elements with one or more facilities or services that a requesting telecommunications carrier has obtained at wholesale from an incumbent LEC.

Currently, BellSouth's tariffs for wholesale DSL transport provide a limitation that requires provisioning only over in-service BellSouth controlled access lines. BellSouth interprets this to mean only lines where BellSouth carries the voice or lines which are provided by a CLEC via resale. Pursuant to the above-referenced regulation, Cinergy Communications is requesting that BellSouth modify its tariff and incorporate language into the interconnection agreement that would overturn this restriction and allow Cinergy Communications to provide UNE-P or UNE-L and wholesale DSL transport commingled over a single copper loop.

Paragraph 581 of the TRO provides, "we require incumbent LECs to effectuate commingling by modifying their interstate access service tariffs to expressly permit connections with UNES and UNE combinations." DSL transport is an access service and contained in BellSouth's access tariff. In fact, BellSouth argued in briefs and before the U.S. Dist. Ct. in Kentucky that DSL was an access service, so no argument can be made that this rule does not apply to DSL transport.

To the extent BellSouth will not comply, Cinergy Communications is prepared to pursue all available remedies. The FCC has already determined in the TRO that this practice is unjust and unreasonable under 201 of the Act as well as an undue and unreasonable prejudice or advantage under 202 of the Act.

Because the above issue relates to a specific, valid regulation, there is no need to wait until the states have completed their impairment analysis to conclude negotiations. Nor is there anything in the interconnection agreement that would require the parties to include all impairment issues in our negotiations. To the contrary, we are entitled to this relief as of today and demand access as soon as possible.

This is to request that SBC negotiate this issue in good faith. Good faith requires, at a minimum, assigning a representative to negotiate who is up to speed on the issues and who has authority to bind the company. I would be more than happy to travel to Atlanta to meet with the appropriate BellSouth representative in person to resolve this issue.

- I look forward to working with you and resolving this matter in an amicable and timely fashion.

Robert A. Bye
Vice President and General Counsel
Cinergy Communications Company
8829 Bond St.
Overland Park, KS 66214
(913) 492-1230 ext. 5132
(812) 759-1732 (Fax)

CONFIDENTIALITY NOTICE: This email message and any attachments are confidential and may also be protected by the attorney/client or other applicable privileges. If you are not the named recipient, please notify the sender immediately and delete the contents of this message without disclosing the contents to anyone, using them for any purpose, or storing or copying the information on any medium.

BellSouth Corporation
Legal Department
675 West Peachtree Street, N.E.
Suite 4300
Atlanta, GA 30375-0001

annamarie.lemoine@bellsouth.com

Annamarie Lemoine
Senior Counsel

404 335 0719
Fax 404 614 4054

November 5, 2003

Robert A. Bye
Vice President and General Counsel
Cinergy Communications Company
8829 Bond Street
Overland Park, KS 66214

Re: Request for Amendment to Interconnection Agreement due to Change in Law

Dear Bob:


I am responding to your September 10, 2002 letter to Nicole Bracy requesting an Amendment to our Interconnection Agreement pursuant to its Change-in-Law Modification provision. I have tried to contact you a number of times regarding this matter, but with both of our busy schedules we have only engaged on a prolonged game of phone tag. Therefore, I thought it best to provide BellSouth's response with this letter.

You base your request on the Federal Communications Commission's ("FCC") recently effective Triennial Review Order ("TRO") and the commingling rules promulgated therein. For several reasons, the commingling provisions of the TRO should not be construed to apply to the DSL over UNE-P issue. First, "commingling" is the "connecting," "attaching" or "combining" of a UNE or UNE combination with a tariffed facility. The low-frequency portion of the loop does not constitute a UNE, because the FCC only required the unbundling of the entire loop (both high and low frequency together). Moreover, DSL over UNE-P does not involve the connection, attaching or combining of a UNE with a tariffed facility because it requires the Incumbent Local Exchange Carrier ("ILEC") to provision its DSL services over the same line. Furthermore, in a DSL over UNE-P arrangement, BellSouth's DSL service is not provided to a "requesting telecommunications carrier." Rather, it is provided to an Internet access provider. For this additional reason, DSL over UNE-P does not fall under the commingling requirement, because it does not involve a wholesale facility or service that a requesting telecommunications carrier has obtained from the ILEC and seeks to connect or combine with a UNE.

Instead, the FCC specifically addressed this issue in Paragraph 270, wherein it rejected an argument by CompTel to separately unbundle the low frequency portion of the loop, which would enable the Competitive Local Exchange Carrier ("CLEC") to obtain voice capability on a loop where the ILEC retains the data capability. In rejecting CompTel's argument, the FCC concluded that unbundling the low frequency portion of the loop is not necessary to address CLEC impairment because line splitting rules allow narrowband CLECs to partner with other CLECs that offer DSL services.

Given the above, it is quite clear that the TRO does not require BellSouth to commingle our wholesale services with UNE – P. Accordingly, BellSouth cannot comply with your request to amend the interconnection agreement for this purpose. However we will continue to provide you wholesale DSL over UNE-P in Kentucky pursuant to the Kentucky Public Service Commission's Order in Case No. 2001-00432, as long as it remains effective.

Sincerely,



Annamarie Lemoine

cc: Nicole Bracy

BellSouth Interconnection Services

675 West Peachtree St., NE
Room 34S91
Atlanta, Georgia 30375

Nicole Bracy
(404) 927-7596
FAX: 404 529-7839

Sent Via Electronic Mail

November 21, 2003

Robert A. Bye
Cinergy Communication Company
8829 Bond Street
Overland Park, KS 66214

Dear Bob:

On September 10, 2003, Cinergy Communications Company ("Cinergy") sent BellSouth Telecommunications, Inc. ("BellSouth") a letter requesting an Amendment to the Interconnection Agreements ("Agreement") between the Parties to reflect changes resulting from the Report and Order and Order on Remand and Further Notice of Proposed Rulemaking ("Triennial Order") issued by the Federal Communications Commission and effective October 2, 2003.

