

BellSouth Interconnection Services

675 West Peachtree St., NE
Room 34S91
Atlanta, Georgia 30375

Amy Hindman
(404) 927-8998
FAX: 404 529-7839

Sent Via Certified Mail and Electronic Mail

February 23, 2005

Mr. Robert A. Bye
Vice President and General Counsel
Cinergy Communications Company
8829 Bond Street
Overland Park, KS 66214

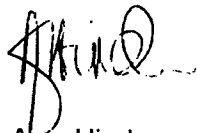
Dear Bob:

This is in response to your letter dated February 21, 2005 to Jerry Hendrix, which is responding to my letter of February 18, 2005. As your contract negotiator, I am responding to your letter.

BellSouth appreciates the lively dialog with Cinergy in setting out the positions of both parties relating to issues, including but not limited to Digital Subscriber Lines (DSL) over Unbundled Network Element-Platform (UNE-P) in Kentucky, commingling and the Triennial Review Remand Order (TRRO). Regretfully, it is apparent each party disagrees with the other party's positions, and will be unable to reach agreement outside of the Dispute Resolution process.

BellSouth will continue to work with Cinergy to move forward in negotiations. Should you have questions, do not hesitate to contact me.

Sincerely,



Amy Hindman
Manager - Interconnection Services

cc: John Cinelli—Cinergy (via electronic mail)
Jerry Hendrix—BellSouth (via electronic mail)

Cinergy Communications Company
8829 Bond Street
Overland Park, KS 66214
phone 913.492.1230
fax 913.492.1684

February 21, 2005

CINERGY.
COMMUNICATIONS

Mr. Jerry Hendrix
Assistant Vice President
BellSouth Interconnection Services
675 West Peachtree St., N.E.
Atlanta, GA 30375

Re: Change of Law

Dear Jerry:

This is in response to Amy Hindman's letter of February 18, 2005. It is now clear from this response that BellSouth has no intention of complying with the terms of the Interconnection Agreement.¹ This is despite the fact that the Interconnection Agreement specifies the procedure that the parties are to take in the event of change of law. This response amounts to an anticipatory breach of our Interconnection Agreement.

I am compelled to respond to some of the assertions made by Ms. Hindman in her letter. Cinergy Communications attempted to verify in several letters that BellSouth would continue to comply with the terms of its Interconnection Agreement. Ms. Hindman attempts to dispute this fact by mischaracterizing the intent of Cinergy Communications' letters. The letters speak for themselves. It is clear that Cinergy Communications is and has been concerned about the ability to place new orders for UNE-P, including DSL over UNE-P. BellSouth conveniently ignores the fact that without UNE-P there can be no DSL over UNE-P.

The District Court upheld the Kentucky Public Service Commission's approval of our Interconnection Agreement. The Interconnection Agreement was sanctioned by an Order from an Article III court and cannot be collaterally attacked. We agree with Ms. Hindman's point that "rulings by the District Court have been based on the state of the law at the time and may change as the state of law changes." However, the Interconnection Agreement provides for an orderly transition process which includes notice, good faith negotiation, and arbitration if necessary. The TRRO cannot usurp the

¹ "In your February 15, 2005 letter, you disagree with BellSouth's position that per the TRRO, carriers are no longer entitled to place new orders for network elements that are no longer required to be provided pursuant to Section 251 of the Act. BellSouth fully explained its position on this issue in the Carrier Notification posted on February 11, 2005, and stands by that position."

dispute resolution provisions of the Interconnection Agreement. Therefore, we expect BellSouth to comply with the terms of the contract.

BellSouth denies that it is dragging its feet on commingling, and then proceeds to dig its heels in further. It is true that Cinergy Communications refused to accept BellSouth's "take it or leave it" offer to amend our interconnection agreement. However, that agreement was insufficient to incorporate the commingling of DSL with UNE-P or UNE-L. Since that time, Cinergy Communications has offered to negotiate this issue many times without success.

BellSouth is misinterpreting the TRO and must even rely upon misleading quotes to do so. The first two sentences of Paragraph 581 of the TRO provide as follows:

We conclude that the Act does not prohibit commingling of UNEs and wholesale services and that section 251(c)(3) of the Act grants authority for the Commission to adopt rules to permit the commingling of UNEs and combinations of UNEs with wholesale services, including interstate access services. An incumbent LECs wholesale services constitute one technically feasible method to provide nondiscriminatory access to UNEs and UNE combinations.

