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EXECUTIVE SECRETARY

October 25, 1999

Mr. Gary Hotvedt
Pre-Arbitration Officer
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, TN 37243-0505

In Re: Petition of ICG Telecom Group, Inc. for Arbitration with Bellsouth Telecommunications, Inc. Pursuant to Section 252 of the Telecommunications Act of 1996
Docket No. 99-00377

Dear Gary:

Enclosed is a revised issues matrix for the ICG-BellSouth arbitration proceeding. I have changed the questions as you requested and also updated ICG's responses based on the direct, pre-filed testimony. I have not changed BellSouth's responses. I will update ICG's responses again based on the filing of rebuttal testimony on November 10, and will file a revised matrix on November 11.

Please note that Guy Hicks has not seen this revised matrix and will, I assume, also wish to update BellSouth's responses based on the direct testimony.

BOULT, CUMMINGS, CONNERS & BERRY, PLC

By:
Henry Walker, attorney for ICG

HW/nl
Attachment
cc: Guy Hicks, attorney for BellSouth

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TENNESSEE AMENDED ISSUES MATRIX
ICG TELECOM GROUP/ BELLSOUTH ARBITRATION
TRA DOCKET NO. 99-00377

ISSUE	ICG TELECOM GROUP POSITION	BELLSOUTH POSITION
I. General Issues		
Issue 1: For the purposes of this agreement, should dial-up calls to Internet service providers ("ISPs") be treated as if they were local calls for purposes of reciprocal compensation?	Yes. The TRA has previously ruled on this issue in the NEXTLINK arbitration (Docket 98-00123). ICG seeks the same relief. Since the NEXTLINK hearing, moreover, the FCC has issued a Declaratory ruling concerning local calls to ISPs. In the Ruling, the FCC explicitly recognized that state commissions may continue to require compensation for ISP traffic in the absence of any federal compensation rule. Until the FCC acts, if it ever does, ICG will receive no compensation for handling these calls unless the TRA orders it.	No. Under 47 U.S.C. § 251 (b)(5) and 47 C.F.R. § 51.701, it is clear that reciprocal compensation is applicable only to local traffic, not to all traffic that may be routed over "local" trunks. "Local" trunks may actually carry access, or toll, traffic in addition to local traffic. ISP-bound traffic, even if routed over local interconnection trunks, is not subject to the 1996 Act's requirement of reciprocal compensation. The FCC's recent Declaratory Ruling in CC Docket Nos. 96-98 and 99-68, released on February 26, 1999, confirmed unequivocally that ISP-bound traffic is interstate in nature, not local. Under the provisions of the 1996 Act and FCC rules, only local traffic is subject to reciprocal compensation obligations. Thus, reciprocal compensation is clearly not applicable to ISP-bound traffic. In addition to being contrary to the law, treating ISP-bound traffic as local for reciprocal compensation purposes is contrary to sound public policy. Therefore, this issue is not appropriate for arbitration. Although BellSouth does not believe that compensation for ISP-bound traffic is subject to a Section 252 arbitration because ISP traffic is interstate, not local, traffic, BellSouth will propose an interim mechanism for ISP-bound traffic until the FCC issues a final order in its inter-carrier compensation docket.
II. Unbundled Network Elements		
Issue 3: Where, how and at what rate should BellSouth make available Packet-switching capabilities as UNEs throughout the term of the contract, including: (a) user-to-network interface ("UNI") at 56 kbps, 64 kbps, 128 kbps 256 kbps, 384 kbps, 1.544 Mbps, 44.736 Mbps; (b) network-	Although this issue has been settled in other states, it has not been settled in Tennessee. BellSouth is required under the Act and under FCC orders to provide UNEs for packet-switched services, including unbundled frame relay packet switching. To ensure that the prices charged to	BST agrees to comply with ICG's request at rates proposed by BellSouth until the FCC issues a final non-appealable order on rule 51.319 and with other limitations. Moreover, until the Authority's prehearing conference held on August 25, 1999, BellSouth was under the impression this issue was settled regionally, subject only to ICG's review of BellSouth's rates in each state. BellSouth's

