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December 8, 2004

EX PARTE

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

Re: *Unbundled Access to Network Elements*, WC Docket No. 04-313;

Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, CC Docket No. 01-338;

Dear Ms. Dortch:

BellSouth Telecommunications, Inc. ("BellSouth") submits this response to a recent ex parte from AT&T Corp. ("AT&T") concerning the process by which interconnection agreements are amended to conform to the Commission's unbundling decisions.¹ AT&T requests that the Commission direct state public service commission to resolve "change of law disputes arising from the *Triennial Review Order* before any change in law dispute proceedings initiated in the wake of the Commission's order in this proceeding."

The purported justification for this request -- that ILECs "have steadfastly refused to implement" the Commission's unbundling decisions in the *Triennial Review Order* -- is misleading at best and borders on outright fabrication. While AT&T would like this Commission to believe that it is the incumbents that have refused to implement the *Triennial Review Order*, it is in fact AT&T that has refused to amend its interconnection agreements and has otherwise sought to game the change-of-law process.

With respect to BellSouth, AT&T insists that BellSouth "has refused to modify its [interconnection agreements] with AT&T to remove unlawful commingling restrictions despite the fact AT&T was proposing language that was drawn directly from BellSouth's post-*Triennial Review Order* SGAT." The truth of the matter is that, after the *Triennial Review Order* took effect, BellSouth, pursuant to the change of law provisions of its interconnection agreements with AT&T in the states of Florida, Kentucky, Louisiana, South Carolina and Tennessee, sent a

¹ Ex Parte Letter from C. Frederick Beckner III, Counsel to AT&T, to Marlene Dortch, Secretary, FCC (December 7, 2004) ("*AT&T Ex Parte*").

letter to AT&T dated October 28, 2003, requesting an amendment of those agreements.² BellSouth forwarded its proposed *Triennial Review Order* amendment to AT&T on December 11, 2003. That amendment contained contract language necessary to implement the *Triennial Review Order* in its entirety, including the commingling provisions adopted by the Commission. In the past year since BellSouth provided its proposed amendment to AT&T, AT&T has essentially ignored BellSouth's proposal and failed to offer any justifiable reason for ignoring its contractual requirement to implement this change of law upon BellSouth's request.

While BellSouth was attempting to negotiate *Triennial Review Order* amendments with competing local exchange carriers ("CLECs"), BellSouth also filed a modified Statement of Generally Available Terms ("SGAT") in most of its states to implement the provisions of the *Triennial Review Order*. While ignoring BellSouth's desire to amend the interconnection agreements, on February 23, 2004, AT&T requested to adopt the commingling language from BellSouth's newly filed SGATs in Florida and Georgia, which was identical to the language that BellSouth had proposed to AT&T in its amendment. Not surprisingly, AT&T did not request any other *Triennial Review Order* provisions from the SGAT.

BellSouth declined AT&T's request to amend its interconnection agreement by seeking to adopt favorable provisions from BellSouth's SGAT because Section 252(i), upon which AT&T relied, applies only to the adoption of an approved interconnection agreement, not an SGAT.³ That Section 252(i) does not authorize the adoption of individual provisions in an SGAT recently was confirmed by the Commission when modifying its rules regarding a CLEC's adoption rights pursuant to Section 252(i). These new rules, which took effect August 23, 2004, do not allow a CLEC to adopt single provisions of an interconnection agreement but instead require that a CLEC adopt an approved interconnection agreement in its entirety.

In adopting these new rules, the Commission noted the four options for entering into interconnection agreements that are available to CLECs. These four options allow a requesting carrier to:

² In light of the fact that at the time the *Triennial Review Order* became effective, BellSouth and AT&T were in the process of renegotiating their Alabama interconnection agreement, the *Triennial Review Order* change of law request for AT&T's Alabama interconnection agreement was dated February 9, 2004, just after that agreement had been executed. Further, because negotiations for agreements in the states of Georgia, Mississippi and North Carolina were commencing at the time of the effective date of the *Triennial Review Order*, BellSouth did not send AT&T change of law notices for those states.

³ See 47 U.S.C. § 252(i) (requiring a local exchange carrier "to make available any interconnection service or network elements provided under *an agreement approved by this section ...*") (emphasis added); 47 C.F.R. § 51.809(a) (requiring that "any individual interconnection, service, or network element arrangement *contained in any agreement ...*" be made available to a requesting carrier) (emphasis added); see also Second Report and Order, *In re: Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, CC Docket No. 01-338, ¶ 2 (July 13, 2004) (noting that the FCC has "interpreted section 252(i) to mean that requesting carriers can choose among *individual provisions contained in publicly filed interconnection agreements*") (hereinafter referred to as "*Second Report and Order*") (emphasis added).

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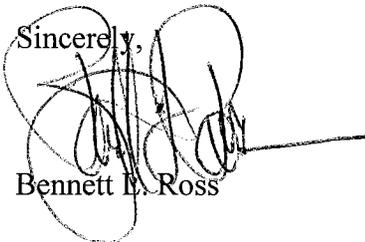
- (1) purchase services and elements through an SGAT in states with effective SGATs;
- (2) pick and choose individual provisions from existing agreements negotiated by other competitive carriers;
- (3) adopt an entire agreement negotiated by another competitive carrier; or
- (4) negotiate a new interconnection agreement with the incumbent LEC.⁴

Noticeably absent from the Commission's list of options available to a requesting carrier is the option that AT&T sought to exercise in Florida and Georgia – namely, the ability to “pick and choose” individual provisions of an SGAT.

Importantly, while AT&T disputed BellSouth's objections to its SGAT adoption request, it never filed a complaint with either the Florida or Georgia state public service commissions. And, of course, AT&T never entered into an amendment implementing the *Triennial Review Order*, which would have allowed AT&T to avail itself of the commingling language it desired.

In the case of implementation of the requirements of the *Triennial Review Order*, BellSouth sought amendment to incorporate *all* the terms of that order promptly after it took effect. By contrast, AT&T sought to implement only provisions favorable to AT&T by failing to negotiate in good faith and by seeking to adopt selective portions of an SGAT to which it was not entitled. But for AT&T's actions, the requirements of the *Triennial Review Order* could have been incorporated expeditiously into the parties' interconnection agreement.

Please include a copy of this letter in the record in the above-referenced proceedings. Thank you for your attention to this matter.

Sincerely,

Bennett B. Ross

BLR:kjw

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cc:	Christopher Libertelli	Russell Hanser	Thomas Navin
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⁴ *Second Report and Order* ¶ 9, n.35.