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Guy M. Hicks
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October 29, 1999

VIA HAND DELIVERY

Mr. David Waddell, Executive Secretary
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, Tennessee 37243-0505

Re: *Petition by ICG Telecom Group, Inc. for Arbitration of an Interconnection Agreement with BellSouth Telecommunications, Inc. pursuant to Section 252(b) of the Telecommunications Act of 1996*
Docket No. 99-00377

Dear Mr. Waddell:

Enclosed are the original and thirteen copies of the Direct Testimony of Al Varner on behalf of BellSouth Telecommunications, Inc. Copies of the enclosed are being provided to counsel of record for all parties.

Very truly yours,

Guy M. Hicks

GMH/jem

Enclosure

184390

BELLSOUTH TELECOMMUNICATIONS, INC.

DIRECT TESTIMONY OF ALPHONSO J. VARNER

BEFORE THE TENNESSEE REGULATORY AUTHORITY

DOCKET NO. 99-00377

OCTOBER 29, 1999

Q. PLEASE STATE YOUR NAME, YOUR POSITION WITH BELLSOUTH TELECOMMUNICATIONS, INC. ("BELLSOUTH") AND YOUR BUSINESS ADDRESS.

A. My name is Alphonso J. Varner. I am employed by BellSouth as Senior Director for State Regulatory for the nine-state BellSouth region. My business address is 675 West Peachtree Street, Atlanta, Georgia 30375.

Q. PLEASE GIVE A BRIEF DESCRIPTION OF YOUR BACKGROUND AND EXPERIENCE.

A. I graduated from Florida State University in 1972 with a Bachelor of Engineering Science degree in systems design engineering. I immediately joined Southern Bell in the division of revenues organization with the responsibility for preparation of all Florida investment separations studies for division of revenues and for reviewing interstate settlements.

Subsequently, I accepted an assignment in the rates and tariffs organization with responsibilities for administering selected rates and tariffs including preparation of tariff filings. In January 1994, I was appointed Senior Director of Pricing for the nine-state region. I was named Senior Director for Regulatory Policy and Planning in August 1994, and I accepted my current position as Senior Director of Regulatory in April 1997.

Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?

A. My testimony provides BellSouth's policy position on numerous issues raised by ICG Telecom Group, Inc. ("ICG") in its Petition for Arbitration filed with the Tennessee Regulatory Authority ("Authority") on May 27, 1999. Initially, I address the ramifications of recent judicial and regulatory decisions as they specifically relate to ICG Issues 3, 4, 6, and 7. Then, I provide BellSouth's recommended remedy and position for the following issues raised by ICG in the following order: 4, 3, 6, 7, 11, 5 and 19-26.

Recent Regulatory Decisions

Issue 3: Should BellSouth be required to make available as UNEs packet-switching capabilities…? (See subsequent testimony for complete issue)

Issue 4: Should a local loop combined with dedicated transport be provided as a UNE? If so, what is the proposed rate?

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?

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 what rate?

Q. PLEASE SUMMARIZE THE CURRENT STATUS OF PRICING RULES AND BUNDLING RULES THAT APPEAR TO AFFECT THIS PROCEEDING.

A. On June 10, 1999, the United States Court of Appeals for the Eighth Circuit ("Eighth Circuit") issued an order in the *Iowa Utilities Board, et al.* case reinstating many of the previously vacated Federal Communications Commission's ("FCC") Rules. These Rules were originally issued in the FCC's First Report and Order and Second Report and Order dated August 8, 1996 in CC Docket 96-98. In light of the Eighth Circuit's recent and past decisions, along with the January 25, 1999 decision by the United States Supreme Court, the status of the FCC's rules can be divided into categories as follows.

The FCC's pricing Rules 51.501-51.515 (Pricing of Elements) and 51.701-51.717 (Reciprocal Compensation for Transport and Termination of Local Telecommunications Traffic) have been reinstated. However, they must still be reevaluated by the Eighth Circuit because the Eighth Circuit's earlier ruling was based solely upon jurisdictional arguments and did not consider the various challenges raised to these rules on their merits. Although these rules are in effect while the Eighth Circuit revisits them, the final pricing rules will not likely be known until the Eighth Circuit acts, which could be several months in the future. In the interim, BellSouth proposes that the existing rates under the ICG interconnection agreement continue in effect until the Authority issues a final order in Docket 97-01262. In addition, for rates not covered under the current agreement, BellSouth is proposing prices that are consistent with the FCC's pricing methodology and with cost studies filed by BellSouth in the Authority's UNE cost proceeding (Docket No. 97-01262), pursuant to the Authority's January 25, 1999 Order, as amended by decisions at the April 20, 1999 Directors' Conference. BellSouth also proposes that prices in effect under the current agreement, as well as prices established in this proceeding, be modified retroactive to the effective date of the new interconnection agreement, after the Authority's final order in Phase II of the UNE cost proceeding, and, if necessary, when the FCC issues its final rules.