Pursuant to the Triennial Order, BellSouth's obligations under the Act have been materially modified in numerous aspects. The Order sets forth those unbundled network elements that BellSouth must make available to CLECs at a cost based rate, as well as certain facilities that are no longer subject to unbundling.

Attached for your review is BellSouth's proposed Amendment, which replaces Attachment 2 – Network Elements and Other Services and Attachment 6 – Pre-Ordering, Ordering, Provisioning, Maintenance and Repair in their entirety. These new attachments reflect the changes resulting from the Triennial Order and additional service enhancements such as Loop Tagging, and Melded Tandem Switching Rate. The Amendment also addresses other issues important to BellSouth and Cinergy.

In addition, BellSouth has developed a Market Based Agreement for those services and facilities that BellSouth is no longer required to provide at cost based rates. This agreement is attached for your review.

Pursuant to the Modification of Agreement section of General Terms and Conditions of the Agreement, BellSouth and Cinergy must complete negotiations of this Amendment within 90 days of September 10, 2003. BellSouth is confident this can be accomplished and is available to work with Cinergy in reaching a mutually agreeable Amendment.

Upon review, if acceptable, please print one full original amendment and one full original Market Based Rate Agreement as well as duplicate signature pages for both documents. Execute all original signature pages and return to me within 14 calendar days at the above address for execution on behalf of BellSouth. Once executed, I will return a fully executed signature page to you for your records. If more than 14 days elapses, please contact me before signing and returning.

Should you have any questions, please contact me at the number above.

Sincerely,

Nicole Bracy
Manager, Interconnection Services

December 16, 2003



Ms. Nicole Bracy
BellSouth Interconnection Services
675 West Peachtree St., NE
Room 34S91
Atlanta, GA 30375

Re: Change of Law

Dear Nicole:

This follows our telephone conversation of December 12, 2003 regarding BellSouth's proposed amendment. Please be advised that your proposal is unacceptable for the following reasons.

1. Any change to the interconnection agreement must be based upon a change of law. In your letter of November 21, 2003, you admit that the proposed changes are not limited to those arising out of change of law. Your proposed amendment also contains alleged "service enhancements" as well as "addresses other issues important to BellSouth and Cinergy."
2. The proposed amendment was not a redlined version of our current agreement. Based upon past experience, Cinergy Communications must insist on a redlined version so that we can address each change of law individually.
3. BellSouth did not include an explanation of why the change was necessary or even cite to the TRO for support of the change.
4. Cinergy Communications disputes the concept of Market Based Rates. Once a UNE is delisted, 271 elements are to be provided at "just and reasonable" rates which we believe must be set by a commission. BellSouth's proposed rates are improper and we will not voluntarily agree to them.
5. BellSouth did not even consider our request for commingling of UNE-P and wholesale DSL transport. Instead, I received a half-baked argument from Annamarie Lemoine related to line sharing. As I indicated in our call, this is not a line sharing issue. With UNE-P we have access to the entire loop which is not line sharing. We then want to commingle DSL transport, an access service found in BellSouth's FCC Access Tariff, with UNE-P. Annamarie admitted in our conversation that she was not even familiar

with the FCC tariff and the manner in which DSL transport was offered. This is unacceptable and does not constitute good faith.

In fact, BellSouth has now included the FCC's commingling language in its Access Tariff (See Section 2.2.3 attached). The commingling language applies to all access services in the tariff, including wholesale DSL transport:

...telecommunication carriers who obtain unbundled network elements (UNEs) or combinations of UNEs . . . pursuant to an interconnection agreement with the Telephone Company, may connect, combine, or otherwise attach such UNEs or combinations of UNEs to Access services purchased under this tariff except to the extent such agreement explicitly:

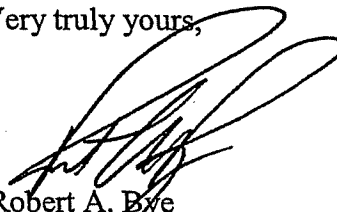
- (1) prohibits such commingling; or
- (2) requires the parties to complete the procedures set forth in the agreement regarding change of law prior to implementing such commingling

DSL transport is an access service which Cinergy Communications can purchase out of the Access tariff at issue. The only thing preventing Cinergy Communications from doing so is negotiating the change in law provisions into the interconnection agreement as required by this tariff.

Unfortunately, BellSouth's contract negotiators are unaware of this language in the BellSouth tariff. It would seem to me that including this language in the agreement is a mere formality. Cinergy Communications has indicated that the language contained in the Kentucky agreement would be acceptable in order to fulfill the commingling requirement. We believe that the Kentucky language amounts to commingling and the parties have proved that they can operate in this fashion with little or no complaint.

This is to again request that BellSouth reconsider negotiating commingling language based upon our Kentucky agreement. The FCC has clearly stated that a failure to allow commingling "would constitute an 'unjust and unreasonable practice' under 201 of the Act, as well as an 'undue and unreasonable prejudice or advantage' under section 202 of the Act. (See paragraph 581 of TRO). The FCC noted that failure to comply will result in specific penalties of \$7,600 per offense and \$330 for each day of the continuing offense. (footnote 1792 of TRO).

