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February 26, 2004

Via Federal Express

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FEB 27 2004

PUBLIC SERVICE
COMMISSION

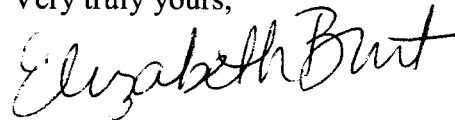
Mr. Thomas M. Dorman
Executive Director
Kentucky Public Service Commission
211 Sower Blvd.
Frankfort, KY 40601

Re: Review of FCC's Triennial Review Order Regarding Unbundling Requirements
for Individual Network Elements, PSC Case No. 2003-00379

Dear Mr. Dorman:

Enclosed please find **Bowling Green Municipal Utilities' Motion to Quash Subpoena Duces
Tecum, and Motion for Protective Order.** I have also enclosed ten copies of the Motions.

Very truly yours,



Elizabeth W. Burt

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Enclosures

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FEB 27 2004

**PUBLIC SERVICE
COMMISSION**

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the matter of:

REVIEW OF THE FEDERAL COMMUNICATIONS)
COMMISSION'S TRIENNIAL REVIEW ORDER) CASE NO.
REGARDING UNBUNDLING REQUIREMENTS) 2003-00379
FOR INDIVIDUAL NETWORK ELEMENTS)

**BOWLING GREEN MUNICIPAL UTILITIES'
MOTION TO QUASH SUBPOENA DUCES TECUM,
AND MOTION FOR PROTECTIVE ORDER**

Comes Bowling Green Municipal Utilities ("BGMU"), by counsel, and for its Motion to Quash Subpoena Duces Tecum and Motion For Protective Order, states as follows:

That on or about February 20, 2004, BellSouth issued a Notice to Take Deposition of a representative of BGMU to be held on March 1, 2004 at 9:00 a.m. at the Public Service Commission ("PSC") in Frankfort, Kentucky. A Subpoena Duces Tecum was also issued by the PSC commanding that a BGMU representative produce all materials referenced in BellSouth's data requests. Prior to service of the Subpoena Duces Tecum, counsel for BellSouth inquired whether George E. Strickler, Jr., independent counsel for Bowling Green Municipal Utilities, would accept service of the subpoena. Mr. Strickler declined and refused to accept service of the subpoena on behalf of his client, BGMU. Notwithstanding this information, BellSouth delivered a Subpoena Duces Tecum to the Warren County Sheriff for delivery upon George E. Strickler, Jr., which was delivered. However, this is insufficient to constitute service upon BGMU. Mr. Strickler is not employed by nor an officer of BGMU. Furthermore, since he has not agreed to

accept service of the subpoena, BGMU has not been served with same. As such, BGMU hereby seeks to quash the Subpoena as it was not properly served upon it.

Even if BellSouth had properly served the Subpoena, BGMU can not be compelled to submit to deposition in Frankfort, Kentucky. Kentucky Revised Statutes §278.340 allow the PSC or any party that is granted deposition rights to depose a witness in connection with a proceeding. The depositions must be taken in accordance with the Rules of Civil Procedure. Ky. R. Civ. Pro. §45.03 provides that a resident of Kentucky may only be required to attend a deposition in the county wherein he resides, is employed, or transacts his business. BGMU is a legal entity which resides in Kentucky. Its only place of business is located in Bowling Green, Warren County, Kentucky. Therefore, it may only be required to submit to a deposition in Warren County, Kentucky. As BellSouth's Notice to Take Deposition requires a BGMU representative to submit to deposition in Frankfort, Kentucky, BGMU objects to same, and moves the Commission to quash the Subpoena pursuant to Ky. R. Civ. Pro. §45.02.

BGMU also moves the PSC to enter a Protective Order limiting the examination by BellSouth, pursuant to CR 30.04. The Commission may limit the scope of examination when it is done in bad faith, or in such a manner as unreasonably to annoy or to oppress the deponent. In this instance, BellSouth has propounded discovery requests upon BGMU in this matter. BGMU filed a response indicating that it is not a Competitive Local Exchange Carrier, is not a party to the proceeding, does not intend to intervene to the proceeding, and is not subject to the jurisdiction of the PSC. As such, BGMU was not required to respond to the discovery requests. In an effort to annoy and oppress BGMU, BellSouth is attempting to take BGMU's deposition, for the sole purpose of obtaining the information sought by their previous discovery requests,

which it has already been established that they are not entitled to. The oppressive nature of BellSouth's tactics is evidenced by its scheduling depositions of 96 company representatives on the same day and beginning at the same time. It is obvious that the intent of BellSouth is to create economic hardship upon BGMU by requiring a company representative to remain in Frankfort, Kentucky for days on end to take its deposition. Clearly, BellSouth should schedule the depositions of non-party witnesses according to a reasonably feasible schedule. As such, the PSC should quash the subpoena and enter an order protecting BGMU from submitting to a deposition without having a reasonably certain deposition day and time.