Moreover, as to bundling, the FCC's Unbundled Network Element ("UNE") Rule 51.319 (Specific unbundling requirements) was vacated after the Supreme Court's decision in *Iowa Utilities Bd.* The FCC recently completed its 319 proceeding but has not yet issued its order. Until the FCC's rules become effective, there is no minimum list of UNEs that BellSouth is required to offer.

Even though the FCC's Rule 51.315(b) (Pre-existing combinations) has been reinstated by the Eighth Circuit, it cannot be effectively applied until the FCC reestablishes the UNE list in FCC Rule 51.319 that was vacated by the Supreme Court.

Finally, the FCC's Rules 51.315(c) through 51.315(f) (Incumbent Local

Exchange Company ("ILEC") combination of UNEs) continue to be vacated. The Eighth Circuit, however, is seeking comments on whether it should take further action with respect to these rules. Because these rules are not in effect, any action by the Authority requiring BellSouth to combine network elements would be improper in light of the Telecommunications Act of 1996 ("Act").

After the FCC and the Eighth Circuit take further action in response to the Supreme Court's decision, BellSouth's position on the issues raised in this proceeding may be affected.

Q. BRIEFLY DESCRIBE THE REGULATORY STATUS OF THE FCC'S RULE 51.319 (SPECIFIC UNBUNDLING REQUIREMENTS).

A. The FCC made its decision on which UNEs are required on September 15, 1999, but an order has not been issued, nor is it effective. Based on available documentation of the FCC's 319 ruling, it appears that two UNEs that are issues in this arbitration will be affected. The FCC has indicated that both switching and transport will have restrictions applied that limit their availability as UNEs. The specifics of these restrictions will not be known until the FCC's 319 order becomes effective. Based on the only indications currently available regarding the FCC's decision on Rule 51.319, it appears that currently combined UNEs must be in existence and providing service to a BellSouth end-user at the time a CLEC requests the combination. However, the criteria for determining whether UNEs are currently combined will not be known definitively until the FCC's 319 Order becomes effective.

The Authority presumably will have, and should have, a role in implementing the "necessary" and "impair" standards. However, the Authority's decisions should, as a practical matter, await the FCC's further definition of those standards. Furthermore, even if the Authority eventually is empowered to decide which elements must remain combined, the FCC has not issued a written order indicating exactly which elements those are.

Q. WHAT IS YOUR UNDERSTANDING OF BELLSOUTH'S CURRENT REGULATORY OBLIGATIONS REGARDING NETWORK ELEMENT COMBINATIONS?

A. With respect to network element combinations, the Supreme Court's vacating of the FCC's Rule 51.319 and its reinstatement of other rules directly impact the network elements BellSouth is required to provide. In accordance with the FCC's Rule 51.315(a), BellSouth is obligated to provide unbundled network elements in a manner that allows requesting telecommunications carriers to combine them in order to provide a telecommunications service. Although requesting telecommunications carriers may combine UNEs in any manner they choose, BellSouth is not required to combine unbundled elements for those carriers. The Eighth Circuit vacated the FCC's rules (§§ 51.315(c)-(f)) that purported to impose such a requirement. The Eighth Circuit's decision vacating these rules was not challenged by any party, and because those rules are not in effect, BellSouth is not required to combine network elements. However, BellSouth is willing to perform certain of these functions upon execution of a voluntary commercial agreement that is not subject to the requirements of the Act.