Paragraph 581 then goes on to provide further justification for commingling based upon the discriminatory practices of BellSouth and other LECs:

Thus, we find that a restriction on commingling would constitute an "unjust and unreasonable practice" under 201 of the Act, as well as an "undue and unreasonable prejudice or advantage" under section 202 of the Act. Furthermore, we agree that restricting commingling would be inconsistent with the nondiscrimination requirement in section 251(c)(3). **Incumbent LECs place no such restrictions upon themselves for providing service to any customers by requiring, for example, two circuits to accommodate telecommunications traffic from a single customer. . .**

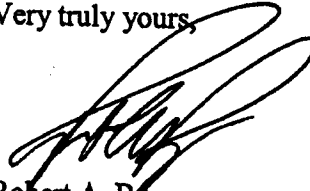
BellSouth's refusal to provide commingling results in precisely the discriminatory conduct this rule sought to prevent. BellSouth requires that DSL must be provisioned on resale lines despite the fact that BellSouth does not require this of itself. Clearly, this is just the type of abuse that this new rule sought to prevent.

BellSouth understands the plain meaning of the new commingling rule found at 47 CFR § 51.309(e) and (f). This is why BellSouth placed commingling language in its access tariff. To the extent BellSouth truly believed that commingling did not apply to DSL, it could have provided such a limitation in its tariff.

Finally, let me again state that Cinergy Communications is prepared to negotiate in good faith to bring resolution to this issue. We look forward to reviewing your proposed amendment. I would request that this time around you please forward your proposed amendment in Word version instead of an Acrobat .pdf file. Thereafter, I will

make redline changes with the "Track Changes" function of the Word software. To the extent BellSouth provides yet another "take it or leave it" amendment, we shall have no choice but reject your offer as unacceptable.

Very truly yours,

A handwritten signature in black ink, appearing to read "R. Bye", written over the closing "yours,".

Robert A. Bye

Vice President and
General Counsel

Cc: Amy Hindman
John Cinelli

BellSouth Interconnection Services

675 West Peachtree St., NE
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Sent Via Certified Mail and Electronic Mail

February 18, 2005

Mr. Robert A. Bye
Vice President and General Counsel
Cinergy Communications Company
8829 Bond Street
Overland Park, KS 66214

Dear Bob:

This is in response to your letter dated February 11, 2005, regarding Carrier Notification SN91085032, which sets forth BellSouth's plans to offer commercial agreements for DS0 Wholesale Local Voice Platform services, and to your letter dated February 15, 2005, regarding Carrier Notification SN91085039, which provides information relating to the Triennial Review Remand Order ("TRRO").

You state in your letter dated February 11, 2005, "We have attempted to verify on numerous occasions that BellSouth will continue to accept new Unbundled Network Element-Platform (UNE-P) orders after the effective date of the Federal Communication Commission's ("FCC") Triennial Review Remand Order ("TRRO")." This statement is inaccurate. Neither Cinergy's attempts to verify BellSouth's intentions nor BellSouth's responses thereto have related to the TRRO or BellSouth's obligation under federal law to provide UNE-P. The BellSouth letters you reference, dated December 29, 2004 and January 17, 2005, are both in response to Cinergy's correspondence regarding the change of law proceeding in Kentucky relating to Digital Subscriber Line ("DSL") over UNE-P. BellSouth continues to maintain its position that it will provide DSL over Cinergy's UNE-P circuits, pursuant to the terms of Cinergy's Kentucky Interconnection Agreement, until the earlier of execution of an amendment to comply with the change of law or a decision of the Kentucky Public Service Commission (PSC) in docket 2004-00501. The Carrier Notifications referenced in your correspondence of February 11 and February 15, 2005, do not relate to the provisions of the Interconnection Agreement regarding DSL over UNE-P or to the change of law proceeding pending in the above referenced docket.

In your February 15, 2005 letter, you disagree with BellSouth's position that per the TRRO, carriers are no longer entitled to place new orders for network elements that are no longer required to be provided pursuant to Section 251 of the Act. BellSouth fully explained its position on this issue in the Carrier Notification posted on February 11, 2005, and stands by that position.