to-network interface ("NNI") at 56 kbps, 64 kbps, 1.544 Mbps, 44.736 Mbps; and (c) data link control identifiers ("DLCIs"), at committed information rates ("CIRs") of 0 kbps, 8 kbps, 9.6 kbps, 16 kbps, 19.2 kbps, 28 kbps, 32 kbps, 56 kbps, 64 kbps, 128 kbps, 192 kbps, 256 kbps, 320 kbps, 384 kbps, 448 kbps, 512 kbps, 576 kbps, 640 kbps, 704 kbps, 768 kbps, 832 kbps, 896 kbps, 960 kbps, 1.024 Mbps, 1.088 Mbps, 1.152 Mbps, 1.216 Mbps, 1.280 Mbps, 1.344 Mbps, 1.408 Mbps, 1.472 Mbps, 1.536 Mbps, 1.544 Mbps, Mbps, 3.088 Mbps, 4.632 Mbps, 6.176 Mbps, 7.720 Mbps, 9.264 Mbps, 10.808 Mbps, 12.350 Mbps, 13.896 Mbps, 15.440 Mbps, 16.984 Mbps, 18.528 Mbps, 20.072 Mbps? *If so, what are the proposed rates*?	ICG for these capabilities are TELRIC-based, it is necessary that all packet-switched capabilities be available as UNEs. ICG will accept BellSouth's Tennessee-specific TELRIC-based prices for these services as long as ICG is not required to collocate in every BellSouth central office in order to purchase these UNEs.	understanding was based upon representations made by ICG in a mediation conference in Montgomery, Alabama, held on August 10, 1999. BellSouth recognizes that ICG raised collocation questions relating to this issue in that mediation; however, irrespective of the collocation questions, the parties settled Issue 3 in its entirety in Alabama. (The North Carolina Utilities Commission ("NCUC") did not consider the UNE issues – herein issues 3,4 and 6 – because of the fluidity of the issue at the FCC, and the concern that UNE policy be consistent and not established on a piecemeal basis. The NCUC has an ongoing UNE docket which was deemed to be an appropriate place to consider those issues). BellSouth opposes ICG's attempt to broaden Issue 3 to include a collocation issue related to packet switching. Section 252(b)(2) of the Telecommunications Act of 1996 requires that the petitioner (in this case ICG) must set forth unresolved issues in its petition for arbitration. To allow ICG to change and expand this issue would be a violation of the requirements of the 1996 Act and would prejudice BellSouth's right to a fair arbitration.
Issue 4: Should a local loop combined with dedicated transport be provided as a UNE? *If so, what is the proposed rate*?	Yes. Both parties agree that extended loops should be made available. BellSouth, however, insists that the EELs be offered through a "Professional Services Agreement" outside the jurisdiction of the TRA and at whatever rate BellSouth decides to charge. ICG believes that, like any other network element, an EEL must be offered at a TELRIC-based rate approved by this Authority. In light of the Supreme Court's decision in *Iowa vs. FCC*, the TRA has authority under both federal and state law to order BellSouth to provide extended loops at TELRIC-based rates. EEL rates should be fixed based on BellSouth's cost study filed in this docket.	No. First, neither loops, ports, nor transport have been defined by the FCC as unbundled network elements that BellSouth must provide. Second, even if loops, ports and transport are defined as UNEs, BellSouth is only obligated to provide combinations of those elements where they are currently combined in BellSouth's network. Because BellSouth is not required to combine network elements for CLECs under the 1996 Act, the issue of applicable rates for such network combinations is not properly the subject of arbitration. To the extent the Authority concludes otherwise, or determines to establish rates for network elements that are currently combined in BellSouth's network, the Authority should do so in the context of a generic proceeding rather than an arbitration involving one CLEC. Therefore, this issue is not appropriate for arbitration.

