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BELLSOUTH

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

guy hicks@bellsouth com

Guy M. Hicks
General Counsel

615 214 6301
Fax 615 214 7406

December 17, 2004

The handwritten #s show the position on the CD.

VIA HAND DELIVERY

Hon. Pat Miller, Chairman
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, TN 37238

Re: *Joint Petition for Arbitration of NewSouth Communications Corp., et al. of an Interconnection Agreement with BellSouth Telecommunications, Inc. Pursuant to Section 252(b) of the Communications Act of 1934, as Amended*
Docket No. 04-00046

Dear Chairman Miller:

Enclosed are a CD and one paper copy of the public portions of BellSouth's discovery responses as follows:

Joint Petition for Arbitration of NewSouth, et al., North Carolina Docket Nos., P-771, Sub I; P-913, Sub 5; P-989, Sub 3, P-824, Sub 6, and P-1202, Sub 4:

2 Response to Joint Petitioners' First Set of Interrogatories
1 Response to Joint Petitioners' First Request for Production of Documents
3, 4, 5 First Supplemental Response to Joint Petitioners' First Set of Interrogatories and First Request for Production of Documents
6+7 Second Supplemental Response to Joint Petitioners' First Request for Production of Documents
8+9 Third Supplemental Response to Joint Petitioners' First Request for Production of Documents

Joint Petition for Arbitration of NewSouth, et al., Alabama Docket No. 29242:

11 Objections and Response to Joint Petitioners' First Set of Interrogatories
10+12 Objections and Response to Joint Petitioners' First Request for Production of Documents

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1 040517_BST_Responses_to_Joint_Petitioners_PODs_with_PUBLIC_.pdf
2 040517_BST_Responses_to_Joint_Petitioners_ROGs.pdf
041202_BST_Public_Supp_Resp_to_Joint_Petitioners_1st_InterPODs.zip
3 041202_Bates_stamped_Public_Attachs_1st_Supp_Jnt_CLP_1st_POD.pdf
041202_BST_1st_Supplemental_Resp_to_Joint_Petitioners_1st_Inter.DOC
041202_BST_1st_Supplemental_Resp_to_Joint_Petitioners_1st_PODs.DOC
on new CD #4 + #5
041206_BST_2nd_Supplemental_Rsps_Jnt_CLP_1st_PODs.zip
6 041206_Bates_stamped_BSTs_Public_Attachs_2nd_Supp_Jnt_CLP_1st_PODs.pdf
7 041206_BST_2nd_Supplemental_Rsps_Jnt CLP_1st_PODs.pdf
041208_BST_3rd_Supplemental_Rsp_Jnt_CLP_1st_PODs.zip
8 BST_3rd_Supp_Rsp_Jnt_CLP_1st_POD_6_11_A_1.pdf
9 Public_Attchs_BST_ 3rd_Supp_Rsp_Jnt_CLP_1st_POD_6_11_A_1.pdf
10 P-772, Sub 8 (NC) BST's Public Attachments to Joint Petitio.pdf
11 P-772, Sub 8 (NC) BST's Responses to Joint Petitioners' 1st.pdf
12 P-772, Sub 8 (NC) BST's Responses to Joint Petitioners' ROG.pdf

Pari Simpson

Fr: Carolyn Hansbrough 214-6324

BellSouth Telecommunications, Inc.
Legal Department
1521 BellSouth Plaza
P O Box 30188
Charlotte, NC 28230

edward rankin@bellsouth com

Edward L Rankin, III
General Counsel-North Carolina

704 417 8833
Fax 704 417 9389

December 8, 2004

Ms. Geneva S. Thigpen
Chief Clerk
North Carolina Utilities Commission
4325 Mail Service Center
Raleigh, NC 27699-4325

Re: Docket Nos. P-772, Sub 8; P-913, Sub 5;
P-989, Sub 3, P-824, Sub 6; P-1202, Sub 4

Dear Ms. Thigpen:

I enclose for filing in the above-referenced dockets the original and 31 copies of BellSouth Telecommunications, Inc 's Third Supplemental Responses to Joint Petitioners' First Request for Production of Documents. Please stamp the extra copy of this letter "Filed" and return it to me in the usual manner.

Thank you for your assistance in this matter

Sincerely,

Edward L Rankin III

Edward L. Rankin, III

ELR/db
Enclosures

cc Parties of record (By email)

BEFORE THE

NORTH CAROLINA UTILITIES COMMISSION

In the Matter of	)	
	)	
Joint Petition for Arbitration of	)	
	)	
NewSouth Communications Corp.,	)	Docket No. P-772, Sub 8
NuVox Communications, Inc.	)	Docket No. P-913, Sub 5
KMC Telecom V, Inc., KMC Telecom III LLC, and	)	Docket No. P-989, Sub 3
Xspedius Communications, LLC on Behalf of its	)	Docket No. P-824, Sub 6
Operating Subsidiary Xspedius Management Co.	)	Docket No. P-1202, Sub 4
Switched Services, LLC	)	
	)	
Of an Interconnection Agreement with	)	
BellSouth Telecommunications, Inc.	)	
Pursuant to Section 252(b) of the	)	
Communications Act of 1934, as Amended	)	

BELLSOUTH TELECOMMUNICATIONS, INC.'S
THIRD SUPPLEMENTAL RESPONSE TO
THE JOINT PETITIONERS'
FIRST REQUESTS FOR PRODUCTION OF DOCUMENTS

BellSouth Telecommunications, Inc. ("BellSouth") hereby files the following Third Supplemental Response to the First Requests for Production of Documents served by NewSouth Communications Corp, NuVox Communications, Inc., KMC Telecom V, Inc., KMC Telecom III LLC, and Xspedius Communications, LLC's ("Joint Petitioners"), dated April 13, 2004.

BellSouth incorporates herein by reference all of its general and specific objections filed on April 27, 2004. Any responses provided by BellSouth in response to this discovery will be provided subject to and without waiving any of BellSouth's previously filed objections.

THIRD SUPPLEMENTAL RESPONSE

ISSUE: 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?

REQUEST: Provide all documents in which BellSouth discusses, explains, adopts or refers to a policy regarding whether a CLEC may submit an order for Mass Migration of customers and associated service arrangements from another CLEC to itself.

RESPONSE: BellSouth objects to this request on the grounds that it is overly broad and unduly burdensome. BellSouth has thousands of ICAs, legal pleadings, tariffs, and other documents that BellSouth would need to locate, search, and review in order to respond to this request. BellSouth further objects to this request on the grounds it potentially seeks information that is already a matter of public record before this or another state commission or is readily accessible to the Joint Petitioners through publicly available means; e.g., publicly accessible website (**http://cpr.bellsouth.com/clec/docs/all_states/index7.htm**). Particularly, in light of the voluminous nature of the Joint Petitioners' request, the Joint Petitioners are not entitled to require other parties to gather information that is equally available and accessible to the Joint Petitioners. Moreover, BellSouth objects on the ground that the information requested is irrelevant and not likely to lead to the discovery of admissible evidence. The language contained in other ICAs and documents involving different carriers and facts and which resulted either from negotiation or arbitration is not relevant to the specific arbitration herein. BellSouth further objects on the grounds that the request seeks information that is irrelevant and not likely to lead to the discovery of admissible evidence as the conduct of BellSouth's own employees is not at issue in this proceeding.

Subject to and without waiving the foregoing objections, responsive documents are attached. Furthermore, the following document is also responsive to this request.

- CLEC to CLEC Conversion for Unbundled Loops - CLEC Information Package which may be found on the Interconnection website at http://www.interconnection.bellsouth.com/guides/html/unes.html

SUPPLEMENTAL RESPONSE:

Subject to and without waiving the foregoing objections, the following responsive documents are provided.

- CLEC to CLEC Conversion for Unbundled Loops, CLEC Information Package, Version 2
- Mergers and Acquisition Process

These documents can also be found on the BellSouth Interconnection website:

http://www.interconnection.bellsouth.com/guides/html/unes.html

http://interconnection.bellsouth com/ma_process/

Respectfully submitted, this 8th day of December, 2004.

BELLSOUTH TELECOMMUNICATIONS, INC.

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COUNSEL FOR BELLSOUTH
TELECOMMUNICATIONS, INC.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served on all parties of record by email this 8th day of December, 2004.

Dorothy Blache

562062

BellSouth Telecommunications, Inc.
North Carolina Utilities Commission
Docket Nos. P-772, Sub 8, P-913,
Sub 5; P-989, Sub 3; P-824, Sub 6; and P-1202, Sub 4
Joint Petitioners' 1st Request for Production
April 6, 2003
SUPPLEMENTAL RESPONSE Item No.
6-11(A)-1
Attachment A

ATTACHMENT A TO REQUEST FOR PRODUCTION, SUPPLEMENTAL RESPONSE TO, ITEM NO. 6-11(A)-1

CLEC to CLEC Conversion for Unbundled Loops

CLEC
Information Package

Version 2

CLEC to CLEC Conversion for Unbundled Loops

Table of Contents

CLEC to CLEC Conversion for Unbundled Loops

Introduction & Scope

This Product Information Package is intended to provide to CLECs general ordering information specific to the CLEC to CLEC Conversion process described herein.

The information contained in this document is subject to change BellSouth will provide notification of changes to the document through the CLEC Notification Process.

Please contact your BellSouth Local Support Manager if you have any questions about the information contained herein.

CLEC to CLEC Conversion for Unbundled Loops

Revisions

Version 2

1) Page 1 – 'Version 2' replaces 'Version 1'.
2) Footnote on each page – date changed from '11/9/01' to '01/03/02' and 'Version 1' changed to 'Version 2'.
3) **Ordering Information** section.
   - clarified that only manual ordering is available at this time
   - provided clarification regarding instructions for LSR completion
   - deleted reference to Local Exchange Ordering – Implementation Guide (this guide contains electronic ordering information which does not apply to the CLEC to CLEC Conversion for Unbundled Loops process at this time).

CLEC to CLEC Conversion for Unbundled Loops

Service Description

The CLEC to CLEC conversion process may be used by a CLEC when converting an existing unbundled loop from another CLEC. In this scenario, the existing loop that is being converted must be for the same end-user, must be the same loop type, and must not require outside dispatch to the end-user premises

Throughout the remainder of this document, the existing CLEC will be referred to as ***CLEC* A** and the CLEC requesting the conversion will be ***CLEC B.***

Requirements

There are requirements that must be met in order for CLEC B to request a loop conversion from ***CLEC A*** The requirements are as follows.

- ***CLEC B*** must have the loop product in its Interconnection Agreement before requesting a conversion
- ***CLEC B*** must have CLEC to CLEC Conversion terms and rates in its Interconnection Agreement
- ***CLEC B*** must have an end-user **letter of authorization (LOA)** on file (it must be available if requested)
- Must be same loop type with no changes requested
- Must be at the same end-user location and the same serving wire center
- Must not require outside dispatch to the end-user
- Order Coordination is available as a chargeable option on Unbundled Voice Loop-SL1 (UVL-SL1), Unbundled Copper Loop-Non Designed (UCL-ND) and Unbundled Copper Loop-Designed (UCL-D)
- Order Coordination comes standard on the following Unbundled Loop types·
  - 2 Wire Unbundled Voice Loop – SL2
  - 4 Wire Unbundled Voice Loop
  - 2 Wire Unbundled Asymmetrical Digital Subscriber Line (ADSL) Compatible Loop
  - 2 or 4 Wire Unbundled High-Bit-Rate Digital Subscriber Line (HDSL) Compatible Loop
  - 2 Wire Unbundled ISDN Loop and 2 Wire Universal Digital Channel (UDC) Loop
  - 4 Wire Unbundled Digital Loop/DS0 (56/64 kbps)
  - 4 Wire Unbundled DS1/ISDN Loop
- Must submit Local Service Request (LSR) form to the Local Carrier Service Center (LCSC)
- No Service Inquiry is required

CLEC to CLEC Conversion for Unbundled Loops

Ordering Information

At this time, only manual ordering is available for this process ***CLEC B*** will submit a LSR directly to the LCSC for each UNE element it wishes to convert The table below contains ordering information specific for a CLEC to CLEC Conversion of Unbundled Loops. However, the table does not provide all information necessary to complete the entire LSR For instructions on LSR preparation, the CLEC should refer to the guidelines in the **BellSouth Business Rules for Local Ordering**.

LSR Field	Entry	Description
REQTYPE	AB	AB – Stand-alone Loop
ACT	W	Indicates a "switch-as-is" (conversion)
NC	NC code	NC code of the loop being converted
NCI	NCI code	NCI code of the loop being converted (if applicable) *
SECNCI	SECNCI code	SECNCI code of the loop being converted (if applicable) *
LNA	W	Indicates a "switch as is" conversion
ECCKT	Circuit ID	Circuit ID of loop being converted
End User Name	End User Name	Must be the same name of the loop being converted
End User Address	End User Address	Must be the same address of the loop being converted
Cable ID and Chan/Pair	Cable Identification and Channel Pair	The converting CLEC's (CLEC B) Central Office cable and the specific channel pair
CFA	Cable Facility Assignment	The converting CLEC's (CLEC B) Cable Facility Assignment

* NCI and SECNCI codes are not needed on the non-designed loops (UVL-SL1 and UCL-ND)

CLEC to CLEC Conversion for Unbundled Loops

Rate Elements & USOCs

Non-recurring rates for CLEC to CLEC conversions by loop type must be included in the CLEC's Interconnection Agreement. Rates may be interim and subject to change pending approval of final rates by the respective State Commissions

The rate element and USOC for this process is.

Rate Element. CLEC to CLEC Conversion Charge without Outside Dispatch
USOC: UREWO

Other Non-Recurring Charges

Expedite Charge – applies if CLEC requests an order interval less than the stated "standard interval" in the BellSouth Products and Services Interval Guide

Manual Service Order -- applies if order is manually submitted

Electronic Service Order – applies if order is submitted electronically

Order Cancellation – applies if the CLEC cancels an order This charge is for work associated with converting a loop at the time the CLEC cancels an order

Service Order Modification Charge – Applies if the CLEC modifies a service order after the Firm Order Confirmation has been issued

Overtime Charge – Applies for work requested outside of normal working hours

Time & Material – Applies for CLEC requested dispatch, (outside the central office) if "no trouble found" on an unbundled loop

Intervals

Intervals will be based on the loop type being converted. Intervals can be found in the **BellSouth Products and Services Interval Guide**.

CLEC to CLEC Conversion for Unbundled Loops

Maintenance and Repair Process

The CLEC is responsible for testing and pre-screening any trouble conditions on the unbundled loop before calling BellSouth If CLEC B isolates the repair problem to the unbundled loop, the CLEC should notify the Customer Wholesale Interconnection Network Services (CWINS) Center.

The CLEC must provide the following information when reporting a repair problem

- Unbundled loop circuit ID
- Description of the trouble

If BellSouth dispatches a technician on a CLEC reported trouble call and no trouble exists on the loop, BellSouth will charge the CLEC for time spent on the dispatch and for time spent testing the loop.

CLEC to CLEC Conversion for Unbundled Loops

Acronyms

ACT	Activity Type
ADSL	Asymmetrical Digital Subscriber Line
CFA	Cable Facility Assignment
CLEC	Competitive Local Exchange Carrier
CWINS	Customer Wholesale Interconnection Network Services
ECCKT	Exchange Company Circuit
HDSL	High-Bit-Rate Digital Subscriber Line
ISDN	Integrated Services Digital Network
LCSC	Local Carrier Service Center
LNA	Line Activity
LSR	Local Service Request
NC	Network Channel
NCI	Network Channel Interface
REQTYPE	Requisition Type
SECNCI	Secondary Network Channel Interface
UCL-D	Unbundled Copper Loop – Designed
UCL-ND	Unbundled Copper Loop – Non-Designed
UDC	Universal Digital Carrier
UVL-SL1	Unbundled Voice Loop – Service Level One
UVL-SL2	Unbundled Voice Loop – Service Level Two

BellSouth Telecommunications, Inc
North Carolina Utilities Commission
Docket Nos. P-772, Sub 8, P-913,
Sub 5; P-989, Sub 3, P-824, Sub 6; and P-1202, Sub 4
Joint Petitioners' 1st Request for Production
April 6, 2003
SUPPLEMENTAL RESPONSE Item No.
6-11(A)-1
Attachment B

ATTACHMENT B TO REQUEST FOR PRODUCTION, SUPPLEMENTAL RESPONSE TO, ITEM NO. 6-11(A)-1

Mergers & Acquisitions Process - BellSouth Interconnection Services - Microsoft Internet Explorer provided by BellSouth

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Address http://interconnection.bellsouth.com/ma_process/index.htm

BELLSOUTH Interconnection Services

HOME
1.0 Description
2.0 Expectations
3.0 Restrictions
4.0 Rates
5.0 Let's Get Started
6.0 Collocation
7.0 Forms
8.0 Links
9.0 Glossary
10.0 FAQs
11.0 Contact Us

Mergers & Acquisitions Process

Welcome

WELCOME to the *Mergers and Acquisitions* (M&A) home page The Mergers and Acquisition Process is designed to assist Wholesale Customers during their merger, acquisition, and consolidation of accounts. The Process supports all Wholesale Customers and provides step by step instructions and guidance for the ease of this critical transaction.

This home page contains links to supporting processes in an effort to provide comprehensive information useful during and at the conclusion of the M&A process. These pages contain the documents and forms essential to the M&A process, frequently asked questions as well as a method to contact us for further assistance.

If you have any questions, please contact **Your BellSouth Mergers and Acquisition Chairperson** via e-mail at Contact Us. BellSouth will respond in 3 business days.

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11.0 Contact Us

Mergers & Acquisitions Process

1.0 Description

A merger is defined as the consolidation of two companies. In a merger, the merged company ceases to exist as a separate business and legal entity. The acquiring company assumes the assets, liabilities, franchises, and powers of the merged company by operation of law (i.e., automatically).

An acquisition applies when Company A acquires some or all of the property of company B. Typically asset acquisitions involve the transfer of some of the telephone 'exchanges' operated by the selling company

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Address http://interconnection.bellsouth.com/ma_process/process.htm

BELLSOUTH Interconnection Services

Mergers & Acquisitions Process

2.0 Expectations

The acquiring CLEC or IXC will complete Level 1 and Level 2 Checklists that will assist BellSouth in determining how the transaction will be managed. The acquiring CLEC or IXC will also be responsible for providing a spreadsheet inventory of the transferring assets.

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Address http://interconnect.bellsouth.com/ma_process/index.ht-l

BELLSOUTH® Interconnection Services

Mergers & Acquisitions Process

3.0 Restrictions

- No interruption or disconnection in service use.
- No relocation of all existing services.
- The new customer (Assignee) assumes all outstanding indebtedness for such services, any unexpired portion of the minimum period, and the termination liability (if any) associated with the services involved in the transfer. If the new customer does not agree to assume responsibility for all charges, Transfer of Service is not applicable and N & D orders are required
- An outright purchase
- Acquisition of an existing business
- The merging of two or more existing businesses
- Establishment of a new/changed business structure; i.e.

Sole ownership - Partnership - Corporation

- No service order(s) will be issued/re-based to execute a Transfer of Service prior to the receipt of proper written agreement from both the Assignor (former owner) and the Assignee (new owner). If the former company has already been dissolved, the Transfer Document will not be appropriate.

Mergers & Acquisitions Process - BellSouth Interconnection Services - Microsoft Internet Explorer provided by BellSouth

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Address http://interconnect.bellsouth.com/ma_process/index.html

BELLSOUTH® Interconnection Services

Mergers & Acquisitions Process

4.0 Rates

The cost of implementing the merger changes within BellSouth is dependent of the quantity and type of services involved in the merger as well as tariff defined and negotiated rates.

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Address http://interconnection.bellsouth.com/ma_process/index.html

BELLSOUTH® Interconnection Services

Mergers & Acquisitions Process

5.0 Let's Get Started

- Contact BellSouth as noted in the notices section of the Interconnection Agreement or your Account Team Representative, we will guide you through the process and advise where to submit forms.
- Request PSC approval of the acquisition
- Verify all RECA changes and additions
- Complete and submit direct profile

http://interconnection.bellsouth.com/forms/pdf/rf-3950.pdf

- Submit a letter providing the details of the "assumption of services" should be from the 'acquiring' customer on the letterhead
- Complete and submit Level 1 checklist
- Provide inventory spreadsheets
- Should document how the 'transferring' customer's ACNA and/or OCN will be used in the issuance of service orders if applicable.
- Provide all legal names that are used or will be used in the application to BellSouth Sign the Transfer Agreement

BELLSOUTH
Interconnection Services

Credit Profile

Return By Fax To: 404-986-0166

Complete, sign and fax to 404-986-0166 Attention Business Credit Management	Estimated Monthly billing with BellSouth $_____
For questions concerning this application call 888-634-4114	New customer ☐ Existing customer ☐
Please Print And Complete All Information.	Attach Copy of Fiscal Audited Statement (if available)

Type of Business Applying For

☐ Local (Resale) ☐ Facility Based ☐ Payphone Services Provider (# of lines in the first 6 months) _____
☐ Access ☐ CMRS (Wireless) ☐ Other_____

Company Information

Business Name (Legal Name)		Doing Business As (Trade Style)	
Please Check One ☐ Corporation ☐ Partnership ☐ Sole-Proprietor ☐ Other _____			
Street Address	City	State	Zip
Corporate Office Location (If different from above)	City	State	Zip
(Area Code) Telephone Number	(Area Code) Fax Number	E mail address of business	
Are you presently a Bellsouth Customer in another area of business?		☐ Yes	☐ No
Contact name for additional information (if needed)	Contact e mail address		

Officer's Names

President	CFO	CEO

Company History

Year Business Established	Principal Business of Firm	Company Web Site

Business Credit References

Company Name	City	State	(Area Code) Telephone Number
Account Number	Contact Name		
Company Name	City	State	(Area Code) Telephone Number
Account Number	Contact Name		
Company Name	City	State	(Area Code) Telephone Number
Account Number	Contact Name		

Bank Reference

Bank Name	City	State	Account Number
Banking Officer	(Area Code) Telephone Number	(Area Code) Fax Number	

I hereby authorize you to release to BellSouth any and all information, which they may request concerning my account I understand that such information will be held strictly confidential and will remain BellSouth's property whether or not credit is extended I understand that security may be required by BellSouth to establish service I certify that the above information provided for this credit profile is true and correct to the best of my knowledge.

Signature (Authorized Individual Only)	**Print Name**	**Date (MM/DD/YYYY)**

BELLSOUTH

Interconnection Services

If Collocation:

- Customer prepares an application (e-Application, prints the application, but does not submit the application until the agreement is finalized and the distribution of applications is authorized)
- Submit a Letter of Authorization (LOA) for the transfer and release of the of the collocation arrangement(s).
  - Should be from the 'transferring' customer on their letterhead.
  - Should include the Reference Number for each arrangement
- Submit a letter providing the details of the 'assumption of services'
  - Should be from the 'acquiring' customer on their letterhead
  - Should document how the 'transferring' customer's ACNA will be used in the issuance of service orders for services
- Submit a complete list of the Collocation Billing Account Numbers (BANS) that will be transferred
- Submit a complete list of all termination (CFA) and circuits for each arrangement that will be transferred.
  - Use the attached template and provide all requested information
- Submit a hard copy of the application to transfer ownership for each collocation arrangement being transferred.
  - Enter the application in BellSouth's eApplications system. Print a copy of the application but do not submit it until the *Transfer Agreement* has been signed
- Submit a Virtual Collocation Equipment Inventory/Acceptance List for each virtual collocation arrangement.
- Contact your Contract Negotiator to discuss any necessary contractual revisions.
- Sign the Transfer Agreement
- Submit the e-applications(s) once the Transfer Agreement has been signed and all information and details are complete.
- The customer (buyer) and/or certified vendor is responsible for ALL re-stenciling. This includes, but is not limited to, Virtual equipment and/or cable/fiber interconnection points
- e-Application

Mergers & Acquisitions Process - BellSouth Interconnection Services - Microsoft Internet Explorer provided by BellSouth

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Address http://interconnection.bellsouth.com/ma_process/index.htm

BELLSOUTH Interconnection Services

Mergers & Acquisitions Process

7.0 Forms

MNA Level 0 Initial Checklist V08

MNA Level 0 Access Trunking/Operator Services PrePlan V05

MNA Level 0 Local Trunking/Operator Services PrePlan V05

MNA Level 0 QACCT PMAP SEEV V03

MNA Level 0 Special Access Preplan V031

MNA Level 0 LNE PrePlan V01

MNA Level 0 Wireless PrePlan V051

MNA Wireless Trunking Spreadsheet v01

Line Sharing Spreadsheet Issue 10

MNA Special Access TCS Spreadsheet V01

MNA Trunking/Operator Services Spreadsheet v1

MNA JNEP Spreadsheet V1

MNA Right Of Way V1

TCEC DForm

TCEC NDForm

MNA Level 0 Wireless Trunking PrePlan V051

MNA Wireless Non-Process Specials Spreadsheet v11

Line Splitting Spreadsheet Issue 11

MERGERS & ACQUISITIONS – LEVEL I PRELIMINARY CHECKLIST

Project Scope / Definitions

SCOPE OF MERGER / ACQUISITION PLEASE PROVIDE DESCRIPTION OF MERGERS AND CHANGES

IS THE SELLER CURRENTLY IN BANKRUPTCY? YES ☐ NO ☐ IF yes, please provide Case #

I - COMPANY DATA

SELLER – Company Information **(If multiple ACNA, CCNA, OCN, CIC's, please provide on separate sheet)**

LEGAL COMPANY NAME OF PARENT COMPANY			
LEGAL COMPANY NAME			
CUSTOMER CONTACT	PHONE NUMBER	EMAIL ADDRESS	
CARRIER RELATIONS CONTACT	PHONE NUMBER	EMAIL ADDRESS	
NETWORK OPERATIONS CONTACT	PHONE NUMBER	EMAIL ADDRESS	
ACNA	CCNA	OCN	CIC

BUYER- Company Information **(If multiple ACNA, CCNA, OCN, CIC's, please provide on separate sheet)**

LEGAL COMPANY NAME OF PARENT COMPANY			
LEGAL COMPANY NAME			
CUSTOMER CONTACT	PHONE NUMBER	EMAIL ADDRESS	
CARRIER RELATIONS CONTACT	PHONE NUMBER	EMAIL ADDRESS	
NETWORK OPERATIONS CONTACT	PHONE NUMBER	EMAIL ADDRESS	
ACNA	CCNA	OCN	CIC

II – TYPES OF SERVICE IMPACTED

- LOCAL INTERCONNECTION TRUNKING / FACILITIES ☐
- SWITCHED ACCESS TRUNKING / FACILTIES ☐
- WIRELESS TRUNKING / FACILITIES ☐
- SPECIAL ACCESS ☐
- COLLOCATION ☐
- UNBUNDLED NETWORK ELEMENTS
  - UNE-P ☐
    - IF UNE-P, IS THERE LINE SPLITTING? YES ☐ NO ☐
    - IF YES, LIST VOICE AND DATA PROVIDER BELSOW AT "OTHER"
  - UNE-L ☐
  - UNE-TRANSPORT ☐
- DIRECTORY SERVICES
  - OPERATOR SERVICES ☐
  - DIRECTORY ASSISTANCE ☐
  - BRANDING ☐
- SHARED LOOP
  - LINE SHARING, CO BASED ☐ RS BASED ☐ SPLITTER BST ☐ DLEC ☐
  - LINE SPLITTING, CO BASED ☐ RS BASED ☐ SPLITTER BST ☐ DLEC ☐
- RIGHT OF WAY ☐
- RESALE PRODUCTS ☐
- LNP/SPID MIGRATIONS
- OTHER_____

III – STATES IMPACTED

- AL ☐ FL ☐ GA ☐ KY ☐ LA ☐ MS ☐ NC ☐ SC ☐ TN ☐

ACCESS TRUNKING - MERGERS & ACQUISITIONS – LEVEL II - PROJECT PREPLANNING

Project Scope / Definitions

SCOPE OF MERGER / ACQUISITION PLEASE PROVIDE DESCRIPTION OF MERGERS AND CHANGES

EXISTING - Customer Contact Information **(If multiple ACNA, CCNA, OCN, CIC's, please provide on separate sheet)**

LEGAL COMPANY NAME		
CUSTOMER CONTACT	PHONE NUMBER	EMAIL ADDRESS
CUSTOMER PROVISIONING CONTACT	PHONE NUMBER	EMAIL ADDRESS
BELLSOUTH ACCOUNT TEAM CONTACT	PHONE NUMBER	EMAIL ADDRESS
BELLSOUTH LOCAL CONTRACT MANAGER CONTACT	PHONE NUMBER	EMAIL ADDRESS

ACNA	CCNA	OCN	CIC

NEW - Customer Contact Information **(If multiple ACNA, CCNA, OCN, CIC's, please provide on separate sheet)**

LEGAL COMPANY NAME		
CUSTOMER CONTACT	PHONE NUMBER	EMAIL ADDRESS
CUSTOMER PROVISIONING CONTACT	PHONE NUMBER	EMAIL ADDRESS
BELLSOUTH ACCOUNT TEAM CONTACT	PHONE NUMBER	EMAIL ADDRESS
BELLSOUTH LOCAL CONTRACT MANAGER CONTACT	PHONE NUMBER	EMAIL ADDRESS

ACNA	CCNA	OCN	CIC

FACTORS SECTION:

Jurisdictional factors are utilized to apportion the billing of BellSouth Access and Local Interconnections Services between the interstate, intrastate and local jurisdictions The rates, terms and conditions applicable to the provision of services are determined based upon the jurisdictional use of the service. Please refer to the *BellSouth Jurisdictional Factors Reporting Guide* @ http //www interconnection.bellsouth com/guides/ixc/pdf/factgu pdf or your BellSouth Account Team for more information.

As a result of this merger, you may have to update your quarterly factors reporting.

Questionnaire Section:

Is acquiring customer currently set up to use C A F E for issuing ASR's? YES ☐ NO☐

Will Collocations sites be impacted with Merger / Acquisition? YES ☐ NO☐

Are there higher-level services that will be impacted? OC-n ☐ Rings ☐ STS ☐ DS3 ☐

Will there be changes made to ACNA, CCNA, OCN, CIC? ACNA ☐ CCNA ☐ OCN ☐ CIC ☐

Will there be changes required to the 11-character ACTL CLLI? YES ☐ NO☐

Will there be any of the following non-Feature Group D trunks involved? YES ☐ NO☐
Feature Group-A ☐ Feature Group-B ☐ Feature Group-C ☐

Will there be changes to LRN / N-PAC database? YES ☐ NO☐

Will there be SS7 links involved that will require changes? YES ☐ NO☐
If yes, is BellSouth the link provider? YES ☐ NO☐

Will there be changes to any CNAM, LIDB, or CLASS type services? YES ☐ NO☐

Will there be changes to any OPS DA or NDA type services? YES ☐ NO☐
If yes, have contract issues must be addressed with BellSouth Account Team? YES ☐ NO☐

Will there be changes required to branding on OPS / DA services? YES ☐ NO☐

Will there be requirements to make changes on PIC / LPIC YES ☐ NO☐
If yes, please provide written description of changes

ACCESS TRUNKING - MERGERS & ACQUISITIONS – LEVEL II - PROJECT PREPLANNING

Project Scope / Definitions

SCOPE OF MERGER / ACQUISITION PLEASE PROVIDE DESCRIPTION OF MERGERS AND CHANGES

EXISTING - Customer Contact Information **(If multiple ACNA, CCNA, OCN, CIC's, please provide on separate sheet)**

LEGAL COMPANY NAME			
CUSTOMER CONTACT	PHONE NUMBER	EMAIL ADDRESS	
CUSTOMER PROVISIONING CONTACT	PHONE NUMBER	EMAIL ADDRESS	
BELLSOUTH ACCOUNT TEAM CONTACT	PHONE NUMBER	EMAIL ADDRESS	
BELLSOUTH LOCAL CONTRACT MANAGER CONTACT	PHONE NUMBER	EMAIL ADDRESS	
ACNA	CCNA	OCN	CIC

NEW - Customer Contact Information **(If multiple ACNA, CCNA, OCN, CIC's, please provide on separate sheet)**

LEGAL COMPANY NAME			
CUSTOMER CONTACT	PHONE NUMBER	EMAIL ADDRESS	
CUSTOMER PROVISIONING CONTACT	PHONE NUMBER	EMAIL ADDRESS	
BELLSOUTH ACCOUNT TEAM CONTACT	PHONE NUMBER	EMAIL ADDRESS	
BELLSOUTH LOCAL CONTRACT MANAGER CONTACT	PHONE NUMBER	EMAIL ADDRESS	
ACNA	CCNA	OCN	CIC

FACTORS SECTION:

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As a result of this merger, you may have to update your quarterly factors reporting.

Questionnaire Section:

Is acquiring customer currently set up to use C A F E for issuing ASR's? YES ☐ NO☐

Will Collocations sites be impacted with Merger / Acquisition? YES ☐ NO☐

Are there higher-level services that will be impacted? OC-n ☐ Rings ☐ STS ☐ DS3 ☐

Will there be changes made to ACNA, CCNA, OCN, CIC? ACNA ☐ CCNA ☐ OCN ☐ CIC ☐

Will there be changes required to the 11-character ACTL CLLI? YES ☐ NO☐

Will there be any of the following non-Feature Group D trunks involved? YES ☐ NO☐

Feature Group-A ☐ Feature Group-B ☐ Feature Group-C ☐

Will there be changes to LRN / N-PAC database? YES ☐ NO☐

Will there be SS7 links involved that will require changes? YES ☐ NO☐

If yes, is BellSouth the link provider? YES ☐ NO☐

Will there be changes to any CNAM, LIDB, or CLASS type services? YES ☐ NO☐

Will there be changes to any OPS DA or NDA type services? YES ☐ NO☐

If yes, have contract issues must be addressed with BellSouth Account Team? YES ☐ NO☐

Will there be changes required to branding on OPS / DA services? YES ☐ NO☐

Will there be requirements to make changes on PIC / LPIC YES ☐ NO☐

If yes, please provide written description of changes

Q-ACCOUNT/PMAP/SEEM - MERGERS & ACQUISITIONS – LEVEL II CHECKLIST

Project Scope / Definitions

SCOPE OF MERGER / ACQUISITION PLEASE PROVIDE DESCRIPTION OF MERGERS AND CHANGES

EXISTING - Customer Contact Information **(If multiple ACNA, CCNA, OCN, CIC's, please provide on separate sheet)**

LEGAL COMPANY NAME		
CUSTOMER CONTACT	PHONE NUMBER	EMAIL ADDRESS
ACNA	CCNA	OCN
COMPANY BILLING NAME		

NEW - Customer Contact Information **(If multiple ACNA, CCNA, OCN, CIC's, please provide on separate sheet)**

LEGAL COMPANY NAME		
CUSTOMER CONTACT	PHONE NUMBER	EMAIL ADDRESS
ACNA	CCNA	OCN
COMPANY BILLING NAME		

LIST ALL OTHER LEGAL ENTITY NAMES INVOLVED IN THE MERGER / ACQUISITION

What is the effective bill date for this Merger / Acquisition?

