BELLSOUTH

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

guy.hicks@bellsouth.com

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August 31, 2000

Guy M. Hicks
General Counsel

615 214-6301
Fax 615 214-7406

VIA HAND DELIVERY

David Waddell, Executive Secretary
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, TN 37238

Re: *Petition of 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:

Since the issuance of the Authority's Final Order of Arbitration in this proceeding, the parties have been negotiating in good faith with the intent of submitting to the Authority a final agreement for its approval. With the exception of two issues, the language of the final interconnection agreement has been successfully negotiated, and the agreement is ready to file. Enclosed are the original and thirteen copies BellSouth's submission of its best and final language for the two remaining provisions in dispute. BellSouth understands that ICG will also be submitting best and final language. BellSouth respectfully requests that the Arbitrators consider the best and final proposals of the parties. Please let me know if the Authority would like copies of the agreement to be filed prior to resolution of the remaining issues. Copies of the enclosed best and final proposals are being provided to counsel of record for ICG.

Very truly yours,

Guy M. Hicks

GMH:ch
Enclosure

226881

BEFORE THE TENNESSEE REGULATORY AUTHORITY
Nashville, Tennessee

In Re: *Petition of 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

BELLSOUTH TELECOMMUNICATIONS, INC.'S SUBMISSION OF ITS BEST AND FINAL LANGUAGE FOR THE PROVISIONS IN DISPUTE

Pursuant to 47 U.S.C. § 252 of the Telecommunications Act of 1996 ("1996 Act"), BellSouth Telecommunications, Inc. ("BellSouth") and ICG Telecom Group, Inc. ("ICG") have negotiated an interconnection agreement and submitted to arbitration those issues that could not be resolved between the Parties. On August 4, 2000, the Tennessee Regulatory Authority ("Authority"), acting as Arbitrators, issued its Final Order of Arbitration in the above styled case. Since the issuance of the Authority's order, the Parties have been negotiating in good faith with the intent of submitting to the Authority a final agreement for its approval. With the exception of two issues, the language of the final interconnection agreement has been successfully negotiated.

Unfortunately the Parties were unable to reach agreement on two sections to the final interconnection agreement. Section 1.9 of Attachment 2 concerns the terms and conditions relating to extended loops or "EELs". Included within this pleadings as Exhibit A is BellSouth's best and final proposed language for Section

1.9 of Attachment 2 and its rationale in support of its proposal. Additionally, section 3.6.5 of Attachment 3 concerns the terms and conditions relating to a binding forecast (Issue 11). Included within this pleading as Exhibit B is BellSouth's best and final proposed language for section 3.6.5 of Attachment 3 and its rationale in support of its proposal.

ICG will be submitting a similar filing to the Authority. Both Parties respectfully request that the Authority determine which Parties' language is the appropriate language for inclusion within the final interconnection agreement.

Respectfully submitted,

BELLSOUTH TELECOMMUNICATIONS, INC.

Guy M. Hicks
333 Commerce Street, Suite 2101
Nashville, Tennessee 37201-3300
(615) 214-6301

Mary Jo Peed
Lisa S. Foshee
675 West Peachtree Street, N.E., Suite 4300
Atlanta, Georgia 30375

EXHIBIT A

Extended Loops or "EELs"
(Issue 4)

Issue: Should a Local Loop Combined with Dedicated Transport be provided as a UNE? If so, what is the proposed rate?

Contract Provision in Dispute—

Attachment 2, section 1.9

BellSouth's Proposed Language

1.9 Enhanced Extended Links

1.9.1 Definitions

1.9.1.1 For Enhanced Extended Links (EEL), "Currently Combined" network elements shall mean that such network elements are in fact already combined by BellSouth in the BellSouth network to provide service to a particular end user at a particular location.

1.9.2 The Parties shall devise and implement a means to extend the unbundled loop sufficient to allow ICG to use a collocation arrangement at any BellSouth location per LATA (e.g., tandem switch) to obtain access to the unbundled loop(s) at any other BellSouth serving central office within the LATA. The means of extending the unbundled loop, hereinafter collectively referred to as "EEL", shall include, to the extent necessary, the loop, cross connects at the serving central office, aggregating, multiplexing, and routing at the serving central office, and transport to ICG's switch or an ICG collocation site and otherwise shall be in accordance with the parameters established by the FCC in its November 5, 1999 UNE Order.