		BellSouth, however, is willing to provide this combination through commercial agreement.
Issue 5: Should BellSouth be subject to liquidated damages or other concessions or remedies for failing to meet the time intervals for provisioning UNEs? *If so, what level of damages, concessions or remedies are appropriate? What time intervals*?	Yes. Pending the establishment of a Tennessee-specific plan which includes performance standards and liquidated damages, ICG recommends that the TRA adopt in the interim the performance standards and penalties recently adopted by the Texas Public Utilities Commission. The Texas Plan adequately address each of the performance related issues raised in this arbitration. Having argued at length that liquidated damages are appropriate for inclusion in BellSouth's tariffs and Contract Service Arrangements, BellSouth cannot seriously now contend that the TRA has no authority to consider such penalties or that liquidated damages are not a useful method of ensuring compliance with contracts and tariffs. In Texas, Southwest Bell and the other parties came to an agreement on performance measures and penalties. The proceedings were closely monitored by staff members from both the FCC and the U.S. Department of Justice. It seems likely that the Texas plan may become a blueprint for other states and, possible, the FCC. On the one hand, BellSouth argues that performance measures and damages are inappropriate and illegal. On the other hand, BellSouth has acknowledged that the company is presently working on a proposal that is similar to the Texas plan and which includes performance measures and liquidated damages. BellSouth, however, has said that it will not agree to the company's own plan in any state until after that state commission approves BellSouth's 271 application. Brief of Sept. 7, 1999, p. 10. If performance standards and damages are needed	BellSouth disagrees that the so called "performance measures" and performance "guarantees" proposed by ICG are appropriate. BellSouth has offered a comprehensive set of performance measurements (Service Quality Measurements or "SQMs") which ensure that BellSouth provides all CLECs with nondiscriminatory access as required by the 1996 Act and applicable rules of the Federal Communications Commission ("FCC"). BellSouth also is willing to provide ICG any additional performance measurements that the Authority may order BellSouth to provide to other CLECs in this state. With respect to performance "guarantees," BellSouth does not believe that financial incentives, "guarantees," penalties or liquidated damages are appropriate matters for arbitration under the 1996 Act. The Authority has previously declined to "require a system of penalties and credits" in the context of an arbitration. (*See* Brief of the TRA, Case No. 39-97-0616, at 26, U.S. Dist. Ct., M.D. Tenn. (8-13-99); and MCI/BellSouth Arbitration before the TRA in Docket No. 96-01271). ICG's proposal is not required by the 1996 Act and represents a supplemental enforcement scheme that is inappropriate and unnecessary. ICG has adequate legal recourse in the event BellSouth breaches its interconnection agreement.

	to make competition workable, the TRA should adopt them in this proceeding. Otherwise, the interconnection agreement will not succeed.	
Issue 6: Should volume and term discounts be available for UNEs? Have specific volumes and terms for given items been identified? *If so, what are they?*	Yes. One purpose of this proceeding is to fix cost-based rates for UNEs. To the extent BellSouth saves money through provisioning service in high volumes or for extended terms, these savings must be passed through to ICG.	No. BellSouth should not be required to provide volume and term discounts for UNEs. Neither the Act nor any FCC order or rule requires volume and term discount pricing. The UNE recurring rates that ICG will pay are cost-based in accordance with the requirements of Section 252(d) and are derived using least-cost, forward looking technology consistent with the FCC's rules. Also, BellSouth's nonrecurring rates already reflect any economies involved when multiple UNEs are ordered and provisioned at the same time.
Issue 7: Should ICG be compensated for end office, tandem, and transport elements of termination, for purposes of reciprocal compensation, when ICG's switch serves a geographic area comparable to the area served by BellSouth's tandem switch? *If so, according to what schedule or at what rate*?	Yes. In accordance with FCC Rule 47 C.F.R. § 51.711(a)(3) specifically addresses this issue. According to the rule, ICG is entitled to compensation at BellSouth's "tandem interconnection rate" whether or not ICG itself uses a tandem switch to serve that area. BellSouth's position simply ignores the rule. The rate should be the UNE proxy price of $0.005 per minute for transport and termination of local traffic through the BellSouth tandem.	No. The appropriate rates for reciprocal compensation are the elemental rates for end office switching, tandem switching and common transport that are used to transport and terminate local traffic. If a call is not handled by a switch on a tandem basis, it is not appropriate to pay reciprocal compensation for the tandem switching function. Therefore, this issue is not appropriate for arbitration.
Issue 11: Should BellSouth commit to the requisite network build out and necessary support when ICG agrees to a binding forecast of its traffic requirements in a specified period?	Yes. To avoid blockages, ICG is willing to commit to pay for BellSouth's network improvements that are not fully utilized. BellSouth has no principled reason t refuse ICG's proposal and, in fact, has agreed to binding forecasts in other interconnection proceedings. *See, e.g.* Interconnection Agreement Between BellSouth and KMC Telecom, Section 20.4 "Binding Traffic Forecasts," Feb. 24, 1997. In the alternative, ICG would propose that, if the parties cannot agree on a forecast, they could submit the matter to the TRA for decision under T.C.A. §65-4-114 (authorizing the TRA to order "any reasonable extension" of existing facilities where "reasonable and practical" and the utility is reasonably protected from economic loss).	No. BellSouth is not required by the Act or FCC rules to commit to a binding forecast with ICG or any CLEC. Therefore, this issue is not appropriate for arbitration.