Questionnaire Section (For assumption of former customer Q accounts):

Has acquiring customer filed with NECA for OCN name change? YES ☐ NO☐

If yes, please attach documentation

Has acquiring customer filed with PSC (per State) for ownership change? YES ☐ NO☐

If yes, please attach documentation

☐ If facility based, will acquiring customer assume LNP Listing Q account of former owner? YES ☐ NO

Please Identify Q Account number and OCN

Please list all former Customer OCN's and Q accounts involved in this Merger / Acquisition to be assumed

OCN (Assumed by Aquiring Customer):	Q Account #.

Please list all existing Q accounts to be disconnected

Questionnaire Section (For New OCN's and New Q accounts):

Are new OCN's and Q accounts required? YES ☐ NO☐

If yes, please contact the Advisory Team

Is there a specific priority the Q accounts should be processed in? YES ☐ NO☐

If yes, please describe

By Service type? YES ☐ NO
☐

By State? YES ☐ NO☐

SPECIAL ACCESS - MERGERS & ACQUISITIONS – LEVEL II - PROJECT PREPLANNING

Project Scope / Definitions

SCOPE OF MERGER / ACQUISITION PLEASE PROVIDE DESCRIPTION OF MERGERS AND CHANGES

EXISTING - Customer Contact Information

LEGAL COMPANY NAME			
CUSTOMER CONTACT	PHONE NUMBER	EMAIL ADDRESS	
CUSTOMER PROVISIONING CONTACT	PHONE NUMBER	EMAIL ADDRESS	
BELLSOUTH ACCOUNT TEAM CONTACT	PHONE NUMBER	EMAIL ADDRESS	
BELLSOUTH LOCAL CONTRACT MANAGER CONTACT	PHONE NUMBER	EMAIL ADDRESS	
ACNA	CCNA	OCN	CIC

NEW - Customer Contact Information

LEGAL COMPANY NAME			
CUSTOMER CONTACT	PHONE NUMBER	EMAIL ADDRESS	
CUSTOMER PROVISIONING CONTACT	PHONE NUMBER	EMAIL ADDRESS	
BELLSOUTH ACCOUNT TEAM CONTACT	PHONE NUMBER	EMAIL ADDRESS	
BELLSOUTH LOCAL CONTRACT MANAGER CONTACT	PHONE NUMBER	EMAIL ADDRESS	
ACNA	CCNA	OCN	

FACTORS SECTION:

Jurisdictional factors are utilized to apportion the billing of BellSouth Access and Local Interconnections Services between the interstate, intrastate and local jurisdictions The rates, terms and conditions applicable to the provision of services are determined based upon the jurisdictional use of the service. Please refer to the *BellSouth Jurisdictional Factors Reporting Guide* @ http //www interconnection.bellsouth com/guides/ixc/pdf/factgu.pdf or your BellSouth Account Team for more information.

As a result of this merger, you may have to update your quarterly factors reporting.

Questionnaire Section:

Is acquiring customer currently set up to use C A F E for issuing ASR's?	YES ☐ NO☐
Will Collocations sites be impacted with Merger / Acquisition?	YES ☐ NO☐
Are there higher-level services that will be impacted?	OC-n ☐ Rings ☐ STS ☐ DS3 ☐
Will there be changes made to ACNA, CCNA?	ACNA ☐ CCNA ☐

SHARED LOOP - MERGERS & ACQUISITIONS – LEVEL II - PROJECT PREPLANNING

Project Scope / Definitions

SCOPE OF MERGER / ACQUISITION PLEASE PROVIDE DESCRIPTION OF MERGERS AND CHANGES

EXISTING - Customer Contact Information

LEGAL COMPANY NAME			
CUSTOMER CONTACT	PHONE NUMBER	EMAIL ADDRESS	
CUSTOMER PROVISIONING CONTACT	PHONE NUMBER	EMAIL ADDRESS	
BELLSOUTH ACCOUNT TEAM CONTACT	PHONE NUMBER	EMAIL ADDRESS	
BELLSOUTH LOCAL CONTRACT MANAGER CONTACT	PHONE NUMBER	EMAIL ADDRESS	
ACNA	CCNA	OCN	CIC

NEW - Customer Contact Information

LEGAL COMPANY NAME			
CUSTOMER CONTACT	PHONE NUMBER	EMAIL ADDRESS	
CUSTOMER PROVISIONING CONTACT	PHONE NUMBER	EMAIL ADDRESS	
BELLSOUTH ACCOUNT TEAM CONTACT	PHONE NUMBER	EMAIL ADDRESS	
BELLSOUTH LOCAL CONTRACT MANAGER CONTACT	PHONE NUMBER	EMAIL ADDRESS	
ACNA	CCNA	OCN	CIC

Questionnaire Section:

Is acquiring customer currently set up to use EDI, LENS, or TAG/XML for issuing LSRs? EDI ☐ LENS ☐ TAG/XML ☐

Is acquiring customer currently set up to use TAFI, DLEC TAFI, or LQS? TAFI ☐ DLEC TAFI ☐ LQS ☐

Is exiting customer currently set up to use TAFI, DLEC TAFI, or LQS? TAFI ☐ DLEC TAFI ☐ LQS ☐

What Shared Loop services are impacted by the Merger / Acquisition?

Central Office Based

- Line Sharing with BST Splitter ☐ or DLEC Splitter ☐ or BOTH ☐
- Line Splitting with BST Splitter ☐ or DLEC Splitter ☐ or BOTH ☐

Remote Site Based

- Line Sharing with BST Splitter ☐ or DLEC Splitter ☐ or BOTH ☐
- Line Splitting with DLEC Splitter ☐ (only option available)

Line Splitting

Prior to the merger/acquisition, who are the Voice and Data providers?

VOICE _____

DATA _____

Following the merger/acquisition, who are the Voice and Data providers?

VOICE _____

DATA _____

Do the post merger/acquisition VOICE and DATA providers have a Line Splitting Letter of Authorization (LOA)? YES ☐ NO☐

Does the acquiring DATA provider have a C07 BAN for each affected state? YES ☐ NO☐

If YES, please list the BAN

AL	_____	LA	_____
FL	_____	MS	_____
GA	_____	NC	_____
KY	_____	SC	_____
		TN	_____

Will there be changes made to ACNA, CCNA, OCN? ACNA ☐ CCNA ☐ OCN ☐

Will new Cable IDs &/or Cable Pair ranges be required? YES ☐ NO☐ NOT KNOWN ☐

Will there be changes required to the 11-character ACTL CLLI? YES ☐ NO☐

SPECIAL ACCESS - MERGERS & ACQUISITIONS – LEVEL II - PROJECT PREPLANNING (WIRELESS ACCESS and NON-ACCESS)

Project Scope / Definitions

SCOPE OF MERGER / ACQUISITION PLEASE PROVIDE DESCRIPTION OF MERGERS AND CHANGES

SELLER - Customer Contact Information (If multiple ACNA, CCNA, OCN, ZWC, please provide on separate sheet)

LEGAL COMPANY NAME			
CUSTOMER CONTACT	PHONE NUMBER	EMAIL ADDRESS	
CUSTOMER PROVISIONING CONTACT	PHONE NUMBER	EMAIL ADDRESS	
BELLSOUTH ACCOUNT TEAM CONTACT	PHONE NUMBER	EMAIL ADDRESS	
BELLSOUTH LOCAL CONTRACT MANAGER CONTACT	PHONE NUMBER	EMAIL ADDRESS	
ACNA	CCNA	OCN	CIC

BUYER - Customer Contact Information (If multiple ACNA, CCNA, OCN, ZWC, please provide on separate sheet)

LEGAL COMPANY NAME			
CUSTOMER CONTACT	PHONE NUMBER	EMAIL ADDRESS	
CUSTOMER PROVISIONING CONTACT	PHONE NUMBER	EMAIL ADDRESS	
BELLSOUTH ACCOUNT TEAM CONTACT	PHONE NUMBER	EMAIL ADDRESS	
BELLSOUTH LOCAL CONTRACT MANAGER CONTACT	PHONE NUMBER	EMAIL ADDRESS	
ACNA	CCNA	OCN	

Buyer should attach a copy of the Existing Tax Exemption Certification per state.

Questionnaire Section:

Is acquiring customer currently set up to use WOS for issuing WSR's?	YES ☐ NO☐
Will Collocations sites be impacted with Merger / Acquisition?	YES ☐ NO☐
Are there higher-level services that will be impacted?	OC-n ☐ Rings ☐ STS ☐ DS3 ☐
Will there be changes made to ACNA, CCNA?	ACNA ☐ CCNA ☐

Wireless Trunking
Mergers and Acquisition
Account List

Ver 1
07/27/04

Legal Company Name (Seller)

Legal Company Name (Buyer)

Buyer Billing Address

Interconnection Agreement Number (ZRCN) | Credit Class

Buyer MAN # | Deposit

Buyer ZWC

Buyer Billing Contact

Buyer Billing Contact Telephone Number

Buyer must complete all fields hilited in YELLOW

Billing Telephone Number (BTN)	Earning Telephone No (ETN)	PON	Order Number	Rid	Due Date	CLO

EXISTING LINES BEFORE

Transfer Ownership Records Change for Line Share &/or Splitter/Cable Information

Project ID			
Project Manager	Project Manager E-mail address		Project Manager contact number

CLEC	State		DATE
CLEC contact name (ZRCI info)	CLEC contact number		
New ACNA	Old ACNA		
New CCNA	Old CCNA		
New BAN (see instructions)	Old BAN		

	SLTN	CIRCUIT	OLD CABLE ID 1	NEW CABLE ID 1	OLD DLEC Splitter CABLE ID 2	NEW DLEC Splitter CABLE ID 2	OLD PAIR 1	NEW PAIR 1	OLD DLEC Splitter Pair 2	NEW DLEC Splitter Pair 2	OLD Splitter Shelf/Relay Rack/Slot	NEW Splitter Shelf/Relay Rack/Slot	PON	REMARKS May be used by CLEC & BellSouth
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Instructions for preparing Transfer Ownership Records Change for Line Sharing AND/OR DLEC Owned Cable ID & Splitter

Note: CLEC will complete all the fields in the yellow shaded areas of the form

Instructions for 'EXISTING LINES' sheet tab

NOTE: Submit one sheet tab per C07 Account

Header Fields to be Completed by the CLEC	Special Considerations
CLEC	
State	
Date	Date the form is submitted to BellSouth Project Manager
CLEC Contact Name (LCON) & LCON Tel #	
New ACNA	ACNA of Acquiring CLEC
Old ACNA	ACNA of CLEC that is transferring assets
New CCNA	CCNA of Acquiring CLEC
Old CCNA	CCNA of the CLEC that is transferring assets
New BAN	Leave blank if acquiring CLEC ***does not*** have an existing C07 Line Share Account BellSouth will create new account as required
Old BAN	

Column Fields to be completed by the CLEC	Special Considerations
SLTN	The TN of Line with Line Share provisoned
Circuit ID	The Circuit ID of Line with Line Share provisoned
Old Cable ID 1	
DLEC Splitter Cable ID 2	To be filled out only if a DLEC splitter is present
Old Pair 1	
Old DLEC Splitter Pair 2	To be filled out only if a DLEC splitter is present
Splitter Shelf/Relay Rack/Slot	
PON	Unique PON per TN

Column Fields to be completed by the CRSG	Special Considerations
New Cable ID	
New DLEC Cable ID 2	The Name of the acquiring CLEC cable To be filled out only if a DLEC splitter is present
New Cable Pair	The Pair within the acquiring CLEC range on which the Line Share will be present
New DLEC Splitter Pair 2	To be filled out only if a DLEC splitter is present
New Splitter Shelf/Relay Rack/Slot	The re-named Splitter ID of the acquiring CLEC

Header Fields to be completed by BellSouth Project Manager	Special Considerations
Project Number	
Project Manager	
PM Email address	
PM contact number	
New BAN	New BAN is required if acquiring CLEC does not have a C07 Account

SPLITTER_CABLE BEFORE

The yellow high-lighted information is supplied by the CLEC and represents the EXISTING CLEC inventory

PROJECT ID:		CLEC:				
BAN	ACTL	CABLE ID	TYPE	CABLE RANGE	SPLITTER RANGE FROM	SPLITTER RANGE TO

Instructions for preparing Transfer Ownership Records Change for Line Sharing AND/OR DLEC Owned Cable ID & Splitter

Note: CLEC will complete all the fields in the yellow shaded areas of the form	
Instructions for 'SPLITTER_CABLE BEFORE' sheet tab	
Header Fields to be Completed by the CLEC	**Special Considerations**
CLEC	

Column Fields to be completed by the CLEC	**Special Considerations**
BAN	
ACTL	
CABLE ID	
TYPE	Indicated if range is Data/Voice (DV) or Voice Only (VO)
CABLE RANGE	
SPLITTER RANGE FROM	
SPLITTER RANGE TO	

Header Fields to be completed by BellSouth Project Manager	**Special Considerations**
Project Number	

Merger and Acquistion/Transfer of Service Spreadsheet for Special Access Services
BAN Level Changes

	A	B	C	D	E	F	G	H	I	J	K	L	M
1	**Project ID**		**Old IXC Name**										
2	**Project Manager**		**New IXC Name**										
3	**PH #**		**New IXC Project Manager**										
4			**PH #**										
5			**Bill Name**										
6	**Email**		**Billing Address**										
7	**Issue Date**						**PORTION TO BE COMPLETED BY BELLSOUTH FOR TRACKING**						
8			**Bill Contact**										
9													
10	***State***	***Old ACNA/CCNA***	***New ACNA***	***New CCNA***	***N-BAN***		***MAN CODE***	***CREDIT CLASS***	***PON***	***RECORD SERVICE ORDER***	***ASR#***	***DD***	***Notes***
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Merger and Acquisition/Transfer of Service Spreadsheet for Special Access Services
Facilities

	A	B	C	D	E	F	G	H	I	J	K	L	M
1	**Project ID**		**Old IXC Name**										
2	**Project Manager**		**New IXC Name**										
3	**PH #.**		**New IXC Project Manager**										
4			**PH #**										
5			**Bill Name**										
6	**Email**		**Billing Address**										
7	**Issue Date.**												
8			**Bill Contact**					**PORTION TO BE COMPLETED BY BELLSOUTH FOR TRACKING**					
9	***State***	***Old ACNA/CCNA***	***New ACNA***	***New CCNA***	***N-BAN***	***ECCKT***		***DD***	***Notes***				
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Carrier Interconnection Project Management

New ACN
New ACNA
New CIC

Old ACN
Old ACNA
Old CIC

New CCNA

Old CCNA
Old OCN

Project Manager
PH #
Email

Issue Date
Project ID

PORTION TO BE COMPLETED BY BELLSOUTH FOR TRACKING

N-BAN	S-BAN	TSC CODE	CLF SYSTEM ID				Trf.Typ	QTY	R ORDER	S.O	ASR#	FAC CLO	TRK CLO	FDD	DD
			SYS ID		ALOC	ZLOC									

Main ATN	BTN	OCN	PON	Contact Name	Contact TN

1 Licensee Tracking No	CONSENT TO ASSIGNMENT	2 BST Tracking (SAM) No

3 Date Submitted	4 License Agreement No	5 Authorized Licensee Representative
6 Company Making Application (Assignee)		7 Telephone 8 Fax
9 Street Address		

10 City	11 State	12 Zip	13 Effective Date of Assingment

BellSouth Telecommunications, Inc ("Licensor"), hereby consents to the assignment of License Agreement for Rights of Way (ROW), Conduits, and Pole Attachments, indicated in no 4 above, from the current Licensee to the Assignee identified herein From and after the date of assignment all rights and duties under the License Agreement will be assumed by Assignee and Licensee shall have no further obligations thereunder Licensee will, however, continue to be responsible for obligations accruing before the date of assignment unless Licensor, Licensee and Assignee otherwise expressly provide through a separate agreement

Assignee shall be responsible for obtaining from the appropriate governmental and/or private authority any required authorization to construct, operate and/or maintain its communications facilities on public and/or private property before it attaches its communications facilities to poles located on such public and/or private property Such authorizations may include, but are not necessarily limited to, certificates of public convenience and necessity to provide service to the public and appropriate easements or right of way permits for location of facilities In the absence of evidence satisfying the above, Licensor reserves the right to revoke its consent to this assignment

Assignee:

Assignee Company Name

Authorized Representative

Name (Typed/Printed)

Date

Licensee:

Licensee Company Name

Authorized Representative

Name (Typed/Printed)

Date

Licensor:

BellSouth Telecommunications, Inc.

Authorized Representative

Name (Typed/Printed)

Date

Territory (describe in detail, e g franchise area, etc)

Version 1: 02/20/04

Transfer Ownership Records Change for DESIGNED UNE Circuits

Project ID:			
Project Manager:	Project Manager E-mail address:		Project Manager contact number

CLEC:	State:	ACTL:	Date:
CLEC contact name (ZRCI info):	CLEC contact number:		

New ACNA:		Old ACNA:	Reserved for future use
New CCNA:		Old CCNA:	Reserved for future use
New CA Name.		Old CA Name:	

	Circuit ID	NPA Old BAN	NPA NEW BAN	New CLEC cable pair	LCON	LCON #	PON	Due Date
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Version 1, 02/20/04

Instructions for preparing Transfer Ownership Records Change for *DESIGNED* UNE Loops

Provide as many pages of the form as necessary and continue numbering the lines on the additional pages.

Note. CLEC will complete all the fields in the yellow shaded areas of the form. Refer to the Local Ordering Handbook (LOH) for format requirements for each of the fields for which information is to be provided. The LOH can be found at:
http //www interconnection bellsouth com/guides/html/leo html

Header Fields to be Completed by the CLEC	**Special Considerations**
CLEC Name	
State	
ACTL	This is the ACTL assigned to the collocation arrangement that is being acquired
Date	Date the form is submitted to BellSouth Project Manager
CLEC Contact Name (LCON)	
CLEC Contact Telephone Number (LCON Number)	
New ACNA	Acquiring CLEC's ACNA
Old ACNA	ACNA of CLEC that is transferring assets
New CCNA	Acquiring CLEC's CCNA
OLD CCNA	CCNA of CLEC that is transferring assets
New CA Name	Acquiring CLEC's cable name
Old CA Name	Cable Name of the CLEC that is transferring assets
Column Fields to be completed by the CLEC	***Special Considerations***
Circuit ID	Ckt ID assigned to the Unbundled Loop(s) for which ownership is being transferred
NPA Old BAN	The BAN(s) of the CLEC that is transferring assets
New CLEC cable pair	New Cable pair must be filled in for every Circuit being transferred
PON	Provide a Purchase Order Number (PON) for each circuit being transferred
Header Fields to be Completed by BellSouth CCPM	***Special Considerations***
Project ID	
Project Manager	
Project Manager Email address	
Project Manager contact number	
Column Fields to be completed by the BellSouth	***Special Considerations***
New BAN	
LCON	
LCON Number	
DD	

Version 1. 02/20/04

Transfer Ownership Records Change for NON-DESIGNED UNE Circuits

Project Number			
Project Manager (PM)		PM Email address	PM contact number

CLEC				State		ACTL		Date	
CLEC Contact Name (LCON) & LCON Tel #									
New AECN						Old AECN		Reserved for Future Use	
New Cable Name						Old Cable Name		Reserved for Future Use	

	BTN "Q" Account #	Misc Account	CKT ID	DD	PON	New CA	LCON	New PR	PRN	AECN	CLEC
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2											
3											
4											
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Version 1; 02/20/04

Instructions for preparing Transfer Ownership Records Change for *NON-DESIGNED* UNE Loops

Provide as many pages of the form as necessary and continue numbering the lines on the additional pages.

Note: CLEC will complete all the fields in the yellow shaded areas of the form. Refer to the Local Ordering Handbook (LOH) for format requirements for each of the fields for which information is to be provided. The LOH can be found at:
http://www.interconnection.bellsouth.com/guides/html/leo.html

Header Fields to be Completed by the CLEC	**Special Considerations**
CLEC	CLEC Company Name
State	
ACTL	This is the ACTL assigned to the collocation arrangement that is being acquired
Date	Date the form is submitted to BellSouth Project Manager
CLEC Contact Name (LCON) & LCON Tel #	
New AECN	AECN of Acquiring CLEC
Old AECN	AECN of CLEC that is transferring assets
New Cable Name	Cable Name of Acquiring CLEC
Old Cable Name	Cable Name of the CLEC that is transferring assets
Column Fields to be completed by the CLEC	***Special Considerations***
BTN Q Account #	Must be provided on everyone line that has a Ckt ID entry
Misc Account	Must be provided on everyone line that has a Ckt ID entry
CKt ID	Ckt ID assigned to the Unbundled Loop(s) for which ownership is being transferred
PON	Provide a Purchase Order Number (PON) for each circuit being transferred
New PR	Acquiring CLEC's pair number for each Ckt ID
Header Fields to be Completed by BellSouth Proj. Mgr.	***Special Considerations***
Project Number	
Project Manager	
PM Email address	
PM contact number	
Column Fields to be completed by BellSouth Proj Mgr	***Special Considerations***
DD	Due Date
New CA	New Cable Name copied from the information that CLEC provided in the Header Field
LCON	CLEC Contact Name (LCON) & LCON Tel # copied from the information that CLEC provided in t he Header Field
PRN	Project Number copied from the information in the Project Manager Header Field
AECN	New AECN copied from the information that CLEC provided in the Header Field
CLEC	CLEC Company Name copied from the information that CLEC provided in the Header Field

WIRELESS TRUNKING - MERGERS & ACQUISITIONS – LEVEL II - PROJECT PREPLANNING

Project Scope / Definitions

SCOPE OF MERGER / ACQUISITION PLEASE PROVIDE DESCRIPTION OF MERGERS AND CHANGES

Seller - Customer Contact Information **(If multiple ACNA, CCNA, OCN, ZWC, please provide on separate sheet)**

LEGAL COMPANY NAME			
CUSTOMER CONTACT	PHONE NUMBER	EMAIL ADDRESS	
CUSTOMER PROVISIONING CONTACT	PHONE NUMBER	EMAIL ADDRESS	
BELLSOUTH ACCOUNT TEAM CONTACT	PHONE NUMBER	EMAIL ADDRESS	
BELLSOUTH LOCAL CONTRACT MANAGER CONTACT	PHONE NUMBER	EMAIL ADDRESS	
ACNA	CCNA	OCN	CIC

Please attach a list of existing Interconnection Agreement Contract numbers.

Buyer - Customer Contact Information **(If multiple ACNA, CCNA, OCN, ZWC please provide on separate sheet)**

LEGAL COMPANY NAME			
CUSTOMER CONTACT	PHONE NUMBER	EMAIL ADDRESS	
CUSTOMER PROVISIONING CONTACT	PHONE NUMBER	EMAIL ADDRESS	
BELLSOUTH ACCOUNT TEAM CONTACT	PHONE NUMBER	EMAIL ADDRESS	
BELLSOUTH LOCAL CONTRACT MANAGER CONTACT	PHONE NUMBER	EMAIL ADDRESS	
ACNA	CCNA	OCN	CIC

Please attach a list of existing Interconnection Agreement Contract numbers

Buyer should attach a copy of the Existing Tax Exemption Certification per state.

Questionnaire Section:

Is acquiring customer currently set up to use WOS for issuing WSR's? YES ☐ NO☐

Will Collocations sites be impacted with Merger / Acquisition? YES ☐ NO☐

Are there higher-level services that will be impacted? OC-n ☐ Rings ☐ STS ☐ DS3 ☐

Will there be changes made to ACNA, CCNA, OCN? ACNA ☐ CCNA ☐ OCN ☐ CIC ☐

Will there be changes required to the 11-character ACTL CLLI? YES ☐ NO☐

Will there be changes to LRN / N-PAC database? YES ☐ NO☐

Will there be SS7 links involved that will require changes? YES ☐ NO☐

If yes, is BellSouth the link provider? YES ☐ NO☐

Will there be changes to any CNAM, LIDB, or CLASS type services? YES ☐ NO☐

Will there be changes to any OPS DA or NDA type services? YES ☐ NO☐

If yes, have contract issues must be addressed with BellSouth Account Team? YES ☐ NO☐

Will there be changes required to branding on OPS / DA services? YES ☐ NO☐

Will there be requirements to make changes on PIC / LPIC YES ☐ NO☐

If yes, please provide written description of changes

Wireless Non Access Specials
Mergers and Acquisition
Account List

Ver 1
07/27/04

Legal Company Name (Seller)

Legal Company Name (Buyer)

Buyer Billing Address

Master Service Agreement Contract Number (MSA)

Credit Class

Buyer MAN #

Deposit

Buyer ZWC

Buyer Billing Contact

Buyer Billing Contact Telephone Number

Buyer must complete all fields hilited in YELLOW

Billing Telephone Number (BTN)	Earning Telephone No (ETN)	PON	Circuit ID	Order Number	RID	Due Date	CLO

VOICE-DATA PROVIDERS

Instruction
The acquiring CLEC shall fill out all fields

Provider Information BEFORE Transaction					Provider Information AFTER Transaction				
Voice Provider	Voice Provider CCNA	Data Provider	Data Provider AECN	Data Provider ACNA	Voice Provider	Voice Provider CCNA	Data Provider	Data Provider AECN	Data Provider ACNA

LSR Local Service Provider (LSP) fields required with Letter of Authorization (LOA)	
LSP Auth	
LSP Auth Date	
LSP Auth Name	

EXISTING LINES BEFORE

Transfer Ownership Records Change for Line Splitting

Project ID			
Project Manager	Project Manager E-mail address		Project Manager contact number

CLEC		State	DATE
CLEC contact name (ZRCI info)		CLEC contact number	
New ACNA: Data CLEC		Old ACNA: Data CLEC	
New CCNA Voice CLEC		Old CCNA Voice CLEC	
New BAN (see instructions)		Old BAN	

	SLTN	CIRCUIT	OLD CABLE ID 1	NEW CABLE ID 1	OLD DLEC Splitter CABLE ID 2	NEW DLEC Splitter CABLE ID 2	OLD PAIR 1	NEW PAIR 1	OLD DLEC Splitter Pair 2	NEW DLEC Splitter Pair 2	OLD Splitter Shelf/Relay Rack/Slot	NEW Splitter Shelf/Relay Rack/Slot	PON	REMARKS May be used by CLEC & BellSouth
1														
2														
3														
4														
5														
6														
7														
8														
9														
10														
11														
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Instructions for preparing Transfer Ownership Records Change for Line Splitting

Note: CLEC will complete all the fields in the yellow shaded areas of the form

Instructions for 'EXISTING LINES' sheet tab

NOTE: Submit one sheet tab per Q Account
Business & Residence must be submitted on separate spreadsheets
All Accounts must be active and currently billed to the CLEC being acquired

Header Fields to be Completed by the CLEC	Special Considerations
CLEC	
State	
Date	Date the form is submitted to BellSouth Project Manager
CLEC Contact Name (LCON) & LCON Tel #	
New ACNA	ACNA of Acquiring CLEC
Old ACNA	ACNA of CLEC that is transferring assets
New CCNA	CCNA of Acquiring CLEC
Old CCNA	CCNA of the CLEC that is transferring assets
New BAN	Leave blank if acquiring CLEC ***does not*** have an existing Q Account BellSouth will create new account as required
Old BAN	

Column Fields to be completed by the CLEC	Special Considerations
SLTN	The TN of Line with Line Split provisoned
Circuit ID	The Circuit ID of Line with Line Split provisoned
Old Cable ID 1	
DLEC Splitter Cable ID 2	To be filled out only if a DLEC splitter is present
Old Pair 1	
Old DLEC Splitter Pair 2	To be filled out only if a DLEC splitter is present
Splitter Shelf/Relay Rack/Slot	
PON	Unique PON per TN - Multi Line Accounts may be covered by a single PON

Column Fields to be completed by the CRSG	Special Considerations
New Cable ID	
New DLEC Cable ID 2	The Name of the acquiring CLEC cable To be filled out only if a DLEC splitter is present
New Cable Pair	The Pair within the acquiring CLEC range on which the Line Share will be present
New DLEC Splitter Pair 2	To be filled out only if a DLEC splitter is present
New Splitter Shelf/Relay Rack/Slot	The re-named Splitter ID of the acquiring CLEC

Header Fields to be completed by BellSouth Project Manager	Special Considerations
Project Number	
Project Manager	
PM Email address	
PM contact number	
New BAN	New BAN is required if acquiring CLEC does not have a Q Account

Mergers & Acquisitions Process - BellSouth Interconnection Services - Microsoft Internet Explorer provided by BellSouth

File Edit View Favorites Tools Help

Back Search Favorites

Address http://interconnection.bellsouth.com/m_a_process/index.html

BELLSOUTH Interconnection Services

Mergers & Acquisitions Process

8.0 Links

Do you want to become a CLEC?

Do you want to become a Wireless Provider?

Do you want to become a CLEC? - BellSouth Interconnection Services - Microsoft Internet Explorer provided by BellSouth

File Edit View Favorites Tools Help

Back Search Favorites

Address http://interconnection.bellsouth.com/become_a_clec/index.html Links

Proven Predictability

my Interconnection Log In | Register Contact | FAQ | Help | Search | Site Map

Wholesale Markets | Guides | News & Events | Notifications | Products & Services | Templates & Forms | Training

Home

Collocation

Interconnection

Resale

Customer Guides

Start-Up Guide

Standard Agreement

Draft Market Based Rates (MBR) Agreement

Brochure

Sample Request Letter

Frequently Asked Questions

Do You Want to Become a CLEC?

Becoming a Competitive Local Exchange Carrier (CLEC) has never been easier, but first ask yourself "Are you ready?" Is your company ready to handle such essential issues as billing, repairs and customer service? Are you ready to provide first rate customer service, products, reliability and the low rates that your customers are going to demand?

With BellSouth Interconnection Services, getting ready is simple. You get immediate access to a world-class network that has everything you need. BellSouth Interconnection Services has the knowledge, experience, operational excellence and first class customer services to help you become an outstanding provider of the right products and services at the right prices.

Here are three easy steps to help you get started today.

STEP 1: Fax and mail your Request Letter for negotiations and assignment for Negotiator

STEP 2: Choose a BellSouth Interconnection Services Standard Agreement that fits your business strategy.

STEP 3: Read the BellSouth Interconnection Services Start-Up Guide. The Start-Up Guide provides a wealth of useful, time saving and pertinent information that assist CLECs in the methods and procedures of working with BellSouth.

STEP 4: Additional questions? Contact the BellSouth Advisory Team at 888-560-CLEC. The Advisory Team can assist you with any questions you have regarding getting started as a CLEC in the BellSouth nine state region.

Done Trusted sites

Start

Wireless Carriers - Interconnection Agreements

Paging Interconnection Agreement

BellSouth's standard Paging interconnection agreement is for those licensed paging companies wishing to negotiate an interconnection agreement under the Telecommunications Act of 1996. This agreement contains terms, conditions, methodology and rates for paging interconnection under the Act.

Contact:
Bob Thomas
Phone 404-927-7217
Fax: 404-522-5888
Suite 34S91
675 West Peachtree Street
Atlanta, Georgia 30375

Cellular/PCS/SMR Interconnection Agreement

BellSouth's standard Cellular/PCS/SMR interconnection agreement is for those licensed wireless companies wishing to negotiate an agreement under the Telecommunications Act of 1996. This agreement contains, terms, conditions, methodology and rates for interconnection under the Act.

Contact:
Marcha Romano
Phone 404-927-7507
Fax: 404-522-5888
Suite 34S91
675 West Peachtree Street
Atlanta, Georgia 30375

BELLSOUTH Interconnection Services

Mergers & Acquisitions Process

9.0 Glossary

Merger - The consolidation of two companies. In a merger, the merged company ceases to exist as a separate business and legal entity. The surviving company assumes the assets, liabilities, franchises, and powers of the merged company by operation of law (i.e., automatically).

Asset acquisition - Company A acquires some or all of the property of company B. Typically asset acquisitions involve the transfer of some of the telephone "exchanges" operated by the selling company.

Company - A legal entity, formed under the laws of a particular state (usually), to operate a business of some type (e.g., provision of telephone service). Other types of legal entities that may perform similar functions include cooperatives, partnerships, limited liability corporations (LLCs), sub chapter S corporations, etc. For simplicity, all are referred to as "companies" in this document. As a legal entity, a "company" has the status similar to a person and can sign contracts, employ people, own assets (including other companies), and buy and sell goods and services.

M&A Chair - Merger and Acquisition Chairperson, a program manager and whose responsibility is to guide wholesale customers through the M&A process.

10.0 FAQs

Question 1: My company, ABC Telco, has just merged with Just in Time Telecom. What do I need to do to get their customers brought over to ABC Telecom's ACNA?

Answer: If you are a CLEC- then refer to the notices section in your ICA. If you are an IXC, contact your Account Team Representative.

Question 2: If my company has merged in the corporate world, why do I have to go through a merger process with BellSouth?

Answer: If BST is not notified, you will still operate as separate entities.

Question 3: My company, ABC Telecom, already does business with BellSouth and the company we just merged with, Just in Time Telecom, does as well. Why are we charged to go through the merger process with BellSouth?

Answer: There are costs associated with the changes that BST must make to align our records with the new single entity.

Question 4. Why do I need to provide a list of customers/circuits to BellSouth in order to combine my inventory?

Answer: BST requires an explicit listing of all products that are affected by the merger to ensure that the assets you have acquired are correctly identified

Question 5: My company already has a deposit on file with BellSouth. Why do I have to go through the credit process again now that my company has been through a merger?

Answer: You are assuming additional assets that may require analysis.

Question 6: My company just merged with another provider. We both currently have PSC certification. Do we have to contact the PSC/Regulatory boards about our merger?

Answer: Yes

Question 7: My company has not kept very good records over the years. What can I do if I cannot provide BellSouth an acceptable inventory of my circuits/customers?

Answer: BellSouth has an internal organization that will assist you in preparing the inventory.

Question 8: How long will the BellSouth merger process?

Answer: All timeframes are negotiated.

Question 9: What will the BellSouth merger process cost?

Answer: The rates are dependent upon the services that are impacted by the merger.

Question 10: Can my BellSouth Account Team handle this process for me?

Answer: Your merger process involves many BellSouth representatives, of which your Account Team is one.

Question 11: What documentation should I provide to BellSouth to begin the merger process?

Answer: Please refer to the Merger website. A list of forms and other documentation requirements are identified on this website.

Question 12: What is a merger?

Answer: Get definition from website.

Question 13: Will new account numbers be assigned after completion of merger?

Answer: Establishment of new accounts or use of existing accounts is dependent on the merger activities and will be communicated to you via the Merger and acquisition chairperson.

Question 14: How can I be assured that the merger process is complete?

Answer: The M&A chairperson will coordinate the merger on your behalf and contact you during the merger process and up on completion.