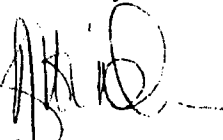
Further, your argument that "the FCC doesn't have the power to set aside an order of an Article III court" is nonsensical. First, the District Court for the Eastern District of Kentucky (District Court) has never issued an order relating to BellSouth's obligation to provide UNE-P. Its order related only to whether the PSC's order requiring BellSouth to provide DSL services over Cinergy's UNE-P lines was entitled to deference. Second, the District Court's jurisdiction over Interconnection Agreements relates solely to the right to review whether the PSC has correctly implemented the law as it exists at the time of the review. Previous rulings by the District Court have been based on the state of the law at that time and may change as the state of law changes. In any event, the FCC's ruling in the TRRO has not set aside an order of any court.

In addition, BellSouth is not "dragging its feet on commingling" as your February 15, 2005 letter states. BellSouth requested that Cinergy execute an amendment to its Interconnection Agreement to incorporate the FCC's Triennial Review Order (TRO). In fact, it is Cinergy that has not negotiated nor executed a TRO amendment that would add to Cinergy's Interconnection Agreement, among other things, language consistent with the FCC's ruling on commingling. However, execution of a TRO amendment would not allow Cinergy to commingle wholesale DSL over UNE-loops, as you are requesting. The FCC explains in the TRO that a tariffed wholesale service is a "technically feasible method to provide nondiscriminatory access to UNEs and UNE combinations".¹ Cinergy is not seeking a method of access to UNEs, but rather is leasing a facility as a UNE, and then asking BellSouth to provide a tariffed service over the facility that it has leased. This is not consistent with commingling as described in the TRO. Further, Cinergy is attempting to use the commingling provisions of the TRO to demonstrate that it is entitled to services that the FCC, in other portions of the TRO have clearly stated are not required to be provided.

Finally, you claim in your February 15, 2005 letter that Cinergy is willing to negotiate in good faith to implement a transition plan in accordance with the TRRO. BellSouth will send Cinergy an amendment in the next few weeks to incorporate this transition to other arrangements, and looks forward to executing such an amendment with Cinergy. In connection with that Interconnection Agreement amendment, BellSouth continues to offer its DS0 Wholesale Local Voice Platform Services Commercial Agreement with transitional discounts through March 10, 2005.

Please feel free to contact me with any questions.

Sincerely,



Amy Hindman
Manager - Interconnection Services

cc: John Cinelli—Cinergy (via electronic mail)
Jerry Hendrix—BellSouth (via electronic mail)

¹ TRO, ¶ 581

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February 15, 2005

CINERGY.
COMMUNICATIONS

Mr. Jerry Hendrix
Assistant Vice President
BellSouth Interconnection Services
675 West Peachtree St., N.E.
Atlanta, GA 30375

Re: Carrier Notification SN91085039

Dear Jerry:

This follows our conversation of this date in which you asked me to respond in writing to the above-reference Carrier Notification issued February 11, 2005. Our objections to this Carrier Notification are set forth below. You agreed that BellSouth will provide a written response on February 22, 2005, and Cinergy Communications agrees not to pursue any legal action until after it reviews this response.

We strenuously disagree with your assertion that the TRRO "constitutes a generic self-effectuating change for all interconnection agreements." The TRRO says no such thing, and in fact says just the opposite. The TRRO transition provides that "carriers have twelve months from the effective date of this Order to modify their interconnection agreements, including any change of law process."¹ However, the FCC also provided: "Of course, the transition mechanism adopted here is simply a default process, and pursuant to section 252(a)(1), carriers remain free to negotiate alternative arrangements superseding this transition period."²

Nothing in this language remotely suggests that the TRRO was intended to supersede the dispute resolution provisions of existing interconnection agreements. To the contrary, this is a "default process" that applies to those interconnection agreements where the language is silent. In the case of Cinergy Communications, our interconnection agreement was arbitrated and upheld by a federal court. Even to the extent the TRRO required what you assert, such requirement would be illegal since the FCC doesn't have the power to set aside an order of an Article III court:

Since neither the legislative branch nor the executive branch has the power to review judgments of an Article III court [e.g. Eastern District of

¹ TRRO ¶ 227
² TRRO ¶ 228

Kentucky], an administrative agency such as the FCC, which is a creature of the legislative and executive branches, similarly has no power.