Very truly yours,



Robert A. Bye
Vice President and
General Counsel

Enclosures

cc: John P. Cinelli, President Cinergy Communications
Jerry Hendrix

BELLSOUTH TELECOMMUNICATIONS, INC.
BY: Operations Manager - Pricing
29657, 675 W. Peachtree St., N.E.
Atlanta, Georgia 30375
ISSUED: OCTOBER 2, 2003

TARIFF F.C.C. NO. 1
1ST REVISED PAGE 2-9
CANCELS ORIGINAL PAGE 2-9

EFFECTIVE: OCTOBER 17, 2003

ACCESS SERVICE

2 - General Regulations (Cont'd)

2.2 Use (Cont'd)

2.2.1 Interference or Impairment (Cont'd)

(B) Except as provided for equipment or systems subject to the F.C.C. Part 68 Rules in 47 C.F.R. Section 68.108, if such characteristics or methods of operation are not in accordance with (A) preceding, the Telephone Company will, where practicable, notify the customer that temporary discontinuance of the use of a service may be required; however, where prior notice is not practicable, nothing contained herein shall be deemed to preclude the Telephone Company's right to temporarily discontinue forthwith the use of a service if such action is reasonable under the circumstances. In case of such temporary discontinuance, the customer will be promptly notified and afforded the opportunity to correct the condition which gave rise to the temporary discontinuance. During such period of temporary discontinuance, credit allowance for service interruptions as set forth in 2.4.4(A) and (B) following is not applicable.

2.2.2 Unlawful Use

The service provided under this tariff shall not be used for an unlawful purpose.

2.2.3 Commingling

(A) Except as provided in Section 51.318 of the Federal Communications Commission's rules, telecommunications carriers who obtain unbundled network elements (UNEs) or combinations of UNEs pursuant to a Statement of Generally Available Terms, under Section 252 of the Act, or pursuant to an interconnection agreement with the Telephone Company, may connect, combine, or otherwise attach such UNEs or combinations of UNEs to Access services purchased under this Tariff except to the extent such agreement explicitly:

(1) prohibits such commingling; or

(2) requires the parties to complete the procedures set forth in the agreement regarding change of law prior to implementing such commingling.

(B) The rates, terms, and conditions of this Tariff will apply to the Access Services that are commingled.

(C) UNEs or combinations of UNEs that are commingled with Access Services are not included in the shared use provisions of this Tariff.

Certain material previously appearing on this page now appears on Original Page 2-9.1.

BELLSOUTH TELECOMMUNICATIONS, INC.
BY: Operations Manager - Pricing
29657, 675 W. Peachtree St., N.E.
Atlanta, Georgia 30375
ISSUED: OCTOBER 2, 2003

TARIFF F.C.C. NO. 1
ORIGINAL PAGE 2-9.1

EFFECTIVE: OCTOBER 17, 2003

ACCESS SERVICE

2 - General Regulations (Cont'd)

(N)

2.3 Obligations of the Customer

(M)

2.3.1 Damages

(M)

The customer shall reimburse the Telephone Company for damages to Telephone Company facilities utilized to provide services under this tariff caused by the negligence or willful act of the customer, or resulting from the customer's improper use of the Telephone Company facilities, or due to malfunction of any facilities or equipment provided by other than the Telephone Company. Nothing in the foregoing provision shall be interpreted to hold one customer liable for another customer's actions. The Telephone Company will, upon reimbursement for damages, cooperate with the customer in prosecuting a claim against the person causing such damage and the customer shall be subrogated to the right of recovery by the Telephone Company for the damages to the extent of such payment.

(M)
(M)
(M)
(M)
(M)
(M)
(M)
(M)
(M)
(M)

Certain material now appearing on this page previously appeared on Original Page 2-9.

BELLSOUTH TELECOMMUNICATIONS, INC.
BY: Operations Manager - Pricing
29657, 675 W. Peachtree St., N.E.
Atlanta, Georgia 30375
ISSUED: OCTOBER 2, 2003

TARIFF F.C.C. NO. 1
9TH REVISED PAGE 2-54.1
CANCELS 8TH REVISED PAGE 2-54.1
EFFECTIVE: OCTOBER 17, 2003

ACCESS SERVICE

2 - General Regulations (Cont'd)

2.6 Definitions (Cont'd)

Collocator - BellSouth Virtual Expanded Interconnection Service

The term "Collocator-BellSouth Virtual Expanded Interconnection Service" denotes any person, corporation, or other legal entity with whom the Telephone Company has negotiated for the purpose of provisioning an interconnection arrangement in accordance with the BellSouth Virtual Expanded Interconnection tariff provisions.

Collocator's Facilities - BellSouth Virtual Expanded Interconnection Service

The term "Collocator's Facilities-BellSouth Virtual Expanded Interconnection service" denotes the collocator-provided Telephone Company leased fiber optic cables and central office terminating equipment installed and maintained by the Telephone Company for the sole use of provisioning a BellSouth Virtual Expanded Interconnection service arrangement, in accordance with the BellSouth Virtual Expanded Interconnection tariff provisions.

Common Line

The term "Common Line" denotes a line, trunk, pay telephone line or other facility provided under the general and/or local exchange service tariffs of the Telephone Company, terminated on a central office switch. A common line-residence is a line or trunk provided under the residence regulations of the general and/or local exchange service tariffs. A common line-business is a line provided under the business regulations of the general and/or local exchange service tariffs.

Commingling

The term "Commingling" means the connecting, attaching, or otherwise linking of an unbundled network element (UNE), or a combination of unbundled network elements (UNEs), to one or more facilities or services that a requesting telecommunications carrier has obtained at wholesale from an incumbent LEC, or the combining of an UNE, or a combination of UNEs, with one or more such facilities or services.