Issue 19-26: Should the following installation benchmarks, provisioning benchmarks, maintenance benchmarks, performance measures and liquidated damages be approved by the arbitrators: Issue 19: Should BellSouth be required to pay liquidated damages when BellSouth fails to install, provision, or maintain any service in accordance with the due dates set forth in an interconnection agreement between the Parties? Issue 20: Should BellSouth continue to be responsible for any cumulative failure in a one-month period to install, provision, or maintain any service in accordance with the due dates specified in the interconnection agreement with ICG? Issue 21: Should BellSouth be required to pay liquidated damages when BellSouth's service fails to meet the requirements imposed by the interconnection agreement with ICG (or the service is interrupted causing loss of continuity or functionality)? Issue 22: Should BellSouth continue to be responsible when the duration of service's failure exceeds certain benchmark? Issue 23: Should BellSouth be required to pay liquidated damages when BellSouth's service fails to meet the grade of service requirements imposed by the interconnection agreement with ICG? Issue 24: Should BellSouth continue to be responsible when the duration of service's	Yes. As explained in Issue 5, ICG believes that the TRA should adopt the performance standards and penalties recently approved by the Texas Public Utilities Commission. The most comprehensive state plan yet adopted, the Texas plan adequately addresses each of the performance-related issues in this docket. In the long-run, however, Tennessee should adopt its own state-specific plan and apply it prospectively to all pending interconnection agreements.	BellSouth disagrees that the so called "performance measures" and performance "guarantees" proposed by ICG are appropriate. BellSouth has offered a comprehensive set of performance measurements (Service Quality Measurements or "SQMs") which ensure that BellSouth provides all CLECs with nondiscriminatory access as required by the 1996 Act and applicable rules of the Federal Communications Commission ("FCC"). BellSouth also is willing to provide ICG any additional performance measurements that the Authority may order BellSouth to provide to other CLECs in this state. With respect to performance "guarantees," BellSouth does not believe that financial incentives, "guarantees," penalties or liquidated damages are appropriate matters for arbitration under the 1996 Act. The Authority has previously declined to "require a system of penalties and credits" in the context of an arbitration. (*See* Brief of the TRA, Case No. 39-97-0616, at 26, U.S. Dist. Ct., M.D. Tenn. (8-13-99); and MCI/BellSouth Arbitration before the TRA in Docket No. 96-01271). ICG's proposal is not required by the 1996 Act and represents a supplemental enforcement scheme that is inappropriate and unnecessary. ICG has adequate legal recourse in the event BellSouth breaches its interconnection agreement.

failure to meet the grade of service requirements exceeds certain benchmarks? Issue 25: Should BellSouth be required to pay liquidated damages when BellSouth fails to provide any data in accordance with the specifications of the interconnection agreement with ICG? Issue 26: Should BellSouth continue to be responsible when the duration of its failure to provide the requisite data exceeds certain benchmark?		

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