REQUIRES MONITORING
OR STAFF ACTION_____

COMMISSION DIRECTIVE

ADMINISTRATIVE DEPT. _____ DATE FEBRUARY 24, 2004

TRANSPORTATION DEPT. _____ DOCKET NO. 2004-42-C

UTILITIES DEPT. XXX ORDER NO. _____

SUBJECT:

DOCKET NO. 2004-42-C – Joint Petition for Arbitration of NewSouth Communications Corp., NuVox Communications, Inc., KMC Telecom V, Inc., KMC Telecom III LLC, and Xspedius (Affiliates) of an Interconnection Agreement with BellSouth Telecommunications, Inc. *Advise Commission of receipt of a Joint Petition for Arbitration filed by John J. Pringle, Jr., Esquire, on behalf of the Petitioners. Discuss with the Commission a scheduling order.*

COMMISSION ACTION:

CARRY OVER

PRESIDING CLYBURN

ATKINS _____

CARRUTH _____

CLYBURN _____

MITCHELL _____

MOSELEY _____

SAUNDERS _____

THEODORE _____

REGULAR SESSION X

SPECIAL SESSION _____

TIME OF SESSION 10:30 AM

APPROVED _____

APPROVED STC 30 DAYS _____

ACCEPTED FOR FILING _____

DENIED _____

AMENDED _____

TRANSFERRED _____

SUSPENDED _____

CANCELED _____

SET FOR HEARING _____

ADVISED _____

CARRIED OVER √

RECORDED BY J.McDaniel

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February 13, 2004

John J. Pringle, Esq.
Ellis, Lawhorne & Sims, P.A.
1501 Main Street, 5th Floor
P.O. Box 2285
Columbia, S.C. 29202

IN RE: Docket No. 2004-42-C – Joint Petition for Arbitration of NewSouth Communications, Corp., NuVox Communications, Inc., KMC Telecom III LLC, and Xspedius [Affiliates] of an Interconnection Agreement With BellSouth Telecommunications, Inc. Pursuant to Sections 252 (b) Of the Communications Act of 1934, as Amended

Dear Mr. Pringle:

This office has received your application, which has been assigned the above referenced docket number. This docket will be processed as soon as possible.

PLEASE BE ADVISED THAT THE COMMISSION'S RULES AND REGULATIONS AND EXISTING SOUTH CAROLINA LAW REQUIRE PARTICIPATION BY AN ATTORNEY ADMITTED TO PRACTICE IN SOUTH CAROLINA FOR THE REPRESENTATION OF THE INTERESTS OF ANY PERSON OR GROUP OF PERSONS OTHER THAN AN INDIVIDUAL'S INTEREST. If an attorney from outside South Carolina wishes to represent a party before the Commission, then he or she must be accompanied by an attorney admitted to practice in South Carolina. Your attention is directed to R. 103-804 (s) of the Rules of Practice and Procedure of the Commission regarding representation.

If you have any questions relative to this docket, please call the Commission at (803) 896-5125.

Very truly yours,

Bruce F. Duke
Deputy Executive Director

BFD/ccl

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Jmm DSL
L Flo JES

ELLIS : LAWHORNE

John J. Pringle, Jr.
Direct dial: 803/343-1270
jpringle@ellislawhorne.com

February 11, 2004

The Honorable Bruce Duke
Executive Director
South Carolina Public Service Commission
Post Office Drawer 11649
Columbia, South Carolina 29211

2004-42C

RECEIVED
2004 FEB 11 PM 4:25
SC PUBLIC SERVICE COMMISSION

RE: Joint Petition for Arbitration of NewSouth Communications, Corp., NuVox Communications, Inc., KMC Telecom V, Inc., KMC Telecom III LLC, and Xspedius [Affiliates] of an Interconnection Agreement with BellSouth Telecommunications, Inc. Pursuant to Section 252(b) of the Communications Act of 1934, as Amended
Our File No. 803-10208

Dear Mr. Duke:

Enclosed is the original and ten (10) copies of the **Petition for Arbitration** for filing on behalf of NewSouth Communications, Corp., NuVox Communications, Inc., KMC Telecom V, Inc., KMC Telecom III LLC, and Xspedius [Affiliates] in the above-referenced matter.

Please acknowledge your receipt of this document by file-stamping the copy of this letter enclosed, and returning it in the envelope provided. By copy of this letter, I am serving all parties of record and enclose my certificate of service to that effect.

If you have any questions or need additional information, please do not hesitate to contact me.

With kind regards, I am

Very truly yours,

John J. Pringle, Jr.

John J. Pringle, Jr.

S. C. PUBLIC SERVICE COMMISSION
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UTILITIES DEPARTMENT

JJP/cr
cc: all parties of record
Enclosures
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BEFORE THE
SOUTH CAROLINA PUBLIC SERVICE COMMISSION

In the Matter of	)	
	)	
Joint Petition for Arbitration of	)	
NewSouth Communications, Corp.,	)	
NuVox Communications, Inc.,	)	
KMC Telecom V, Inc.,	)	**CERTIFICATE OF SERVICE**
KMC Telecom III LLC, and	)	
Xspedius [Affiliates] of an	)	
Interconnection Agreement with	)	
BellSouth Telecommunications, Inc.	)	
Pursuant to Section 252(b) of the	)	
Communications Act of 1934,	)	
as Amended	)	

RECEIVED
2004 FEB 11 PM 4: 25
SC PUBLIC SERVICE COMMISSION

This is to certify that I have caused to be served this day, one (1) copy of the **Petition for Arbitration** by placing a copy of same in the care and custody of the United States Postal Service (unless otherwise specified), with proper first-class postage affixed hereto and addressed as follows:

VIA HAND DELIVERY
Patrick Turner, Esquire
BellSouth Telecommunications, Inc.
1600 Williams Street
Columbia SC 29201

Carol Roof

Carol Roof

February 11, 2004
Columbia, South Carolina
F:\APPS\OFFICE\WPWIN\WPDOCS\KMC-NewSouth-Nuvox-Xspedius\cert.service.wpd

ACCEPTED
Legal 2-12-04

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BEFORE THE
SOUTH CAROLINA PUBLIC SERVICE COMMISSION

DOCKET NO. 2004-42-C

POSTED 01/02/13:04

In the Matter of	)
	)
Joint Petition for Arbitration of	)
	)
NewSouth Communications Corp., NuVox Communications, Inc. KMC Telecom V, Inc., KMC Telecom III LLC, and Xspedius Communications, LLC on Behalf of its Operating Subsidiaries Xspedius Management Co. Switched Services, LLC, Xspedius Management Co. of Charleston, LLC, Xspedius Management Co. of Columbia, LLC, Xspedius Management Co. of Greenville, LLC, and Xspedius Management Co. of Spartanburg, LLC	)
	)
Of an Interconnection Agreement with BellSouth Telecommunications, Inc. Pursuant to Section 252(b) of the Communications Act of 1934, as Amended	)

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SC PUBLIC SERVICE COMMISSION

JOINT PETITION FOR ARBITRATION

NewSouth Communications Corp. ("NewSouth"); **NuVox Communications, Inc.** ("NuVox"); **KMC Telecom V, Inc.** ("KMC V") and **KMC Telecom III LLC** ("KMC III") (collectively, "KMC"); and **Xspedius Communications, LLC** on behalf of its operating subsidiaries **Xspedius Management Co. Switched Services, LLC** ("Xspedius Switched"), **Xspedius Management Co. of Charleston, LLC** ("Xspedius Charleston"), **Xspedius**

Management Co. of Columbia, LLC ("Xspedius Columbia"), **Xspedius Management Co. of Greenville, LLC** ("Xspedius Greenville"), and **Xspedius Management Co. of Spartanburg, LLC** ("Xspedius Spartanburg") (collectively "Xspedius") (collectively, the "Joint Petitioners" or "CLECs"), by their attorneys and pursuant to Section 252(b) of the Communications Act of 1934, as amended (the "Communications Act"); S.C. Code Section 58-9-280(D); Article 8, Practice and Procedure, Public Service Commission Rules and Regulations; and other applicable statutes, rules and regulations, and decisions, hereby file with the South Carolina Public Service Commission (the "Commission") this Joint Petition for Arbitration (the "Joint Petition") seeking resolution of certain issues arising between the Joint Petitioners and BellSouth Telecommunications, Inc. ("BellSouth") in the negotiation of an interconnection agreement. In support of this Joint Petition, the Joint Petitioners state as follows:

I. DESIGNATED CONTACTS

1. All communications, filings, and submissions in this proceeding, including but not limited to, correspondence, notices, inquiries, and orders, should be served upon the following designated contacts for the Joint Petitioners:

For NewSouth:

Jake E. Jennings, Senior Vice President,
Regulatory Affairs and Carrier Relations
Two North Main Street
Greenville, South Carolina 29601
Tel. (864) 672-5877
Fax (864) 672-5105

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For NuVox:

Bo Russell, Regional Vice President – Regulatory and Legal Affairs SE
301 North Main Street, Suite 5000
Greenville, South Carolina 29601
Tel. (864) 331-7323
Fax (864) 313-1236

For KMC:

Marva Brown Johnson, Senior Regulatory Policy Advisor
1755 North Brown Road
Lawrenceville, Georgia 30043
Tel. (678) 985-6220
Fax (678) 985-6213

For Xspedius:

James C. Falvey, Senior Vice President – Regulatory Affairs
7125 Columbia Gateway Drive, Suite 200
Columbia, Maryland 21046
Tel. (301) 361-4298
Fax (301) 361-7654

with a copy to:

John J. Heitmann
Enrico C. Soriano
Heather T. Hendrickson
KELLEY DRYE & WARREN LLP
1200 Nineteenth Street, N.W., Suite 500
Washington, D.C. 20036
Tel. (202) 955-9600
Fax (202) 955-9792
jheitmann@kelleydrye.com
esoriano@kelleydrye.com
hhendrickson@kelleydrye.com

and to:

John J. Pringle, Jr.
ELLIS, LAWHORNE & SIMS, P.A.
1501 Main Street, Fifth Floor, P.O. Box 2285
Columbia, SC 29202
Tel. 803-254-4190/803-343-1270 (direct)
Fax 803-779-4749
jpringle@ellislawhorne.com

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2. BellSouth's attorneys and lead negotiators are:

J. Philip Carver
Rhona Reynolds
Annamarie LeMoine
BELLSOUTH TELECOMMUNICATIONS, INC.
1155 Peachtree Street NE
Atlanta, Georgia 30309-3610
Tel. (404) 249-2000

Jim Tamplin
Julie O'Kelley
Shelley Decker
BELLSOUTH TELECOMMUNICATIONS, INC.
1155 Peachtree Street NE
Atlanta, Georgia 30309-3610
Tel. (404) 249-2000

II. STATEMENT OF FACTS

3. BellSouth is an incumbent local exchange carrier ("ILEC"), as defined by the Communications Act. *See* 47 U.S.C. § 251(h). To the best of the Joint Petitioners' knowledge, BellSouth's executive offices are located at 1155 Peachtree Street NE, Atlanta, Georgia 30309-3610. Within its operating territory, including South Carolina, BellSouth has, at relevant times, been a dominant provider of telephone exchange service.

4. Pursuant to the Communications Act, BellSouth is required to provide to requesting telecommunications carriers, through negotiation or otherwise, interconnection, access to unbundled network elements ("UNEs"), collocation, number portability, dialing parity, access to rights-of-way, reciprocal compensation, and resale, among other things. *See* 47 U.S.C. §§ 251(b)-(c). The terms and conditions of interconnection must comply with the provisions of sections 251 and 252 of the Communications Act. *See* 47 U.S.C. § 251(c). Section 252(d) of the Communications Act governs the pricing of UNEs, interconnection, reciprocal compensation, and resale services.

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5. Joint Petitioner NewSouth is a competitive local exchange carrier formed under the laws of the State of Delaware, and having its principal place of business at Two North Main Street, Greenville, South Carolina 29601. NewSouth currently provides or is authorized to provide voice and data, local, long distance, and bundled telecommunications services in several states. In South Carolina, NewSouth is authorized by the Commission to provide local exchange and long distance communications services pursuant to Docket No. 97-467-C, Order No. 98-165, issued March 5, 1998.

6. Joint Petitioner NuVox is a competitive local exchange carrier formed under the laws of the State of South Carolina, and having its principal place of business at 301 N. Main Street, Suite 5000, Greenville, SC. NuVox currently provides or is authorized to provide local and long distance telecommunications services in several states. In South Carolina, NuVox is authorized by the Commission to provide local and long distance telecommunications services pursuant to Order No. 98-395, Docket No. 98-129-C, dated May 29, 1998.

7. Joint Petitioner KMC is a competitive local exchange carrier formed under the laws of the State of Delaware, and having its principal place of business at 1755 North Brown Road, Lawrenceville, GA 30043. KMC currently provides or is authorized to provide telecommunications services in several states. In South Carolina, KMC III is authorized by the Commission to provide intrastate interexchange services, switched and special access, and local exchange telecommunications services pursuant to Docket No. 96-337-C, Order No. 97-149, dated February 24, 1997. Likewise, KMC V has been granted a certificate of local exchange and interexchange authority by the Commission in Docket No. 2001-17-C.

8. Joint Petitioners Xspedius Switched, Xspedius Charleston, Xspedius Columbia, Xspedius Greenville, and Xspedius Spartanburg, LLC are limited liability companies

formed under the laws of the State of Delaware, and having their principal place of business at 5555 Winghaven Boulevard, Suite 300, O'Fallon, Missouri 63366. Xspedius Switched is authorized to provide switched telecommunications services, pursuant to Docket No. 2002-230-C. Xspedius Charleston, Xspedius Columbia, Xspedius Greenville, and Xspedius Spartanburg are authorized as Competitive Access Providers in South Carolina, pursuant to Docket Nos. 2002-226-C, 2002-228-C, 2002-229-C, and 2002-227-C.

9. Joint Petitioners previously entered into interconnection agreements with BellSouth which were subsequently approved by the Commission. These interconnection agreements have expired, although the Joint Petitioners and BellSouth have agreed to continue to operate pursuant to the rates, terms, and conditions of their respective interconnection agreements until such time as their replacement interconnection agreements are approved by the Commission.

10. Prior to the expiration of their interconnection agreements, BellSouth provided to the Joint Petitioners requests for negotiation of a new interconnection agreement. Negotiations began on September 6, 2003. Accordingly, the window for filing a formal request for arbitration under the Communications Act opened on January 17, 2004, and closes on February 11, 2004.

11. Subsequent to the Joint Petitioners' receipt of BellSouth's requests for negotiation, Joint Petitioners and BellSouth held numerous meetings, both in person and by telephone, to discuss the rates, terms, and conditions pursuant to which BellSouth would provide to Joint Petitioners interconnection, access to UNEs, collocation, and resale, among other things. As a result of these good faith negotiations, Joint Petitioners and BellSouth have reached agreement on many of the issues raised during the statutorily prescribed interconnection

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negotiation period. However, Joint Petitioners and BellSouth have not reached agreement on a number of other issues. Consequently, Joint Petitioners are filing this Joint Petition, pursuant to Section 252 of the Communications Act and other applicable law, to seek arbitration of the issues that remain unresolved.

12. The Joint Petitioners are filing a joint petition for arbitration as opposed to several individual petitions for arbitration because, in order to maximize limited resources, efficiency, and bargaining power, they have been negotiating with BellSouth as a group. Moreover, the vast majority of the issues that remain in dispute are common to each of the Joint Petitioners. Specifically, all the issues related to all the attachments, other than Attachment 3, are shared in common by the Joint Petitioners. Of the 107 issues set for arbitration, only ten issues are not common among all parties and only six of those ten issues are single-party issues. No CLEC party takes a position adverse to the position taken by the other CLEC parties and, to the fullest extent possible, CLECs anticipate the use of a "team" witness approach. Because there are common questions of law and fact in this arbitration proceeding, separate filings and hearings would result in unwarranted expense to the parties and the Commission, as well as unnecessary delay, particularly considering the statutory deadline within which the Commission is charged with concluding this arbitration proceeding. Accordingly, the Joint Petitioners submit that, for reasons of administrative efficiency and economy, a joint petition and hearing is appropriate. Alternatively, should the Commission decide that separate petitions for arbitration should be filed by each of the Joint Petitioners, the Joint Petitioners respectfully request that the Commission (a) grant them adequate time to prepare and submit their individual petitions for arbitration, and (b) toll the statutory deadlines imposed by Section 252(b)(1) of the Communications Act for good cause.

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III. JURISDICTION AND APPLICABLE LAW

13. Under the Communications Act, parties to an interconnection negotiation have the right to petition the relevant state commission for arbitration of any open issue whenever negotiations between them fail to yield an agreement. *See* 47 U.S.C. § 252(b). Either party may seek arbitration during the period between the 135th day and the 160th day, inclusive, after the date the ILEC received the request for negotiation. *Id.*

14. Because negotiations began on September 6, 2003, the statutory window for filing a formal request for arbitration opened on January 17, 2004, and closes on February 11, 2004. Accordingly, this Joint Petition is timely filed. Section 252(b)(4)(C) of the Communications Act requires that the Commission conclude the resolution of any unresolved issues within nine (9) months after the request for interconnection negotiation was initiated. 47 U.S.C. § 252(b)(4)(C). Consequently, unless the Joint Petitioners waive the statutory deadline, the Commission must conclude this arbitration no later than June 6, 2004.

15. The Federal Communications Commission (the "FCC") established the appropriate standard for arbitration under Sections 251 and 252 of the Act in *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, First Report and Order (rel. Aug. 8, 1996) (*Local Competition Order*). Pursuant to the *Local Competition Order*, the Commission must do the following in an arbitration: (1) ensure resolution and conditions satisfying Section 251 of the Communications Act, including the regulations promulgated by the FCC; and (2) establish rates for interconnection and UNEs according to Section 252(d) of the Act.

16. The Commission must make an affirmative determination that the rates, terms, and conditions that it prescribes in this arbitration proceeding for interconnection are

consistent with the requirements of Section 251(b)-(c) and Section 252(d) of the Communications Act. Notably, Section 252(c)(3) of the Communications Act, which requires that an implementation schedule be prescribed, is inapplicable because the Joint Petitioners and BellSouth already have implemented interconnection arrangements pursuant to their existing interconnection agreements.

17. Section 251(b) of the Communications Act, 47 U.S.C. § 251(b), states that each local exchange carrier has the following duties:

(1) the duty not to prohibit, and not to impose unreasonable or discriminatory conditions or limitations on, the resale of its telecommunications service;

(2) the duty to provide, to the extent technically feasible, number portability in accordance with requirements prescribed by the FCC;

(3) the duty to provide dialing parity to competing providers of telephone exchange service and telephone toll service, and the duty to permit all such providers to have nondiscriminatory access to telephone numbers, operator services, directory assistance, and directory listing, with no unreasonable dialing delays;

(4) the duty to afford access to the poles, ducts, conduits, and rights-of-way of such carrier to competing providers of telecommunications services on rates, terms, and conditions that are consistent with Section 224 of the Act; and

(5) the duty to establish reciprocal compensation arrangements for the transport and termination of telecommunications.

18. Section 251(c) of the Communications Act states that each incumbent local exchange carrier, such as BellSouth, has the following additional duties:

(1) the duty to negotiate in good faith;

(2) the duty to provide, for the facilities and equipment of any requesting telecommunications carrier, interconnection with the local exchange carrier's network for the transmission and routing of telephone exchange service and exchange access at any technically feasible point within the carrier's network that is at least equal in quality to that provided by the local exchange carrier

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to itself, or to any subsidiary, affiliate, or any other party to which the carrier provides interconnection on rates, terms and conditions that are just, reasonable and nondiscriminatory;

(3) the duty to provide, to any requesting telecommunications carrier, nondiscriminatory access to network elements on an unbundled basis at any technically feasible point on rates, terms and conditions that are just, reasonable and nondiscriminatory and in such a manner that allows requesting carriers to combine such elements in order to provide such telecommunications service;

(4) the duty to offer for resale at wholesale rates any telecommunications service that the carrier provides at retail to subscribers who are not telecommunications carriers and not to prohibit, and not to impose unreasonable or discriminatory conditions or limitations on the resale of such services;

(5) the duty to provide reasonable public notice of changes in the information necessary for the transmission and routing of services using that local exchange carrier's facilities or networks, as well as of any other changes that would affect the interoperability of those facilities and networks; and

(6) the duty to provide, on rates, terms and conditions that are just, reasonable and nondiscriminatory, for physical collocation of equipment necessary for interconnection or access to unbundled network elements at the premises of the local exchange carrier, except that virtual collocation may be provided if the local exchange carrier demonstrates to the State commission that physical collocation is not practical for technical reasons or because of space limitations.

19. Section 252(d) of the Communications Act sets forth the applicable pricing standards for interconnection and network element charges, as well as for collocation, transport, and termination of traffic. Section 252(d)(1) of the Communications Act states, in pertinent part, that "determinations by a State commission of the just and reasonable rate for the interconnection of facilities and equipment . . . and the just and reasonable rate for network elements . . . shall be (i) based on the cost (determined by reference to a rate-of-return or other rate-based proceeding) of providing the interconnection or network element (whichever is applicable); and (ii) nondiscriminatory; and [(iii)] may include a reasonable profit." 47 U.S.C.

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§ 252(d)(1). Section 252(d)(2) of the Communications Act further states, in pertinent part, that "a State commission shall not consider the terms and conditions for reciprocal compensation [for transport and termination] to be just and reasonable unless (i) such terms and conditions provide for the mutual and reciprocal recovery by each carrier of costs associated with the transport and termination on each carrier's network facilities of calls that originate on the network facilities of another carrier; and (ii) such terms and conditions determine such costs on the basis of a reasonable approximation of the additional costs of terminating such calls." 47 U.S.C. § 252(d)(2).

IV. ARBITRATION ISSUES AND POSITIONS OF THE PARTIES

20. The unresolved issues between the Joint Petitioners and BellSouth, and the parties' respective positions as to each unresolved issue, are detailed below (*see also* CLEC-BellSouth Joint Issues Matrix, which is attached hereto and incorporated herein by reference as *Exhibit 1*).[1] Due to the imminent close of the window for filing a formal request for arbitration,

[1] Issues identified are common among CLECs in all cases other than with respect to "Interconnection (Attachment 3)", where each CLEC, instead of using the same attachment (as is the case with all other attachments, as well as the General Terms and Conditions) is using a CLEC-specific customized version derived from a common template. Thus, while there is a single version of the General Terms and Conditions, and the 11 attachments other than Attachment 3, there is a version of Attachment 3 for each CLEC. There is a high degree of commonality among these individual Attachment 3s and the issues raised with respect thereto. For Attachment 3 issues, section numbers are accompanied by indications of which CLEC's Attachment 3 the section belongs to. Identical text associated with the same issue is sometimes accorded a different section number (e.g., with respect to Issue 3-1, identical text is Section 3.3.4 in each CLEC's Attachment 3, other than Xspedius's, where it is Section 3.3.3). Where section numbers are referenced from each CLEC's Attachment 3, the issue is common to all CLECs (*as is the case with all issues outside of Attachment 3*). With respect to Attachment 3 issues, where no section is listed from a CLEC's agreement, that indicates that the individual issue raised is not of concern for the specific CLEC (e.g., Issue 3-6 lists section references for KMC and NewSouth only; it is not an issue for NuVox and Xspedius). There are 14 Attachment 3 issues, 4 of which are common among all parties, 4 of which are common to some but not all parties, and 6 of which are common only to Xspedius and BellSouth. Notably, many of the Xspedius/BellSouth issues are associated with related and advanced settlement negotiations on outstanding disputes. It is anticipated that many of these issues likely would be resolved as part of a settlement. Abbreviations used in association with Attachment 3 section references are as follows: "KMC" for KMC, "NSC" for NewSouth, "NVX" for NuVox, and "XSP" for Xspedius.

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the Joint Petitioners are compelled to seek arbitration of a number of issues which remain under discussion between BellSouth and the Joint Petitioners. The Joint Petitioners remain hopeful that some or many of these issues will be resolved prior to hearing, either through continued negotiations or Commission mediation. Finally, while the parties have attempted to exhaustively identify all the disputed issues, additional issues may arise while the parties continue their interconnection negotiations. Accordingly, the Joint Petitioners reserve the right to amend, supplement, or modify their Joint Petition and/or issues list in the event additional disputed issues are identified or existing disputed issues are modified during the course of negotiations. Attached hereto and incorporated herein by reference as *Exhibit 2* is a "composite" interconnection agreement, which highlights the remaining unresolved issues between the parties.

21. The parties have attempted, where possible, to arrive at mutually agreeable statements of the issues. Where a mutual agreement has been reached, the Joint Petition reflects the issues as mutually framed by the parties, as well as their relevant positions. However, in instances where the parties have failed to agree on the framing of the issues, the Joint Petition reflects the issues as framed by the Joint Petitioners and omits BellSouth's position, as requested by BellSouth. In addition, where the parties have neither agreed or disagreed on the framing of certain issues, as of the date of this filing, the Joint Petition omits BellSouth's position, as requested by BellSouth. It is the Joint Petitioners' understanding, based on BellSouth's representations, that BellSouth will either concur in Joint Petitioners' statement of such issues or provide an alternative statement with its Response (wherein BellSouth will also provide its position). The Joint Petitioners and BellSouth have represented to each other that they will

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attempt to reach agreement on as many of the issues statements as possible in the near future and will provide the Commission with an updated Joint Issues Matrix as soon as practicable.

GENERAL TERMS AND CONDITIONS

Issue No. G-1 [Section 1.6]: *What should be the effective date of future rate impacting amendments?*

CLECs' POSITION: Future amendments incorporating Commission-approved rates should be effective as of the effective date of the Commission order, if an amendment is requested within 30 calendar days of that date. Otherwise, such amendments should be effective 10 calendar days after request.

BELLSOUTH'S POSITION: Future amendments incorporating Commission-approved rates should be effective ten (10) calendar days after the date of the last signature executing the amendment.

Issue No. G-2 [Section 1.7]: *How should "End User" be defined?*

CLECs' POSITION: The term "End User" should be defined as "the customer of a Party".

BELLSOUTH'S POSITION: BellSouth will provide its position with its Response.

Issue No. G-3 [Section 10.2]: *Should the Agreement contain a general provision providing that BellSouth shall take financial responsibility for its own actions in causing, or contributing to unbillable or uncollectible CLEC revenue in addition to specific provisions set forth in Attachments 3 and 7?*

CLECs' POSITION: YES, BellSouth should be financially liable for causing, failing to prevent, or contributing to unbillable or uncollectible CLEC revenue. A general provision complements the specific provisions contained in Attachments 3 and 7.

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BELLSOUTH'S POSITION: NO. The Parties have negotiated specific provisions in Attachments 3 and 7 addressing responsibility for billing records deficiencies.

> ***Issue No. G-4 [Section 10.4.1]:*** *What should be the limitation on each Party's liability in circumstances other than gross negligence or willful misconduct?*

CLECS' POSITION: In cases other than gross negligence and willful misconduct by the other party, or other specified exemptions as set forth in CLECs' proposed language, liability should be limited to an aggregate amount over the entire term equal to 7.5% of the aggregate fees, charges or other amounts paid or payable for any and all services provided or to be provided pursuant to the Agreement as of the day immediately preceding the date of assertion or filing of the applicable claim or suit. CLECs' proposal represents a hybrid between limitation of liability provisions typically found in commercial contracts between sophisticated buyers and sellers, in the absence of overwhelming market dominance by one party, and the effective elimination of liability provision proposed by BellSouth.

BELLSOUTH'S POSITION: The industry standard limitation of liability should apply, which limits the liability of the provisioning party to a credit for the actual cost of the services or functions not performed or improperly performed.

> ***Issue No. G-5 [Section 10.4.2]:*** *Should each Party be required to include specific liability-eliminating terms in all of its tariffs and End User contracts (past, present and future), and, to the extent that a Party does not or is unable to do so, should it be obligated to indemnify the other Party for liabilities not eliminated?*

CLECS' POSITION: NO, BellSouth should not be able to dictate the terms of service between CLEC and its End Users by, among other things, holding CLEC liable for failing to mirror BellSouth's limitation of liability and indemnification provisions in CLEC's End User tariffs

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and/or contracts. To the extent that a Party does not, or is unable to, include specific elimination-of-liability terms in all of its tariffs and End User contracts (past, present and future), and provided that the non-inclusion of such terms is commercially reasonable, that Party should not be required to indemnify and reimburse the other Party for that portion of the loss that would have been limited had the first Party included in its tariffs and contracts the elimination-of-liability terms that such other Party included in its tariffs at the time of such loss.

BELLSOUTH'S POSITION: BellSouth will provide its position with its Response.

Issue No. G-6 [Section 10.4.4]: *Should limitation on liability for indirect, incidental or consequential damages be construed to preclude liability for claims or suits for damages incurred by CLEC's (or BellSouth's) End Users to the extent such damages result directly and in a reasonably foreseeable manner from BellSouth's (or CLEC's) performance obligations set forth in the Agreement?*

CLECS' POSITION: NO, the Agreement, by its nature, contemplates that End Users will be served via the exchange of traffic through interconnection arrangements and through the use of UNEs and Other Services purchased. Damages to End Users that result directly and in a reasonably foreseeable manner from BellSouth's (or CLEC's) performance of obligations set forth in the Agreement that were not and are not directly and proximately caused by or are the result of CLEC's (or BellSouth's) failure to act at all relevant times in a commercially reasonable manner in compliance with CLEC's (or BellSouth's) duties of mitigation with respect to such damage should be considered direct under the Agreement for simple negligence purposes.

BELLSOUTH'S POSITION: BellSouth will provide its position with its Response.

Issue No. G-7 [Section 10.5]: *What should the indemnification obligations of the parties be under this Agreement?*

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CLECs' POSITION: The Party providing service under the Agreement should be indemnified, defended and held harmless by the Party receiving services against any claim for libel, slander or invasion of privacy arising from the content of the receiving Party's own communications. Similarly, the Party receiving services under the Agreement should be indemnified, defended and held harmless by the Party providing services against any claims, loss or damage to the extent arising from: (1) the providing Party's failure to abide by Applicable Law, or (2) injuries or damages arising out of or in connection with this Agreement to the extent cased by the providing Party's negligence, gross negligence or willful misconduct.

BELLSOUTH'S POSITION: The Party receiving services should indemnify the party providing services from (1) any claim loss or damages from claims for libel, slander or invasion of privacy arising from the content of the receiving party's own communications, or (2) any claim, loss or damage claimed by the end user of the party receiving services arising out of the Agreement.

Issue No. G-8 [Section 11.1]: *What language should be included in the Agreement regarding a Party's use of the other Party's name, service marks and trademarks?*

CLECs' POSITION: Given the complexity of and variability in intellectual property law, this nine-state Agreement should simply state that no patent, copyright, trademark or other proprietary right is licensed, granted or otherwise transferred by the Agreement and that a Party's use of the other Party's name, service mark and trademark should be in accordance with Applicable Law. The Commission should not attempt to prejudge intellectual property law issues, which at BellSouth's insistence, the Parties have agreed are best left to adjudication by courts of law (*see* GTC, Sec. 11.5).

BELLSOUTH'S POSITION: BellSouth will provide its position with its Response.

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Issue No. G-9 [Section 13.1]: *Should a court of law be included among the venues at which a Party may seek dispute resolution under the Agreement?*

CLECs' POSITION: YES, either Party should be able to petition the Commission, the FCC or a court of law for resolution of a dispute. Given the difficulties experienced in achieving efficient regional dispute resolution, and the ongoing debate as to whether state commissions have jurisdiction to enforce agreements (CLECs do not dispute that authority) and as to whether the FCC will engage in such enforcement (or not), no legitimate dispute resolution venue should be foreclosed. There is no question that courts of law have jurisdiction to entertain such disputes (*see* GTC, Sec. 11.5); indeed, in certain instances, they may be better equipped to adjudicate a dispute and may provide a more efficient alternative to litigating in up to 9 different jurisdictions or to waiting for the FCC to decide whether it will or won't accept an enforcement role given the particular facts.

BELLSOUTH'S POSITION: BellSouth will provide its position with its Response.

Issue No. G-10 [Section 17.4]: *(A) How much notice should be given by a Party requesting a change of law amendment? (B) How much time must elapse before a Party may seek dispute resolution pursuant to the dispute resolution procedures of the agreement, absent successful negotiation of and agreement by the Parties on such an amendment?*

CLECs' POSITION: (A) The Party requesting renegotiation should give 15 calendar days notice.

