

**BEFORE THE PUBLIC SERVICE COMMISSION
OF
THE STATE OF MISSISSIPPI**

IN RE:)	DOCKET NO. <u>2005-AD-139</u>
)	
Order Establishing Generic Docket to)	
Consider Change-of-Law To Existing)	
Interconnection Agreements)	

ORDER ESTABLISHING GENERIC DOCKET

COMES NOW, the Mississippi Public Service Commission ("Commission"), *sua sponte*, and directs the Executive Secretary to issue a notice to BellSouth Telecommunications, Inc. (BellSouth) and to all Competitive Local Exchange Carriers (CLECs) certificated by the Commission that the Commission hereby institutes a generic proceeding to address changes that may be required to existing approved interconnection agreements (ICAs) between BellSouth and various certificated CLECs as a result of decisions issued by the FCC and the reviewing court. These decisions include the FCC's *Triennial Review Order* (TRO) issued August of 2003; the *United States Court of Appeals for the District of Columbia Circuit Decision* (USTA II) issued March 2, 2004; the *FCC's Order Establishing Interim Rules* (Interim Rules) issued August 20, 2004; and the FCC's *Triennial Review Remand Order* (TRRO) recently issued on February 4, 2005.

The Commission takes note of the fact that on October 29, 2004, in Docket No. 2004-AD-0724, BellSouth filed a Petition to Establish Generic Docket. In that filing BellSouth requests the Commission to "institute a generic proceeding to consider what changes recent decisions from the FCC and DC Circuit require in existing approved interconnection agreements." The Commission did not establish the generic docket at that time because the TRRO had not been issued.

On March 1, 2005, a Joint Petition for Emergency Relief (Joint Petition) was filed by certain CLECs in Docket No. 2005-AD-138 seeking emergency declaratory relief. The Joint Petition is incorporated herein by reference. The Joint Petition was prompted by BellSouth's February 11, 2005, and February 25, 2005, Carrier Notification letters, stating, *inter alia*, that certain provisions of the FCC's

TRRO regarding new orders for certain elements are “self-effectuating” as of March 11, 2005, and that CLECs would not be able to order “new adds” for the “self-effectuating” elements. The letters indicated that BellSouth plans to unilaterally refuse to provide certain elements and to change certain pricing as of March 11, 2005, the effective date of the TRRO.¹ It appears from the letters and the Joint Petition that BellSouth’s position is that the TRRO supersedes certain provisions of existing ICAs, and in particular, the “change-of-law” provisions in each ICA.

A standard “change-of-law” provision² is included in each ICA that the Commission has approved. This provision states, that in the event of a “change-of-law” – which the TRRO obviously is – the parties will negotiate revisions to the ICAs. If the parties cannot agree, the issues will then be presented to this Commission for a resolution. The applicable standard contractual language is as follows:

In the event that any effective legislative, regulatory, judicial or other legal action materially affects any material terms of this Agreement, or the ability of <<customer_short_name>> or BellSouth to perform any material terms of this Agreement, <<customer_short_name>> or BellSouth may, on thirty (30) days’ written notice, require that such terms be renegotiated, and the Parties shall renegotiate in good faith such mutually acceptable new terms as may be required. In the event that such new terms are not renegotiated within forty-five (45) days after such notice, and either Party elects to pursue resolution of such amendment, such Party shall pursue the Dispute Resolution procedure set forth in this Agreement.

...if any dispute arises as to the interpretation of any provision of this Agreement or as to the proper implementation of this Agreement, the aggrieved party shall petition the Commission for a resolution of the dispute...Furthermore, the Parties agree to carry on their respective obligations under this Agreement, while any dispute resolution is pending.

The preceding discussion requires the Commission to establish an orderly proceeding where any needed revisions to the ICAs can be accomplished. The Commission has determined that the most efficient means to address the issues raised is to consider the “change-of-law” issues in this docket,

¹ It should be noted that on March 7, 2005, BellSouth circulated another Carrier Notification letter advising that “BellSouth will continue to accept CLEC orders for these ‘new adds’ until the earlier of (1) an order from an appropriate body, either a commission or a court, allowing BellSouth to reject these orders; or (2) April 17, 2005.”

² The Commission finds that said Agreements contain identical or substantially similar contractual terms, with some variance of time periods to negotiate.

instead of opening approximately 300 separate arbitration dockets, should the parties involved be unable to negotiate an agreement. The Commission finds that conducting individual “change-of-law” proceedings for each ICA would be impractical, unduly burdensome, duplicative, and wasteful of this Commission’s limited resources and the resources of the signatories to each ICA.