BEFORE THE

NORTH CAROLINA UTILITIES COMMISSION

In the Matter of	)	
	)	
Joint Petition for Arbitration of	)	
	)	
NewSouth Communications Corp.,	)	Docket No. P-772, Sub 8
NuVox Communications, Inc.	)	Docket No. P-913, Sub 5
KMC Telecom V, Inc., KMC Telecom III LLC, and	)	Docket No. P-989, Sub 3
Xspedius Communications, LLC on Behalf of its	)	Docket No. P-824, Sub 6
Operating Subsidiary Xspedius Management Co.	)	Docket No. P-1202, Sub 4
Switched Services, LLC	)	
	)	
Of an Interconnection Agreement with	)	
BellSouth Telecommunications, Inc.	)	
Pursuant to Section 252(b) of the	)	
Communications Act of 1934, as Amended	)	

BELLSOUTH TELECOMMUNICATIONS, INC.'S
FIRST SUPPLEMENTAL RESPONSES TO
THE JOINT PETITIONERS'
FIRST SET OF INTERROGATORIES

BellSouth Telecommunications, Inc. ("BellSouth") respectfully submits the following First Supplemental Responses to the First Set of Interrogatories served by NewSouth Communications Corp , NuVox Communications, Inc., KMC Telecom V, Inc., KMC Telecom III LLC, and Xspedius Communications, LLC's ("Joint Petitioners") dated April 13, 2004.

BellSouth incorporates herein by reference all of its general and specific objections filed on April 27, 2004. Any responses provided by BellSouth in response to this discovery will be provided subject to and without waiving any of BellSouth's previously filed objections.

SUPPLEMENTAL RESPONSES

ISSUE: 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?

REQUEST: Identify all documents, including but not limited to ICAs, agreements that are not ICAs, memoranda, legal pleadings, tariffs, policy statements, policy manuals and training materials, in which BellSouth discusses, explains, adopts or refers to a policy regarding whether BellSouth will issue CNAM queries and pass such information on calls exchanged between itself and another carrier. If an identified document is an ICA or an agreement that is not an ICA, please provide: (a) the name of the other party to the agreement; (b) the effective date of the agreement; (c) the termination date of the agreement; (d) the paragraph or section number of the agreement which contain the relevant provisions

RESPONSE: BellSouth objects to this interrogatory on the grounds it is overly broad and unduly burdensome. BellSouth has thousands of "ICAs", legal pleadings, tariffs, and other documents that BellSouth would need to locate, search, and review in order to respond to this interrogatory. BellSouth further objects to this interrogatory on the grounds it potentially seeks information that is already a matter of public record before this or another state commission or is readily accessible to the Joint Petitioners through publicly available means; e.g., publicly accessible website. Particularly, in light of the voluminous nature of the Joint Petitioners' request, the Joint Petitioners are not entitled to require other parties to gather information that is equally available and accessible to the Joint Petitioners. Finally, BellSouth objects on the ground that the information requested is irrelevant and not likely to lead to the discovery of admissible evidence. The language contained in other ICAs and documents involving different carriers and facts and which resulted either from negotiation or arbitration is not relevant to the specific arbitration herein. Moreover, the information requested is irrelevant because it apparently seeks information regarding the provision of a non-telecommunications service and thus outside the scope of a Section 251 arbitration.

SUPPLEMENTAL RESPONSE:

Subject to and without waiving the previously filed objections, see BellSouth's First Supplemental Response to the Joint Petitioners' First Production of Documents, Item No. 2-39-1.

ISSUE: Should the amount of the deposit that BellSouth requires from CLP be reduced by past due amounts owed by BellSouth to CLP?

REQUEST: Identify all documents, including but not limited to ICAs, agreements that are not ICAs, memoranda, legal pleadings, tariffs, policy statements, policy manuals and training materials, in which BellSouth discusses, explains, adopts or refers to a policy regarding its practices with respect to disputing and paying charges imposed by CLPs. If an identified document is an ICA or agreement, please provide: (a) the name of the other party to the agreement; (b) the effective date of the agreement; (c) the termination date of the agreement; (d) the paragraph or section number of the agreement which contain the relevant provisions.

RESPONSE: BellSouth objects to this interrogatory on the grounds it is overly broad and unduly burdensome. BellSouth has thousands of "ICAs", legal pleadings, tariffs, and other documents that BellSouth would need to locate, search, and review in order to respond to this interrogatory. BellSouth further objects to this interrogatory on the grounds it potentially seeks information that is already a matter of public record before this or another state commission or is readily accessible to the Joint Petitioners through publicly available means; e.g., publicly accessible website. Particularly, in light of the voluminous nature of the Joint Petitioners' request, the Joint Petitioners are not entitled to require other parties to gather information that is equally available and accessible to the Joint Petitioners. Finally, BellSouth objects on the ground that the information requested is irrelevant and not likely to lead to the discovery of admissible evidence. The language contained in other ICAs and documents involving different carriers and facts and which resulted either from negotiation or arbitration is not relevant to the specific arbitration herein. In addition, the requested information – BellSouth's practices regarding the payment and disputing of CLPs' bills – is irrelevant to this arbitration.

SUPPLEMENTAL RESPONSE:

Subject to and without waiving the previously filed objections, see BellSouth's First Supplemental Response to Joint Petitioner's First Request for Production of Documents, Item No. 7-8-1.

ISSUE: Should the amount of the deposit that BellSouth requires from CLP be reduced by past due amounts owed by BellSouth to CLP?

REQUEST: Please state the average or approximate average time in which BellSouth disputes and the average or approximate average time in which BellSouth pays amount invoiced by CLPs. Include an explanation of assumptions used and the manner in which the figures presented were derived.

RESPONSE: BellSouth objects to this interrogatory on the grounds that it is irrelevant and not likely to lead to the discovery of admissible evidence. Information relating to BellSouth's payment and dispute of CLP bills is irrelevant to any issue in this proceeding. Moreover, BellSouth objects on the grounds that the interrogatory is vague and ambiguous as the interrogatory contains instructions that are unintelligible.

SUPPLEMENTAL RESPONSE:

Subject to and without waiving the previously filed objections, BellSouth does not calculate the average number of days that it takes to dispute and/or pay invoices. BellSouth does measure the percentage of invoices that are paid and/or disputed in 30 days or less from the date that the invoice is received by BellSouth. Results for invoices submitted by the Joint Petitioners' are provided below:

Invoices for	CLP	Percent Paid/Disputed <= 30 Days
May 2004 – Oct 2004	Xspedius Communications Xspedius Corporation	100%
May 2004 – Oct 2004	KMC	90%

BellSouth has not received invoices from NewSouth and NuVox since March 2001 and May 2004, respectively, due to bill and keep clauses in their interconnection agreements with BellSouth.

Respectfully submitted, this 2nd day of December, 2004.

BELLSOUTH TELECOMMUNICATIONS, INC.

_____

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Atlanta, GA 30375
(404) 335-0841

COUNSEL FOR BELLSOUTH
TELECOMMUNICATIONS, INC.

543457

BEFORE THE

NORTH CAROLINA UTILITIES COMMISSION

In the Matter of	)	
	)	
Joint Petition for Arbitration of	)	
	)	
NewSouth Communications Corp.,	)	Docket No. P-772, Sub 8
NuVox Communications, Inc.	)	Docket No. P-913, Sub 5
KMC Telecom V, Inc., KMC Telecom III LLC, and	)	Docket No. P-989, Sub 3
Xspedius Communications, LLC on Behalf of its	)	Docket No. P-824, Sub 6
Operating Subsidiary Xspedius Management Co.	)	Docket No. P-1202, Sub 4
Switched Services, LLC	)	
	)	
Of an Interconnection Agreement with	)	
BellSouth Telecommunications, Inc.	)	
Pursuant to Section 252(b) of the	)	
Communications Act of 1934, as Amended	)	

BELLSOUTH TELECOMMUNICATIONS, INC.'S
FIRST SUPPLEMENTAL RESPONSES TO
THE JOINT PETITIONERS'
FIRST REQUESTS FOR PRODUCTION OF DOCUMENTS

BellSouth Telecommunications, Inc. ("BellSouth") hereby files the following First Supplemental Responses to the First Requests for Production of Documents served by NewSouth Communications Corp, NuVox Communications, Inc., KMC Telecom V, Inc., KMC Telecom III LLC, and Xspedius Communications, LLC's ("Joint Petitioners"), dated April 13, 2004.

BellSouth incorporates herein by reference all of its general and specific objections filed on April 27, 2004. Any responses provided by BellSouth in response to this discovery will be provided subject to and without waiving any of BellSouth's previously filed objections.

SUPPLEMENTAL RESPONSES

ISSUE: Should a court of law be included among the venues at which a Party may seek dispute resolution under the Agreement?

REQUEST: Provide all documents that identify (by caption, forum, case number and filing date) and describe (including the nature of the claims, procedural status, and any resolution reached) any and all complaints filed in a court of law regarding the terms, performance or enforcement of an ICA between BellSouth and a CLP.

RESPONSE: BellSouth objects on the grounds that it is overly broad and unduly burdensome. BellSouth has thousands of documents it would need to locate, search, and review in order to respond to this request. BellSouth further objects to this request on the grounds it potentially seeks information that is already a matter of public record before this or another state commission or is readily accessible to the Joint Petitioners through publicly available means; e.g., publicly accessible website. Particularly, in light of the voluminous nature of the Joint Petitioners' request, the Joint Petitioners are not entitled to require other parties to gather information that is equally available and accessible to the Joint Petitioners. Finally, BellSouth objects on the grounds that the information requested is irrelevant and not likely to lead to the discovery of admissible evidence. Complaints brought under the provisions of different ICAs involving different carriers and facts are not relevant to the specific arbitration herein.

SUPPLEMENTAL RESPONSE:

Subject to and without waiving the previously filed objections, responsive documents are attached.

ISSUE: In cases where CLP purchases UNEs from BellSouth, should BellSouth be required not to refuse to provide DSL transport or DSL services (of any kind) to CLP and its End Users, unless BellSouth has been expressly permitted to do so by the Authority?

REQUEST: Provide all documents in which BellSouth discusses, explains, adopts or refers to a policy regarding whether BellSouth will provide, or agrees to provide, DSL services of any kind to the End Users of a CLP served via UNEs purchased from BellSouth.

RESPONSE: BellSouth objects to this request on the grounds that it is vague and ambiguous because the phrase "DSL service" is not defined. BellSouth objects to this request on the grounds that it is overly broad and unduly burdensome. BellSouth has thousands of ICAs, legal pleadings, tariffs, and other documents that BellSouth would need to locate, search, and review in order to respond to this request. BellSouth further objects to this request on the grounds it potentially seeks information that is already a matter of public record before this or another state commission or is readily accessible to the Joint Petitioners through publicly available means; e.g., publicly accessible website (http://cpr.bellsouth.com/CLEC/docs/all_states/index7.htm). Particularly, in light of the voluminous nature of the Joint Petitioners' request, the Joint Petitioners are not entitled to require other parties to gather information that is equally available and accessible to the Joint Petitioners. Moreover, BellSouth objects on the ground that the information requested is irrelevant and not likely to lead to the discovery of admissible evidence. The language contained in other ICAs and documents involving different carriers and facts and which resulted either from negotiation or arbitration is not relevant to the specific arbitration herein. Moreover, the information requested is irrelevant because it purportedly seeks information regarding the provision of DSL service, which is not a telecommunications service and thus outside the scope of a Section 251 arbitration.

SUPPLEMENTAL RESPONSE:

Subject to and without waiving the previously filed objections, responsive documents are attached.

ISSUE: Where BellSouth provides such transport or services to CLP 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?

REQUEST: Provide all documents in which BellSouth discusses, explains, adopts or refers to the rates, terms and conditions under which DSL service of some kind is provided to a CLP or the customers of a CLP served via UNEs purchased from BellSouth.

RESPONSE: BellSouth objects to this request on the grounds that it is vague and ambiguous because the phrase "DSL service" is not defined. BellSouth objects to this request on the grounds that it is overly broad and unduly burdensome. BellSouth has thousands of ICAs, legal pleadings, tariffs, and other documents that BellSouth would need to locate, search, and review in order to respond to this request. BellSouth further objects to this request on the grounds it potentially seeks information that is already a matter of public record before this or another state commission or is readily accessible to the Joint Petitioners through publicly available means; e.g., publicly accessible website (http://cpr.bellsouth.com/CLEC/docs/all_states/index7.htm). Particularly, in light of the voluminous nature of the Joint Petitioners' request, the Joint Petitioners are not entitled to require other parties to gather information that is equally available and accessible to the Joint Petitioners. Moreover, BellSouth objects on the ground that the information requested is irrelevant and not likely to lead to the discovery of admissible evidence. The language contained in other ICAs and documents involving different carriers and facts and which resulted either from negotiation or arbitration is not relevant to the specific arbitration herein. Moreover, the information requested is irrelevant because it purportedly seeks information regarding the provision of DSL service, which is not a telecommunications service and thus outside the scope of a Section 251 arbitration.

SUPPLEMENTAL RESPONSE:

Subject to and without waiving the previously filed objections, see BellSouth's First Supplemental Response to the Joint Petitioners' First Requests for Production of Documents, Item No. 2-28(A)-1.

ISSUE: 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?

REQUEST: Provide all documents in which BellSouth discusses, explains, adopts or refers to a policy regarding whether BellSouth will issue CNAM queries and pass such information on calls exchanged between itself and another carrier.

RESPONSE: BellSouth objects to this request on the grounds that it is overly broad and unduly burdensome. BellSouth has thousands of ICAs, legal pleadings, tariffs, and other documents that BellSouth would need to locate, search, and review in order to respond to this request. BellSouth further objects to this request on the grounds it potentially seeks information that is already a matter of public record before this or another state commission or is readily accessible to the Joint Petitioners through publicly available means; e.g., publicly accessible website (http://cpr.bellsouth.com/CLEC/docs/all_states/index7.htm). Particularly, in light of the voluminous nature of the Joint Petitioners' request, the Joint Petitioners are not entitled to require other parties to gather information that is equally available and accessible to the Joint Petitioners. Moreover, BellSouth objects on the ground that the information requested is irrelevant and not likely to lead to the discovery of admissible evidence. The language contained in other ICAs and documents involving different carriers and facts and which resulted either from negotiation or arbitration is not relevant to the specific arbitration herein. Moreover, the information requested is irrelevant because it purportedly seeks information regarding the provision of a non- telecommunications service and thus outside the scope of a Section 251 arbitration.

SUPPLEMENTAL RESPONSE:

Subject to and without waiving the previously filed objections, responsive documents are attached. Attachment B contains BellSouth affiant Malika Blakely's Affidavit Exhibit B which is proprietary and is being provided pursuant to the terms of the parties' protective agreement.

ISSUE: 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?

REQUEST: Provide all documents in which BellSouth discusses, explains, adopts or refers to a policy regarding whether it is technically feasible for BellSouth to issue CNAM queries and pass such information on calls exchanged between itself and another carrier. If an identified document is an ICA or agreement, please provide: (a) the name of the other party to the agreement; (b) the effective date of the agreement; (c) the termination date of the agreement; (d) the paragraph or section number of the agreement which contain the relevant provisions

RESPONSE: BellSouth objects to this request on the grounds that it is overly broad and unduly burdensome. BellSouth has thousands of ICAs, legal pleadings, tariffs, and other documents that BellSouth would need to locate, search, and review in order to respond to this request. BellSouth further objects to this request on the grounds it potentially seeks information that is already a matter of public record before this or another state commission or is readily accessible to the Joint Petitioners through publicly available means; e.g., publicly accessible website (**http://cpr.bellsouth.com/CLEC/docs/all_states/index7.htm**). Particularly, in light of the voluminous nature of the Joint Petitioners' request, the Joint Petitioners are not entitled to require other parties to gather information that is equally available and accessible to the Joint Petitioners. Moreover, BellSouth objects on the ground that the information requested is irrelevant and not likely to lead to the discovery of admissible evidence. The language contained in other ICAs and documents involving different carriers and facts and which resulted either from negotiation or arbitration is not relevant to the specific arbitration herein. Moreover, the information requested is irrelevant because it purportedly seeks information regarding the provision of a non- telecommunications service and thus outside the scope of a Section 251 arbitration.

SUPPLEMENTAL RESPONSE:

Subject to and without waiving the previously filed objections, see BellSouth's First Supplemental Response to the Joint Petitioners' First Requests for Production of Documents, Item No. 2-39-1.

ISSUE: 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?

REQUEST: Provide all documents which BellSouth discusses, explains, adopts or refers to a policy regarding which party bears the cost when BellSouth issues CNAM queries and pass such information on calls exchanged between itself and another carrier.

RESPONSE: BellSouth objects to this request on the grounds that it is overly broad and unduly burdensome. BellSouth has thousands of ICAs, legal pleadings, tariffs, and other documents that BellSouth would need to locate, search, and review in order to respond to this request. BellSouth further objects to this request on the grounds it potentially seeks information that is already a matter of public record before this or another state commission or is readily accessible to the Joint Petitioners through publicly available means; e.g., publicly accessible website (**http://cpr.bellsouth.com/CLEC/docs/all_states/index7.htm**). Particularly, in light of the voluminous nature of the Joint Petitioners' request, the Joint Petitioners are not entitled to require other parties to gather information that is equally available and accessible to the Joint Petitioners. Moreover, BellSouth objects on the ground that the information requested is irrelevant and not likely to lead to the discovery of admissible evidence. The language contained in other ICAs and documents involving different carriers and facts and which resulted either from negotiation or arbitration is not relevant to the specific arbitration herein. Moreover, the information requested is irrelevant because it purportedly seeks information regarding the provision of a non- telecommunications service and thus outside the scope of a Section 251 arbitration.

SUPPLEMENTAL RESPONSE:

Subject to and without waiving the previously filed objections, see BellSouth's First Supplemental Response to the Joint Petitioners' First Requests for Production of Documents, Item No. 2-39-1.

ISSUE: Should BellSouth be able to charge the CLP a Tandem Intermediary Charge for the transport and termination of Local Transit Traffic and ISP-Bound Transit Traffic?

REQUEST: Provide all documents regarding the percentage of the proposed TIC rate that BellSouth seeks include in the Agreement that is attributable to unduplicated cost recovery and that which represents profit.

RESPONSE: BellSouth objects to this request on the grounds that it is vague, ambiguous, and unintelligible. Without clarification, BellSouth is unable to provide a response. Regarding the request to produce cost information, BellSouth further objects on the grounds that it requires the disclosure of confidential and proprietary cost information and to the extent that providing a response imposes an obligation on BellSouth that does not exist under the law. Additionally, BellSouth objects to this request on the grounds that the TIC rate is a market-based rate thus is irrelevant to the issues in this docket.

SUPPLEMENTAL RESPONSE:

Subject to and without waiving the previously filed objections, BellSouth does not have any such documentation because the TIC is a market based rate.

ISSUE: Should the amount of the deposit that BellSouth requires from CLP be reduced by past due amounts owed by BellSouth to CLP?

REQUEST: Provide all documents in which BellSouth discusses, explains, adopts or refers to a policy regarding its practices with respect to disputing and paying charges imposed by CLPs.

RESPONSE: BellSouth objects to this request on the grounds that it is overly broad and unduly burdensome. BellSouth has thousands of ICAs, legal pleadings, tariffs, and other documents that BellSouth would need to locate, search, and review in order to respond to this request. BellSouth further objects to this request on the grounds it potentially seeks information that is already a matter of public record before this or another state commission or is readily accessible to the Joint Petitioners through publicly available means; e.g., publicly accessible website (**http://cpr.bellsouth.com/CLEC/docs/all_states/index7.htm**). Particularly, in light of the voluminous nature of the Joint Petitioners' request, the Joint Petitioners are not entitled to require other parties to gather information that is equally available and accessible to the Joint Petitioners. Moreover, BellSouth objects on the ground that the information requested is irrelevant and not likely to lead to the discovery of admissible evidence. The language contained in other ICAs and documents involving different carriers and facts and which resulted either from negotiation or arbitration is not relevant to the specific arbitration herein. BellSouth further objects on the grounds that the request seeks information that is irrelevant and not likely to lead to the discovery of admissible evidence as the conduct of BellSouth's own employees is not at issue in this proceeding.

SUPPLEMENTAL RESPONSE:

Subject to and without waiving the previously filed objections, responsive documents are attached. The information contained in Attachment B is proprietary and is being provided to the parties pursuant to the terms of the parties' protective agreement.

ISSUE: Should the amount of the deposit that BellSouth requires from CLP be reduced by past due amounts owed by BellSouth to CLP?

REQUEST: Provide all documents stating the average or approximate average time in which BellSouth disputes and the average or approximate average time in which BellSouth pays amount invoiced by CLPs.

RESPONSE: BellSouth objects to this interrogatory on the grounds that it is irrelevant and not likely to lead to the discovery of admissible evidence. Information relating to BellSouth's payment and dispute of CLPs bills is irrelevant to any issue in this proceeding. Moreover, BellSouth objects on the grounds that the interrogatory is vague and ambiguous as the interrogatory contains instructions that are unintelligible.

SUPPLEMENTAL RESPONSE:

Subject to and without waiving the previously filed objections, see BellSouth's First Supplemental Response to Joint Petitioner's First Set of Interrogatories, Item No. 7-8-2.

Respectfully submitted, this 2nd day of December, 2004.

BELLSOUTH TELECOMMUNICATIONS, INC.

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BellSouth Telecommunications, Inc.
North Carolina Utilities Commission
Docket Nos. P-772, Sub 8; P-913, Sub 5; P-989, Sub 3; P-824, Sub 6; and P-1202, Sub 4
Joint Petitioners' 1st Request for Production
April 6, 2004
SUPPLEMENTAL RESPONSE Item No. G-9-2

ATTACHMENT TO REQUEST FOR PRODUCTION, SUPPLEMENTAL RESPONSE TO, ITEM NO. G-9-2

DUPLICAT

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

COVAD COMMUNICATIONS COMPANY, and DIECA COMMUNICATIONS, INC. d/b/a COVAD COMMUNICATIONS COMPANY, Plaintiffs, v. BELLSOUTH CORPORATION, and BELLSOUTH TELECOMMUNICATIONS, INC., Defendants.	Civ. A. No.: **COMPLAINT** 1:00-CV-3414 **JURY TRIAL REQUESTED**

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INTRODUCTION

1. This is an action for damages arising out of the unlawful, anticompetitive, and fraudulent practices of BellSouth Corporation and its subsidiaries including BellSouth Telecommunications, Inc. (collectively "BellSouth") which have constrained competition in certain markets for local telecommunications services. In particular, BellSouth's unlawful conduct has hindered Covad Communications Company and DIECA Communications, Inc. (collectively "Covad"), a significant new entrant in the marketplace, from competing to offer a valuable new service, Digital Subscriber Line technology ("DSL"), to customers in local telecommunications markets in BellSouth's region.

JURISDICTION AND VENUE

2. This is a civil action arising under the antitrust laws of the United States. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331 and 15 U.S.C. § 15 over the claims relating to violations of Sections 1 and 2 of the Sherman Act. This Court has supplemental jurisdiction over the state law claims pursuant to 28 U.S.C. § 1367(a) because the state and federal claims originate from a common nucleus of operative facts. In addition, this Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1332 because this is an action between citizens of different states and the amount in controversy exceeds $75,000.

3. Venue is proper pursuant to 15 U.S.C. § 22 and 28 U.S.C. § 1391(b) and (c). Under 28 U.S.C. § 1391(c), a corporation "shall be deemed to reside in any judicial district in which it is subject to personal jurisdiction at the time the action is commenced." Defendants are subject to personal jurisdiction in this judicial district because their principal places of business are located here. Under 28 U.S.C. § 1391(b), venue may be laid in "a judicial district where any defendant resides, if all defendants reside in the same state." In addition, a substantial part of the events and omissions giving rise to the claims stated in this Complaint occurred in this judicial district. 28 U.S.C. § 1391(b)(2).

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THE PARTIES

4. Plaintiff Covad Communications Company is a California corporation with its principal place of business in Santa Clara, California.

5. Plaintiff DIECA Communications, Inc., a wholly-owned subsidiary of Covad Communications Group, is a Virginia corporation with its principal place of business in Santa Clara, California. Plaintiffs are collectively referred to here as "Covad."

6. Covad is a competitive local exchange carrier ("CLEC"); that is, it competes with incumbent local exchange carriers ("ILECs") such as BellSouth who have long enjoyed the benefits of monopoly power over local telecommunication services in a given geographic area. Founded in 1996, Covad is a publicly traded telecommunications company that offers high-speed local telecommunications service by using Digital Subscriber Line or "DSL" technology to connect customers to the Internet over local telephone lines.

7. Covad's direct customers are Internet service providers ("ISPs"). The end users of the service are business and consumers who use DSL to connect to the Internet and to enable their employees to connect with the businesses' internal computer networks (or "local area networks") from their homes using "virtual private network" software. They obtain both DSL service and Internet access by contracting with ISPs to whom Covad sells DSL service, in competition with BellSouth.

8. Covad's services directly benefit the end users – the individual Internet users and employees themselves – by providing a relatively inexpensive and convenient high-speed connection to the Internet, and indirectly to their employers' local area network. This connection is described as "always on" because there is no need to dial into a network for each use.

9. The Defendants in this case are BellSouth Corporation and BellSouth Telecommunications, Inc. (hereafter collectively "BellSouth"). BellSouth Corporation is a Georgia corporation with its principal place of business in Atlanta, Georgia. Defendant

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BellSouth Telecommunications, Inc. is a wholly owned subsidiary of BellSouth Corporation. It is a Georgia corporation with its principal place of business in Atlanta, Georgia.

10. BellSouth is one of the Regional Bell Operating Companies ("RBOCs") that was divested from AT&T as part of the 1983 Modified Final Judgment entered by the Federal District Court for the District of Columbia, and permitted to provide local exchange service throughout a specified region of the country which comprises all or significant parts of Alabama, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina, and Tennessee (the "BellSouth Region").

11. BellSouth Corporation (the parent) and its subsidiaries are effectively one enterprise. BellSouth controls its subsidiaries to such a degree that they are merely its instrumentalities and act as its extension. The facts alleged in this Complaint are wrongs that BellSouth has perpetrated through its subsidiaries, which serve as instrumentalities acting on its and their collective behalf, and wrongs in which BellSouth's subsidiaries act as its agent and alter ego. For example, BellSouth coordinates an overall position concerning access to physical facilities and provisioning of services. BellSouth operates a single wholesale operation on behalf of all the BellSouth subsidiaries. It coordinates the sale, joint advertising and marketing of its own DSL services among all the BellSouth subsidiaries.

BACKGROUND

A. BellSouth's Monopoly Over Local Telephone Service And Facilities

12. BellSouth's monopoly over local telecommunications services is founded on its historical and continuing control of the ubiquitous physical facilities that form the massive local telecommunications network in the BellSouth Region. Those physical facilities include, among other things: (1) millions of telephone lines (referred to as "loops" in the industry) to residential and business users; (2) many hundreds of "central offices" – buildings where residential and business telephone lines converge and are connected to the rest of the local phone network; (3) transmission facilities (referred to as "transport") between central offices (as well as

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poles, conduits, ducts, rights of way, and so forth); and (4) operations support systems, which are all the systems used by BellSouth to order, provision, repair and maintain this extensive network.

13. As the dominant, or in most cases, sole provider of local telecommunications facilities in the BellSouth Region, BellSouth maintains overwhelming control and monopoly power in the market for central offices, loops, transport and other equipment necessary to make local telephone connections. Indeed, almost any local telephone connection in the BellSouth Region – whether a traditional voice call or a data transmission connection, such as to the Internet – relies largely, if not exclusively, on equipment owned by BellSouth, and must be ordered and administered using BellSouth's operations support systems ("OSS").

14. Covad was formed in 1996 to take advantage of the growing demand for Internet access and the ILECs' failure to respond to that demand. Covad uses DSL technology, which provides high-speed data transmission (from 5 to 50 times faster than a 28.8k modem) over local telephone lines. Over the last five years, high-speed connection to the Internet has become critical to individuals and to businesses as Internet and local area network usage has skyrocketed. DSL customers not only use their service to connect to the Internet, but also use virtual private network software to telecommute by connecting through the Internet to their corporate local area networks. In addition to speed, Covad's services offer customers the advantage of paying a flat monthly fee, no matter how much time they spend using the services. The service is "always on," meaning that the user need not place a telephone call to a computer network to use it – the connection is constant. Covad offers a superior product: a suite of DSL services that offers price/performance packages superior to competing services offered by BellSouth.

15. DSL technology has been available for a number of years; however, BellSouth and other ILECs had not been offering it on a broad scale because the ILECs did not wish to reduce their revenues from more profitable services by offering DSL as an alternative.

16. Access to BellSouth's facilities is essential to Covad and other competitors, because alternative facilities are not reasonably or practically available. Duplication of the Bell system's ubiquitous physical facilities, even in a single metropolitan area, would be prohibitively costly, time-consuming and redundant. There is no practical and commercially viable way to provide widely available local voice or data service without relying on BellSouth's ubiquitous local telephone network.

B. Market Definitions

17. In the BellSouth Region, Covad and other CLECs compete with BellSouth in the market for local telecommunications services providing residences and small and medium-sized businesses with connections to their Internet Service Providers ("ISPs") – in other words, the market for connecting people at home or at work to the Internet through their ISP (the "Local Internet Access Market").

18. Currently, BellSouth dominates the Local Internet Access Market through the sale of four types of services: POTS, ISDN, DSL, and other high-capacity dedicated services, including T-1 and Frame Relay service.

19. POTS ("plain old telephone service") is the basic, analog local telecommunications service. Although POTS originally handled mostly voice calls, for the last decade, POTS has been used for dial-up connections to the Internet and other computer networks via modems, including the 28.8k and 56k modems offered as standard equipment on most personal computers. POTS provides the overwhelming majority of connections to ISPs and, thus, to the Internet. POTS service, however, has several drawbacks. POTS operates at low speeds (leading, for example, to long wait times as users download a web page) and users must dial up each time they connect to the network. In some areas, users must pay long distance toll charges for the ISP connection because there is no local Internet access.

20. ISDN ("Integrated Services Digital Network") service is a digital telecommunications service that relies on the same telephone lines and infrastructure that

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BellSouth uses to provide POTS. BellSouth has used this fact to tout the benefits of ISDN. At 128 kilobits per second, ISDN transmission speeds are several times faster than POTS, but they are still slower than most types of DSL service. As with POTS, most ISDN services require users to dial up each time they wish to use the service, resulting in per-minute usage charges that can make ISDN prohibitively expensive. BellSouth actively markets its ISDN service to home users and business customers for their telecommuter and other Internet connection needs.

21. BellSouth offers other dedicated high-speed services, such as T-1 and Frame Relay services, marketed under a variety of names. To use these services, customers in some cases pay BellSouth a flat monthly fee plus mileage-based fees. BellSouth actively markets these dedicated services to ISPs, their users, and to medium and large business customers for Internet connections.

22. BellSouth, Covad and others offer DSL services that rely on the same telephone lines and infrastructure as POTS and ISDN. These services are much faster than POTS and ISDN, and use a constant, or dedicated, connection, thus eliminating the need to dial up every time a customer wants to connect to the Internet. While Covad offers several different types of DSL, BellSouth provides only ADSL (Asymmetrical Digital Subscriber Line), a service in which download speed is greater than upload speed. BellSouth markets this service to home users under the FastAccess℠ brand name. Covad's DSL services, marketed under the brand names TeleSpeed℠ and TeleSurfer℠, provide a better combination of coverage, speed, cost, and quality than BellSouth's offerings.

23. Covad's services compete with all of the above-mentioned BellSouth services to meet the needs of the Local Internet Access Market. BellSouth, however, retains an overwhelming share of the market and wields monopoly power in it. In addition, BellSouth controls the facilities used by Covad and other CLECs to compete with BellSouth.

24. Demand for local telecommunications services – including demand in the Local Internet Access Market – is extremely localized. Specifically, each central office, which

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serves several thousand customers, constitutes a separate and independent relevant market. This is because each telephone customer's loop connects to only one central office. There is no overlap among central offices. Thus, if a competitor such as Covad cannot place (or "collocate") its equipment in a particular central office, it is shut out of that market: it cannot serve any customer whose local loop terminates in that office. BellSouth, as the sole owner of nearly every central office in the BellSouth Region, has monopoly power in each central office geographic market in its service area. In those markets from which BellSouth has excluded Covad altogether, its market share of the Local Internet Access Market approaches 100%. Its market share remains extremely high even in those markets in which it has nominally allowed Covad access, due to its anticompetitive conduct described below.

C. The Need For Access To BellSouth's Network

25. To compete against BellSouth, Covad requires access to essential parts of the local telephone network over which BellSouth exercises total control: ([redacted] connect its own network facilities with the massive network owned by BellSouth (a process called "collocation"); (2) the loop order placement and completion processes and databases known as operations support systems or "OSS"; (3) the actual loops that connect end users to BellSouth central offices, and (4) "[redacted]

26. Access to each of these features is essential to ensure that there is a connection between Covad's network, Covad's customer (i.e., a particular Internet Service Provider) and the customer's end users (i.e., the people or businesses that use the ISP). Covad is then able to use that connection to provide its high-speed DSL service. These, among other elements of BellSouth's network, are thus absolutely essential to Covad's business.

27. Moreover, access to collocation, OSS, loops and transport must be dependable, timely and affordable. Although BellSouth certainly can prevent Covad from

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competing by denying effective collocation, OSS, loops or transport outright, BellSouth can also illegally wield its monopoly power by other, less obvious means. For example, when BellSouth forces Covad to wait months for loops or collocation, demands exorbitant fees, or provides Covad with inadequate equipment, BellSouth has also effectively prevented Covad from competing. This is particularly true in light of Covad's business strategy, which focuses on speed of entry into the market and widespread geographic coverage. As to speed of market entry, Covad has in several areas of the country been the first DSL provider, and that early start has been crucial to Covad's success. A first provider has the advantage of establishing long-term contracts with customers and quickly developing brand-name recognition. Foot-dragging by an ILEC in providing collocation, transport, OSS, or loops can, even in a few short months, result in a tremendous loss of competitive advantage to a start-up such as Covad. In the BellSouth Region, Covad first applied for collocation space in August, 1998, but was unable to offer service until August, 1999.

28. Geographic coverage is also crucial. To be attractive to ISPs, Covad must be able to serve customers across a broad geographic area, because it is important for ISPs to be able to market their services to all of their customers, not just those served by selected central offices. Thus, BellSouth's refusal to provide Covad collocation in even a few central offices in a given metropolitan area effectively limits Covad's ability to reach customers throughout the area, and not merely in the denied COs.

D. The Interconnection Agreement

29. Covad's goal is to provide DSL service as a competitive alternative to BellSouth's domination of the Local Internet Access Market. BellSouth's existing local telephone network is absolutely essential to Covad's ability to provide that competitive alternative. BellSouth completely controls that network, and no reasonable alternative to BellSouth's network exists or could feasibly be created. As a result, Covad needs access to the BellSouth network to compete. At the most elemental level, Covad requires BellSouth to do four

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things to provide Covad the necessary access: (1) [redacted]; (2) [redacted] must provide high bandwidth telephone [redacted]; (3) [redacted] process – comparable to that [redacted] for local loops for its customers, [redacted]); and (4) o[redacted]r.