Q. WHAT IS BELLSOUTH'S POSITION WITH REGARD TO COMBINATIONS OF ELEMENTS THAT ALREADY EXIST IN BELLSOUTH'S NETWORK?

A. Regarding the provision of combinations that already exist in the network, there are no requirements that the Authority can implement until the FCC's order becomes effective. When those rules become effective, BellSouth will be obligated to provide UNEs that are currently combined as defined by the FCC. The pricing rules applicable to such combinations could be affected by the Eighth Circuit's evaluation. Therefore, with regard to this issue, a final determination of which UNEs must remain connected and functional, as well as the prices for those combinations, will depend upon the outcome of further proceedings before the FCC and the Courts.

The Supreme Court specifically recognized the linkage between Rule 51.315(b) and the list of UNEs. In its discussion of the legality of Rule 51.315(b), the Court stated: "As was the case for the all-elements rule, our remand of Rule 319 [i.e., requiring application of the "necessary" and "impair" standards] may render the incumbents' concern on this score academic." (525 U.S. __, 142 L. Ed. 2d 834, 858). This linkage should not be ignored by requiring the provision of services which are allegedly pre-existing combinations of UNEs before the UNEs themselves are defined.

For the reasons outlined above, BellSouth proposes that the Authority simply require BellSouth to provide currently combined UNEs to the extent required by law. Only the FCC and courts can determine the applicable requirements. The Authority need not, nor should it, speculate on the outcome of these proceedings.

Q. PLEASE FURTHER DESCRIBE WHY THE AUTHORITY SHOULD WAIT ON ACTION BY THE FCC BEFORE SPECIFYING WHICH UNE COMBINATIONS MUST BE OFFERED.

A. For the moment, while we have indications, no one knows for certain exactly *what* network elements must be made available to competing carriers. Even though the Eighth Circuit has simply reinstated the FCC's Rule 51.315(b) prohibiting ILECs from separating already-combined network elements before leasing them to competitors, the FCC will be defining the criteria to determine which elements are currently combined in its 319 order. In short, there is no reasonable way for the Authority to mandate combinations of network elements unless and until it is clear what those elements are and what constitutes currently combined UNEs.

Q. WHAT HAS THE AUTHORITY PREVIOUSLY DECIDED IN REGARD TO UNE PRICING?

A. The Authority issued its Interim Order in Phase I of Proceeding to Establish

Prices for Interconnection and Unbundled Network Elements (Docket 97-01262) on January 25, 1999 ("January 25, 1999 Order"). Pursuant to that order, BellSouth filed cost studies on February 24, 1999, reflecting adjustments as ordered by the Authority. In addition, on February 4, 1999, BellSouth filed a Motion for Reconsideration and Clarification. In its Directors' Conference on April 20, 1999, the Authority revised some decisions and clarified certain others. A final order in this generic UNE cost proceeding has not yet been issued.

Q. IN THE ABSENCE OF A FINAL ORDER IN THE UNE COST PROCEEDING, WHAT DOES BELLSOUTH PROPOSE ARE THE APPROPRIATE RATES FOR ELEMENTS REQUESTED IN ICG'S PETITION?

A. BellSouth proposes that the existing rates under the ICG agreement continue in effect until the Authority issues a final order in Docket 97-01262. Once such an order has been issued, BellSouth will true-up those existing rates, as well as rates for other services that ICG may request that are not covered by the current agreement, consistent with the parties' interconnection agreement.

Issue 4: Should a local loop combined with dedicated transport be provided as a UNE? If so, what is the proposed rate?

Q. WHAT IS BELLSOUTH'S PROPOSED REMEDY TO THIS ISSUE?

A BellSouth proposes that the Authority require BellSouth to provide currently combined UNEs to the extent required by law. The question as to whether the combinations of elements requested by ICG will be determined to be currently combined can only be determined upon final rulings by the FCC and courts. The Authority need not, nor should it, speculate on the outcome of those proceedings.

Q. WHAT IS BELLSOUTH'S UNDERSTANDING OF ICG'S REQUEST FOR A LOCAL LOOP COMBINED WITH DEDICATED TRANSPORT?

A. ICG has requested what it terms an "enhanced extended link" ("EEL") or a local loop and cross connect, combined with dedicated transport. However, the Authority has limited the request to local loop and dedicated transport. There is no question that these extended links or extended loops would not be a single UNE, but would be a combination of loops and dedicated transport.

