

**COMMONWEALTH OF KENTUCKY**

**BEFORE THE PUBLIC SERVICE COMMISSION**

In the Matter of: )  
)  
PETITION OF BELLSOUTH )  
TELECOMMUNICATIONS, INC. )  
TO ESTABLISH GENERIC DOCKET ) CASE NO. 2004-00427  
TO CONSIDER AMENDMENTS TO )  
INTERCONNECTION AGREEMENTS )  
RESULTING FROM CHANGES OF LAW )

**US LEC OF TENNESSEE INC.’S COMMENTS  
TO EMERGENCY MOTION OF CINERGY COMMUNICATIONS  
FOR DECLARATORY RULING**

US LEC of Tennessee Inc. (“US LEC”), pursuant to the Order issued on May 5, 2005 by the Commission inviting responses to the Emergency Motion of Cinergy Communications (“Cinergy”) for a Declaratory Ruling filed on April 26, 2005 (“Emergency Motion”) and by counsel, respectfully submits its comments in support of the Emergency Motion.

US LEC is a facilities-based competitive local exchange carrier (“CLEC”) in Kentucky, and, pursuant to an interconnection agreement with BellSouth Telecommunications, Inc. (“BellSouth”), may provision loops and transport from BellSouth on an unbundled non-discriminatory basis. US LEC does not provision unbundled local switching from BellSouth in combination with other unbundled network work elements (so-called “UNE Platform” or “UNE-P”). Nevertheless, the Commission’s decision on the Emergency Motion may affect BellSouth’s obligations to provide access to high capacity loops and dedicated transport to US LEC in the event that BellSouth wire centers in Kentucky are determined to meet the non-impairment

thresholds adopted by the Federal Communications Commission (“FCC”) in the Triennial Review Remand Order (“TRRO”).<sup>1</sup>

In the Triennial Review Order (“TRO”),<sup>2</sup> the FCC concluded that the BellSouth and the other Regional Bell Operating Companies (“RBOCs”) have on-going requirements under Section 271(c)(2)(B) of the Act to provide access to loops, switching, transport, and signaling separate from any unbundling obligations required under Section 251(c)(3) of the Act.<sup>3</sup> In the USTA II decision,<sup>4</sup> the D.C. Circuit Court of Appeals affirmed the FCC’s conclusion.<sup>5</sup>

US LEC supports the argument and conclusions in the Emergency Motion. Accordingly, US LEC asks that the Commission make the findings sought by Cinergy.

Respectfully submitted,

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<sup>1</sup> *Order on Remand*, 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, FCC 04-290 (rel. Feb. 4, 2005).

<sup>2</sup> *Report and Order and Order on Remand and Further Notice of Rulemaking*, Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, Implementation of Local Competition provisions of the Telecommunications Act of 1996, Deployment of Wireline Services Offering Advanced Telecommunications Capability, CC Docket Nos. 01-338, 96-98, 98-147, 18 FCC Rcd 16978 (2003).

<sup>3</sup> *Id.* ¶ 653.

<sup>4</sup> *United States Telecom Ass’n v. FCC*, 359 F.3d 554 (D.C. Cir. 2004) (“USTA II”).

<sup>5</sup> *Id.* p. 588.

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a copy of the foregoing US LEC of Tennessee Inc.'s Comments To Emergency Motion Of Cinergy Communications for Declaratory Ruling has been filed electronically as permitted by the procedural order governing Case No. 2004-00427 this 11<sup>th</sup> day of May, 2005.

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Douglas F. Brent