30. To obtain the network access (including collocation, transport, OSS and loops) necessary to compete against BellSouth, Covad entered into an interconnection agreement (the "Agreement") with BellSouth that applies in the states of Alabama, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina, and Tennessee. The pricing of services differs from state to state and is contained in addenda to the Agreement; otherwise the terms of the Agreement are applicable to all states in the BellSouth Region. The Agreement is structured to provide Covad collocation and access to essential portions of BellSouth's network on just, reasonable, and non-discriminatory terms, and fulfills some of BellSouth's negotiation duties under Section 252 of the Telecommunications Act of 1996 (the "Telecom Act"). By definition, execution of the Agreement does not itself satisfy BellSouth's obligation to provide Covad with collocation and unbundled network elements in a just, reasonable and nondiscriminatory manner pursuant to that Agreement.

Collocation

31. The Agreement provides for two types of collocation – physical collocation (including both "caged" and "cageless") and virtual collocation. Under physical collocation arrangements, Covad places its own equipment in the central office and is supposed to have round-the-clock access to that equipment. Under virtual collocation arrangements, Covad is required to sell its equipment to BellSouth and then lease it back. CLEC access to the

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equipment for maintenance and repair is uncertain at best in virtual arrangements. Physical collocation is a far more preferable competitive alternative because it allows CLECs access to their equipment at all times, enabling them to maintain and ensure the quality of their service, a critical cornerstone in their efforts to compete by offering exceptional service. As a result, it is strongly favored by the Telecom Act and applicable FCC regulations.

32. The Agreement grants Covad the right to occupy space within the BellSouth premises, designated as "Collocation Space." Should BellSouth determine that insufficient space exists in a CO to provision collocation space to conform to Covad's application, it must notify Covad and must timely file a petition with the appropriate state public utilities commission seeking a determination that no space is available.

33. Physical collocation involves placement of Covad's equipment in BellSouth's central office or other premises. Covad retains ownership of the equipment, has access to it and can operate, maintain, and upgrade it at will. Such direct access to its equipment enables Covad to control the quality of the service that Covad is using to compete with an ILEC, like BellSouth, and thus Covad always prefers physical collocation arrangements.

34. For physical collocation, BellSouth initially required Covad either to build large caged enclosures or to lease large amounts of segregated space in the CO, despite Covad's need for very modest space. This imposed unnecessary delays and costs on Covad. In fact, BellSouth refused to discuss alternative collocation arrangements and included language in the original Agreement stating that "BellSouth will design and construct at [Covad's] expense and agreed to specifications, a wall or other delineation to establish a clear division between the Collocation Space and other areas of the Central Office dedicated to BellSouth's use." Furthermore, BellSouth routinely selected space for Covad's equipment that would require construction, addition of wiring and cabling, or augmentations to the power equipment or air conditioning systems, rather than using existing, prepared space in the central office.

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35. In response to this practice, the FCC specifically mandated "cageless collocation" in its March 31, 1999 Advanced Services Order. The FCC found efficient use of collocation space to be crucial to the continued development of the competitive telecommunications market, and concluded that ILECs had used the construction of cages as a means of delaying, and imposing substantial unnecessary costs upon, their competitors. Consequently, the FCC ordered the ILECs to allow CLECs to collocate their equipment without having to first pay for, and wait for, the construction of a cage. Since no construction is required, the ILECs should be able to implement cageless collocation more quickly and more inexpensively than caged collocation. The Advanced Services Order also required ILECs to allow Covad to order collocation space in smaller increments than had been their practice.

36. Physical cageless collocation demands very little space. Covad, for example, can place its equipment in just a few feet of space at the ends of unfilled BellSouth lineups (a lineup is a row of bays housing BellSouth's equipment), and in other spaces that already have lighting, heating, ventilation, air conditioning, cables, iron work, and other essentials.

37. While physical collocation allows a chance for true competition, virtual collocation hinders the CLEC by allowing the ILEC absolute control over the CLEC's equipment. In virtual collocation, Covad can put its equipment in a central office, but has to sell its equipment at some nominal cost (such as $1.00) to BellSouth. Thereafter, Covad has no right to access, operate, maintain, or upgrade the collocated equipment. Instead, Covad must pay to train BellSouth employees how to use Covad's equipment, and then depends entirely on BellSouth to maintain its service (also for a fee). In other words, virtual collocation is a method by which a CLEC puts its proprietary technology and the quality of its service entirely in the hands of its competitor and pays for the privilege. Of course, Covad has chosen virtual collocation only when BellSouth has denied physical collocation, leaving Covad no choice but to accept virtual collocation or forgo serving all of the end users in the CO in question (and all ISPs

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who demand coverage in those COs). Virtual collocation puts Covad's equipment, and thus its service, at the mercy of BellSouth.

OSS

38. The Agreement requires that BellSouth provide nondiscriminatory access to its operations support systems, or "OSS", which is necessary for Covad and other CLECs to compete with BellSouth in the Local Internet Access Market. OSS is an umbrella term for all of the electronic and manual operational systems used by BellSouth to pre-qualify orders, to place orders, and to provision orders. OSS are composed of various "back office" systems, databases and personnel that an ILEC uses to commercially provision telecommunications service to its retail and wholesale customers. To a great extent, nondiscriminatory access to BellSouth's OSS determines how successful Covad will be. BellSouth itself has elaborate OSS to enable its many divisions, including its retail ADSL group, to run their businesses economically. The FCC has determined that certain OSS functions – pre-ordering, ordering, provisioning, repair and maintenance, and billing – are essential to competitive carriers to deliver local exchange and exchange access service at the minimum level expected by customers.

39. Electronic pre-ordering and ordering systems are critical to growing Covad's business. Recognizing the opportunity to capture the DSL market, BellSouth has in place electronic pre-ordering and ordering systems for its own retail DSL services. Other ILECs have developed Electronic Data Interface ("EDI") systems for competitive carriers to perform the essential pre-ordering and ordering functions. EDI enables the ILECs and CLECs to exchange data so that competitive carriers will be able to qualify loops, place orders through electronic means and constantly check on the status of orders as they move through the ILEC ordering and provisioning process. BellSouth has failed to construct a EDI for pre-ordering, ordering, repair and maintenance of DSL loops, despite its promises to provision an EDI systems for DSL as long ago as September 1999. To the extent manual processes are part of BellSouth's

OSS, Covad must use manual processes as well, at great expense and with a tremendous loss of efficiency.

Loops

40. To reach an end user, Covad depends on BellSouth to provision "local loops," the copper wires connecting the end users to their serving central offices (or to an intervening remote terminal between the end user premises and the central office). Commonly referred to as the "last mile" to the residential customer, the loop is the part of the communications network that is most difficult to duplicate, and over which BellSouth has the most absolute monopoly power. The local loop has been recognized as essential to any form of local telephone competition.

41. In most cases, a loop is a simple pair of twisted copper wires that can carry both analog voice signals and digital transmissions from the CO to the end user's premises. The particular DSL services available to an end user depend on the user's distance from the central office, i.e., the length of the loop. Nonetheless, virtually all potential end users in the BellSouth Region can be served with one of Covad's DSL services.

42. The Agreement states that "BellSouth will offer loops capable of supporting telecommunications services such as: POTS, Centrex, basic rate ISDN, analog PBX, voice grade private line, and digital data (up to 64 kb/s), ADSL and HDSL." The Agreement obligates BellSouth to offer loops that are consistent with either its own technical standards or applicable industry standards, whichever is greater. Thus, if industry standards improve the reach of certain types of loops, BellSouth is obligated to offer loops to Covad consistent with industry standards.

Transport

43. Transport facilities are another essential component of the local telephone network, over which BellSouth maintains monopoly power in its service region. Transport facilities are used to provide point-to-point, high bandwidth connections. When configuring a

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DSL network, access to transport facilities is absolutely essential to the ability to deliver service. Covad utilizes a hub-and-spoke network configuration, which is the most efficient method of DSL network configuration. Within a given metropolitan area, Covad designates one or more critically located COs as hub COs. Covad then utilizes transport facilities to provide the connection between various spoke COs and the hub CO. Thus, all the communications traffic for each CO passes over the transport facilities to a hub CO, where that traffic is converged onto another transport facility for transmission to Covad's own data center.

44. Without transport, Covad's network will not function. Transport delays and denials – just like collocation delays and denials – render entire geographic regions, not just individual customers, without the benefits of the choice of Covad's competitive DSL services. When Covad cannot obtain transport between a spoke CO and a hub CO, Covad is unable to offer any service, at all, in the spoke CO. This affects the desirability of Covad's service in more than just the CO directly affected, because Covad's ISP customers highly value the ability to offer DSL on a broad geographic basis. Worse, when Covad cannot obtain transport between a hub CO and its data center, it is unable to offer DSL service to any one of the COs connected to that hub, rendering an entire metropolitan area without Covad's competitive alternatives.

BELLSOUTH'S UNLAWFUL CONDUCT

45. Because Covad's market entry and service offerings pose a real threat to BellSouth's monopoly power in the Local Internet Access Markets in the BellSouth Region, BellSouth has engaged in a pattern of anticompetitive conduct generally designed to leverage BellSouth's monopoly power obtained through its ubiquitous local telecommunications network into artificially enhanced market power in the Local Internet Access Markets. BellSouth has engaged in a wide variety of unlawful, exclusionary and anticompetitive acts with the intent and inevitable effect of injuring, thwarting or eliminating Covad as an actual or potential competitor.

46. BellSouth's anticompetitive conduct falls into four categories: (1) it refused to allow Covad entry into certain markets (through denied or delayed provisioning of

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space for Covad's equipment ("collocation"); (2) once BellSouth did allow Covad to place its equipment, BellSouth's manual systems made it prohibitively expensive and time-consuming to place orders (especially given the volume of orders Covad planned to place); (3) once BellSouth accepted a Covad order, BellSouth failed to provision it in a timely and commercially reasonable way; and (4) BellSouth erected a series of impediments to Covad's penetration of its monopoly hold on the Local Internet Access Market. Each of these will be discussed in detail below.

Collocation As An Exclusion Device

A. False Collocation Denials

47. Pursuant to the Agreement, BellSouth agreed to provide and Covad regularly requested physical collocation in BellSouth COs throughout the BellSouth Region. Covad cannot offer its services at all, in any BellSouth CO, without collocation of its own equipment in that CO. Despite that clear and absolute need, and its own agreement, BellSouth has continually denied Covad physical collocation despite its availability.

48. Often, BellSouth's exclusion of Covad was simple and outright, and took the form of intentional false representations that no collocation space existed in given BellSouth COs. One such example is BellSouth's false denial of physical collocation in BellSouth's Alpharetta, Georgia CO. In August 1998, Covad applied for physical collocation in the Alpharetta CO. BellSouth denied Covad's request, intentionally misrepresenting that there was no available space. In December 1998, BellSouth informed Covad that there was a chance that space would soon be available, and asked Covad to reapply for space. Covad reapplied. In February 1999, BellSouth informed Covad that it was on the waiting list for physical collocation in the Alpharetta CO. By July 1999, BellSouth had still failed to offer Covad any physical collocation space in the Alpharetta CO. Covad again applied for physical collocation, and was told that another CLEC was ahead of Covad on the physical collocation waiting list. Covad requested an inspection of the Alpharetta CO; BellSouth agreed in October 1999. At that point, BellSouth still maintained, falsely, that no physical collocation space was available in the

Alpharetta CO. On October 20, 1999, representatives from Covad, Sprint and BellSouth attended the inspection. It was obvious – indeed, a BellSouth representative admitted – that there was ample space available for physical collocation, both in the old facility and the large new addition that was completed in July 1999. On October 28, 1999, nearly fourteen months after Covad's request for physical collocation and just eight days after the inspection, BellSouth officially admitted space existed, and offered Covad physical collocation space in the Alpharetta CO.

49. The same pattern repeated itself elsewhere in BellSouth's territory. For example, Covad requested space for physical collocation in the Fayetteville, Georgia CO in August 1998, and for space in the Miami (Golden Glades) CO in Florida, in January 1999. In each case, BellSouth intentionally misrepresented that no space was available for physical collocation. In each instance, when Covad challenged BellSouth's pronouncement and threatened to conduct an inspection, BellSouth's fraud was revealed and it miraculously "discovered" space for collocation – though not without having first imposed substantial delays on Covad.

B. Collocation Delays

50. The process BellSouth established for providing collocation to Covad is extremely burdensome and imposes unnecessary delay. The process works as follows: Covad must submit an 8-page collocation application detailing the space needed and the equipment it plans to place in that space, as well as providing BellSouth with $3,850 application fee. BellSouth then returns a "price quote," informing Covad that space is available and what it will cost to have the collocation space provisioned. Covad must then place a "firm order" for the collocation space, and pay one half of the space preparation fee, usually thousands of dollars. After receiving the firm order, BellSouth begins to provision the space. BellSouth interposes unnecessary, unreasonable and anticompetitive delays at each stage of the collocation process.

1) Price Quotes

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51. Even when BellSouth nominally deigned to provide collocation to Covad, it generally failed to do so in a commercially reasonable manner. Rather, BellSouth consistently imposed unnecessary, anticompetitive and unreasonable delays in the provisioning of collocation space. The Agreement provides exceedingly generous timelines within which BellSouth is to provision collocation space. First, BellSouth is to provide a price quote within 30 days of receipt of a Covad collocation request. Second, BellSouth is to provide a fully built-out collocation space within 120 days of receipt of Covad's firm order for that space.

52. BellSouth has consistently failed to adhere even to the generous time intervals prescribed in the Agreement. BellSouth collocation practices are flagrantly anticompetitive, especially compared with other ILECs. While some of its fellow ILECs have agreed and are able to return price quotes within a month or less, BellSouth has made Covad wait as long as 171 days for a price quote for collocation in the CO on Panola Road in Atlanta, Georgia. Covad had to wait 150 days to get price quotes for collocation in central offices serving Conyers, Roswell, and Marietta. For central offices in Norcross, Tucker, Lithonia, and Stone Mountain, Covad was forced to wait 123, 133, 139, and 167 days, respectively, for the price quotes. Significantly, the price quote is only the first of a long series of steps to obtaining collocation space in a BellSouth CO. By unnecessarily delaying Covad in this first step, BellSouth is able to use its monopolistic control over its central offices to delay Covad's market entry.

53. BellSouth has the ability to produce price quotes in a faster time period, as it has done so both at will and when it has been ordered to do so by a state public service commission. For example, for central offices in Lilburn and Smyrna, BellSouth managed to return to the price quote within 41 days. Although that interval is still unacceptably long, it is far better than the almost six month delay Covad has experienced with other central office price quotes. Additionally, when the Florida Public Service Commission ordered that BellSouth return price quotes for central offices in Florida within 30 days, BellSouth complied. BellSouth can be responsive when it chooses, but it simply prefers to add delay to the application process for Covad. BellSouth's dilatory collocation application process has impeded Covad's first-to-market strategy for deploying its DSL services.

2) Provisioning

54. BellSouth performs no better when it comes to provisioning the collocation space it has promised to deliver. Again, the Agreement provides BellSouth with extremely generous intervals in which to complete provisioning of space. After receiving Covad's deposit, BellSouth is to provision collocation space within 120 days, but even in "extraordinary conditions," not more than 180 days. In violation of the Agreement, BellSouth routinely exceeds 120 days to provision collocation space. Furthermore, BellSouth unnecessarily waits the maximum time allowed under the Agreement before turning over collocation space, even when little or no space preparation is required. The same is true even when BellSouth provisions "cageless" collocation, which does not require construction of a special enclosure separating Covad's space from the rest of the CO – despite the fact that the intervals were developed on the assumption that BellSouth would be provisioning more time-consuming "caged" collocation spaces.

55. These practices have resulted in unreasonably and anticompetitively long delays in the provisioning of collocation space. For example, Covad had to wait 221 days from its firm order before BellSouth turned over collocation space in the Newman, Georgia CO.

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Similarly, in Fort Lauderdale, Florida Covad waited 228 days for space after its firm order, 247 days in Hollywood, Florida, and between 266 and 323 days after firm order in four other COs in Florida. Similarly, in the Atlanta metropolitan area, Covad experienced delays requiring it to wait more than 120 days after its firm order for collocation space in 17 of the first 35 COs in which it ordered space.

56. BellSouth's collocation provisioning delays are unreasonable by any measure. For example, another ILEC, US West, has demonstrated that it is possible to adhere to a cageless collocation provisioning interval of 45 days. Unfortunately, BellSouth has imposed the same sorts of lengthy delays when provisioning even the less burdensome cageless collocation space.

57. Overall, these ordering and provisioning delays have delayed Covad's entry in dozens of local markets in BellSouth's Region, including those in Atlanta, Birmingham, Charlotte, Greensboro, Jacksonville, Louisville, Memphis, Miami, Nashville, New Orleans, and Raleigh. The combined delays from BellSouth's dilatory tactics have encompassed periods ranging from several months to approximately a year. For example, on August 25, 1998, Covad applied for collocation in 25 Georgia COs. Of the 25 applications, 7 were for virtual collocation and 18 were for physical collocation. BellSouth took anywhere from 61 to 233 days to provide virtual collocation, and anywhere from 149 to 375 days to provide physical collocation. In North Carolina, BellSouth provided the earliest physical collocation after 150 days and the latest after 244 days from Covad's application. In Florida, BellSouth took anywhere from 230 days to 323 days to delivery physical collocation.

C. Improper Virtual Collocation Practices

58. When BellSouth declines Covad's requests for physical collocation, it sometimes offers virtual collocation as an alternative. In virtual collocation arrangements, BellSouth owns, operates and maintains the equipment that Covad places in the CO in order to provide DSL service to Covad customers; Covad depends on BellSouth to provide all

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installation, maintenance and repairs to that equipment, and Covad pays a fee for that service. Covad also must pay the cost of training BellSouth personnel on Covad's equipment. Physical collocation, by contrast, allows Covad to lease space from BellSouth, and Covad owns, operates and maintains its own equipment within the CO. Virtual collocation is not an acceptable alternative to physical collocation at an operational level. For example, Covad has experienced unnecessarily extended periods of downtime when network problems have arisen in virtual collocation COs, precisely because it could not obtain direct, immediate access to the CO when problems arose. This diminishes the reliability of Covad's service in COs served via virtual collocation. BellSouth fraudulently insisted on virtual collocation in instances where it knew or should have known physical collocation space was actually available, thus giving itself an improper anticompetitive advantage.

59. BellSouth has also acted in an anticompetitive manner concerning the conversion of virtual collocation arrangements. As BellSouth has begun to allow cageless collocation, it has recognized the indefensibility of many of its prior claims of lack of collocation space. As a result, it has nominally been allowing Covad to convert some virtual collocation arrangements into cageless collocation. But BellSouth has consciously and persistently structured those conversions to make them uneconomical and disadvantageous to Covad. The efficient course would be for BellSouth simply to transfer back to Covad ownership of the equipment that is currently being used to provide DSL service in each of the virtual collocation arrangements, and allow Covad personnel to access and maintain it in its current location. Instead, BellSouth has insisted that Covad must submit new applications for physical collocation space and relocate its equipment, often only a few yards away from where it presently operates. This posture forces Covad to choose either (1) to spend tens of thousands of dollars per CO on duplicative equipment (and up to $100,000 per CO for buildout of new collocation space), or (2) to endure lengthy downtime, unable to provide service, while waiting for BellSouth to provision new space for the existing equipment.

60. BellSouth's insistence on this approach is in bad faith, and is calculated to disrupt Covad's business. While BellSouth maintains that Covad's equipment must be relocated for security reasons, the parties' operating history proves otherwise. BellSouth has consistently permitted – indeed, required – Covad to use its own personnel to access, maintain and repair its equipment used in nominally "virtual" collocation arrangements. BellSouth is seeking unilaterally, for its own anticompetitive purposes and without legitimate justification, to disrupt that efficient economic relationship.

D. Other Collocation Interference

61. BellSouth has imposed a variety of other obstacles designed to interpose delay, uncertainty and unreliability into Covad's efforts to obtain collocation, all with the intent and effect of derailing Covad's rapid deployment.

62. For example, in February 2000, BellSouth abruptly halted Covad's deployment in Birmingham, Alabama and Nashville, Tennessee. After Covad had successfully deployed equipment in over 200 COs in the BellSouth Region, BellSouth suddenly changed its practices and demanded that Covad's installation vendor obtain proprietary BellSouth drawings from BellSouth's database, mark-up those drawings to show where Covad equipment was to be placed, and input that information back into the BellSouth proprietary system. BellSouth refused to let Covad's vendor install any equipment until the new tasks were completed – a requirement never before imposed on Covad or its installer. Because of BellSouth's unilateral new requirement for collocation, Covad's network deployment was completely stopped in six central offices in Birmingham and eleven central offices in Nashville.

63. BellSouth continues to attempt to halt Covad's deployment and to stifle competition in Florida by requiring unnecessary building permits before physical collocation is made available. For example, BellSouth has routinely assigned collocation space to Covad that requires BellSouth to upgrade the HVAC system, run lighting, and/or run power to the collocation space, despite the availability of existing space with in-place HVAC, lighting and

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power. BellSouth then contends that it is required to obtain construction permits for that work, before it can begin to provision even cageless collocation. BellSouth thus imposed substantial delay in the provisioning of collocation space, while blaming factors allegedly outside its control.

64. BellSouth has also interfered with Covad's need to access its collocation space. After Covad obtains collocation space from BellSouth, its transmission technicians and other collocation personnel regularly need access to the collocation space. Despite this need for access, BellSouth has repeatedly provided Covad with keys or access cards that do not work, or has provided Covad with only some but not all of the keys necessary to access a central office or has unreasonably delayed delivery of keys and access cards. BellSouth has also interfered with Covad's access to its collocation space by routinely stacking equipment, ladders, garbage, and other obstructions in or near Covad's collocation space. BellSouth apparently believes it is free to use Covad's collocation space for storage of BellSouth's equipment, and has on at least one instance used Covad's space to shave metal equipment, risking damage to Covad's equipment. Such conduct further delays Covad's ability to enter the collocation space, install and maintain its equipment, and thereby hinders Covad's rapid deployment.

Transport As An Exclusion Device

65. In yet another attempt to slow Covad's entrance into the DSL market, BellSouth has delayed in the provisioning of transport facilities. Transport facilities are very high bandwidth telephone lines, and are one of several essential network elements Covad needs to provide DSL service to its customers and which BellSouth has agreed to provide in the Agreement. Covad uses transport facilities to provide high-speed line connections between individual COs and hub COs, and between hub COs and Covad's own data centers.

66. BellSouth has opportunistically and in bad faith denied or delayed the provisioning of transport facilities in order to cause unpredictable interruptions in Covad's network. For example, in Florida, Covad requested and was provisioned collocation space in

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over 13 BellSouth COs. Those COs provided Covad with access to thousands of potential DSL customers. Covad connected each of those COs to a hub CO via transport facilities. To provide DSL service to the entire CO network, Covad needed BellSouth to provision just one more piece: a transport line from the hub CO to Covad's data center. BellSouth refused to connect the hub CO to Covad's data center, intentionally misrepresenting that no facilities existed and that it would take several months to provide the necessary transport line. After Covad made this incident public, BellSouth suddenly "found" transport facilities and provided the necessary transport within three weeks.

Exclusionary Loop Practices

67. Covad must overcome a series of obstacles to getting a loop to an end user's premises. First, as described below, Covad must manually order the loop from BellSouth using the complex Local Service Request ("LSR") and Service Inquiry ("SI") forms, a process designed to delay and obstruct rapid service. Once BellSouth accepts an order, BellSouth then provides Covad with a FOC ("Firm Order Commitment") date on which the loop will be delivered by BellSouth to the customer's premises. Then, BellSouth must actually deliver a working loop on that date. BellSouth excludes Covad from the marketplace by consistently failing to meet its obligations in each of these areas.

A. Anticompetitive Loop Ordering Processes

68. When Covad receives an order for DSL service from one of its customers, it must order the necessary loops from BellSouth. Remarkably, BellSouth does not offer an electronic ordering system for Covad to use in purchasing its massive quantities of loops. Worse, the completely manual ordering process Covad must use to order loops from BellSouth is, by design, inept and calculated to produce delay, human error and uncertainty at every turn. As a starting point, BellSouth insists that each order must be typed by a Covad employee on a Local Service Request ("LSR") form, then the LSR form must be submitted manually by facsimile from a Covad employee to a BellSouth employee who then retypes the information into

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the BellSouth system. The LSR form itself is confusing and complicated, and the facsimile transmission of the LSR form often results in BellSouth claims that its contents are illegible. As a direct result, BellSouth rejects literally thousands of Covad orders on the basis that the LSR form is either improperly filled out or is illegible. Often, BellSouth rejects Covad's LSR forms without any notification. Further compromising the accuracy of the manual ordering system, BellSouth has at times turned off its facsimile machines without notice, and has even changed facsimile numbers without notice. As a result, Covad placed large numbers of orders that BellSouth later contended it had never received. Covad was then forced to resubmit each order, again by facsimile, a time-consuming and resource-intensive undertaking.

69. The inherent problems in the inept loop ordering system are further intensified by the inability of the BellSouth system to identify rejected orders. Each order placed by Covad receives a purchase order number (PON). During a Covad order's circuitous route through BellSouth's processes, numerous Covad orders get lost, fail to be assigned FOC dates, get placed in "pending facilities" or "no facilities" hold lines, or are otherwise improperly treated. Thus, Covad must rigorously check the status of each and every order on an almost daily basis by looking for missing PONs on daily PON Status Reports to determine whether any orders are missing or have been rejected. To do this, Covad must call BellSouth to get information or check several different websites posting the PON Status Reports, which are often inaccurate or are updated infrequently.

70. Once again, the system does not have to operate this way. Other ILECs have developed automated electronic interfaces to handle ordering of local loops. Indeed, BellSouth itself has developed automated electronic interfaces for other parts of its network – but not for its DSL loop offerings, which are the lifeblood of Covad's competitive DSL offering. In this way, BellSouth adds another incremental layer of interference, attempting to increase and perpetuate its stranglehold over the Local Internet Access Market in its territory. The effects of this illegal behavior are further compounded by BellSouth's own internal electronic pre-ordering

and ordering systems for its own DSL products, which provide BellSouth with huge and unwarranted competitive advantages.

71. In order to compete, Covad requires electronic access to loop information, such as loop length and the presence of various electronic devices that may hinder DSL transmissions. With this information, Covad and other CLECs can determine for the end user, before making a sale, what kind of DSL service, if any, could be made available using a particular loop. Currently, Covad customers sometimes must wait days or weeks before Covad learns enough loop information to enable Covad to tell the customer what DSL options are available. In contrast, a customer to BellSouth's retail DSL service will usually know immediately whether his or her location allows DSL service. This forced, discriminatory delay has an enormous impact on Covad's ability to compete with BellSouth. For example, an ISP that resells BellSouth's DSL service will be provided electronic interfaces to BellSouth's loop qualification database. In that way, the ISP can inform its end user immediately about what speed of service will be available. In contrast, an ISP providing DSL to end users through Covad will not have any access to loop qualification information immediately. Thus, BellSouth prevents Covad from competing on an equal footing with BellSouth's wholesale offerings to ISPs. BellSouth gives itself the unique ability to tell consumers as soon as possible what "flavors" of Internet access are available and how soon they can be installed. BellSouth capitalizes on its monopolistic control over OSS and leverages it into control over downstream Local Internet Access Markets in its Region.

B. Anticompetitive Loop Provisioning

72. The problems with BellSouth's loops do not end at the ordering stage. Even after it takes Covad's orders, BellSouth has consistently refused to provision loops to Covad for its DSL customers in a timely and workable manner. For Covad to compete in the Local Internet Access Markets, it must rely on BellSouth to fulfill its contractual obligations to, among other things, (1) timely respond to Covad's loop orders, (2) properly issue a firm order

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commitment (FOC) date, (3) actually deliver the loop by the FOC date when one is issued, and (4) when the loop is delivered, deliver it in working order. BellSouth systematically fails to perform one or more of those steps in a timely manner on virtually all of Covad's loop orders.

73. The problems are legion. For example, BellSouth routinely changes the loop delivery date without adequate notice. This injures Covad in two respects: its customer often waits all day for the BellSouth technician to show up and deliver the loop (which BellSouth never delivers), and Covad often sends one of its technicians to perform Covad's part of the installation on a loop that BellSouth has failed to timely deliver. Even more egregious, when BellSouth does not complete an installation appointment, BellSouth requires Covad to "supplement" Covad's LSR to obtain a new FOC date – even if the appointment was not met due to BellSouth's error. If Covad does not "supplement" an LSR for a new appointment date within ten days – which requires filling out the same complex LSR form and faxing it to BellSouth again – BellSouth will automatically cancel the order. Indeed, BellSouth has cancelled service for Covad customers after that service has been up and running, based on an erroneous (by definition) notation by BellSouth that the installation appointment was not met.

74. This system places the entire burden on Covad to drive BellSouth to perform its contractual obligation to provide loops in a timely fashion and to correct BellSouth's failures to do so. This system is not only structured to impede Covad, but it is specifically designed to (and successfully does) increase the chance that Covad orders will be canceled, permitting BellSouth to leverage its monopoly over loops to exclude competition in and gain control of the Local Internet Access Markets.

C. False Limitations On ADSL Loops

75. Covad's equipment will enable it to provide some type of DSL service to virtually everyone in the BellSouth Region. To do so, Covad needs only unrestricted access to the network elements it buys from BellSouth. Rather than providing a single loop capable of supporting all DSL services, as it is both possible and most efficient to do, BellSouth has

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constructed an elaborate and unnecessarily confusing array of loop offerings for Covad's service. Each loop type is strictly controlled by BellSouth and BellSouth places, arbitrarily, limits on those loops to further disadvantage Covad and other competitors. BellSouth provides four types of loops that Covad can use for xDSL service: HDSL, ADSL, UCL, and ISDN. According to the BellSouth limitations on these loops, the type of loop Covad must order depends on the distance over which the DSL service is to be provided and the type of service to be provided.

76. It is Covad's prerogative to offer whatever services it deems appropriate. Under the Agreement, BellSouth's obligation is to provide loops that fulfill Covad's orders. In doing so, BellSouth agreed to provide loops consistent with either its own technical standards or applicable industry standards, whichever is greater. Thus, when Covad orders an ADSL loop, BellSouth must provide a loop meeting the industry standard for ADSL loops, the Revised Resistance Design ("RRD"), which allows the loop to run up to 18,000 feet from the central office. Of course, if industry standards subsequently improve the reach of certain types of loops, BellSouth is obligated to offer loops to Covad meeting those higher industry standards.

77. BellSouth decided to disregard the industry standard governing ADSL loop length. When Covad began placing ADSL loop orders in August 1999, BellSouth refused to allow Covad to purchase ADSL loops for distances longer than 9,000 or 12,000 feet, depending on the size of the wire present. Significantly, no other ILEC in the entire country has attempted to impose the loop length limitation that BellSouth imposed on Covad. Immediately alarmed at BellSouth's refusal to allow Covad to service a huge segment of customers, Covad demanded that BellSouth change this arbitrary policy. BellSouth refused.

78. Instead, BellSouth decided to create a new loop offering, called the Unbundled Copper Loop ("UCL"), that would extend up to 18,000 feet from a central office and would support ADSL. In an attempt to force Covad to order UCL loops, and to enter into the UCL Amendment and buy this "new" loop product at a substantially higher price, BellSouth

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refused to provide even a single UCL loop until Covad executed an amendment to the Agreement.

79. BellSouth's negotiating tactics concerning the UCL Amendment demonstrate its anticompetitive intent. In connection with its proposal of new UCL loop rates, BellSouth was obliged to provide cost data to Covad, upon its request. Furthermore, BellSouth was not permitted to require the execution of a Non-Disclosure Agreement that prohibits a party from disclosing information to the Commission or a state commission. BellSouth expressly violated both these requirements. In April 1999, BellSouth sent Covad a proposed UCL Amendment to the Agreement. Since the proposed prices were as much as 11 times greater than another regional ILEC's prices for the same type of loop, Covad requested cost data to support these extremely high nonrecurring and recurring charges for the UCL loop. In June 1999, BellSouth refused to provide cost data because it claimed the data was proprietary and confidential. In September 1999, BellSouth agreed to allow Covad to review the cost data only if Covad signed a Non-Disclosure Agreement which would have precluded Covad from disclosing to any regulatory authority the substance of the negotiations between the parties relating to the UCL Amendment, unless Covad was subpoenaed or otherwise required to do so by law. BellSouth was ultimately fined by the FCC for this bad faith tactic. In the meantime, however, Covad was unable to purchase loops for a huge segment of its potential orders.

80. That inability to order and purchase loops for a large proportion of its potential orders ground Covad's business to a near halt in the BellSouth Region. Faced with no other alternative, Covad acquiesced and signed the UCL Amendment on September 30, 1999. Covad returned the signed UCL Amendment with a letter protesting the exorbitant costs, BellSouth's refusal to commit to specific time intervals for the delivery of a loop and BellSouth's refusal to provide supporting data for the cost of this loop. In response, BellSouth demanded that Covad withdraw the September 30, 1999 accompanying letter. BellSouth threatened to delay the signing of the UCL Amendment, and, therefore delay the provisioning of

UCL loops. Again, in an effort to get its business in the BellSouth Region moving, Covad withdrew the September 30, 1999 letter on October 1, 1999.

81. BellSouth compounded the problem created by its unlawful insistence on UCL loops by setting unreasonably high nonrecurring charges for those loops: $632.52 in Georgia; $641.12 in Florida; and $630.69 in North Carolina. Other ILECs in states in the BellSouth Region charge only $57.75 (GTE Florida) and $89.14 (Sprint) for the same type of loop. BellSouth's charges are anticompetitive on their face. Thus, BellSouth created a two-pronged barrier to competition by Covad. Initially, Covad could not compete at all for customers who resided beyond the artificially short loop lengths mandated by BellSouth – BellSouth simply refused to provide Covad any ADSL loop for such customers. Later, with its introduction of the UCL loop, BellSouth constructed a classic Hobson's choice. Either Covad could choose to order the anticompetitively overpriced UCL loops, or it could forego offering ADSL service to any customers with loops longer than BellSouth's improperly imposed loop length. The price difference between the ADSL loop BellSouth was required to provide under the Agreement, and the UCL loops it agreed to provide, is enormous. For example, a single UCL loop costs $253.85 more than an ADSL loop in Georgia; $527.27 more in Florida; and $350.54 more in North Carolina.

82. Finally, BellSouth admitted that the loop limitation it placed on its ADSL loops was false. After months of buying the UCL under protest, on February 22, 2000 BellSouth suddenly announced that it would begin on March 22, 2000 to provide ADSL loops that met the RRD criteria and were up to 18,000 feet long. BellSouth acknowledged that the proper standard for ADSL loops was the RRD and that it would begin to apply that standard to its ADSL loops. BellSouth's unilateral reversal shows the arbitrary nature of its prior position and reveals how impervious BellSouth believes itself to be from penalty for blatant anticompetitive policies. Moreover, even after BellSouth abandoned its arbitrary loop length limitation, it chose not to immediately cease its unlawful practices. After admitting its position lacked merit, BellSouth

made Covad and other DSL providers wait nearly a month before it made loops available in accordance with the proper technical specifications.