(B) In the event that changes to the Agreement necessitated by a change of law are not renegotiated within 45 days after notice of renegotiation, either Party may invoke the Dispute Resolution procedures of the agreement, as it deems appropriate. The 45 day period is not a deadline. Rather, it establishes a reasonable minimum time frame during which the Parties

must attempt to negotiate an amendment without resorting to dispute resolution. After 45 days have passed, each Party should use discretion and good judgment prior to resorting to Dispute Resolution, as with respect to some amendments, it may take months to sort through the issues and complete a good faith attempt at reaching resolution without intervention.

BELLSOUTH'S POSITION: BellSouth will provide its position with its Response.

> ***Issue No. G-11 [Sections 19, 19.1]:*** *For the purpose of bankruptcy law, should the Agreement be considered indivisible?*

CLECS' POSITION: NO, it is neither necessary nor proper to amalgamate or pre-decide bankruptcy law in the context of this Agreement. All provisions of the Agreement were not negotiated as a "single whole" or as a "single transaction" and not all of the provisions or obligations set forth therein are "interdependent". BellSouth's proposed language impermissibly subverts, the requirements of section 252(i) of the Communications Act, FCC Rule 51.809, and Section 17.1 of the General Terms and Conditions.

BELLSOUTH'S POSITION: YES. The parties have negotiated this agreement as a whole and do not consider each attachment to be a separate contract, divisible from the general terms and conditions, and every other applicable attachment.

> ***Issue No. G-12 [Section 32.2]:*** *Should the Agreement explicitly state that all existing state and federal laws, rules, regulations, and decisions apply unless otherwise specifically agreed to by the Parties?*

CLECS' POSITION: YES, nothing in the Agreement should be construed to limit a Party's rights or exempt a Party from obligations under Applicable Law, as defined in the Agreement, except in such cases where the Parties have explicitly agreed to a limitation or exemption. This is a

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basic legal tenet and is consistent with both federal and Georgia law (agreed to by the parties), and it should be explicitly stated in the Agreement in order to avoid unnecessary disputes and litigation that has plagued the Parties in the past.

BELLSOUTH'S POSITION: This agreement constitutes the contractual obligations of the parties to each other and should not be subject to further negotiation subsequent to being fully negotiated and arbitrated.

> ***Issue No. G-13 [Section 32.3]:*** *How should the Parties deal with non-negotiated deviations from the state Commission-approved rates in the rate sheets attached to the Agreement?*

CLECS' POSITION: Any non-negotiated deviations from ordered rates should be corrected by retroactive true-up to the effective date of the Agreement within 30 calendar days of the date the error was identified by either Party.

BELLSOUTH'S POSITION: Any non-negotiated deviations from ordered rates should be changed by amendment of the agreement upon discovery by a party and should be applied prospectively regardless of whether the rate increases or decreases as a result of such amendment.

> ***Issue No. G-14 [Section 34.2]:*** *Can either Party require, as a prerequisite to performance of its obligations under the Agreement, that the other Party adhere to any requirement other than those expressly stipulated in the Agreement or mandated by Applicable Law?*

CLECS' POSITION: NO, the Parties should not be permitted to hold performance hostage to terms not included in the Agreement and not mandated by Applicable Law. More specifically, neither Party should, as a condition or prerequisite to such Party's performance of its obligations under the Agreement, impose or insist upon the other Party's (or any of its End Users')

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adherence to any requirement or obligation other than as expressly stipulated in this Agreement or as otherwise mandated by Applicable Law.

BELLSOUTH'S POSITION: YES. The Parties are free to negotiate with each other as they may with third parties. Neither Party should use this Agreement to interfere with a third party's contractual rights and obligations.

> ***Issue No. G-15 [Section 45.2]:*** *If BellSouth changes a provision of one or more of its Guides that would cause CLEC to incur a material cost or expense to implement the change, should the CLEC notify BellSouth, in writing, if it does not agree to the change?*

CLECS' POSITION: NO, if the contemplated change to one or more of BellSouth's Guides would cause CLEC to incur a material cost or expense to implement the change, BellSouth and CLEC should negotiate an amendment to the Agreement to incorporate such change.

BELLSOUTH'S POSITION: YES. BellSouth's Guides apply to all CLEC's equally. If BellSouth allows a CLEC the right to opt out of the requirements of a Guide, the CLEC should notify BellSouth of its decision to do so.

> ***Issue No. G-16 [Section 45.3]:*** *Should the obligations set forth in the Agreement be impacted by unreasonable and/or discriminatory revisions to BellSouth tariffs?*

CLECS' POSITION: NO, unreasonable and/or discriminatory revisions to BellSouth's tariffs should not affect the obligations set forth in the Agreement. Specifically, to the extent that tariff changes are inconsistent with the provisions of the Agreement, or are unreasonable or discriminatory, they should not supersede the Agreement. Such changes may only become part of the Agreement by written amendment negotiated and/or arbitrated by the Parties.

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BELLSOUTH'S POSITION: BellSouth will provide its position with its Response.

RESALE (ATTACHMENT 1)

Issue No. 1-1 [Section 3.19]: *How much advance notice must BellSouth give CLEC before discontinuing a service or increasing the price of a service.*

CLECS' POSITION: BellSouth must provide electronically to CLEC forty-five (45) days advance notice of changes to the prices, terms or conditions of services available for Resale, including but not limited to, discontinuances and price increases.

BELLSOUTH'S POSITION: If a CLEC is under a Commission requirement to provide notice to its end users of price increases or discontinuance of services, BellSouth should provide 10 days notice prior to the CLEC's obligation to provide notice to its end users.

Issue No. 1-2 [Section 11.6.6]: *For the purpose of connecting to BellSouth's TOPS platform, should CLEC be entitled to purchase from BellSouth transport facilities and trunks at TELRIC-compliant rates where such transport facilities and trunks are available as UNEs?*

CLECS' POSITION: YES, for the purpose of connecting to BellSouth's TOPS, CLEC should be entitled to purchase from BellSouth transport facilities or trunks at TELRIC rates where such transport facilities and trunks are available as UNEs.

BELLSOUTH'S POSITION: BellSouth will provide its position with its Response.

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NETWORK ELEMENTS (ATTACHMENT 2)

Issue No. 2-1 [Section 1.1]: *(A) To what extent shall obligations set forth in FCC rules and orders and Commission rules and orders apply? (B) To the extent that there is a conflict between Attachment 2 and any other provision of the Agreement, should the provisions in Attachment 2 control?*

CLECs' POSITION: (A) In general, Attachment 2 is not intended to eliminate obligations set forth in FCC rules and orders and Commission rules and orders. However, to the extent obligations are addressed in the text of Attachment 2 and that text conflicts with obligations set forth in FCC rules and orders and Commission rules and orders, the text of Attachment 2 should prevail. Conversely, to the extent obligations set forth in FCC rules and orders and Commission rules and orders are not addressed in Attachment 2, those obligations should apply unless the text of Attachment 2 expressly states that a particular obligation does not apply.

(B) NO, CLECs are unaware of any conflicts between Attachment 2 and any other provision of the Agreement. Any conflicts that may arise or be alleged in the future should be addressed and evaluated on a case-by-case basis.

BELLSOUTH'S POSITION: BellSouth will provide its position with its Response.

Issue No. 2-2 [Section 1.2]: *(A) Should the Agreement contain a paraphrased version of a rule regarding CLEC obligations in lieu of direct references to rules governing both Parties' obligations? (B) Should references to FCC rules be construed as including or excluding relevant text from the FCC's Triennial Review Order?*

CLECs' POSITION: (A) NO, the Agreement should contain direct references to rules governing both Parties' obligations. (B) Direct references to FCC rules should be construed to include relevant text from the FCC's *Triennial Review Order*.

BELLSOUTH'S POSITION: BellSouth will provide its position with its Response.

> ***Issue No. 2-3 [Section 1.4.1]:*** *Should the provision regarding the effective billing date for Conversions explicitly state that agreement to it by CLECs is made without admission or prejudice with respect to pre-existing disputes regarding this issue?*

CLECS' POSITION: YES, given that the text of this provision represents a negotiated resolution to a controversial issue that has no intended retroactive effect on ongoing disputes between the Parties, it is appropriate to include such a disclaimer in the provision.

BELLSOUTH'S POSITION: BellSouth will provide its position with its Response.

> ***Issue No. 2-4 [Section 1.4.3]:*** *(A) Should CLEC be required to submit a BFR/NBR to convert a UNE or Combination (or part thereof) to Other Services or tariffed BellSouth access services? (B) In the event of such conversion, what rates should apply?*

CLECS' POSITION: (A) NO, CLEC should be allowed to submit an LSR or ASR, as appropriate. (B) For such conversion, the non-recurring charges should be as set forth in Exhibit A of Attachment 2 or the relevant tariff, as appropriate. In addition, such charges should be commensurate with the work required to effectuate the conversion (cross connect only, billing change/records update only, etc.).

BELLSOUTH'S POSITION: BellSouth will provide its position with its Response.

> ***Issue No. 2-5 [Section 1.5]:*** *(A) In the event UNEs or Combinations are no longer offered pursuant to, or are not in compliance with, the terms set forth in this Agreement, which Party should bear the obligation of identifying those service arrangements? (B) What recourse may BellSouth take if CLEC does not submit a rearrange or disconnect order within 30 days? (C) What rates, terms and conditions should apply in the event of a termination, re-termination, or physical rearrangements of circuits?*

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CLECs' POSITION: (A) In the event UNEs or Combinations are no longer offered pursuant to, or are not in compliance with, the terms set forth in the Agreement, it should be BellSouth's obligation to identify the specific service arrangements that it insists be transitioned to other services pursuant to Attachment 2.

(B) If CLEC does not submit a rearrange or disconnect order within 30 days, BellSouth may disconnect such arrangements or services without further notice, provided that CLEC has not notified BellSouth of a dispute regarding the identification of specific service arrangements as being no longer offered pursuant to, or are not in compliance with, the terms set forth in the Agreement.

(C) For arrangements that require a re-termination or other physical rearrangement of circuits to comply with the terms of the Agreement, non-recurring charges for the applicable UNE or cross connect from Exhibit A of Attachment 2 should apply. Disconnect charges should not apply to services that are being physically rearranged or re-terminated.

BELLSOUTH'S POSITION: BellSouth will provide its position with its Response.

Issue No. 2-6 [Section 1.5.1]: *Should BellSouth be entitled to impose limitations on CLEC use of UNEs not permitted by Applicable Law?*

CLECs' POSITION: NO, unless permitted under Applicable Law, BellSouth may not impose limitations on CLEC's ability to access and use UNEs.

BELLSOUTH'S POSITION: BellSouth will provide its position with its Response.

Issue No. 2-7 [Section 1.6.1]: *What rates, terms and conditions should apply for Routine Network Modifications pursuant to 47 C.F.R. § 51.319(a)(8) and (e)(5)?*

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CLECs' POSITION: If BellSouth has anticipated such Routine Network Modifications and performs them during normal operations, then BellSouth should perform such Routine Network Modifications at no additional charge. If BellSouth has not anticipated a requested or necessary network modification as being a Routine Network Modification and, as such, has not recovered the costs of such Routine Network Modifications in the rates set forth in Exhibit A of Attachment 2, then BellSouth should notify CLEC of the required Routine Network Modification and should request that CLEC submit a Service Inquiry to have the work performed. Each *unique* request should be handled as a project on an individual case basis. BellSouth should provide a TELRIC-compliant price quote for the request, and upon receipt of a firm order from CLEC, BellSouth should perform the Routine Network Modification.

BELLSOUTH'S POSITION: BellSouth will provide its position with its Response.

Issue No. 2-8 [Section 1.7]: *Should BellSouth be required to commingle UNEs or Combinations with any service, network element or other offering that it is obligated to make available pursuant to Section 271 of the Act?*

CLECs' POSITION: YES, BellSouth should be required to commingle UNEs or Combinations with any service, network element, or other offering that it is obligated to make available pursuant to Section 271 of the Act.

BELLSOUTH'S POSITION: BellSouth will provide its position with its Response.

Issue No. 2-9 [Section 1.8.3]: *When multiplexing equipment is attached to a commingled circuit, should the multiplexing equipment be billed per the jurisdictional authorization (Agreement or tariff) of the lower or higher bandwidth service?*

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CLECs' POSITION: When multiplexing equipment is attached to a commingled circuit, the multiplexing equipment should be billed from the same jurisdictional authorization (Agreement or tariff) as the lower bandwidth service.

BELLSOUTH'S POSITION: BellSouth will provide its position with its Response.

> ***Issue No. 2-10 [Section 1.9.4]:*** *Should the recurring charges for UNEs, Combinations and Other Services be prorated based upon the number of days that the UNEs are in service?*

CLECs' POSITION: YES, the recurring charges for UNEs, Combinations, and Other Services should be prorated based upon the number of days that the UNEs, Combinations, and Other Services are in service.

BELLSOUTH'S POSITION: BellSouth will provide its position with its Response.

> ***Issue No. 2-11 [Section 2.1.1]:*** *Are the types of loops that BellSouth, pursuant to FCC Rule 319(a), is required to provide to CLEC limited to those that are (a) currently available and set forth in the Agreement or (b) set forth in the Agreement?*

CLECs' POSITION: The types of loops that BellSouth is required to provide to CLEC, pursuant to FCC Rule 319(a), should be limited to those that BellSouth currently offers and is required to unbundle as set forth in the Agreement. Other loop-types that may be developed and may be subject to FCC Rule 319(a) will be incorporated into the Agreement by amendment or the BFR process.

BELLSOUTH'S POSITION: BellSouth will provide its position with its Response.

> ***Issue No. 2-12 [Section 2.1.1.1]:*** *Should the Agreement include a provision declaring that facilities that terminate to another carrier's switch or premises, a cell cite, Mobile Switching Center or base station do not constitute loops?*

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CLECs' POSITION: NO, the Agreement should not include a provision declaring that facilities that terminate to another carrier's switch or premises, a cell site, Mobile Switching Center, or base station do not constitute loops. Such a provision would be inconsistent with the FCC's Triennial Review Order.

BELLSOUTH'S POSITION: BellSouth will provide its position with its Response.

> ***Issue No. 2-13 [Section 2.1.1.2]:*** *Should the Agreement require CLEC to purchase the entire bandwidth of a Loop, even in cases where such purchase is not required by Applicable Law?*

CLECs' POSITION: NO, CLEC should not be required to purchase the entire bandwidth of a Loop, except where required by Applicable Law.

BELLSOUTH'S POSITION: BellSouth will provide its position with its Response.

> ***Issue No. 2-14 [Sections 2.1.2, 2.1.2.1, 2.1.2.2]:*** *(A) Should the Agreement contain provisions categorizing loops as either mass market loops or enterprise market loops? (B) If so, what should such provisions say?*

CLECs' POSITION: (A) YES, the Agreement should contain provisions categorizing loops as either mass market loops or enterprise market loops.

(B) Such provisions should state that there are two categories of UNE loops, namely, Mass Market Loops and Enterprise Loops. The provisions should further define Mass Market Loops as loops that deliver narrowband service, such as POTS, facsimile services and DS0 level services as well as broadband services such as DSL services to residential and very small business customers. In addition, there should be a provision listing the three types of Mass Market Loops: copper loops, fiber-to-the-home loops, and hybrid fiber/copper loops. The provision should define Enterprise Market Loops as loops that deliver narrowband and

broadband services to small, medium and large-sized businesses. Similarly, there should be a provision setting forth that Enterprise Loops, including DS1, DS-3/STS loops, and dark fiber loops are not subject to any of the restrictions applicable to Mass Market Loops, regardless of the transmission medium over which they are provided.

BELLSOUTH'S POSITION: BellSouth will provide its position with its Response.

> ***Issue No. 2-15 [Section 2.2.3]:*** *Is unbundling relief provided under FCC Rule 319(a)(3) applicable to Fiber-to-the-Home Loops deployed prior to October 2, 2003?*

CLECS' POSITION: NO, the unbundling relief provided under FCC Rule 319(a)(3) is only applicable to Fiber-to-the-Home Loops deployed on or after October 2, 2003 (the effective date of the FCC's Triennial Review Order).

BELLSOUTH'S POSITION: BellSouth will provide its position with its Response.

> ***Issue No. 2-16 [Section 2.3.3]:*** *How should Dark Fiber Loops be defined?*

CLECS' POSITION: Dark Fiber Loop should be defined as fiber within an existing fiber optic cable that has not been activated through the use of optronics to render it capable of carrying communications services that extends from the demarcation point at an End User's premises to the BellSouth central office.

BELLSOUTH'S POSITION: BellSouth will provide its position with its Response.

> ***Issue No. 2-17 [Sections 2.4.3, 2.4.4]:*** *What rates should apply to testing and dispatch performed by BellSouth in response to a CLEC trouble report and in order to confirm the working status of a UNE Loop?*

CLECS' POSITION: TELRIC-compliant rates to be approved by the Commission and incorporated in Exhibit A of Attachment 2 should apply to testing and dispatch performed by

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BellSouth in response to a CLEC trouble report and in order to confirm the working status of a UNE Loop.

BELLSOUTH'S POSITION: BellSouth will provide its position with its Response.

> ***Issue No. 2-18 [Section 2.12.1]:*** *(A) How should line conditioning be defined in the Agreement? (B) What should BellSouth's obligations be with respect to line conditioning?*

CLECS' POSITION: (A) Line Conditioning should be defined in the Agreement as set forth in FCC Rule 47 CFR 51.319 (a)(1)(iii)(A). (B) BellSouth should perform line conditioning in accordance with FCC Rule 47 C.F.R. 51.319 (a)(1)(iii). Insofar as it is technically feasible, BellSouth should test and report troubles for all the features, functions, and capabilities of conditioned copper lines, and may not restrict its testing to voice transmission only.

BELLSOUTH'S POSITION: BellSouth will provide its position with its Response.

> ***Issue No. 2-19 [Section 2.12.2]:*** *Should the Agreement contain specific provisions limiting the availability of Line Conditioning to copper loops of 18,000 feet or less?*

CLECS' POSITION: NO, the agreement should not contain specific provisions limiting the availability of Line Conditioning to copper loops of 18,000 feet or less in length.

BELLSOUTH'S POSITION: BellSouth will provide its position with its Response.

> ***Issue No. 2-20 [Sections 2.12.3, 2.12.4]:*** *Under what rates, terms and conditions should BellSouth be required to perform Line Conditioning to remove bridged taps?*

CLECS' POSITION: Any copper loop being ordered by CLEC which has over 6,000 feet of combined bridged tap will be modified, upon request from CLEC, so that the loop will have a maximum of 6,000 feet of bridged tap. This modification will be performed at no additional

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charge to CLEC. Line conditioning orders that require the removal of other bridged tap should be performed at the rates set forth in Exhibit A of Attachment 2.

BELLSOUTH'S POSITION: BellSouth will provide its position with its Response.

> ***Issue No. 2-21 [Section 2.12.6]:*** *(A) Should the Agreement contain a provision barring Line Conditioning that would result in the modification of a Loop in such a way that it no longer meets technical parameters of the original Loop? (B) If not, should the resulting modified Loop be maintained as a non-service -specific Unbundled Copper Loop?*

CLECS' POSITION: (A) NO, CLEC should not be barred from requesting Line Conditioning that would result in the modification of a Loop in such a way that it no longer meets the technical parameters of the original Loop. (B) YES, the resulting modified Loop should be maintained as a non-service-specific Unbundled Copper Loop.

BELLSOUTH'S POSITION: BellSouth will provide its position with its Response.

> ***Issue No. 2-22 [Section 2.14.3.1.1]:*** *Should BellSouth be required to allow CLEC to connect its Loops directly to BellSouth's multi-line residential NID enclosures that have spare terminations available?*

CLECS' POSITION: YES, the Commission should order BellSouth to allow CLEC to connect its Loops directly to BellSouth's multi-line residential NID enclosures that have spare terminations available.

BELLSOUTH'S POSITION: BellSouth will provide its position with its Response.

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Issue No. 2-23 [Sections 2.16.2.2, 2.16.2.3.1-5, 2.16.2.3.7-12]: *(A) Should the provisions relating to BellSouth's obligation to provide Unbundled Network Terminating Wire (UNTW) apply to CLEC, as well?*

(B) Should the obligation to provide UNTW apply when such premise wiring is leased? (2.16.2.2, 2.16.2.3.1)

(C) Should the obligation to provide access to UNTW be limited to existing UNTW? (2.16.2.3.2)

(D) Should CLECs have to agree to language that requires them to "ensure" that a customer that has asked to switch service to CLEC is already no longer using another carrier's service on that pair – or – will language obligating CLEC to use commercially reasonable efforts to access only an "available pair" suffice? (2.16.2.3.5)

(E) Should a time limit be placed on the obligation to reimburse costs associated with removing access terminals and restoring the property to its original state (per request of property owner)? (2.16.2.3.7)

CLECs' POSITION: (A) NO, CLECs have expressly notified BellSouth that they are at the present time unwilling to negotiate such access to UNTW as CLECs have no legal obligation to make UNEs available to, or otherwise unbundle UNTW for, BellSouth.

(B) YES, BellSouth's legal obligation to provide UNTW applies even where the premises wiring is leased.

(C) NO, to the extent BellSouth would install new or additional UNTW beyond existing UNTW upon request from one of its own End Users, or is otherwise required to do so in order to comply with FCC or Commission rules and orders, BellSouth should be obligated to provide access to such new or additional UNTW beyond existing UNTW.

(D) CLEC should not be required to "ensure" that a customer that has asked to switch service to CLEC is no longer using another carrier's service on a particular pair. Rather,

a provision obligating CLEC to use commercially reasonable efforts to access only an "available pair" should be sufficient.

(E) YES, there should be a time limit on reimbursement obligations. Specifically, CLEC should be responsible for costs associated with removing access terminals and restoring the property to its original state only when the property owner objects to and demands removal of access terminal installations that are in progress or within thirty (30) calendar days of completion.

BELLSOUTH'S POSITION: BellSouth will provide its position with its Response.

Issue No. 2-24 [Section 2.17.3.5]: *Should BellSouth be required to provide access to Dark Fiber Loops for test access and testing at any technically feasible point?*

CLECS' POSITION: YES, BellSouth should be required to provide access to Dark Fiber Loops for test access and testing at any technically feasible point, the termination point within a serving wire center, and CLEC's End User's premises.

BELLSOUTH'S POSITION: BellSouth will provide its position with its Response.

Issue No. 2-25 [Section 2.18.1.4]: *Under what circumstances should BellSouth provide CLEC Loop Makeup information?*

CLECS' POSITION: BellSouth should provide CLEC Loop Makeup information on a particular loop upon request by CLEC. Such access should not be contingent upon receipt of an LOA from a third party carrier.

BELLSOUTH'S POSITION: BellSouth will provide its position with its Response.

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Issue No. 2-26 [Section 3.6.5]: When Line Sharing is provisioned, what provisions should apply when BellSouth receives a voice trouble and isolates the trouble to a physical collocation arrangement belonging to CLEC?

CLECs' POSITION: When Line Sharing is provisioned, the following provisions should apply when BellSouth receives a voice trouble and isolates the trouble to a physical collocation arrangement belonging to CLEC: When BellSouth receives a voice trouble and isolates the trouble to the physical collocation arrangement belonging to CLEC, BellSouth should notify CLEC. CLEC should respond by providing at least one (1) but no more than two (2) verbal CFA pair changes to BellSouth in an attempt to resolve the voice trouble. In the event a CFA pair change resolves the voice trouble, CLEC should provide BellSouth an LSR with the new CFA pair information within twenty-four (24) hours (excluding Saturdays, Sundays and Holidays) of receiving notification from BellSouth of such resolution. No charges should apply for submission of such LSR. If CLEC fails to respond to a BellSouth request for verbal CFA pair changes within twenty-four (24) hours (excluding Saturdays, Sundays and Holidays) of CLEC's Maintenance Service Center receiving notification from BellSouth, BellSouth may suspend CLEC's access to the High Frequency Spectrum on such Loop.

BELLSOUTH'S POSITION: BellSouth will provide its position with its Response.

Issue No. 2-27 [Section 3.10.3]: What should be CLEC's indemnification obligations under a line splitting arrangement?

CLECs' POSITION: If CLEC is purchasing line splitting, and it is not the data provider, CLEC should indemnify, defend and hold harmless BellSouth from and against any claims, losses, actions, causes of action, suits, demands, damages, injury, and costs (including reasonable attorney fees) reasonably arising or resulting from the actions taken by the data provider in

connection with the line splitting arrangement, except to the extent caused by BellSouth's gross negligence or willful misconduct.

BELLSOUTH'S POSITION: BellSouth will provide its position with its Response.

> ***Issue No. 2-28 [Section 3.10.4]:*** *(A) In cases where CLEC purchases UNEs from BellSouth, should BellSouth be required not to refuse to provide DSL transport or DSL services (of any kind) to CLEC and its End Users, unless BellSouth has been expressly permitted to do so by the Commission?*
>
> *(B) Where BellSouth provides such transport or services to CLEC and its End Users, should BellSouth be required to do so without charge until such time as it produces an amendment proposal and the Parties amend this Agreement to incorporate terms that are no less favorable, in any respect, than the rates, terms and conditions pursuant to which BellSouth provides such transport and services to any other entity?*

CLECs' POSITION: (A) YES, in cases where CLEC purchases UNEs from BellSouth, BellSouth should not refuse to provide DSL transport or DSL services (of any kind) to CLEC and its End Users, unless BellSouth has been expressly permitted to do so by the Commission.

(B) YES, where BellSouth provides such transport or services to CLEC and its End Users, BellSouth should be required to do so without charge until such time as it produces an amendment proposal and the Parties amend this Agreement to incorporate terms that are no less favorable, in any respect, than the rates, terms and conditions pursuant to which BellSouth provides such transport and services to any other entity.

BELLSOUTH'S POSITION: BellSouth will provide its position with its Response.

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Issue No. 2-29 [Section 4.2.2]: (A) Should BellSouth be entitled to a greater limitation on its duty to unbundle Local Circuit Switching than currently prescribed by the FCC?

(B) Should the Agreement include a provision that requires CLEC to do something prior to the Effective Date?

CLECs' POSITION: (A) NO, the limitations imposed on BellSouth's duty to unbundle Local Circuit Switching should be consistent with the limitations prescribed by the FCC.

(B) NO, to the extent the Effective Date is later than April 1, 2004, CLEC should not be required to submit orders to terminate, prior to the Effective Date, unbundled local circuit switching for CLEC when CLEC serves an End User with a DS1 or higher capacity Loop prior to the Effective Date.

BELLSOUTH'S POSITION: BellSouth will provide its position with its Response.

Issue No. 2-30 [Section 4.5.5]: Should CLEC be entitled to purchase transport facilities and trunks used to connect to BellSouth's TOPS at TELRIC-compliant rates?

CLECs' POSITION: YES, CLEC should be entitled to purchase transport facilities and trunks used to connect to BellSouth's TOPS at TELRIC-compliant rates.

BELLSOUTH'S POSITION: BellSouth will provide its position with its Response.

Issue No. 2-31 [Section 5.2.4]: Under what conditions, if any, may BellSouth deny or delay a CLEC request to convert a circuit to a high capacity EEL?

CLECs' POSITION: BellSouth may not deny or delay CLEC's request for a high-capacity EEL based upon its own assessment of compliance with eligibility criteria. However, BellSouth may notify CLEC when it detects an order that it does not believe complies with the eligibility criteria. CLEC will then have the option of proceeding with, modifying or canceling such order.

BELLSOUTH'S POSITION: BellSouth will provide its position with its Response.

> ***Issue No. 2-32 [Sections 5.2.5.2.1-7]:*** *Should the high capacity EEL eligibility criteria use the term "customer", as used in the FCC's rules, or "End User"?*

CLECS' POSITION: The high capacity EEL eligibility criteria should be consistent with those set forth in the FCC's rules and should use the term "customer", as used in the FCC's rules. Use of the term "End User" may result in a deviation from the FCC rules to which CLECs are unwilling to agree.

BELLSOUTH'S POSITION: BellSouth will provide its position with its Response.

> ***Issue No. 2-33 [Sections 5.2.6, 5.2.6.1, 5.2.6.2, 5.2.6.2.1, 5.2.6.2.3]:*** *(A) How often, and under what circumstances, should BellSouth be able to audit CLEC's records to verify compliance with the high capacity EEL service eligibility criteria?*
>
> *(B) Should there be a notice requirement for BellSouth to conduct an audit and what should the notice include?*
>
> *(C) Who should conduct the audit and how should the audit be performed?*

CLECS' POSITION: (A) BellSouth may, no more frequently than on an annual basis, and only based upon cause, conduct a limited audit of CLEC's records in order to verify compliance with the high capacity EEL service eligibility criteria.

(B) YES, to invoke its limited right to audit, BellSouth should send a Notice of Audit to CLEC, identifying the particular circuits for which BellSouth alleges non-compliance and the cause upon which BellSouth rests its allegations. The Notice of Audit should also include all supporting documentation upon which BellSouth establishes the cause that forms the basis of BellSouth's allegations of noncompliance. Such Notice of Audit should be delivered to

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CLEC with all supporting documentation no less than thirty (30) days prior to the date upon which BellSouth seeks to commence an audit.

(C) The audit should be conducted by a third party independent auditor mutually agreed-upon by the Parties and retained and paid for by BellSouth. The audit should commence at a mutually agreeable location (or locations) no sooner than thirty (30) days after the parties have reached agreement on the auditor. In addition, the audit should be performed in accordance with the standards established by the American Institute for Certified Public Accountants (AICPA) which will require the auditor to perform an "examination engagement" and issue an opinion regarding CLEC's compliance with the high capacity EEL eligibility criteria. AICPA standards and other requirements related to determining the independence of an auditor will govern the audit of requesting carrier compliance. The concept of materiality should govern this audit; the independent auditor's report should conclude whether or the extent to which CLEC complied in all material respects with the applicable service eligibility criteria. Consistent with standard auditing practices, such audits should require compliance testing designed by the independent auditor, which typically includes an examination of a sample selected in accordance with the independent auditor's judgment.

BELLSOUTH'S POSITION: BellSouth will provide its position with its Response.

Issue No. 2-34 [Section 5.2.8]: *When should CLEC be required to reimburse BellSouth for the cost of the independent auditor?*

CLECS' POSITION: As expressly set forth in the FCC's Triennial Review Order, in the event the auditor's report concludes that CLEC did not comply in all material respects with the service eligibility criteria, CLEC shall reimburse BellSouth for the cost of the independent auditor.

BELLSOUTH'S POSITION: BellSouth will provide its position with its Response.

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Issue No. 2-35 [Section 6.1.1]: How should Dedicated Transport be defined?

CLECs' POSITION: Dedicated Transport should be defined as set forth in 47 C.F.R. 319(e). The definition should also encompass the FCC's definition articulated in the Triennial Review Order, to wit: "Dedicated Transport is defined as BellSouth's interoffice transmission facilities, dedicated to a particular customer or carrier that CLEC uses for transmission between wire centers or switches owned by BellSouth and to the extent that BellSouth has local switching equipment, as defined by the FCC's rules, "reverse collocated" in a non-incumbent LEC premises, the transmission path from this point back to the BellSouth wire center shall be unbundled as transport between incumbent LEC switches or wire centers to the extent specified in part 51 of the FCC's rules within the same LATA."

BELLSOUTH'S POSITION: BellSouth will provide its position with its Response.

Issue No. 2-36 [Section 6.1.1.1]: How should Dark Fiber Transport be defined?

CLECs' POSITION: Dark Fiber Transport should be defined as set forth in FCC Rule 47 CFR 319(e).

BELLSOUTH'S POSITION: BellSouth will provide its position with its Response.

Issue No. 2-37 [Section 6.4.2]: What terms should govern CLEC access to test and splice Dark Fiber Transport?

CLECs' POSITION: CLEC should be able to splice and test Dark Fiber Transport obtained from BellSouth at any technically feasible point, using CLEC or CLEC-designated personnel. BellSouth must provide appropriate interfaces to allow splicing and testing of Dark Fiber.

BELLSOUTH'S POSITION: BellSouth will provide its position with its Response.