(N)
(N)
(N)
(N)
(N)
(N)

BELLSOUTH TELECOMMUNICATIONS, INC.
BY: Operations Manager - Pricing
29657, 675 W. Peachtree St., N.E.
Atlanta, Georgia 30375
ISSUED: OCTOBER 2, 2003

TARIFF F.C.C. NO. 1
5TH REVISED PAGE 2-72
CANCELS 4TH REVISED PAGE 2-72
EFFECTIVE: OCTOBER 17, 2003

ACCESS SERVICE

2 - General Regulations (Cont'd)

2.6 Definitions (Cont'd)

Transmission Measuring (105 Type) Test Line/Responder

The term "Transmission Measuring (105 Type) Test Line/Responder" denotes an arrangement in an end office which provides far-end access to a responder and permits two-way loss and noise measurements to be made on trunks from a near end office.

Transmission Path

The term "Transmission Path" denotes an electrical path capable of transmitting signals within the range of the service offering, e.g., a voice grade transmission path is capable of transmitting voice frequencies within the approximate range of 300 to 3000 Hz. A transmission path is comprised of physical or derived channels consisting of any form or configuration of facilities typically used in the telecommunications industry.

Trunk

The term "Trunk" denotes a communications path connecting two switching systems in a network, used in the establishment of an end-to-end connection.

Trunk Group

The term "Trunk Group" denotes a set of trunks which are traffic engineered as a unit for the establishment of connections between switching systems in which all of the communications paths are interchangeable.

Trunk-Side Connection

The term "Trunk-Side Connection" denotes the connection of a transmission path to the trunk side of a local exchange switching system.

Two-Wire to Four-Wire Conversion

The term "Two-Wire to Four-Wire Conversion" denotes an arrangement which converts a four-wire transmission path to a two-wire transmission path to allow a four-wire facility to terminate in a two-wire entity (e.g., a central office switch).

Unbundled Network Elements (UNEs)

The term "Unbundled Network Elements" denotes the physical facilities of the network, including the associated features, functions and capabilities, that are capable of being used in the provision of a telecommunications service, made available pursuant to Section 251 of the Telecommunications Act of 1996.

(N)
(N)
(N)
(N)

BELLSOUTH TELECOMMUNICATIONS, INC.
BY: Operations Manager - Pricing
29G57, 675 W. Peachtree St., N.E.
Atlanta, Georgia 30375
ISSUED: SEPTEMBER 14, 2001

TARIFF F.C.C. NO. 1
6TH REVISED PAGE 7-103.23
CANCELS 5TH REVISED PAGE 7-103.23

EFFECTIVE: SEPTEMBER 29, 2001

ACCESS SERVICE

7 - Special Access (a.k.a. BellSouth SPA) Service (Cont'd)

7.4 Rate Regulations (Cont'd)

7.4.29 BellSouth ADSL Service

- (A) Monthly rates and nonrecurring charges apply as specified following, and reflect the cost of providing BellSouth ADSL service to the customer, but do not reflect any additional incremental cost associated with providing service to customers of a NSP. The minimum quantity of BellSouth ADSL service VCs specified in 7.2.17(C)(1) and (2) is 51. The minimum quantity of BellSouth ADSL service VCs specified in 7.2.17(C)(3) through (7) is 1. (C)

Nonrecurring charges are one-time charges that apply for a specific work activity. Nonrecurring charges that apply for BellSouth ADSL service are associated with installation of service, moves of service, service rearrangements and termination liability. These charges are as specified in F through I and 7.5.21 following.

Beginning October 1, 2001, and ending December 31, 2001, the Telephone Company will credit 50% of the VC Nonrecurring Charge for customers who subscribe to a BellSouth ADSL service, High Speed Asymmetric and Symmetric VC having a customer-specified commitment equal to or greater than 13 months. The nonrecurring charge credit will appear as a bill credit upon completion of the 13th consecutive month of service. In order to take advantage of this nonrecurring charge credit, requests for service must be placed between October 1, 2001 and December 31, 2001, with order completion within 30 days of the order application date. The order application date is the date the customer requests service and has provided all information necessary to complete the order, as determined by the Company, pursuant to tariff. If the VC is disconnected at customer request prior to completion of 13 consecutive months service, the credit will not apply. If the VC is disconnected at customer request after completion of 13 consecutive months service, any applicable termination liability charges will be assessed pursuant to tariff.

Monthly rates are recurring charges that apply each month, or fraction thereof, that a service is provided. For billing purposes, each month is considered to have 30 days.

Certain material previously appearing on this page now appears on 6th Revised Page 7-103.24

BELLSOUTH TELECOMMUNICATIONS, INC.
BY: Operations Manager - Pricing
29G57, 675 W. Peachtree St., N.E.
Atlanta, Georgia 30375
ISSUED: SEPTEMBER 14, 2001

TARIFF F.C.C. NO. 1
6TH REVISED PAGE 7-103.24
CANCELS 5TH REVISED PAGE 7-103.24

EFFECTIVE: SEPTEMBER 29, 2001

ACCESS SERVICE

7 - Special Access (a.k.a. BellSouth SPA) Service (Cont'd)

7.4 Rate Regulations (Cont'd)

7.4.29 BellSouth ADSL Service (Cont'd)

(B) A monthly recurring rate will be billed to the customer for each BellSouth ADSL service VC established to an end-user premises. The monthly rate for data rate options specified in 7.2.17(C)(1) and (2) will be as specified in 7.5.21(A)(1) and (2). The monthly rate for data rate options specified in 7.2.17(C)(3) through (7) will be determined by the commitment period designated by the customer beginning with establishment of the customer account.