Deerfield v. FCC, 992 F.2d 420 (1993). This case stands for the proposition that the FCC cannot collaterally attack an Order of a federal court. Therefore, there cannot be a unilateral or "self-effectuating" amendment, modification or reformation.

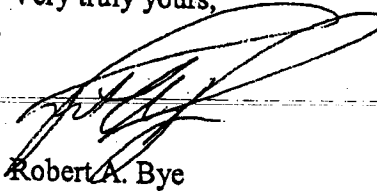
The only way that our interconnection agreement may be modified is pursuant to the terms of that agreement. As we have outlined on numerous occasions, BellSouth must provide notice and negotiate in good faith. To the extent the parties cannot agree, the commission will arbitrate the dispute and, provided that decision is upheld on appeal by the district court, the contract will be amended. The Order isn't even effective until March 11, 2005, so BellSouth intends to deny new orders before it even sends its first notice of change of law.

Cinergy Communications stands ready to negotiate in good faith to develop a transition plan. We have no desire to remain on UNE-P. We have spent the past two years investing in switching technology and building out our network, and have every intention of converting our customer base. However, BellSouth cannot simply demand this transition and then withhold our ability to commingle wholesale DSL on those UNE-L loops. BellSouth itself is causing the delay. To the extent BellSouth stops dragging its feet on commingling, I have no doubt that we can agree to transition plan.

The interconnection agreement contemplated a change of law, and it provides for an orderly transition process. Cinergy Communications negotiated for and received contract language that insures the status quo during the change of law process specifically to avoid business interruptions. BellSouth should honor its contract.

I look forward to your written response on or before February 22, 2005. As I have stated on numerous occasions, Cinergy Communications would prefer to resolve this matter through amicable negotiation. However, if that is not possible, we have no choice but to seek relief from the federal court.

Very truly yours,



Robert A. Bye

Vice President and
General Counsel

Cc: Amy Hindman
John Cinelli

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February 11, 2005

CINERGY.
COMMUNICATIONS

Mr. Jerry Hendrix
Assistant Vice President
BellSouth Interconnection Services
675 West Peachtree St., N.E.
Atlanta, GA 30375

Re: Carrier Notification SN91085032

Dear Jerry:

I am in receipt of the above-referenced Carrier Notification. I understand that BellSouth will not voluntarily offer its DS0 Wholesale Local Voice Platform Services Commercial Agreement ("DS0 Agreement") at the same price which it is available today. However, this Carrier Notification also seems to suggest that BellSouth will not accept new UNE-P orders after March 11, 2005.

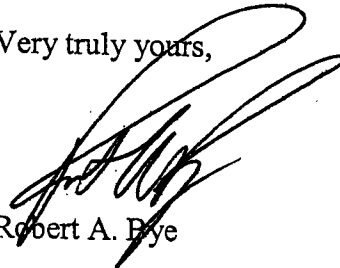
We have attempted to verify on numerous occasions that BellSouth will continue to accept new UNE-P orders after the effective date of the Triennial Review Remand Order ("TRRO"). In her letter of December 29, 2004, Amy Hindman confirmed that "BellSouth has no intentions of breaching the Interconnection Agreement, as you imply, by 'prevent[ing] new orders or otherwise interrupt[ing] Cinergy Communications' service.'" Ms. Hindman reiterated this position on January 17, 2005 by stating, "BellSouth has no intentions of breaching the Interconnection Agreement."

Despite the above reassurances, BellSouth has persisted in asserting a reservation of rights to pursue modification, reformation, or amendment of the existing Interconnection Agreement. It is our understanding that modification and/or amendment require the parties to follow sections 11 and 17 of the Interconnection Agreement. Taken together as a whole, these provisions require a written notice, good faith negotiation, commission arbitration, and judicial review before any amendment can be incorporated. Reformation is an equitable remedy based upon mutual mistake of fact which requires court intervention. None of these reserved rights entitle BellSouth to unilaterally suspend service or prevent new orders.

This is to request that BellSouth provide assurances in plain language, and without legal reservations, that it will continue to abide by the terms of the Interconnection Agreement and accept new orders after March 11, 2005. To the extent

BellSouth cannot provide this assurance without qualification or reservation within five (5) business days, Cinergy Communications will consider such action an anticipatory breach of the Interconnection Agreement. Thereafter, Cinergy Communications will take all necessary legal action to enforce its rights under the Interconnection Agreement and seek damages for BellSouth's breach.