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Issue No. 2-38 [Sections 7.2, 7.3]: Should BellSouth's obligation to provide signaling link transport and SS7 interconnection at TELRIC-based rates be limited to circumstances in which BellSouth is required to provide and is providing to CLEC unbundled access to Local Circuit Switching?

CLECs' POSITION: NO, BellSouth's obligation to provide signaling link transport and SS7 interconnection at TELRIC-based rates should not be limited to circumstances in which BellSouth is required to provide and is providing to CLEC unbundled access to Local Circuit Switching.

BELLSOUTH'S POSITION: BellSouth will provide its position with its Response.

Issue No. 2-39 [Sections 7.4]: Should the Parties be obligated to perform CNAM queries and pass such information on all calls exchanged between them, regardless of whether that would require BellSouth to query a third party database provider?

CLECs' POSITION: YES, the Parties should be obligated to perform CNAM queries and pass such information on all calls exchanged between them, regardless of whether that would require BellSouth to query a third party database provider.

BELLSOUTH'S POSITION: BellSouth will provide its position with its Response.

Issue No. 2-40 [Sections 9.3.5]: Should LIDB charges be subject to application of jurisdictional factors?

CLECs' POSITION: No, LIDB charges should not be subject to application of jurisdictional factors.

BELLSOUTH'S POSITION: BellSouth will provide its position with its Response.

Issue No. 2-41 [Sections 14.1]: What terms should govern BellSouth's obligation to provide access to OSS?

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CLECs' POSITION: BellSouth must provide CLEC with nondiscriminatory access to operations support systems on an unbundled basis, in accordance with 47 CFR 51.319(g) and as set forth in Attachment 6. Operations support system ("OSS") functions consist of pre-ordering, ordering, provisioning, maintenance and repair, and billing functions supported by BellSouth's databases and information. BellSouth, as part of its duty to provide access to the pre-ordering function, must provide CLEC with nondiscriminatory access to the same detailed information about the loop that is available to BellSouth.

BELLSOUTH'S POSITION: BellSouth will provide its position with its Response.

INTERCONNECTION (ATTACHMENT 3)

Issue No. 3-1 [Section 3.3.4 (KMC, NSC, NVX), 3.3.3 XSP)]: *Should CLEC be permitted to connect to BellSouth's switch via a Cross Connect or any other technically feasible means of interconnection?*

CLECs' POSITION: YES, in the event that a Party's Point of Presence is located within any serving wire center (*i.e.,* switch location), such Party may interconnect to the other Party's switch via a Cross Connect or any other technically feasible means of interconnection.

BELLSOUTH'S POSITION: BellSouth will provide its position with its Response.

Issue No. 3-2 [Section 9.6 (KMC), 9.6/7 (NSC), 9.6 (NVX, XSP)]: *(A) Should BellSouth be required to provide upon request, for any trunk group outage that has occurred 3 or more times in a 60 day period, a written root cause analysis report? (B) What target interval should apply for the delivery of such reports, as well as for those for global outages?*

CLECs' POSITION: (A) YES, upon request, BellSouth should provide a written root cause analysis report for all global outages, and for any trunk group outage that has occurred 3 or more

times in a 60 day period. (B) BellSouth should use best efforts to provide global outage and trunk group outage root cause analysis reports within five (5) business days of request.

BELLSOUTH'S POSITION: BellSouth will provide its position with its Response.

> ***Issue No. 3-3 [Section 10.9.5 (KMC), 10.7.4 (NSC), 10.7.4 (NVX), 10.12.4 (XSP)]:*** *What provisions should apply regarding records exchange necessary for the billing and collection of access revenues?*

CLECS' POSITION: In the event that either Party fails to provide accurate switched access detailed usage data to the other Party *within 90 days* after the recording date and the receiving Party is unable to bill and/or collect access revenues due to the sending Party's failure to provide such data within said time period, then the Party failing to send the specified data should be liable to the other Party in an amount equal to the unbillable or uncollectible revenues.

BELLSOUTH'S POSITION: BellSouth will provide its position with its Response.

> ***Issue No. 3-4 [Section 10.10.6 (KMC), 10.8.6 (NSC), 10.8.6 (NVX), 10.13.5 (XSP)]:*** *Under what terms should CLEC be obligated to reimburse BellSouth for amounts BellSouth pays to third party carriers that terminate BellSouth transited/CLEC originated traffic?*

CLECS' POSITION: In the event that a terminating third party carrier imposes on BellSouth any charges or costs for the delivery of Transit Traffic originated by CLEC, CLEC should reimburse BellSouth for all charges paid by BellSouth, which BellSouth is contractually obligated to pay. BellSouth should diligently review, dispute and pay such third party invoices (or equivalent) in a manner that is at parity with its own practices for reviewing, disputing and paying such invoices (or equivalent) when no similar reimbursement provision applies.

BELLSOUTH'S POSITION: BellSouth will provide its position with its Response.

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Issue No. 3-5 [Section10.7.4.2 (KMC), 10.5.5.2 (NSC), 10.5.6.2 (NVX)]: While a dispute over jurisdictional factors is pending, should factors reported by the originating party remain in place, unless the parties mutually agree otherwise?

CLECs' POSITION: YES, in the event that negotiations and audits fail to resolve disputes between the Parties, either Party may seek Dispute Resolution as set forth in the General Terms and Conditions. While such a dispute is pending, factors reported by the originating Party should remain in place, unless the Parties mutually agree otherwise.

BELLSOUTH'S POSITION: BellSouth will provide its position with its Response.

Issue No. 3-6 [Section 10.10. 1 (KMC), 10.8.1 (NSC)]: Should BellSouth be able to impose upon CLEC a Tandem Intermediary Charge for the transport and termination of Local Transit Traffic and ISP-Bound Transit Traffic?

CLECs' POSITION: NO, BellSouth should not be permitted to impose upon CLEC a Tandem Intermediary Charge ("TIC") for the transport and termination of Local Transit Traffic and ISP-Bound Transit Traffic. The TIC is a non-TELRIC based additive charge which exploits BellSouth's market power and is discriminatory.

BELLSOUTH'S POSITION: BellSouth will provide its position with its Response.

Issue No. 3-7 [Section 10.1 (KMC),10.1 (XSP)]: Should CLEC be entitled to symmetrical reciprocal compensation for the transport and termination of Local Traffic at the tandem interconnection rate?

CLECs' POSITION: YES, CLEC should be entitled to bill, and BellSouth should be obligated to pay, reciprocal compensation for the transport and termination of Local Traffic to CLEC at a symmetrical tandem interconnection rate, inclusive of end office switching, tandem switching, and transport.

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BELLSOUTH'S POSITION: BellSouth will provide its position with its Response.

> ***Issue No. 3-8 [Section 10.2, 10.2.1 (KMC), 10.2, 10.3 (XSP)]:*** *Should compensation for the transport and termination of ISP-bound Traffic be subject to a cap?*

CLECS' POSITION: NO, compensation caps set in the FCC's remanded *ISP Order on Remand* do not extend beyond 2003.

BELLSOUTH'S POSITION: BellSouth will provide its position with its Response.

> ***Issue No. 3-9 [Section 2.1.12 (XSP)]:*** *How should Local Traffic be defined?*

CLECS' POSITION: Local Traffic should be defined as any telephone call that originates in one exchange and is terminated in either the same exchange, or other mandatory local calling area associated with the originating exchange (*e.g.*, mandatory Extended Area Service) as defined and specified in Section A3 of BellSouth's GSST. Designation of Local Traffic should not be dependent on the type of switching technology used to switch and terminate such Local Traffic, including use of frame switching. Local Traffic includes any cross boundary, intrastate, interLATA or interstate, interLATA calls established as a local call by the ruling regulatory body.

BELLSOUTH'S POSITION: BellSouth will provide its position with its Response.

> ***Issue No. 3-10 [Section 3.2 (XSP), Ex. A (XSP)]:*** *(A) Should BellSouth be required to provide CLEC with OCn level interconnection at TELRIC-compliant rates? (B) What should those rates be?*

CLECS' POSITION: (A) YES, OCn level interconnection is technically feasible and must be made available at TELRIC-compliant rates. (B) TELRIC compliant rates for OCn interconnection trunks and facilities should be set by the Commission.

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BELLSOUTH'S POSITION: BellSouth will provide its position with its Response.

> ***Issue No. 3-11 [Sections 3.3.1, 3.3.2, 3.4.5, 10.10.2 (XSP)]:*** *Should cost-based interconnection (i.e., TELRIC), be limited to the percentage of facilities used for "local" traffic?*

CLECS' POSITION: NO, cost-based interconnection should not be limited to the percentage of facilities used for "local" traffic ("PLF"). CLEC is entitled to cost based interconnection for telephone exchange and exchange access traffic.

BELLSOUTH'S POSITION: BellSouth will provide its position with its Response.

> ***Issue No. 3-12 [Section 4.5 (XSP)]:*** *What rate should apply in the event that a rate is not set forth in Exhibit A?*

CLECS' POSITION: To the extent a rate associated with interconnection trunks and facilities is not set forth in Exhibit A of Attachment 3, and no Commission-approved rate has been set, the rate should be negotiated by the Parties.

BELLSOUTH'S POSITION: BellSouth will provide its position with its Response.

> ***Issue No. 3-13 [Section 4.6 (XSP)]:*** *Should the costs of two-way interconnection trunks facilities be split (a) proportionally based on the percentage of traffic originated by each Party or (b) in half?*

CLECS' POSITION: For two-way trunk groups that carry only both Parties' non-transit and non-interLATA Switched Access Traffic, each Party should pay its proportionate share of the recurring charges for trunks and associated facilities and nonrecurring charges for additional trunks and associated facilities based on the percentage of the total traffic originated by that Party. The Parties should determine the applicable percentages twice per year based on the previous six months minutes of use billed by each Party. Each Party should pay its proportionate share of initial facilities based on the joint forecasts for circuits required by each Party.

BELLSOUTH'S POSITION: BellSouth will provide its position with its Response.

Issue No. 3-14 [Sections 10.10.4, 10.10.5, 10.10.6,10.10.7 (XSP)]: Should CLEC be permitted to bill BellSouth based on actual traffic measurements, in lieu of BellSouth-reported jurisdictional factors?

CLECS' POSITION: YES, where CLEC has message recording technology that identifies the jurisdiction of traffic terminated as defined in the Agreement, CLEC should have the option of using that information to bill BellSouth based upon actual measurements and jurisdictionalization, in lieu of factors reported by BellSouth.

BELLSOUTH'S POSITION: BellSouth will provide its position with its Response.

COLLOCATION (ATTACHMENT 4)

Issue No. 4-1 [Section 3.9]: What definition of "Cross Connect" should be included in the Agreement?

CLECS' POSITION: The following definition of "Cross Connect" should be included in the Agreement: "A cross-connection (Cross Connect) is a cabling scheme between cabling runs subsystems, and equipment using patch cords or jumper wires that attach to connection hardware on each end, as defined and described by the FCC in its applicable rules and orders." In addition to the FCC's definition, the following language should be added for clarity: "A Cross Connect involved in the provision of services not associated with a collocation arrangement is not ordered but is a part of the provisioning of the service."

BELLSOUTH'S POSITION: BellSouth will provide its position with its Response.

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Issue No. 4-2 [Sections 5.21.1, 5.21.2]: With respect to interference and impairment issues raised outside of the scope of the FCC Rule 51.233 (which relates to the deployment of Advanced Services *equipment) what provisions should be included in the Agreement?*

CLECs' POSITION: Provisions should be included to cover the installation and operation of any equipment or services that (1) significantly degrades ("significantly degrades" is as in the FCC rule applicable to Advanced Services); (2) endangers or damages the equipment or facilities of any other telecommunications carrier collocated in the Premises; or (3) knowingly and unlawfully compromises the privacy of communications routed through the Premises; and (4) creates an unreasonable risk of injury or death to any individual or to the public.

The Agreement also should provide that if BellSouth reasonably determines that any equipment or facilities of CLEC violates the provisions of Section 5.21, BellSouth should provide written notice to CLEC requesting that CLEC cure the violation within forty-eight (48) hours of actual receipt of written notice or, at a minimum, to commence curative measures within twenty-four (24) hours and to exercise reasonable diligence to complete such measures as soon as possible thereafter.

The Agreement also should state that, with the exception of instances which pose an immediate and substantial threat of physical damage to property or injury or death to any person, disputes regarding the source of the risk, impairment, interference, or degradation should be resolved pursuant to the Dispute Resolution provisions set forth in the General Terms and Conditions.

BELLSOUTH'S POSITION: BellSouth will provide its position with its Response.

Issue No. 4-3 [Section 8.1]: Where grandfathering is appropriate, which rates should apply?

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CLECs' POSITION: When rates have been "grandfathered," the rates that will apply are those rates that were in effect prior to the Effective Date of the Agreement, unless application of such rates would be inconsistent with the underlying purpose for grandfathering.

BELLSOUTH'S POSITION: BellSouth will provide its position with its Response.

> ***Issue No. 4-4 [Section 8.4]:*** *When should BellSouth commence billing of recurring charges for power?*

CLECs' POSITION: Billing for recurring charges for power provided by BellSouth should commence on the date upon which the primary and redundant connections from CLEC's equipment in the Collocation Space to the BellSouth power board or BDFB are installed.

BELLSOUTH'S POSITION: Billing for power provided by BellSouth should commence on the Space Acceptance Date or the Space Ready Date if a Space Acceptance inspection does not occur within 15 calendar days of the Space Ready Date.

> ***Issue No. 4-5 [Section 8.6]:*** *Should CLEC be required to pay space preparation fees and charges with respect to collocations when it already has paid space preparation charges through ICB or NRC pricing?*

CLECs' POSITION: NO, space preparation fees should not apply when CLEC already has paid space preparation charges through previously billed ICB or non-recurring space preparation charges.

BELLSOUTH'S POSITION: BellSouth will provide its position with its Response.

> ***Issue No. 4-6 [Sections 8.11, 8.11.1, 8.12.2]:*** *What rates should apply for BellSouth-supplied DC power?*

CLECs' POSITION: Applicable rates should vary depending on whether_CLEC elects to be billed on a "fused amp" basis, by electing to remain (or install new collocations or augments)

under the traditional collocation power billing method, or on a "used amp" basis, by electing to convert collocations to (or install new collocations or augments under) the power usage metering option set forth in Section 9 of Attachment 4. Under either billing method, there will be rates applicable to grandfathered collocations for which power plant infrastructure costs have been prepaid under an ICB pricing or non-recurring charge arrangement, and there will be rates applicable where such grandfathering does not apply and power plant infrastructure is instead recovered via recurring charges, as currently set by the Commission.

Under the fused amp billing option, CLEC will be billed at the Commission's most recently approved fused amp recurring rate for DC power. However, if certain arrangements are grandfathered as a result of CLEC having paid installation costs under an ICB or non-recurring rate schedule for the collocation arrangement power installation, CLEC should only be billed the recurring rate for the DC power in effect prior to the Effective Date of this Agreement, or, if rates that excluded the infrastructure component had not been incorporated into the Parties' most recent Agreement, the most recent Commission approved rate that does not include an infrastructure component should apply.

Under the power usage metering option, recurring charges for DC power are subdivided into a power infrastructure component and an AC usage component (based on DC amps consumed). However, if certain arrangements are grandfathered as a result of CLEC having paid installation costs under an ICB or non-recurring rate schedule for the collocation arrangement power installation, CLEC should only be billed a recurring rate for the AC usage based on the most recent Commission approved rate exclusive of an infrastructure component (as set by the Commission).

BELLSOUTH'S POSITION: BellSouth will provide its position with its Response.

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Issue No. 4-7 [Section 9.1.1]: Under the fused amp billing option, how will recurring and non-recurring charges be applied and what should those charges be?

CLECs' POSITION: Under the fused amp billing option, monthly recurring charges for -48V DC power should be assessed per fused amp per month in a manner consistent with Commission orders and as set forth in Section 8 of Attachment 4 (*see* Issue 4-6 above). Non-recurring charges for –48V DC power distribution, should be as prescribed by the Commission.

BELLSOUTH'S POSITION: BellSouth will provide its position with its Response.

Issue No. 4-8 [Sections 9.1.2, 9.1.3]: (A) Should CLEC be permitted to choose between a fused amp billing option and a power usage metering option in states other than and in addition to Tennessee (where the choice already is available)? (B) Under the power usage metering option, how will recurring and non-recurring charges be applied and what should those charges be?

CLECs' POSITION: (A) YES, CLEC should be permitted to choose between a fused amp billing option and a power usage metering option in states other than and in addition to Tennessee. (B) If CLEC chooses the power usage metering option, monthly recurring charges for -48V DC power will be assessed based on a consumption component and, if applicable, an infrastructure component, as set forth in Section 8 of Attachment 4 (*see* Issue 4-6 above). The Commission should ensure that its most recently approved recurring rates are apportioned appropriately into the consumption and infrastructure components. Nonrecurring charges for -48V DC power distribution should be as prescribed by the Commission.

BELLSOUTH'S POSITION: BellSouth will provide its position with its Response.

Issue No. 4-9 [Sections 9.3]: For BellSouth-supplied AC power, should CLEC be entitled to choose between a fused amp billing option and a power usage metering option?

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CLECs' POSITION: YES, where CLEC elects to install its own DC Power Plant, and BellSouth provides Alternating Current (AC) power to feed CLEC's DC Power Plant, CLEC should have the option of choosing between fused amp billing and power usage metering options.

BELLSOUTH'S POSITION: BellSouth will provide its position with its Response.

> ***Issue No. 4-10 [Sections 13.6]:*** *(A) Should BellSouth have the right to request the removal from BellSouth's Premises of a CLEC employee where the CLEC employee has not been found to have interfered with the property or personnel of BellSouth or another telecommunications carrier in a significant and material way? (B) In instances where interference caused by CLEC employee has not been found to have interfered with the property or personnel of BellSouth or another telecommunications carrier in a significant and material way, should the Parties be required to cooperate to ensure that appropriate remedial measures are taken that are less likely to have a significant impact on CLEC's daily operations?*

CLECs' POSITION: (A) NO, only in cases where CLEC employee is found interfering with the property or personnel of BellSouth or another telecommunications carrier in a significant and material way should BellSouth be entitled to request prompt removal and suspension of access from BellSouth's Premises for any employee of CLEC to whom BellSouth does not wish to grant access pursuant to an investigation to be conducted by BellSouth. (B) YES, in instances where interference caused by CLEC employee has not been found to have interfered with the property or personnel of BellSouth or another telecommunications carrier in a significant and material way, the Parties should be required to cooperate and communicate, to the extent circumstances permit, to ensure that the Parties may take appropriate remedial measures and so that CLEC personnel are not denied access for activity that does not have a significant and

material impact and that would be more suitably addressed through disciplinary measures less likely to have a significant impact on CLEC's daily operations.

BELLSOUTH'S POSITION: BellSouth will provide its position with its Response.

ORDERING (ATTACHMENT 6)

Issue No. 6-1 [Section 2.5.1]: Should payment history be included in the CSR?

CLECS' POSITION: YES, the subscribers' payment history should be included in the CSR to the extent authorized or required by the FCC, Commission or End User.

BELLSOUTH'S POSITION: NO, payment history should be maintained as confidential information and is not necessary in order for a CLEC to provision service to an end user. BellSouth's systems will not permit this information to be shared on an end user by end user or CLEC by CLEC basis.

Issue No. 6-2 [Section 2.5.5]: Should CLEC have to provide BellSouth with access to CSRs within firm intervals?

CLECS' POSITION: NO, CLEC is not required by law to commit to specific intervals, and does not have any automated system in place to handle CSR requests. Moreover, BellSouth refuses to commit to deliver CSRs within a firm interval. CLEC, however, will commit to use its best efforts to provide CSRs within an average of 5 business days of a valid request, subject to the same exclusions applicable to BST's delivery of CSRs.

BELLSOUTH'S POSITION: YES, BellSouth is required to provide CSRs to CLEC in intervals prescribed by this Commission which, if not met, require BellSouth to remit SEEMs penalties. If CLEC is not held to the same standard, the End User customer is impaired by being unable to receive the same service interval from all local service providers.

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Issue No. 6-3 [Sections 2.5.6.2, 2.5.6.3]: (A) What procedures should apply when one Party alleges, via written notice, that the other Party has engaged in unauthorized access to CSR information? (B) How should disputes over alleged unauthorized access to CSR information be handled under the Agreement?

CLECs' POSITION: (A) Either Party, in the event it suspects that the other Party has accessed CSR information without having obtained the proper End User authorization, should send written notice to the other Party specifying the alleged noncompliance. The Party receiving the notice should be obligated to acknowledge receipt of the notice as soon as practicable, and provide appropriate proof of authorization within seven (7) days or provide notice that appropriate corrective measures have been taken or will be taken as soon as practicable.

(B) If one Party disputes the other Party's assertion of non-compliance, that Party should notify the other Party in writing of the basis for its assertion of compliance. If the receiving Party fails to provide the other Party with notice that appropriate corrective measures have been taken within a reasonable time or provide the other Party with proof sufficient to persuade the other Party that it erred in asserting the non-compliance, the requesting Party should proceed pursuant to the Dispute Resolution provisions set forth in the General Terms and Conditions and the Parties should cooperatively seek expedited resolution of the dispute. "Self help", in the form of suspension of access to ordering systems and discontinuance of service, is inappropriate and coercive. Moreover, it effectively denies one Party the ability to avail itself to the Dispute Resolution process otherwise agreed to by the Parties.

BELLSOUTH'S POSITION: (A) The Party receiving such notice should provide documentation within seven (7) business days to prove authorization.

(B) The Party providing notice of such impropriety should provide notice to the offending Party that additional applications for service may be refused, that any pending orders for service may not be completed, and/or that access to ordering systems may be suspended if such use is not corrected or ceased by the fifth (5th) calendar day following the date of the notice. In addition, the alleging Party may, at the same time, provide written notice to the person(s) designated by the other Party to receive notices of noncompliance that the alleging Party may terminate the provision of access to ordering systems to the other Party and may discontinue the provisioning of existing services if such use is not corrected or ceased by the tenth (10th) calendar day following the date of the initial notice. If the other Party disagrees with the alleging Party's allegations of unauthorized use, the other Party shall proceed pursuant to the dispute resolution provisions set forth in the General Terms and Conditions.

Issue No. 6-4 [Section 2.6]: *Should BellSouth be allowed to assess manual service order charges on CLEC orders for which BellSouth does not provide an electronic ordering option?*

CLECs' Position: NO, if, at any time, electronic interfaces are not available to make placement of an electronic LSR possible, CLEC must use the manual LSR process for the ordering of UNEs and Combinations. In such cases where CLEC does not willfully choose to use the manual LSR process, CLEC should be assessed the lower electronic LSR OSS rate.

BellSouth's Position: YES, BellSouth is not required to provide electronic ordering capability for every function. BellSouth has implemented the Change Control Process for CLEC requests to change BellSouth's OSS capabilities if CLEC is not satisfied with existing ordering capabilities.

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Issue No. 6-5 [Section 2.6.5]: What rate should apply for Service Data Advancement (a/k/a service expedites)?

CLECs' Position: Rates for Service Date Advancement (a/k/a service expedites) related to UNEs, interconnection or collocation should be set consistent with TELRIC pricing principles.

BellSouth's Position: BellSouth is not required to provide expedited service pursuant to The Act. If BellSouth elects to offer expedite capability as an enhancement to a CLEC, BellSouth's tariffed rates for service date advancement should apply.

Issue No. 6-6 [Section 2.6.25]: Should CLEC be required to deliver a FOC to BellSouth for purposes of porting a number within a firm interval?

CLECs' Position: NO, CLEC is not required by law to commit to specific intervals, and does not have the necessary automated system in place to meet such requirements. Moreover, BellSouth refuses to commit to deliver FOCs within a firm interval. CLEC, however, subject to the same exclusions that apply to BellSouth's delivery of a FOC, is willing to commit to use best efforts to return a FOC to BellSouth, for purposes of porting a number, within an average of 5 business days, for noncomplex orders, after CLEC's receipt from BellSouth of a valid LSR.

BellSouth's Position: YES, BellSouth is required to provide FOCs to CLEC in intervals prescribed by this Commission, which if not met require BellSouth to remit SEEMs penalties. If CLEC is not held to the same standard, the End User customer is impaired by being unable to receive the same service interval from all Local service providers.

Issue No. 6-7 [Section 2.6.26]: Should CLEC be required to provide Reject Responses to BellSouth within a firm interval?

CLECs' Position: NO, CLEC is not required by law to commit to specific intervals, and does not have the necessary automated system in place to meet such requirements. Moreover,

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BellSouth refuses to commit to deliver Reject Responses within a firm interval. CLEC, however, subject to the same exclusions that apply to BellSouth's delivery of Reject Responses, is willing to commit to use best efforts to return Reject Responses to BellSouth, for purposes of porting a number, within an average of 5 business days, for noncomplex orders, after CLEC's receipt from BellSouth of a valid LSR.

BELLSOUTH'S POSITION: YES, BellSouth is required to provide FOC Reject Responses to CLEC in intervals prescribed by this Commission which if not met require BellSouth to remit SEEMs penalties. If CLEC is not held to the same standard, the End User customer is impaired by being unable to receive the same service interval from all local service providers.

Issue No. 6-8 [Section 2.7.10.4]: *Should BellSouth be required to provide performance and maintenance history for circuits with chronic problems?*

CLECS' POSITION: YES, upon request from CLEC, BellSouth should disclose all available performance and maintenance history regarding the network element, service or facility subject to the chronic trouble ticket.

BELLSOUTH'S POSITION: NO, network performance and maintenance history is BellSouth's proprietary information.

Issue No. 6-9 [Section 2.9.1]: *Should charges for substantially similar OSS functions performed by the parties be reciprocal?*

CLECS' POSITION: YES, the Parties should bill each other OSS rates pursuant to the terms, conditions and rates for OSS as set forth in Exhibit A of Attachment 2 of the Agreement, for substantially similar OSS functions performed by the Parties.

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BELLSOUTH'S POSITION: YES, but only for those functions that CLEC performs that are substantially similar to those performed by BellSouth and only if the CLEC performs the same OSS functions pursuant to the terms and conditions under which BellSouth bills CLEC for OSS, including FOC turnaround times the same as BellSouth's, due date intervals the same as BellSouth's and CSRs handled under the same terms and conditions under which BellSouth provides the CSRs to CLEC.

> ***Issue No. 6-10 [Section 3.1.1]:*** *(A) Can Bellsouth make the porting of an End User to the CLEC contingent on either the CLEC having an operating, billing and/or collection arrangement with any third party carrier, including BellSouth Long Distance or the End User changing its PIC? (B) If not, should BellSouth be subject to liquidated damages for imposing such conditions?*

CLECS' POSITION: (A) NO, BellSouth is required by law to port a customer once the customer requests to be switched to another local service provider, regardless of any arrangement or agreement (or lack thereof) between CLEC and BellSouth Long Distance or another third party carrier. BellSouth's practice represents an anticompetitive leveraging of its ILEC status in favor of, and in collusion with, its Section 272 affiliate. More specifically, BellSouth may not condition its compliance with these obligations under the Agreement upon CLEC's or its End-Users' entry into any billing and/or collection arrangement, operational understanding, relationship or other arrangement with one or more of BellSouth's Affiliates, and/or any third party carrier.

(B) YES, liquidated damages are appropriate in this instance because it would be impossible or commercially impracticable to ascertain and fix the actual amount of damages as would be sustained by CLEC as a result of such action by BellSouth. A liquidated damage amount of $1,000 per occurrence per day is a reasonable approximation of the damages likely to

be sustained by CLEC, upon the occurrence and during the continuance of any such breach. Liquidated damages should be in addition to and without prejudice to or limitation upon any other rights or remedies CLEC and/or any of its End Users may have under this Agreement and/or other applicable documents against BellSouth.

BELLSOUTH'S POSITION: (A) YES. If another carrier restricts the conditions under which that carrier's end user can retain a PIC, CLEC should be required to either comply with that carrier's requirements or transfer the end-user with another PIC. (B) NO, liquidated damages provisions are inappropriate.

Issue No. 6-11 [Sections 3.1.2, 3.1.2.1]: *(A) Should the mass migration of customer service arrangements resulting from mergers, acquisitions and asset transfers be accomplished by the submission of an electronic LSR or spreadsheet?* *(B) If so, what rates should apply?* *(C) What should be the interval for such mass migrations of services?*

CLECS' POSITION: (A) YES, mass migration of customer service arrangements (e.g., UNEs, Combinations, resale) should be accomplished pursuant to submission of electronic LSR or, if mutually agreed to by the Parties, by submission of a spreadsheet in a mutually agreed-upon format. Until such time as an electronic LSR process is available, a spreadsheet containing all relevant information should be used.

(B) An electronic OSS charge should be assessed per service arrangement migrated. In addition, BellSouth should only charge CLEC a TELRIC-based records change charge, as set forth in Exhibit A of Attachment 2, for migrations of customers for which no physical re-termination of circuits must be performed. Similarly, BellSouth should only charge

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CLEC a TELRIC-based charge, as set forth in Exhibit A of Attachment 2, for migrations of customers for which physical re-termination of circuits is required.

(C) Migrations should be completed within ten (10) calendar days of an LSR or spreadsheet submission.

BELLSOUTH'S POSITION: (A) No, each and every Merger, Acquisition and Asset Transfer is unique and requires project management and planning to ascertain the appropriate manner in which to accomplish the transfer, including how orders should be submitted. The vast array of services that may be the subject of such a transfer, under the agreement and both state and federal tariffs, necessitates that various forms of documentation may be required.

(B) The rates by necessity must be negotiated between the Parties based upon the particular services to be transferred and the work involved.

(C) No finite interval can be set to cover all potential situations. While shorter intervals can be committed to and met for small, simple projects, larger and more complex projects require much longer intervals and prioritization and cooperation between the Parties.

BILLING (ATTACHMENT 7)

Issue No. 7-1 [Section 1.1.3]: *Should there be a time limit on the parties' ability to engage in backbilling?*

CLECS' POSITION: YES, bills for service should not be rendered more than ninety (90) calendar days have passed since the bill date on which those charges ordinarily would have been billed. Billed amounts for services rendered more than one (1) billing period prior to the Bill Date should be invalid unless the billing Party identifies such billing as "back-billing" on a line-item basis. Billing beyond (90) calendar days and up to a limit of six (6) months after the date upon which the bill ordinarily would have been issued may be allowed under the following

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conditions: (1) charges connected with jointly provided services whereby meet point billing guidelines require either Party to rely on records provided by a third party and such records have not been provided in a timely manner; and (2) charges incorrectly billed due to erroneous information supplied by the non-billing Party.

BELLSOUTH'S POSITION: BellSouth will provide its position with its Response.

Issue No. 7-2 [Section 1.2.2]: *(A) What charges, if any, should be imposed for records changes made by the Parties to reflect changes in corporate names or other LEC identifiers such as OCN, CC, CIC and ACNA? (B) What intervals should apply to such changes?*

CLECS' POSITION: (A) A Party should be entitled to make one (1) "LEC Change" (*i.e,* corporate name change, OCN, CC, CIC, ACNA change) per state in any twelve (12) month period without charge by the other Party for updating its databases, systems and records solely to reflect such change. For any additional LEC Changes, TELRIC compliant rates should be charged.

(B) "LEC Changes" should be accomplished in thirty (30) calendar days and should result in no delay or suspension of ordering or provisioning of any element or service provided pursuant to this Agreement, or access to any pre-order, order, provisioning, maintenance or repair interfaces. At the request of a Party, the other Party should establish a new BAN within ten (10) calendar days.

BELLSOUTH'S POSITION: BellSouth will provide its position with its Response.

Issue No. 7-3 [Section 1.4]: *When should payment of charges for service be due?*

CLECS' POSITION: Payment of charges for services rendered should be due thirty (30) calendar days from receipt or website posting of a complete and fully readable bill or within thirty (30)

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calendar days from receipt or website posting of a corrected or retransmitted bill in those cases where correction or retransmission is necessary for processing.

BELLSOUTH'S POSITION: Payment for services should be due on or before the next bill date (Payment Due Date) in immediately available funds.

> ***Issue No. 7-4 [Section 1.6]:*** *(A) What interest rate should apply for late payments? (B) What fee should be assessed for returned checks?*

CLECS' POSITION: (A) The interest rate that should apply for late payments is a uniform region-wide (1) percent per month. (B) In addition to any applicable late payment charges, a uniform region-wide $20 fee for all returned checks should apply.