Furthermore, the PSC should quash the subpoena duces tecum such that BGMU does not have to answer the 'data requests' as indicated therein. Ky. R. Civ. Pro. §45.02 provides that a subpoena may command the production of books, papers, documents, or tangible things designated therein. BellSouth's data requests however do not ask for the production of any tangible book, record or document. Rather they request BGMU to answer written interrogatories and requests for admission. The use of a Subpoena Duces Tecum to compel the answering of interrogatories and requests for admission is clearly inappropriate and unauthorized by the rules of civil procedure.

Without waiving any of BGMU's objections, motion to quash, or motion for a protective order, and in an effort to avoid further hardships created by BellSouth, BGMU hereby submits verified answers the following data requests. BGMU will not answer any further data requests, and hereby puts BellSouth on notice of its intent to recoup attorney's fees and costs, should further inappropriate data requests be submitted.

1. Identify each switch owned by BGMU that BGMU uses to provide a qualifying service anywhere in Kentucky, irrespective of whether the switch itself is located in the State and regardless of the type of switch (eg. Circuit switch, packet switch, soft switch, host switch, remote switch).

RESPONSE: In answering this response, BGMU assumes that the term "qualifying service" means a service offered by a Competitive Local Exchange Carrier, and/or refers to offering telephone services. BGMU is not a CLEC, and therefore any switches, if any, owned by BGMU are not used to provide qualifying services anywhere within or outside of Kentucky. Furthermore, BGMU does not provide telephone services, and therefore, any switches, if any, owned by BGMU are not used to provide qualifying services anywhere within or outside of Kentucky.

2. For each switch identified in response to Data Request No. 1, please:


- (a) provide the common language location identifier ("CLLI") code of the switch;
- (b) provide the street address, including the city and state in which the switch is located;
- (c) identify the type of switch by manufacturer and model (eg Nortel DMS100);
- (d) state the total capacity of the switch by providing the maximum number of voice-grade equivalent lines the switch is capable of serving, based on the switch's existing configuration and component parts;
- (e) state the number of voice-grade equivalent lines the switch is currently serving based on the switch's existing configuration and component parts; and
- (f) provide information relating to the switch as contained in Telcordia's Local Exchange Routing Guide "LERG"; or, state if the switch is not identified in the LERG.

RESPONSE: Not Applicable.

CONCLUSION

BGMU respectfully requests the PSC to quash the subpoena duces tecum issued by BellSouth because it was improperly served upon counsel for BGMU; violates the Kentucky rules of civil procedure by seeking to depose a BGMU representative outside of Warren County, Kentucky; seeks to oppress and annoy BGMU by compelling the answering of Data Requests which BellSouth is not entitled to do pursuant to the Kentucky rules of civil procedure; and seeks to further oppress and annoy BGMU by failing to reasonably schedule its deposition.

Submitted February 26, 2004.


GEORGE E. STRICKLER, JR
ELIZABETH W. BURT
Bell, Orr, Ayers & Moore, P.S.C.
1010 College Street, P.O. Box 738
Bowling Green, Kentucky 42102
Counsel for Bowling Green Municipal
Utilities

Verification

I, Teresa Newman, of Bowling Green Municipal Utilities hereby verifies that I have read the responses to data requests contained hereinabove, and certify that to the best of my information and belief that they are true and correct.


Teresa Newman

Certificate of Service

I hereby certify that the foregoing was served on Dorothy J. Chambers, 601 W. Chestnut Street, Room 407, P.O. Box 32410, Louisville, Kentucky 40203, and R. Douglas Lackey, Andrew D. Shore, and Meredith E. Mays, Suite 4300, BellSouth Center, 675 West Peachtree St., N.E., Atlanta, GA 30375, Counsel for BellSouth Telecommunications, Inc., by regular U.S. mail on this the 26th day of February, 2004.


GEORGE E. STRICKLER, JR.
ELIZABETH W. BURT