In addition to month-to-month (MTM) rates, customer-selected commitment periods of from 13 to 24 months, and 25 months or greater, are available for data rate options specified in 7.2.17(C)(3) through (7). When the customer requests these data rate options, the customer must designate to the Telephone Company the commitment and optional commitment period desired, e.g. a commitment of 20 months and a 13 to 24 month commitment period.

Rates stabilized under customer-selected commitment periods of from 13 to 24 months, and 25 months or greater, are exempt from Telephone Company-initiated increases. However, decreases will flow through to the customer. In the event that a VC is disconnected at customer request prior to completion of a customer-selected commitment period in excess of 12 months, the customer will be required to pay a termination charge as specified in (G) following. The customer-designated commitment and commitment period may not be reduced, however, renewals of the existing VC and data rate, at the same end-user premises are allowed at rates and terms and conditions appropriate for new service. The VC nonrecurring charges are not applicable for the renewed services.

Subsequent to the establishment of a customer-selected commitment period longer than 12 months, and prior to completion of that period, the existing commitment and commitment period may be replaced by a currently offered commitment and commitment period having a length equal to or longer than the time remaining in the existing arrangement. The appropriate rates will be as if for new service. Nonrecurring charges will not be re-applied for these renewals, and no credit will be provided for payments made during the formerly selected period. Changes to a commitment or commitment period with a length shorter than the existing arrangement will result in application of termination liability charges as specified in G. following. Recognition of previous service will not be a factor in determination of rates appropriate for a renewed arrangement.

(M)

Certain material now appearing on this page previously appeared on 5th Revised Page 7-103.23

Certain material previously appearing on this page now appears on 2nd Revised Page 7-103.24.0.1

BELLSOUTH TELECOMMUNICATIONS, INC.
BY: Operations Manager - Pricing
29G57, 675 W. Peachtree St., N.E.
Atlanta, Georgia 30375
ISSUED: SEPTEMBER 14, 2001

TARIFF F.C.C. NO. 1
2ND REVISED PAGE 7-103.24.0.1
CANCELS 1ST REVISED PAGE 7-103.24.0.1

EFFECTIVE: SEPTEMBER 29, 2001

ACCESS SERVICE

7 - Special Access (a.k.a. BellSouth SPA) Service (Cont'd)

7.4 Rate Regulations (Cont'd)

7.4.29 BellSouth ADSL Service (Cont'd)

(C) For customer-selected VC data rates specified in 7.2.17(C)(1) and (2), existing customers of record as of May 28, 2001 will be allowed 180 days, and new or future customers beginning on/after May 29, 2001 will be allowed an initial period of 180 days beginning with establishment of the first billing account, to attain a combined quantity of VCs at data rates specified in 7.2.17(C)(1) and (2) that is equal to or greater than the minimum number of VCs as specified in 7.4.29(A) on billing accounts across the region. During this initial 180-day period, customers will be billed an amount equal to the number of VCs on their billing accounts across the region multiplied by the appropriate VC monthly recurring rate.

Upon completion of the 180-day period, a monthly review will be conducted of quantities of VCs specified in 7.2.17(C)(1) and (2) that are associated with each customer's billing accounts across the region. Each month, a customer account not meeting the minimum quantity of VCs specified in 7.4.29(A) will be charged an amount equal to the difference between the minimum quantity of VCs as specified in 7.4.29(A) and the customer's combined quantity of VCs at data rates specified in 7.2.17(C)(1) and (2), multiplied by the rate specified in 7.5.21(A)(1)(a). This charge is in addition to the normal monthly rates equal to the number of VCs actually attained on their billing accounts across the region, multiplied by the appropriate VC monthly recurring rate.

BELLSOUTH TELECOMMUNICATIONS, INC.
 BY: Operations Manager - Pricing
 29657, 675 W. Peachtree St., N.E.
 Atlanta, Georgia 30375
 ISSUED: JULY 28, 2000

TARIFF F.C.C. NO. 1
 3RD REVISED PAGE 7-103.24.1
 CANCELS 2ND REVISED PAGE 7-103.24.1

EFFECTIVE: AUGUST 12, 2000

ACCESS SERVICE

7 - Special Access (a.k.a. BellSouth SPA) Service (Cont'd)

7.4 Rate Regulations (Cont'd)

7.4.29 BellSouth ADSL Service (Cont'd)

(F) A move charge applies for each BellSouth ADSL service VC moved to an end-user's new premises as designated by the customer. This charge is equal to the sum of all the nonrecurring charges applicable for a new installation of BellSouth ADSL service. (T)

If BellSouth ADSL service is available at the end-user's new premises as designated by the customer, no Termination Liability Charge is applicable when the service orders to install a BellSouth ADSL service VC at the end-user's new premises and disconnect a BellSouth ADSL service VC at the end-user's old premises are for the same end-user, both orders are related together, and there is no lapse in service between installation and disconnection of a BellSouth ADSL service VC. (T)

If BellSouth ADSL service is not available at the end-user's new premises as designated by the customer, the move request will be treated as a discontinuance of service at the old premises and the customer will remain responsible for satisfying minimum period obligations. If appropriate, a Termination Liability Charge as specified in (G) following will apply. (T)

(G) A Termination Liability Charge (TLC) is applicable for VCs at data rates specified in 7.2.17(C)(1) through (7), on a per end-user basis, that are disconnected prior to completion of the appropriate minimum service period as specified in 7.4.4 preceding. (T)

The TLC for VC data rates specified in 7.2.17(C)(1) and (2) is: (N)

<u>Tariff Reference</u>	<u>VC Data Rate</u>	<u>Charge</u>
7.2.17(C)(1)	256 Kbps x 1.5 Mbps	\$ 50.00
7.2.17(C)(2)	512 Kbps x 768 Kbps	\$200.00