Q. WHAT IS BELLSOUTH'S POSITION REGARDING THE PROVISION OF A LOOP COMBINED WITH DEDICATED TRANSPORT?

A. BellSouth is not required to combine individual UNEs such as the loop and dedicated transport. BellSouth may do so through voluntary agreements, however, such agreements are not subject to the Act. In addition, there is no reasonable way for the Authority to mandate provision of currently combined network elements unless and until it is clear what those elements are. As I discussed earlier, this identification will not be known until the FCC reissues its UNE rules in accordance with the Supreme Court's decision. Thus, the Authority should not order that such an obligation be imposed in the interconnection agreement.

Q. IS THE ENHANCED EXTENDED LOOP A UNE?

A. No, indications are that the FCC did not include EELs on the UNE list. Apparently, the FCC did consider whether EELs should be on the list of UNEs and decided EELs should not be a network element. To provide Enhanced Extended Loops ("EELs") as requested by ICG, BellSouth would have to combine UNEs, an activity that BellSouth is not required to do.

Q. ARE THERE CURRENTLY COMBINED UNES THAT CONSTITUTE AN EXTENDED LOOP?

A. No. To provide EELs as requested by ICG, BellSouth will have to combine UNEs. Since BellSouth is not obligated to perform this function, ICG's request should be denied for that reason alone. There is no facility currently in place that would convert a BellSouth customer to ICG's collocation space. If a customer is connected to ICG's space, the customer is receiving service from ICG, not BellSouth. The facility requested by ICG must be created by BellSouth; it does not already exist.

Q. WHAT DOES BELLSOUTH PROPOSE THE AUTHORITY DO IN LIGHT OF THE CURRENT STATUS OF 319 RULES?

A. Until these questions are resolved by the FCC and the courts, the prudent course of action is to obligate BellSouth to provide EELs in accordance with the FCC's and the court's decisions. BellSouth believes that the Authority does not need to speculate about FCC or court action to resolve this issue.

Q. IS BELLSOUTH WILLING TO OFFER NETWORK ELEMENTS ON AN UNBUNDLED BASIS BEFORE THE FCC COMPLETES ITS RULEMAKING?

A. Yes. BellSouth will continue to offer any individual UNE currently offered until Rule 51.319 is resolved. However, BellSouth will not offer combinations that replicate end user retail or access services at the sum of the UNE prices. BellSouth does not believe such action was intended by the Act, and BellSouth would certainly not voluntarily provide such combinations at UNE prices. Moreover, such action would cannibalize revenue streams for other services. However, as explained earlier, BellSouth is willing to provide combinations for certain functions upon execution of a voluntary commercial agreement that is not subject to the requirements of the Act.

Issue 3: Should BellSouth be required to make available as UNEs packet-switching capabilities, including but not limited to: (a) user-to-network interface ("UNI") at 56 kbps, 64 kbps, 128kbps, 256 kbps, 384 kbps, 1.544 Mbps, 44.736 Mbps; (b) network-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, [sic] 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?

Q. WHAT IS BELLSOUTH'S PROPOSED REMEDY TO THIS ISSUE?

A. The rates requested in this issue are neither covered under the current agreement, nor covered in the Authority's Interim Order in Docket No. 97-01262. The Authority should approve as interim rates for the requested items those rates filed by BellSouth in this proceeding. Cost studies for those rates, filed with the testimony of Ms. Caldwell, are consistent with the FCC's pricing methodology and with BellSouth's understanding of the Authority's approved methodology in the Interim Order in Phase I of Docket No. 97-01262. The Authority should also provide that such prices established in this proceeding be modified retroactive to the effective date of the new interconnection agreement, pursuant to the Authority's final order to be issued in Phase II of the UNE cost proceeding and pursuant to the FCC's final rules, when effective.

Q. WHAT IS BELLSOUTH'S POSITION ON THIS ISSUE?

A. It is BellSouth's understanding that ICG is requesting that BellSouth unbundle its existing tariffed Packet Switching Frame Relay Service. Preliminary indications from the FCC's September 15, 1999 Press Release indicate that such advanced services will not be subject to unbundling. However, pending the FCC's ruling, BellSouth has agreed to provide unbundled Packet Switching Frame Relay Service. Ms. Caldwell is sponsoring cost studies for the functions as they are found in BellSouth's tariff. One Frame Relay rate element, Data Link Connection Identifier ("DLCI") is offered in BellSouth's tariff at varying Committed Information Rates ("CIRs"). BellSouth studied this functionality in "groupings" of CIRs that mirror its tariff offering. BellSouth's costs and proposed rates applicable during this interim period for unbundled packet switching capabilities are found on Exhibit AJV-8 attached to my testimony.