83. Prior to BellSouth's admission that the ADSL loop should be up to 18,000 feet, BellSouth itself did not provide DSL service to any customers beyond 12,000 feet from the CO. Through its false ADSL loop definition, BellSouth limited competitive carriers to serving only the customers BellSouth was choosing to serve. When BellSouth deemed itself ready to extend its own retail offerings to customers up to 18,000 feet from the central office, BellSouth then allowed competitors to provision loops to that same distance at the cost of the lower ADSL loop price. Again, BellSouth leveraged its monopolistic control over loops to solidify its control over the downstream Local Internet Access Markets.

D. Exclusionary Line Sharing Practices

84. BellSouth has acted in an aggressively anticompetitive manner with regard to a particularly promising mechanism for delivery of DSL service known as "line sharing." Line sharing involves provisioning ADSL service over the same local loop the customer uses for its POTS telephone service. Because voice traffic and data traffic use distinct frequencies of a single loop, both services can function on the same loop without causing interference with the other service. Thus, in order to receive ADSL service via line sharing, a customer need not have a second local loop provisioned to its residence; ADSL can be provisioned over the customer's existing telephone line. Given the ordering, operational and provisioning barriers BellSouth has imposed on CLECs' ability to obtain unbundled local loops on which to provision ADSL, line sharing should offer a more efficient means to provide ADSL service. BellSouth's anticompetitive conduct has made that not so.

85. BellSouth's anticompetitive line sharing practices fall into three main categories. First, BellSouth did not offer line sharing at all until the FCC ordered it to do so. Second, it does not permit Covad to offer line sharing to any of the scores of thousands of BellSouth ADSL customers who already receive line-shared ADSL service from BellSouth.

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Third, BellSouth has erected numerous barriers preventing Covad from effectively and reliably offering line-shared ADSL service even to customers who do not already receive ADSL service from BellSouth. In combination, these practices have essentially prevented Covad from offering customers any viable line sharing alternative, and have enhanced BellSouth's control over the Local Internet Access Markets.

86. From the beginning of the parties' relationship, Covad would have preferred in many instances, to share an existing line by leasing from BellSouth only the high frequency portion of an existing loop. Such line sharing arrangements were feasible, economical, and could resolve many of the problems and delays caused by its poor loop provisioning practices. BellSouth knew that line sharing was preferable because it uses line sharing to provision its own retail DSL service. Despite, or because of, these advantages, BellSouth used its local loop monopoly to maintain an unlawful competitive advantage by refusing to offer line sharing to CLECs until the FCC ordered it to do so (and indeed for months afterward). Instead, it demanded that Covad face the unnecessary hurdles of ordering a second, stand-alone loop for each customer.

87. After it nominally began offering line sharing, BellSouth erected an impenetrable competitive barrier around its own existing ADSL customers, in a conscious effort to forestall competition from Covad. BellSouth uses line sharing as the predominant means by which it provisions ADSL on a retail basis. BellSouth has over 140,000 ADSL customers receiving line-shared service, comprising the overwhelming portion of BellSouth's total ADSL business. Covad would like to compete for the business of those line-share ADSL customers, to persuade them to migrate their business to Covad. BellSouth has made that impossible.

88. BellSouth has failed, despite Covad's request, to develop any mechanism by which Covad can offer an existing BellSouth ADSL customer a seamless transfer to Covad line-shared service. Recently, and only after it was ordered to do so by the FCC, BellSouth developed processes by which Covad supposedly may order line-shared ADSL service for some

customers – but not if they already receive line-shared ADSL service from BellSouth. Instead, for all such customers, Covad must order a freestanding unbundled loop from BellSouth.

89. Thus, to compete for BellSouth's existing ADSL customers – and BellSouth has openly promoted its goal of expanding its DSL customer base to 600,000 lines by the end of 2001 – Covad cannot offer the more economical, timely and efficient alternative of line-shared service. It can only attempt to take away those customers by offering the more expensive, more time consuming and, given BellSouth's provisioning habits, more unreliable option of second line DSL service. The result is that Covad's ability to compete with BellSouth for DSL customers is seriously hindered.

90. Finally, even when Covad has attempted to obtain line-shared ADSL service for customers for whom BellSouth does not currently provide ADSL service, BellSouth has delayed and obstructed Covad's efforts to compete. Among other anticompetitive behavior, BellSouth has incorrectly installed critical central office equipment necessary to provision line sharing (known as "splitters," which are used to separate the voice traffic from the data traffic in the central office), BellSouth has failed to make the necessary connections on the loops to enable Covad to provide its service, and BellSouth has caused huge numbers of Covad orders to be cancelled. This has had the effect of halting Covad's aggressive rollout of ADSL over line-shared loops, harming Covad's reputation in the marketplace and damaging its business relationship with ISPs and end users. All of this has reduced competition, and perpetuated BellSouth's monopoly position, in the Local Internet Access Markets in the BellSouth Region.

Price Squeeze

91. BellSouth has attempted to take unlawful advantage of Covad's status as both a customer and a competitor of BellSouth. As a customer, Covad obtains from BellSouth several essential inputs needed to provide Covad-brand DSL service. Pursuant to the Agreement, Covad obtains these essential inputs, including local loops, from BellSouth at wholesale. But Covad is also a competitor, and sells its DSL service in competition with

BellSouth's many competing services, including POTS, ISDN, BellSouth's own FastAccess℠ DSL service and BellSouth's other high capacity dedicated services. BellSouth capitalizes on this situation. It imposes upon Covad a two-pronged pricing structure that makes it uneconomical for Covad to compete with BellSouth. BellSouth has developed an anticompetitive cost-allocation scheme, based on the fact that Covad and other CLECs are both BellSouth's customers and its competitors. To prevent competition, BellSouth allocates its costs *to* the portions of its service that Covad and other competitors must buy – the loops – and *away* from those portions of its service where BellSouth faces competitors, such as Covad.

92. BellSouth has set the wholesale prices for its ISDN and DSL loops at a level far higher than a fair price. BellSouth charges two types of fees for local loops: recurring and non-recurring charges. Non-recurring charges are one time, up front charges that purportedly reflect the cost of provisioning the local loop. BellSouth charges Covad hundreds of dollars per loop in non-recurring charges. On top of those standard non-recurring charges, BellSouth also frequently imposes additional non-recurring construction or conditioning charges, which are even higher. BellSouth has also set prohibitively high monthly wholesale recurring fees for its unbundled local loops. The wholesale prices BellSouth offers to ISPs for DSL service, as well as its retail prices for combined DSL and Internet access service, are set so low relative to its unbundled wholesale loop prices that Covad cannot meet BellSouth's wholesale or retail prices and still make a reasonable return on its investment. If Covad charged retail DSL/Internet access customers the same price as BellSouth does, or charged comparable wholesale DSL prices, Covad could not recover the cost of providing the service, e.g., loop costs, collocation costs, transport costs, corporate overhead and sales and marketing costs.

93. BellSouth's manipulation of loop prices and costs by itself has provided BellSouth an unfair advantage, wholly unrelated to legitimate economic factors. If BellSouth had charged itself the same wholesale price for loops, BellSouth could not make a profit from its

DSL service at current prices. Conversely, if BellSouth's wholesale and retail costs were fully allocated, the wholesale profit margin would be significantly greater than its retail profit margin.

94. BellSouth has acted with full knowledge and intent in creating this price squeeze. BellSouth achieves the unlawful price squeeze by allocating costs so as to apportion only a *de minimis* cost to the loops over which it provides its own DSL service. For example, when BellSouth provides DSL service, it does so by using the high-frequency portion of installed loops that it is already using to provide analog voice service. By offering itself line sharing, BellSouth puts itself in a position to allocate virtually all of the costs of the local loop to the analog voice service consumers receive, and virtually no cost to the DSL service carried over the same phone line. Were BellSouth to conduct a proper cost allocation, it would apportion much lower costs to the analog voice portion of the loop. As the costs are presently allocated, BellSouth must necessarily realize a significantly higher profit margin on its wholesale sales (for which it faces no competition) than it does on the corresponding retail sales (for which Covad is attempting to compete).

95. BellSouth intended this artificial cost allocation to harm Covad, and it did. First, BellSouth did not offer line sharing to Covad at all until June 2000. As a result, for most of the relevant period, Covad has been entirely unable to obtain the costing benefits of line sharing. Covad was left, instead, to purchase the much more expensive and unnecessary stand-alone loops, or be unable to offer any competition at all. Second, since June 2000, line sharing has been available to Covad only on a very limited basis, and BellSouth has failed to develop processes to provision it in a timely and dependable manner. Thus, while BellSouth has installed approximately 140,000 line-shared DSL lines for its own retail customers, it has installed fewer than 400 line-shared lines for Covad, despite Covad's placement of thousands of orders. Moreover, even after it has nominally allowed Covad to obtain line-shared lines, BellSouth has continued to impose exorbitant non-recurring charges that it does not impose upon itself or its

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own retail customers. BellSouth's actions demonstrate that it has consciously acted to create and protect a price squeeze for its own benefit, and to the detriment of competition.

Other Anticompetitive Conduct

A. Chronic And Intentional Understaffing

96. BellSouth has strategically understaffed its wholesale division to slow down the processing of Covad orders, further hindering Covad's ability to compete. BellSouth has at times had a backlog of over 5,000 Covad orders. On several occasions, BellSouth has asked Covad to stop inquiring about problem orders because it did not even have adequate resources to process Covad's new orders. For example, BellSouth asked Covad in a November 12, 1999 electronic mail, "Please attempt to not status me on PONs today. I have about 5,000 SI responses that I'm trying to get out . . . ." BellSouth has refused to increase the staffing of its wholesale ordering division, and its inability to timely process Covad's orders has directly damaged Covad.

B. "Vaporware" False Advertising

97. BellSouth, like Covad, has experienced delays in the provisioning of loops for its DSL customers. BellSouth has engaged in activities designed to mask its own inability to deliver timely service, so as to prevent Covad from gaining any significant market share as a first-to-market competitor with BellSouth in the DSL market. One such activity is BellSouth's knowingly false, misleading and fraudulent marketing campaign for its DSL FastAccess℠ product.

98. For example, BellSouth advertises on its website that it will use its best efforts to install DSL within 10 to 14 business days from the date of customers' order. *See* <https://fast1.corp.bellsouth.net/adsl/faq.jsp#installation3> ("How soon can I get DSL installed? We make every effort to ship self-install kits for receipt within 10-12 business days of order placement. For technician installations, we make every effort to schedule an installer within 10-14 business days of your order."); *see also* <https://fast1.corp.bellsouth.net/adsl/install.jsp>.

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Additionally, BellSouth offers with each new order for DSL service two months of service for the price of one, a free DSL modem, and a "new reduced monthly rate" of $40.00 per month. *See* <https://fast1.corp.bellsouth.net/adsl/index.jsp>. BellSouth makes these promises despite its clear lack of resources devoted to provisioning DSL services. BellSouth's representation that it can process DSL orders within ten to fourteen business days is patently false, and seeks to occupy the market with a product that cannot be delivered. BellSouth's false advertising is anticompetitive conduct in violation of Section 2 of the Sherman Act.

C. Improper Solicitation of Covad Customers

99. BellSouth is required by the Telecom Act, 47 U.S.C. § 222, to keep confidential any information it acquires about Covad's customers by virtue of performing wholesale services for Covad. BellSouth is not permitted to use such information for its own retail marketing purposes. Despite this statutory prohibition, BellSouth's wholesale division has provided its retail DSL division with information about Covad's collocation requests. Thus BellSouth has the confidential marketing and business plans of its competitors, information that Covad does not have about BellSouth.

100. BellSouth takes advantage of the information it gains as Covad's wholesale service provider to solicit retail business from Covad's customers. For example, for each Covad order, BellSouth technicians must visit customer premises to install the loops Covad leases to provide DSL service (except line-shared orders). During these visits, BellSouth technicians regularly solicit the customers to place orders with BellSouth. Covad's ISP partners report that, once they place an order for Covad service, many of their customers receive solicitation calls from BellSouth, which indicates that BellSouth's wholesale division provides its retail division the names of customers who are interested in DSL service. This customer list is particularly valuable because it constitutes a pre-selected list of persons who have already ordered DSL service. While making these calls to solicit Covad's customers, BellSouth is

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simultaneously delaying the provisioning of that loop for the end user through the series of illegal anticompetitive activities described in this Complaint.

101. For example, misusing the information it has gained in its role as wholesaler, BellSouth has repeatedly approached Covad's customers who have experienced delays in the provisioning of Covad DSL service and have stated that if they switch to BellSouth DSL service they will be connected immediately. In one instance, BellSouth told a Covad customer there were no loops available to provide Covad IDSL service. BellSouth then told the Covad customer that he could order BellSouth's ISDN service. The customer ordered BellSouth's ISDN service, and his ISDN service was provisioned within one week of his order, despite the fact that BellSouth's ISDN service and Covad's IDSL service are provisioned over the same loop. In other cases, BellSouth contacted Covad customers upon their placing orders, and told them that BellSouth's DSL service was better than Covad's, and that BellSouth's DSL service could be installed faster than Covad's DSL service, all in a conscious attempt to steal Covad's customers.

EFFECTS ON COVAD AND CONSUMERS

102. The effect of BellSouth's collocation, OSS, transport, loop, marketing, pricing and other practices is simple – BellSouth has grievously harmed Covad by excluding it from the marketplace. Covad's strategy was to enter the BellSouth Region as quickly as possible and become the leading provider of DSL in it. BellSouth did everything it could do to prevent Covad from gaining any significant share of that market, and delayed Covad's ability to provide DSL service to consumers in that market. From the outset, and continually thereafter, Covad was met with stall tactics, delays, and refusals to provide essential facilities.

103. For example, BellSouth's collocation delays and denials prevented Covad from offering any service for over a year after it first applied for collocation in BellSouth's region. Even after the initial applications, BellSouth continued to impose lengthy delays on Covad's collocation efforts. These delays prevented Covad from offering any service at all in

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the COs from which it was excluded, and greatly hampered its ability to offer services in other COs in the same metropolitan areas as well. BellSouth's transport delays, and abysmal loop ordering and provisioning performance also prevented Covad from offering service to countless potential customers.

104. As another example, BellSouth's unlawful conduct and abuse of its monopoly power with regard to OSS functions also dramatically damaged Covad's ability to compete for the business of ISP customers and their end users. For example, an ISP that resells BellSouth's DSL service is provided electronic interfaces to BellSouth's loop qualification database. In that way, the BellSouth ISP can inform its end user immediately about what speed of service will be available. But BellSouth will not provide that information to Covad when it orders a loop for one of its ISP customers – nor, as a result, to any end-user using Covad's DSL service. As a result, Covad's sales force is unable to tell customers what DSL services are available, and Covad's ability to successfully compete for the business of ISPs is seriously hampered.

105. Overall, the effect on Covad was severe. BellSouth's conduct delayed Covad's introduction of service by over a year at the outset, and imposed other hurdles since that have greatly reduced Covad's market share in the Local Internet Access Markets, reduced Covad's revenues, and significantly increased its costs. BellSouth completely deprived Covad of the benefits of being a "first mover" in the relevant markets. All of this had the effect of decreasing substantially Covad's presence in the Local Internet Access Markets in the BellSouth Region. At the same time, BellSouth succeeded in using its control over the local network to solidify its dominance in the Local Internet Access Markets.

106. As a direct and proximate result of Defendants' unlawful conduct, Covad's market entry has been impeded and frustrated, and Covad has been foreclosed from markets and has lost sales, profits, and the value of its business. Covad has suffered and will continue to suffer irreparable harm through loss of and injury to its trade and business in that

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(a) Covad has been and will be precluded from entering into contracts for the sale of competitive local telecommunications services, (b) Covad has been and will be precluded from carrying out contracts already entered into for the sale of competitive local telecommunications services; (c) Covad has been and will continue to be irreparably harmed in its reputation and goodwill; (d) Covad and other competitive local telecommunications service providers will be hampered in marketing, selling and providing their services; and (e) independent sources for telecommunications transmission services to the Local Internet Access Markets will be deterred and eliminated.

107. Defendants' conduct is harmful to competition and consumers in that it has had and will continue to have the effects of: (a) denying Covad access to the Local Internet Access Markets; (b) denying the public free choice in the Local Internet Access Markets; (c) affecting a substantial amount of commerce in the Local Internet Access Markets; (d) substantially lessening competition and tending to create or maintain a monopoly in the Local Internet Access Markets; (e) creating higher prices for the Local Internet Access Markets; (f) forcing consumers to use inferior local telecommunications services in the Local Internet Access Markets; and (g) stifling the development of new and better local telecommunications services.

FIRST CAUSE OF ACTION
Sherman Act, Section 2 - Essential Facilities Doctrine

108. Covad incorporates by reference the allegations of paragraphs 1 through 107 of this Complaint, as though fully set forth here.

109. BellSouth has monopoly power in all relevant local telecommunications markets, including the Local Internet Access Markets, as well as in the market for central offices, OSS, transport facilities and local loops in the entirety of the BellSouth Region. Among other things, BellSouth enjoys the only ubiquitous physical local telecommunications network within the BellSouth Region.

110. Barriers to entry faced by competitors like Covad wishing to provide any local telecommunications services are extremely high, and would be even if BellSouth did not

artificially inflate these barriers, because BellSouth controls the facilities necessary for any CLEC to provide those services. The costs in money and time of replicating the necessary portions of that ubiquitous network are prohibitively high. Further, alternative means of reaching local telecommunications consumers either do not exist or are not practicable.

111. BellSouth has engaged in the anticompetitive conduct described above with the intent to preserve and to extend its monopoly power and position in the Local Internet Access Markets. BellSouth continues to deny Covad access to central offices, OSS, transport, local loops, and other parts of BellSouth's network that Covad requires to provide its services. BellSouth feasibly could have granted Covad access to these facilities and, indeed, promised to do so.

112. As a direct and proximate result of BellSouth's monopolistic conduct, competition in the relevant markets has been injured, and Covad has been damaged in that: (i) its costs of operation have increased significantly; and (ii) its ability to penetrate BellSouth's monopoly has been frustrated and delayed, causing Covad to lose potential customers and profits and harming Covad's goodwill and reputation. Covad has sustained damages and continues to sustain damages in an amount to be determined at trial.

SECOND CAUSE OF ACTION
Sherman Act, Section 2 - Monopolization

113. Covad incorporates by reference the allegations of paragraphs 1 through 107 of this Complaint, as though fully set forth here.

114. BellSouth has monopoly power in all relevant local telecommunications markets, including the Local Internet Access Markets, as well as in the market for central offices, transport, OSS, transport facilities and local loops, in the entirety of the BellSouth Region.

115. BellSouth has engaged in the anticompetitive conduct described above with the intent to gain an unfair competitive advantage and to maintain and extend its monopoly power and position in the Local Internet Access Markets. BellSouth's conduct has delayed and

prevented Covad's entry into these markets. BellSouth continues to dominate these markets through unlawful conduct, to the detriment of consumers and competition.

116. As a direct and proximate result of BellSouth's monopolistic conduct, competition in the relevant markets has been injured, and Covad has been damaged in that: (i) its costs of operation have increased; and (ii) its ability to penetrate BellSouth's monopoly has been frustrated and delayed, causing Covad to lose potential customers and profits and harming Covad's goodwill and reputation. Covad has sustained damages and continues to sustain damages in an amount to be determined at trial.

THIRD CAUSE OF ACTION
Sherman Act, Section 2 - Attempted Monopolization

117. Covad incorporates by reference the allegations of paragraphs 1 through 116 of this Complaint, as though fully set forth here.

118. BellSouth has engaged in the anticompetitive conduct described above in a willful effort and attempt to gain or continue a monopoly in the Local Internet Access Markets in the BellSouth Region.

119. BellSouth has demonstrated a dangerous probability of success in its efforts to gain, perpetuate or enhance a monopoly in the Local Internet Access Markets in the BellSouth Region. BellSouth continues to dominate those markets through unlawful conduct, to the detriment of consumers and competition.

120. As a direct and proximate result of BellSouth's monopolistic conduct, competition in the relevant markets has been injured, and Covad has been damaged in that: (i) its costs of operation have increased significantly; and (ii) its ability to penetrate BellSouth's monopoly has been frustrated and delayed, causing Covad to lose potential customers and profits and harming Covad's goodwill and reputation. Covad has sustained damages and continues to sustain damages in an amount to be determined at trial.

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FOURTH CAUSE OF ACTION
Telecommunications Act of 1996, 47 U.S.C. §§ 206, 207, 222

121. Covad incorporates by reference the allegations of paragraphs 1 through 107 of this Complaint, as though fully set forth here.

122. In its capacity as a carrier customer of BellSouth, Covad provided BellSouth's wholesale operations with proprietary information concerning its customers and potential customers. BellSouth was required under 47 U.S.C. § 222 to use that information only to provide the wholesale services Covad ordered, and not for its own marketing efforts. BellSouth misused that information, in violation of Section 222 of the Act, in order to solicit those customers as BellSouth's own retail customers. Some of those solicited customers cancelled their orders with Covad and became BellSouth customers.

123. As a direct result of BellSouth's conduct, Covad has been injured in its business and property, and is entitled to damages and attorneys' fees under 47 U.S.C. §§ 206 and 207 in an amount to be determined at trial.

FIFTH CAUSE OF ACTION
Breach of Contract

124. Covad incorporates by reference the allegations of paragraphs 1 through 107 of this Complaint, as though fully set forth here.

125. The acts and misconduct described above constitute breach of the Agreement between BellSouth Telecommunications, Inc. and DIECA Communications, Inc. As a direct and consequential result of these breaches of contract, DIECA has been injured in an amount to be determined according to proof, but that exceeds $75,000.

SIXTH CAUSE OF ACTION
Monopolization under Alabama Code § 8-10-3

126. Covad incorporates by reference the allegations of paragraphs 1 through 107 of this Complaint, as though fully set forth here.

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127. BellSouth has monopoly power in all relevant local telecommunications markets including the Local Internet Access Markets, as well as in the markets for local loops, OSS, central offices, and transport facilities within relevant geographic markets in the State of Alabama.

128. BellSouth has acted with intent to secure and expand its monopoly power, and to extend it to the Local Internet Access Market within relevant geographic markets in Alabama.

129. As a direct result of its conduct, BellSouth has unlawfully restrained trade and monopolized the Local Internet Access Market within relevant geographic markets in Alabama.

130. As a further direct result of BellSouth's conduct, Covad has been injured in its business and property within Alabama, in an amount to be determined according to proof, but which exceeds $75,000.

SEVENTH CAUSE OF ACTION
Attempted Monopolization under Alabama Code § 8-10-3

131. Covad incorporates by reference the allegations of paragraphs 1 through 107 of this Complaint, as though fully set forth here.

132. BellSouth has monopoly power in all relevant local telecommunications markets including the Local Internet Access Markets, as well as in the markets for local loops, OSS, central offices, and transport facilities within relevant geographic markets in the State of Alabama.

133. BellSouth has acted with intent to secure and expand its monopoly power, and to extend it to the Local Internet Access Market within relevant geographic markets in Alabama.

134. As a direct result of its conduct, BellSouth has achieved a dangerous probability of successfully monopolizing the Local Internet Access Market in one or more relevant geographic markets within Alabama.

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135. As a further direct result of BellSouth's conduct, Covad has been injured in its business and property within Alabama, in an amount to be determined according to proof, but which exceeds $75,000.

EIGHTH CAUSE OF ACTION
Interference with Business Relations under Alabama Common Law

136. Covad incorporates by reference the allegations of paragraphs 1 through 107 of this Complaint, as though fully set forth here.

137. At all relevant times, BellSouth was aware of Covad's intention and attempts to offer services, in direct competition with BellSouth, to consumers in the State of Alabama. In particular, BellSouth was aware that Covad had contracts with a number of potential subscribers of Covad's services.

138. At all relevant times, BellSouth was aware the Covad's services would appeal to a number of consumers in Alabama.

139. BellSouth attempted to and did exclude Covad from competing in Alabama, in the process interfering with Covad's ability to offer services to consumers there, including causing the cancellation of contracts to purchase Covad service. BellSouth further improperly interfered with Covad's existing and prospective business relations with customers by, among other things, improperly soliciting customers not to enter into contracts with Covad or to breach existing contracts, disparaging Covad's products and services, and wrongfully delaying and refusing to supply services necessary for development and completion of Covad's business relations with its existing and prospective customers.

140. BellSouth acted with the knowledge and intent that its conduct would prevent Covad from offering competing services, in a malicious and intentional attempt to restrain trade, injure Covad's business and drive Covad out of business in Alabama.

141. BellSouth's actions have been and continue to be without legal justification or excuse, and without privilege.

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142. As a direct result of BellSouth's conduct, BellSouth has induced persons who, but for BellSouth's interference, were reasonably likely to purchase DSL service from Covad instead to purchase DSL service from BellSouth. Further, BellSouth has interfered with Covad's ongoing business and contractual relations with ISPs and end users. BellSouth has induced ISPs and end users not to enter into contracts with Covad, or to cancel such contracts. As a result, trade has been restrained in the Local Internet Access Markets in Alabama.

143. As a direct result of BellSouth's conduct, Covad has been injured in its business and property within Alabama, in an amount to be determined according to proof, but which exceeds $75,000.

144. BellSouth's conduct was willful, malicious, fraudulent, wanton and demonstrated such entire want of care that it raises the presumption of conscious indifference to the consequences it would cause to Covad and consumers in Alabama.

NINTH CAUSE OF ACTION
Monopolization under Florida Statutes § 542.19

145. Covad incorporates by reference the allegations of paragraphs 1 through 107 of this Complaint, as though fully set forth here.

146. BellSouth has monopoly power in all relevant local telecommunications markets including the Local Internet Access Markets, as well as in the markets for local loops, OSS, central offices, and transport facilities within relevant geographic markets in the State of Florida.

147. BellSouth has acted with intent to secure and expand its monopoly power, and to extend it to the Local Internet Access Market in relevant geographic markets within Florida.

148. As a direct result of its conduct, BellSouth has unlawfully restrained trade and monopolized the Local Internet Access Market in one or more relevant geographic markets located within Florida.

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149. As a further direct result of BellSouth's conduct, Covad has been injured in its business and property within Florida, in an amount to be determined according to proof, but which exceeds $75,000.

TENTH CAUSE OF ACTION
Attempted Monopolization under Florida Statutes § 542.19

150. Covad incorporates by reference the allegations of paragraphs 1 through 107 of this Complaint, as though fully set forth here.

151. BellSouth has monopoly power in all relevant local telecommunications markets including the Local Internet Access Markets, as well as in the markets for local loops, OSS, central offices, and transport facilities within relevant geographic markets in the State of Florida.

152. BellSouth has acted with intent to secure and expand its monopoly power, and to extend it to the Local Internet Access Markets in relevant geographic markets within Florida.

153. As a direct result of its conduct, BellSouth has achieved a dangerous probability of successfully monopolizing the Local Internet Access Markets in one or more geographic markets within Florida.

154. As a further direct result of BellSouth's conduct, Covad has been injured in its business and property within Florida, in an amount to be determined according to proof, but which exceeds $75,000.

ELEVENTH CAUSE OF ACTION
Interference with Business Relations under Florida Common Law

155. Covad incorporates by reference the allegations of paragraphs 1 through 107 of this Complaint, as though fully set forth here.

156. At all relevant times, BellSouth was aware of Covad's intention and attempts to offer services, in direct competition with BellSouth, to consumers in the State of

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Florida. In particular, BellSouth was aware that Covad had contracts with a number of potential subscribers of Covad's services.

157. At all relevant times, BellSouth was aware the Covad's services would appeal to a number of consumers in Florida.

158. BellSouth attempted to and did exclude Covad from competing in Florida, in the process interfering with Covad's ability to offer services to consumers there, including causing the cancellation of contracts to purchase Covad service. BellSouth further improperly interfered with Covad's existing and prospective business relations with customers by, among other things, improperly soliciting customers not to enter into contracts with Covad or to breach existing contracts, disparaging Covad's products and services, and wrongfully delaying and refusing to supply services necessary for development and completion of Covad's business relations with its existing and prospective customers.

159. BellSouth acted with the knowledge and intent that its conduct would prevent Covad from offering competing services, in a malicious and intentional attempt to restrain trade, injure Covad's business and drive Covad out of business in Florida.

160. BellSouth's actions have been and continue to be without legal justification or excuse, and without privilege.

161. As a direct result of BellSouth's conduct, BellSouth has induced persons who, but for BellSouth's interference, were reasonably likely to purchase DSL service from Covad instead to purchase DSL service from BellSouth. Further, BellSouth has interfered with Covad's ongoing business and contractual relations with ISPs and end users. BellSouth has induced ISPs and end users not to enter into contracts with Covad, or to cancel such contracts. As a result, trade has been restrained in the Local Internet Access Markets in Florida.

162. As a direct result of BellSouth's conduct, Covad has been injured in its business and property within Florida, including but not limited to revenue losses from sales of DSL service to ISPs and end users. Covad has also suffered severe and irreparable injury to its

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reputation and goodwill. Covad has been damaged in an amount to be determined according to proof, but which exceeds $75,000.

163. BellSouth's conduct was willful, malicious, fraudulent, wanton and demonstrated such entire want of care that it raises the presumption of conscious indifference to the consequences it would cause to Covad and consumers in Florida.

TWELFTH CAUSE OF ACTION

Interference with Business Relations and Restraint of Trade under OCGA § 13-8-2

164. Covad incorporates by reference the allegations of paragraphs 1 through 107 of this Complaint, as though fully set forth here.

165. At all relevant times, BellSouth was aware of Covad's intention and attempts to offer services, in direct competition with BellSouth, to consumers in Georgia. In particular, BellSouth was aware that Covad had contracts with a number of potential subscribers of Covad's services.

166. At all relevant times, BellSouth was aware the Covad's services would appeal to a number of consumers in Georgia.

167. BellSouth attempted to and did exclude Covad from competing in Georgia, in the process interfering with Covad's ability to offer services to consumers there, including causing the cancellation of contracts to purchase Covad service. BellSouth further improperly interfered with Covad's existing and prospective business relations with customers by, among other things, improperly soliciting customers not to enter into contracts with Covad or to breach existing contracts, disparaging Covad's products and services, and wrongfully delaying and refusing to supply services necessary for development and completion of Covad's business relations with its existing and prospective customers.

168. BellSouth acted with the knowledge and intent that its conduct would prevent Covad from offering competing services, in a malicious and intentional attempt to restrain trade, injure Covad's business and drive Covad out of business in Georgia.

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169. BellSouth's actions have been and continue to be without legal justification or excuse, and without privilege.

170. As a direct result of BellSouth's conduct, BellSouth has induced persons who, but for BellSouth's interference, were reasonably likely to purchase DSL service from Covad instead to purchase DSL service from BellSouth. Further, BellSouth has interfered with Covad's ongoing business and contractual relations with ISPs and end users. BellSouth has induced ISPs and end users not to enter into contracts with Covad, or to cancel such contracts. As a result, trade has been restrained in the Local Internet Access Markets in Georgia.

171. As a further direct result of BellSouth's conduct, Covad has been injured in its business and property within Georgia, including but not limited to revenue losses from sales of DSL service to ISPs and end users. Covad has also suffered severe and irreparable injury to its reputation and goodwill. Covad has been damaged in an amount to be determined according to proof, but which exceeds $75,000.

172. BellSouth's conduct was willful, malicious, fraudulent, wanton and demonstrated such entire want of care that it raises the presumption of conscious indifference to the consequences it would cause to Covad and consumers in Georgia.

THIRTEENTH CAUSE OF ACTION
Monopolization under Kentucky Revised Statutes, Chapter 29, § 367.175

173. Covad incorporates by reference the allegations of paragraphs 1 through 107 of this Complaint, as though fully set forth here.

174. BellSouth has monopoly power in all relevant local telecommunications markets including the Local Internet Access Markets, as well as in the markets for local loops, OSS, central offices, and transport facilities within relevant geographic markets in the State of Kentucky.

175. BellSouth has acted with intent to secure and expand its monopoly power, and to extend it to the Local Internet Access Market in relevant geographic markets within Kentucky.

176. As a direct result of its conduct, BellSouth has unlawfully restrained trade and monopolized the Local Internet Access Market in one or more relevant geographic markets located within Kentucky.

177. As a further direct result of BellSouth's conduct, Covad has been injured in its business and property within Kentucky, in an amount to be determined according to proof, but which exceeds $75,000.

FOURTEENTH CAUSE OF ACTION
Attempted Monopolization under Kentucky Revised Statutes, Chapter 29, § 367.175

178. Covad incorporates by reference the allegations of paragraphs 1 through 107 of this Complaint, as though fully set forth here.

179. BellSouth has monopoly power in all relevant local telecommunications markets including the Local Internet Access Markets, as well as in the markets for local loops, OSS, central offices, and transport facilities within relevant geographic markets in the State of Kentucky.

180. BellSouth has acted with intent to secure and expand its monopoly power, and to extend it to the Local Internet Access Market in relevant geographic markets within Kentucky.

181. As a direct result of its conduct, BellSouth has achieved a dangerous probability of successfully monopolizing the Local Internet Access Market in one or more relevant geographic markets located within Kentucky.

182. As a further direct result of BellSouth's conduct, Covad has been injured in its business and property within Kentucky, in an amount to be determined according to proof, but which exceeds $75,000.

FIFTEENTH CAUSE OF ACTION
Interference with Business Relations under Kentucky Common Law

183. Covad incorporates by reference the allegations of paragraphs 1 through 107 of this Complaint, as though fully set forth here.

184. At all relevant times, BellSouth was aware of Covad's intention and attempts to offer services, in direct competition with BellSouth, to consumers in the State of Kentucky. In particular, BellSouth was aware that Covad had contracts with a number of potential subscribers of Covad's services.

185. At all relevant times, BellSouth was aware the Covad's services would appeal to a number of consumers in Kentucky.

186. BellSouth attempted to and did exclude Covad from competing in Kentucky, in the process interfering with Covad's ability to offer services to consumers there, including causing the cancellation of contracts to purchase Covad service. BellSouth further improperly interfered with Covad's existing and prospective business relations with customers by, among other things, improperly soliciting customers not to enter into contracts with Covad or to breach existing contracts, disparaging Covad's products and services, and wrongfully delaying and refusing to supply services necessary for development and completion of Covad's business relations with its existing and prospective customers.

187. BellSouth acted with the knowledge and intent that its conduct would prevent Covad from offering competing services in a malicious and intentional attempt to restrain trade, injure Covad's business and drive Covad out of business in Kentucky.

188. BellSouth's actions have been and continue to be without legal justification or excuse, and without privilege.

189. As a direct result of BellSouth's conduct, BellSouth has induced persons who, but for BellSouth's interference, were reasonably likely to purchase DSL service from Covad instead to purchase DSL service from BellSouth. Further, BellSouth has interfered with Covad's ongoing business and contractual relations with ISPs and end users. BellSouth has induced ISPs and end users not to enter into contracts with Covad, or to cancel such contracts. As a result, trade has been restrained in the Local Internet Access Markets in Kentucky.

190. As a direct result of BellSouth's conduct, Covad has been injured in its business and property within Kentucky, including but not limited to revenue losses from sales of DSL service to ISPs and end users. Covad has also suffered severe and irreparable injury to its reputation and goodwill. Covad has been damaged in an amount to be determined according to proof, but which exceeds $75,000.