Very truly yours,



Robert A. Bye

Vice President and
General Counsel

Cc: Amy Hindman
John Cinelli



BellSouth Interconnection Services
675 West Peachtree Street
Atlanta, Georgia 30375

Carrier Notification
SN91085032

Date: February 8, 2005
To: Competitive Local Exchange Carriers (CLEC)
Subject: CLECs – (Product/Service) – Commercial Agreement for BellSouth DS0 Wholesale Local Voice Platform Services

On February 4, 2005, the Federal Communications Commission (FCC) released its Order on Remand ("Order"), which, among other things, relieved Incumbent Local Exchange Carriers ("ILEC") of their obligation to provide unbundled access to mass market switching and Unbundled Network Element-Platform ("UNE-P") services, on a nationwide basis, pursuant to Section 251 of the Act. The Order establishes a twelve-month transition period commencing March 11, 2005, during which CLECs must transition their embedded base of mass market switching and UNE-P lines to alternative arrangements. The Order further precludes CLECs from adding new UNE-P lines starting March 11, 2005.

As a result of these ordered changes, BellSouth would like to inform CLEC customers that through March 10, 2005, the day before the Order becomes effective, BellSouth will continue to offer its current DS0 Wholesale Local Voice Platform Services Commercial Agreement ("DS0 Agreement") with transitional discounts off of BellSouth's current market rate for mass market platform services. As of March 11, 2005, although BellSouth will continue to offer commercial agreements for DS0 switching and platform services, the pricing set forth in the current DS0 Agreement will no longer be available.

BellSouth encourages CLECs to contact their negotiator to find out more about its DS0 Agreement while the transitional discounts remain available.

Sincerely,

ORIGINAL SIGNED BY JERRY HENDRIX

Jerry Hendrix – Assistant Vice President
BellSouth Interconnection Services

BellSouth Interconnection Services

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Atlanta, Georgia 30375

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Sent Via Certified Mail and Electronic Mail

January 17, 2005

Mr. Robert A. Bye
Vice President and General Counsel
Cinergy Communications Company
8829 Bond Street
Overland Park, KS 66214

Dear Bob:

This is in response to your letter of January 7, 2005, and is a follow-up to our telephone conversation of January 13, 2005, regarding the Kentucky Broadband Act.

Although BellSouth has attempted to negotiate an amendment with Cinergy pursuant to change of law as a result of the Kentucky Statute KRS 278.546; Chapter 167 of the ACTS (Kentucky Broadband Act), Cinergy persists with its argument that an amendment is not needed because Digital Subscriber Line (DSL) over Unbundled Network Element (UNE-P) is commingling. BellSouth disagrees with this position, and has previously provided to Cinergy its position with regard to commingling.

In accordance with previous state Commission rulings, BellSouth has incorporated DSL over UNE-P language into Cinergy's Interconnection Agreement, regardless of appeals sought to overturn this ruling. By doing so, BellSouth fulfilled the "duty of each party to continue their respective obligations under the agreement" as you mention in your letter. Therefore, BellSouth would expect Cinergy to similarly comply with any and all rulings from the Kentucky Public Service Commission (KPSC) as a result of the decision in KPSC Docket 2004-501.

As stated to you in my letter of December 29, 2004, BellSouth has no intentions of breaching the Interconnection Agreement. However, BellSouth does intend to exercise its legal, equitable and/or regulatory rights and pursue modification, reformation or amendment of the existing Interconnection Agreement to properly reflect the Kentucky Broadband Act and current law.

As always, BellSouth stands ready to negotiate an amendment with Cinergy to comply with the Kentucky Broadband Act. ~~Should you wish to reconsider BellSouth's amendment, please contact me at 404.927.8998. Otherwise, we will resolve the dispute at the KPSC.~~

Sincerely,



Amy Hindman
Manager - Interconnection Services

cc: John Cinelli—Cinergy (via electronic mail)
Jerry Hendrix—BellSouth (via electronic mail)

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January 7, 2005

CINERGY
COMMUNICATIONS

Ms. Amy Hindman
BellSouth Interconnection Services
675 West PeachTree Street, NE
Room 34S91
Atlanta, GA 30375

Re: Kentucky Broadband Act

Dear Amy:

This responds to your letter of December 29, 2004. We disagree that an amendment to our Interconnection Agreement is required. It is our position that the Kentucky Broadband Act has no material affect on the Interconnection Agreement. BellSouth has raised this issue in KPSC Docket 2004-501. Comments in that docket are due January 20, 2005, and Cinergy Communications will timely file comments therein.