Q. PLEASE EXPLAIN BELLSOUTH'S PROPOSAL FOR SETTING RATES FOR THE ELEMENTS DISCUSSED IN THIS AND OTHER ISSUES IN THIS PROCEEDING.

A. Where ICG is requesting capabilities for which no rates have been established, BellSouth is filing cost studies that are consistent with BellSouth's understanding of the Authority's approved methodology in the Interim Order in Phase I of Docket 97-01262. BellSouth witness Ms. Daonne Caldwell presents and supports those cost studies.

Q. ARE BELLSOUTH'S COST STUDIES GENERALLY CONSISTENT WITH THE FCC'S PRICING METHODOLOGY?

A. Yes. FCC Rule 51.505 defines the FCC's cost methodology for UNEs. BellSouth's Total Element Long Run Incremental Cost (TELRIC) studies used to support prices for capabilities in this proceeding are generally consistent with those methods. Ms. Caldwell provides further elaboration in her testimony. In addition to Rule 51.505, there are several other rules that describe the rate structure requirements that the FCC applies to UNEs. With the exception of Rule 51.507(f) (geographic deaveraging), BellSouth has proposed prices for these interim capabilities that are consistent with the FCC's rate structure requirements.

Q. DOES BELLSOUTH AGREE THAT INTERCONNECTION AND UNE PRICES SHOULD BE REQUIRED TO BE SET EQUAL TO TELRIC?

A. No. BellSouth does not agree that interconnection and UNE prices should be required to be set equal to TELRIC. As I have testified on several occasions, there are a number of reasons why such a requirement should <u>not</u> be established. In fact, various challenges to the FCC's pricing rules have been raised and are currently under review by the Eighth Circuit. However, during this interim period, the FCC's rules are in effect, therefore, BellSouth is proposing prices in accordance with the FCC's rules for network elements requested by ICG in this proceeding.

Q. WHAT IS BELLSOUTH PROPOSING WITH REGARD TO GEOGRAPHIC DEAVERAGING?

A. FCC Rule 51.507(f) requires that each state commission establish at least three geographic rate zones for UNEs and interconnection that reflect cost differences. On May 7, 1999 the FCC released an order in CC Docket No. 96-98 issuing a stay of Rule 51.507(f). The stay will remain in effect until six months after the FCC issues its order in CC Docket No. 96-45 finalizing and ordering implementation of high-cost universal service support for non-rural local exchange carriers. Therefore, Rule 51.507(f) should not be applied to the unbundled network capabilities that BellSouth would offer at this time.

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?

Q. WHAT IS BELLSOUTH'S PROPOSED REMEDY AND POSITION ON THIS ISSUE?

A. The Authority should find that BellSouth is not 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. Furthermore, the nonrecurring rates in BellSouth's cost studies 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 what rate?

Q. WHAT IS BELLSOUTH'S PROPOSED REMEDY ON THIS ISSUE?

A. Consistent with the FCC's findings that transport and termination are separate functions, each with its own cost, the Authority should deny ICG's request for tandem switching compensation when tandem switching is not performed.

Q. WHAT IS BELLSOUTH'S POSITION ON THIS ISSUE?

A. BellSouth's position is that carriers should be compensated only for those functions they actually perform. 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. A tandem switch connects one trunk to another trunk and is an intermediate switch or connection between an originating telephone call location and the final destination of the call. An end office switch is connected to a telephone subscriber and allows the call to be originated or terminated. If ICG's switch is an end-office switch, then it is handling calls that originate from or terminate to customers served by that local switch, and thus ICG's switch is not providing a tandem function. ICG is seeking to be compensated for the cost of equipment it does not own and for functionality it does not provide. Therefore, the Authority should deny ICG's request for tandem switching compensation when tandem switching is not performed.

Q. PLEASE RESPOND TO ICG'S CONTENTION THAT ICG'S SWITCH SERVES A GEOGRAPHIC AREA COMPARABLE TO BELLSOUTH'S TANDEM.

A. Without additional information, it is not possible to determine whether ICG's switch would actually serve a geographic area comparable to BellSouth's tandem. Even if one were to assume that ICG's switch covers a geographic area similar to BellSouth's tandem, ICG's switch is not performing tandem functions which the FCC has indicated is one of the criteria that a CLEC's switch must meet to be eligible for tandem switching.