191. BellSouth's conduct was willful, malicious, fraudulent, wanton and demonstrated such entire want of care that it raises the presumption of conscious indifference to the consequences it would cause to Covad and consumers in Kentucky.

SIXTEENTH CAUSE OF ACTION
Monopolization under Louisiana Rev. Stat. §§ 51:123

192. Covad incorporates by reference the allegations of paragraphs 1 through 107 of this Complaint, as though fully set forth here.

193. BellSouth has monopoly power in all relevant local telecommunications markets including the Local Internet Access Markets, as well as in the markets for local loops, OSS, central offices, and transport facilities within relevant geographic markets in the State of Louisiana.

194. BellSouth has acted with intent to secure and expand its monopoly power, and to extend it to the Local Internet Access Market in relevant geographic markets within Louisiana.

195. As a direct result of its conduct, BellSouth has unlawfully restrained trade and monopolized the Local Internet Access Market in one or more relevant geographic markets located within Louisiana.

196. As a further direct result of BellSouth's conduct, Covad has been injured in its business and property within Louisiana, in an amount to be determined according to proof, but which exceeds $75,000.

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SEVENTEENTH CAUSE OF ACTION
Attempted Monopolization under Louisiana Rev. Stat. § 51:123

197. Covad incorporates by reference the allegations of paragraphs 1 through 107 of this Complaint, as though fully set forth here.

198. BellSouth has monopoly power in all relevant local telecommunications markets including the Local Internet Access Markets, as well as in the markets for local loops, OSS, central offices, and transport facilities within relevant geographic markets in the State of Louisiana.

199. BellSouth has acted with intent to secure and expand its monopoly power, and to extend it to the Local Internet Access Market in the relevant geographic markets within Louisiana.

200. As a direct result of its conduct, BellSouth has achieved a dangerous probability of successfully monopolizing the Local Internet Access Market in one or more geographic markets located within Louisiana.

201. As a further direct result of BellSouth's conduct, Covad has been injured in its business and property within Louisiana, in an amount to be determined according to proof, but which exceeds $75,000.

EIGHTEENTH CAUSE OF ACTION
Unfair Competition under Louisiana Rev. Stat. § 51:1405

202. Covad incorporates by reference the allegations of paragraphs 1 through 107 of this Complaint, as though fully set forth here.

203. BellSouth has acted with intent to secure and expand its monopoly power, and to extend it to the Local Internet Access Markets in relevant geographic markets within Louisiana, by means of trade practices that are unfair, unreasonable and deceptive.

204. As a direct result of BellSouth's conduct, Covad has been injured in its business and property within Louisiana, in an amount to be determined according to proof, but which exceeds $75,000.

NINETEENTH CAUSE OF ACTION
Monopolization under North Carolina Gen. Stat.§ 75-2.1

205. Covad incorporates by reference the allegations of paragraphs 1 through 107 of this Complaint, as though fully set forth here.

206. BellSouth has monopoly power in all relevant local telecommunications markets including the Local Internet Access Markets, as well as in the markets for local loops, OSS, central offices, and transport facilities within relevant geographic markets in the State of North Carolina.

207. BellSouth has acted with intent to secure and expand its monopoly power, and to extend it to the Local Internet Access Market in relevant geographic markets within North Carolina.

208. As a direct result of its conduct, BellSouth has unlawfully restrained trade and monopolized the Local Internet Access Market in one or more relevant geographic markets located within North Carolina.

209. As a further direct result of BellSouth's conduct, Covad has been injured in its business and property within North Carolina, in an amount to be determined according to proof, but which exceeds $75,000.

TWENTIETH CAUSE OF ACTION
Attempted Monopolization under North Carolina Gen. Stat.§ 75-2.1

210. Covad incorporates by reference the allegations of paragraphs 1 through 107 of this Complaint, as though fully set forth here.

211. BellSouth has monopoly power in all relevant local telecommunications markets including the Local Internet Access Markets, as well as in the markets for local loops, OSS, central offices, and transport facilities within relevant geographic markets in the State of North Carolina.

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212. BellSouth has acted with intent to secure and expand its monopoly power, and to extend it to the Local Internet Access Market in the relevant geographic markets within North Carolina.

213. As a direct result of its conduct, BellSouth has achieved a dangerous probability of successfully monopolizing the Local Internet Access Markets in one or more geographic markets located within North Carolina.

214. As a further direct result of BellSouth's conduct, Covad has been injured in its business and property within North Carolina, in an amount to be determined according to proof, but which exceeds $75,000.

TWENTY-FIRST CAUSE OF ACTION
Interference with Business Relations under North Carolina Common Law

215. Covad incorporates by reference the allegations of paragraphs 1 through 107 of this Complaint, as though fully set forth here.

216. At all relevant times, BellSouth was aware of Covad's intention and attempts to offer services, in direct competition with BellSouth, to consumers in the State of North Carolina. In particular, BellSouth was aware that Covad had contracts with a number of potential subscribers of Covad's services.

217. At all relevant times, BellSouth was aware the Covad's services would appeal to a number of consumers in North Carolina.

218. BellSouth attempted to and did exclude Covad from competing in North Carolina, in the process interfering with Covad's ability to offer services to consumers in those markets, including causing the cancellation of contracts to purchase Covad service. BellSouth further improperly interfered with Covad's existing and prospective business relations with customers by, among other things, improperly soliciting customers not to enter into contracts with Covad or to breach existing contracts, disparaging Covad's products and services, and wrongfully delaying and refusing to supply services necessary for development and completion of Covad's business relations with its existing and prospective customers.

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219. BellSouth acted with the knowledge and intent that its conduct would prevent Covad from offering competing services in a malicious and intentional attempt to restrain trade, injure Covad's business and drive Covad out of business in North Carolina.

220. BellSouth's actions have been and continue to be without legal justification or excuse, and without privilege.

221. As a direct result of BellSouth's conduct, BellSouth has induced persons, who, but for BellSouth's interference were reasonably likely to purchase DSL service from Covad instead to purchase DSL service from BellSouth. Further, BellSouth has interfered with Covad's ongoing business and contractual relations with ISPs and end users. BellSouth has induced ISPs and end users not to enter into contracts with Covad, or to cancel such contracts. As a result, trade has been restrained in the Local Internet Access Markets in North Carolina.

222. As a direct result of BellSouth's conduct, Covad has been injured in its business and property within North Carolina, including but not limited to revenue losses from sales of DSL service to ISPs and end users. Covad has also suffered severe and irreparable injury to its reputation and goodwill. Covad has been damaged in an amount to be determined according to proof, but which exceeds $75,000.

223. BellSouth's conduct was willful, malicious, fraudulent, wanton and demonstrated such entire want of care that it raises the presumption of conscious indifference to the consequences it would cause to Covad and consumers in North Carolina.

TWENTY-SECOND CAUSE OF ACTION
Monopolization under Tenn. Code § 47-25-101 and Tenn. Const. Art. 1, § 22

224. Covad incorporates by reference the allegations of paragraphs 1 through 107 of this Complaint, as though fully set forth here.

225. BellSouth has monopoly power in all relevant local telecommunications markets including the Local Internet Access Markets, as well as in the markets for local loops, OSS, central offices, and transport facilities within relevant geographic markets in the State of Tennessee.

226. BellSouth has acted with intent to secure and expand its monopoly power, and to extend it to the Local Internet Access Market in relevant geographic markets within Tennessee.

227. As a direct result of its conduct, BellSouth has unlawfully restrained trade and monopolized the Local Internet Access Market in one or more relevant geographic markets located within Tennessee.

228. As a further direct result of BellSouth's conduct, Covad has been injured in its business and property within Tennessee, in an amount to be determined according to proof, but which exceeds $75,000.

TWENTY-THIRD CAUSE OF ACTION
Attempted Monopolization under Tenn. Code § 47-25-101 and Tenn. Const. Art. 1, § 22

229. Covad incorporates by reference the allegations of paragraphs 1 through 107 of this Complaint, as though fully set forth here.

230. BellSouth has monopoly power in all relevant local telecommunications markets including the Local Internet Access Markets, as well as in the markets for local loops, OSS, central offices, and transport facilities within relevant geographic markets in the State of Tennessee.

231. BellSouth has acted with intent to secure and expand its monopoly power, and to extend it to the Local Internet Access Market in relevant geographic markets within Tennessee.

232. As a direct result of its conduct, BellSouth has achieved a dangerous probability of successfully monopolizing the Local Internet Access Markets in one or more geographic markets located within Tennessee.

233. As a further direct result of BellSouth's conduct, Covad has been injured in its business and property within Tennessee, in an amount to be determined according to proof, but which exceeds $75,000.

TWENTY-FOURTH CAUSE OF ACTION
Interference with Business Relations under Tennessee Common Law

234. Covad incorporates by reference the allegations of paragraphs 1 through 107 of this Complaint, as though fully set forth here.

235. At all relevant times, BellSouth was aware of Covad's intention and attempts to offer services, in direct competition with BellSouth, to consumers in the State of Tennessee. In particular, BellSouth was aware that Covad had contracts with a number of potential subscribers of Covad's services.

236. At all relevant times, BellSouth was aware the Covad's services would appeal to a number of consumers in Tennessee.

237. BellSouth attempted to and did exclude Covad from competing in Tennessee, in the process interfering with Covad's ability to offer services to consumers in those markets, including causing the cancellation of contracts to purchase Covad service. BellSouth further improperly interfered with Covad's existing and prospective business relations with customers by, among other things, improperly soliciting customers not to enter into contracts with Covad or to breach existing contracts, disparaging Covad's products and services, and wrongfully delaying and refusing to supply services necessary for development and completion of Covad's business relations with its existing and prospective customers.

238. BellSouth acted with the knowledge and intent that its conduct would prevent Covad from offering competing services there, in a malicious and intentional attempt to restrain trade, injure Covad's business and drive Covad out of business in Tennessee.

239. BellSouth's actions have been and continue to be without legal justification or excuse, and without privilege.

240. As a direct result of BellSouth's conduct, BellSouth has induced persons who, but for BellSouth's interference, were reasonably likely to purchase DSL service from Covad instead to purchase DSL service from BellSouth. Further, BellSouth has interfered with Covad's ongoing business and contractual relations with ISPs and end users. BellSouth has

induced ISPs and end users not to enter into contracts with Covad, or to cancel such contracts. As a result, trade in the Local Internet Access Markets has been restrained in Tennessee.

241. As a direct result of BellSouth's conduct, Covad has been injured in its business and property within Tennessee, including but not limited to revenue losses from sales of DSL service to ISPs and end users. Covad has also suffered severe and irreparable injury to its reputation and goodwill. Covad has been damaged in an amount to be determined according to proof, but which exceeds $75,000.

242. BellSouth's conduct was willful, malicious, fraudulent, wanton and demonstrated such entire want of care that it raises the presumption of conscious indifference to the consequences it would cause to Covad and consumers in Tennessee.

PRAYER FOR RELIEF

Wherefore, Covad prays that the Court award relief on its claims against BellSouth as follows:

1. Judgment in favor of Covad on all claims;
2. Damages in an amount to be proven at trial;
3. Treble damages on Covad's antitrust claims;
4. Punitive damages as permitted by state law on Covad's tort claims;
5. Covad's reasonable attorneys' fees and costs; and
6. Such other and further relief as the Court deems just and proper.

IN THE SUPERIOR COURT OF TROUP COUNTY
STATE OF GEORGIA

ITC^DELTACOM COMMUNICATIONS, INC.	)	
V.	)	CIVIL ACTION NO. 02-CV-298
BELLSOUTH TELECOMMUNICTIONS, INC.	)	

PETITION FOR DECLARATORY JUDGMENT

Comes Now, ITC^DeltaCom Communications, Inc. ("ITC^D") and hereby petitions this court for Declaratory Judgment. In support of this Petition, ITC^D shows as follows:

I. PARTIES

1.

ITC^D is an Alabama corporation conducting business as a local exchange telephone company in Georgia, with its corporate headquarters located at 1791 O.G. Skinner Drive in West Point, Troup County, Georgia.

2.

BST is a Georgia corporation with a principal place of business at 675 West Peachtree Street, Atlanta, Georgia, 30375 which conducts business in Georgia, including Troup County, Georgia. BST has an office at 502 S. Greenwood, LaGrange, Georgia, 30240. BST may be served through its registered agent, CSC of Gwinnett County, Inc., at 4845 Jimmy Carter Boulevard, Norcross, Georgia 30093.

II. JURISDICTION

3.

This Court has general jurisdiction to grant the relief requested herein pursuant to O.C.G.A. § 9-4-2 and to "declare rights and other legal relations" of ITC^D and BST. Id.

4.

This Court has authority to interpret and enforce interconnection agreements entered into pursuant to the Telecommunications Act of 1996. See BellSouth Telecommunications, Inc. v. MCI Metro Access Transmission Services, Inc., 278 F.3rd 1223 (11th Cir. 2002).

5.

This case presents an "actual controversy" regarding interpretation of a contract between ITC^D and BST.

6.

Declaratory Judgment is proper in this case because the parties assert adverse claims upon an accrued set of facts. Adler v. Adler, 87 Ga. App. 842 (1953).

7.

ITC^D asserts that BST may not require security from ITC^D under the current facts and provisions of the contract between the parties.

8.

BST asserts that it may require ITC^D to provide security under the current facts and provisions of the contract between the parties.

9.

There is great uncertainty and insecurity with respect to rights, status and other legal relations between the parties. See Mayor of Savannah v. Bay Realty Co., 90 Ga. App. 261 (1954).

III. FACTS

10.

ITC^D is a competitive local exchange company ("CLEC") providing local telecommunications services to customers in the State of Georgia and in other states throughout the BellSouth region.

11.

BST is an incumbent local exchange carrier ("ILEC") which pursuant to Section 252 of the federal Telecommunications Act of 1996 is required to enter into contracts, called interconnection agreements, with CLECs such as ITC^D. Pursuant to such interconnection agreements, CLECs and ILECs provide various services to each other.

12.

ITC^D and BST entered into an Interconnection Agreement ("ICA") dated February 9, 2001. The ICA is a valid contract that is in force today.

13.

The ICA states that "if either party fails to pay undisputed billed charges... such party may be required to provide information regarding credit worthiness."

14.

ITC^D has not failed to pay to BST undisputed billed charges.

15.

In early December, 2001, BST requested additional information regarding ITC^D's credit worthiness. Such information was provided on or about January 16, 2002, and it was agreed between ITC^D and BST that the parties would mutually re-evaluate ITC^D's credit worthiness in July, 2002.

16.

The ICA states that "[i]f, in the sole opinion of the Party providing service, circumstances so warrant and/or gross monthly billing has increased beyond the level initially used to determine the level of security, the Party providing service reserves the right to request additional security." (Attachment 1)

17.

By letter dated March 8, 2002, BST stated that "an additional security deposit *is required* in the amount of $10 million" and asked that ITC^D provide such additional security by March 29, 2002. (See Attachment 2). (emphasis added).

18.

ITC^D declined to provide security to BST in response to such request.

19.

By letter dated March 15, 2002, BST asked ITC^D to amend the ICA by replacing Section 1.11 of Attachment F with a new section which states that "[i]n the event ITC^DeltaCom fails to remit to BellSouth any deposit requested pursuant to this Section, service to ITC^DeltaCom may be terminated..." (See Attachment 3)

20.

The Parties have not executed the March 15, 2002 proposed Amendment.

IV. PRAYER FOR RELIEF

It is requested that this Court declare as follows:

21.

Under the ICA, BST may not *require* a security deposit be paid by ITC^D to BST.

22.

ITC^D also requests the court grant such other relief as it deems just and proper.

Respectfully submitted, this 28th day of March, 2002.

WILLIS, MCKENZIE & LONG, LLP

By: D. Ray McKenzie, Jr.
D. Ray McKenzie, Jr.
Attorney for Petitioner
Georgia Bar No.: 494750

300 Smith Street
LaGrange, Georgia 30240
(706)882-2942
(706)883-8947 fax

AND

SUTHERLAND, ASBILL & BRENNAN, LLP

by MCD w/ Express Permission

By: David Adelman
David Adelman
Attorney for Petitioner
Georgia Bar No.: 005120

999 Peachtree Street
Atlanta, Georgia 30309-3996
(404)853-8000
(404)853-8806 fax

1.10 Discontinuing Service. The procedures for discontinuing service to ITC^DeltaCom or BellSouth are as follows:

1.10.1 Each party reserves the right to suspend or terminate service for nonpayment in accordance with applicable state and federal regulations.

1.10.2 If payment of account is not received by the bill day in the month after the original bill day, the billing Party may provide written notice to the other Party that additional applications for service will be refused and that any pending orders for service will not be completed if payment is not received by the fifteenth day following the date of the notice. In addition the billing party may, at the same time, give thirty days notice to the person designated by the other party to receive notices of noncompliance, to discontinue the provision of existing services at any time thereafter.

1.10.3 In the case of such discontinuance, all billed charges, as well as applicable termination charges, shall become due.

1.10.4 If the billing party does not discontinue the provision of the services involved on the date specified in the thirty days notice and the other Party's noncompliance continues, nothing contained herein shall preclude the billing party's right to discontinue the provision of the services without further notice.

1.10.5 If payment is not received or satisfactory arrangements made for payment by the date given in the written notification, the billed party's services may be discontinued. Upon discontinuance of service on the billed party's account, service to the billed party's end users will be denied. The billing party will reestablish service at the request of the end user or the other Party upon payment of the appropriate connection fee and subject to the billing party's 's normal application procedures. The billed party is solely responsible for notifying the end user of the proposed service disconnection.

1.10.6 If within fifteen days after an end user's service has been denied no contact has been made in reference to restoring service, the end user's service shall be disconnected.

1.11 Deposit Policy. Either Party may be required to provide information regarding credit worthiness. If either Party repeatedly fails to pay undisputed billed charges by the Payment due date or its financial condition deteriorates materially, such party may be required to provide information regarding credit worthiness. Based on the results of the credit

BELLSOUTH

March 8, 2002

Attention: Mr. Douglas A Shumate
ITC DeltaCom, Inc
1791 OG Skinner Dr
West Point, GA 31833

Dear Mr. Shumate,

BellSouth performs periodic credit reviews of its existing customers. After reviewing your account, an additional security deposit is required in the amount of $10,000,000 based upon your average monthly billing with BellSouth Interconnection Services less disputes. BellSouth believes material changes have occurred that warrant this request at this time. Standard & Poor's has lowered the corporate credit rating on ITC DeltaCom Inc. to triple-'C'-minus from triple-'C'plus; due to increased concerns over liquidity. "The downgrade is based on the company's limitations to draw down the remaining $70 million available on its existing preferred stock agreement with ITC Holding Company Inc., SCANA Corp., and HBK Master Fund L.P. due to the possibility of a change of control situation."

This balance can be submitted either in cash (guaranteed funds), in the form of an Irrevocable Letter of Credit or as a Surety Bond (required formats attached) to:

> **Attn: Sandra Cutt / 36E56**
> **BellSouth Telecommunications, Inc.**
> **675 West Peachtree Street, N.E.**
> **Atlanta, Georgia 30375**

The security must be received by March 29, 2002. If said security deposit is not received in this office by March 29, 2002, BellSouth hereby notifies ITC DeltaCom, Inc.that the failure to provide a deposit is considered to be a dispute. As such, the dispute shall be handled pursuant to the procedures set forth in Attachment 7, Section 1.11 of the Interconnection Agreement between our respective companies.

We look forward to your prompt response.

Sincerely,

Larry W. Thaxton
Sr. Credit Analyst
404-927-7941

cc: Jerry Hendrix

STANDBY LETTER OF CREDIT

(To Be Reproduced on Issuing Bank's Letterhead)

Date
Letter of Credit No.

To Whom It May Concern:

We hereby open our Irrevocable Letter of Credit in your favor available by your drafts drawn on *(Name of issuing bank)* at Sight for any sums not exceeding in total *(face amount)* U.S. Dollars for account *(Corporate name and address of account party)*.

Draft must be accompanied by:

I.

A. Your signed statement certifying that the funds drawn hereunder are due you on account of *(Account Debtor)* as a result of failure to pay, within terms quoted therein, invoice(s) issued to them by you and demand for payment has been made and the funds have not been forthcoming from *(Account Debtor)* or any source; and

B. A photocopy of unpaid invoice(s).

OR;

II.

A. Your signed statement certifying that the funds drawn hereunder represent the amount of payments you have received from or for the account of *(Account Debtor)* within 90 days prior to the occurrence of one of the following: (i) the filing of a petition by or against *(Account Debtor)* with a United States Bankruptcy Court; (ii) the making by *(Account Debtor)* of an assignment for the benefit of creditors or (iii) *(Account Debtor)* became the subject of any proceeding, voluntary or involuntary, which under applicable State or Federal law could result in the return of such payment(s); and

B. The amount of such payment(s) has been (or will promptly after payment of the accompanying draft be) returned to *(account debtor)* or otherwise to the appropriate person.

Each draft must bear on its face the clause, "Drawn under Letter of Credit No. _____ dated _____ of *(Name of issuing bank)*.

In the event that you receive, prior to the expiration date herein set forth, any payment (from a source other than drafts drawn under this Letter of Credit) for invoices on the debtor's account and within ninety (90) days after receipt of said payment (i) a petition is filed by or against *(Account Debtor)* with a United States Bankruptcy Court; (ii) *(Account Debtor)* is the subject of any other proceeding, voluntary or involuntary, which under applicable State or Federal law could result in the return of such payment, then the expiration date hereof shall automatically be extended to a date that is one hundred twenty (120) days after the date of such filing, assignment or proceeding and, if this letter of credit has previously expired, our obligations hereunder shall be reinstated up to the amount of such payment only, but in no event more than *(face amount)* in the aggregate.

This Letter of Credit shall cover invoices issued or dated prior to, on or after the date hereof.

Except so far as otherwise expressly stated herein, this Letter of Credit is subject to the "Uniform Customs and Practice for Documentary Credits (1993 Revision), International Chamber of Commerce Publication No. 500."

We hereby agree with you that drafts drawn under and in compliance with the terms of this Letter of Credit will be duly honored if presented to the above-mentioned drawee bank on or before *(expiration date)* (or as such expiration date may be extended pursuant to the provisions hereof).

Very truly yours,

(Issuing Bank)

By: _____
Authorized Officer

CORPORATE GUARANTY

WHEREAS, _____ (Guarantor), is a principal investor in _____; and

WHEREAS, _____ is a reseller of telecommunications services; and

WHEREAS, BellSouth Telecommunications, Inc. (BellSouth), provides telecommunications services; and

WHEREAS, as a condition precedent to extending credit to _____ _____ BellSouth requires that Guarantor absolutely and unconditionally guaranty payment for all services provided;

NOW, THEREFORE, to induce BellSouth to extend credit to _____ and for other good and valuable consideration, Guarantor hereby makes the following unconditional, absolute and continuing guaranty to BellSouth for the prompt and direct payment by _____ of all sums which may become due BellSouth for providing the services from time to time pursuant to the following terms and conditions:

1 The foregoing recitals are hereby incorporated herein by this reference.

2. Guarantor hereby absolutely and unconditionally guarantees, as a direct and primary obligation of Guarantor, the payments of the _____ of all sums due BellSouth for providing the services from time to time. Guarantor covenants and agrees that if, _____ at any time shall be in default in payment of amount due for the Services as provided. Guarantor will, within ten (10) days after written demand therefore by BellSouth, pay all such liabilities in full.

3. Guarantor hereby waives notice of acceptance of the guaranty and notice of the incurring liabilities by _____, relating to the services provided by BellSouth from time to time.

4. Guarantor agrees that BellSouth shall not be required, as a condition to the enforcement of Guarantor's obligations hereunder, to make any demand upon, or pursue or exhaust any of its rights or remedies against, or to proceed against _____ to collect any such obligation. No action or inaction by BellSouth against _____ or any change in the terms of debt or any release of rights or security or any foregoing of remedies will affect the guaranty. Guarantor agrees that any renewal, postponement or extension of time, any addition or release of any person or entity, primarily or secondarily liable, or any other indulgence to _____ may be effected without notice to Guarantor and without affecting the liability of Guarantor hereunder.

5. This guaranty is payable in Fulton County, Georgia, in U.S. dollars or mutually agreed upon currency

6. This guaranty shall inure to the benefit of BellSouth, its successors and assigns, and shall be binding on Guarantor and its successors in interest.

7. There are no conditions or limitations to the guaranty except those contained herein as the date hereof, and thereafter no alteration, change or modifications hereof shall be binding or effective unless executed in writing by Guarantor after sixty (60) days advance written notice to BellSouth.

8. This Guaranty shall remain in full force and effect unless terminated by the Guarantor with sixty (60) days advance notice to BellSouth.

9. Termination of this Guaranty shall not in any way affect Guarantor's liability as to any indebtedness or liability created prior to such termination.

10. Notices shall be sent to BellSouth by U S Mail, first class, postage prepaid at the following address:

    Attn: Credit Department, 35H63
    BellSouth Telecommunications, Inc.
    675 West Peachtree Street
    Atlanta, GA 30375

IN WITNESS WHEREOF, Guarantor has executed this guaranty this _____day of _____, 2000.

By:_____ GUARANTOR

By: _____ GUARANTOR

ACKNOWLEDGEMENT

STATE OF: _____
COUNTY OF: _____

BEFORE ME, the undersigned authority, a Notary Public, on this day personally appeared _____, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that the same was the act of the said _____, and that he/she has executed the same for the purposes and considerations therein expressed.

SUBSCRIBED AND SWORN TO BEFORE ME on this the ____ day of _____, 2000.

BELLSOUTH

BellSouth Interconnection Services
675 W. Peachtree Street, NE
Room 34S91
Atlanta, Georgia 30375

Michelle Culver
(404) 927-1374
(404) 529-7839

Sent Via Electronic and Certified Mail

March 15, 2002

Ms. Nanette Edwards
Director of Regulatory
ITC^DeltaCom
4092 S. Memorial Parkway
Huntsville, AL 35802

Dear Ms. Edwards:

Attached for your review and signature is an amendment for each of the six Interconnection Agreements between our companies, which addresses a revision to those Interconnection Agreements. The amendment contains specific provisions associated with BellSouth's Deposit Policy.

Upon review, if accepted as provided, please sign both copies of each amendment (if email: return two original signature pages) and return them to me at the above address. BellSouth will execute each amendment and return one fully executed copy to you for your files. In addition, you will need to provide the certificate numbers, company number or docket pending certifications for those states within BellSouth's region where the amendment will need to be filed with the appropriate state commissions.

If you have any questions relating to this amendment, please call me.

Sincerely,

Michelle Culver

Michelle Culver
Manager, Interconnection Services

Attachment

AMENDMENT
TO THE
AGREEMENT BETWEEN
ITC^DELTACOM COMMUNICATIONS, INC. AND
BELLSOUTH TELECOMMUNICATIONS, INC.
DATED FEBRUARY 9, 2001

Pursuant to this Amendment, (the "Amendment"), ITC^DeltaCom Communications, Inc. ("ITC^DeltaCom") and BellSouth Telecommunications, Inc. ("BellSouth"), hereinafter referred to collectively as the "Parties", hereby agree to amend that certain Interconnection Agreement between the Parties in the state of Florida dated February 9, 2001 ("Agreement").

WHEREAS, BellSouth and ITC^DeltaCom entered into the Agreement on February 9, 2001, and;

NOW THEREFORE, in consideration of the mutual provisions contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby covenant and agree as follows:

1. Attachment 7, Billing and Billing Accuracy Certification, Section 1.11, Deposit Policy, is hereby deleted in its entirety and replaced with a new Section 1.11, Deposit Policy, as set forth in Exhibit 1 attached hereto and incorporated herein by this reference

2. All of the other provisions of the Agreement, dated February 9, 2001, shall remain in full force and effect.

3. Either or both of the Parties are authorized to submit this Amendment to the respective state regulatory authorities for approval subject to Section 252(e) of the Federal Telecommunications Act of 1996.

IN WITNESS WHEREOF, the Parties hereto have caused this Amendment to be executed by their respective duly authorized representatives and shall be deemed effective the date of the last signature of both Parties.

ITC^DeltaCom Communications, Inc.	BellSouth Telecommunications, Inc.
By: _____	By: _____
Name: _____	Name: _____
Title: _____	Title: _____
Date: _____	Date: _____

Roslyn Clopton - ITC^DeltaCom v. BellSouth - Local Counsel E-mail Addresses

From: <rhyatt@itcdeltacom.com>
To: <dladelman@sablaw.com>
Date: 3/27/02 6:02 PM
Subject: ITC^DeltaCom v. BellSouth - Local Counsel E-mail Addresses
CC: <rmckenzie@wmllaw.com>, <mdegennaro@wmllaw.com>

David, the contact information for Ray McKenzie and Mark DeGennaro is as follows:

Willis, McKenzie & Long LLP
Attorneys at Law
300 Smith Street
LaGrange, GA 30240

Main #: (706)882-2942
Fax#: (706)883-8947

e-mail addresses are as indicated in the "cc" addresses above.

Thanks,

Rodney Hyatt
Vice President - Legal and
Assistant General Counsel
ITC^DeltaCom
Ph: (256)382-3846
Fax: (256)382-3936

JOB STATUS REPORT

AS OF APR 30 '02 15:23 PAGE. 01

BELLSOUTH LEGAL DEPT

JOB #485

	DATE	TIME	TO/FROM	MODE	MIN/SEC	PGS	STATUS
001	4/30	15:12	4049861800	EC- S	10' 29"	055	OK

BELLSOUTH TELECOMMUNICATIONS, INC.
LEGAL DEPARTMENT
1155 Peachtree Street, NE
Atlanta, Georgia 30309
FAX: (404) 249-5664

Facsimile Cover Page

Date: 4/30/2002

To: Bennett Ross (404) 986-1800

From: Mark F. McIntosh

Telephone: (404) 249-3392 **Pages:** _____ (Including Cover Sheet)

MESSAGE:
The originals of the below matters will be sent to you via federal express tonight. The orginals of all labor related matters will be forwarded to Keith Kochler.

Case Name		Docket#	Type of Matter
Chrysler Financial vs LaShanda Harris	State Court of Gwinnett	02C32053	Garnishment
ITC DeltaCom vs BellSouth Telecommunications, Inc.	Superior Court of Troup	02CV398	Pleadings
Georgia International Health Alliance, Inc., et al. vs BellSouth Corporation, et al.	U.S. Bankruptcy Court	029149	Bankruptcy
Georgia International Health Alliance, Inc., et al. vs BellSouth Corporation, et al.	U.S. Bankruptcy Court	029149	Bankruptcy

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO: 00-2808-CIV-GOLD/SIMONTON

MGC COMMUNICATIONS, INC., d/b/a
MPOWER COMMUNICATIONS CORP., a
Nevada corporation,

Plaintiff,

vs.

BELLSOUTH TELECOMMUNICATIONS, INC.,
a Georgia corporation,

Defendant.

CLOSED
CIVIL
CASE

ORDER GRANTING DEFENDANT BELLSOUTH'S MOTION TO DISMISS

THIS CAUSE is before the Court upon Defendant's Motion to Dismiss [D.E. 10], filed on September 8, 2000. Plaintiff filed a Response [D.E. 21] on October 20, 2000, and Defendant filed a Reply [D.E. 28] on November 9, 2000.

The Complaint, filed on August 2, 2000, alleges violations of the United States antitrust laws and the Telecommunications Act of 1996. The Complaint contains three claims for relief, as follows: (1) monopolization of high-speed internet access, in violation of Section 2 of the Sherman Antitrust Act, 15 U.S.C. § 2; (2) attempted monopolization of high-speed internet access, in violation of Section 2 the Sherman Antitrust Act, 15 U.S.C. § 2; and (3) failure to obey the FCC's *UNE Remand Order*,[1] in violation of 47 U.S.C. § 401(b). Jurisdiction of this Court is invoked pursuant

[1] The *UNE Remand Order* is attached as Exhibit 1 to Defendant's Appendix in Support of Motion to Dismiss.

to 28 U.S.C. §§ 1331 and 1337 and under 47 U.S.C. §§ 207, 251, 252 and 401(b).

Defendant moves for dismissal of all counts of the Complaint pursuant to Rules 12(b)(1) (lack of subject matter jurisdiction), (3) (improper venue), and (6) (failure to state a claim upon which relief may be granted), of the Federal Rules of Civil Procedure. After careful consideration of the parties' arguments, the applicable law, and the record as a whole, the Court concludes that Defendant's Motion to Dismiss should be granted.

I. Background

A. The Statutory Framework

In 1996, Congress passed the Telecommunications Act of 1996, Pub. L. 104-104, 110 Stat. 56 (1996), codified at 47 U.S.C. § 151, *et seq.*, to "promote competition and reduce regulation in order to secure lower prices and higher quality services for American telecommunications consumers and encourage the rapid deployment of new telecommunications technologies." Preamble to Telecommunications Act of 1996. The Act imposes on local carriers, as a matter of federal law, various duties designed to foster competition, and allows state commissions the option of taking a major role in implementing the Act's requirements.

Specifically, Section 251 of the Telecommunications Act stipulates that each local exchange carrier, or LEC, has the duty to resell on reasonable and nondiscriminatory terms, to provide number portability to the extent technically feasible, to provide dialing parity to competing providers, to afford access to rights-of-way, and to establish reciprocal compensation arrangements for the transport and termination of telecommunications. 47 U.S.C. § 251(b). Incumbent local exchange

carriers, or ILECs, have additional duties under the statute, which are spelled out in § 251(c): they must negotiate in good faith to create the agreements necessary for fulfilling the subpart (b) duties; they must provide for "requesting communications carriers" appropriate interconnections; they must provide unbundled access to network elements at any technically feasible point on just, reasonable, and nondiscriminatory terms; they must offer to aspiring competitors at wholesale rates any services that they sell at retail; and they must give reasonable public notice of changes in their services that would affect others. See also Goldwasser v. Ameritech Corp., 222 F.3d 390, 394 (7th Cir. 2000).

As noted above, incumbent local exchange carriers, or ILECs, and competitive local exchange carriers, or CLECs, must attempt to negotiate the terms of interconnection and resale. 47 U.S.C. § 251(c)(1) and 252(a). If the parties cannot reach an agreement, any party may request arbitration, and the parties are required to participate. 47 U.S.C. § 252(b)(1) and (5). All interconnection agreements adopted by negotiation or arbitration must be submitted for approval to the State public service commission ("PSC"). 47 U.S.C. § 252(e). Parties may appeal any state PSC decision under the Telecommunications Act to federal district court. 47 U.S.C. § 252(e)(6).

The 1996 Act contains a 'savings clause' with respect to its relation to federal antitrust laws. Section 601(b)(1), found at 47 U.S.C. § 152 Historical and Statutory Notes, provides that, ". . . nothing in this Act or the amendments made by this Act . . . shall be construed to modify, impair, or supersede the applicability of any of the antitrust laws." A similar provision is set forth with respect to federal, state, and local law. See § 601(c)(1) of the Act, 47 U.S.C. § 152 Historical and Statutory Notes ("This Act and the amendments made by this Act shall not be construed to modify,

impair, or supersede Federal, State, or local law unless expressly so provided in such Act or amendments.").