BELLSOUTH'S POSITION: (A) The applicable interest rate approved by each state Commission in BellSouth's tariffs should apply. (B) The Commission approved rate from the GSST should apply or, in the absence of such, the amount permitted by state law.

> ***Issue No. 7-5 [Section 1.7.1]:*** *What recourse should a Party have if it believes the other Party is engaging in prohibited, unlawful or improper use of its facilities or services, abuse of the facilities or noncompliance with the Agreement or applicable tariffs?*

CLECS' POSITION: Each Party should have the right to suspend access to ordering systems for and to terminate particular services or access to facilities that are being used in an unlawful, improper or abusive manner. However, such remedial action should be limited to the services or facilities in question and such suspension or termination should not be imposed unilaterally by one Party over the other's written objections to or denial of such accusations. In the event of such a dispute, "self help" should not supplant the Dispute Resolution process set forth in the Agreement.

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BELLSOUTH'S POSITION: Each Party should have the right to suspend or terminate service in the event it believes the other party is engaging in one of these practices.

> ***Issue No. 7-6 [Section 1.7.2]:*** *Should CLEC be required to calculate and pay past due amounts in addition to those specified in BellSouth's notice of suspension or termination for nonpayment in order to avoid suspension or termination?*

CLECS' POSITION: NO. If CLEC receives a notice of suspension or termination from BellSouth with a limited time to pay nondisputed past due amounts, CLEC should, in order to avoid suspension or termination, be required to pay only the amount past due as of the date of the notice and as expressly and plainly indicated on the notice. Otherwise, CLEC will risk suspension or termination due to possible calculation and timing errors.

BELLSOUTH'S POSITION: BellSouth will provide its position with its Response.

> ***Issue No. 7-7 [Section 1.8.3]:*** *How many months of billing should be used to determine the maximum amount of the deposit?*

CLECS' POSITION: The amount of a deposit should not exceed two month's estimated billing for new CLECs or one and one-half month's actual billing for existing CLECs (based on average monthly billings for the most recent six (6) month period). The one and one-half month's actual billing deposit limit for existing CLECs is reasonable given that balances can be predicted with reasonable accuracy and that significant portions of services are billed in advance.

BELLSOUTH'S POSITION: The average of two (2) months of actual billing for existing customers or estimated billing for new customers, which is consistent with the telecommunications industry's standard and BellSouth's practice with its end users.

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Issue No. 7-8 [Section 1.8.3.1]: Should the amount of the deposit BellSouth requires from CLEC be reduced by past due amounts owed by BellSouth to CLEC?

CLECs' POSITION: YES, the amount of security due from an existing CLEC should be reduced by amounts due CLEC by BellSouth aged over thirty (30) calendar days. BellSouth may request additional security in an amount equal to such reduction once BellSouth demonstrates a good payment history, as defined in the deposit provisions of Attachment 7. This provision is appropriate given that the Agreement's deposit provisions are not reciprocal and that BellSouth's payment history with CLECs is often poor.

BELLSOUTH'S POSITION: NO, CLEC's remedy for addressing late payment by BellSouth should be suspension/termination of service or application of interest/late payment charges similar to BellSouth's remedy for addressing late payment by CLEC.

Issue No. 7-9 [Section 1.8.6]: Should BellSouth be entitled to terminate service to CLEC pursuant to the process for termination due to non-payment if CLEC refuses to remit any deposit required by BellSouth within 30 calendar days?

CLECs' POSITION: NO, BellSouth should have a right to terminate services to CLEC for failure to remit a deposit requested by BellSouth only in cases where (a) CLEC agrees that such a deposit is required by the Agreement, or (b) the Commission has ordered payment of such deposit. A dispute over a requested deposit should be addressed via the Agreement's Dispute Resolution provisions and not through "self-help".

BELLSOUTH'S POSITION: YES, thirty (30) calendar days is a commercially reasonable time period within which CLEC should have met its fiscal responsibilities.

Issue No. 7-10 [Section 1.8.7]: What recourse should be available to either Party when the Parties are unable to agree on the need for or amount of a reasonable deposit?

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CLECs' POSITION: If the Parties are unable to agree on the need for or amount of a reasonable deposit, either Party should be able to file a petition for resolution of the dispute and both parties should cooperatively seek expedited resolution of such dispute.

BELLSOUTH'S POSITION: If CLEC does not agree with the amount or need for a deposit requested by BellSouth, CLEC may file a petition with the Commission for resolution of the dispute and BellSouth would cooperatively seek expedited resolution of such dispute. BellSouth shall not terminate service during the pendency of such a proceeding provided that CLEC posts a payment bond for the amount of the requested deposit during the pendency of the proceeding.

Issue No. 7-11 [Section 1.8.9]: *Under what conditions may BellSouth seek additional security deposit from CLEC?*

CLECs' POSITION: Subject to a standard of commercial reasonableness and the standards for deposits requirements set forth in Attachment 7, BellSouth may seek an additional deposit if a material change in the circumstances of CLEC so warrants and/or gross monthly billing has increased more than 25% beyond the level most recently used to determine the level of deposit. BellSouth should not be entitled to make such additional requests based solely on increased billing more frequently than once in any six (6) month period.

BELLSOUTH'S POSITION: BellSouth may seek additional security, subject to a standard of commercial reasonableness, if a material change in the circumstances of CLEC so warrants and/or gross monthly billing has increased beyond the level most recently used to determine the level of security deposit.

Issue No. 7-12 [Section 1.9.1]: *To whom should BellSouth be required to send notice of suspension for additional applications for service, pending applications for service and access to BellSouth's ordering systems?*

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CLECs' POSITION: Notice of suspension for additional applications for service, pending applications for service, and access to BellSouth's ordering systems should be sent pursuant to the requirements of Attachment 7 and also should be sent via certified mail to the individual(s) listed in the Notices provision of the General Terms and Conditions.

BELLSOUTH'S POSITION: BellSouth will provide its position with its Response.

BONA FIDE REQUEST/NEW BUSINESS REQUEST (BFR/NBR) (ATTACHMENT 11)

Issue No. 11-1 [Sections 1.5, 1.8.1, 1.9, 1.10]: (A) Should BellSouth be permitted to charge CLEC the full development costs associated with a BFR? (B) If so, how should these costs be recovered?

CLECs' POSITION: (A) NO, charges associated with the development of a BFR should be apportioned among CLECs who may benefit from the UNE(s). (B) To the extent BellSouth can charge CLEC for the development costs associated with a BFR, such costs should be assessed through nonrecurring and recurring rates.

BELLSOUTH'S POSITION: (A) YES, BellSouth is entitled to recover its costs in provisioning services to CLEC. Since this is a unique request that CLEC is making, CLEC should bear the full development costs. (B) CLEC should be obligated to pay these costs upon request that BellSouth proceed.

V. PROCEDURAL MATTERS

22. Section 252(b)(4)(c) of the Communications Act requires that, unless waived by the parties, the Commission should render a decision in this proceeding not later than nine (9) months after the date on which interconnection negotiations formally commenced which, in this case, is June 6, 2004. In order to allow the most expeditious conduct of this

arbitration, the Joint Petitioners respectfully request that the Commission issue a procedural order as promptly as possible, establishing a schedule for discovery requests, prefiled testimony, prehearing conference, and the timing and conduct of the hearing in this matter.

VI. CONCLUSION

23. BellSouth and the Joint Petitioners have, in good faith, attempted to arrive at a mutually acceptable interconnection agreement. While much progress has been made, numerous issues remain unresolved. Accordingly, the Joint Petitioners call upon the Commission to arbitrate the remaining unresolved issues.

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WHEREFORE, the Joint Petitioners respectfully request that the Commission resolve the outstanding issues between the parties as set forth in this Joint Petition, resolve each such issue in favor of the Joint Petitioners, grant all the requests sought herein, and grant any other relief as the Commission may deem just and proper.

Respectfully submitted,

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EXHIBIT 1

MATRIX OF UNRESOLVED ISSUES

KMC / NUVOX / NEWSOUTH / XSPEDIUS - BELLSOUTH ARBITRATION
JOINT ISSUES/OPEN ITEMS MATRIX

[AS OF 2/11/04]

ITEM NO.	ISSUE #	§	UNRESOLVED ISSUE	CLEC POSITION	BELLSOUTH POSITION
			GT&Cs (MAIN)		
1	G-1	1.6	*What should be the effective date of future rate impacting amendments?*	Future amendments incorporating Commission-approved rates should be effective as of the effective date of the Commission order, if an amendment is requested within 30 calendar days of that date. Otherwise, such amendments should be effective 10 calendar days after request.	Future amendments incorporating Commission-approved rates should be effective ten (10) calendar days after the date of the last signature executing the amendment.
2	G-2	1.7	*How should "End User" be defined?* [BellSouth will either concur in CLECs' statement of the issue or provide an alternative statement with its Response]	The term "End User" should be defined as "the customer of a Party".	BellSouth will provide its position with its Response.
3	G-3	10.2	*Should the agreement contain a general provision providing that BellSouth shall take financial responsibility for its own actions in causing, or contributing to unbillable or uncollectible CLEC revenue in addition to specific provisions set forth in Attachments 3 and 7?*	YES, BellSouth should be financially liable for causing, failing to prevent, or contributing to unbillable or uncollectible CLEC revenue. A general provision complements the specific provisions contained in Attachments 3 and 7.	NO. The Parties have negotiated specific provisions in Attachments 3 and 7 addressing responsibility for billing records deficiencies.

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ITEM NO.	ISSUE #	§	UNRESOLVED ISSUE	CLEC POSITION	BELLSOUTH POSITION
4	G-4	10.4.1	*What should be the limitation on each Party's liability in circumstances other than gross negligence or willful misconduct?*	In cases other than gross negligence and willful misconduct by the other party, or other specified exemptions as set forth in CLECs' proposed language, liability should be limited to an aggregate amount over the entire term equal to 7.5% of the aggregate fees, charges or other amounts paid or payable for any and all services provided or to be provided pursuant to the Agreement as of the day immediately preceding the date of assertion or filing of the applicable claim or suit. CLECs' proposal represents a hybrid between limitation of liability provisions typically found in commercial contracts between sophisticated buyers and sellers, in the absence of overwhelming market dominance by one party, and the effective elimination of liability provision proposed by BellSouth.	The industry standard limitation of liability should apply, which limits the liability of the provisioning party to a credit for the actual cost of the services or functions not performed or improperly performed.
5	G-5	10.4.2	*Should each Party be required to include specific liability-eliminating terms in all of its tariffs and End User contracts (past, present and future), and, to the extent that a Party does*	NO, BellSouth should not be able to dictate the terms of service between CLEC and its End Users by, among other things, holding CLEC liable for failing to mirror BellSouth's limitation of liability and indemnification provisions in CLEC's End User tariffs and/or contracts. To the extent	BellSouth Issue Statement: *If the CLEC elects not to place in its contracts with end users and/or tariffs standard industry limitations of liability, who should bear the risks that result from this business decision.*

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ITEM NO.	ISSUE #	§	UNRESOLVED ISSUE	CLEC POSITION	BELLSOUTH POSITION
			not or is unable to do so, should it be obligated to indemnify the other Party for liabilities not eliminated? [BellSouth does not concur in this statement of the issue]	that a Party does not, or is unable to, include specific elimination-of-liability terms in all of its tariffs and End User contracts (past, present and future), and provided that the non-inclusion of such terms is commercially reasonable, that Party should not be required to indemnify and reimburse the other Party for that portion of the loss that would have been limited had the first Party included in its tariffs and contracts the elimination-of-liability terms that such other Party included in its tariffs at the time of such loss.	BellSouth Position: If a CLEC elects not to limit its liability to its end users/customers in accordance with industry norms, the CLEC should bear the risk of loss arising from that business decision.
6	G-6	10.4.4	*Should limitation on liability for indirect, incidental or consequential damages be construed to preclude liability for claims or suits for damages incurred by CLEC's (or BellSouth's) End Users to the extent such damages result directly and in a reasonably foreseeable manner from BellSouth's (or CLEC's) performance obligations set forth in the Agreement?* [BellSouth will either concur with CLECs' statement of the	NO, the Agreement, by its nature, contemplates that End Users will be served via the exchange of traffic through interconnection arrangements and through the use of UNEs and Other Services purchased. Damages to End Users that result directly and in a reasonably foreseeable manner from BellSouth's (or CLEC's) performance of obligations set forth in the Agreement that were not and are not directly and proximately caused by or are the result of CLEC's (or BellSouth's) failure to act at all relevant times in a commercially reasonable manner in compliance with CLEC's (or BellSouth's) duties of mitigation with respect to such damage should be considered direct under the Agreement for simple negligence	BellSouth will provide its position with its Response.

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ITEM NO.	ISSUE #	§	UNRESOLVED ISSUE	CLEC POSITION	BELLSOUTH POSITION
			issue or provide an alternative statement with its Response]	purposes.	
7	G-7	10.5	*What should the indemnification obligations of the parties be under this Agreement?*	The Party providing service under the Agreement should be indemnified, defended and held harmless by the Party receiving services against any claim for libel, slander or invasion of privacy arising from the content of the receiving Party's own communications. Similarly, the Party receiving services under the Agreement should be indemnified, defended and held harmless by the Party providing services against any claims, loss or damage to the extent arising from: (1) the providing Party's failure to abide by Applicable Law, or (2) injuries or damages arising out of or in connection with this Agreement to the extent cased by the providing Party's negligence, gross negligence or willful misconduct.	The Party receiving services should indemnify the party providing services from (1) any claim loss or damages from claims for libel, slander or invasion of privacy arising from the content of the receiving party's own communications, or (2) any claim, loss or damage claimed by the end user of the Party receiving services arising out of the Agreement.
8	G-8	11.1	*What language should be included in the Agreement regarding a Party's use of the other Party's name, service marks and trademarks?* [BellSouth will either concur with CLECs' statement of the issue or provide an alternative statement with its Response]	Given the complexity of and variability in intellectual property law, this nine-state Agreement should simply state that no patent, copyright, trademark or other proprietary right is licensed, granted or otherwise transferred by the Agreement and that a Party's use of the other Party's name, service mark and trademark should be in accordance with Applicable Law. The Commission should not attempt to prejudge intellectual property law issues, which at	BellSouth will provide its position with its Response.

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ITEM NO.	ISSUE #	§	UNRESOLVED ISSUE	CLEC POSITION	BELLSOUTH POSITION
				BellSouth's insistence, the Parties have agreed are best left to adjudication by courts of law (see, GTC, Sec. 11.5).	
9	G-9	13.1	*Should a court of law be included among the venues at which a Party may seek dispute resolution under the Agreement?* [BellSouth does not concur in this statement of the issue]	YES, either Party should be able to petition the Commission, the FCC or a court of law for resolution of a dispute. Given the difficulties experienced in achieving efficient regional dispute resolution, and the ongoing debate as to whether state commissions have jurisdiction to enforce agreements (CLECs do not dispute that authority) and as to whether the FCC will engage in such enforcement (or not), no legitimate dispute resolution venue should be foreclosed. There is no question that courts of law have jurisdiction to entertain such disputes (see GTC, Sec. 11.5); indeed, in certain instances, they may be better equipped to adjudicate a dispute and may provide a more efficient alternative to litigating in up to 9 different jurisdictions or to waiting for the FCC to decide whether it will or won't accept an enforcement role given the particular facts.	BellSouth Issue Statement: *Should a party be allowed to take a dispute concerning the interpretation or implementation of any provision of the agreement to a Court of law for resolution without first exhausting its administrative remedies?* BellSouth Position: This Commission or the FCC should resolve disputes as to the interpretation of the Agreement or as to the proper implementation of the Agreement. A party should be entitled to seek judicial review of any ruling made by the Commission or the FCC concerning this Agreement, but should not be entitled to take such disputes to a Court of law without first exhausting its administrative remedies.
10	G-10	17.4	*(A) How much notice should be given by a Party requesting a change of law amendment?* *(B) How much time must elapse before a Party may*	(A) The Party requesting renegotiation should give 15 calendar days notice. (B) In the event that changes to the Agreement necessitated by a change of law are not renegotiated within 45 days after notice of renegotiation, either Party may	BellSouth will provide its position with its Response.

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			seek dispute resolution pursuant to the dispute resolution procedures of the agreement, absent successful negotiation of and agreement by the Parties on such an amendment? [BellSouth will either concur with CLECs' statement of the issue or provide an alternative statement with its Response]	invoke the Dispute Resolution procedures of the agreement, as it deems appropriate. The 45 day period is not a deadline. Rather, it establishes a reasonable minimum time frame during which the Parties must attempt to negotiate an amendment without resorting to dispute resolution. After 45 days have passed, each Party should use discretion and good judgment prior to resorting to Dispute Resolution, as with respect to some amendments, it may take months to sort through the issues and complete a good faith attempt at reaching resolution without intervention.	
11	G-11	19, 19.1	*For the purpose of bankruptcy law, should the Agreement be considered indivisible?*	NO, it is neither necessary nor proper to amalgamate or pre-decide bankruptcy law in the context of this Agreement. All provisions of the Agreement were not negotiated as a "single whole" or as a "single transaction" and not all of the provisions or obligations set forth therein are "interdependent". BellSouth's proposed language impermissibly subverts, the requirements of section 252(i) of the Communications Act, FCC Rule 51.809, and Section 17.1 of the General Terms and Conditions.	YES. The Parties have negotiated this agreement as a whole and do not consider each attachment to be a separate contract, divisible from the general terms and conditions, and every other applicable attachment.
12	G-12	32.2	*Should the Agreement explicitly state that all existing state and federal laws, rules, regulations,*	YES, nothing in the Agreement should be construed to limit a Party's rights or exempt a Party from obligations under Applicable Law, as defined in the Agreement, except in	This Agreement constitutes the contractual obligations of the Parties to each other and should not be subject to further negotiation subsequent to being

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ITEM NO.	ISSUE #	§	UNRESOLVED ISSUE	CLEC POSITION	BELLSOUTH POSITION
			and decisions apply unless otherwise specifically agreed to by the Parties?	such cases where the Parties have explicitly agreed to a limitation or exemption. This is a basic legal tenet and is consistent with both federal and Georgia law (agreed to by the parties), and it should be explicitly stated in the Agreement in order to avoid unnecessary disputes and litigation that has plagued the Parties in the past.	fully negotiated and arbitrated.
13	G-13	32.3	*How should the Parties deal with non-negotiated deviations from the state Commission- approved rates in the rate sheets attached to the Agreement?*	Any non-negotiated deviations from ordered rates should be corrected by retroactive true-up to the effective date of the Agreement within 30 calendar days of the date the error was identified by either Party.	Any non-negotiated deviations from ordered rates should be changed by amendment of the agreement upon discovery by a party and should be applied prospectively regardless of whether the rate increases or decreases as a result of such amendment.
14	G-14	34.2	*Can either Party require, as a prerequisite to performance of its obligations under the Agreement, that the other Party adhere to any requirement other than those expressly stipulated in the Agreement or mandated by Applicable Law?*	NO, the Parties should not be permitted to hold performance hostage to terms not included in the Agreement and not mandated by Applicable Law. More specifically, neither Party should, as a condition or prerequisite to such Party's performance of its obligations under the Agreement, impose or insist upon the other Party's (or any of its End Users') adherence to any requirement or obligation other than as expressly stipulated in this Agreement or as otherwise mandated by Applicable Law.	YES. The Parties are free to negotiate with each other as they may with third parties. Neither Party should use this agreement to interfere with a third party's contractual rights and obligations.
15	G-15	45.2	*If BellSouth changes a provision of one or more of its Guides that would cause CLEC to incur a material*	NO, if the contemplated change to one or more of BellSouth's Guides would cause CLEC to incur a material cost or expense to implement the change, BellSouth and CLEC	YES. BellSouth's Guides apply to all CLEC's equally. If BellSouth allows a CLEC the right to opt out of the requirements of a Guide, the CLEC

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			cost or expense to implement the change, should the CLEC notify BellSouth, in writing, if it does not agree to the change?	should negotiate an amendment to the Agreement to incorporate such change.	should notify BellSouth of its decision to do so.
16	G-16	45.3	*Should the obligations set forth in the Agreement be impacted by unreasonable and/or discriminatory revisions to BellSouth tariffs?* [BellSouth does not concur in this statement of the issue]	NO, unreasonable and/or discriminatory revisions to BellSouth's tariffs should not affect the obligations set forth in the Agreement. Specifically, to the extent that tariff changes are inconsistent with the provisions of the Agreement, or are unreasonable or discriminatory, they should not supersede the Agreement. Such changes may only become part of the Agreement by written amendment negotiated and/or arbitrated by the Parties.	BellSouth Issue Statement: *If a tariff is referenced in the Agreement, what effect should subsequent changes to the tariff have on the Agreement?* BellSouth Position: If a service is purchased pursuant to a tariff that is referenced in the Agreement, the terms of that tariff at the time of the purchase should apply. This Commission already has procedures in place pursuant to which BellSouth may revise its tariffs, and pursuant to which a CLEC, or any other party, may object to such revisions. There should be no requirement that tariff revisions that occur after the Agreement becomes effective be incorporated into the Agreement by amendment.
			RESALE (ATTACHMENT 1)		
17	1-1	3.19	*How much advance notice must BellSouth give CLEC before discontinuing a service or increasing the price of a service?*	BellSouth must provide electronically to CLEC forty-five (45) days advance notice of changes to the prices, terms or conditions of services available for Resale, including but not limited to, discontinuances and price	If a CLEC is under a commission requirement to provide notice to its end users of price increases or discontinuance of services, BellSouth should provide 10 days notice prior to

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				increases.	the CLEC's obligation to provide notice to its end users.
18	1-2	11.6.6	*For the purpose of connecting to BellSouth's TOPS platform, should CLEC be entitled to purchase from BellSouth transport facilities and trunks at TELRIC-compliant rates where such transport facilities and trunks are available as UNEs?* [BellSouth does not concur in this statement of the issue]	YES, for the purpose of connecting to BellSouth's TOPS, CLEC should be entitled to purchase from BellSouth transport facilities or trunks at TELRIC rates where such transport facilities and trunks are available as UNEs.	BellSouth Issue Statement: *Should CLEC be entitled to purchase from BellSouth dedicated transport or trunks at TELRIC compliant rates to connect a BellSouth end office to BellSouth's TOPS or CLEC's operator service provider?* BellSouth Position: No, dedicated transport or trunks to BellSouth's or CLEC's TOPS should be at tariffed rates.
NETWORK ELEMENTS (ATTACHMENT 2)					
19	2-1	1.1	*(A) To what extent shall obligations set forth in FCC rules and orders and Commission rules and orders apply?* *(B) To the extent that there is a conflict between Attachment 2 and any other provision of the Agreement, should the provisions in Attachment 2 control?* [BellSouth will either concur	(A) In general, Attachment 2 is not intended to eliminate obligations set forth in FCC rules and orders and Commission rules and orders. However, to the extent obligations are addressed in the text of Attachment 2 and that text conflicts with obligations set forth in FCC rules and orders and Commission rules and orders, the text of Attachment 2 should prevail. Conversely, to the extent obligations set forth in FCC rules and orders and Commission rules and orders are not addressed in Attachment 2, those obligations should apply unless the text of Attachment 2 expressly states that a particular obligation does not apply	BellSouth will provide its position with its Response.

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			with CLECs' statement of the issue or provide an alternative statement with its Response]	particular obligation does not apply. (B) NO, CLECs are unaware of any conflicts between Attachment 2 and any other provision of the Agreement. Any conflicts that may arise or be alleged in the future should be addressed and evaluated on a case-by-case basis.	
20	2-2	1.2	*(A) Should the Agreement contain a paraphrased version of a rule regarding CLEC obligations in lieu of direct references to rules governing both Parties' obligations?* *(B) Should references to FCC rules be construed as including or excluding relevant text from the FCC's Triennial Review Order?* [BellSouth will either concur with CLECs' statement of the issue or provide an alternative statement with its Response]	(A) NO, the Agreement should contain direct references to rules governing both Parties' obligations. (B) Direct references to FCC rules should be construed to include relevant text from the FCC's *Triennial Review Order*.	BellSouth will provide its position with its Response.
21	2-3	1.4.2	*Should the provision regarding the effective billing date for Conversions explicitly state that agreement to it by*	YES, given that the text of this provision represents a negotiated resolution to a controversial issue that has no intended retroactive effect on ongoing disputes between the Parties, it is appropriate to	BellSouth will provide its position with its Response.

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ITEM NO.	ISSUE #	§	UNRESOLVED ISSUE	CLEC POSITION	BELLSOUTH POSITION
			CLECs is made without admission or prejudice with respect to pre-existing disputes regarding this issue? [BellSouth will either concur with CLECs' statement of the issue or provide an alternative statement with its Response]	include such a disclaimer in the provision.	
22	2-4	1.4.3	*(A) Should CLEC be required to submit a BFR/NBR to convert a UNE or Combination (or part thereof) to Other Services or tariffed BellSouth access services?* *(B) In the event of such conversion, what rates should apply?* [BellSouth will either concur with CLECs' statement of the issue or provide an alternative statement with its Response]	(A) NO, CLEC should be allowed to submit an LSR or ASR, as appropriate. (B) For such conversion, the non-recurring charges should be as set forth in Exhibit A of Attachment 2 or the relevant tariff, as appropriate. In addition, such charges should be commensurate with the work required to effectuate the conversion (cross connect only, billing change/records update only, etc.).	BellSouth will provide its position with its Response.
23	2-5	1.5	*(A) In the event UNEs or Combinations are no longer offered pursuant to, or are not in compliance with, the terms set forth in this Agreement, which Party should bear the*	(A) In the event UNEs or Combinations are no longer offered pursuant to, or are not in compliance with, the terms set forth in the Agreement, it should be BellSouth's obligation to identify the specific service arrangements that it insists be transitioned to other services pursuant to Attachment 2.	BellSouth will provide its position with its Response.

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ITEM NO.	ISSUE #	§	UNRESOLVED ISSUE	CLEC POSITION	BELLSOUTH POSITION
			obligation of identifying those service arrangements? *(B) What recourse may BellSouth take if CLEC does not submit a rearrange or disconnect order within 30 days?* *(C) What rates, terms and conditions should apply in the event of a termination, re-termination, or physical rearrangements of circuits?* [BellSouth will either concur with CLECs' statement of the issue or provide an alternative statement with its Response]	(B) If CLEC does not submit a rearrange or disconnect order within 30 days, BellSouth may disconnect such arrangements or services without further notice, provided that CLEC has not notified BellSouth of a dispute regarding the identification of specific service arrangements as being no longer offered pursuant to, or are not in compliance with, the terms set forth in the Agreement. (C) For arrangements that require a re-termination or other physical rearrangement of circuits to comply with the terms of the Agreement, non-recurring charges for the applicable UNE or cross connect from Exhibit A of Attachment 2 should apply. Disconnect charges should not apply to services that are being physically rearranged or re-terminated.	
24	2-6	1.5.1	*Should BellSouth be entitled to impose limitations on CLEC use of UNEs not permitted by Applicable Law?* [BellSouth will concur with CLECs' statement of the issue or provide an alternative statement with its Response]	NO, unless permitted under Applicable Law, BellSouth may not impose limitations on CLEC's ability to access and use UNEs.	BellSouth will provide its position with its Response.

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ITEM NO.	ISSUE #	§	UNRESOLVED ISSUE	CLEC POSITION	BELLSOUTH POSITION
25	2-7	1.6.1	*What rates, terms and conditions should apply for Routine Network Modifications pursuant to 47 C.F.R. § 51.319(a)(8) and (e)(5)?* [BellSouth will either concur with CLECs' statement of the issue or provide an alternative statement with its Response]	If BellSouth has anticipated such Routine Network Modifications and performs them during normal operations, then BellSouth should perform such Routine Network Modifications at no additional charge. If BellSouth has not anticipated a requested or necessary network modification as being a Routine Network Modification and, as such, has not recovered the costs of such Routine Network Modifications in the rates set forth in Exhibit A of Attachment 2, then BellSouth should notify CLEC of the required Routine Network Modification and should request that CLEC submit a Service Inquiry to have the work performed. Each *unique* request should be handled as a project on an individual case basis. BellSouth should provide a TELRIC-compliant price quote for the request, and upon receipt of a firm order from CLEC, BellSouth should perform the Routine Network Modification.	BellSouth will provide its position with its Response.
26	2-8	1.7	*Should BellSouth be required to commingle UNEs or Combinations with any service, network element or other offering that it is obligated to make available pursuant to Section 271 of the Act?*	YES, BellSouth should be required to commingle UNEs or Combinations with any service, network element, or other offering that it is obligated to make available pursuant to Section 271 of the Act.	BellSouth will provide its position with its Response.

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ITEM NO.	ISSUE #	§	UNRESOLVED ISSUE	CLEC POSITION	BELLSOUTH POSITION
			[BellSouth will either concur with CLECs' statement of the issue or provide an alternative statement with its Response]		
27	2-9	1.8.3	*When multiplexing equipment is attached to a commingled circuit, should the multiplexing equipment be billed per the jurisdictional authorization (Agreement or tariff) of the lower or higher bandwidth service?* [BellSouth will either concur in CLECs' statement of the issue or provide an alternative statement with its Response]	When multiplexing equipment is attached to a commingled circuit, the multiplexing equipment should be billed from the same jurisdictional authorization (Agreement or tariff) as the lower bandwidth service.	BellSouth will provide its position with its Response.
28	2-10	1.9.4	*Should the recurring charges for UNEs, Combinations and Other Services be prorated based upon the number of days that the UNEs are in service?* [BellSouth will either concur in CLECs' statement of the issue or provide an alternative statement with its Response]	YES, the recurring charges for UNEs, Combinations, and Other Services should be prorated based upon the number of days that the UNEs, Combinations, and Other Services are in service.	BellSouth will provide its position with its Response.
29	2-11	2.1.1	*Are the types of loops that BellSouth, pursuant to FCC Rule 319(a), is*	The types of loops that BellSouth is required to provide to CLEC, pursuant to FCC Rule 319(a), should be limited to those	BellSouth will provide its position with its Response.

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			required to provide to CLEC limited to those that are (a) currently available and set forth in the Agreement or (b) set forth in the Agreement? [BellSouth will either concur in CLECs' statement of the issue or provide an alternative statement with its Response]	that BellSouth currently offers and is required to unbundle as set forth in the Agreement. Other loop-types that may be developed and may be subject to FCC Rule 319(a) will be incorporated into the Agreement by amendment or the BFR process.	
30	2-12	2.1.1.1	*Should the Agreement include a provision declaring that facilities that terminate to another carrier's switch or premises, a cell cite, Mobile Switching Center or base station do not constitute loops?* [BellSouth will either concur in CLECs' statement of the issue or provide an alternative statement with its Response]	NO, the Agreement should not include a provision declaring that facilities that terminate to another carrier's switch or premises, a cell site, Mobile Switching Center, or base station do not constitute loops. Such a provision would be inconsistent with the FCC's Triennial Review Order.	BellSouth will provide its position with its Response.
31	2-13	2.1.1.2	*Should the Agreement require CLEC to purchase the entire bandwidth of a Loop, even in cases where such purchase is not required by Applicable Law?*	NO, CLEC should not be required to purchase the entire bandwidth of a Loop, except where required by Applicable Law.	BellSouth will provide its position with its Response.

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ITEM NO.	ISSUE #	§	UNRESOLVED ISSUE	CLEC POSITION	BELLSOUTH POSITION
			[BellSouth will either concur in CLECs' statement of the issue or provide an alternative statement with its Response]		
32	2-14	2.1.2, 2.1.2.1, 2.1.2.2	*(A) Should the Agreement contain provisions categorizing loops as either mass market loops or enterprise market loops?* *(B) If so, what should such provisions say?* [BellSouth will either concur in CLECs' statement of the issue or provide an alternative statement with its Response]	(A) YES, the Agreement should contain provisions categorizing loops as either mass market loops or enterprise market loops. (B) Such provisions should state that there are two categories of UNE loops, namely, Mass Market Loops and Enterprise Loops. The provisions should further define Mass Market Loops as loops that deliver narrow-band service, such as POTS, facsimile services and DS0 level services as well as broadband services such as DSL services to residential and very small business customers. In addition, there should be a provision listing the three types of Mass Market Loops: copper loops, fiber-to-the-home loops, and hybrid fiber/copper loops. The provision should define Enterprise Market Loops as loops that deliver narrow-band and broadband services to small, medium and large-sized businesses. Similarly, there should be a provision setting forth that Enterprise Loops, including DS1, DS-3/STS loops, and dark fiber loops are not subject to any of the restrictions applicable to Mass Market Loops, regardless of the transmission	BellSouth will provide its position with its Response.