Q. PLEASE COMMENT ON ICG'S POSITION THAT ICG PROVIDES TRANSPORT BETWEEN ITS SWITCH AND ITS COLLOCATIONS.

A. Without specific information from ICG to the contrary, the equipment in ICG's collocation space is most likely nothing more than a Subscriber Loop Carrier ("SLC"). An SLC is part of loop technology and provides no "switching" functionality. Thus, ICG is only providing the termination function, which is not the same as transport from the ILEC tandem to end offices as ICG contends.

In paragraph 1039 of the FCC's First Report and Order, the FCC clearly defines transport:

> "We conclude that transport and termination should be treated as two distinct functions. We define 'transport' for purposes of section 251(b)(5), as the transmission of terminating traffic that is subject to section 251(b)(5) from the interconnection point between the two carriers to the terminating carrier's end office switch that directly serves the called party (or equivalent facility provided by the non-incumbent carrier)."

Further, in paragraph 1040 of the FCC's First Report and Order,

> "We define "termination" for purposes of section 251(b)(5), as the switching of traffic that is subject to section 251(b)(5) at the terminating carrier's end office switch (or equivalent facility) and delivery of that traffic from that switch to the called party's premises."

Additionally in that same paragraph, the FCC states:

> "As such, we conclude that we need to treat transport and termination as separate functions – each with its own cost."

Clearly, the FCC recognized that transport and termination charges should apply only if those functions are provided. Transport includes any flat-rated dedicated services, tandem switching function and "common" transport between the tandem switch and end office switch necessary to transport the call from the interconnection point to the end office. ICG's switch is not providing a common transport or tandem function, but is switching traffic through its end office for delivery of that traffic from that switch to the called party's premises.

Q. IS ICG'S POSITION CONSISTENT WITH WHAT THE FCC DETERMINED TO BE THE "ADDITIONAL COST" OF TERMINATING A CALL?

A. No. In paragraph 1057, the FCC clearly indicates what should be charged for terminating a call:

> "We find that, once a call has been delivered to the incumbent LEC end office serving the called party, the 'additional cost' to the LEC of terminating a call that originated on a competing carrier's network primarily consists of the traffic-sensitive component of local switching. The network elements involved with the termination of traffic include the end-office switch and local loop. The costs of local loops and line ports associated with local switches do not vary in proportion to the number of calls terminated over these facilities. We conclude that such non-traffic sensitive costs should not be considered 'additional costs' when a LEC terminates a call that originated on the network of a competing carrier."

Obviously, the FCC intends for the terminating LEC to recover its loop costs from the end user customer, not the originating LEC. ICG is clearly attempting to recover its loop costs from BellSouth by inappropriately classifying their end office switch as a tandem switch.

Issue 11: Should BellSouth commit to the requisite network buildout and necessary support when ICG agrees to a binding forecast of its traffic requirements in a specified period?

Q. WHAT IS BELLSOUTH'S PROPOSED REMEDY TO THIS ISSUE?

A. The Authority should find that binding forecast commitments are an issue to be negotiated by the parties outside the requirements of Section 251 and this arbitration.

Q. SHOULD THE AUTHORITY ORDER BELLSOUTH TO COMPLY WITH THIS ISSUE AS ICG HAS STATED IT?

A. No. BellSouth is not required by the Act to commit to a binding forecast with CLECs. Section 251 issues are appropriate for arbitration, and binding forecasts are not required under Section 251. While BellSouth's position is that this issue is not subject to arbitration, the Authority has approved inclusion of the issue in this proceeding. Therefore, I will address the issue of binding forecasts.

Although not required under the Act or by FCC rules, BellSouth has recently completed development of a service (Trunk Port Commitment Service), whereby BellSouth will commit to provisioning the necessary DS1 trunk ports when the Parties agree to the requirements of a CLEC-provided DS1 trunk port forecast. BellSouth is now in the process of developing implementation procedures and contract language, upon completion of which, it will begin offering the service.

BellSouth is agreeable to continue to negotiate with ICG to meet their forecasting needs. It should be noted, however, that at this point in time, BellSouth is not offering binding forecast commitments for network services and facilities other than DS1 trunk ports.

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?

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 benchmarks?