B. The Case at Bar

In this case, Defendant BellSouth Telecommunications, Inc. ("BellSouth"), provides voice and data services in southern Florida as the incumbent local exchange carrier, or ILEC. Plaintiff MGC Communications, Inc. d/b/a Mpower Communications Corp. ("Mpower"), also provides local and long distance voice and data services, and operates as a competitive local exchange carrier, or CLEC, in Florida.

Mpower, as a facilities-based CLEC, has attempted to enter the Florida market by interconnecting and purchasing and/or leasing individual pieces of the ILEC network known as unbundled network elements ("UNEs"). In other words, Mpower builds and operates its own switching and other telecommunications equipment and leases or buys from the ILEC (e.g., BellSouth) the copper wire or "loop" that runs from a customer premises to the point of connection of the ILEC's Central Office. A Central Office typically serves approximately 35,000 end-users of telecommunications service. In the ILEC Central Office, the CLEC, such as Mpower, collocates equipment that recognizes the source of the incoming call, identifies where it needs to go, and sends it to its ultimate destination, be it local or long distance. Equipment records the source, nature, and destination of each call for purposes of permitting the ILECs, CLECs, and long-distance carriers to charge the customer, and in certain circumstances the other carrier, for providing the various originating, transport, and terminating functions of the call. See Complaint, ¶ 8.

Mpower and BellSouth first entered into an interconnection agreement in 1998. Upon expiration of this agreement, a second interconnection agreement was entered on June 21, 2000. See Complaint, ¶ 9.

In the past, BellSouth has provided high-speed data services to its business customers through the provisioning of T-1 dedicated lines, which cost a significant amount for the customer (e.g., as high as $1000/month). See Complaint, ¶ 10. Mpower purchases transmission facilities, which are called "unbundled loops," from BellSouth for the purpose of providing high-speed internet access through a Digital Subscriber Line ("DSL"). See Complaint, ¶ 11. Although DSL are presently marketed at a variety of costs, and in some instances as low as $49.95, Mpower contends that its DSL competes directly with BellSouth's T-1 business. See Complaint, ¶ 12. Mpower believes that in response to its roll-out of DSL services, BellSouth began to provide the DSL alternative to its T-1 business, and now competes directly with Mpower and other CLECs for DSL business. See Complaint, ¶ 12.

To provision DSL, Mpower must obtain "clean" or "conditioned" copper loops from BellSouth, and it pays BellSouth a fee to remove items from the lines that interfere with the digital transmission. See Complaint, ¶ 16. One of the first steps in conditioning the copper loops is to obtain loop make-up information that details the technical characteristics of a particular loop. Currently, to obtain this information, Mpower is required to send a Service Inquiry to BellSouth's Complex Retail Support Group to assess the availability of DSL facilities. See Complaint, ¶ 17. BellSouth sends the request to its Service Advocate Center, which interprets information from a

computerized database, called "LFACS," that contains Loop Facility Assignment Information, and determines the best available loop. The Service Advocate Center then sends the response back to the Complex Retail Support Group, which then sends an e-mail to Mpower advising of the loop make up of the loop that was determined to be DSL capable. The process is entirely manual and takes seven business days, plus additional time if conditioning is required. Furthermore, the manual nature of the process has resulted in numerous errors, which results in further delays, lost customers, and damage to Mpower's reputation. See Complaint, ¶ 18.

In contrast to the Service Inquiry process that Mpower is forced to go through, BellSouth's retail affiliate, BellSouth.net, as well as other CLECs that sign contracts with BellSouth to resell BellSouth facilities, are able to obtain loop make-up information electronically and instantaneously for orders of their DSL products. Complaint, ¶ 19. BellSouth has denied Mpower access to the electronic loop make-up information (termed the "Loop Qualification System") unless Mpower agrees to resell BellSouth's facilities and execute a long term agreement to that effect. See Complaint, ¶ 20. The Loop Qualification System was designed to support only BellSouth's Retail and Resale services. Since Mpower has its own switches and network equipment, even if Mpower had access to the Loop Qualification System, it could not screen Mpower network facilities and equipment. See Complaint, ¶ 21. BellSouth has represented to Mpower that it is in the process of developing a new computerized pre-ordering system that will allow Mpower to obtain loop make-up information electronically. The system was targeted for implementation in July 2000, but as of this time the system has not been delivered, and Mpower expects that it will not be operational for some

time. See Complaint, ¶ 22.

Furthermore, because BellSouth has failed to provide any electronic means for Mpower to place DSL orders, Mpower must manually complete a multi-page order form and fax it to BellSouth for processing, thereby increasing ordering costs, time, and the probability of human error. BellSouth then charges a manual service order charge for DSL orders. See Complaint, ¶ 23. BellSouth has represented to Mpower that it is in the process of developing a new computerized ordering system. The new system was targeted for July 2000, but has not yet been completed. See Complaint, ¶ 24.

Mpower alleges that the provision of high-speed internet access is a distinct product market in the southern Florida area (the "High-Speed Internet Access Market"), and that BellSouth currently controls a monopoly market share of the High-Speed Internet Access Market. See Complaint, ¶¶ 26, 28. Mpower competes with BellSouth with respect to providing high-speed internet access through the deployment of DSL in the High-Speed Internet Access Market. Complaint, ¶ 27. Mpower alleges that BellSouth has engaged in a pattern of anticompetitive conduct generally designed to leverage BellSouth's monopoly power obtained through its ubiquitous local telecommunications network into artificially enhanced market power in the High-Speed Internet Access Market. Complaint, ¶ 29.

II. Standard of Review

A. Rule 12(b)(1)

Attacks on subject matter jurisdiction under Fed. R. Civ. P. 12(b)(1) come in two forms.

"Facial attacks" on the complaint "require[ ] the court merely to look and see if [the] plaintiff has sufficiently alleged a basis of subject matter jurisdiction, and the allegations in his complaint are taken as true for the purposes of the motion." Menchaca v. Chrysler Credit Corp., 613 F.2d 507, 511 (5th Cir.), cert. denied, 449 U.S. 953, 101 S.Ct. 358 (1980) (citing Mortensen v. First Fed. Sav. & Loan Ass'n, 549 F.2d 884, 891 (3d Cir.1977)). "Factual attacks," on the other hand, challenge "the existence of subject matter jurisdiction in fact, irrespective of the pleadings, and matters outside the pleadings, such as testimony and affidavits, are considered." Id.

These two forms of attack differ substantially. On a facial attack, a plaintiff is afforded safeguards similar to those provided in opposing a Rule 12(b)(6) motion--the court must consider the allegations of the complaint to be true. Williamson v. Tucker, 645 F.2d 404, 412 (5th Cir.), cert. denied, 454 U.S. 897, 102 S.Ct. 396 (1981). But when the attack is factual, the trial court may proceed as it never could under 12(b)(6) or Fed. R. Civ. P. 56. Because at issue in a factual 12(b)(1) motion is the trial court's jurisdiction--its very power to hear the case--there is substantial authority that the trial court is free to weigh the evidence and satisfy itself as to the existence of its power to hear the case. Lawrence v. Dunbar, 919 F.2d 1525, 1529 (11th Cir. 1990). In short, no presumptive truthfulness attaches to plaintiff's allegations, and the existence of disputed material facts will not preclude the trial court from evaluating for itself the merits of jurisdictional claims. Id. at 412-13 (quoting Mortensen, 549 F.2d at 891).

In this case, Defendant has made a facial attack upon the Complaint and has not attempted to present any factual evidence from outside the Complaint to the Court. Therefore, the motion to dismiss will be reviewed under the same standards as a Rule 12(b)(6) motion, which are set forth

below.

B. Rule 12(b)(3)

Rule 12(b)(3) of the Federal Rules of Civil Procedure provides for dismissal of an action on the basis of improper venue. For defenses raised under Rule 12(b)(3), the court may consider matters outside the pleadings if presented in proper form by the parties. See Transmirra Prods. Corp. v. Fourco Glass Co., 246 F.2d 538-39 (2nd Cir. 1957) (resolving motion to dismiss because of improper venue "in the usual manner on affidavits, here supplemented by answers to interrogatories, and a deposition from one of defendant's employees in the district, rather than by a full trial"); see generally 5A Charles A Wright & Arthur R. Miller, Federal Practice and Procedure § 1364 (2nd ed. 1990). In a case such as this, where the parties have not presented additional material to the court, the motion is analyzed under the same standards as a motion to dismiss under Rule 12(b)(6).

C. Rule 12(b)(6)

Rule 12(b)(6) of the Federal Rules of Civil Procedure provides that dismissal of a claim is appropriate "only if it is clear that no relief could be granted under any set of facts that could be proved consistent with the allegations." Blackston v. Alabama, 30 F.3d 117, 120 (11th Cir. 1994) (quoting Hishon v. King & Spalding, 467 U.S. 69, 73, 104 S. Ct. 2229, 2232 (1984)). On a motion to dismiss, the Court must accept as true all facts alleged and draw all inferences therefrom in the light most favorable to the non-moving party. See Hummings v. Texaco, Inc., 29 F.3d 1480, 1483 (11th Cir. 1994). A very low sufficiency threshold is necessary for a complaint, or counterclaim, to survive a motion to dismiss. See Ancata v. Prison Health Servs., Inc., 769 F.2d 700, 703 (11th Cir.

1985) (citation omitted). Moreover, a complaint should not be dismissed for failure to state a claim upon which relief can be granted "unless it appears beyond doubt that the plaintiff can prove no set of facts in support of [its] claim which would entitle [it] to relief." M/V Sea Lion V v. Reyes, 23 F.3d 345, 347 (11th Cir. 1994) (citation omitted). However, a plaintiff must do more than merely "label" its claims. See Blumel v. Mylander, 919 F. Supp. 423, 425 (M.D. Fla. 1996). Dismissal is appropriate only when no construction of the factual allegations of a complaint will support the cause of action. See Marshall County Bd. of Educ. v. Marshall County Gas Dist., 992 F.2d 1171, 1174 (11th Cir. 1993) (citation omitted). The issue is not whether the plaintiff will ultimately prevail, but "whether the claimant is entitled to offer evidence to support the claims." Little v. City of North Miami, 805 F.2d 962, 965 (11th Cir. 1986) (citation omitted).

III. Discussion

A. The Antitrust-Based Claims (Counts I & II)

Counts I and II allege claims under Section 2 of the Sherman Act, 15 U.S.C. § 2, for monopolization and attempted monopolization, respectively, of the market for High-Speed Internet Access. Mpower alleges that BellSouth has sought to leverage the power it has obtained through its local telecommunications network into artificially enhanced market power in the High-Speed Internet Access market by providing Mpower with a manual, instead of electronic, means of obtaining loop make-up information and of ordering DSL capable loops. A thorough analysis of the Complaint shows that Mpower seeks to enforce BellSouth's obligations under the Telecommunications Act through the tool of an antitrust suit – a theory that was recently examined

and rejected by the United States Court of Appeals for the Seventh Circuit in Goldwasser v. Ameritech Corp., 222 F.3d 390 (7th Cir. 2000). Based on the reasoning of *Goldwasser*, this Court finds that Plaintiff has failed to state a claim upon which relief may be granted.

In *Goldwasser*, the Seventh Circuit affirmed the dismissal of an antitrust suit alleging that the Defendant, Ameritech, an incumbent local exchange carrier (ILEC), was not fulfilling its obligations under the Telecommunications Act of 1996 and was unlawfully monopolizing under Section 2 of the Sherman Act. The *Goldwasser* plaintiffs alleged generally that Ameritech had monopoly power in the market for local telephone service, controlled a number of so-called essential facilities (e.g., telephone lines and equipment) that its competitors were unable to duplicate, and engaged in exclusionary practices to prevent its competitors from entering the market. Goldwasser, 222 F.3d at 394. Furthermore, the *Goldwasser* plaintiffs specified 20 specific exclusionary or monopolistic practices that they alleged violated both § 2 of the Sherman Act and the Telecommunications Act of 1996, amongst which were the following allegations: (1) Ameritech failed to "provid[e] the same quality of service to its competitors as it provides to itself"; (2) Ameritech did not "give[] its competitors nondiscriminatory access to its operational support systems," nor did it "give[] them access to unbundled elements of its system on terms equivalent to those Ameritech enjoys"; (3) "Ameritech's competitors have experienced undue delays (presumably caused by Ameritech) in acquiring unbundled elements, and those delays have precluded them from offering services as attractive as Ameritech's"; (4) Ameritech caused its competitors to "experience[] delays and discrimination as they have sought to gain access to unbundled loops"; (5) Ameritech

"failed to provide interconnection between its network and those of competitors that is equal to the interconnections it gives itself"; and (6) Ameritech "refused to allow its competitors to connect with its local telephone network on just, reasonable, and nondiscriminatory terms." Goldwasser, 222 F.3d at 394-95.

The Seventh Circuit set forth a detailed explanation of the history and design of the Telecommunications Act of 1996 as well as a review of § 2 of the Sherman Act (*see* Goldwasser, 222 F.3d at 392-94 and 396-98), concluding that "the 1996 [Telecommunications] Act imposes duties on the ILECs that are not found in the antitrust laws" and that the plaintiffs did not state a Section 2 claim when they accused Ameritech of failing to comply with its duties under the Telecommunications Act. Goldwasser, 222 F.3d at 401. The Court found it "both illogical and undesirable to equate a failure to comply with the 1996 Act with a failure to comply with the antitrust laws." Id. at 400. In explaining its decision, the *Goldwasser* Court stated:

> Congress could have chosen a simple antitrust solution to the problem of restricted competition in local telephone markets. It did not. Instead, in an effort to jump-start the development of competitive local markets, it imposed a host of special duties on the ILECs; it entrusted supervision of those duties to the FCC and the state public utility commissions; and it created a system of negotiated agreements through which this would be accomplished. These are precisely the kinds of affirmative duties to help one's competitors that we have already noted do not exist under the unadorned antitrust laws.

Id. at 399-400.

The *Goldwasser* Court also rejected any antitrust claims which were arguably not based on violations of the Telecommunications Act, such as Plaintiff's allegations that Ameritech dominates and controls essential facilities that its competitors cannot reasonably duplicate and that Ameritech

refuses to deal with its competitors on just, reasonable, and nondiscriminatory terms, finding such claims to be overridden by the Telecommunications Act. The Court stated:

> [W]hen one reads the complaint as a whole these allegations appear to be inextricably linked to the claims under the 1996 Act. Even if they were not, such a conclusion would then force us to confront the question whether the procedures established under the 1996 Act for achieving competitive markets are compatible with the procedures that would be used to accomplish the same result under the antitrust laws. In our view, they are not. The elaborate system of negotiated agreements and enforcement established by the 1996 Act could be brushed aside by any unsatisfied party with the simple act of filing an antitrust action. Court orders in those cases could easily conflict with the obligations the state commissions or the FCC imposes under the [47 U.S.C.] sec. 252 agreements. The 1996 Act is, in short, more specific legislation that must take precedence over the general antitrust laws, where the two are covering precisely the same field.

Goldwasser, 222 F.3d at 401.

The *Goldwasser* case is on all fours with this case, and its reasoning and conclusions are persuasive. In this case, as in *Goldwasser*, Mpower's claims are based on alleged violations of the Telecommunications Act or FCC orders implementing the Telecommunications Act. For example, Mpower's claims that BellSouth has failed to provide electronic loop make-up information and electronic ordering functionality directly implicate 47 U.S.C. § 251. As such, the Complaint does not state a violation of the Sherman Act. Furthermore, just as the plaintiffs in *Goldwasser* argued that they broadly stated claims that do not implicate the Telecommunications Act by alleging that a monopolistic company denied them reasonable access to essential facilities, Mpower in this case argues that its Complaint does not implicate the provisions of the Telecommunications Act because it broadly alleged that BellSouth sought to leverage its monopoly power in one market into artificially enhanced market power in another. As noted in *Goldwasser*, such claims are inextricably

intertwined to the claims under the Telecommunications Act and, even if they were not, the Telecommunications Act is more specific legislation that takes precedence over the general antitrust legislation. Accordingly, the Plaintiff has failed to state a cognizable claim for antitrust violations under § 2 of the Sherman Act in Counts I and II.[2]

B. The Claim of Violation of the FCC's *UNE Remand Order* (Count III)

Mpower's third claim for relief alleges that BellSouth violated the FCC's *UNE Remand Order*, and seeks a "writ of injunction or other proper process to enforce Defendant's obedience" to the Order pursuant to 47 U.S.C. § 401(b).[3] Mpower alleges that under the FCC's *UNE Remand Order*, BellSouth must provide access to underlying loops and any DSL capable loops that a CLEC requires in whichever flavor of DSL the CLEC chooses to offer. See Complaint, ¶¶ 13 & 14.[4]

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[2] Defendant argued in the alternative that Mpower's antitrust claims are barred by implied antitrust immunity and that, even if the antitrust laws were applicable, Mpower's specific complaint in this matter does not state an antitrust claim. Based on the above holding, these arguments need not be reached. Defendant also argued that the Court should dismiss the complaint based on the exclusive or primary jurisdiction of the state public service commissions. The Court finds that it is also not necessary to address this argument in light of the applicability of Goldwasser v. Ameritech Corp. 222 F3d 390 (7th Cir. 2000), to this case.

[3] 47 U.S.C. § 401(b) provides:
If any person fails or neglects to obey any order of the [Federal Communications] Commission other than for the payment of money, while the same is in effect, the Commission or any party injured thereby, or the United States, by its Attorney General, may apply to the appropriate district court of the United States for the enforcement of such order. If, after hearing, that court determines that the order was regularly made and duly served, and that the person is in disobedience of the same, the court shall enforce obedience to such order by a writ of injunction or other proper process, mandatory or otherwise, to restrain such person or the officers, agents, or representatives of such person, from further disobedience of such order, or to enjoin upon it or them obedience to the same.

[4] The Court notes that paragraphs 13 and 14 of the Complaint contain unsupported legal conclusions as to the effect of the *UNE Remand Order* which the Court need not accept as true when evaluating the motion to dismiss.

Defendant argues that this Court lacks jurisdiction over Count III and that Count III fails as a matter of law because the *UNE Remand Order* is not an order that can be enforced using the procedures established in 47 U.S.C. § 401(b). According to the Defendant, § 401(b) only permits challenges to adjudicative FCC orders, not orders promulgated pursuant to the FCC's rulemaking authority. In support of this proposition the Defendant relies heavily on New England Telephone & Telegraph Co. v. Public Utilities Comm'n of Maine, 742 F.2d 1 (1st Cir. 1984), calling it "[t]he most comprehensive and persuasive analysis of the limits of Section 401(b)." Memorandum of Law in Support of Defendant's Motion to Dismiss, p. 23.

Although the Eleventh Circuit has not yet addressed the issue of what constitutes an 'order' subject to the enforcement procedures of § 401(b), every Circuit other than the First Circuit to address the issue, including the Fourth, Fifth, Sixth, Seventh, Eight, and Ninth, has rejected the approach set forth in *New England Telephone* and advocated by Defendant's in this case. See Hawaiian Tel. Co. v. Public Util. Comm'n, 827 F.2d 1264, 1271-72 (9th Cir. 1987), cert. denied, 487 U.S. 1218 (1988); Alltel Tennessee, Inc. v. Tennessee Public Serv. Comm'n, 913 F.3d 305, 308 (6th Cir. 1990); Illinois Bell Tel. Co. v. Illinois Commerce Comm'n, 740 F.2d 566, 571 (7th Cir. 1984); Chesapeake & Potomac Tel. Co. v. Public Serv. Comm'n, 748 F.2d 879, 880-81 (4th Cir. 1984), vacated and remanded for proceedings consistent with Louisiana Pub. Serv. Comm'n v. FCC, 476 U.S. 355, 106 S.Ct. 1890 (1986), 476 U.S. 445 (1986); South Central Bell Tel. Co. v. Louisiana Pub. Serv. Comm'n, 744 F.2d 1107, 1115 (5th Cir. 1984), vacated and remanded for consideration in light of Chesapeake & Potomac, supra, 476 U.S. 1166 (1986); Southwestern Bell Tel. Co. v. Arkansas

Pub. Serv. Comm'n, 738 F.2d 901 (8th Cir. 1984), vacated and remanded for further consideration in light of Chesapeake & Potomac, supra, 476 U.S. 1167 (1986).

This Court finds the position held by the majority to be persuasive. Congress, rather than attempting to limit § 401(b) exclusively to adjudicatory orders, intended that a broad range of orders be reviewable under § 401(b). See Alltel Tennessee, 913 F.2d at 308; Hawaiian Tel. Co., 827 F.2d at 1271-72.

However, this does not end the jurisdictional inquiry or necessarily mean that the rulemaking order at issue in this case is enforceable through § 401(b). As noted in Mallenbaum v. Adelphi Communications Corp., 74 F.3d 465, 468 (3rd Cir. 1996), private enforcement actions under § 401(b) are only available where the order in question requires or prohibits specific action by a specific party. See also In re Comcast Cable TV Rate Regulation, 1994 WL 622105 at *19 (E.D. Pa. 1994). Federal jurisdiction is lacking when the rule in question is prospective and unrelated to specific rights and/or obligations of the litigants, and is thus more akin to a general rulemaking than to an order. Mallenbaum, 74 F.3d at 469.

In this case, the *UNE Remand Order* that Plaintiff seeks to enforce does not direct or order the concrete actions urged on the Defendant by the Plaintiff, and it is therefore not enforceable under § 401(b). Mpower contends that Sections 191 and 428 of the *UNE Remand Order* require that BellSouth provide it with nondiscriminatory access to the underlying loop qualification information.[5]

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[5] Sections 191 and 428 of the *UNE Remand Order* state the following:

191. As the Commission stated in the *Local Competition First Report and Order*, requiring incumbents to provide conditioned loops will, in some instances, require the incumbent LEC to take affirmative steps to enable requesting carriers to provide services that the incumbent does not currently

However, the FCC did not set forth any specific standards in the *UNE Remand Order* as to how nondiscriminatory access to the underlying loop qualification information is to be provided. In Section 429, the Commission states:

> We disagree, however, with Covad's unqualified request that the Commission require incumbent LECs to catalogue, inventory, and make available to competitors loop qualification information through automated OSS ["Operating Support Systems"] even when it has no such information available to itself. If an incumbent LEC has not compiled such information for itself, we do not require the incumbent to conduct a plant inventory and construct a database on behalf of requesting carriers. We find, however, that an incumbent LEC that has manual access to this sort of information for itself, or any affiliate, must also provide access to it to a requesting competitor on a non-discriminatory basis. In addition, we expect that incumbent LECs will be updating their electronic database for their own xDSL deployment and, to the extent their employees have access to the information in an electronic format, that same format should be made available to new entrants via an electronic interface.

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provide. We now clarify that we require the incumbent to provide loops with all their capabilities intact, that is, to provide conditioned loops, *wherever* a competitor requests, even if the incumbent is not itself offering xDSL to the end-user customer on that loop. Thus, incumbent LECs cannot refuse a competitive LEC's request for conditioned loops on the grounds that they themselves are not planning to offer xDSL to that customer. (citation omitted; emphasis in original)

428. In addition, we agree with Covad that an incumbent LEC should not be permitted to deny a requesting carrier access to loop qualification information for particular customers simply because the incumbent is not providing xDSL or other services from a particular end office. We also agree with commenters that an incumbent must provide access to the underlying loop information and may not filter or digest such information to provide only that information that is useful in the provision of a particular type of xDSL that the incumbent chooses to offer. For example, SBC provides ADSL service to its customers, which has a general limitation of use for loops less than 18,000 feet. In order to determine whether a particular loop is less than 18,000 feet, SBC has developed a database used by its retail representatives that indicates only whether the loop falls into a "green, yellow, or red" category. Under our nondiscrimination requirement, an incumbent LEC can not limit access to loop qualification information to such a "green, yellow, or red" indicator. Instead, the incumbent LEC must provide access to the underlying loop qualification information contained in its engineering records, plant records, and other back office systems so that requesting carriers can make their own judgments about whether those loops are suitable for the services the requesting carriers seek to offer. Otherwise, incumbent LECs would be able to discriminate against the other xDSL technologies in favor of their own xDSL technology. (citations omitted)

UNE Remand Order, § 429. Thus, the Commission expressly refused to require ILECs to make loop information available through automated OSS unless the ILEC is using such a system itself. Furthermore, in § 437, the Commission took care to disclaim any intent impose specific obligations on ILECs concerning automated access to OSS information and stated that the state public service commissions should handle such decisions:

> We decline to adopt performance standards in this proceeding. The issue before us in this proceeding is whether OSS is subject to unbundling obligations of section 251, not whether the Commission should establish performance standards and penalties to determine if an incumbent is providing nondiscriminatory access to its OSS functions. We note that the states have primary authority under section 252 for setting schedules and resolving disputes concerning access to OSS functions as unbundled network elements.

UNE Remand Order, § 437.

Thus, the order Plaintiff is attempting to enforce in this case declined to specify concrete requirements as to the manner and type of technical information that must be made available to CLECs. The matter requires an initial determination and input from the state PSCs that have been delegated the power to resolve this question, and, in fact, Mpower has been concurrently pursuing a nearly identical claim before the Georgia Public Service Commission. See Complaint of MGC Communications, Inc. d/b/a Mpower Communications Corp. in In re Complaint of MGC Communications, Inc. d/b/a Mpower Communications Corp. Against BellSouth Communications, Inc. For Failure to Provide Unbundled Network Elements Pursuant to Interconnection Agreement and U.S.C. § 251(c)(3), Georgia Public Service Commission Docket No. 12124U, filed on March 31, 2000, included as Exhibit C to Defendant's Appendix in Support of Motion to Dismiss. Therefore, the issue is unenforceable as a Rule 401(b) action and is better left for an initial decision

by the appropriate administrative agencies.

Accordingly, it is

ORDERED AND ADJUDGED that Defendant's Motion to Dismiss [D.E. 10] is GRANTED and this matter is dismissed. It is further

ORDERED AND ADJUDGED that all pending motions not otherwise resolved by this order are dismissed as moot and this case is CLOSED.

DONE AND ORDERED in Chambers at Miami, Florida, this 17 day of May, 2001.

ALAN S. GOLD
UNITED STATES DISTRICT JUDGE

copies furnished:

U.S. Magistrate Judge Andrea M. Simonton

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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
WESTERN DIVISION

NOW COMMUNICATIONS, INC. PLAINTIFF

V. CIVIL ACTION NO. _____

JURY TRIAL DEMANDED

BELLSOUTH TELECOMMUNICATIONS, INC. DEFENDANT

COMPLAINT

NOW Communications, Inc., Plaintiff, by and through undersigned counsel, brings this its complaint against BellSouth Telecommunications, Inc., Defendant, and, for cause, states:

Parties.

1. NOW Communications, Inc. ("NOW") is a Mississippi corporation with its principal place of business in Jackson, Mississippi. It is registered to do business and is doing business in the State of Alabama.

2. BellSouth Telecommunications, Inc. ("BellSouth") is a Georgia corporation with its principal place of business in Atlanta, Georgia. It is registered to do business and is doing business in the State of Alabama. BellSouth's regional operating center in Birmingham, Alabama is the principal business office with which NOW does business.

Jurisdiction.

3. The matter in controversy exceeds $75,000.00, exclusive of interest and costs. There is complete diversity of the parties. This Court, therefore, has original jurisdiction pursuant to 28 U.S.C. § 1332. This Court also has subject matter jurisdiction, as the matter in controversy involves the Telecommunications Act of 1996, 47 U. S. C. §151 et seq. ("the Act").

Facts.

4. BellSouth is a regional telephone company operating in the southeastern United States, including Birmingham, Alabama, which provides residential telephone service, among other services. BellSouth's regional operating center is in Birmingham, Alabama. Its officers, representatives and employees with whom NOW does business on a regular basis are based in Birmingham. NOW's point of doing business with BellSouth is in Birmingham, and NOW has customers in the Birmingham area. BellSouth is, and historically has been, a monopoly, charged with the responsibility of providing universal regulated and mandated local telephone service. It has failed to provide universal service to approximately fifteen percent (15%) of the residential households in the BellSouth operating area, which includes Alabama, Georgia, Mississippi, Louisiana, and Tennessee, in which NOW has a customer base. These residential households have been deprived of an increasingly essential service in the modern world. Today telephone service is no longer a luxury but is an essential service, constituting the lifeline for the health and safety of the public. Citizens, regardless of their economic status, have the right to access the telephone network, which provides public necessities such as emergency services, educational services, financial services, public and private safety services, property protection services and health services.

5. In 1996 the United States Congress responded to the denial of individuals' rights to universal telephone service by the monopolistic practices of the Bell Operating Companies. Congress took a bold step toward breaking up the monopolistic practices of the Bell Operating Companies when it passed the Telecommunications Act of 1996 ("the Act"). The Act was designed to create an open marketplace to facilitate competition and new development, which

would in turn lower prices, improve quality of service, give the consumer greater choice, and meet the goal of universal service. The Act refers to the monopolistic practices of the Bell Operating Companies and, through the Act, Congress made clear that this monopoly should give way to competition in the local exchange in order to provide all economic segments of the population with its rights to local residential telephone service. The Act was designed to open the telecommunications market so that alternative providers could provide service and competition for a significant portion of the American population who were refused residential phones because of the Bell Operating Companies' unreasonable, restrictive, anti-competitive financial requirements.

6. NOW is an alternative provider born out of the purposes of the Act. It is a company that provides pre-paid local telephone service to residential customers in BellSouth's service area who have been precluded from essential telephone service by unreasonable and restrictive requirements of BellSouth. The Act provides for CLECs, such as NOW, to obtain the service directly from BellSouth at a discounted rate and then resell that same service to its own pre-paid customers.

7. NOW and BellSouth entered into a Resale Agreement in May 1997 ("Agreement"). The terms of the Agreement defined NOW as a Competitive Local Exchange Carrier (CLEC), similar to other CLECs across the area in which BellSouth operates. The terms of this agreement denominated NOW as a "customer" of BellSouth, with all of the rights of a private customer of BellSouth. NOW's customers, in turn, were denominated "end users" of BellSouth's service. The Agreement provides that the end user will have no direct contact with BellSouth, therefore requiring all complaints and other contact to be exclusively between the end

user and NOW. There has been a large quantity of complaints from end users arising out of BellSouth's willful failure to provide access to the local exchange and interconnection for transmission on a nondiscriminatory basis, which has precluded NOW's ability to service its present customers and to expand its customer base. NOW's customers prepay for their service and demand refunds from NOW when BellSouth repeatedly and deliberately refuses to provide the mandated access to the local exchange. BellSouth's refusal has forced NOW to incur the expense of hiring additional personnel to handle complaints. This results not only in financial loss to NOW but also in loss of good will among its current and prospective customers. BellSouth's reckless and deliberate actions have interfered with NOW's right of access to the local exchange market, in violation of the Act. BellSouth has acknowledged these violations and its failure to provide the mandated standard of service with a token credit but will not cease and desist its violations of the Act and will not provide NOW's customers with non-discriminatory access to the local exchange.

8. BellSouth's actions are a deliberate attempt to destroy not only NOW, but also other CLECs that bring competition to BellSouth. Though NOW has lost many customers because of BellSouth's willful refusal to provide access to the local exchange, NOW has built a substantial subscriber base and has the potential to be very successful with a good reputation in the telecommunications industry, but only when BellSouth obeys the legislative mandate to release its death grip on residential telephone access to the local exchange. BellSouth has breached the Agreement with NOW, and has violated the terms of the Act by providing discriminatory access to the local exchange.

9. The terms of the Agreement were negotiated between BellSouth and another

party. NOW was not a party to the negotiations of the Agreement. Because of BellSouth's superior strength and bargaining position, NOW had no choice but to accept the terms of the Agreement which were forced upon it by BellSouth. Even though BellSouth was the author of the Agreement, it has failed to abide by its own terms by refusing to provide access to the local exchange in a nondiscriminatory manner which is mandated by the Agreement and the Act. At all times NOW has complied with the Agreement, despite BellSouth's continuing breach. BellSouth's breach is contrary to the statutory requirement of good faith and fair dealing owed to NOW.

10. NOW is dependent on BellSouth to obey the law, to cease and desist from violating the Act and to provide access to the exchange and interconnection for transmission on a nondiscriminatory basis. Not only is NOW dependent on BellSouth, but so are other CLECs. BellSouth has deliberately and grossly refused to provide access to the local exchange and interconnection for transmission on a nondiscriminatory basis in total disregard for NOW's rights and in willful, wanton, and reckless disregard of the duties and obligations imposed upon it by the Act and other lawful mandates. BellSouth obviously abhors the competition in the local exchange which threatens its historical monopoly, and BellSouth has set out on a course of action deliberately designed to destroy NOW's business which it has every legal right to enjoy.

11. The law requires the relationship between BellSouth and the CLECs to be mutually beneficial. BellSouth has used the existence of the CLECs for its own benefit in attempting to show competition in the local exchange. BellSouth represents that it is in compliance with the Act by pointing to the "competition" provided by the CLECs. BellSouth's representation is in reckless disregard of the real facts. BellSouth has impeded competition since

the Act was passed. In fact, very few local lines have been delivered by alternative carriers. BellSouth erroneously represents its compliance with the Act, when in fact its actions in implementing its duties are contrary to the furtherance of the competition mandated by the Act.

12. BellSouth contracted to provide NOW with interconnection for residential telephone service but in actuality precluded interconnection and precluded nondiscriminatory access and refused to provide network features, functions and capabilities to NOW and its customers (end users) as BellSouth is enforceably mandated to provide under the Act. Because of BellSouth's deliberate and willful failure to fulfill its obligations to NOW under the Agreement and the law, it is impossible for NOW to fulfill its obligations to its own customers (end users). BellSouth maintains exclusive control over connections and transfers of end user local telephone service and has failed and refused to exercise that control in a nondiscriminatory manner as required by the Act and by law. BellSouth has refused to timely provide access to NOW's customers in the same manner as it provides access to its own. BellSouth has repeatedly refused to keep appointments for establishing interconnection to NOW's prepaid customers without notification to either NOW or NOW's customers (end users). This action has created and inflicted extreme economic distress on NOW and its customers (end users).

13. The fundamental basis for NOW's successful business is NOW's network of independent sales agents. BellSouth's failure to grant nondiscriminatory access to its customers procured through its network of independent sales agents has destroyed NOW's business relationships with its independent sales agents. NOW's sales agents on more than one occasion have had to procure police intervention at various places of business to maintain order and the public peace because of BellSouth's reckless actions toward NOW's customers. These willful

and reckless acts of BellSouth have caused many agents to cancel their representation in the procurement of customers, which has damaged NOW's reputation and diminished and destroyed its presence in its target markets.

14. BellSouth is obligated under the terms of its Agreement and the Act to provide access to the local exchange and interconnection on a nondiscriminatory basis and to provide network features and functions capable of blocking optional affiliated services. BellSouth has refused to abide by the Act and its Agreement and has consistently failed to provide network capabilities and functions to provide the blocking service, which has caused NOW to suffer substantial damages.

15. BellSouth has refused to provide NOW with network features and functions which reasonably accommodate interconnection and nondiscriminatory access to the local exchange. BellSouth's procedures and technical requirements are inconsistent and grossly inadequate. Through deliberate design or gross negligence, BellSouth's procedures and technical requirements frustrate, harass, intimidate and preclude NOW from reasonable access to the local exchange in violation of the Act and the Agreement.