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ITEM NO.	ISSUE #	§	UNRESOLVED ISSUE	CLEC POSITION	BELLSOUTH POSITION
				medium over which they are provided.	
33	2-15	2.2.3	*Is unbundling relief provided under FCC Rule 319(a)(3) applicable to Fiber-to-the-Home Loops deployed prior to October 2, 2003?* [BellSouth will either concur in CLECs' statement of the issue or provide an alternative statement with its Response]	NO, the unbundling relief provided under FCC Rule 319(a)(3) is only applicable to Fiber-to-the-Home Loops deployed on or after October 2, 2003 (the effective date of the FCC's Triennial Review Order).	BellSouth will provide its position with its Response.
34	2-16	2.3.3	*How should Dark Fiber Loops be defined?* [BellSouth will either concur in CLECs' statement of the issue or provide an alternative statement with its Response]	Dark Fiber Loop should be defined as fiber within an existing fiber optic cable that has not been activated through the use of optronics to render it capable of carrying communications services that extends from the demarcation point at an End User's premises to the BellSouth central office.	BellSouth will provide its position with its Response.
35	2-17	2.4.3, 2.4.4	*What rates should apply to testing and dispatch performed by BellSouth in response to a CLEC trouble report and in order to confirm the working status of a UNE Loop?* [BellSouth will either concur in CLECs' statement of the issue or provide an alternative statement with its Response]	TELRIC-compliant rates to be approved by the Commission and incorporated in Exhibit A of Attachment 2 should apply to testing and dispatch performed by BellSouth in response to a CLEC trouble report and in order to confirm the working status of a UNE Loop.	BellSouth will provide its position with its Response.

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ITEM NO.	ISSUE #	§	UNRESOLVED ISSUE	CLEC POSITION	BELLSOUTH POSITION
36	2-18	2.12.1	*(A) How should line conditioning be defined in the Agreement?* *(B) What should BellSouth's obligations be with respect to line conditioning?* [BellSouth will either concur in CLECs' statement of the issue or provide an alternative statement with its Response]	(A) Line Conditioning should be defined in the Agreement as set forth in FCC Rule 47 CFR 51.319 (a)(1)(iii)(A). (B) BellSouth should perform line conditioning in accordance with FCC Rule 47 C.F.R. 51.319 (a)(1)(iii). Insofar as it is technically feasible, BellSouth should test and report troubles for all the features, functions, and capabilities of conditioned copper lines, and may not restrict its testing to voice transmission only.	BellSouth will provide its position with its Response.
37	2-19	2.12.2	*Should the Agreement contain specific provisions limiting the availability of Line Conditioning to copper loops of 18,000 feet or less?* [BellSouth will either concur in CLECs' statement of the issue or provide an alternative statement with its Response]	NO, the agreement should not contain specific provisions limiting the availability of Line Conditioning to copper loops of 18,000 feet or less in length.	BellSouth will provide its position with its Response.
38	2-20	2.12.3, 2.12.4	*Under what rates, terms and conditions should BellSouth be required to perform Line Conditioning to remove bridged taps?* [BellSouth will either concur in CLECs' statement of the issue or	Any copper loop being ordered by CLEC which has over 6,000 feet of combined bridged tap will be modified, upon request from CLEC, so that the loop will have a maximum of 6,000 feet of bridged tap. This modification will be performed at no additional charge to CLEC. Line conditioning orders that require the removal	BellSouth will provide its position with its Response.

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			provide an alternative statement with its Response]	conditioning orders that require the removal of other bridged tap should be performed at the rates set forth in Exhibit A of Attachment 2.	
39	2-21	2.12.6	*(A) Should the Agreement contain a provision barring Line Conditioning that would result in the modification of a Loop in such a way that it no longer meets technical parameters of the original Loop?* *(B) If not, should the resulting modified Loop be maintained as a non-service -specific Unbundled Copper Loop?* [BellSouth will either concur in CLECs' statement of the issue or provide an alternative statement with its Response]	(A) NO, CLEC should not be barred from requesting Line Conditioning that would result in the modification of a Loop in such a way that it no longer meets the technical parameters of the original Loop. (B) YES, the resulting modified Loop should be maintained as a non-service-specific Unbundled Copper Loop.	BellSouth will provide its position with its Response.
40	2-22	2.14.3.1.1	*Should BellSouth be required to allow CLEC to connect its Loops directly to BellSouth's multi-line residential NID enclosures that have spare terminations available?*	YES, the Commission should order BellSouth to allow CLEC to connect its Loops directly to BellSouth's multi-line residential NID enclosures that have spare terminations available.	BellSouth will provide its position with its Response.

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ITEM No.	ISSUE #	§	UNRESOLVED ISSUE	CLEC POSITION	BELLSOUTH POSITION
			[BellSouth will either concur in CLECs' statement of the issue or provide an alternative statement with its Response]		
41	2-23	2.16.2.2, 2.16.2.3.1-5, 2.16.2.3.7-12	*(A) Should the provisions relating to BellSouth's obligation to provide Unbundled Network Terminating Wire (UNTW) apply to CLEC, as well?* *(B) Should the obligation to provide UNTW apply when such premise wiring is leased? (2.16.2.2, 2.16.2.3.1)* *(C) Should the obligation to provide access to UNTW be limited to existing UNTW? (2.16.2.3.2)* *(D) Should CLECs have to agree to language that requires them to "ensure" that a customer that has asked to switch service to CLEC is already no longer using another carrier's service on that pair – or – will language obligating CLEC to use commercially*	(A) NO, CLECs have expressly notified BellSouth that they are at the present time unwilling to negotiate such access to UNTW as CLECs have no legal obligation to make UNEs available to, or otherwise unbundle UNTW for, BellSouth. (B) YES, BellSouth's legal obligation to provide UNTW applies even where the premises wiring is leased. (C) NO, to the extent BellSouth would install new or additional UNTW beyond existing UNTW upon request from one of its own End Users, or is otherwise required to do so in order to comply with FCC or Commission rules and orders, BellSouth should be obligated to provide access to such new or additional UNTW beyond existing UNTW. (D) CLEC should not be required to "ensure" that a customer that has asked to switch service to CLEC is no longer using another carrier's service on a particular pair. Rather, a provision obligating CLEC to use commercially reasonable efforts to access only an "available pair" should be	BellSouth will provide its position with its Response.

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			reasonable efforts to access only an "available pair" suffice? (2.16.2.3.5) *(E) Should a time limit be placed on the obligation to reimburse costs associated with removing access terminals and restoring the property to its original state (per request of property owner)? (2.16.2.3.7)* [BellSouth will either concur in CLECs' statement of the issue or provide an alternative statement with its Response]	sufficient. (E) YES, there should be a time limit on reimbursement obligations. Specifically, CLEC should be responsible for costs associated with removing access terminals and restoring the property to its original state only when the property owner objects to and demands removal of access terminal installations that are in progress or within thirty (30) calendar days of completion.	
42	2-24	2.17.3.5	*Should BellSouth be required to provide access to Dark Fiber Loops for test access and testing at any technically feasible point?* [BellSouth will either concur in CLECs' statement of the issue or provide an alternative statement with its Response]	YES, BellSouth should be required to provide access to Dark Fiber Loops for test access and testing at any technically feasible point, the termination point within a serving wire center, and CLEC's End User's premises.	BellSouth will provide its position with its Response.

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ITEM NO.	ISSUE #	§	UNRESOLVED ISSUE	CLEC POSITION	BELLSOUTH POSITION
43	2-25	2.18.1.4	*Under what circumstances should BellSouth provide CLEC Loop Makeup information?* [BellSouth will either concur in CLECs' statement of the issue or provide an alternative statement with its Response]	BellSouth should provide CLEC Loop Makeup information on a particular loop upon request by CLEC. Such access should not be contingent upon receipt of an LOA from a third party carrier.	BellSouth will provide its position with its Response.
44	2-26	3.6.5	*When Line Sharing is provisioned, what provisions should apply when BellSouth receives a voice trouble and isolates the trouble to a physical collocation arrangement belonging to CLEC?* [BellSouth will either concur in CLECs' statement of the issue or provide an alternative statement with its Response]	When Line Sharing is provisioned, the following provisions should apply when BellSouth receives a voice trouble and isolates the trouble to a physical collocation arrangement belonging to CLEC: When BellSouth receives a voice trouble and isolates the trouble to the physical collocation arrangement belonging to CLEC, BellSouth should notify CLEC. CLEC should respond by providing at least one (1) but no more than two (2) verbal CFA pair changes to BellSouth in an attempt to resolve the voice trouble. In the event a CFA pair change resolves the voice trouble, CLEC should provide BellSouth an LSR with the new CFA pair information within twenty-four (24) hours (excluding Saturdays, Sundays and Holidays) of receiving notification from BellSouth of such resolution. No charges should apply for submission of such LSR. If CLEC fails to respond to a BellSouth request for verbal CFA pair changes within twenty-four (24)	BellSouth will provide its position with its Response.

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ITEM NO.	ISSUE #	§	UNRESOLVED ISSUE	CLEC POSITION	BELLSOUTH POSITION
				hours (excluding Saturdays, Sundays and Holidays) of CLEC's Maintenance Service Center receiving notification from BellSouth, BellSouth may suspend CLEC's access to the High Frequency Spectrum on such Loop.	
45	2-27	3.10.3	*What should be CLEC's indemnification obligations under a line splitting arrangement?* [BellSouth will either concur in CLECs' statement of the issue or provide an alternative statement with its Response]	If CLEC is purchasing line splitting, and it is not the data provider, CLEC should indemnify, defend and hold harmless BellSouth from and against any claims, losses, actions, causes of action, suits, demands, damages, injury, and costs (including reasonable attorney fees) reasonably arising or resulting from the actions taken by the data provider in connection with the line splitting arrangement, except to the extent caused by BellSouth's gross negligence or willful misconduct.	BellSouth will provide its position with its Response.
46	2-28	3.10.4	*(A) In cases where CLEC purchases UNEs from BellSouth, should BellSouth be required not to refuse to provide DSL transport or DSL services (of any kind) to CLEC and its End Users, unless BellSouth has been expressly permitted to do so by the Commission?*	(A) YES, in cases where CLEC purchases UNEs from BellSouth, BellSouth should not refuse to provide DSL transport or DSL services (of any kind) to CLEC and its End Users, unless BellSouth has been expressly permitted to do so by the Commission. (B) YES, where BellSouth provides such transport or services to CLEC and its End Users, BellSouth should be required to do so without charge until such time as it produces an amendment proposal and the	BellSouth will provide its position with its Response.

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ITEM NO.	ISSUE #	§	UNRESOLVED ISSUE	CLEC POSITION	BELLSOUTH POSITION
			(B) Where BellSouth provides such transport or services to CLEC and its End Users, should BellSouth be required to do so without charge until such time as it produces an amendment proposal and the Parties amend this Agreement to incorporate terms that are no less favorable, in any respect, than the rates, terms and conditions pursuant to which BellSouth provides such transport and services to any other entity? [BellSouth will either concur in CLECs' statement of the issue or provide an alternative statement with its Response]	Parties amend this Agreement to incorporate terms that are no less favorable, in any respect, than the rates, terms and conditions pursuant to which BellSouth provides such transport and services to any other entity.	
47	2-29	4.2.2	*(A) Should BellSouth be entitled to a greater limitation on its duty to unbundle Local Circuit Switching than currently prescribed by the FCC?* *(B) Should the Agreement include a provision that requires CLEC to do*	(A) NO, the limitations imposed on BellSouth's duty to unbundle Local Circuit Switching should be consistent with the limitations prescribed by the FCC. (B) NO, to the extent the Effective Date is later than April 1, 2004, CLEC should not be required to submit orders to terminate, prior to the Effective Date, unbundled local circuit switching for CLEC when CLEC	BellSouth will provide its position with its Response.

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ITEM NO.	ISSUE #	§	UNRESOLVED ISSUE	CLEC POSITION	BELLSOUTH POSITION
			something prior to the Effective Date? [BellSouth will either concur in CLECs' statement of the issue or provide an alternative statement with its Response]	serves an End User with a DS1 or higher capacity Loop prior to the Effective Date.	
48	2-30	4.5.5	*Should CLEC be entitled to purchase transport facilities and trunks used to connect to BellSouth's TOPS at TELRIC-compliant rates?* [BellSouth will either concur in CLECs' statement of the issue or provide an alternative statement with its Response]	YES, CLEC should be entitled to purchase transport facilities and trunks used to connect to BellSouth's TOPS at TELRIC-compliant rates.	BellSouth will provide its position with its Response.
49	2-31	5.2.4	*Under what conditions, if any, may BellSouth deny or delay a CLEC request to convert a circuit to a high capacity EEL?* [BellSouth will either concur in CLECs' statement of the issue or provide an alternative statement with its Response]	BellSouth may not deny or delay CLEC's request for a high-capacity EEL based upon its own assessment of compliance with eligibility criteria. However, BellSouth may notify CLEC when it detects an order that it does not believe complies with the eligibility criteria. CLEC will then have the option of proceeding with, modifying or canceling such order.	BellSouth will provide its position with its Response.
50	2-32	5.2.5.2.1-7	*Should the high capacity EEL eligibility criteria use the term "customer", as used in the FCC's rules, or "End User"?*	The high capacity EEL eligibility criteria should be consistent with those set forth in the FCC's rules and should use the term "customer", as used in the FCC's rules. Use of the term "End User" may result in a	BellSouth will provide its position with its Response.

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Item No.	Issue #	§	Unresolved Issue	CLEC Position	BellSouth Position
			[BellSouth will either concur in CLECs' statement of the issue or provide an alternative statement with its Response]	deviation from the FCC rules to which CLECs are unwilling to agree.	
51	2-33	5.2.6, 5.2.6.1, 5.2.6.2, 5.2.6.2.1, 5.2.6.2.3	*(A) How often, and under what circumstances, should BellSouth be able to audit CLEC's records to verify compliance with the high capacity EEL service eligibility criteria?* *(B) Should there be a notice requirement for BellSouth to conduct an audit and what should the notice include?* *(C) Who should conduct the audit and how should the audit be performed?* [BellSouth will either concur in CLECs' statement of the issue or provide an alternative statement with its Response]	(A) BellSouth may, no more frequently than on an annual basis, and only based upon cause, conduct a limited audit of CLEC's records in order to verify compliance with the high capacity EEL service eligibility criteria. (B) YES, to invoke its limited right to audit, BellSouth should send a Notice of Audit to CLEC, identifying the particular circuits for which BellSouth alleges non-compliance and the cause upon which BellSouth rests its allegations. The Notice of Audit should also include all supporting documentation upon which BellSouth establishes the cause that forms the basis of BellSouth's allegations of noncompliance. Such Notice of Audit should be delivered to CLEC with all supporting documentation no less than thirty (30) days prior to the date upon which BellSouth seeks to commence an audit. (C) The audit should be conducted by a third party independent auditor mutually agreed-upon by the Parties and retained and paid for by BellSouth. The audit should	BellSouth will provide its position with its Response.

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ITEM NO.	ISSUE #	§	UNRESOLVED ISSUE	CLEC POSITION	BELLSOUTH POSITION
				commence at a mutually agreeable location (or locations) no sooner than thirty (30) days after the parties have reached agreement on the auditor. In addition, the audit should be performed in accordance with the standards established by the American Institute for Certified Public Accountants (AICPA) which will require the auditor to perform an "examination engagement" and issue an opinion regarding CLEC's compliance with the high capacity EEL eligibility criteria. AICPA standards and other requirements related to determining the independence of an auditor will govern the audit of requesting carrier compliance. The concept of materiality should govern this audit; the independent auditor's report should conclude whether or the extent to which CLEC complied in all material respects with the applicable service eligibility criteria. Consistent with standard auditing practices, such audits should require compliance testing designed by the independent auditor, which typically includes an examination of a sample selected in accordance with the independent auditor's judgment.	
52	2-34	5.2.8	*When should CLEC be required to reimburse BellSouth for the cost of the independent auditor?*	As expressly set forth in the FCC's Triennial Review Order, in the event the auditor's report concludes that CLEC did not comply in all material respects with the	BellSouth will provide its position with its Response.

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ITEM NO.	ISSUE #	§	UNRESOLVED ISSUE	CLEC POSITION	BELLSOUTH POSITION
			[BellSouth will either concur in CLECs' statement of the issue or provide an alternative statement with its Response]	service eligibility criteria, CLEC shall reimburse BellSouth for the cost of the independent auditor.	
53	2-35	6.1.1	*How should Dedicated Transport be defined?* [BellSouth will either concur in CLECs' statement of the issue or provide an alternative statement with its Response]	Dedicated Transport should be defined as set forth in 47 C.F.R. 319(e). The definition should also encompass the FCC's definition articulated in the Triennial Review Order, to wit: "Dedicated Transport is defined as BellSouth's interoffice transmission facilities, dedicated to a particular customer or carrier that CLEC uses for transmission between wire centers or switches owned by BellSouth and to the extent that BellSouth has local switching equipment, as defined by the FCC's rules, "reverse collocated" in a non-incumbent LEC premises, the transmission path from this point back to the BellSouth wire center shall be unbundled as transport between incumbent LEC switches or wire centers to the extent specified in part 51 of the FCC's rules within the same LATA."	BellSouth will provide its position with its Response.
54	2-36	6.1.1.1	*How should Dark Fiber Transport be defined?* [BellSouth will either concur in CLECs' statement of the issue or provide an alternative statement with its Response]	Dark Fiber Transport should be defined as set forth in FCC Rule 47 CFR 319(e).	BellSouth will provide its position with its Response.

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ITEM NO.	ISSUE #	§	UNRESOLVED ISSUE	CLEC POSITION	BELLSOUTH POSITION
55	2-37	6.4.2	*What terms should govern CLEC access to test and splice Dark Fiber Transport?* [BellSouth will either concur in CLECs' statement of the issue or provide an alternative statement with its Response]	CLEC should be able to splice and test Dark Fiber Transport obtained from BellSouth at any technically feasible point, using CLEC or CLEC-designated personnel. BellSouth must provide appropriate interfaces to allow splicing and testing of Dark Fiber.	BellSouth will provide its position with its Response.
56	2-38	7.2, 7.3	*Should BellSouth's obligation to provide signaling link transport and SS7 interconnection at TELRIC-based rates be limited to circumstances in which BellSouth is required to provide and is providing to CLEC unbundled access to Local Circuit Switching?* [BellSouth will either concur in CLECs' statement of the issue or provide an alternative statement with its Response]	NO, BellSouth's obligation to provide signaling link transport and SS7 interconnection at TELRIC-based rates should not be limited to circumstances in which BellSouth is required to provide and is providing to CLEC unbundled access to Local Circuit Switching.	BellSouth will provide its position with its Response.
57	2-39	7.4	*Should the Parties be obligated to perform CNAM queries and pass such information on all calls exchanged between them, regardless of whether that would require*	YES, the Parties should be obligated to perform CNAM queries and pass such information on all calls exchanged between them, regardless of whether that would require BellSouth to query a third party database provider.	BellSouth will provide its position with its Response.

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ITEM NO.	ISSUE #	§	UNRESOLVED ISSUE	CLEC POSITION	BELLSOUTH POSITION
			BellSouth to query a third party database provider? [BellSouth will either concur in CLECs' statement of the issue or provide an alternative statement with its Response]		
58	2-40	9.3.5	*Should LIDB charges be subject to application of jurisdictional factors?* [BellSouth will either concur in CLECs' statement of the issue or provide an alternative statement with its Response]	No, LIDB charges should not be subject to application of jurisdictional factors.	BellSouth will provide its position with its Response.
59	2-41	14.1	*What terms should govern BellSouth's obligation to provide access to OSS?* [BellSouth will either concur in CLECs' statement of the issue or provide an alternative statement with its Response]	BellSouth must provide CLEC with nondiscriminatory access to operations support systems on an unbundled basis, in accordance with 47 CFR 51.319(g) and as set forth in Attachment 6. Operations support system ("OSS") functions consist of pre-ordering, ordering, provisioning, maintenance and repair, and billing functions supported by BellSouth's databases and information. BellSouth, as part of its duty to provide access to the pre-ordering function, must provide CLEC with nondiscriminatory access to the same detailed information about the loop that is available to BellSouth.	BellSouth will provide its position with its Response.

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ITEM NO.	ISSUE #	§	UNRESOLVED ISSUE	CLEC POSITION	BELLSOUTH POSITION
			INTERCONNECTION (ATTACHMENT 3)		
60	3-1	3.3.4 (KMC, NSC, NVX) 3.3.3 XSP)	*Should CLEC be permitted to connect to BellSouth's switch via a Cross Connect or any other technically feasible means of interconnection?* [BellSouth will either concur in CLECs' statement of the issue or provide an alternative statement with its Response]	YES, in the event that a Party's Point of Presence is located within any serving wire center (*i.e.,* switch location), such Party may interconnect to the other Party's switch via a Cross Connect or any other technically feasible means of interconnection.	BellSouth will provide its position with its Response.
61	3-2	9.6 (KMC), 9.6 (NSC), 9.6 (NVX, XSP)	*(A) Should BellSouth be required to provide upon request, for any trunk group outage that has occurred 3 or more times in a 60 day period, a written root cause analysis report?* *(B) What target interval should apply for the delivery of such reports, as well as for those for global outages?* [BellSouth will either concur in CLECs' statement of the issue or provide an alternative statement with its Response]	(A) YES, upon request, BellSouth should provide a written root cause analysis report for all global outages, and for any trunk group outage that has occurred 3 or more times in a 60 day period. (B) BellSouth should use best efforts to provide global outage and trunk group outage root cause analysis reports within five (5) business days of request.	BellSouth will provide its position with its Response.
62	3-3	10.9.5 (KMC),	*What provisions should apply regarding records*	In the event that either Party fails to provide accurate switched access detailed usage data	BellSouth will provide its position with its Response.

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Item No.	Issue #	§	Unresolved Issue	CLEC Position	BellSouth Position
		10.7.4 (NSC), 10.7.4 (NVX), 10.12.4 (XSP)	*exchange necessary for the billing and collection of access revenues?* [BellSouth will either concur in CLECs' statement of the issue or provide an alternative statement with its Response]	to the other Party *within 90 days* after the recording date and the receiving Party is unable to bill and/or collect access revenues due to the sending Party's failure to provide such data within said time period, then the Party failing to send the specified data should be liable to the other Party in an amount equal to the unbillable or uncollectible revenues	
63	3-4	10.10.6 (KMC), 10.8.6 (NSC), 10.8.6 (NVX), 10.13.5 (XSP)	*Under what terms should CLEC be obligated to reimburse BellSouth for amounts BellSouth pays to third party carriers that terminate BellSouth transited/CLEC originated traffic?* [BellSouth will either concur in CLECs' statement of the issue or provide an alternative statement with its Response]	In the event that a terminating third party carrier imposes on BellSouth any charges or costs for the delivery of Transit Traffic originated by CLEC, CLEC should reimburse BellSouth for all charges paid by BellSouth, which BellSouth is contractually obligated to pay. BellSouth should diligently review, dispute and pay such third party invoices (or equivalent) in a manner that is at parity with its own practices for reviewing, disputing and paying such invoices (or equivalent) when no similar reimbursement provision applies.	BellSouth will provide its position with its Response.
64	3-5	10.7.4.2 (KMC), 10.5.5.2 (NSC), 10.5.6.2 (NVX)	*While a dispute over jurisdictional factors is pending, should factors reported by the originating party remain in place, unless the parties mutually agree otherwise?*	YES, in the event that negotiations and audits fail to resolve disputes between the Parties, either Party may seek Dispute Resolution as set forth in the General Terms and Conditions. While such a dispute is pending, factors reported by the originating Party should remain in place, unless the	BellSouth will provide its position with its Response.

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ITEM No.	ISSUE #	§	UNRESOLVED ISSUE	CLEC POSITION	BELLSOUTH POSITION
			[BellSouth will either concur in CLECs' statement of the issue or provide an alternative statement with its Response]	Parties mutually agree otherwise.	
65	3-6	10.10. 1 (KMC), 10.8.1 (NSC)	*Should BellSouth be able to impose upon CLEC a Tandem Intermediary Charge for the transport and termination of Local Transit Traffic and ISP-Bound Transit Traffic?* [BellSouth will either concur in CLECs' statement of the issue or provide an alternative statement with its Response]	NO, BellSouth should not be permitted to impose upon CLEC a Tandem Intermediary Charge ("TIC") for the transport and termination of Local Transit Traffic and ISP-Bound Transit Traffic. The TIC is a non-TELRIC based additive charge which exploits BellSouth's market power and is discriminatory.	BellSouth will provide its position with its Response.
66	3-7	10.1 (KMC),10 .1 (XSP)	*Should CLEC be entitled to symmetrical reciprocal compensation for the transport and termination of Local Traffic at the tandem interconnection rate?* [BellSouth will either concur in CLECs' statement of the issue or provide an alternative statement with its Response]	YES, CLEC should be entitled to bill, and BellSouth should be obligated to pay, reciprocal compensation for the transport and termination of Local Traffic to CLEC at a symmetrical tandem interconnection rate, inclusive of end office switching, tandem switching, and transport.	BellSouth will provide its position with its Response.
67	3-8	10.2, 10.2.1 (KMC), 10.2, 10.3	*Should compensation for the transport and termination of ISP-bound Traffic be subject to a cap?*	NO, compensation caps set in the FCC's remanded ISP Order on Remand do not extend beyond 2003.	BellSouth will provide its position with its Response.

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ITEM NO.	ISSUE #	§	UNRESOLVED ISSUE	CLEC POSITION	BELLSOUTH POSITION
		(XSP)	[BellSouth will either concur in CLECs' statement of the issue or provide an alternative statement with its Response]		
68	3-9	2.1.12 (XSP)	*How should Local Traffic be defined?* [BellSouth will either concur in CLECs' statement of the issue or provide an alternative statement with its Response]	Local Traffic should be defined as any telephone call that originates in one exchange and is terminated in either the same exchange, or other mandatory local calling area associated with the originating exchange (e.g., mandatory Extended Area Service) as defined and specified in Section A3 of BellSouth's GSST. Designation of Local Traffic should not be dependent on the type of switching technology used to switch and terminate such Local Traffic, including use of frame switching. Local Traffic includes any cross boundary, intrastate, interLATA or interstate, interLATA calls established as a local call by the ruling regulatory body.	
69	3-10	3.2 (XSP), Ex. A (XSP)	*(A) Should BellSouth be required to provide CLEC with OCn level interconnection at TELRIC-compliant rates?* *(B) What should those rates be?* [BellSouth will either concur in	(A) YES, OCn level interconnection is technically feasible and must be made available at TELRIC-compliant rates. (B) TELRIC compliant rates for OCn interconnection trunks and facilities should be set by the Commission.	BellSouth will provide its position with its Response.

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ITEM No.	ISSUE #	§	UNRESOLVED ISSUE	CLEC POSITION	BELLSOUTH POSITION
			CLECs' statement of the issue or provide an alternative statement with its Response]		
70	3-11	3.3.1, 3.3.2, 3.4.5, 10.10.2 (XSP)	*Should cost-based interconnection (i.e., TELRIC), be limited to the percentage of facilities used for "local" traffic?* [BellSouth will either concur in CLECs' statement of the issue or provide an alternative statement with its Response]	NO, cost-based interconnection should not be limited to the percentage of facilities used for "local" traffic ("PLF"). CLEC is entitled to cost based interconnection for telephone exchange and exchange access traffic.	BellSouth will provide its position with its Response.
71	3-12	4.5 (XSP)	*What rate should apply in the event that a rate is not set forth in Exhibit A?* [BellSouth will either concur in CLECs' statement of the issue or provide an alternative statement with its Response]	To the extent a rate associated with interconnection trunks and facilities is not set forth in Exhibit A of Attachment 3, and no Commission-approved rate has been set, the rate should be negotiated by the Parties.	BellSouth will provide its position with its Response.
72	3-13	4.6 (XSP)	*Should the costs of two-way interconnection trunks facilities be split (a) proportionally based on the percentage of traffic originated by each Party or (b) in half?* [BellSouth will either concur in CLECs' statement of the issue or provide an alternative statement with its Response]	For two-way trunk groups that carry only both Parties' non-transit and non-interLATA Switched Access Traffic, each Party should pay its proportionate share of the recurring charges for trunks and associated facilities and nonrecurring charges for additional trunks and associated facilities based on the percentage of the total traffic originated by that Party. The Parties should determine the applicable percentages twice per year based on the previous six months minutes of use billed	BellSouth will provide its position with its Response.

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Item No.	Issue #	§	Unresolved Issue	CLEC Position	BellSouth Position
				by each Party. Each Party should pay its proportionate share of initial facilities based on the joint forecasts for circuits required by each Party.	
73	3-14	10.10.4, 10.10.5, 10.10.6, 10.10.7 (XSP)	*Should CLEC be permitted to bill BellSouth based on actual traffic measurements, in lieu of BellSouth-reported jurisdictional factors?* [BellSouth will either concur in CLECs' statement of the issue or provide an alternative statement with its Response]	YES, where CLEC has message recording technology that identifies the jurisdiction of traffic terminated as defined in the Agreement, CLEC should have the option of using that information to bill BellSouth based upon actual measurements and jurisdictionalization, in lieu of factors reported by BellSouth.	BellSouth will provide its position with its Response.
COLLOCATION (ATTACHMENT 4)					
74	4-1	3.9	*What definition of "Cross Connect" should be included in the Agreement?* [BellSouth will either concur in CLECs' statement of the issue or provide an alternative statement with its Response]	The following definition of "Cross Connect" should be included in the Agreement: "A cross-connection (Cross Connect) is a cabling scheme between cabling runs subsystems, and equipment using patch cords or jumper wires that attach to connection hardware on each end, as defined and described by the FCC in its applicable rules and orders." In addition to the FCC's definition, the following language should be added for clarity: "A Cross Connect involved in the provision of services not associated with a collocation arrangement is not ordered but is a part of the provisioning of the service."	BellSouth will provide its position with its Response.

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ITEM NO.	ISSUE #	§	UNRESOLVED ISSUE	CLEC POSITION	BELLSOUTH POSITION
75	4-2	5.21.1, 5.21.2	*With respect to interference and impairment issues raised outside of the scope of the FCC Rule 51.233 (which relates to the deployment of* Advanced Services *equipment) what provisions should be included in the Agreement?*	Provisions should be included to cover the installation and operation of any equipment or services that (1) significantly degrades ("significantly degrades" is as in the FCC rule applicable to Advanced Services); (2) endangers or damages the equipment or facilities of any other telecommunications carrier collocated in the Premises; or (3) knowingly and unlawfully compromises the privacy of communications routed through the Premises; and (4) creates an unreasonable risk of injury or death to any individual or to the public. The Agreement also should provide that if BellSouth reasonably determines that any equipment or facilities of CLEC violates the provisions of Section 5.21, BellSouth should provide written notice to CLEC requesting that CLEC cure the violation within forty-eight (48) hours of actual receipt of written notice or, at a minimum, to commence curative measures within twenty-four (24) hours and to exercise reasonable diligence to complete such measures as soon as possible thereafter. The Agreement also should state that, with the exception of instances which pose an immediate and substantial threat of physical damage to property or injury or death to any	BellSouth will provide its position with its Response.

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ITEM NO.	ISSUE #	§	UNRESOLVED ISSUE	CLEC POSITION	BELLSOUTH POSITION
				person, disputes regarding the source of the risk, impairment, interference, or degradation should be resolved pursuant to the Dispute Resolution provisions set forth in the General Terms and Conditions.	
76	4-3	8.1	*Where grandfathering is appropriate, which rates should apply?* [BellSouth will either concur in CLECs' statement of the issue or provide an alternative statement with its Response]	When rates have been "grandfathered," the rates that will apply are those rates that were in effect prior to the Effective Date of the Agreement, unless application of such rates would be inconsistent with the underlying purpose for grandfathering.	BellSouth will provide its position with its Response.
77	4-4	8.4	*When should BellSouth commence billing of recurring charges for power?* [BellSouth will either concur in CLECs' statement of the issue or provide an alternative statement with its Response]	Billing for recurring charges for power provided by BellSouth should commence on the date upon which the primary and redundant connections from CLEC's equipment in the Collocation Space to the BellSouth power board or BDFB are installed.	Billing for power provided by BellSouth should commence on the Space Acceptance Date or the Space Ready Date if a Space Acceptance inspection does not occur within 15 calendar days of the Space Ready Date.
78	4-5	8.6	*Should CLEC be required to pay space preparation fees and charges with respect to collocations when it already has paid space preparation charges through ICB or NRC pricing?*	NO, space preparation fees should not apply when CLEC already has paid space preparation charges through previously billed ICB or non-recurring space preparation charges.	BellSouth will provide its position with its Response.

