

LOUISIANA PUBLIC SERVICE COMMISSION

ORDER NUMBER U-28131

LOUISIANA PUBLIC SERVICE COMMISSION EX PARTE

Docket U-28141 In re: Pursuant to Special Order 48-2004, Establishment of a Monitoring Docket to ensure Telecommunications Service Providers continue to honor their obligations under their approved interconnection agreements and to further ensure the carriers properly effectuate any changes to those interconnection agreements in accordance with the law, including, but not limited to, the change of law provisions in the interconnection agreements.

CONSOLIDATED WITH

ORDER NUMBER U-28356

BELLSOUTH TELECOMMUNICATIONS EX PARTE

Docket Number U-28356 In re: Petition to establish generic docket to consider amendments to Interconnection Agreements resulting from changes of law.

(Decided at the February 22, 2006 Business and Executive Session)

Docket U-28131 was opened by the Commission Staff as directed by the Commission in the Commission's Special Order dated 48-2004.¹ As stated in the Special Order, the docket was initiated

to ensure the parties continue to honor their obligations under the approved interconnection agreements and to further ensure the parties properly effectuate any changes to those interconnection agreements in accordance with the law, including, but not limited to, the change of law provisions in the interconnection agreements.

Specifically, carriers were concerned with the impact of the FCC's decision in the *Triennial Review Order* ("TRO")², and the possibility BellSouth might implement the changes of law mandated by that order in a unilateral manner.

On November 1, 2004, BellSouth filed a "Petition to Establish Generic Docket to Consider Amendments to Interconnection Agreements Resulting from Changes of Law", as in addition to the TRO, the District of Columbia Circuit had recently issued a decision affirming and vacating portions of the TRO in *USTA II*³ and the FCC issued its decision in the *Triennial Review Remand Order* ("TRRO")⁴. Staff filed a motion to consolidate Dockets U-28131 and U-28356, as the dockets involved essentially the same parties, and both involved the same basic

¹ The Special Order resulted from an emergency petition filed by CompSouth, a party to this proceeding.

² 18 FCC Rcd. 16987, corrected by *Errata* 18 FCC Rcd. 19020.

³ *United States Telecom Ass'n v. FCC*, 359 F.3d 554 (D.C. Cir. 2004).

⁴ *In the Matter of Unbundled Access to Network Elements; Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, WC Docket No. 04-313 and CC Docket No. 01-338, Order on Remand FCC 04-290.

fundamental issue, i.e. the implementation of the changes in telecommunication law into existing interconnection agreements. The parties have briefed a number of issues which are pending before the Administrative Law Judge assigned to hear this matter. As of the date of the Commission's February 22, 2006 Business and Executive Session, the ALJ's Recommendation on the pending issues had not yet been released.

COMMISSION'S CONSIDERATION

At the Commission's February 22, 2006 Business and Executive Session, Commissioner Blossman moved that in accordance with Rules 51 and 57 of the Commission's Rules of Practice and Procedure, the Commission assert its original and primary jurisdiction over Issue Number 8 and Issue Number 14 currently pending before the ALJ in Docket Number U-28131 consolidated with Docket U-28356 in order that the Commission could give a ruling on these issues prior to the expiration of the transition period for elements de-listed under Section 251⁵, which expires on March 10, 2006. Commissioner Sittig seconded the Motion, with Commissioners Campbell and Boissiere voting yes and Commissioner Field voting to not assert the Commission's primary jurisdiction. Following the vote, representative of BellSouth, CompSouth and the Commission Staff provided oral argument to the Commission with respect to Issue Number 8. Issue Number 8 and Issue Number 14, both pending before the ALJ, read as follows:

Issue 8(a): Section 271⁶ and State Law- Does the Commission have the authority to require BellSouth to include in its interconnection agreements entered into pursuant to Section 252, network elements under either state law, or pursuant to Section 271 or any other federal law other than Section 251?

State Law Authority to Include delisted elements pursuant to state law in Section 252 agreements.

Issue 8(b): Section 271 and State Law: If the answer to part (a) is affirmative in any respect, does the State Commission have authority to establish rates for such elements?

Issue 14- Commingling: What is the scope of commingling allowed under the FCC's rules and orders and what language should be included in interconnection agreements to implement commingling (including rates)?

After considering the lengthy arguments of the parties, Commissioner Blossman moved that the Commission decline to order BellSouth to include Section 271 elements in Section 252 agreements, and that the Commission likewise decline to set rates for these elements, as Section 271 elements are more properly contained in arms-length, commercial agreements, subject to the FCC's enforcement authority. Accordingly, the Commission should adopt BellSouth's proposed

⁵ 47 USC § 251.

⁶ 47 USC § 271.

contract language with respect to Issue 8. However, because Section 271 clearly contemplates an advisory role for the state commissions, he further moved that any CLEC filing an enforcement action at the FCC regarding Section 271 elements shall provide a copy of the filing to this Commission so that this Commission may intervene and advise the FCC of its recommendation if we deem it necessary. He finally moved that the Commission adopt BellSouth's proposed contract language with respect to Issue 14 and order that BellSouth's commingling obligation does not extend to the elements obtained pursuant to Section 271. Commissioner Sittig seconded the motion. Prior to a vote, and after being advised no discussion was provided on Issue 14, Commissioner Blossman requested the Commission first allow for arguments with respect to Issue 14 prior to the vote. Following a discussion on Issue 14, the Commissioner Field moved to remove Issue 14 from the motion, with Commissioner Blossman seconding the motion and that motion being unanimously adopted. Commissioner Campbell and Commissioner Boissiere voted yes on the Motion with respect to Issue 8, with Commissioner Field abstaining.

IT IS THEREFORE ORDERED THAT:

1. The Commission asserts its primary jurisdiction pursuant to Rules 51 and 57 of the Rules of Practice and Procedure with respect to Issue 8 only.
2. The Commission declines to order BellSouth to include Section 271 elements in Section 252 agreements and further declines to set rates for Section 271 elements.
3. BellSouth's proposed contract language with respect to Issue 8 is hereby adopted.
4. Any CLEC that files an enforcement action with the FCC regarding Section 271 elements shall provide a copy of the filing to the Commissioners so that the Commission may intervene and advise the FCC of its recommendation, if deemed necessary.
5. This Order shall be effective immediately.

**BY ORDER OF THE COMMISSION
BATON ROUGE, LOUISIANA
March 7, 2006**

ABSTAINED
DISTRICT II
CHAIRMAN JAMES M. FIELD

/S/ JACK "JAY" A. BLOSSMAN
DISTRICT I
VICE CHAIRMAN JACK "JAY" A. BLOSSMAN

/S/ C. DALE SITTIG
DISTRICT IV
COMMISSIONER C. DALE SITTIG

/S/ FOSTER L. CAMPBELL
DISTRICT V
COMMISSIONER FOSTER L. CAMPBELL

LAWRENCE C. ST. BLANC
SECRETARY

/S/ LAMBERT C. BOISSIERE, III
DISTRICT III
COMMISSIONER LAMBERT C. BOISSIERE, III