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February 27, 2006

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

Re: Petition to Establish Generic Docket to Consider Amendments to
Interconnection Agreements Resulting from Changes of Law
KPSC 2004-00427

Dear Ms. O'Donnell:

By letter dated February 21, 2006, CompSouth filed various information from proceedings in other states in what CompSouth said was an effort to have a full picture of what has transpired in those states before this Commission. BellSouth agrees with CompSouth that this Commission should have the full picture of what has transpired in other cases; BellSouth also, of course agrees this Commission ultimately must make its decision based on the reasoning and legal sustainability of the arguments before it.

One of the documents CompSouth filed was the February 17, 2006 Florida Staff Recommendation resulting from Covad's request that the Florida Commission withdraw portions of the January 26 Staff Recommendation and reconsider its decision on certain issues in the Change of Law Proceeding. BellSouth herewith encloses for this Commission's fuller edification, BellSouth's letter filed with the Florida Commission on February 17, 2006, which responds to Covad's filings in that same docket.¹

On the same date that CompSouth filed its February 21, 2006 letter at the Kentucky Commission, the Florida Public Service Commission also filed its Response and Supporting Memorandum and Opposition to Plaintiff's Motion for Preliminary Injunction in the United States District Court in the Northern District of Florida.² The Florida Commission therein made clear its recognition that line sharing is not a loop transmission facility under Section 271 and that state commissions do not have authority to require BellSouth to include Section 271 elements in Section 252 interconnection agreements. The Florida Commission also noted that Covad's position is in direct

¹ See Attachment 1.

² See Attachment 2.

conflict with the clear statement of the FCC that line sharing is anti-competitive and contrary to the goals of the 1996 Telecommunications Act.³ Although Covad stated other commissions that have considered the line sharing issue declared line sharing is a 271 element, the Florida Commission observed that Covad had failed to mention that the Michigan, Rhode Island and Illinois Commissions have ruled consistent with the Florida Commission, finding that line sharing is not a 271 element.⁴

Additionally, on February 22, 2006, the Public Service Commission of Louisiana ruled on the certain issues related to Section 271 and line sharing in its Generic Change of Law proceeding. Although a written order is not yet available, the following is a summary of the Louisiana Commission's Rulings:

Section 271: The Louisiana Commission declined to order BellSouth to include 271 elements in 252 agreements, and it likewise declined to set rates for these elements. The Louisiana Commission explained that these 271 elements are more properly contained in arms-length, commercial agreements, subject to the FCC's enforcement authority, and it adopted BellSouth's proposed contract language with respect to these issues. The Louisiana Commission further ruled that because Section 271 contemplates an advisory role for the state commissions, any CLEC filing an enforcement action at the FCC regarding Section 271 elements shall provide a copy of the filing to the Louisiana Commission so that the Commission may intervene and advise the FCC of its recommendation, if it deems it necessary.

Line Sharing Issues: The Louisiana Commission rejected a December 2005 finding by an Administrative Law Judge that the commission has jurisdiction to set rates for line sharing under Section 271 based on BellSouth's voluntary agreement. The Louisiana Commission ruled that BellSouth had not agreed to negotiate rates for line sharing under Section 271 for inclusion in its Section 252 interconnection agreement with Covad, but that instead, BellSouth had attempted only to negotiate transitional rates for line sharing under Section 251. The Louisiana Commission also decided that the dispute resolution and change of law provisions in the interconnection agreement cannot be used to compel arbitration of elements outside of the interconnection agreement.

The official Minutes of the Louisiana Commission's February 22, 2006 Open Session are not yet available. If they become available prior to the Commission's decision in this case, BellSouth will file them in this docket.

BellSouth also wishes to emphasize that the deadline of March 11, 2006 has been known to all carriers; nevertheless, quick and decisive action in this docket is still needed from this Commission to see that the transition is accomplished before that deadline. As

³ See page 8 of Attachment 2 and citation to TRO at paragraphs 248, 260 and 261.

⁴ See pages 9-10 of Attachment 2.

Judge Hood recognized in Case 3:05-CV-00016-JMH⁵, “the FCC’s Order on Remand stated that “[g]iven the need for prompt action, the requirements . . . shall take effect on March 11, 2005.” Despite the clarity of this directive, some carriers have taken little or no action to effectuate this transition in the months since that Order was issued.⁶ BellSouth, respectfully requests that the Commission adopt BellSouth’s position on the issues in this docket. BellSouth also respectfully requests that the Commission’s decision be issued as quickly as possible.

One paper copy of this filing is providing for filing in case 2004-00427. The attached certification for case 2004-00427 certifies that this filing was filed electronically today and served by email on parties of record. Parties of record can access the information at the Commission’s Electronic Filing Center located at <http://psc.ky.gov/efs/efsmain.aspx>.

Very truly yours,


for Dorothy J. Chambers

Enclosures

cc: Parties of Record

623254

⁵ See Memorandum Opinion and Order, *In Re: BellSouth Telecommunications, Inc., Plaintiff v. Cinergy Communications Co., a/k/a Cinergy Communications, Corp., et al., Defendants*, at p.4 (April 22, 2005).

⁶ For example, SouthEast Telephone recently advised that it does not plan to transition its embedded base of UNE-P lines to UNE-L before the March 10, 2006 deadline. See SouthEast Telephone’s February 7, 2006 letter, Attachment 3, and BellSouth’s response of February 15, 2006, Attachment 4.

CERTIFICATION FOR 2004-00427

I hereby certify that the electronic version of this filing made with the Commission this 27th day of February 2006 is a true and accurate copy of the documents filed herewith in paper form on February 27, 2006, and the electronic version of the filing has been transmitted to the Commission. An electronic copy of the Read1st document has been served electronically on parties.

for Cheryl R Winn

Dorothy J. Chambers

ELECTRONIC SERVICE LIST - KPSC 2004-00427

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