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ITEM NO.	ISSUE #	§	UNRESOLVED ISSUE	CLEC POSITION	BELLSOUTH POSITION
			[BellSouth will either concur in CLECs' statement of the issue or provide an alternative statement with its Response]		
79	4-6	8.11, 8.11.1, 8.12.2	*What rates should apply for BellSouth-supplied DC power?* [BellSouth will either concur in CLECs' statement of the issue or provide an alternative statement with its Response]	Applicable rates should vary depending on whether CLEC elects to be billed on a "fused amp" basis, by electing to remain (or install new collocations or augments) under the traditional collocation power billing method, or on a "used amp" basis, by electing to convert collocations to (or install new collocations or augments under) the power usage metering option set forth in Section 9 of Attachment 4. Under either billing method, there will be rates applicable to grandfathered collocations for which power plant infrastructure costs have been prepaid under an ICB pricing or non-recurring charge arrangement, and there will be rates applicable where such grandfathering does not apply and power plant infrastructure is instead recovered via recurring charges, as currently set by the Commission. Under the fused amp billing option, CLEC will be billed at the Commission's most recently approved fused amp recurring rate for DC power. However, if certain arrangements are grandfathered as a result	BellSouth will provide its position with its Response.

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ITEM NO.	ISSUE #	§	UNRESOLVED ISSUE	CLEC POSITION	BELLSOUTH POSITION
				of CLEC having paid installation costs under an ICB or non-recurring rate schedule for the collocation arrangement power installation, CLEC should only be billed the recurring rate for the DC power in effect prior to the Effective Date of this Agreement, or, if rates that excluded the infrastructure component had not been incorporated into the Parties' most recent Agreement, the most recent Commission approved rate that does not include an infrastructure component should apply. Under the power usage metering option, recurring charges for DC power are subdivided into a power infrastructure component and an AC usage component (based on DC amps consumed). However, if certain arrangements are grandfathered as a result of CLEC having paid installation costs under an ICB or non-recurring rate schedule for the collocation arrangement power installation, CLEC should only be billed a recurring rate for the AC usage based on the most recent Commission approved rate exclusive of an infrastructure component (as set by the Commission).	
80	4-7	9.1.1	*Under the fused amp billing option, how will recurring and non-recurring charges be*	Under the fused amp billing option, monthly recurring charges for -48V DC power should be assessed per fused amp per month in a manner consistent with	BellSouth will provide its position with its Response.

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ITEM NO.	ISSUE #	§	UNRESOLVED ISSUE	CLEC POSITION	BELLSOUTH POSITION
			applied and what should those charges be? [BellSouth will either concur in CLECs' statement of the issue or provide an alternative statement with its Response]	Commission orders and as set forth in Section 8 of Attachment 4 (see Issue 4-6 above). Non-recurring charges for –48V DC power distribution, should be as prescribed by the Commission.	
81	4-8	9.1.2, 9.1.3	*(A) Should CLEC be permitted to choose between a fused amp billing option and a power usage metering option in states other than and in addition to Tennessee (where the choice already is available)?* *(B) Under the power usage metering option, how will recurring and non-recurring charges be applied and what should those charges be?* [BellSouth will either concur in CLECs' statement of the issue or provide an alternative statement with its Response]	(A) YES, CLEC should be permitted to choose between a fused amp billing option and a power usage metering option in states other than and in addition to Tennessee. (B) If CLEC chooses the power usage metering option, monthly recurring charges for -48V DC power will be assessed based on a consumption component and, if applicable, an infrastructure component, as set forth in Section 8 of Attachment 4 (see Issue 4-6 above). The Commission should ensure that its most recently approved recurring rates are apportioned appropriately into the consumption and infrastructure components. Non-recurring charges for -48V DC power distribution should be as prescribed by the Commission.	BellSouth will provide its position with its Response.
82	4-9	9.3	*For BellSouth-supplied AC power, should CLEC be entitled to choose between*	YES, where CLEC elects to install its own DC Power Plant, and BellSouth provides Alternating Current (AC) power to feed	BellSouth will provide its position with its Response.

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ITEM NO.	ISSUE #	§	UNRESOLVED ISSUE	CLEC POSITION	BELLSOUTH POSITION
			a fused amp billing option and a power usage metering option? [BellSouth will either concur in CLECs' statement of the issue or provide an alternative statement with its Response]	CLEC's DC Power Plant, CLEC should have the option of choosing between fused amp billing and power usage metering options.	
83	4-10	13.6	*(A) Should BellSouth have the right to request the removal from BellSouth's Premises of a CLEC employee where the CLEC employee has not been found to have interfered with the property or personnel of BellSouth or another telecommunications carrier in a significant and material way?* *(B) In instances where interference caused by CLEC employee has not been found to have interfered with the property or personnel of BellSouth or another telecommunications carrier in a significant and material way, should the*	(A) NO, only in cases where CLEC employee is found interfering with the property or personnel of BellSouth or another telecommunications carrier in a significant and material way should BellSouth be entitled to request prompt removal and suspension of access from BellSouth's Premises for any employee of CLEC to whom BellSouth does not wish to grant access pursuant to an investigation to be conducted by BellSouth. (B) YES, in instances where interference caused by CLEC employee has not been found to have interfered with the property or personnel of BellSouth or another telecommunications carrier in a significant and material way, the Parties should be required to cooperate and communicate, to the extent circumstances permit, to ensure that the Parties may take appropriate remedial measures and so that CLEC personnel are not denied access for activity that does not have a significant and material	BellSouth will provide its position with its Response.

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Item No.	Issue #	§	Unresolved Issue	CLEC Position	BellSouth Position
			Parties be required to cooperate to ensure that appropriate remedial measures are taken that are less likely to have a significant impact on CLEC's daily operations? [BellSouth will either concur in CLECs' statement of the issue or provide an alternative statement with its Response]	impact and that would be more suitably addressed through disciplinary measures less likely to have a significant impact on CLEC's daily operations.	
			ORDERING (ATTACHMENT 6)		
84	6-1	2.5.1	*Should payment history be included in the CSR?*	YES, the subscribers' payment history should be included in the CSR to the extent authorized or required by the FCC, Commission or End User.	NO, payment history should be maintained as confidential information and is not necessary in order for a CLEC to provision service to an end user. BellSouth's systems will not permit this information to be shared on an end user by end user or CLEC by CLEC basis.
85	6-2	2.5.5	*Should CLEC have to provide BellSouth with access to CSRs within firm intervals?*	NO, CLEC is not required by law to commit to specific intervals, and does not have any automated system in place to handle CSR requests. Moreover, BellSouth refuses to commit to deliver CSRs within a firm interval. CLEC, however, will commit to use its best efforts to provide CSRs within an average of 5 business days of a valid request, subject to the same exclusions applicable to BST's delivery of CSRs.	YES, BellSouth is required to provide CSRs to CLEC in intervals prescribed by this Commission which, if not met, require BellSouth to remit SEEMs penalties. If CLEC is not held to the same standard, the End User customer is impaired by being unable to receive the same service interval from all local service providers.

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ITEM NO.	ISSUE #	§	UNRESOLVED ISSUE	CLEC POSITION	BELLSOUTH POSITION
86	6-3	2.5.6.2, 2.5.6.3	*(A) What procedures should apply when one Party alleges, via written notice, that the other Party has engaged in unauthorized access to CSR information?* *(B) How should disputes over alleged unauthorized access to CSR information be handled under the Agreement?*	(A) Either Party, in the event it suspects that the other Party has accessed CSR information without having obtained the proper End User authorization, should send written notice to the other Party specifying the alleged noncompliance. The Party receiving the notice should be obligated to acknowledge receipt of the notice as soon as practicable, and provide appropriate proof of authorization within seven (7) days or provide notice that appropriate corrective measures have been taken or will be taken as soon as practicable. (B) If one Party disputes the other Party's assertion of non-compliance, that Party should notify the other Party in writing of the basis for its assertion of compliance. If the receiving Party fails to provide the other Party with notice that appropriate corrective measures have been taken within a reasonable time or provide the other Party with proof sufficient to persuade the other Party that it erred in asserting the non-compliance, the requesting Party should proceed pursuant to the Dispute Resolution provisions set forth in the General Terms and Conditions and the Parties should cooperatively seek expedited resolution of the dispute. "Self help", in the form of suspension of access to ordering systems	(A) The Party receiving such notice should provide documentation within seven (7) business days to prove authorization. (B) The Party providing notice of such impropriety should provide notice to the offending Party that additional applications for service may be refused, that any pending orders for service may not be completed, and/or that access to ordering systems may be suspended if such use is not corrected or ceased by the fifth (5th) calendar day following the date of the notice. In addition, the alleging Party may, at the same time, provide written notice to the person(s) designated by the other Party to receive notices of noncompliance that the alleging Party may terminate the provision of access to ordering systems to the other Party and may discontinue the provisioning of existing services if such use is not corrected or ceased by the tenth (10th) calendar day following the date of the initial notice. If the other Party disagrees with the alleging Party's allegations of unauthorized use, the other Party shall proceed pursuant to the dispute resolution provisions set forth in the General Terms and Conditions.

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ITEM NO.	ISSUE #	§	UNRESOLVED ISSUE	CLEC POSITION	BELLSOUTH POSITION
				and discontinuance of service, is inappropriate and coercive. Moreover, it effectively denies one Party the ability to avail itself to the Dispute Resolution process otherwise agreed to by the Parties.	
87	6-4	2.6	*Should BellSouth be allowed to assess manual service order charges on CLEC orders for which BellSouth does not provide an electronic ordering option?*	NO, if, at any time, electronic interfaces are not available to make placement of an electronic LSR possible, CLEC must use the manual LSR process for the ordering of UNEs and Combinations. In such cases where CLEC does not willfully choose to use the manual LSR process, CLEC should be assessed the lower electronic LSR OSS rate.	YES, BellSouth is not required to provide electronic ordering capability for every function. BellSouth has implemented the Change Control Process for CLEC requests to change BellSouth's OSS capabilities if CLEC is not satisfied with existing ordering capabilities.
88	6-5	2.6.5	*What rate should apply for Service Data Advancement (a/k/a service expedites)?*	Rates for Service Date Advancement (a/k/a service expedites) related to UNEs, interconnection or collocation should be set consistent with TELRIC pricing principles.	BellSouth is not required to provide expedited service pursuant to The Act. If BellSouth elects to offer expedite capability as an enhancement to a CLEC, BellSouth's tariffed rates for service date advancement should apply.
89	6-6	2.6.25	*Should CLEC be required to deliver a FOC to BellSouth for purposes of porting a number within a firm interval?*	NO, CLEC is not required by law to commit to specific intervals, and does not have the necessary automated system in place to meet such requirements. Moreover, BellSouth refuses to commit to deliver FOCs within a firm interval. CLEC, however, subject to the same exclusions that apply to BellSouth's delivery of a FOC, is willing to commit to use best efforts to return a FOC to BellSouth, for purposes of porting a number, within an average of 5	YES, BellSouth is required to provide FOCs to CLEC in intervals prescribed by this Commission, which if not met require BellSouth to remit SEEMs penalties. If CLEC is not held to the same standard, the End User customer is impaired by being unable to receive the same service interval from all Local service providers.

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ITEM NO.	ISSUE #	§	UNRESOLVED ISSUE	CLEC POSITION	BELLSOUTH POSITION
				business days, for noncomplex orders, after CLEC's receipt from BellSouth of a valid LSR.	
90	6-7	2.6.26	*Should CLEC be required to provide Reject Responses to BellSouth within a firm interval?*	NO, CLEC is not required by law to commit to specific intervals, and does not have the necessary automated system in place to meet such requirements. Moreover, BellSouth refuses to commit to deliver Reject Responses within a firm interval. CLEC, however, subject to the same exclusions that apply to BellSouth's delivery of Reject Responses, is willing to commit to use best efforts to return Reject Responses to BellSouth, for purposes of porting a number, within an average of 5 business days, for noncomplex orders, after CLEC's receipt from BellSouth of a valid LSR.	YES, BellSouth is required to provide FOC Reject Responses to CLEC in intervals prescribed by this Commission which if not met require BellSouth to remit SEEMs penalties. If CLEC is not held to the same standard, the End User customer is impaired by being unable to receive the same service interval from all Local service providers.
91	6-8	2.7.10.4	*Should BellSouth be required to provide performance and maintenance history for circuits with chronic problems?*	YES, upon request from CLEC, BellSouth should disclose all available performance and maintenance history regarding the network element, service or facility subject to the chronic trouble ticket.	NO, network performance and maintenance history is BellSouth's proprietary information.
92	6-9	2.9.1	*Should charges for substantially similar OSS functions performed by the parties be reciprocal?*	YES, the Parties should bill each other OSS rates pursuant to the terms, conditions and rates for OSS as set forth in Exhibit A of Attachment 2 of the Agreement, for substantially similar OSS functions performed by the Parties.	YES, but only for those functions that CLEC performs that are substantially similar to those performed by BellSouth and only if the CLEC performs the same OSS functions pursuant to the terms and conditions under which BellSouth bills CLEC for OSS, including FOC

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ITEM NO.	ISSUE #	§	UNRESOLVED ISSUE	CLEC POSITION	BELLSOUTH POSITION
					turnaround times the same as BellSouth's, due date intervals the same as BellSouth's and CSRs handled under the same terms and conditions under which BellSouth provides the CSRs to CLEC.
93	6-10	3.1.1	*(A) Can Bellsouth make the porting of an End User to the CLEC contingent on either the CLEC having an operating, billing and/or collection arrangement with any third party carrier, including BellSouth Long Distance or the End User changing its PIC?* *(B) If not, should BellSouth be subject to liquidated damages for imposing such conditions?*	(A) NO, BellSouth is required by law to port a customer once the customer requests to be switched to another local service provider, regardless of any arrangement or agreement (or lack thereof) between CLEC and BellSouth Long Distance or another third party carrier. BellSouth's practice represents an anticompetitive leveraging of its ILEC status in favor of, and in collusion with, its Section 272 affiliate. More specifically, BellSouth may not condition its compliance with these obligations under the Agreement upon CLEC's or its End-Users' entry into any billing and/or collection arrangement, operational understanding, relationship or other arrangement with one or more of BellSouth's Affiliates, and/or any third party carrier. (B) YES, liquidated damages are appropriate in this instance because it would be impossible or commercially impracticable to ascertain and fix the actual amount of damages as would be sustained by CLEC as a result of such action by	(A) YES. If another carrier restricts the conditions under which that carrier's end user can retain a PIC, CLEC should be required to either comply with that carriers requirements or transfer the end-user with another PIC. (B) NO, liquidated damages provisions are inappropriate.

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ITEM NO.	ISSUE #	§	UNRESOLVED ISSUE	CLEC POSITION	BELLSOUTH POSITION
				BellSouth. A liquidated damage amount of $1,000 per occurrence per day is a reasonable approximation of the damages likely to be sustained by CLEC, upon the occurrence and during the continuance of any such breach. Liquidated damages should be in addition to and without prejudice to or limitation upon any other rights or remedies CLEC and/or any of its End Users may have under this Agreement and/or other applicable documents against BellSouth.	
94	6-11	3.1.2, 3.1.2.1	*(A) Should the mass migration of customer service arrangements resulting from mergers, acquisitions and asset transfers be accomplished by the submission of an electronic LSR or spreadsheet?* *(B) If so, what rates should apply?* *(C) What should be the interval for such mass migrations of services?*	(A) YES, mass migration of customer service arrangements (e.g., UNEs, Combinations, resale) should be accomplished pursuant to submission of electronic LSR or, if mutually agreed to by the Parties, by submission of a spreadsheet in a mutually agreed-upon format. Until such time as an electronic LSR process is available, a spreadsheet containing all relevant information should be used. (B) An electronic OSS charge should be assessed per service arrangement migrated. In addition, BellSouth should only charge CLEC a TELRIC-based records change charge, as set forth in Exhibit A of Attachment 2, for migrations of customers for which no physical re-termination of circuits must be performed. Similarly,	(A) No, each and every Merger, Acquisition and Asset Transfer is unique and requires project management and planning to ascertain the appropriate manner in which to accomplish the transfer, including how orders should be submitted. The vast array of services that may be the subject of such a transfer, under the agreement and both state and federal tariffs, necessitates that various forms of documentation may be required. (B) The rates by necessity must be negotiated between the Parties based upon the particular services to be transferred and the work involved. (C) No finite interval can be set to cover all potential situations. While shorter intervals can be committed to

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ITEM NO:	ISSUE #	§	UNRESOLVED ISSUE	CLEC POSITION	BELLSOUTH POSITION
				BellSouth should only charge CLEC a TELRIC-based charge, as set forth in Exhibit A of Attachment 2, for migrations of customers for which physical re-termination of circuits is required. (C) Migrations should be completed within ten (10) calendar days of an LSR or spreadsheet submission.	and met for small, simple projects, larger and more complex projects require much longer intervals and prioritization and cooperation between the Parties.
				BILLING (ATTACHMENT 7)	
95	7-1	1.1.3	*Should there be a time limit on the parties' ability to engage in backbilling?* [BellSouth does not concur in this statement of the issue]	YES, bills for service should not be rendered more than ninety (90) calendar days have passed since the bill date on which those charges ordinarily would have been billed. Billed amounts for services rendered more than one (1) billing period prior to the Bill Date should be invalid unless the billing Party identifies such billing as "back-billing" on a line-item basis. Billing beyond (90) calendar days and up to a limit of six (6) months after the date upon which the bill ordinarily would have been issued may be allowed under the following conditions: (1) charges connected with jointly provided services whereby meet point billing guidelines require either Party to rely on records provided by a third party and such records have not been provided in a timely manner; and (2) charges incorrectly billed due to erroneous information supplied by the non-billing Party.	BellSouth Issue Statement: *What limitations period should apply to charges under the agreement and should such limitations period apply to all issue related to billing under the agreement?* BellSouth Position: All charges incurred under the agreement should be subject to the state's statute of limitations or applicable Commission rules. Back-billing alone should not be subject to a shorter limitations period than any other claims related to billing under the agreement.

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ITEM NO.	ISSUE #	§	UNRESOLVED ISSUE	CLEC POSITION	BELLSOUTH POSITION
96	7-2	1.2.2	*(A) What charges, if any, should be imposed for records changes made by the Parties to reflect changes in corporate names or other LEC identifiers such as OCN, CC, CIC and ACNA?* *(B) What intervals should apply to such changes?* [BellSouth will either concur in CLECs' statement of the issue or provide an alternative statement with its Response]	(A) A Party should be entitled to make one (1) "LEC Change" (*i.e,* corporate name change, OCN, CC, CIC, ACNA change) per state in any twelve (12) month period without charge by the other Party for updating its databases, systems and records solely to reflect such change. For any additional LEC Changes, TELRIC compliant rates should be charged. (B) "LEC Changes" should be accomplished in thirty (30) calendar days and should result in no delay or suspension of ordering or provisioning of any element or service provided pursuant to this Agreement, or access to any pre-order, order, provisioning, maintenance or repair interfaces. At the request of a Party, the other Party should establish a new BAN within ten (10) calendar days.	BellSouth will provide its position with its Response.
97	7-3	1.4	*When should payment of charges for service be due?*	Payment of charges for services rendered should be due thirty (30) calendar days from receipt or website posting of a complete and fully readable bill or within thirty (30) calendar days from receipt or website posting of a corrected or retransmitted bill in those cases where correction or retransmission is necessary for processing.	Payment for services should be due on or before the next bill date (Payment Due Date) in immediately available funds.
98	7-4	1.6	*(A) What interest rate should apply for late*	(A) The interest rate that should apply for late payments is a uniform region-wide (1)	(A) The applicable interest rate approved by each state Commission in

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ITEM NO.	ISSUE #	§	UNRESOLVED ISSUE	CLEC POSITION	BELLSOUTH POSITION
			payments? *(B) What fee should be assessed for returned checks?*	percent per month. (B) In addition to any applicable late payment charges, a uniform region-wide $20 fee for all returned checks should apply.	BellSouth's tariffs should apply. (B) The Commission approved rate from the GSST should apply or, in the absence of such, the amount permitted by state law.
99	7-5	1.7.1	*What recourse should a Party have if it believes the other Party is engaging in prohibited, unlawful or improper use of its facilities or services, abuse of the facilities or noncompliance with the Agreement or applicable tariffs?*	Each Party should have the right to suspend access to ordering systems for and to terminate particular services or access to facilities that are being used in an unlawful, improper or abusive manner. However, such remedial action should be limited to the services or facilities in question and such suspension or termination should not be imposed unilaterally by one Party over the other's written objections to or denial of such accusations. In the event of such a dispute, "self help" should not supplant the Dispute Resolution process set forth in the Agreement.	Each Party should have the right to suspend or terminate service in the event it believes the other party is engaging in one of these practices.
100	7-6	1.7.2	*Should CLEC be required to calculate and pay past due amounts in addition to those specified in BellSouth's notice of suspension or termination for nonpayment in order to avoid suspension or termination?* [BellSouth does not concur in this statement of the issue]	NO. If CLEC receives a notice of suspension or termination from BellSouth with a limited time to pay nondisputed past due amounts, CLEC should, in order to avoid suspension or termination, be required to pay only the amount past due as of the date of the notice and as expressly and plainly indicated on the notice. Otherwise, CLEC will risk suspension or termination due to possible calculation and timing errors.	BellSouth will provide its position with its Response.

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ITEM NO.	ISSUE #	§	UNRESOLVED ISSUE	CLEC POSITION	BELLSOUTH POSITION
101	7-7	1.8.3	*How many months of billing should be used to determine the maximum amount of the deposit?*	The amount of a deposit should not exceed two month's estimated billing for new CLECs or one and one-half month's actual billing for existing CLECs (based on average monthly billings for the most recent six (6) month period). The one and one-half month's actual billing deposit limit for existing CLECs is reasonable given that balances can be predicted with reasonable accuracy and that significant portions of services are billed in advance.	The average of two (2) months of actual billing for existing customers or estimated billing for new customers, which is consistent with the telecommunications industry's standard and BellSouth's practice with its end users.
102	7-8	1.8.3.1	*Should the amount of the deposit BellSouth requires from CLEC be reduced by past due amounts owed by BellSouth to CLEC?*	YES, the amount of security due from an existing CLEC should be reduced by amounts due CLEC by BellSouth aged over thirty (30) calendar days. BellSouth may request additional security in an amount equal to such reduction once BellSouth demonstrates a good payment history, as defined in the deposit provisions of Attachment 7. This provision is appropriate given that the Agreement's deposit provisions are not reciprocal and that BellSouth's payment history with CLECs is often poor.	NO, CLEC's remedy for addressing late payment by BellSouth should be suspension/termination of service or application of interest/late payment charges similar to BellSouth's remedy for addressing late payment by CLEC.
103	7-9	1.8.6	*Should BellSouth be entitled to terminate service to CLEC pursuant to the process for termination due to non-payment if CLEC refuses to remit any deposit required*	NO, BellSouth should have a right to terminate services to CLEC for failure to remit a deposit requested by BellSouth only in cases where (a) CLEC agrees that such a deposit is required by the Agreement, or (b) the Commission has ordered payment of such deposit. A dispute over a requested	Yes, thirty (30) calendar days is a commercially reasonable time period within which CLEC should have met its fiscal responsibilities.

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ITEM NO.	ISSUE #	§	UNRESOLVED ISSUE	CLEC POSITION	BELLSOUTH POSITION
			by BellSouth within 30 calendar days?	deposit should be addressed via the Agreement's Dispute Resolution provisions and not through "self-help".	
104	7-10	1.8.7	*What recourse should be available to either Party when the Parties are unable to agree on the need for or amount of a reasonable deposit?*	If the Parties are unable to agree on the need for or amount of a reasonable deposit, either Party should be able to file a petition for resolution of the dispute and both parties should cooperatively seek expedited resolution of such dispute.	If CLEC does not agree with the amount or need for a deposit requested by BellSouth, CLEC may file a petition with the Commission for resolution of the dispute and BellSouth would cooperatively seek expedited resolution of such dispute. BellSouth shall not terminate service during the pendency of such a proceeding provided that CLEC posts a payment bond for the amount of the requested deposit during the pendency of the proceeding.
105	7-11	1.8.9	*Under what conditions may BellSouth seek additional security deposit from CLEC?*	Subject to a standard of commercial reasonableness and the standards for deposits requirements set forth in Attachment 7, BellSouth may seek an additional deposit if a material change in the circumstances of CLEC so warrants and/or gross monthly billing has increased more than 25% beyond the level most recently used to determine the level of deposit. BellSouth should not be entitled to make such additional requests based solely on increased billing more frequently than once in any six (6) month period.	BellSouth may seek additional security, subject to a standard of commercial reasonableness, if a material change in the circumstances of CLEC so warrants and/or gross monthly billing has increased beyond the level most recently used to determine the level of security deposit.
106	7-12	1.9.1	*To whom should BellSouth be required to send notice of suspension for*	Notice of suspension for additional applications for service, pending applications for service, and access to	BellSouth will provide its position with its Response.

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ITEM NO.	ISSUE #	§	UNRESOLVED ISSUE	CLEC POSITION	BELLSOUTH POSITION
			additional applications for service, pending applications for service and access to BellSouth's ordering systems? [BellSouth will either concur in CLECs' statement of the issue or provide an alternative statement with its Response]	BellSouth's ordering systems should be sent pursuant to the requirements of Attachment 7 and also should be sent via certified mail to the individual(s) listed in the Notices provision of the General Terms and Conditions.	
BFR/NBR (ATTACHMENT 11)					
107	11-1	1.5, 1.8.1, 1.9, 1.10	*(A) Should BellSouth be permitted to charge CLEC the full development costs associated with a BFR?* *(B) If so, how should these costs be recovered?*	(A) NO, charges associated with the development of a BFR should be apportioned among CLECs who may benefit from the UNE(s). (B) To the extent BellSouth can charge CLEC for the development costs associated with a BFR, such costs should be assessed through non-recurring and recurring rates.	(A) YES, BellSouth is entitled to recover its costs in provisioning services to CLEC. Since this is a unique request that CLEC is making, CLEC should bear the full development costs. (B) CLEC should be obligated to pay these costs upon request that BellSouth proceed.

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EXHIBIT 2

WORKING COPY OF
COMPOSITE INTERCONNECTION AGREEMENT

AGREEMENT
GENERAL TERMS AND CONDITIONS

(Note - The Parties agree to correct all section references upon finalization of the Agreement.)

THIS agreement (Agreement) is made by and between BellSouth Telecommunications, Inc., ("BellSouth"), a Georgia corporation, and <<customer_name>> ("<<customer_short_name>>"), a _____corporation, and shall be effective on the Effective Date, as defined herein. This Agreement may refer to either BellSouth or <<customer_short_name>> or both as a "Party" or "Parties."

W I T N E S S E T H

WHEREAS, BellSouth is an incumbent local exchange telecommunications company authorized to provide telecommunications services in the states of Alabama, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina and Tennessee; and

WHEREAS, <<customer_short_name>> is or seeks to become a CLEC authorized to provide telecommunications services in the states of Alabama, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina, and Tennessee; and

WHEREAS, <<customer_short_name>> wishes to resell BellSouth's telecommunications services and purchase network elements and other services, and, primarily in connection therewith, may wish to utilize collocation space as set forth in Attachment 4 of this Agreement); and

WHEREAS, the Parties wish to interconnect their facilities and exchange traffic pursuant to and consistent with the rights and obligations set forth in Sections 251 and 252 of the Act.

NOW THEREFORE, in consideration of the mutual agreements contained herein, BellSouth and <<customer_short_name>> agree as follows:

1. **Definitions**

1.1 The definitions set forth in this Section apply to the Agreement as a whole and both Parties' conduct thereunder. Additional definitions are included in the various attachments to this Agreement. Unless the context clearly indicates otherwise, any term defined or used in the singular shall include the plural.

1.2 **Affiliate** is defined as a person that (directly or indirectly) owns or controls, is owned or controlled by, or is under common ownership or control with, another person. For purposes of this paragraph, the term "own" means to own an equity interest (or equivalent thereof) of more than 10 percent.

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1.3 **Commission** is defined as the appropriate regulatory agency in each state of BellSouth's nine-state region (Alabama, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina, and Tennessee).

1.4 **Competitive Local Exchange Carrier (CLEC)** means a telephone company certified by the Commission to provide local exchange service within BellSouth's franchised area.

1.5 **Day** is defined to mean calendar day, unless otherwise expressly noted.

1.6 [Parties Disagree]

[<<customer short name>> Version] **Effective Date** is defined as the date that the Agreement is effective and shall be ten (10) calendar days after the date of the last signature executing the Agreement. Non rate impacting future amendments will be effective as of the date of the last signature executing the amendment or as otherwise ordered in a FCC or Commission order or rule. Future amendments incorporating Commission-approved rates will be effective **as of the effective date of the Commission order, if an amendment is requested within thirty (30) calendar days of that date. Otherwise, such amendments shall be effective ten (10) calendar days after request.**

[BellSouth Version] **Effective Date** is defined as the date that the Agreement is effective and shall be ten (10) calendar days after the date of the last signature executing the Agreement. Non rate impacting future amendments will be effective as of the date of the last signature executing the amendment or as otherwise ordered in a FCC or Commission order or rule. Future amendments incorporating Commission-approved rates will be effective **ten (10) calendar days after the date of the last signature executing the amendment.**

1.7 [Parties Disagree]

[<<customer short name>> Version] **End User** means the **customer of a Party**.

[BellSouth Version] **End User** means the **ultimate user of the Telecommunications Service.**

1.8 **FCC** means the Federal Communications Commission.

1.9 **General Terms and Conditions** means this document including all of the terms, provisions and conditions set forth herein.

1.10 **National Holiday** means New Year's Day, Martin Luther King Jr. Day, President's Day/Washington's Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans' Day, Thanksgiving Day, Christmas Day. In the calculation of intervals of less than ten (10) calendar days national holidays will be excluded.

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1.11 **Project Management** means the BellSouth Professional Services organization.

1.12 **Telecommunications** means the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received.

1.13 **Telecommunications Service** means the offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used.

1.14 **Telecommunications Act of 1996** ("1996 Act") means Public Law 104-104 of the United States Congress effective February 8, 1996. The 1996 Act is part of the Communications Act of 1934 (47 U.S.C. Section 1 et. seq.) as amended ("the Act").

2. **CLEC Certification**

2.1 Prior to execution of this Agreement, BellSouth may request and <<customer_short_name>> agrees to provide BellSouth in writing <<customer_short_name>>'s CLEC certification for all states covered by this Agreement except Kentucky. BellSouth will file this Agreement with the appropriate Commission for approval.

2.2 To the extent <<customer_short_name>> is not certified as a CLEC in each state covered by this Agreement as of the execution hereof, <<customer_short_name>> will notify BellSouth in writing and provide CLEC certification when it becomes certified to operate in any other state covered by this Agreement. Upon notification, BellSouth will file this Agreement with the appropriate Commission for approval.

3. **Term of the Agreement**

3.1 The term of this Agreement shall be three and one half (3 ½) years, beginning on the Effective Date and shall apply to the BellSouth territory in the state(s) of Alabama, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina and Tennessee. Notwithstanding any prior agreement of the Parties, the rates, terms and conditions of this Agreement shall not be applied retroactively prior to the Effective Date.

3.2 The Parties agree that by no earlier than two hundred seventy (270) calendar days and no later than one hundred and eighty (180) calendar days prior to the expiration of this Agreement, they shall commence negotiations for a new agreement for a new agreement to be effective beginning on the expiration date of this Agreement ("Subsequent Agreement").

