

BEFORE THE TENNESSEE REGULATORY AUTHORITY
NASHVILLE, TENNESSEE

February 20, 2004

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IN RE Petition of LoadPoint, LLC for) Docket No 04-00060
Arbitration with BellSouth)
Telecommunications, Inc Pursuant to 47)
U S C § 252)

**PETITION OF LOADPOINT, LLC FOR ARBITRATION WITH BELLSOUTH
TELECOMMUNICATIONS, INC. PURSUANT TO 47 U.S.C. § 252**

LoadPoint, LLC (“LoadPoint”) hereby petitions the Tennessee Regulatory Authority, pursuant to 47 U S C § 252(b), to arbitrate an interconnection agreement with BellSouth Telecommunications, Inc (“BellSouth”) There is one issue to be arbitrated Whether LoadPoint may adopt, pursuant to 47 U S C § 252(i) and 47 C F R § 51 809(a), the interconnection agreement between BellSouth and Time Warner Telecom of Mid-South L P (“Time Warner”), a three-year agreement which became effective when approved by the Tennessee Regulatory Authority on May 30, 2003, in Docket 03-00190

In support hereof, LoadPoint states as follows

PARTIES

1 The name and address of the Petitioner are

LoadPoint
3200 West End Ave.
Nashville, Tennessee 37203

2 All pleadings, documents, correspondence, notices, staff recommendations and orders filed, served or issued in this docket should be served on the following

Henry Walker
Boult, Cummings, Conners & Berry, PLC
414 Union Street, Suite 1600
Nashville, Tennessee 37219
(615) 252-2363

3 BellSouth is an incumbent local exchange carrier (ILEC) providing telecommunications services in Tennessee. BellSouth's official business address is

BellSouth Telecommunications, Inc
333 Commerce Street
Nashville, TN 37204

FACTUAL BACKGROUND

4 On April 22, 2002, BellSouth and LoadPoint petitioned the Authority for approval of an interconnection agreement. LoadPoint had adopted the interconnection agreement of XO Tennessee, Inc ("XO") which was approved by the Authority on November 21, 2000. On June 25, 2002, the Authority issued an Order (Docket 02-00467) in which the Authority took no action on the Petition but recognized that the interconnection agreement between LoadPoint and BellSouth would become effective by operation of law on July 22, 2002.

5 The parties have engaged in negotiations but have been unable to arrive at a new interconnection agreement. By mutual consent, the parties have extended the current agreement, as well as the period for filing an arbitration petition, through February 20, 2004.

6 On December 22, 2003, LoadPoint informed BellSouth that LoadPoint wished to adopt the Time Warner agreement pursuant to 47 U.S.C. § 251(i). BellSouth declined to allow LoadPoint to adopt the Time Warner agreement on the grounds that the Agreement has not yet been amended to incorporate the recent rulings of the Federal

Communications Commission in the Triennial Review Order¹ BellSouth proposed to allow LoadPoint to adopt the Time Warner agreement only if LoadPoint would agree to amend the agreement by adding additional language, drafted by BellSouth, regarding the TRO

7 LoadPoint and BellSouth have been unable to agree to BellSouth's proposed TRO language LoadPoint believes that BellSouth's language takes a one-sided view of the TRO and also makes changes that go beyond the TRO

8 On February 18, 2004, LoadPoint again requested the right to adopt the Time Warner agreement BellSouth again declined, reiterating their position that BellSouth would not execute any agreement that had not been updated to reflect the TRO

DISCUSSION

9 Section 252(i) of the Telecommunications Act of 1996 provides

A local exchange carrier shall make available any interconnection service, or network element provided under an agreement approved under this section to which it is a party to any other requesting telecommunications carrier upon the same terms and conditions as those provided in the agreement

10 47 C F R § 51.809(a) (from the rules of the FCC) states that

An incumbent LEC shall make available without unreasonable delay to any requesting telecommunications carrier any individual interconnection, service or network element arrangement contained in any agreement to which it is a party that is approved by a state

¹ Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, CC Docket No. 01-338, Implementation of the Telecommunications Act of 1996, CC Docket No. 96-98, Deployment of Wireline Services Offering Advanced Telecommunications Capability, CC Docket No. 98-147, FCC 03-36, 579-584 (rel. August 21, 2003) ("Triennial Review Order" or "TRO")

commission pursuant to section 252 of the Act, upon the same rates, terms and conditions as those provided in the agreement

11 The Time Warner Agreement is an agreement to which BellSouth is a party, and it contains the terms and conditions for individual interconnection, service or network element arrangements that LoadPoint has asked to be made available to it pursuant to Section 252(i). The agreement is a three-year agreement which became effective when approved by the TRA on May 30, 2003. LoadPoint submits that the agreement is available for election by LoadPoint to adopt, and BellSouth must make it available without further delay.

12 BellSouth has no legal basis for declining to allow LoadPoint to adopt the Time Warner agreement. Although the Time Warner agreement does not address the FCC's rulings in the TRO, the agreement does include a change-of-law provision which requires the parties to amend the agreement to make it conform to "any regulatory action [which] materially affects any material terms of this Agreement." General Terms and Conditions, Section 14.3. The provision states in full

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 TWTC [Time Warner] or BellSouth to perform any material terms of this Agreement, TWTC 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 ninety (90) days after such notice, the Dispute shall be referred to the Dispute Resolution procedure set forth in this Agreement.

Under the "Dispute Resolution" provision of the agreement, Section 10, either party may petition the Authority for relief if the parties are unable to agree. Thus, LoadPoint may adopt the Time Warner agreement and then negotiate with BellSouth language regarding

the TRO If the parties are unable to agree, either may then ask the Authority to settle the matter

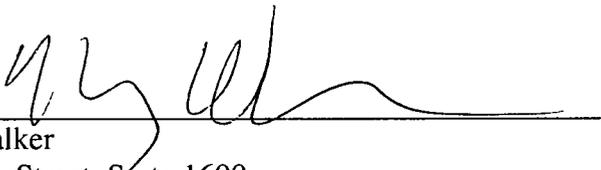
CONCLUSION

This arbitration proceeding has one issue whether LoadPoint adopt into the Time Warner interconnection agreement BellSouth has no legal basis upon which to deny LoadPoint's request Therefore, LoadPoint asks that the Authority convene an arbitration proceeding and direct BellSouth to allow LoadPoint to adopt the Time Warner agreement

Respectfully submitted,

BOULT, CUMMINGS, CONNERS & BERRY, PLC

By


Henry Walker
414 Union Street, Suite 1600
P O Box 198062
Nashville, Tennessee 37219
(615) 252-2363

CERTIFICATE OF SERVICE

I hereby certify that on February 20, 2004, a copy of the foregoing document was serviced on the parties of record, via US mail

Guy Hicks, Esq
BellSouth Telecommunications, Inc
333 Commerce Street, Suite 2101
Nashville, TN 37201-3300


Henry Walker