BEFORE THE
TENNESSEE REGULATORY AUTHORITY

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 and Xspedius Management Co. of CHATTANOOGA, LLC	)	**Docket No.** 04-00046
	)	
Of an Interconnection Agreement with BellSouth Telecommunications, Inc. Pursuant to Section 252(b) of the Communications Act of 1934, as Amended	)	

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") and **Xspedius Management Co. of Chattanooga, LLC** ("Xspedius Chattanooga") (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"), Chapter 1220-1-1, Rules and Regulations of Practice and Procedure, and other applicable statutes, rules and regulations, and decisions,[1] hereby file with the Tennessee Regulatory

[1] *See, e g , AT&T Communications of the South Central States, Inc* , Docket No 96-01152, Docket No 96-01271, Docket No 96-01249 (Sept 27, 1996)

Authority (the "Authority") 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

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

H LaDon Baltimore
FARRAR & BATES, L L P
211 Seventh Avenue North
Suite 420
Nashville, TN 37219
Tel 615-254-3060
Fax 615-254-9835
don baltimore@farrar-bates com

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

James 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 Tennessee, 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

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 Tennessee, NewSouth is authorized by the Authority to provide intrastate telecommunications services pursuant to Docket No 98-00325, dated November 24, 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 Tennessee, NuVox is authorized by the Authority to provide a full array of telecommunications services pursuant to Docket No 99-00806, dated February 22, 2000

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 Tennessee, KMC III is authorized by the Authority to provide facilities-based and resold, switched, local exchange, and interexchange services pursuant to Case No 99-00211, dated July 28, 1999 Likewise, the Authority granted

KMC V a certificate of convenience and necessity to provide competitive resold and facilities-based local exchange and resold interexchange telecommunications services throughout the state of Tennessee on May 4, 2001, in Docket No 00-1123

8. Joint Petitioners Xspedius Switched and Xspedius Chattanooga 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 In Tennessee, Xspedius Switched is authorized to provide switched telecommunications services pursuant to Docket No 02-00714, and Xspedius Chattanooga is authorized as a Competitive Access Provider also pursuant to Docket No 02-00174

9. Joint Petitioners previously entered into interconnection agreements with BellSouth which were subsequently approved by the Authority 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 Authority

10. Prior to the expiration of their interconnection agreements, BellSouth provided to the Joint Petitioners requests for negotiation of a new interconnection agreement For the purpose of establishing the statutory timeframes set forth in Section 252 of the Communications Act, the Joint Petitioners and BellSouth have agreed that 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

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 100 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 Authority, as well as unnecessary delay, particularly considering the statutory deadline within which the Authority 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 Authority decide that separate petitions for arbitration should be filed by each of the Joint Petitioners, the Joint Petitioners respectfully request that the Authority (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

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 the Joint Petitioners and BellSouth have agreed that, for the purpose of this arbitration, 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 Authority 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 Authority 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 Authority 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 Authority 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 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 § 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*) [2]

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[2] 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*

(continued)

Due to the imminent close of the window for filing a formal request for arbitration, 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 mediation by the Authority 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

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(continued)

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

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 attempt to reach agreement on as many of the issues statements as possible in the near future and will provide the Authority 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

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 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?*

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

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

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

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 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') 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

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

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?*

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)?*

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?*

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?*

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 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 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

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

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

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 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

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

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?*

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

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

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

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

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?*

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

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?*

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

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 (5^{th}) 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 (10^{th}) 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

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, 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

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 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 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) 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

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 non-disputed 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

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?*

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?*

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 Authority 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 Authority 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 Authority to arbitrate the remaining unresolved issues

WHEREFORE, the Joint Petitioners respectfully request that the Authority 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 Authority may deem just and proper

Respectfully submitted,

H LaDon Baltimore
FARRAR & BATES, L L P
211 Seventh Avenue North
Suite 420
Nashville, TN 37219
Tel 615-254-3060
Fax 615-254-9835
E-mail don baltimore@farrar-bates com

John J Heitmann
Enrico C Soriano
Heather T Hendrickson
KELLEY DRYE & WARREN LLP
1200 19th, N W , Suite 500
Washington, D C 20036
Tel (202) 955-9600
Fax (202) 955-9792

Counsel for the Joint Petitioners

Dated February 11, 2004

Certificate of Service

The undersigned hereby certifies that a true and correct copy of the foregoing has been forwarded via U S Mail, first class postage prepaid, to the following, this 11th day of February, 2004

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

H. LaDon Baltimore