16. BellSouth's procedures, practices and policies are so grossly inadequate by specific design or gross negligence that it perpetrates a plan for its personnel to give no information, disinformation, wrong information or misinformation and to refuse to provide a network of features and personnel who are properly and prudently supervised to meet BellSouth's requirements under the Act and the Agreement. BellSouth's stonewalling tactics evidence discriminatory practices toward NOW and its customers.

17. BellSouth's dealings with NOW in relation to its obligations under the Act and

the Agreement are in total, reckless, gross disregard of the duty of good faith and fair dealing. Its deliberate design of inconsistent policies and procedures and the pattern of conduct of its employees in providing deceptive information, misinformation and wrong information constitute acts in contravention of its duty of good faith and fair dealing as mandated by the Act.

18. BellSouth has deliberately and maliciously disconnected NOW's business lines and terminated NOW's access to the network in Monroe, Louisiana without notice. BellSouth's willful and reckless action is an act of aggression and demonstrates BellSouth's continuing plan to destroy NOW, and BellSouth's actions are in direct violation of the Act and the Agreement

19. For injuries sustained to its business, NOW is entitled to recover all damages, actual, consequential and punitive, for said injuries which include the following:

a. Loss of past, present and prospective customers

b. Loss of strategic agent relationships

c. Loss of presence in major markets

d. Loss of benefits from advertising in markets

e. Loss of good will and damage to business reputation, past, present and future

f. Losses incurred through substantial business expenses

g. Loss of past, present and future business revenue

h. Loss of past, present and future business profits

i. Loss of past, present and future value of the business

j. Loss of past, present and future value of the company

k. Loss of past, present and future capital of the business

l. Loss of past, present and future business relationships

20. For all of the above and foregoing, BellSouth is liable to the Plaintiff NOW for actual and punitive damages as follows:

COUNT I

21. The allegations of paragraphs 1 through 20 are incorporated herein by reference.

22. BellSouth has breached its contractual agreement with NOW by its willful and reckless disregard in refusing to provide its customer, NOW, with access to the local exchange and interconnection services on a nondiscriminatory basis in violation of the terms of the Agreement and the Act.

23. As a result of BellSouth's willful and reckless acts and/or omissions in disregard of its duties and obligations under the Agreement and the Act, NOW has been substantially damaged, for which it is entitled to recover actual, consequential and punitive damages in an amount to be determined by the court and jury.

COUNT II

24. The allegations of paragraphs 1 through 23 are incorporated herein by reference.

25. BellSouth has tortiously breached its contractual agreement with NOW by its willful and reckless disregard of its duties and obligations under the Agreement and the Act in refusing to provide its customer, NOW, with access to the local exchange and interconnection services on a nondiscriminatory basis in violation of the terms of the Agreement and the Act.

26. As a result of BellSouth's willful and reckless acts and/or omissions in disregard of its duties and obligations under the Agreement and the Act, NOW has been substantially damaged for which it is entitled to recover actual, consequential and punitive damages in an amount to be

determined by the court and jury.

COUNT III

27. The allegations of paragraphs 1 through 26 are incorporated herein by reference.

28. BellSouth has breached its own policies and procedures in refusing to provide NOW with access to the local exchange and interconnection services on a nondiscriminatory basis in violation of the Act and the Agreement.

29. As a result of BellSouth's willful and reckless acts and/or omissions in disregard of its duties and obligations under the Act and the Agreement, NOW has been substantially damaged, for which it is entitled to actual, consequential and punitive damages in an amount to be determined by the court and jury.

COUNT IV

30. The allegations of paragraphs 1 through 29 are incorporated herein by reference.

31. BellSouth has breached regulatory policies and procedures in refusing to provide NOW with access to the local exchange and interconnection services on a nondiscriminatory basis.

32. As a result of BellSouth's willful and wrongful acts and/or omissions in disregard of its duties and obligations under the Act and the Agreement, NOW has been substantially damaged, for which it is entitled to recover actual, consequential and punitive damages in an amount to be determined by the court and jury.

COUNT V

33. The allegations of paragraphs 1 through 32 are incorporated herein by reference.

34. BellSouth has failed and refused to follow the mandates of the

Telecommunications Act of 1996 by refusing to provide NOW with access to the local exchange, interconnection services and network features on a nondiscriminatory basis.

35. As a result of BellSouth's willful and wrongful acts and/or omissions in disregard of its duties and obligations under the Act and the Agreement, NOW has been substantially damaged, for which it is entitled to recover actual, consequential and punitive damages in an amount to be determined by the court and jury.

COUNT VI

36. The allegations of paragraphs 1 through 35 are incorporated herein by reference.

37. BellSouth's anticompetitive practices have precluded competition in the local exchange market in violation of the Telecommunications Act of 1996 by erecting barriers to prevent NOW and other CLECs from entering the local exchange market.

38. As a result of BellSouth's willful and reckless acts and/or omissions in disregard of its duties and obligations under the Act and the Agreement, NOW has been substantially damaged, for which it is entitled to recover actual, consequential and punitive damages in an amount to be determined by the court and jury.

COUNT VII

39. The allegations of paragraphs 1 through 38 are incorporated herein by reference.

40. BellSouth, in willful and reckless disregard for the law, has set in place actions to maintain its historical monopolistic position, contrary to the spirit and mandates of the Act in calling for universal access to the local exchange and interconnection services on a nondiscriminatory and competitive basis.

41. As a result of BellSouth's willful and reckless acts and/or omissions in disregard

of its duties and obligations under the Act and the Agreement, NOW has been substantially damaged, for which it is entitled to recover actual, consequential and punitive damages in an amount to be determined by the court and jury.

COUNT VIII

42. The allegations of paragraphs 1 through 41 are incorporated herein by reference.

43. BellSouth has engaged in predatory practices designed to maintain its historical monopoly by destroying NOW's business, in violation of NOW's right to provide local telephone service as mandated by the Act and other laws.

44. As a result of BellSouth's willful and reckless acts and/or omissions in disregard of its duties and obligations under the Act and the Agreement, NOW has been substantially damaged, for which it is entitled to recover actual, consequential and punitive damages in an amount to be determined by the court and jury.

COUNT IX

45. The allegations of paragraphs 1 through 44 are incorporated herein by reference.

46. BellSouth has maliciously and tortuously interfered with the present contractual and business relationships between NOW and its customers (end users).

47. As a result of BellSouth's willful and reckless acts and/or omissions in disregard of its duties and obligations under the Act and the Agreement, NOW has been substantially damaged, for which it is entitled to recover actual, consequential and punitive damages in an amount to be determined by the court and jury.

COUNT X

48. The allegations of paragraphs 1 through 47 are incorporated herein by reference.

49. BellSouth has maliciously and tortuously interfered with the prospective contractual and business relationships between NOW and its prospective customers (end users), agents and other business relationships.

50. As a result of BellSouth's willful and reckless acts and/or omissions in disregard of its duties and obligations under the Act and the Agreement, NOW has been substantially damaged, for which it is entitled to recover actual, consequential and punitive damages in an amount to be determined by the court and jury.

COUNT XI

51. The allegations of paragraphs 1 through 50 are incorporated herein by reference.

52. BellSouth has breached the duty of good faith and fair dealing owed by it to NOW. The unique position between BellSouth and NOW, described above, created a fiduciary duty owed by BellSouth to NOW which has been breached by NOW's refusal to abide by its legal obligations under the Act and the Agreement.

53. As a result of BellSouth's willful and reckless acts and/or omissions in disregard of its duties and obligations under the Act and the Agreement, NOW has been substantially damaged, for which it is entitled to recover actual, consequential and punitive damages in an amount to be determined by the court and jury.

COUNT XII

54. The allegations of paragraphs 1 through 53 are incorporated herein by reference.

55. BellSouth has exercised coercion and duress by virtue of its superior position of strength against NOW, a CLEC in a unique subordinate position to BellSouth under the Act.

56. As a result of BellSouth's willful and reckless acts and/or omissions in disregard

COUNT XV

63. The allegations of paragraphs 1 through 62 are incorporated herein by reference.

64. BellSouth fraudulently misrepresented to NOW its intention to provide NOW with access to the local exchange and interconnection on a nondiscriminatory basis, as required by the terms of the Agreement and the Act. These representations were false when made and BellSouth knew they were false at the time of making them.

65. As a result of BellSouth's willful and reckless acts and/or omissions in disregard of its duties and obligations under the Act and the Agreement, NOW has been substantially damaged, for which it is entitled to recover actual, consequential and punitive damages in an amount to be determined by the court and jury.

COUNT XVI

66. The allegations of paragraphs 1 through 65 are incorporated herein by reference.

67. BellSouth has committed fraud against NOW through the use of deceptive practices wherein it provided NOW with disinformation and misinformation in an effort to deceive NOW by setting forth that the severe problems affecting NOW were merely service problems and could easily be corrected by BellSouth. These representations were false when made, and BellSouth knew they were false when making them.

68. As a result of BellSouth's willful and reckless acts and/or omissions in disregard of its duties and obligations under the Act and the Agreement, NOW has been substantially damaged, for which it is entitled to recover actual, consequential and punitive damages in an amount to be determined by the court and jury.

COUNT XVII

69. The allegations of paragraphs 1 through 68 are incorporated herein by reference.

70. BellSouth's conduct has been so willful and reckless and attended by such bad faith and in such grossly careless, callous, indifferent and reckless disregard of NOW's rights as to entitle NOW to punitive damages.

71. As a result of BellSouth's willful and reckless acts and/or omissions in disregard of its duties and obligations under the Act and the Agreement, NOW has been substantially damaged, for which it is entitled to recover actual, consequential and punitive damages in an amount to be determined by the court and jury.

COUNT XVIII

72. The allegations of paragraphs 1 through 71 are incorporated herein by reference.

73. NOW seeks to enjoin BellSouth from its noticed intention to disconnect and/or interrupt NOW's service and from terminating the Agreement. Disconnection or interruption of NOW's service to its customers (end users) would permanently destroy the company. NOW further seeks to enjoin BellSouth from treating NOW's customers (end users) in a discriminatory fashion, as described above.

74. NOW has no adequate or speedy remedy at law to prevent the above described misconduct of BellSouth.

WHEREFORE, PREMISES CONSIDERED, NOW Communications, Inc., Plaintiff herein, demands judgment against BellSouth Telecommunications, Inc. for actual and punitive damages in a sum to be determined by the Court but not less than fifty million dollars ($50,000,000) in actual compensatory damages and five hundred million dollars ($500,000,000) in punitive damages, all costs of this action, attorney fees and both pre-judgment and post-

judgment interest.

NOW Communications, Inc. also prays that the Court enter injunctive relief by issuance of a temporary restraining order and a preliminary injunction pursuant to Rule 65 of the Federal Rules of Civil Procedure, ordering BellSouth and its officers, agents, employees, successors, attorneys and all those in active concert or participation with it to refrain immediately, pending the final hearing and determination of this action, from disconnecting NOW's service, from terminating or otherwise violating the agreement and from treating NOW's customers (end users) in a discriminatory fashion.

Plaintiff further prays that the Court issue a permanent injunction perpetually enjoining and restraining BellSouth and its officers, agents, employees, successors, attorneys and all those in active concert or participation with it, from the conduct complained of herein.

THIS, the _____ day of November, 1998.

Respectfully submitted,

NOW COMMUNICATIONS, INC.

By: Charles E. Robinson, Jr.

Carroll H. Ingram

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CERTIFICATE OF SERVICE

We, Carroll H. Ingram and Charles E. Robinson, Jr., of counsel for NOW Communications, do hereby certify that we have this day served by U.S. Mail, postage fully pre-paid, a true and correct stamped "filed" copy of the above and foregoing pleading to:

Registered Agent
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C/O Prentice Hall Corporation SYS, Inc.
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Montgomery, AL 36104

Stephen M. Vinsavich, Esq.
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Legal Department, Suite 4300
675 West Peachtree Street
Atlanta, GA 30375-0001

THIS, the 17th day of November, 1998.

Carroll H. Ingram

Charles E. Robinson, Jr.

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

INTERMEDIA COMMUNICATIONS, INC., Plaintiff, v. BELLSOUTH TELECOMMUNICATIONS, INC. Defendant.	Case No. 8:00-CV-1410-T-26C

MEMORANDUM OF LAW IN SUPPORT OF BELLSOUTH'S MOTION TO DISMISS

BellSouth Telecommunications, Inc. ("BellSouth") files this memorandum of law in support of its motion to dismiss Intermedia Communications, Inc.'s ("Intermedia") Complaint. Intermedia's Complaint should be dismissed in its entirety. Intermedia's antitrust claims are legally deficient. Moreover, the remaining claims are subject to the exclusive or primary jurisdiction of the state public service commissions to whom Congress delegated the principal responsibility for implementing and enforcing the Telecommunications Act of 1996. Further, Intermedia's fraud and tortious interference claims fail to state a claim.

INTRODUCTION

In 1996, Congress fundamentally and irrevocably changed the way that telecommunications services have been regulated and provided for more than a century. To open the local telecommunications market to competition, the Telecommunications Act of 1996 relies on a carefully balanced scheme of privately negotiated agreements, state public commission

and/or Federal Communication Commission supervision, and limited federal district court review of agency decisions. The operation of Intermedia's agreements with BellSouth, within the context of the regulatory framework established by the Telecommunications Act, requires the parties to bring all disputes to the appropriate state commissions. These expert administrative agencies will resolve disputed issues, and, where appropriate, order the parties to change their behavior under the agreement. There is no place in this carefully constructed system of dispute resolution and policy implementation for private damage actions, whether the relief is based on "antitrust" or "breach of contract" or some other theory of recovery.

Thus, the entire Complaint must be dismissed because every count is inextricably tied to BellSouth's obligations under the Telecommunications Act of 1996. For example, as to Intermedia's antitrust claims (Counts IX, X, and XI), the Seventh Circuit has ruled recently that alleged violations of the Act cannot support a federal antitrust claim. As to the balance of Intermedia's state and federal claims, Intermedia must first file before the appropriate regulatory agency before judicial intervention may be obtained.

The Telecommunications Act clearly mandates that State Public Service Commissions ("PSCs") and the Federal Communications Commission ("FCC") shall have exclusive initial jurisdiction over the implementation of the massive restructuring of the telecommunications industry mandated by the Telecommunications Act. The alleged violations of the Telecommunications Act, as well as the remaining claims, whether labeled breach of contract or tort, must first be submitted to the appropriate regulatory authority. Even if exclusive jurisdiction did not exist, the PSCs or the FCC would be the best forum to decide these highly technical issues under the doctrine of primary jurisdiction. Further, the Interconnection Agreement clearly contemplates that disputes between BellSouth and Intermedia must first be

heard before the appropriate state PSC. Therefore, the Court should dismiss Counts I through VIII, without prejudice to Intermedia's right to pursue those claims before the appropriate state commission. In addition, Intermedia's claims related to the rates charged under the June 1998 Amendment are barred by the filed rate doctrine. Finally, even if the Court had jurisdiction (which it does not) over Intermedia's claims of fraud (Counts I and V) and tortious interference (Counts VII and VIII) claims which are based on the same facts as Intermedia's other causes of action, these claims fail to state a cause of action under applicable state law.

STATEMENT OF THE FACTS

A. The Telecommunications Act of 1996.

In the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (codified in various sections of Title 47, United States Code) ("the Telecommunications Act"), Congress opened the market for local telephone service to full and effective competition. At the same time, however, Congress understood that local competition would not arise overnight but, rather, would evolve over time. Congress therefore imposed obligations on companies such as BellSouth that historically had provided local telephone service (referred to as "incumbent local exchange companies" or "ILECs"), to permit competitors to access their telecommunications networks, or parts thereof, to afford new entrants the opportunity to provide local telephone service in competition with ILECs. 47 U.S.C. § 251. These new entrants, like Intermedia, are known as "competitive local exchange carriers" or "CLECs."

For the implementation of the provisions of the Telecommunications Act, Congress relied first on private negotiations between incumbent ILECs, such as BellSouth, and CLECs, such as Intermedia, to produce agreements. 47 U.S.C. § 251(c)(1). State public service commissions are tasked with approving such privately negotiated interconnection and resale agreements (47

U.S.C. § 252(e)). If the parties cannot reach an agreement, they are required to arbitrate all disputed issues before the state PSCs. 47 U.S.C. § 252(b)(1). After "resolv[ing] each issue," (id. § 252(b)(4)), the state PSC may direct the parties to implement its determinations in the parties' final agreement, which the state PSC then must either "approve or reject." Id. § 252(e)(4). Parties may appeal any state public service commission decision under the Telecommunications Act to federal district court. 47 U.S.C. § 252(e)(6). The PSCs of Florida, Georgia, and North Carolina, among others, reviewed and approved BellSouth's Agreements with Intermedia.

B. Intermedia's Agreement with BellSouth.

In June 1996, within only a few months of the Telecommunications Act's passage, Intermedia approached BellSouth and negotiated and signed the Interconnection Agreement ("the Agreement"). The Agreement is attached as Exhibit 1 to the Complaint. The Agreement was submitted to the appropriate state PSCs for approval. This Agreement provides detailed direction on how the parties interconnect their networks. For instance, Section XVI of the Agreement provides each party's responsibilities as to network design and management, including trunk utilization and new trunk provisioning. Section XX (A) limits liability associated with the provisioning of BellSouth services to "an amount equal to the proportionate charge for the service" provided under the Agreement. Section XXVI provides that the "Agreement shall be governed by, construed and enforced in accordance with the laws of the State of Georgia, without regard to its conflicts of laws principles." Exhibit 1 to the Complaint.

The parties have amended the Agreement several times. In the most recent amendment, the parties agreed to modify the rates for reciprocal compensation applicable to the exchange of local traffic and provided an alternative method for Intermedia to interconnect with BellSouth's

network ("the June 1998 Amendment) (Exhibit 14 to the Complaint). Intermedia refers to the June 1998 Amendment as the "MTA Amendment."

C. Forum Selection.

All of the Agreements provide detailed direction on the issues of choice of forum, limitation of liability, and choice of law. Section XXIII provides that the parties initially must refer any dispute to the individuals that negotiated the Agreement. If that process does not resolve the dispute, the agreement contemplates that the dispute will be presented to the appropriate PSC for resolution.

D. Intermedia's Regulatory Proceedings Against BellSouth.

Prior to filing the present suit, Intermedia already had filed proceedings against BellSouth with the State PSCs of Georgia, Florida, North Carolina, Alabama, Louisiana, and Tennessee making many of the same allegations as those contained in the Complaint in this matter. In particular, Intermedia has initialed proceedings before the regulatory agencies on the issues of BellSouth's alleged failure to pay reciprocal compensation and the scope, implementation and enforceability of the Interconnection Agreement and the June 1998 Amendment.

E. Intermedia's Complaint.

Intermedia filed its Complaint on July 11, 2000. The Complaint purports to allege eleven causes of action against BellSouth, each allegedly arising out of BellSouth's provision of telecommunications service and network access to Intermedia pursuant to the Agreements.

The separate counts of the Complaint are based on three general allegations of fact. First, Intermedia contends that BellSouth is not fulfilling its obligations under the Interconnection Agreement and the Telecommunications Act with respect to the interconnection of the parties' networks, primarily as it relates to the provision of trunks. Compl. ¶¶ 57-58. Second, Intermedia

contends that BellSouth has continued unnecessarily to litigate the dispute over whether traffic bound for Internet Service Providers ("ISPs") should be considered local traffic under the specific terms of the Interconnection Agreement. Compl. ¶¶ 88-97. Third, Intermedia contends that BellSouth fraudulently procured Intermedia's consent to the June 1998 Amendment, the effect of which is to reduce the rate at which the parties' compensate each other for the exchange of local traffic. Compl. ¶¶ 98-109.

ARGUMENT

Intermedia's claims do not belong in this Court and should be dismissed. Intermedia seeks to litigate claims that, to the extent they may be raised at all, must be raised before the state PSC's charged with the responsibility for implementing, supervising and enforcing the Telecommunications Act of 1996. As shown below, none of Intermedia's claims may be brought as original actions in federal district court.

This memorandum opens with a discussion of the antitrust counts because these claims are legally deficient in any forum. It is clear that no antitrust cause of action exists for violation of the duties imposed by the Act. Next is a discussion of why the remaining claims are subject to the exclusive or primary jurisdiction of state public service commissions. Further, the memorandum discusses why the filed rate doctrine bars all claims under the June 1998 Amendment. It concludes with a brief discussion concerning Intermedia's failure to state a fraud or tortious interference cause of action.

I. THE ANTITRUST-BASED CLAIMS ARE LEGALLY DEFICIENT.

The Court should dismiss Intermedia's antitrust claims (Counts IX, X, and XI) because they are legally deficient. Congress did not intend for the Telecommunications Act to be implemented or enforced through antitrust litigation.

A. The Telecommunications Act Does Not Provide a Basis For Antitrust Claims.

Intermedia summarized its antitrust claims against BellSouth as follows:

> BellSouth now maintains its monopoly power not by its skill, foresight and industry, but by intentionally engaging in the anti-competitive conduct described above, including but not limited to: (1) willfully refusing to commit adequate resources and manpower to assure that Intermedia could interconnect with BellSouth's network and facilities; (2) refusing to make required reciprocal compensation payments to Intermedia for ISP-bound calls; and (3) fraudulently inducing Intermedia to enter into the MTA Amendment to drastically reduce BellSouth's reciprocal compensation obligations to Intermedia.

Compl. ¶ 171. Reduced to its essentials, Intermedia alleges a breach of the Interconnection Agreement and misconduct in the negotiation of the June 1998 Amendment. That is, Intermedia seeks to enforce BellSouth's obligations under the Telecommunications Act through the tool of an antitrust suit.

The United States Court of Appeals for the Seventh Circuit recently considered and rejected the same antitrust theory Intermedia is advancing here. In Goldwasser v. Ameritech, __ F.3d __, 2000 WL 1022365 (7th Cir. July 25, 2000), Judge Wood (a former University of Chicago Law Professor and Antitrust Lawyer with the Justice Department), writing for a unanimous panel, affirmed the dismissal of an antitrust suit alleging that Ameritech was not fulfilling its obligations under the Telecommunications Act and that such failure was a violation of that statute and an abuse of Ameritech's monopoly power in violation of section 2 of the Sherman Act, 15 U.S.C. § 2.[1]

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[1] Similar to this case, the Goldwasser plaintiffs alleged that (1) Ameritech failed to "provid[e] the same quality of service to its competitors as it provides to itself"; (2) "Ameritech's competitors have experienced undue delays (presumably caused by Ameritech) in acquiring unbundled elements, and those delays have precluded them from offering services as attractive as Ameritech's" (3) Ameritech "failed to provide interconnection between its network and those of competitors that is equal to the interconnections it gives itself"; and (4) Ameritech "refused to allow its competitors to connect with its local telephone network on just, reasonable, and nondiscriminatory terms." Id. at *4-*5.

The court explained that "a failure to comply with the 1996 Telecommunications Act" does not equate to "a failure to comply with the antitrust laws." Id. at *10. According to the court, a company's failure to meet the obligations Congress created in the Telecommunications Act does not constitute an antitrust violation:

> The fundamental fallacy in the plaintiffs' theory is that the duties the 1996 Telecommunications Act imposes on ILECs are coterminous with the duty of a monopolist to refrain from exclusionary practices. They are not.
>
> * * *
>
> In other words, Congress could have chosen a simple antitrust solution to the problem of restricted competition in local telephone markets. It did not. Instead, in an effort to jump-start the development of competitive local markets, it imposed a host of special duties on the ILECs; it entrusted supervision of those duties to the FCC and the state public utility commissions; and it created a system of negotiated agreements through which this would be accomplished. These are precisely the kinds of affirmative duties to help one's competitors that we have already noted do not exist under the unadorned antitrust laws.

Id. at *10.

The court also rejected the plaintiffs' antitrust claims which were not, strictly speaking, based solely on the alleged failure to comply with the Telecommunications Act. Noting that the plaintiffs alleged that Ameritech "controlled certain essential facilities" and "ha[d] refused to deal with its competitors on just, reasonable, and nondiscriminatory terms," the court nevertheless concluded that antitrust review in a judicial forum was not consistent with the enforcement procedures created in the Telecommunications Act:

> [W]hen one reads the complaint as a whole these allegations appear to be inextricably linked to the claims under the 1996 Telecommunications Act. Even if they were not, such a conclusion would then force us to confront the question whether the procedures established under the 1996 Telecommunications Act for achieving competitive markets are compatible with the procedures that would be used to accomplish the same result under the antitrust laws. In our view, they are not. The elaborate system of negotiated agreements and enforcement established by the 1996 Telecommunications Act could be brushed aside by any unsatisfied party with the simple act of filing an antitrust action. Court orders in those cases could easily conflict with the obligations the state commissions or the FCC

> imposes under the [47 U.S.C.] sec. 252 agreements. The 1996 Telecommunications Act is, in short, more specific legislation that must take precedence over the general antitrust laws, where the two are covering precisely the same field.

Id. at *12. (emph. added). Finding that "[t]he 1996 Telecommunications Act in fact has an elaborate enforcement structure that Congress created for purposes of managing the transition from the former regulated world to the hoped-for competitive markets of the future," the court concluded that "[t]he antitrust laws would add nothing to the oversight already available under the 1996 law." Id. at *12.

Here, as in Goldwasser, Intermedia's claims are based on alleged violations of the Telecommunications Act or of BellSouth's obligations under the Interconnection Agreement. For example, Intermedia's claim that BellSouth is "willfully refusing to commit adequate resources and manpower to assure that Intermedia could interconnect with BellSouth's network and facilities" is merely a variation of the Goldwasser plaintiffs' complaint that Ameritech "failed to provide interconnection between its network and those of competitors that is equal to the interconnections it gives itself." Moreover, each of the substantive factual allegations of the Complaint concerns BellSouth's alleged failure to fulfill its duties under either the Interconnection Agreement or the Telecommunications Act.

By filing this lawsuit, Intermedia, like the Goldwasser plaintiffs, is trying merely to brush aside "the elaborate system of negotiated agreements and enforcement" (Id. at *12) set forth in the Telecommunications Act to promote and develop competition in the local telecommunications market. Thus, just as in Goldwasser, this Court should dismiss Intermedia's claims because they cannot form the basis of an antitrust claim.

B. Intermedia's Antitrust Claims Are Barred By Implied Antitrust Immunity.

Intermedia's antitrust claims against BellSouth should be dismissed based on the doctrine of antitrust immunity. Antitrust immunity is implied where antitrust enforcement "poses a substantial danger that appellees would be subject to duplicative and inconsistent standards." United States v. National Ass'n of Sec. Dealers, Inc., 422 U.S. 694, 719-20, 95 S. Ct. 2427, 2442-43 (1975) ("NASD"). Implied immunity is also created "to assure that the federal agency entrusted with regulation in the public interest could carry out that responsibility free from the disruption of conflicting judgments that might be voiced by courts exercising jurisdiction under the antitrust laws." Id., 422 U.S. at 734, 95 S. Ct. at 2450.

Although the Telecommunications Act contains no express grant of antitrust immunity, courts infer an implied immunity from the antitrust laws where it appears that a pervasive regulatory scheme would be disrupted by antitrust enforcement. Gordon v. New York Stock Exch., Inc., 422 U.S. 659, 682, 95 S. Ct. 2598, 2611 (1975). It is difficult to imagine a more pervasive web of regulation than that imposed on BellSouth in allowing access to its network. The question is whether antitrust enforcement must take a back seat in order "to make the [subsequent law] work." National Gerimedical Hosp. Ctr. & Gerontology v. Blue Cross of Kansas City, 452 U.S. 378, 389, 101 S. Ct. 2415, 2422 (1981) (alteration in original) (quoting Silver v. New York Stock Exch., 373 U.S. 341, 357, 83 S. Ct. 1246, 1257 (1963)).[2]

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2 The Savings Clause in Section 601(b)(1) of the Act does not prevent the application of the doctrine of implied antitrust immunity. The Savings Clause provides: "Except as provided in paragraphs (2) and (3), nothing in this Act or the amendments made by this Act shall be construed to modify, impair, or supersede the applicability of the antitrust laws." The Savings Clause was not intended to prevent the application of the doctrine of implied antitrust immunity, particularly in those areas where active regulation was expanded. Indeed, a savings clause does not modify or impair the doctrine of antitrust immunity or prevent its application. Rather, the Act establishes a new extensive regulatory paradigm to which the preexisting doctrine of implied antitrust immunity must be applied. See AT&T v. Central Office Tel., Inc., 524 U.S. 214, 118 S.Ct. 1956, 1965 (1998) (in interpreting a savings clause, "the Act cannot be held to destroy itself"); Pan Am World Airways v. United States, 371 U.S. 296, 310, 321

The Telecommunications Act has changed nearly every aspect of the local telecommunications market. BellSouth and other incumbent telephone companies are opening their networks to companies such as Intermedia. The FCC and the state commissions are involved directly in every step of that process. Those agencies have dictated the precise manner in which the networks must be opened to competitors and the established price that CLECs must pay for such access. Regulators are defining nearly every aspect of the day-to-day business dealings among competitors. The Telecommunications Act's comprehensive regulatory scheme, which directly addresses Intermedia's claims, leaves no room for an antitrust court to review separately allegations of discrimination in the provision of access to the local exchange network. The mandate of the antitrust laws is "to ensure that private discretionary conduct is adequately constrained by government authority." 1A Phillip Areeda & Herbert Hovenkamp, ANTITRUST LAW ¶ 240b, at 4 (1997). BellSouth's provision of access to the local exchange network can hardly be characterized as private, discretionary conduct given the applicable statutes and intense regulatory review by the FCC and state PSCs. Moreover, it is inconsistent with the pervasive regulatory framework of the Telecommunications Act to permit Intermedia and other companies to run to court crying "antitrust injury" at every turn while the total restructuring of the local telecommunications market is underway.[3]

(1963) (finding antitrust claims repugnant to administrative scheme even though the statute contained a broadly-worded savings clause).

3 The Court in Goldwasser did not apply the doctrine of implied antitrust immunity to reach its conclusions 2000 WL 1022365, at *11. The Goldwasser court's conclusion, however, that the Telecommunications Act is "more specific legislation that must take precedence over the general antitrust laws" reaches the same result from a different angle.

C. BellSouth Has The Absolute Right to Appeal Administrative and Judicial Decisions Concerning Reciprocal Compensation for ISP-Bound Traffic.

As part of its antitrust claims, Intermedia alleges that BellSouth's exercise of its rights to appeal the administrative judicial decisions concerning reciprocal compensation for ISP traffic is an anticompetitive effort to "destroy Intermedia." Compl. ¶¶ 88-96. Significantly, however, Intermedia concedes – as it must – that BellSouth and other incumbent telephone companies have won some of these reciprocal compensation cases. See Compl. ¶ 96. Buried at the bottom of the next to last page of Exhibit 13 to the Complaint, (entitled "States Ordering Payment of Reciprocal Compensation"), Intermedia provides an incomplete list of state PSC decisions refusing to order the ILEC to pay reciprocal compensation. For example, the Louisiana Public Service Commission has ruled in favor of BellSouth on the identical issue raised by Intermedia in this suit – reciprocal compensation for ISP-bound traffic. In re Petition of KMC Telecom, Inc. against BST to Enforce Reciprocal Compensation Provisions of the Parties' Interconnection Agreement, Order, Docket No. U-23829 (La. Pub. Serv. Comm'n Oct. 28, 1999).[4] Thus, Intermedia would have this Court rule that BellSouth's exercise of its right to appeal an adverse ruling in one jurisdiction on an issue it has prevailed upon in another somehow constitutes exclusionary conduct actionable under section 2 of the Sherman Act. 15 U.S.C. § 15.

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4 Colorado, Massachusetts and New Jersey have also held that ISP-bound traffic is not subject to reciprocal compensation. In the Matter of ICG Telecom Group, Inc. against U.S. West Communications, Inc., Docket No. 00B-103T Colorado PUC Decision No. C00-958 (August 1, 2000); Complaint of MCI WorldCom, Inc. against New England Telephone and Telegraph Company, Massachusetts D.T.E. 97-116-C (May 19, 1999); In the Matter of Global Naps, Inc., New Jersey Board of Public Utilities, Docket No. T 098070426 (July 7, 1999)). Further, the FCC agrees that ISP-bound traffic is not subject to reciprocal compensation because it is not "local" traffic under the Telecommunications Act. In its Declaratory Ruling in CC Docket No. 96-98 and Notice of Proposed Rulemaking in CC Docket No. 99-68, Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, Inter-Carrier Compensation for ISP-Bound Traffic, 14 FCC Rcd 3689 (1999), the FCC concluded that Internet communications "do not terminate at the ISP's local server ... but continue to the ultimate destination or destinations, specifically at a[n] Internet website that is often located in another state." Id. at ¶ 12. In so doing, the FCC rejected any attempt "to divide communications at any intermediate points of switching or exchanges between carriers," and squarely held that Internet communications are "non-local." Id. at ¶ 26 n. 87. Finally, the FCC held that "the

Indeed, the exercise of a party's constitutional right to petition the government is beyond the reach of the antitrust laws under the Noerr-Pennington, or petitioning immunity doctrine: "Those who petition government for redress are generally immune from antitrust liability." Real Estate Investors, Inc. v Columbia Pictures Industries, Inc., 508 U.S. 49, 56, 113 S. Ct. 1920, 1926 (1993). This immunity applies to litigation before courts and administrative agencies, unless the litigation is a "sham." California Motor Transport Co. v. Trucking Unlimited, 404 U.S. 508, 510, 92 S.Ct. 609, 611 (1972).

To be a sham, the plaintiff must first show that the litigation is "objectively baseless in the sense that no reasonable litigant could realistically expect success on the merits." Real Estate Investors, Inc., 508 U.S. 60, 113 S.Ct. at 1928. The Supreme Court explained: "If an objective litigant could conclude that the suit is reasonably calculated to elicit a favorable outcome, the suit is immunized under Noerr, and an antitrust claim premised on the sham exception must fail." Id. Consequently, "a winning lawsuit is by definition a reasonable effort at petitioning for redress and therefore not a sham." Id. at 1928 n. 5. Only if the lawsuit is objectively meritless, may the litigant's subjective motivation for the lawsuit then be examined for an anticompetitive purpose. Id. Even so, "[p]roof of a sham merely deprives the defendant of immunity; it does not relieve the plaintiff of the obligation to establish all other elements of his claim." Id.

In this circuit, the burden falls on the plaintiff "to allege facts sufficient to show that Noerr-Pennington immunity did not attach to [defendant's] actions." McGuire Oil Co. v Mapco, Inc., 958 F.2d 1552, 1558 n. 9 (11th Cir. 1992). BellSouth has legitimate and reasonable arguments as to why it does not owe Intermedia reciprocal compensation for ISP traffic. In the

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reciprocal compensation requirements of section 251(b)(5) of the Act and ... of the Commission's rules do not govern inter-carrier compensation for [ISP-bound] traffic." Id. The United States Court of Appeals for the District of Columbia Circuit vacated and remanded the Declaratory Ruling for further