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 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 benchmarks?

Q. WHAT IS BELLSOUTH'S PROPOSED REMEDY TO THIS ISSUE?

A. The Authority should decline to impose liquidated damages or other "penalties" in the context of this arbitration, consistent with the Authority's previous rulings in the MCI case on appeal to the U.S. District Court (Case No. 3-97-0161), the NEXTLINK arbitration (Case No. 98-00123), and because the evidentiary record herein does not support such action.

Q. SHOULD THE AUTHORITY IMPOSE LIQUIDATED DAMAGES?

A. No. First, BellSouth's position is that "penalties" are not appropriate as an issue for arbitration, nor as a contractual remedy, and should not be imposed by the Authority. Penalties are neither a requirement of Section 251 of the Act nor of the FCC's rules. The FCC expressed a preference for self-executing enforcement mechanisms only as a public interest concern under the statutory standard of review for assessing an application under Section 271. At most, penalties are an issue under Section 271, not a requirement of Section 251. Thus, they are not appropriate for arbitration. However, because the Authority has approved the inclusion of these issues in this proceeding, BellSouth provides the following comments.

Q. CAN THE AUTHORITY IMPOSE "PENALTIES" OR LIQUIDATED DAMAGES FOR FAILURE TO MEET SERVICE QUALITY MEASUREMENTS?

A. No. ICG apparently believes that performance measurements can only be enforced through penalties, guarantees or liquidated damages awards. The issue of so called performance guarantees, a.k.a. "penalties" or liquidated damages, is not an appropriate issue for arbitration, nor should they be imposed as a contractual remedy. BellSouth believes that the Authority does not have the statutory authority to, nor should they, impose liquidated damages. In fact, the Authority has already correctly determined that it will not "require a system of penalties and credits" in the context of an arbitration of an interconnection agreement. (See Brief of the Tennessee Regulatory Authority, Case No. 3-97-0161, at 26, U.S. Dist. Court, M.D. Tenn. (filed April 13, 1998)). The

Authority also declined to impose penalties in the NEXTLINK arbitration, finding that the evidentiary record did not support such action. Therefore, the Authority should reject ICG's proposal to have the Authority impose so called "performance guarantees".

Q. WHAT IS BELLSOUTH'S POSITION REGARDING INCORPORATION OF PERFORMANCE MEASUREMENTS INTO INTERCONNECTION AGREEMENTS?

A. Even if a guarantee, penalty or liquidated damage award could be arbitrated, such award is completely unnecessary. State law and State and Federal Commission procedures are available, and are perfectly adequate, to address any breach of contract situation should it arise. The SQMs that BellSouth has proposed are fully enforceable through the Authority's complaint process in the event of BellSouth's failure to meet such measurements.

Q. WHAT IS BELLSOUTH'S POSITION REGARDING ICG's REQUEST FOR BELLSOUTH TO BE RESPONSIBLE FOR SERVICE FAILURES THAT EXCEED CERTAIN BENCHMARKS?

A. BellSouth believes that the only remedies appropriate for inclusion in an interconnection agreement are those to which the parties mutually agree. BellSouth is currently working with the FCC to finalize BellSouth's proposal for self-effectuating enforcement measures. This is a voluntary proposal made by BellSouth which would take effect on a state by state basis concurrent with approval for BellSouth to enter into long distance in each state and subject to acceptance by the FCC. This proposal should not, however, be interpreted in any way as BellSouth's admission that the Authority or the FCC have the authority to impose self-executing penalties or liquidated damages without BellSouth's agreement.

Q. DOES THIS CONCLUDE YOUR TESTIMONY?

A. Yes.

183846

<u>AFFIDAVIT</u>

STATE OF GEORGIA)
:
COUNTY OF FULTON)

BEFORE ME, the undersigned authority, duly commissioned and qualified in and for the State and County aforesaid, personally came and appeared Alphonso J. Varner, Senior Director, State Regulatory, BellSouth Telecommunications, Inc., who, being by me first duly sworn deposed and said that:

He is appearing as a witness before the Tennessee Regulatory Authority in Docket No. 99-00377 on behalf of BellSouth Telecommunications, Inc., and if present before the Authority and duly sworn, his testimony would be set forth in the annexed testimony consisting of 26 pages and 1 exhibit(s).

