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December 14, 2005

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 files this letter in response to the December 8, 2005, filing on behalf of Cinergy Communications Company which attached the November 30, 2005 Maine Court decision ("Maine Decision"). Certain key points should be noted regarding the Maine decision.

First, the case itself is not a final decision on the merits. It is a decision disposing of a preliminary injunction motion in a docket that remains open and is certain to result in further activity. Second, the case is factually distinguishable because it relates back to Verizon's wholesale tariff and the Maine Commission's perception that Verizon made a voluntary commitment to file 271 obligations in its wholesale tariff. The district court expressly found that Section 271 "was not intended by the Congress to exclude the PUC in the circumstances of this case from all activity in setting rates under § 271." Maine Decision, p. 16. Moreover, with respect to the Maine district court, that case is inconsistent with the federal district court cases rendered much closer to home, particularly the U.S. District Court for the Eastern District of Kentucky, as well as the U.S. District Court for the Southern District of Mississippi. Both of these federal courts correctly acknowledged that Section 271 explicitly places enforcement authority with the FCC. The Maine decision also is inconsistent with the Montana federal court's decision, which held that Section 252 did not authorize a state commission to approve an agreement containing elements or services that are not mandated by Section 251.


The Maine Decision also is based on faulty reasoning with respect to the relationship between the states and the FCC pursuant to Section 271. Section 271 is not a

ratemaking provision; rather it involves applications for certain authority under federal law. Section 271 does not need to include the words "preemption"; state commissions have limited authority under Section 252 to ensure Section 251 compliance. Because section 271 is part of federal law, there is no baseline state authority to preempt -- states only have the authority to implement federal law that Congress gave them, and *USTA II* has made clear the limits on further FCC delegation to the states. Moreover, with respect to Section 271 Congress gave the relevant authority to the FCC and elsewhere expressly limited state authority to section 251 rates.

As to whether section 271 requires TELRIC, the FCC itself explained that the just and reasonable requirement does not mandate TELRIC in the *TRO*, and that ruling was affirmed on that issue in *USTA II*. The Maine district court's attempt to minimize that holding is unpersuasive. The FCC's decision not to mandate unbundling under 251 for certain UNEs becomes meaningless if states can require the very same unbundling at the very same rates under 271. The result is no different than adding UNEs where the FCC has refused to require unbundling.

The attached certificate of service 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,

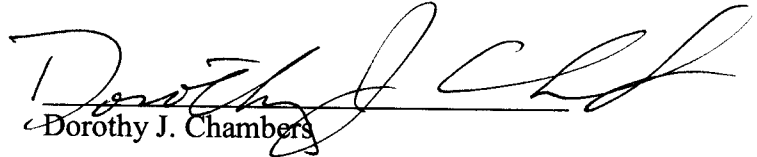
A handwritten signature in black ink, appearing to read "Dorothy J. Chambers", written over a horizontal line.

Dorothy J. Chambers

cc: Parties of Record

CERTIFICATION FOR 2004-00427

I hereby certify that the electronic version of this filing made with the Commission this 14th day of December 2005 is a true and accurate copy of the documents filed herewith in paper form on December 14, 2005, 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.


Dorothy J. Chambers