For VCs at data rates specified in 7.2.17(C)(3) through (7) that are provided on a month-to-month basis and have a customer-designated commitment of 12 months or less, but are disconnected prior to completion of the minimum service period specified in 7.4.4 preceding, the TLC is equal to the number of minimum service period months, less the number of months completed service, multiplied by the appropriate VC monthly rate for the data rate option to which the customer subscribed. This TLC will not exceed the monthly rate for the option to which the customer subscribed, multiplied by the minimum service period months as specified in 7.4.4. (T)

Certain material previously appearing on this page now appears on 2nd Revised Page 7-103.24.2

BELLSOUTH TELECOMMUNICATIONS, INC.
BY: Operations Manager - Pricing
29657, 675 W. Peachtree St., N.E.
Atlanta, Georgia 30375
ISSUED: MAY 28, 1999

TARIFF F.C.C. NO. 1
ORIGINAL PAGE 7-103.25

EFFECTIVE: JUNE 12, 1999

ACCESS SERVICE

7 - Special Access (a.k.a. BellSouth SPA) Service (Cont'd)

7.4 Rates and Regulations (Cont'd)

(N)

7.4.30 BellSouth DS1 Diverse Service

(N)

Monthly rates and nonrecurring charges as specified in 7.5.9 following apply for BellSouth DS1 Diverse service. Nonrecurring charges will not apply for BellSouth DS1 Diverse service Local Channels when furnished under a payment plan other than month-to-month.

(N)
(N)
(N)

BellSouth DS1 Diverse service is available under several payment plans: Month-to-Month (with a minimum of 4 months), Plan A (12 to 36 months), Plan B (37 to 60 months) and Plan C (61 to 96 months). Plans A, B, and C are provided under conditions specified in the Transport Payment Plan (TPP) located in 2.4.8(D) preceding, except as modified following:

(N)
(N)
(N)
(N)

- (A) A termination liability charge will be applicable as specified in 2.4.8(D) preceding if BellSouth DS1 Diverse service elements are disconnected prior to the end of the customer-specified service period.
- (B) BellSouth DS1 Diverse service is eligible for credit of Nonrecurring Charges under provisions of the Service installation Guarantee (SIG) as specified in 2.4.9 preceding.
- (C) Short Interval Charges are applicable for BellSouth DdS1 Diverse service as specified in 5.1.1 preceding.
- (D) No charges apply for the conversion of existing BellSouth DS1 Diverse service from a Month-to-Month arrangement to a TPP arrangement.

(N)
(N)
(N)
(N)
(N)
(N)

BELLSOUTH TELECOMMUNICATIONS, INC.
 BY: Operations Manager - Pricing
 29657, 675 W. Peachtree St., N.E.
 Atlanta, Georgia 30375
 ISSUED: SEPTEMBER 21, 2001

TARIFF F.C.C. NO. 1
 2ND REVISED PAGE 7-156.95
 CANCELS 1ST REVISED PAGE 7-156.95

EFFECTIVE: OCTOBER 6, 2001

ACCESS SERVICE

7 - Special Access (a.k.a. BellSouth SPA) Service (Cont'd)

7.5 Rates and Charges (Cont'd)

7.5.21 BellSouth ADSL Service (Cont'd)

(D) Miscellaneous Charges

(1) Service Rearrangement Charge

	<u>Nonrecurring Charge Per VC</u>	<u>Monthly Rate Per VC</u>	<u>USOC</u>
(a) Per VC redirected to a different XAATMS or MSATMS Port	\$10.00	-	ADR
(b) Per changed VC Destinations or Sessions capability	\$20.00	-	ADRPC

(C)
(C)

(E) End-User Aggregation

(1) Arrangement Capacities

	<u>Nonrecurring Charge</u>	<u>Monthly Rate</u>	<u>USOC</u>
(a) Per 44.210 Mbps Transport Capacity	\$600.00	\$1,000.00	ADFA4
(b) Per 149.760 Mbps Transport Capacity	\$600.00	\$1,800.00	ADFA5

(2) Destinations and Sessions

	<u>Destinations</u>	<u>Sessions Per Line</u>	<u>Nonrecurring Charge</u>	<u>Monthly Rate</u>	<u>USOC</u>
(a)	1	1	-	\$.60	ADFS A
(b)	1	2	-	\$3.50	ADFS B
(c)	2	1	-	\$3.50	ADFS C
(d)	2	2	-	\$6.50	ADFS D
(e)	3	1	-	\$6.50	ADFS E
(f)	3	2	-	\$9.50	ADFS F

BELLSOUTH TELECOMMUNICATIONS, INC.
 BY: Operations Manager - Pricing
 29657, 675 W. Peachtree St., N.E.
 Atlanta, Georgia 30375
 ISSUED: May 25, 2001

TARIFF F.C.C. NO. 1
 3RD REVISED PAGE 7-103.24.2
 CANCELS 2ND REVISED PAGE 7-103.24.2
 EFFECTIVE: May 29, 2001

ACCESS SERVICE

7 - Special Access (a.k.a. BellSouth SPA) Service (Cont'd)

7.4 Rate Regulations (Cont'd)

7.4.29 BellSouth ADSL Service (Cont'd)

(G) Cont'd

The TLC for VCs at data rates specified in 7.2.17(C)(3) through (7) having a customer-selected commitment period greater than 12 months, but disconnected prior to completion of the commitment and prior to completion of 13 months service, is equal to:

Minimum Downstream Data Rate	Commitment Period of:	
	From 13 To 24 Months	25 Months Or More
1.5 Mbps	\$200.00	\$ 400.00
2.0 Mbps	\$500.00	\$1000.00
4.0 Mbps	\$500.00	\$1000.00
384 Kbps	\$200.00	\$ 400.00
192 Kbps	\$200.00	\$ 400.00

The TLC for VCs at data rates specified in 7.2.17(C)(3) through (7) having a customer-selected commitment period greater than 24 months, but disconnected prior to completion of the commitment, prior to completion of 25 months service and subsequent to completion of 13 months service, is equal to:

Minimum Downstream Data Rate	Commitment Period of:
	25 Months Or More
1.5 Mbps	\$200.00
2.0 Mbps	\$500.00
4.0 Mbps	\$500.00
384 Kbps	\$200.00
192 Kbps	\$200.00

TLC does not apply if:

- (1) A customer cannot synchronize its terminal equipment with BellSouth ADSL service equipment;
- (2) A customer disconnects a VC installed between the dates of November 29, 2000 and May 29, 2001 for the data rates specified in 7.2.17(C)(1) and (2);

(S) (X)
 (N) (Y)
 (N) (Y)
 (N) (Y)

(X) Issued under authority of Special Permission No. 01-038

(Y) Scheduled to become effective on May 29, 2001, under the authority of Special Permission No. 01-038

EFFECTIVE: OCTOBER 6, 2001

ACCESS SERVICE

7 - Special Access (a.k.a. BellSouth SPA) Service (Cont'd)

7.4 Rate Regulations (Cont'd)

7.4.29 BellSouth ADSL Service (Cont'd)

(G) Cont'd

(3) A BellSouth ADSL service VC is disconnected prior to completion of the appropriate minimum service period as a result of a customer requested change to a higher or lower peak minimum or maximum downstream data rate:

(a) TLC will not apply for changes from the current VC peak data rate to a VC having a higher downstream peak data rate. However, a new minimum service period as specified in (A) and (B) preceding and rates appropriate for the new data rate as specified in 7.5:21 following will apply. When requested, the appropriate charge for this change will be the sum of all nonrecurring charges appropriate for provisioning of new BellSouth ADSL service, for the new peak data rate.

(b) Except for changes to the data rate option specified in 7.2.17(C)(1), TLC will not apply for changes from the current VC peak data rate to a VC having a lower downstream peak data rate. When requested, the appropriate charge for this change will be the sum of all nonrecurring charges appropriate for provisioning of new BellSouth ADSL service, for the new peak data rate. A new minimum period as specified in (A) and (B) preceding and rates appropriate for the new data rate specified in 7.5.21 following will apply. Changes to a lower downstream peak data rate prior to completion of the minimum service period as specified in (A) and (B) preceding for the current data rate will result in the application of TLC. Changes from data rate options specified in 7.2.17(C)(2) through (7) to the data rate option specified in 7.2.17(C)(1) are not allowed.

(H) Service Rearrangement

(a) The Service Rearrangement Charge specified in 7.5.21(D)(1)(a) is applicable on a per VC rearranged basis for customer requests to redirect a VC from one BellSouth XAATMS or MSATMS port to a different BellSouth XAATMS or MSATMS port, where both ports are on the same switch and both ports are utilized in terminating transport facilities for BellSouth ADSL service without End-User Aggregation. Customer requests to redirect a BellSouth ADSL service VC between BellSouth ADSL service, End-User Aggregation and non-End-User Aggregation transport facilities will constitute a disconnect of existing service and an installation of new service as set forth in 7.4.29(I)(3) and (4) following. (C)

(b) The Service Rearrangement Charge specified in 7.5.21(D)(1)(b) is applicable per VC rearranged basis for customer requests to change the number of Destinations and/or Sessions from the number of Destinations and/or Sessions previously specified by the customer. (C)

EFFECTIVE: SEPTEMBER 20, 2001

ACCESS SERVICE

7 - Special Access (a.k.a. BellSouth SPA) Service (Cont'd)

7.4 Rate Regulations (Cont'd)

7.4.29 BellSouth ADSL Service (Cont'd)

- (I) Per VC Testing Capability is provided at no additional nonrecurring charge whether requested coincident with the initial request for BellSouth ADSL service, End-User Aggregation, or subsequent to the initial request. (S)
- (J) A monthly recurring rate will be billed to the customer for each BellSouth ADSL service, End-User Aggregation arrangement, on a per transport capacity basis. With the exception of per VC Testing Capability, a monthly recurring rate for Destinations and Sessions Per Line is applicable on a per end-user basis. Per VC Testing Capability is provided at no additional recurring charge. (T)
- (1) A customer request to discontinue a BellSouth ADSL service, End-User Aggregation arrangement will result in disconnection of service for all end-users served by that arrangement. Disconnection of a BellSouth ADSL service, End-User Aggregation arrangement will also result in application of any applicable termination charges for all associated elements of the customer's affected BellSouth ADSL service. (C)
- (2) While the number of Destinations and Sessions Per Line may be changed upon customer request, the minimum number of Destinations and Sessions Per Line, on a per end-user basis, is one Destination and one Session Per Line. The charge for changing Destinations and Sessions Per Line is specified in 7.5.21(D)(1)(b). (C)
- (3) Customer requests to disconnect VCs served by a BellSouth ADSL service arrangement without End-User Aggregation, for the purpose of reconnection via a BellSouth ADSL service, End-User Aggregation arrangement will require that a service order be issued for each affected end-user premises and all nonrecurring charges applicable for new service at the affected end-user premises will apply. (C)

A Termination Liability Charge (TLC) as specified in 7.4.29(G) is applicable for VCs that are disconnected prior to completion of the appropriate minimum service period as set forth in 7.4.4.