The Commission finds that Mississippi consumers currently benefiting from the services CLECs offer could be negatively impacted by BellSouth’s proposed course of action (“self-effectuating position”). The Commission finds that the public interest requires it to establish this docket and create an orderly process to amend existing ICAs. It should be noted, that establishing this docket does not relieve the parties of their obligation to seek resolution through the “change-of-law” or § 252 provisions requiring negotiation. Both the “change-of-law” and § 252 provisions direct that this Commission be the final arbiter in the event that negotiations fail. The Commission, in this instance, will accomplish this through the medium of this generic docket.

The Commission finds that BellSouth should be directed to continue accepting and provisioning CLECs orders, as provided for in the ICAs. Additionally, BellSouth should be directed to maintain the same pricing that is established in the ICAs.

The Commission takes official notice that BellSouth, in its filings with other state commissions on this issue, has contended it will suffer financial harm if it cannot implement what it refers to as the “self-effectuating” provisions of the TRRO. Before the other commissions, BellSouth has sought a “true-up mechanism” to protect itself from financial harm arising from potential lost revenues. Balancing the public interest, with the interests of BellSouth and the CLECs, the Commission will, at a later time, if necessary, direct that there be a true-up proceeding that will determine how rates and charges will be adjusted retroactively to March 11, 2005.

IT IS THEREFORE, ORDERED, that BellSouth, in accordance with the terms of this Order, honor all valid existing ICAs approved by this Commission until the “change-of-law” issues raised herein have been addressed by this Commission or through negotiation.

IT IS FURTHER ORDERED, that the Executive Secretary of this Commission shall immediately issue notice to BellSouth and all CLECs of this proceeding and that all certificated CLECs who desire to participate in this proceeding shall file a Notice of Intervention no later than twenty (20) days from the receipt of notice.

IT IS FURTHER ORDERED, that a Scheduling Order will be forthcoming.

IT IS FURTHER ORDERED, that BellSouth file a comprehensive "Issues Matrix" designating the issues to be addressed in this docket no later than twenty (20) days from the date of issuance. The "Issues Matrix" shall be annotated with specific legal authority (TRO, USTA II, Interim Rules and/or TRRO) supporting BellSouth's position. CLECs who intervene in this proceeding, shall respond to BellSouth's "Issues Matrix" and may also provide a proposed "Issues Matrix" no later than twenty (20) days from the filing of BellSouth's "Issues Matrix".

IT IS FURTHER ORDERED, that this Order is effective upon issuance.

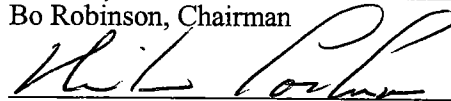
SO ORDERED, this the 9th day of March, 2005.



MISSISSIPPI PUBLIC SERVICE COMMISSION



Bo Robinson, Chairman



Nielsen Cochran, Vice-Chairman



Michael Callahan, Commissioner

ATTEST: A True Copy


Brian U. Ray
Executive Secretary

**MISSISSIPPI
PUBLIC SERVICE COMMISSION
JACKSON, MISSISSIPPI**

March 09, 2005

2005-AD-139

MISSISSIPPI PUBLIC SERVICE COMMISSION

IN RE:
ORDER ESTABLISHING GENERIC DOCKET TO CONSIDER
CHANGE-OF-LAW TO EXISTING INTERCONNECTION
AGREEMENTS.

NOTICE

Notice is hereby given that on the 9th day of March, 2005, the Mississippi Public Service, on its own motion, established the above referenced matter.

Any person desiring to participate in or receive further notice of these proceedings is required under Rule 6J of the Commission's Public Utility Rules of Practice and Procedure to file a written petition to intervene on or before twenty (20) days from the date of this notice.

This cause is returnable to the next regular meeting of the Commission to be held at 10:00 A.M., Tuesday, April 5, 2005, at the Mississippi Public Service Commission, 1st Floor, Woolfolk State Office Building, Jackson, Mississippi. This cause may be subject to being set for disposition on a hearing date not less than twenty (20) days from the date of publication of this Notice. If protest, answer or other appropriate pleading is on file in response to this matter, the Commission will consider same on said hearing date.

WITNESS MY HAND AND THE OFFICIAL SEAL of the Mississippi Public Service Commission, on this, the 9th day of March, 2005.





Brian U. Ray
Executive Secretary