3.3 If, within one hundred and thirty-five (135) calendar days of the designated start date of the negotiation referred to in Section 3.2, above, the Parties are unable to satisfactorily negotiate new terms, conditions and prices for a Subsequent

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Agreement, either Party may petition the Commission to establish appropriate terms, conditions and prices pursuant to 47 U.S.C. 252. The Parties agree that, in such event, they shall encourage the Commission to issue its order regarding the Subsequent Agreement no later than the expiration date of this Agreement. The Parties further agree that in the event the Commission does not issue its Arbitration order prior to the expiration date of this Agreement, or if the Parties continue beyond the expiration date of this Agreement to negotiate the Subsequent Agreement, the Subsequent Agreement ultimately ordered by the Commission, or negotiated by the Parties, will be effective upon the effective date set forth in the Subsequent Agreement.

3.4 Notwithstanding the foregoing and except as set forth in Section 3.4.1 below, in the event that, as of the date of the expiration of this Agreement and conversion of this Agreement to a month-to-month term, the Parties have not entered into a Subsequent Agreement and no arbitration proceeding has been filed in accordance with Section 252 of the Act, then either Party may terminate this Agreement upon sixty (60) calendar days notice to the other Party. In the event that BellSouth terminates this Agreement as provided above, BellSouth shall continue to offer services to <<customer_short_name>> pursuant to BellSouth's then current standard interconnection agreement or <<customer_short_name>> may exercise its rights under Section 252(i) of the Act. In the event that BellSouth's standard interconnection agreement becomes effective as between the Parties or <<customer_short_name>> adopts another agreement, the Parties may continue to negotiate a Subsequent Agreement, and the terms of such Subsequent Agreement shall be effective as of the effective date stated in such Subsequent Agreement.

3.4.1 If an arbitration proceeding has been filed in accordance with Section 252 of the Act and if the Commission does not issue its order prior to the expiration of this Agreement, this Agreement shall be deemed extended on a month-to-month basis until the Subsequent Agreement becomes effective. The terms of such Subsequent Agreement shall be effective as of the effective date stated in such Subsequent Agreement and shall not be applied retroactively to the expiration date of this Agreement unless the Parties agree otherwise. Neither Party shall refuse to provide services to the other Party during the negotiation of the Subsequent Agreement or the transition from this Agreement to the Subsequent Agreement.

4. **Termination**

4.1 <<customer_short_name>> may terminate any network element, interconnection or other services provided under this Agreement upon thirty (30) calendar days written notice to BellSouth. In such cases, <<customer_short_name>>'s obligation to pay for such network element, interconnection or other services shall be limited to the amounts due provided up to and including the date of termination.

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4.2 Upon notice of termination, the Parties agree to cooperate in an orderly and efficient transition to <<customer_short_name>> or another vendor and to exercise their best efforts to effect an orderly and efficient transition.

5. **Operational Support Systems**

5.1 <<customer_short_name>> shall pay charges for Operational Support Systems (OSS) as set forth in this Agreement in Attachment 1 and/or in Attachments 2, 3 and 5, as applicable.

6. **Parity**

6.1 When <<customer_short_name>> purchases services from BellSouth pursuant to Attachment 1 of this Agreement for the purposes of Resale to its End Users, such services shall be at least equal in quality, subject to the same conditions, and provided within the same provisioning time intervals that BellSouth provides to its Affiliates, subsidiaries and End Users. To the extent technically feasible, the quality of a Network Element, as well as the quality of the access to such Network Element provided by BellSouth to <<customer_short_name>> shall be at least equal in quality to that which BellSouth provides to itself, its Affiliates or any other Telecommunications carrier. The quality of the interconnection between the network of BellSouth and the network of <<customer_short_name>> shall be at a level that is at least equal to that which BellSouth provides itself, a subsidiary, an Affiliate, or any other party. The interconnection facilities shall be designed to meet the same technical criteria and service standards that are used within BellSouth's network and shall extend to a consideration of service quality as perceived by BellSouth's End Users and service quality as perceived by <<customer_short_name>> and its End Users.

7. **White Pages Directory Listings Requirements**

7.1 Listings. <<customer_short_name>> shall provide all new, changed and deleted listings on a timely basis and BellSouth or its agent will include <<customer_short_name>> residential and business customer listings in the appropriate White Pages (residential and business) or alphabetical directories in the geographic areas covered by this Interconnection Agreement in a nondiscrimatory manner and at parity. Directory listings will make no distinction between <<customer_short_name>> and BellSouth subscribers.

7.1.1 Rates. So long as <<customer_short_name>> provides subscriber listing information (SLI) to BellSouth in accordance with Section 7.2 below, BellSouth shall provide to <<customer_short_name>> one (1) primary White Pages listing per <<customer_short_name>> subscriber at no charge for the initial listing. Additions or changes to the initial subscriber White Pages listing shall incur a secondary service charge in accordance with Section A4.2 of BellSouth's GSST.

7.2 Procedures for Submitting <<customer_short_name>> SLI are found in The BellSouth Business Rules for Local Ordering located at http//www.interconnection.bellsouth.com.

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7.2.1 <<customer_short_name>> authorizes BellSouth to release all <<customer_short_name>> SLI provided to BellSouth by <<customer_short_name>> to qualifying third parties via either license agreement or BellSouth's Directory Publishers Database Service (DPDS), GSST, Section A38.2, as the same may be amended from time to time. Such <<customer_short_name>> SLI shall be intermingled with BellSouth's own customer listings and listings of any other CLEC that has authorized a similar release of SLI.

7.2.2 No compensation shall be paid to <<customer_short_name>> for BellSouth's receipt of <<customer_short_name>> SLI, or for the subsequent release to third parties of such SLI. In addition, to the extent BellSouth incurs costs to modify its systems to enable the release of <<customer_short_name>>'s SLI, or costs on an ongoing basis to administer the release of <<customer_short_name>>'s SLI, <<customer_short_name>> shall pay to BellSouth its proportionate share of the reasonable costs associated therewith. At any time that costs may be incurred to administer the release of <<customer_short_name>>'s SLI, <<customer_short_name>> will be notified. If <<customer_short_name>> does not wish to pay its proportionate share of these reasonable costs, <<customer_short_name>> may instruct BellSouth that it does not wish to release its SLI to independent publishers, and <<customer_short_name>> shall amend this Agreement accordingly. <<customer_short_name>> will be liable for all costs incurred until the effective date of the amendment.

7.2.3 Neither BellSouth nor any agent shall be liable for the content or accuracy of any SLI provided by <<customer_short_name>> under this Agreement. Except to the extent caused by gross negligence or willfull misconduct by BellSouth, <<customer_short_name>> shall indemnify, hold harmless and defend BellSouth and its agents from and against any damages, losses, liabilities, demands, claims, suits, judgments, costs and expenses (including but not limited to reasonable attorneys' fees and expenses) arising from BellSouth's tariff obligations or otherwise and resulting from or arising out of any third party's claim of inaccurate <<customer_short_name>> listings or use of the SLI provided pursuant to this Agreement. BellSouth may forward to <<customer_short_name>> any complaints received by BellSouth relating to the accuracy or quality of <<customer_short_name>> listings.

7.2.4 BellSouth agrees to address any issue regarding a directory listing raised by a <<customer_short_name>> End User in the same manner that BellSouth does for BellSouth's Retail End Users.

7.2.5 Listings and subsequent updates will be released consistent with BellSouth system changes and/or update scheduling requirements.

7.3 Unlisted/Non-Published Subscribers. <<customer_short_name>> will be required to provide to BellSouth the names, addresses and telephone numbers of all <<customer_short_name>> customers who wish to be omitted from directories.

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7.4 Inclusion of <<customer_short_name>> End Users in Directory Assistance Database. BellSouth will include and maintain <<customer_short_name>> subscriber listings in BellSouth's Directory Assistance databases at no recurring charge and <<customer_short_name>> shall provide such Directory Assistance listings to BellSouth at no recurring charge.

7.5 Listing Information Confidentiality. BellSouth will afford <<customer_short_name>>'s directory listing information the same level of confidentiality that BellSouth affords its own directory listing information.

7.6 Additional, Designer, Non-Listed and Non-Published Listings. BellSouth shall provide Additional, Designer, Non-Listed and Non-Published White Pages Listings to <<customer_short_name>>'s End Users under the same rates, terms and conditions as BellSouth makes such listings available to its own End Users. Where BellSouth charges its End Users for Additional, Designer, Non-Listed and Non-Published White Pages Listings, BellSouth shall publish such listings under the same rates, terms and conditions to <<customer_short_name>> for its Resale End Users subject to the applicable wholesale rates in Attachment 1.

7.7 Directories. BellSouth or its agent shall make available White Pages directories to <<customer_short_name>> subscribers at no charge or as specified in a separate agreement with BellSouth's agent.

7.7.1 Delivery. BellSouth or its agent shall deliver White Pages directories to <<customer_short_name>> End Users at parity with BellSouth's delivery of directories to its own End Users.

8. **Local Dialing Parity**

8.1 BellSouth shall provide local dialing parity as described in the Act and required by FCC rules, regulations and policies. <<customer_short_name>> End Users shall not have to dial any greater number of digits than BellSouth End Users to complete the same call. In addition, <<customer_short_name>> End Users shall experience at least the same service quality as BellSouth End Users in terms of post-dial delay, call completion rate and transmission quality.

9. **Court Ordered Requests for Call Detail Records and Other Subscriber Information**

9.1 Subpoenas Directed to BellSouth. Where BellSouth provides resold services or local switching for <<customer_short_name>>, BellSouth shall respond to subpoenas and court ordered requests delivered directly to BellSouth for the purpose of providing call detail records when the targeted telephone numbers belong to <<customer_short_name>> End Users. Billing for such requests will be generated by BellSouth and directed to the law enforcement agency initiating the request. BellSouth shall maintain such information for <<customer_short_name>> End Users for the same length of time it maintains such information for its own End Users.

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9.2 Subpoenas Directed to <<customer_short_name>>. Where BellSouth is providing to <<customer_short_name>> Telecommunications Services for resale or providing to <<customer_short_name>> the local switching function, then <<customer_short_name>> agrees that in those cases where <<customer_short_name>> receives subpoenas or court ordered requests regarding targeted telephone numbers belonging to <<customer_short_name>> End Users, and where <<customer_short_name>> does not have the requested information, <<customer_short_name>> will advise the law enforcement agency initiating the request to redirect the subpoena or court ordered request to BellSouth for handling in accordance with 9.1 above.

9.3 In all other instances, where either Party receives a request for information involving the other Party's End User, the Party receiving the request will advise the law enforcement agency initiating the request to redirect such request to the other Party.

10. **Liability and Indemnification**

10.1 <<customer_short_name>> Liability. In the event that <<customer_short_name>> consists of two (2) or more separate entities as set forth in this Agreement and/or any Amendments hereto, all such entities that are Parties to this Agreement shall be jointly and severally liable for the obligations of <<customer_short_name>> under this Agreement.

10.2 [Parties Disagree]

[<<customer_short_name Version>] **BellSouth shall take financial responsibility for its own actions in causing or contributing to unbillable or uncollectible <<customer_short_name>> revenue.**

[BellSouth Version] **No Section.**

10.3 Liability for Acts or Omissions of Third Parties. The Parties shall not be liable to each other for any act or omission of another Telecommunications company.

10.4 Limitation of Liability

10.4.1 [Parties Disagree]

[<<customer_short_name>> Version] Except for any indemnification obligations of the Parties hereunder, **with respect to any claim or suit, whether based in contract, tort or any other theory of legal liability, by either Party, any End User of either Party, or by any other person or entity, for damages associated with any of the services provided pursuant to or in connection with this Agreement, including but not limited to the installation, provision, preemption, termination, maintenance, repair or restoration of service, and, in any event, subject to the provisions of the remainder of this Section,** each Party's liability **shall be limited** to **and shall not exceed in aggregate amount over the entire term hereof an amount equal to seven-and-one half percent**

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(7.5%) of the aggregate fees, charges or other amounts paid or payable to such Party for any and all services provided or to be provided by such Party pursuant to this Agreement as of the Day immediately preceding the date of assertion or filing of the applicable claim or suit; provided that the foregoing provisions shall not be deemed or construed as (A) imposing or allowing for any liability of either Party for (x) indirect, special or consequential damages as otherwise excluded pursuant to Section 10.4.4below or (y) any other amount or nature of damages to the extent resulting directly and proximately from the claiming Party's failure to act at all relevant times in a commercially reasonable manner in compliance with such Party's duties of mitigation with respect to all applicable damages or (B) limiting either Party's right to recover appropriate refund(s) of or rebate(s) or credit(s) for fees, charges or other amounts paid at Agreement rates for services not performed or **provided or otherwise failing to comply (with applicable refund, rebate or credit amounts measured by the diminution in value of services reasonably resulting from such noncompliance) with the applicable terms and conditions of this Agreement. Notwithstanding the foregoing, claims or suits for damages by either Party, any End User of either Party, or by any other person or entity, to the extent resulting from the gross negligence or willful misconduct of the other Party, shall not be subject to the foregoing limitation of liability.**

[BellSouth Version] Except for any indemnification obligations of the Parties hereunder, **and except in cases of the provisioning Party's gross negligence or willful misconduct,** each Party's liability to **the other for any loss, cost, claim, injury, liability or expense, including reasonable attorneys' fees relating to or arising out of any negligent act or omission in its performance of this Agreement, whether in contract or in tort,** shall be limited to **a credit for the actual cost of the** services **or functions** not performed or **improperly performed.**

10.4.2 [Parties Disagree]

[<<customer short name>> Version] **No Section.**

[BellSouth Version] **Limitations in Tariffs. A Party may, in its sole discretion, provide in its tariffs and contracts with its End Users and third parties that relate to any service, product or function provided or contemplated under this Agreement, that to the maximum extent permitted by Applicable Law, such Party shall not be liable to the End User or third party for (i) any loss relating to or arising out of this Agreement, whether in contract, tort or otherwise, that exceeds the amount such Party would have charged that applicable person for the service, product or function that gave rise to such loss and (ii) consequential damages. To the extent that a Party elects not to place in its tariffs or contracts such limitations of liability, and the other Party incurs a loss as a result thereof, such Party shall indemnify and reimburse the other Party for that portion of the loss that would have been**

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limited had the first Party included in its tariffs and contracts the limitations of liability that such other Party included in its own tariffs at the time of such loss.

10.4.3 Neither BellSouth nor <<customer_short_name>> shall be liable for physical damage to the other Party's premises, facilities and equipment or End User premises resulting from the furnishing of a service, including, but not limited to, the installation and removal of equipment or associated wiring, except to the extent caused by a Party's negligence, gross negligence or willful misconduct or by a Party's failure to ground properly a local loop after disconnection.

10.4.4 [Parties Disagree]

[<<customer_short_name>> Version] Nothing in this Section 10 shall limit a Party's obligation to indemnify or hold harmless the other Party set forth elsewhere in this Agreement. Except in cases of gross negligence or willful or intentional misconduct, under no circumstance shall a Party be responsible or liable for indirect, incidental, or consequential damages **provided that neither the foregoing nor any other provision of this Section 10 shall be deemed or construed as imposing any limitation on the liability of a Party for claims or suits for damages incurred by End Users of the other Party or by such other Party vis-à-vis its End Users to the extent such damages result directly and in a reasonably foreseeable manner from the first Party's performance of services hereunder and were not and are not directly and proximately caused by or the result of such Party's failure to act at all relevant times in a commercially reasonable manner in compliance with such Party's duties of mitigation with respect to such damage.** In connection with this limitation of liability, each Party recognizes that the other Party may, from time to time, provide advice, make recommendations, or supply other analyses related to the services or facilities described in this Agreement, and, while each Party shall use diligent efforts in this regard, the Parties acknowledge and agree that this limitation of liability shall apply to provision of such advice, recommendations, and analyses.

[BellSouth Version] Nothing in this Section 10 shall limit a Party's obligation to indemnify or hold harmless the other Party set forth elsewhere in this Agreement. Except in cases of gross negligence or willful or intentional misconduct, under no circumstance shall a Party be responsible or liable for indirect, incidental, or consequential damages. In connection with this limitation of liability, each Party recognizes that the other Party may, from time to time, provide advice, make recommendations, or supply other analyses related to the services or facilities described in this Agreement, and, while each Party shall use diligent efforts in this regard, the Parties acknowledge and agree that this limitation of liability shall apply to provision of such advice, recommendations, and analyses.

10.4.5 To the extent any specific provision of this Agreement purports to impose liability, or limitation of liability, on either Party different from or in conflict with

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the liability or limitation of liability set forth in this Section, then with respect to the particular facts or circumstances covered by the more specific provision, the liability or limitation of liability contained in such specific provision shall apply. Nothing in this Section shall be interpreted to limit <<customer_short_name>>'s rights to remedies and/or claims provided or contemplated elsewhere in this Agreement.

10.5 [Parties Disagree]

[<<customer_short_name>> Version] Indemnification for Certain Claims. The Party providing services hereunder, its Affiliates and its parent company, shall be indemnified, defended and held harmless by the Party receiving services hereunder against any claim **for libel, slander or invasion of privacy arising from the content of the receiving Party's own communications. The Party receiving services hereunder, its Affiliates and its parent company, shall be indemnified, defended and held harmless by the Party providing services hereunder against any claim, loss or damage to the extent arising from (1) the providing Party's failure to abide by Applicable Law, or (2) injuries or damages arising out of or in connection with this Agreement to the extent caused by the providing Party's negligence, gross negligence or willful misconduct.**

[BellSouth Version] Indemnification for Certain Claims. The Party providing services hereunder, its Affiliates and its parent company, shall be indemnified, defended and held harmless by the Party receiving services hereunder against any claim, **loss or damage arising from the receiving Party's use of the services provided under this Agreement pertaining to (1) claims** for libel, slander or invasion of privacy arising from the content of the receiving Party's own communications, **or (2)** any claim, loss or damage **claimed by the End User of the Party receiving services arising from such company's use or reliance on the providing Party's services, actions, duties, or obligations** arising out of this Agreement.

10.5.1 Promptly after receipt of notice of the commencement of, or of any definite and colorable written claim or written threat as to the commencement of any action or proceeding relating to a matter or matters for which a Party may seek indemnification pursuant to this Section 10.5.1, such Party (the "Indemnified Party") shall promptly give written notice to the other Party (the "Indemnifying Party") of the action or proceeding so commenced (or claimed or threatened for commencement as aforesaid), whereupon the Indemnifying Party shall, be obligated (unless the Indemnified Party shall have otherwise waived such obligation in its sole and absolute discretion by its written election to maintain its own defense, subject, in such event and in all respects, to the exemptions from and limitations applicable to the Indemnifying Party's liability as provided in the final sentence of this Section 10.5.1) to assume the defense thereof at its sole cost and expense using counsel selected by the Indemnifying Party and reasonably

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acceptable to the Indemnified Party in its reasonable and good faith business judgment; provided that, the Parties hereby acknowledge and agree that the failure by an Indemnified Party to notify the Indemnifying Party as to a claim or the commencement (or written claim or threat of commencement) of any action or proceeding as aforesaid shall not relieve the Indemnifying Party of any liability it may have to the Indemnified Party with respect thereto, except and to the extent that the Indemnifying Party shall have actually and demonstrably incurred material prejudice, or suffered forfeiture of material substantive defenses or claims, resulting directly and exclusively from the failure to so notify. From and after assumption by an Indemnifying Party of the defense of any such pending (or claimed or threatened, as above) claim, action or proceeding, the Indemnified Party shall cooperate in a good faith and commercially-reasonable manner with the Indemnifying Party's reasonable requests for assistance or information relating to such action or proceeding, at the Indemnifying Party's sole cost and expense. The Indemnified Party shall retain the right to participate in the investigation and defense of such action or proceeding, with separate counsel chosen and paid for by the Indemnified Party. Unless the Indemnified Party shall have elected in its sole and absolute discretion to waive any further right to be indemnified with respect to any such action, proceeding or claim the Indemnified Party's counsel shall not unreasonably interfere with the defense by the Indemnifying Party and its counsel, and, absent a good faith and commercially reasonable basis therefore, as communicated in writing to the Indemnifying Party in reasonable detail, the Indemnified Party's counsel shall not raise any claims, defenses, or objections or otherwise take a course of action in representation of the Indemnified Party when such course of action would unreasonably conflict with a course of action or inaction chosen by the Indemnifying Party. An Indemnifying Party shall not be liable under this Section 10.5.1 for settlements or compromises by the Indemnified Party of any claim, action or proceeding commenced (or claimed or threatened for commencement as aforesaid) as described in this Section 10.5.1 unless the Indemnifying Party shall have previously consented in writing thereto (such consent not to be unreasonably withheld, conditioned or delayed) or unless the Indemnifying Party has been given notice and reasonable opportunity to defend such claim, action or proceeding and has failed to promptly undertake the defense.

10.6 Disclaimer. EXCEPT AS SPECIFICALLY PROVIDED TO THE CONTRARY IN THIS AGREEMENT INCLUDING ALL ATTACHMENTS AND EXHIBITS HERETO AND ANY APPLICABLE SERVICE QUALITY STANDARDS, MEASURES, ASSURANCES AND ASSOCIATED REMEDIES ORDERED BY THE FCC OR COMMISSION, NEITHER PARTY MAKES ANY REPRESENTATIONS OR WARRANTIES TO THE OTHER PARTY CONCERNING THE SPECIFIC QUALITY OF ANY SERVICES, OR FACILITIES PROVIDED UNDER THIS AGREEMENT. THE PARTIES DISCLAIM, WITHOUT LIMITATION, ANY WARRANTY OR GUARANTEE OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE,

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ARISING FROM COURSE OF PERFORMANCE, COURSE OF DEALING, OR FROM USAGES OF TRADE.

11. **Intellectual Property Rights and Indemnification**

11.1 [Parties Disagree]

[<<customer_short_name>> Version] No License. No patent, copyright, trademark or other proprietary right is licensed, granted or otherwise transferred by this Agreement. **A Party's use of the other Party's name, service marks and trademarks shall be in accordance with Applicable Law.**

[BellSouth Version] No License. No patent, copyright, trademark or other proprietary right is licensed, granted or otherwise transferred by this Agreement. **The Parties are strictly prohibited from any use, including but not limited to, in the selling, marketing, promoting or advertising of telecommunications services, of any name, service mark, logo or trademark (collectively, the "Marks") of the Other Party. The Marks include those Marks owned directly by a Party or its Affiliate(s) and those Marks that a Party has a legal and valid license to use. Notwithstanding the foregoing, <<customer_short_name>> may make factual references to the BellSouth name as necessary to respond to direct inquiries from customers or potential customers regarding the source of the underlying services or the identity of repair technicians. The Parties acknowledge that they are separate and distinct and that each provides a separate and distinct service and agree that neither Party may, expressly or impliedly, state, advertise or market that it is or offers the same service as the other Party or engage in any other activity that may result in a likelihood of confusion between its own service and the service of the Other Party.**

11.2 Ownership of Intellectual Property. Any intellectual property that originates from or is developed by a Party shall remain the exclusive property of that Party. Except for a limited, non-assignable, non-exclusive, non-transferable license to use patents or copyrights to the extent necessary for the Parties to use any facilities or equipment (including software) or to receive any service solely as provided under this Agreement, no license in patent, copyright, trademark or trade secret, or other proprietary or intellectual property right, now or hereafter owned, controlled or licensable by a Party, is granted to the other Party. Neither shall it be implied nor arise by estoppel. Any trademark, copyright or other proprietary notices appearing on software or documents provided by one Party to the other Party for the receiving Party's internal use, shall not be removed provided that such notices are neither visible to nor detectable by the receiving Party's End Users. It is the responsibility of each Party to ensure at no additional cost to the other Party that it has obtained any necessary licenses in relation to intellectual property of third Parties used in its network that may be required to enable the other Party to use any facilities or equipment (including software), to receive any service, or to perform its respective obligations under this Agreement.

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11.3 Indemnification. The Party providing a service pursuant to this Agreement will defend the Party receiving such service or data provided as a result of such service against claims of infringement arising solely from the use by the receiving Party of such service in the manner contemplated under this Agreement and will indemnify and hold harmless the receiving Party from and against any loss, cost, expense or liability associated with claims.

11.4 Claim of Infringement. In the event that use of any facilities or equipment (including software), becomes, or in the reasonable judgment of the Party who owns the affected network is likely to become, the subject of a claim, action, suit, or proceeding based on intellectual property infringement, then said Party shall promptly and at its sole expense:

11.4.1 modify or replace the applicable facilities or equipment (including software) while maintaining form and function, or

11.4.2 obtain a license sufficient to allow such use to continue, or

11.4.3 in the event that the actions contemplated by Section 11.4.1 or 11.4.2 are commercially unreasonable, then said Party may terminate, upon reasonable notice, this contract with respect to use of, or services provided through use of, the affected facilities or equipment (including software), but solely to the extent required to avoid the infringement claim.

11.4.4 Neither Party's obligations under this Section shall apply to the extent the infringement is caused by: (i) modification of the facilities or equipment (including software) by the indemnitee; (ii) use by the indemnitee of the facilities or equipment (including software) in combination with equipment or facilities (including software) not provided or authorized by the indemnitor, provided the facilities or equipment (including software) would not be infringing if used alone; (iii) conformance to specifications of the indemnitee which would necessarily result in infringement; or (iv) continued use by the indemnitee of the affected facilities or equipment (including software) after being placed on notice to discontinue use as set forth herein.

11.4.5 The foregoing shall constitute the Parties' sole and exclusive remedies and obligations with respect to a third party claim of intellectual property infringement arising out of the conduct of business under this Agreement.

11.5 Dispute Resolution. Any claim arising under this Section shall be excluded from the dispute resolution procedures set forth in Section 13 below and shall be brought in a court of competent jurisdiction.

12. Proprietary and Confidential Information

12.1 Proprietary and Confidential Information. It may be necessary for BellSouth and <<customer_short_name>>, each as the "Discloser," to provide to the other Party, as "Recipient," certain proprietary and confidential information (including trade

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secret information) including but not limited to technical, financial, marketing, staffing and business plans and information, strategic information, proposals, request for proposals, specifications, drawings, maps, prices, costs, costing methodologies, procedures, processes, business systems, software programs, techniques, customer account data, call detail records and like information (collectively the "Information"). All such Information conveyed in writing or other tangible form shall be clearly marked with a confidential or proprietary legend. Information conveyed orally by the Discloser to Recipient shall be designated as proprietary and confidential at the time of such oral conveyance, shall be reduced to writing by the Discloser within forty-five (45) calendar days thereafter, and shall be clearly marked with a confidential or proprietary legend.

12.1.1 Each Party shall have the right to correct an inadvertent failure to identify information as Confidential Information by giving written notification within forty-five (45) calendar days after the information is disclosed. The Recipient shall, from that time forward, treat such information as Confidential Information subject to the provisions of this Section 12.

12.2 Use and Protection of Information. Recipient agrees to protect such Information of the Discloser provided to Recipient from whatever source from distribution, disclosure or dissemination to anyone except employees of Recipient with a need to know such Information solely in conjunction with Recipient's analysis of the Information and for no other purpose except as authorized herein or as otherwise authorized in writing by the Discloser. Recipient will not make any of any kind of the Information inspected by it. The Recipient will use the same standard of care to protect Information received as they would use to protect their own confidential and proprietary Information. Upon request the Information will be returned by the Recipient to the Discloser within thirty (30) calendar days of completion of any use.

12.3 Exceptions. Recipient will not have an obligation to protect any portion of the Information which:

12.3.1 (a) is made publicly available by the Discloser or lawfully by a nonparty to this Agreement; (b) is lawfully obtained by Recipient from any source other than Discloser; (c) is previously known to Recipient without an obligation to keep it confidential; or (d) is released from the terms of this Agreement by Discloser upon written notice to Recipient.

12.4 Recipient agrees to use the Information solely for the purposes of negotiations pursuant to 47 U.S.C. 251 or in performing its obligations under this Agreement and for no other entity or purpose, except as may be otherwise agreed to in writing by the Parties. Nothing herein shall prohibit Recipient from providing information requested by the FCC or a state regulatory agency with jurisdiction over this matter, or to support a request for arbitration or an allegation of failure to negotiate in good faith.

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12.5 Recipient agrees not to publish or use the Information for any advertising, sales or marketing promotions, press releases, or publicity matters that refer either directly or indirectly to the Information or to the Discloser or any of its affiliated companies.

12.6 The disclosure of Information neither grants nor implies any license to the Recipient under any trademark, patent, copyright, application or other intellectual property right that is now or may hereafter be owned by the Discloser.

12.7 Survival of Confidentiality Obligations. The Parties' rights and obligations under this Section 12 shall survive and continue in effect until two (2) years after the expiration or termination date of this Agreement with regard to all Information exchanged during the term of this Agreement. Thereafter, the Parties' rights and obligations hereunder survive and continue in effect with respect to any Information that is a trade secret under applicable law.

13. **Resolution of Disputes**

13.1 [Parties Disagree]

[<<customer short name>> Version] Except as otherwise stated in this Agreement, the Parties agree that if any dispute arises as to the interpretation of any provision of this Agreement or as to the proper implementation of this Agreement, either Party may petition the FCC, the Commission **or a court of law** for a resolution of the dispute. Either Party may seek expedited resolution by the Commission, and may request that resolution occur in no event later than sixty (60) calendar days from the date of submission of such dispute. The other Party will not object to such expedited resolution of a dispute. If the FCC or Commission appoints an expert(s) or other facilitator(s) to assist in its decision making, each party shall pay half of the fees and expenses so incurred to the extent the FCC or the Commission requires the Parties to bear such fees and expenses. Each Party reserves any rights it may have to seek judicial review of any ruling made by the FCC, the Commission **or a court of law** concerning this Agreement. Until the dispute is finally resolved, each Party shall continue to perform its obligations under this Agreement, unless the issue as to how or whether there is an obligation to perform is the basis of the dispute, and shall continue to provide all services and payments as prior to the dispute provided however, that neither Party shall be required to act in any unlawful fashion.

[BellSouth Version] Except as otherwise stated in this Agreement, the Parties agree that if any dispute arises as to the interpretation of any provision of this Agreement or as to the proper implementation of this Agreement, either Party may petition the FCC or the Commission for a resolution of the dispute. Either Party may seek expedited resolution by the Commission, and may request that resolution occur in no event later than sixty (60) calendar days from the date of submission of such dispute. The other Party will not object to such expedited

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resolution of a dispute. If the FCC or Commission appoints an expert(s) or other facilitator(s) to assist in its decision making, each party shall pay half of the fees and expenses so incurred to the extent the FCC or the Commission requires the Parties to bear such fees and expenses. Each Party reserves any rights it may have to seek judicial review of any ruling made by the FCC or the Commission concerning this Agreement. Until the dispute is finally resolved, each Party shall continue to perform its obligations under this Agreement, unless the issue as to how or whether there is an obligation to perform is the basis of the dispute, and shall continue to provide all services and payments as prior to the dispute provided however, that neither Party shall be required to act in any unlawful fashion.

14. **Taxes**

14.1 Definition. For purposes of this Section, the terms "taxes" and "fees" shall include but not be limited to federal, state or local sales, use, excise, gross receipts or other taxes or tax-like fees of whatever nature and however designated (including tariff surcharges and any fees, charges or other payments, contractual or otherwise, for the use of public streets or rights of way, whether designated as franchise fees or otherwise) imposed, or sought to be imposed, on or with respect to the services furnished hereunder or measured by the charges or payments therefore, excluding any taxes levied on income.

14.2 Taxes and Fees Imposed Directly On Either Providing Party or Purchasing Party.

14.2.1 Taxes and fees imposed on the providing Party, which are not permitted or required to be passed on by the providing Party to its customer, shall be borne and paid by the providing Party.

14.2.2 Taxes and fees imposed on the purchasing Party, which are not required to be collected and/or remitted by the providing Party, shall be borne and paid by the purchasing Party.

14.3 Taxes and Fees Imposed on Purchasing Party But Collected And Remitted By Providing Party.

14.3.1 Taxes and fees imposed on the purchasing Party shall be borne by the purchasing Party, even if the obligation to collect and/or remit such taxes or fees is placed on the providing Party.

14.3.2 To the extent permitted by applicable law, any such taxes and/or fees shall be shown as separate items on applicable billing documents between the Parties. Notwithstanding the foregoing, the purchasing Party shall remain liable for any such taxes and fees regardless of whether they are actually billed by the providing Party at the time that the respective service is billed.

