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SC PUBLIC SERVICE COMMISSION

November 18, 2005

The Honorable Charles L.A. Terreni
Chief Clerk/Administrator
Public Service Commission of South Carolina
101 Executive Center Drive, Suite 100
Columbia, South Carolina 29210

RE: Petition of BellSouth Telecommunications, Inc. to Establish Generic Docket to Consider Amendments to Interconnection Agreements resulting from Changes of Law

PSC Docket No. 2004-316-C

Dear Mr. Terreni:

During the hearing held by the Public Service Commission of South Carolina ("the Commission") in this docket on October 18, 2005, the Commission required parties of record to submit proposed orders by November 18, 2005. The Office of Regulatory Staff ("ORS") is opting not to file a proposed order, but is submitting this letter as a recommendation to the Commission.

This docket originated via a petition filed by BellSouth to determine how recent decisions by the Federal Communications Commission ("FCC") and the United States Court of Appeals for the District of Columbia Circuit affect existing interconnection agreements between BellSouth and CLECs in South Carolina. Specifically, the docket was concerned with the requirements of providing and pricing originally and formerly unbundled network elements that have been "delisted" as the result of FCC rulings. BellSouth filed similar petitions in all nine states in its region.

One of the central issues in this proceeding involved the applicability of Section 271 of the Federal Telecommunications Act and whether, after the FCC's issuance of its Triennial Review Remand Order, BellSouth is still required to include certain delisted elements such as local switching and high capacity DS-1 transport in their interconnection agreements and price these elements at TELRIC rates. Additionally, one

important factor put forth during this proceeding regarded whether the FCC had asserted exclusive jurisdiction over disputes arising from the offering and pricing of these elements and, thus, preempted the state Commissions from arbitrating these issues. The Commission would retain jurisdiction over these elements and the resulting pricing methodologies, however, if these items are deemed required to be included in Section 251 interconnection agreements.

During the hearing before the Commission on October 18, 2005, ORS supported the position that such delisted elements should be included in Section 251 agreements and that the interim rates proposed by CompSouth witness Joseph Gillan should be adopted pending a cost study by the Commission. Further, ORS recommended that the Commission should retain jurisdiction over these elements and not yield this control to the FCC. While this position was based on several grounds, ORS's overriding concern was the ability of CLECs to remain in the market as viable entities. ORS has been charged by the Legislature with protecting the public interest which includes ensuring the financial integrity of the utilities in South Carolina. ORS believed that by allowing these delisted elements to be priced at a "just and reasonable" rate without oversight by the Commission or market based regulation, CLECs could be priced out of the market leading to reduced competition in the state.

Since the hearing, ORS has had the opportunity to review several state Commission and court decisions ruling on these very issues. While a number of these orders have concluded that BellSouth is required to include such UNE elements in their interconnection agreements and that state Commissions do have the right to retain control over these issues, the majority have held otherwise. In most instances, Commissions have held, and courts have agreed, that the FCC established exclusive jurisdiction over these disputes. Further, the holdings predominately indicate that BellSouth is no longer required to include these UNEs in interconnection agreements or to price them at TELRIC.

While the preponderance of the decisions have favored BellSouth, ORS still believes there are legitimate issues relating to pricing and the financial viability of the competitive entities that should be considered by this Commission. In order to balance the likelihood of success on appeal with some state oversight of this process, ORS, therefore, recommends that the Commission follow the majority of holdings and to relinquish jurisdiction over these matters to the FCC. In so doing, ORS urges the Commission to consider incorporating the following procedures in its Order in this docket.

ORS recommends and believes that the public interest of the state will best be served if the Commission and ORS continue to be informed of disputes regarding 271 elements, including pricing. This would allow the public interest of South Carolina to be represented in the event such disputes are presented to the FCC. The Commission should allow any CLEC with a dispute regarding BellSouth's provisioning of Section 271 elements in South Carolina to inform the Commission and ORS of the dispute by filing a

notice with the Commission and ORS that describes the dispute with particularity. BellSouth should then be allowed a reasonable opportunity to respond to such notice. Upon considering the notice and any response, ORS will discuss the matter with the parties and report its findings and recommendations to the Commission. This process will allow the Commission and ORS to remain informed of BellSouth's provisioning of Section 271 elements in South Carolina and to consider all available options to address any concerns that may arise from such provisioning.

The Commission should further require any CLEC that files any FCC enforcement action against BellSouth regarding Section 271 elements to provide a copy of the filing to the Commission and ORS. This will allow the Commission and ORS to review the issues involved in the action and, if necessary and appropriate, ORS, on its own or at the request of the Commission, may intervene in the FCC action for the purposes of representing the public interest of the state of South Carolina.

ORS believes that the implementation of these procedures will ensure compliance with federal law and will provide the state the ability to protect the public interest effectively. Thank you for your consideration of this proposal and please let me know if you have any questions.

Sincerely,

Benjamin P. Mustian, Esq.

Cc: All Parties of Record

BEFORE

THE PUBLIC SERVICE COMMISSION OF

SOUTH CAROLINA

DOCKET NO. 2004-316-C

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In Re:	)	
	)	
Petition to Establish Generic Docket to Consider Amendments to Interconnection Agreements Resulting From Changes of Law	)	**CERTIFICATE OF SERVICE**
	)	

This is to certify that I, Pamela McMullan, an employee with the Office of Regulatory Staff, have this date served one (1) copy of the **INVESTIGATIVE REPORT ON EXTENDED CALLING AREA** in the above-referenced matter to the person(s) named below by causing said copy to be deposited in the United States Postal Service, first class postage prepaid and affixed thereto, and addressed as shown below:

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November 18, 2005
Columbia, South Carolina