Cinergy Communications has consistent stated since the release of the TRO that DSL over UNE-P is commingling. BellSouth has incorporated the commingling language of 47 CFR § 51.309 into its tariff from which Cinergy Communications purchases its DSL, but has refused to provide DSL under the tariff despite repeated attempts to negotiate this into our agreements. It is our position that a change of law based upon commingling has been properly noticed pursuant to the Interconnection Agreement and, therefore, this issue must be part of any dispute resolution process. Even if the Kentucky Broadband Act requires a change of law, it is immaterial because BellSouth's tariff would require substantially the same language.

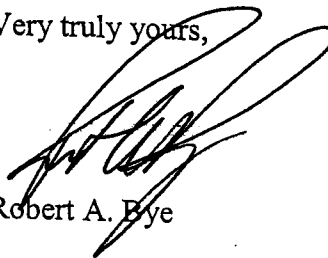
The only amendment that is necessary in Kentucky, as well as the other BellSouth states, is to add DSL over UNE-L as a service to which Cinergy Communications is entitled under the commingling language contained in BellSouth's Access Tariff. Cinergy Communications intends to seek this relief in the change of law proceedings associated with the FCC's forthcoming USTA II Order. The exception is Tennessee where a hearing on this issue scheduled in the pending Section 252 arbitration on February 28, 2005.

Your assertion regarding appeals is misguided. Section 17 references the dispute resolution procedures of Section 11 to the extent the parties cannot voluntarily agree on

an amendment. Section 11 anticipates that either party would seek judicial review of any ruling made by the Commission. The duty of each party to continue their respective obligations under the agreement while dispute resolution is pending also includes any and all appeals. Therefore, even if Cinergy Communications loses in KPSC Docket 2004-501, BellSouth will be required to provide DSL over UNE-P until all appeals are exhausted.

Based upon the above-referenced language in our Interconnection Agreement, any adverse action by BellSouth which has the effect of denying service or preventing new orders of DSL over UNE-P during the dispute resolution process, including appeals, is a knowing and intentional breach of the agreement. In the event of such a breach, Cinergy Communications shall have no choice but to seek injunctive relief as well as a claim for money damages based upon tortious interference with our customer contracts. Conduct yourself accordingly.

Very truly yours,



Robert A. Bye

Vice President and
General Counsel

Cc: Jerry Hendrix
John Cinelli

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December 14, 2004

Mr. Jerry Hendrix
Assistant Vice President
BellSouth Interconnection Services
675 West Peachtree St., NE
Atlanta, GA 30375

CINERGY.
COMMUNICATIONS

Re: Kentucky DSL over UNE-P

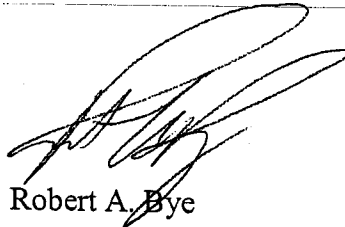
Dear Jerry:

Thank for taking time out to meet with me yesterday in Atlanta. We appreciate the opportunity to negotiate directly with BellSouth. It was obvious from our meeting that the parties are too far apart to reach a compromise. I look forward to resolving these issues in the Kentucky docket recently established by BellSouth, and welcome continued negotiations at any point during the dispute resolution process.

I was pleased by your reassurance that BellSouth would continue to carry on its obligations under the interconnection agreement while any dispute is pending pursuant to Section 11.1. You emphasized this point by exclaiming, "we're not lawbreakers here."

Section 11.1 of our agreement provides: "**the Parties agree to carry on their respective obligations under this Agreement, while any dispute resolution is pending.**" Please be advised that any attempt to prevent new orders or otherwise interrupt Cinergy Communications' service during the dispute resolution process (including appeals) shall constitute a material breach of the contract. Additionally, Cinergy Communications will also seek money damages for BellSouth's tortious interference with its customers.

Very truly yours,



Robert A. Bye

Vice President and
General Counsel