- (4) Customer requests to disconnect VCs served by a BellSouth ADSL service, End-User Aggregation arrangement, for the purpose of reconnection via a BellSouth ADSL service arrangement without End-User Aggregation will require that a service order be issued for each affected end-user premises and all nonrecurring charges applicable for new service at the affected end-user premises will apply.

A Termination Liability Charge (TLC) as specified in 7.4.29(G) is applicable for VCs that are disconnected prior to completion of the appropriate minimum service period as set forth in 7.4.4.

BELLSOUTH TELECOMMUNICATIONS, INC.
BY: Operations Manager - Pricing
29G57, 675 W. Peachtree St., N.E.
Atlanta, Georgia 30375
ISSUED: SEPTEMBER 19, 2001

TARIFF F.C.C. NO. 1
1ST REVISED PAGE 7-103.24.5
CANCELS ORIGINAL PAGE 7-103.24.5

EFFECTIVE: SEPTEMBER 20, 2001

ACCESS SERVICE

7 - Special Access (a.k.a. BellSouth SPA) Service (Cont'd)

7.4 Rate Regulations (Cont'd)

7.4.29 BellSouth ADSL Service (Cont'd)

- (K) The customer will be responsible for payment of a Maintenance of Service (T) charge as specified in 13.3.1(E) when a customer reports a trouble to the Telephone Company for clearance and no trouble is found in the Telephone Company's facilities.
- (L) A BellSouth ADSL service customer may request BellSouth ADSL service be (T) provisioned to a designated end-user premises for purposes of demonstration, for a period not to exceed 5 calendar days. Demonstration requests will be accommodated no more frequently than once in thirty calendar days per designated end-user premises. The appropriate Virtual Circuit nonrecurring charge specified in 7.5.21(A), (B) or (C) will apply.

If notified by the customer prior to expiration of the five day demonstration period that the Telephone Company should not disconnect the designated end-user premises, normal monthly billing will commence on the date that notification is received and additional nonrecurring charges are not applicable. If the five day period has expired, service ordered at that same customer-designated premises will be as for new service and the terms and conditions and appropriate rates and charges applicable for new service will apply.

EXHIBIT “B”

(c) An incumbent LEC shall provide a requesting telecommunications carrier access to an unbundled network element, along with all of the unbundled network element's features, functions, and capabilities, in a manner that allows the requesting telecommunications carrier to provide any telecommunications service that can be offered by means of that network element.

(d) An incumbent LEC shall provide a requesting telecommunications carrier access to the facility or functionality of a requested network element separate from access to the facility or functionality of other network elements, for a separate charge.

(e) An incumbent LEC shall provide to a requesting telecommunications carrier technical information about the incumbent LEC's network facilities sufficient to allow the requesting carrier to achieve access to unbundled network elements consistent with the requirements of this section.

[61 FR 45619, Aug. 29, 1996, as amended at 61 FR 47351, Sept. 6, 1996]

§ 51.309 Use of unbundled network elements.

(a) An incumbent LEC shall not impose limitations, restrictions, or requirements on requests for, or the use of, unbundled network elements that would impair the ability of a requesting telecommunications carrier to offer a telecommunications service in the manner the requesting telecommunications carrier intends.

(b) A telecommunications carrier purchasing access to an unbundled network element may use such network element to provide exchange access services to itself in order to provide interexchange services to subscribers.

(c) A telecommunications carrier purchasing access to an unbundled network facility is entitled to exclusive use of that facility for a period of time, or when purchasing access to a feature, function, or capability of a facility, a telecommunications carrier is entitled to use of that feature, function, or capability for a period of time. A telecommunications carrier's purchase of access to an unbundled network element does not relieve the incumbent LEC of the duty to maintain, repair, or

replace the unbundled network element.

EFFECTIVE DATE NOTE: At 68 FR 52294, Sept. 2, 2003, §51.309 was amended by revising paragraphs (a) and (b), and by adding paragraphs (d) through (g), effective Oct. 2, 2003. For the convenience of the user, the revised and added text is set forth as follows:

§ 51.309 Use of unbundled network elements.

(a) Except as provided in §51.318, an incumbent LEC shall not impose limitations, restrictions, or requirements on requests for, or the use of, unbundled network elements for the service a requesting telecommunications carrier seeks to offer.

(b) A requesting telecommunications carrier may not access an unbundled network element for the sole purpose of providing non-qualifying services.

* * * * *

(d) A requesting telecommunications carrier that accesses and uses an unbundled network element pursuant to section 251(c)(3) of the Act and this part to provide a qualifying service may use the same unbundled network element to provide non-qualifying services.

(e) Except as provided in §51.318, an incumbent LEC shall permit a requesting telecommunications carrier to commingle an unbundled network element or a combination of unbundled network elements with wholesale services obtained from an incumbent LEC.

(f) Upon request, an incumbent LEC shall perform the functions necessary to commingle an unbundled network element or a combination of unbundled network elements with one or more facilities or services that a requesting telecommunications carrier has obtained at wholesale from an incumbent LEC.

(g) An incumbent LEC shall not deny access to an unbundled network element or a combination of unbundled network elements on the grounds that one or more of the elements:

(1) Is connected to, attached to, linked to, or combined with, a facility or service obtained from an incumbent LEC; or

(2) Shares part of the incumbent LEC's network with access services or inputs for non-qualifying services

§ 51.311 Nondiscriminatory access to unbundled network elements.

(a) The quality of an unbundled network element, as well as the quality of the access to the unbundled network element, that an incumbent LEC provides to a requesting telecommunications carrier shall be the same for all