A J Varner
Alphonso J. Varner

Sworn to and subscribed
before me this 15th
day of October, 1999

Teresa L. Rockwell
NOTARY PUBLIC
TERESA L. ROCKWELL
Notary Public, Gwinnett County, Georgia
My Commission Expires October 28, 2001

Tennessee Rate and Cost Analysis

Cost Ref. #	Rate Element	Cost		Proposed Rate		
		Recurring	Non-recurring	Recurring	Non-recurring	Source
N.0	Unbundled Packet Switching					
N.1	*Unbundled Packet Switching Frame Relay Service*					
N.1.1	UPS – UNI/NNI FRS 56 KBPS	22.07	130.43	22.07	130.43	Cost Study
N.1.199	UPS – UNI/NNI FRS 56 KBPS - Disconnect		54.55		54.55	Cost Study
N.1.2	UPS – UNI/NNI FRS 64 KBPS	22.07	130.43	22.07	130.43	Cost Study
N.1.299	UPS – UNI/NNI FRS 64 KBPS - Disconnect		54.55		54.55	Cost Study
N.1.3	UPS – UNI/NNI FRS 1.536 MBPS	70.95	149.65	70.95	149.65	Cost Study
N.1.399	UPS – UNI/NNI FRS 1.536 MBPS - Disconnect		46.81		46.81	Cost Study
N.1.4	UPS – UNI/NNI FRS 44.210 MBPS	531.85	225.24	531.85	225.24	Cost Study
N.1.499	UPS – UNI/NNI FRS 44.210 MBPS - Disconnect		57.56		57.56	Cost Study
N.1.5	UPS – UNI/NNI FRS – DLCI Additional		39.81		39.81	Cost Study
N.1.599	UPS – UNI/NNI FRS – DLCI Additional - Disconnect		25.08		25.08	Cost Study
N.1.6	UPS – UNI/NNI FRS CIR – 0 BPS	.0756		.0756		Cost Study
N.1.7	UPS – UNI/NNI FRS CIR – 1-32 KBPS	.3782		.3782		Cost Study
N.1.8	UPS – UNI/NNI FRS CIR – 32-56 KBPS	.6618		.6618		Cost Study
N.1.9	UPS – UNI/NNI FRS CIR – 56-64 KBPS	.7564		.7564		Cost Study
N.1.10	UPS – UNI/NNI FRS CIR – 64-128 KBPS	1.51		1.51		Cost Study
N.1.11	UPS – UNI/NNI FRS CIR – 128-256 KBPS	3.03		3.03		Cost Study
N.1.12	UPS – UNI/NNI FRS CIR – 256-384 KBPS	4.54		4.54		Cost Study
N.1.13	UPS – UNI/NNI FRS CIR – 384-512 KBPS	6.05		6.05		Cost Study
N.1.14	UPS – UNI/NNI FRS CIR – 512-768 KBPS	9.08		9.08		Cost Study
N.1.15	UPS – UNI/NNI FRS CIR – 768-1.536 MBPS	18.15		18.15		Cost Study
N.1.16	UPS – UNI/NNI FRS CIR – 1.536-4 MBPS	45.38		45.38		Cost Study
N.1.17	UPS – UNI/NNI FRS CIR – 4-10 MBPS	114.97		114.97		Cost Study
N.1.18	UPS – UNI/NNI FRS CIR – 10-16 MBPS	183.80		183.80		Cost Study
N.1.19	UPS – UNI/NNI FRS CIR – 16-34 MBPS	390.89		390.89		Cost Study
N.1.20	UPS – UNI/NNI FRS CIR – 34-44.210 MBPS	508.28		508.28		Cost Study
N.1.21	UPS – UNI/NNI FRS – Feature Change		22.19		22.19	Cost Study
N.1.22	UPS – UNI/NNI FRS – Transfer of Service		9.38		9.38	Cost Study

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CERTIFICATE OF SERVICE

I hereby certify that on October 29, 1999, a copy of the foregoing document was served on the parties of record, via the method indicated:

[✓] Hand
[ ] Mail
[ ] Facsimile
[ ] Overnight

Gary Hotvedt, Esquire
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, TN 37243-0500

[✓] Hand
[ ] Mail
[ ] Facsimile
[ ] Overnight

Henry Walker, Esquire
Boult, Cummings, et al.
414 Union Ave., #1600
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Nashville, TN 37219-8062

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