14.3.3 If the purchasing Party determines that in its opinion any such taxes or fees are not payable, the providing Party shall not bill such taxes or fees to the purchasing

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Party if the purchasing Party provides written certification, reasonably satisfactory to the providing Party, stating that it is exempt or otherwise not subject to the tax or fee, setting forth the basis therefor, and satisfying any other requirements under applicable law. If any authority seeks to collect any such tax or fee that the purchasing Party has determined and certified not to be payable, or any such tax or fee that was not billed by the providing Party, the purchasing Party may contest the same in good faith, at its own expense. In any such contest, the purchasing Party shall promptly furnish the providing Party with copies of all filings in any proceeding, protest, or legal challenge, all rulings issued in connection therewith, and all correspondence between the purchasing Party and the taxing authority.

14.3.4 In the event that all or any portion of an amount sought to be collected must be paid in order to contest the imposition of any such tax or fee, or to avoid the existence of a lien on the assets of the providing Party during the pendency of such contest, the purchasing Party shall be responsible for such payment and shall be entitled to the benefit of any refund or recovery.

14.3.5 If it is ultimately determined that any additional amount of such a tax or fee is due to the imposing authority, the purchasing Party shall pay such additional amount, including any interest and penalties thereon.

14.3.6 Notwithstanding any provision to the contrary, the purchasing Party shall protect, indemnify and hold harmless (and defend at the purchasing Party's expense) the providing Party from and against any such tax or fee, interest or penalties thereon, or other charges or payable expenses (including reasonable attorney fees) with respect thereto, which are incurred by the providing Party in connection with any claim for or contest of any such tax or fee.

14.3.7 Each Party shall notify the other Party in writing of any assessment, proposed assessment or other claim for any additional amount of such a tax or fee by a taxing authority; such notice to be provided, if possible, at least ten (10) calendar days prior to the date by which a response, protest or other appeal must be filed, but in no event later than thirty (30) calendar days after receipt of such assessment, proposed assessment or claim.

14.4 <u>Taxes and Fees Imposed on Providing Party But Passed On To Purchasing Party</u>.

14.4.1 Taxes and fees imposed on the providing Party, which are permitted or required to be passed on by the providing Party to its customer, shall be borne by the purchasing Party.

14.4.2 To the extent permitted by applicable law, any such taxes and/or fees shall be shown as separate items on applicable billing documents between the Parties. Notwithstanding the foregoing, the purchasing Party shall remain liable for any such taxes and fees regardless of whether they are actually billed by the providing Party at the time that the respective service is billed. The Parties agree to use good faith efforts to bill taxes promptly.

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14.4.3 If the purchasing Party disagrees with the providing Party's determination as to the application or basis for any such tax or fee, the Parties shall consult with respect to the imposition and billing of such tax or fee. Notwithstanding the foregoing, the providing Party shall retain ultimate responsibility for determining whether and to what extent any such taxes or fees are applicable, and the purchasing Party shall abide by such determination and pay such taxes or fees to the providing Party. The purchasing Party shall retain the right to contest, or to have the providing Party contest on its behalf, the imposition of such taxes and fees; provided however, that any such contest undertaken by or at the request of the purchasing Party shall be at the purchasing Party's expense.

14.4.4 In the event that all or any portion of an amount sought to be collected must be paid in order to contest the imposition of any such tax or fee, or to avoid the existence of a lien on the assets of the providing Party during the pendency of such contest, the purchasing Party shall be responsible for such payment and shall be entitled to the benefit of any refund or recovery.

14.4.5 If it is ultimately determined that any additional amount of such a tax or fee is due to the imposing authority, the purchasing Party shall pay such additional amount, including any interest and penalties thereon.

14.4.6 Notwithstanding any provision to the contrary, the purchasing Party shall protect, indemnify and hold harmless (and defend at the purchasing Party's expense) the providing Party from and against any such tax or fee, interest or penalties thereon, or other reasonable charges or payable expenses (including reasonable attorneys' fees) with respect thereto, which are incurred by the providing Party in connection with any claim for or contest of any such tax or fee.

14.4.7 Each Party shall notify the other Party in writing of any assessment, proposed assessment or other claim for any additional amount of such a tax or fee by a taxing authority; such notice to be provided, if possible, at least ten (10) calendar days prior to the date by which a response, protest or other appeal must be filed, but in no event later than thirty (30) calendar days after receipt of such assessment, proposed assessment or claim.

14.5 Mutual Cooperation. In any contest of a tax or fee by one Party, the other Party shall cooperate fully by providing records, testimony and such additional information or assistance as may reasonably be necessary to pursue the contest. Further, the other Party shall be reimbursed for any reasonable and necessary out-of-pocket copying and travel expenses incurred in assisting in such contest.

15. **Network Maintenance and Management**

15.1 The Parties shall work cooperatively to implement this Agreement. The Parties shall exchange appropriate information (e.g., maintenance contact numbers, network information, information required to comply with law enforcement and

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other security agencies of the Government, etc.) as reasonably required to implement and perform this Agreement.

15.2 Each Party hereto shall design, maintain and operate their respective networks as necessary to ensure that the other Party hereto receives service quality which is consistent with generally accepted industry standards at least at parity with the network service quality given to itself, its Affiliates, its End Users or any other Telecommunications Carrier.

15.3 BellSouth agrees to provide <<customer_short_name>> prior notice consistent with applicable FCC rules and the Act of changes in information or technical specifications necessary for the transmission and routing of services using BellSouth's facilities or networks, as well as other changes that affect the interoperability of those respective facilities and networks.

16. **Force Majeure**

16.1 In the event performance of this Agreement, or any obligation hereunder, is either directly or indirectly prevented, restricted, or interfered with by reason of fire, flood, earthquake or like acts of God, wars, revolution, civil commotion, explosion, acts of public enemy, embargo, acts of the government in its sovereign capacity, labor difficulties, including without limitation, strikes, slowdowns, picketing, or boycotts, unavailability of equipment from vendor, changes requested by <<customer_short_name>>, or any other circumstances beyond the reasonable control and without the fault or negligence of the Party affected, the Party affected, upon giving prompt notice to the other Party, shall be excused from such performance on a day-to-day basis to the extent of such prevention, restriction, or interference (and the other Party shall likewise be excused from performance of its obligations on a day-to-day basis until the delay, restriction or interference has ceased); provided, however, that the Party so affected shall use diligent efforts to avoid or remove such causes of non-performance and both Parties shall proceed whenever such causes are removed or cease.

17. **Modification of Agreement**

17.1 BellSouth shall make available, pursuant to 47 USC § 252(i) and the FCC rules and regulations regarding such availability, to <<customer_short_name>> any interconnection, service, or network element provided under any other agreement filed and approved pursuant to 47 USC § 252, provided a minimum of six (6) months remains on the term of such agreement. The Parties shall adopt all rates, terms and conditions concerning such interconnection, service or network element and any other rates, terms and conditions that are legitimately related to or were negotiated in exchange for or in conjunction with the interconnection, service or network element being adopted. The adopted interconnection, service, or network element and agreement may be adopted for any BellSouth state, provided it is applicable to that state and provided that <<customer_short_name>> may not adopt an interconnection, service, or network element from an agreement that would result in the co-mingling of state specific and regional OSS rates in the

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same agreement. The term of the adopted agreement or provisions shall expire on the same date as set forth in the agreement that was adopted or from which certain provisions were adopted.

17.2 If <<customer_short_name>> changes its name or makes changes to its company structure that affects the identity of <<customer_short_name>>due to a merger, acquisition, transfer or any other reason, it is the responsibility of <<customer_short_name>> to notify BellSouth of said change and request that an amendment to this Agreement, if necessary, be executed to reflect said change.

17.3 No modification, amendment, supplement to, or waiver of the Agreement or any of its provisions shall be effective and binding upon the Parties unless it is made in writing and duly signed by the Parties.

17.4 [Parties Disagree]

[<<customer_short_name>> Version] In the event that any (1) effective legislative, regulatory, judicial or other legal action or (2) obligation or commitment regarding interconnection, resale or access to network elements which obligation or commitment expressly applies generically to all CLECs made by BellSouth to any state or federal regulatory authority or the U.S. Department of Justice ("Governmental Body") in connection with any merger or regulatory proceeding regarding BellSouth's obligations under the Act,) 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 **fifteen (15)** calendar 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)** calendar days after such notice, the Dispute may at any time thereafter be resolved in accordance with the Dispute Resolution procedure set forth in this Agreement.

[BellSouth Version] In the event that any (1) effective legislative, regulatory, judicial or other legal action or (2) obligation or commitment regarding interconnection, resale or access to network elements which obligation or commitment expressly applies generically to all CLECs made by BellSouth to any state or federal regulatory authority or the U.S. Department of Justice ("Governmental Body") in connection with any merger or regulatory proceeding regarding BellSouth's obligations under the Act,) 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)** calendar 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)** calendar days after such notice, the Dispute may at any time thereafter be resolved in accordance with the Dispute Resolution procedure set forth in this Agreement.

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18. **Non-Waiver of Legal Rights**

18.1 Execution of this Agreement by either Party does not confirm or imply that the executing Party agrees with any decision(s) issued pursuant to the Telecommunications Act of 1996. Neither Party waives its rights to appeal or otherwise challenge any such decision(s) and each Party reserves all of its rights to pursue any and all legal and/or equitable remedies, including appeals of any such decision(s).

19. [Parties Disagree]

[<<customer short name>> Version] **No Section.**

[BellSouth Version] **Indivisibility**

19.1 [Parties Disagree]

[<<customer short name>> Version] **No Section.**

[BellSouth Version] **Subject to the provisions of Section 20, the Parties intend that this Agreement be indivisible and nonseverable, and each of the Parties acknowledges that it has assented to all of the covenants and promises in this Agreement as a single whole and that all of such covenants and promises, taken as a whole, constitute the essence of the contract. Without limiting the generality of the foregoing, each of the Parties acknowledges that any provision by BellSouth of space for collocation under this Agreement as set forth in Attachment 4 is governed by the other applicable attachments to this Agreement. The Parties further acknowledge that this Agreement is intended to constitute a single transaction, and that the obligations of the Parties under this Agreement are interdependent.**

20. **Severability**

20.1 If any provision of this Agreement, or part thereof, shall be held to be invalid or unenforceable in any respect, such invalidity or unenforceability shall not invalidate the entire Agreement, unless such construction would be unreasonable. The Agreement shall be construed as if it did not contain the invalid or unenforceable provision or provisions, and the rights and obligations of each Party shall be construed and enforced accordingly. Provided, however, that in the event such invalid or unenforceable provision or provisions are essential elements of this Agreement and substantially impair the rights or obligations of either Party, the Parties shall promptly negotiate a replacement provision or provisions. In the event the Parties are unable to mutually negotiate such replacement language, either Party may elect to pursue the dispute resolution process set forth in Section 13 above.

21. **No Waiver**

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21.1 A failure or delay of either Party to enforce any of the provisions hereof, to exercise any option which is herein provided, or to require performance of any of the provisions hereof shall in no way be construed to be a waiver of such provisions or options, and each Party, notwithstanding such failure, shall have the right thereafter to insist upon the performance of any and all of the provisions of this Agreement.

22. **Governing Law**

22.1 Where applicable, this Agreement shall be governed by and construed in accordance with federal and state substantive telecommunications law, including rules and regulations of the FCC and appropriate Commission. In all other respects, this Agreement shall be governed by and construed and enforced in accordance with the laws of the State of Georgia without regard to its conflict of laws principles.

23. **Assignments**

23.1 Except as provided herein, any assignment by either Party to any non-affiliated entity of any right, obligation or duty, or of any other interest hereunder, in whole or in part, without the prior written consent of the other Party shall be void. A Party may assign this Agreement or any right, obligation, duty or other interest hereunder to an Affiliate of the Party or to an entity purchasing all or substantially all of the Party's assets without the consent of the other Party; provided, however, that the assigning Party shall notify the other Party in writing of such assignment thirty (30) calendar days prior to the Effective Date thereof and, provided further, if the assignee is an assignee of <<customer_short_name>>, the assignee must provide evidence of Commission CLEC certification. The Parties shall amend this Agreement to reflect such assignments and shall work cooperatively to implement any changes required due to such assignment. All obligations and duties of any Party under this Agreement shall be binding on all successors in interest and assigns of such Party. No assignment or delegation hereof shall relieve the assignor of its obligations under this Agreement in the event that the assignee fails to perform such obligations. Notwithstanding anything to the contrary in this Section and unless the Parties agree otherwise, <<customer_short_name>> shall not assign this Agreement to any Affiliate or non-affiliated entity unless either (1) <<customer_short_name>> pays all bills, past due and current, under this Agreement, or (2) <<customer_short_name>>'s assignee expressly assumes liability for payment of such bills.

24. **Notices**

24.1 Every notice, consent, approval, or other communications required or contemplated by this Agreement shall be in writing and shall be delivered by hand, by overnight courier or by U.S. Mail postage prepaid, addressed to:

BellSouth Telecommunications, Inc.

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BellSouth Local Contract Manager
600 North 19th Street, 8th floor
Birmingham, Alabama 35203

and

ICS Attorney
Suite 4300
675 W. Peachtree St.
Atlanta, GA 30375

<<customer_name>>

_____
_____
_____

24.2 Unless otherwise provided in this Agreement, notice by mail shall be effective on the date it is officially recorded as delivered by return receipt or equivalent, and in the absence of such record of delivery, it shall be presumed to have been delivered the fifth (5th) calendar day, or next business day after the fifth (5th) calendar day, after it was deposited in the mail. Notice by overnight courier shall be effective on the date it was delivered, except that notice delivered on a non-business day shall be deemed effective on the next business day.

24.3 Subject to Section 45.2 below, BellSouth will post changes to business processes and policies, notices of new service offerings, and changes to service offerings not requiring an amendment to this Agreement, notices required to be posted to BellSouth's web site, and any other information of general applicability to <<customer_short_name>>.

25. **Rule of Construction**

25.1 No rule of construction requiring interpretation against the drafting Party hereof shall apply in the interpretation of this Agreement.

26. **Headings of No Force or Effect**

26.1 The headings of Articles and Sections of this Agreement are for convenience of reference only, and shall in no way define, modify or restrict the meaning or interpretation of the terms or provisions of this Agreement.

27. **Cooperation in Preventing End User Fraud**

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27.1 The Parties agree to cooperate fully with one another to investigate, minimize, prevent and take action in cases of fraud by an End Userinvolving the provision of services to <<customer_short_name>> under this Agreement.

28. **Revenue Protection**

28.1 BellSouth shall make available to <<customer_short_name>> fraud prevention or revenue protection features, including prevention, detection, or control functionality embedded within any of the Network Elements or services provided pursuant to this Agreement. These features include switch functions such as screening codes and call blocking of international, 900 and 976 numbers. To the extent separate charges apply for such features, the charges will be set forth in the appropriate attachment to this Agreement or will be negotiated between the Parties and added to this Agreement via an amendment at such time as <<customer_short_name>> requests the features.

29. **Law Enforcement Interface**

29.1 Both Parties shall work cooperatively to comply with all legal or regulatory requirements related to number recording devices, including, for example, orders related to trap and trace and wire taps.

30. **Multiple Counterparts**

30.1 This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, but all of which shall together constitute but one and the same document.

31. **Filing of Agreement**

31.1 Upon execution of this Agreement BellSouth shall file the Agreement with the appropriate state regulatory agency pursuant to the requirements of Section 252 of the Act. Notwithstanding the foregoing, this Agreement shall not be submitted for approval by the appropriate state regulatory agency unless and until such time as <<customer_short_name>> is duly certified as a local exchange carrier in such state, except as otherwise required by a Commission.

32. **Compliance with Applicable Law**

32.1 Each Party shall comply at its own expense with all applicable federal, state, and local statutes, laws, rules, regulations, codes, effective orders, injunctions, judgments and binding decisions, awards and decrees that relate to its obligations under this Agreement ("Applicable Law").

32.2 [Parties Disagree]

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[<<customer short name>> Version] **Nothing in this Agreement shall be construed to limit a Party's rights or exempt a Party from obligations under Applicable Law, except in such cases where the Parties have explicitly agreed to a limitation or exemption. Silence shall not be construed to be such a limitation or exemption with respect to any aspect, no matter how discrete, of Applicable Law.**

[BellSouth Version] **This Agreement is intended to memorialize the Parties' mutual agreement with respect to their obligations under the Act and applicable FCC and Commission rules and orders. Any reference to the Parties complying with applicable FCC and Commission orders is not intended to expand on the obligations of the Parties as set forth herein.**

32.3 [Parties Disagree]

[<<customer short name>> Version] **The rates contained in this Agreement shall be in compliance with Applicable Law.** Where a Commission has adopted rates for network elements or services provided under this Agreement, as of the Effective Date, it is the intent of the Parties that the rate exhibits incorporated into this Agreement will be those rates. Errors in rate sheets will be corrected **by retroactive true-up to the Effective Date within thirty (30) calendar days.**

[BellSouth Version] Where a Commission has adopted rates for network elements or services provided under this Agreement, as of the Effective Date, it is the intent of the Parties that the rate exhibits incorporated into this Agreement will be those rates, unless otherwise negotiated by the Parties. Upon request of either Party, errors in rate sheets will be corrected **prospectively by amendments to this Agreement.**

33. **Necessary Approvals**

33.1 Each Party shall be responsible for obtaining and keeping in effect all approvals from, and rights granted by, governmental authorities, building and property owners, other carriers, and any other persons that may be required in connection with the performance of its obligations under this Agreement. Each Party shall reasonably cooperate with the other Party in obtaining and maintaining any required approvals and rights for which such Party is responsible.

34. **Good Faith Performance**

34.1 Each Party shall act in good faith in its performance under this Agreement. Where notice, approval, consent, agreement or similar action by a Party is permitted or required by any provision of this Agreement (including without limitation, the obligation of the Parties to further negotiate the resolution of new or open issues under this Agreement), such action will not be unreasonably delayed, withheld or conditioned.

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34.2 [Parties Disagree]

[<<customer short name>> Version] **Neither Party shall, as a condition or prerequisite to such Party's performance of its obligations as otherwise provided herein, impose or insist upon the other Party's (or any of its End Users') adherence to any requirement or obligation other than as expressly stipulated in this Agreement or as otherwise mandated by Applicable Law.**

[BellSouth Version] **No Section.**

35. **Independent Contracting Parties**

35.1 Each Party is an independent contractor, and has and hereby retains the right to exercise full control of and supervision over its own performance of its obligations under this Agreement, and retains full control over the employment, direction, compensation and discharge of its employees assisting in the performance of such obligations. Each Party shall be solely responsible for all matters relating to payment of such employees, including compliance with social security taxes, withholding taxes and all other regulations governing such matters. Subject to the limitations on liability and except as otherwise provided in this Agreement, each Party shall be responsible for (i) its own acts and performance of all obligations imposed by Applicable Law in connection with its activities, legal status and property, real or personal and, (ii) the acts of its own Affiliates, employees, agents and contractors during the performance of the Party's obligations hereunder.

36. **Subcontracting**

36.1 If any obligation is performed through a subcontractor, each Party shall remain fully responsible for the performance of this Agreement in accordance with its terms, including any obligations either Party performs through subcontractors, and each Party shall be solely responsible for payments due the Party's subcontractors. No contract, subcontract or other Agreement entered into by either Party with any third party in connection with the provision of any facilities or services provided herein, shall provide for any indemnity, guarantee or assumption of liability by, or other obligation of, the other Party to this Agreement with respect to such arrangement, except as consented to in writing by the other Party. No subcontractor shall be deemed a third party beneficiary for any purposes under this Agreement. Any subcontractor who gains access to CPNI or Confidential Information covered by this Agreement shall be required by the subcontracting Party to protect such CPNI or Confidential Information to the same extent that the subcontracting Party is required to protect the same under the terms of this Agreement.

37. **Labor Relations**

37.1 The Parties shall endeavor to minimize impairment of service to the other Party in the event of a labor dispute to the extent permitted by Applicable Law.

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38. **Compliance with the Communications Assistance for Law Enforcement Act of 1994 ("CALEA")**

38.1 Each Party represents and warrants that any equipment, facilities or services provided to the other Party under this Agreement comply with CALEA. Each Party shall indemnify and hold the other Party harmless from any and all penalties imposed upon the other Party for such other Party's noncompliance.

39. **Customer Inquiries**

39.1 Calls About the Other Party's Products and Services. Each Party shall refer all questions regarding the other Party's services or products directly to the other Party at a telephone number specified by the other Party. Each Party shall ensure that all their representatives who receive inquiries regarding the other Party's services or products: (i) provide such numbers, if available to the personnel receiving the call, to callers who inquire about the other Party's services or products; (ii) do not in any way disparage or discriminate against the other Party, or its products or services; and (iii) do not provide information about their products or services during that same inquiry/subscriber contact, unless that information specifically is requested by the caller. Subject to the limitations of this Section, both Parties maintain the right to serve directly any End User within the service area of the other Party. Both Parties may directly market their own telecommunications products and services and in doing so may establish independent relationships with End Users of the other Party.

40. **Additional Fair Competition Requirements**

40.1 In the event that BellSouth transfers facilities or other assets to an Affiliate during the term of this Agreement, which are necessary in order for BellSouth to comply with its obligations under this Agreement, and BellSouth is required by law to continue to provide such interconnection, services or network elements under this Agreement even after such transfer, then such obligations hereunder shall survive and BellSouth shall continue to perform such obligations. In the event that BellSouth transfers facilities or other assets to an Affiliate during the term of this Agreement, which are necessary in order for BellSouth to comply with its obligations under this Agreement, and BellSouth is relieved of its obligations to provide such interconnection, services or network elements, but such Affiliate is required by law to perform such obligations to the extent that BellSouth was required to, then BellSouth shall be relieved of its obligations hereunder and such obligations shall survive and transfer to such Affiliate pursuant to the Assignment Section hereof.

40.2 BellSouth shall allow <<customer_short_name>>'s local exchange customers to select BellSouth for the provision of intraLATA toll services to the extent BellSouth makes such stand alone intraLATA services available to the general public on a nondiscriminatory basis.

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40.3 Each Party shall protect the confidentiality of proprietary information of, and relating to, the other Party and its End Users or any other carrier. If either Party receives or obtains proprietary information from the other for the purposes of providing services under this agreement, such Party shall use such information only for such purpose and shall not use such information for its own marketing purpose.

41. **Posting of Agreements**

41.1 BellSouth shall post on its web site any BellSouth interconnection agreement between BellSouth and any third party no later than ten (10) calendar days after the approval of such agreement with the Commission.

42. **Nonexclusive Dealings**

42.1 This Agreement does not prevent either Party from providing or purchasing services to or from any other person.

43. **Rate True-Up**

43.1 This Section applies to Network Interconnection and/or Unbundled Network Elements and Other Services rates that are expressly subject to true-up under this Agreement.

43.2 The designated true-up rates shall be trued-up, either up or down, based on final prices determined either by further agreement between the Parties, or by a final order of the Commission. The Parties shall implement the true-up by comparing the actual volumes and demand for each item, together with the designated true-up rates for each item, with the final prices determined for each item. Each Party shall keep its own records upon which the true-up can be based, and any final payment from one Party to the other shall be in an amount agreed upon by the Parties based on such records. In the event of any disagreement as between the records or the Parties regarding the amount of such true-up, the Parties shall submit the matter to the Dispute Resolution process in accordance with the provisions of Section 13 above of the General Terms and Conditions of this Agreement.

44. **Survival**

44.1 In no event shall the expiration or termination for any reason of this Agreement relieve either Party of any liability or obligation accruing in favor of the other Party in respect of acts or omissions occurring prior thereto. Any liabilities and all obligations of each Party under the provisions regarding indemnification, confidentiality of information, liability, and any other provisions of this Agreement that by their specific nature or express terms are contemplated to survive (or be performed) thereafter shall survive expiration or termination.

45. **Entire Agreement**

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45.1 This Agreement means the General Terms and Conditions, the Attachments identified in Section 45.4 below, and subject to the limitations set forth in Section 45.2 all documents identified herein. This Agreement sets forth the entire understanding and supersedes prior agreements between the Parties relating to the subject matter contained in this Agreement and merges all prior discussions between them. Any orders placed under prior agreements between the Parties shall be governed by the terms of this Agreement. Any and all amounts and obligations owed for services provisioned or orders placed under prior agreements between the Parties, related to the subject matter hereof, shall be due and owing under this Agreement and be governed by the terms and conditions of this Agreement as if such services or orders were provisioned or placed under this Agreement. Neither Party shall be bound by any definition, condition, provision, representation, warranty, covenant or promise other than as expressly stated in this Agreement or as is contemporaneously or subsequently set forth in writing and executed by a duly authorized officer or representative of the Party to be bound thereby.

45.2 [Parties Disagree]

[<<customer_short_name>> Version] Guides. The Parties acknowledge that certain provisions of this Agreement reference certain BellSouth documents and publications (collectively referred to herein as the "Guides"). All Guides referred to in this Agreement, are incorporated herein and made a part hereof by reference. To the extent that there is a conflict between a provision of a Guide and a provision of this Agreement, the provision of this Agreement shall prevail. BellSouth may, from time to time during the term hereof, change or alter said Guides (including replacing a Guide entirely with a successor Guide with a different name). The Parties agree that if the change or alteration was made to BellSouth's OSS interface Guides as a result of the Change Control Process (CCP), a revision to a generally accepted and implemented industry standard or guideline (e.g. Ordering Billing Forum (OBF), Telcordia guidelines, etc.), or other legal requirement directly affecting the Guides provided, if such legal requirement would be subject to the change of law provision in these General Terms and Conditions, the change to the Guide would not be applicable until this Agreement is amended to reflect the update to the Guide, or if <<customer_short_name>> agrees to such change or alteration, any such change or alteration shall become effective as specified in the terms of the notice to <<customer_short_name>> via the applicable Internet website posting. In all other cases, a change in a Guide which (1) alters, amends or conflicts with any term of this Agreement; (2) changes any charge or rate, or the application of any charge or rate, specified in this Agreement; (3) adds a new rate or rate element not previously specified in the Agreement; (4) causes <<customer_short_name>> to incur material cost or expense to implement the change or alteration; or (5) increases an interval set forth in this agreement, will not be effective with respect to <<customer_short_name>> until BellSouth and <<customer_short_name>> sign an amendment to this Agreement reflecting the changes described in items (1), (2), (3), (4) or (5). For purposes of item (4), a cost or expense shall be deemed

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material if it imposes a financial burden on <<customer_short_name>>, but shall not include costs associated with disseminating notice of the change or providing training regarding the change to employees. In addition, BellSouth will use its best efforts, upon <<customer_short_name>>'s request to BellSouth's Interconnection Services (ICS) website group at wmag@bellsouth.com, to provide such notices via e-mail to the address specified by <<customer_short_name>>.

In the event that the Parties disagree as to whether any alteration or amendment described in this Section is effective as to <<customer_short_name>> pursuant to the requirements of this Section, either Party may, at its option, seek resolution of the dispute in accordance with the Dispute Resolution provisions in the General Terms and Conditions of this Agreement. In cases where there is a dispute with respect to any alteration or amendment described in this Section becoming effective as to <<customer_short_name>>, such alteration or amendment described in this Section shall not become effective as to <<customer_short_name>> until there is mutual agreement between the Parties that it should become effective or an order resulting from the Dispute Resolution process finding in favor of its becoming effective.

[BellSouth Version] Guides. The Parties acknowledge that certain provisions of this Agreement reference certain BellSouth documents and publications (collectively referred to herein as the "Guides"). All Guides referred to in this Agreement, are incorporated herein and made a part hereof by reference. To the extent that there is a conflict between a provision of a Guide and a provision of this Agreement, the provision of this Agreement shall prevail. BellSouth may, from time to time during the term hereof, change or alter said Guides (including replacing a Guide entirely with a successor Guide with a different name). The Parties agree that if the change or alteration was made to BellSouth's OSS interface Guides as a result of the Change Control Process (CCP), a revision to a generally accepted and implemented industry standard or guideline (e.g. Ordering Billing Forum (OBF), Telcordia guidelines, etc.), or other legal requirement directly affecting the Guides provided, if such legal requirement would be subject to the change of law provision in these General Terms and Conditions, the change to the Guide would not be applicable until this Agreement is amended to reflect the update to the Guide, or if <<customer_short_name>> agrees to such change or alteration, any such change or alteration shall become effective as specified in the terms of the notice to <<customer_short_name>> via the applicable Internet website posting. In all other cases, a change in a Guide which (1) alters, amends or conflicts with any term of this Agreement; (2) changes any charge or rate, or the application of any charge or rate, specified in this Agreement; (3) adds a new rate or rate element not previously specified in the Agreement; (4) causes <<customer_short_name>> to incur material cost or expense to implement the change or alteration; or (5) increases an interval set forth in this agreement, will not be effective with respect to <<customer_short_name>> until BellSouth and <<customer_short_name>> sign an amendment to this Agreement reflecting the changes described in items (1), (2), (3) or (5); **or unless**

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<<customer_short_name>> fails to inform BellSouth in writing that it does not agree to such change or alteration within thirty (30) calendar days of notice of such change being given to <<customer_short_name>> for item (4). For purposes of item (4), a cost or expense shall be deemed material if it imposes a financial burden on <<customer_short_name>>, but shall not include costs associated with disseminating notice of the change or providing training regarding the change to employees. In addition, BellSouth will use its best efforts, upon <<customer_short_name>>'s request to BellSouth's Interconnection Services (ICS) website group at wmag@bellsouth.com, to provide such notices via e-mail to the address specified by <<customer_short_name>>.

In the event that the Parties disagree as to whether any alteration or amendment described in this Section is effective as to <<customer_short_name>> pursuant to the requirements of this Section, either Party may, at its option, seek resolution of the dispute in accordance with the Dispute Resolution provisions in the General Terms and Conditions of this Agreement. In cases where there is a dispute with respect to any alteration or amendment described in this Section becoming effective as to <<customer_short_name>>, such alteration or amendment described in this Section shall not become effective as to <<customer_short_name>> until there is mutual agreement between the Parties that it should become effective or an order resulting from the Dispute Resolution process finding in favor of its becoming effective.

45.3 [Parties Disagree]

[<<customer_short_name>> Version] In various provisions of this Agreement, the Parties have included references to tariffs filed by the Parties. If such tariff is referenced for the purposes of a service that is provisioned pursuant to such tariff, and there is a conflict between such referenced tariff provisions and this Agreement, the terms of the tariff shall control. If the service is provisioned pursuant to this Agreement but the tariff is referenced for a rate, an interval or another purpose, to the extent that there is a conflict between such referenced tariff provision and this Agreement, and except as otherwise set forth in this Agreement, the terms of this Agreement shall prevail. To the extent a Party alleges that changes made to such tariffs subsequent to the Effective Date are unreasonable and discriminatory, the Parties shall endeavor to negotiate a resolution and incorporate such resolution into this Agreement by written amendment. To the extent that the Parties are unable to reach such resolution or agree on an amendment, the dispute shall be resolved in accordance with the Dispute Resolution provisions set forth in Section 13 above.

[BellSouth Version] In various provisions of this Agreement, the Parties have included references to tariffs filed by the Parties. If such tariff is referenced for the purposes of a service that is provisioned pursuant to such tariff, and there is a conflict between such referenced tariff provisions and this Agreement, the terms of the tariff shall control. If the service is provisioned pursuant to this Agreement but the tariff is referenced for a rate, an interval or another purpose, to the extent

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that there is a conflict between such referenced tariff provision and this Agreement, and except as otherwise set forth in this Agreement, the terms of this Agreement shall prevail.

45.4 This Agreement includes eleven (11) Attachments with provisions for the following:

Resale
Network Elements and Other Services
Network Interconnection
Collocation
Access to Numbers and Number Portability
Pre-Ordering, Ordering, Provisioning, Maintenance and Repair
Billing
Rights-of-Way, Conduits and Pole Attachments
Performance Measurements
BellSouth Disaster Recovery Plan
Bona Fide Request/New Business Request Process

45.5 The following services are included as options for purchase by <<customer_short_name>> pursuant to the terms and conditions set forth in this Agreement. <<customer_short_name>> may elect to purchase said services by written request to its Local Contract Manager if applicable:

Optional Daily Usage File (ODUF)
Enhanced Optional Daily Usage File (EODUF)
Access Daily Usage File (ADUF)
Line Information Database (LIDB) Storage
Centralized Message Distribution Service (CMDS)
Calling Name (CNAM)
LNP Data Base Query Service

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