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March 2, 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:

BellSouth Telecommunications, Inc. ("BellSouth") submits this letter to provide this Commission with notice of additional state commission decisions that support BellSouth's positions in this docket.

On March 1, 2006, the North Carolina Utilities Commission issued its decision in Docket No. P-55, Sub 1549. With respect to Section 271, the North Carolina Commission concluded that CompSouth's arguments "while colorable and thought-provoking, are not ultimately persuasive." The North Carolina Commission concluded that it "lacks the authority to compel BellSouth to include Section 271 UNEs in its Section 251/252 ICAs, nor does the Commission believe it has the authority to establish rates for such elements. . . ." (p. 86). The North Carolina Commission also made clear that "BellSouth and the [CLECs] should be required to execute amendments to their ICAs deleting provisions requiring BellSouth to offer the UNEs that the FCC has found are no longer required to be offered pursuant to Section 251" (p. 20), which includes line sharing.¹

On February 27, 2006, the State of Vermont Public Service Board ("Vermont Board") entered its decision in Docket No. 6932, a proceeding involving Verizon's request to modify its interconnection agreements to effectuate FCC orders including the *TRO* and the *TRRO*. The Vermont decision is publicly available at:
<http://www.state.vt.us/psb/orders/2006/files/6932fnl.pdf>.

¹ BellSouth acknowledges that the North Carolina Commission has not adopted its position on commingling. BellSouth is evaluating its options concerning this, and other, aspects of the North Carolina decision.

The Vermont Board adopted in part, and rejected in part, a recommended decision of the hearing officer. The Vermont Board rejected the recommendation of the hearing officer that would have required Verizon to continue offering delisted UNEs under Section 271 or state law. Specifically, the Vermont Board required that “the amended interconnection agreements reflect the reduction in the unbundling obligations set out in the TRRO.” Vermont decision, p. 250. The Vermont Board also made clear that “enforcement of Section 271 obligations rests with the FCC, not the state.” Vermont decision, p. 264. With respect to line sharing, the Vermont Board adopted the recommendation of the hearing officer and ordered the inclusion of the FCC’s transitional plan. See Vermont decision, pp. 156-157. With respect to fiber to the home loops, the Vermont modified the recommended decision of the hearing officer, and found that the fiber unbundling rules apply to all customer classes, and were not limited to mass market customers. See Vermont decision, p. 257.

BellSouth also notes that in CompSouth’s February 21, 2006 letter it cited to FCC’s *Qwest Forbearance Decision*, WC Docket No. 04-223 (rel. Dec. 2, 2005) as a “key FCC decision” worthy of Commission review. BellSouth does not agree that the *Qwest Forbearance Decision* supports CompSouth’s view on commingling. The FCC did not refer to the federal commingling rule in its *Qwest Forbearance Decision* nor did the FCC indicate in any way that it had reversed its decision in the *TRO* in which the FCC was very clear that BellSouth and other RBOCs have no obligation to combine 271 elements or to combine elements that are no longer required to be unbundled pursuant to Section 251(c)(3) of the Act.² Indeed, the FCC has no reason to disturb its ruling considering it was affirmed by the D.C. Circuit Court, which made clear that the FCC had “decided that, in contrast to ILEC obligations under § 251, the independent § 271 unbundling obligations didn’t include a duty to combine network elements.”³

To the extent the *Qwest Forbearance Order* provides any guidance relevant to the current posture of this docket, the Commission should take particular note of paragraphs 9 and 101, which describes the extent of the FCC’s fiber relief and does not limit that relief to mass market customers. The Commission should also review paragraphs 7, 96, and 100 of the *Qwest Forbearance Order*, which describe the Section 271 checklist item 4 requirement as an obligation to provide local *loops* (not line sharing, as certain CLECs claim). The *Qwest Forbearance Order* is available in its entirety at http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC-05-170A1.pdf.


² See *TRO* at ¶ 655, n. 1989. The *TRO*, as originally issued, had this language at note 1990. After the *TRO Errata* the footnotes were renumbered.

³ *USTA II*, 359 F.3d at 589. Significantly, the Section 271 checklist obligates BellSouth to provide local loop transmission “unbundled from local switching and other services”, local transport “unbundled from switching or other services”, and switching “unbundled from transport, local loop transmission or other services.” BellSouth’s Section 271 obligation was referred to by the FCC and the D.C. Circuit Court of Appeals as an “independent” obligation. See *USTA II* at 590; *TRO* at ¶ 653.

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One paper copy of this filing is provided 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,

A handwritten signature in cursive script that reads "Dorothy Chambers". The signature is written in black ink and includes a small flourish at the end of the name.

Dorothy J. Chambers

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CERTIFICATION FOR 2004-00427

I hereby certify that the electronic version of this filing made with the Commission this 2nd day of March 2006 is a true and accurate copy of the documents filed herewith in paper form on March 2, 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 Dorothy J. Chambers