1.9.3 BellSouth shall make available to ICG those EEL combinations and transport only to the extent such combinations of loop and transport network elements are Currently Combined. BellSouth will make available new, not Currently Combined EELs, combinations of loops and transport network elements in density Zone 1 of the Miami, Orlando, Fort Lauderdale, Charlotte, New Orleans, Greensboro and Nashville MSAs to ICG.

1.9.4 The total price charged by BellSouth for the currently combined EEL and new, not Currently Combined EELs described in section 1.9.3, shall be precisely the sum of the Commission-based TELRIC rates for: (1) an unbundled loop, (2) a cross connect of appropriate capacity, and (3) unbundled interoffice dedicated transport.

1.9.5 Although not required to provide EELs which are not Currently Combined in the network, BellSouth agrees to combine loop and transport network elements and provide such elements at rates mutually agreed upon by the Parties.

1.9.6 There may be instances wherein ICG will require multiplexing functionality. Multiplexing will be provided pursuant to the interconnection agreement at TELRIC rates when unbundled network elements are used for interoffice transport.

BellSouth's Rationale for Position—

BellSouth's proposed language accurately captures the Arbitrators' decision regarding BellSouth's obligation to offer to ICG EELs. The Arbitrators held, at page 7 of the Final Order of Arbitration that "...it is reasonable to require BellSouth to offer ICG extended loop links consisting of combinations of unbundled local loops that are cross-connected to interoffice transports **pursuant to applicable FCC orders and federal rulings.**" (Emphasis added) The Order also makes it clear that, except to the extent where elements in BellSouth's network that comprise an EEL are currently combined, BellSouth has no legal obligation to provide ICG with an EEL.

The Parties have not been able to agree to language that incorporates the Arbitrators' decision because ICG has taken the position that BellSouth is obligated to provide it with combinations of local loops and interoffice transport where such combinations do not exist in BellSouth's network. In other words, ICG is claiming that BellSouth must provide new combinations to ICG. ICG's basis for its position is derived from the Arbitrators' August 11, 2000 Interim Order in the ITC^DeltaCom Arbitration (Docket No. 99-00430)[1]. ICG's position is without merit. The Arbitrators' in the DeltaCom case resolved the EEL issue through the adoption of their decision in the ICG case. Their decision in ICG is unambiguous,

[1] To the extent that there is any ambiguity in the Arbitrators' Interim Order in the ITC^DeltaCom arbitration, BellSouth has requested, by its Motion for Reconsideration and Clarification, that the Arbitrators modify the Interim Order to state that the obligation to combine is consistent with the FCC's orders and the Eighth Circuit's recent rulings. BellSouth incorporates into its pleading by this reference Section III of its Motion for Reconsideration and Clarification filed in Docket No. 99-00430 on August 28, 2000.

BellSouth is obligated to provide combinations consistent with the applicable FCC orders and federal rulings.

The issue of the obligation to provide combination was largely resolved by the FCC's Third Report and Order when the FCC confirmed that BellSouth presently has no obligation to combine network elements for CLECs when those elements are not, "in fact," currently combined in BellSouth's network. The FCC stated in para. 480 of the Third Report and Order:

> To the extent an unbundled loop is in fact connected to unbundled dedicated transport, the statute and our rule 51.315(b) require the incumbent to provide such elements to requesting carriers in combined form. Thus, although in this Order, we neither define the EEL as a separate unbundled network element nor interpret rule 51.315(b) as requiring incumbents to combine unbundled network elements that are 'ordinarily combined...'

The FCC went on to state that it would await the outcome of the 8th Circuit Court of Appeals review of the combination rules. The 8th Circuit Court has completed review of these rules. In it July 18, 2000 decision, the Court reaffirmed its decision to vacate the FCC rules that purported to require incumbents to combine unbundled network elements on behalf of requesting carriers. The Court stated that it is the requesting carrier who should combine these elements not the incumbents.

Therefore, for the reasons stated above, the Arbitrators should, consistent with their decision in the Final Order, adopt BellSouth's proposed language regarding EELs.

EXHIBIT B

Binding Forecast
(Issue 11)

Issue: 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?

Contract Provision in Dispute--

Attachment 3, section 3.6.5

BellSouth's Proposed Language

3.6.5 Binding forecast:

3.6.5.1 In addition to, and not in lieu of, non-binding forecasts, ICG may provide to BellSouth a binding forecast of the trunks that BellSouth will need to interconnect with ICG in order to terminate traffic to ICG. Unless otherwise agreed, a binding forecast may not be requested for an existing trunk group that is underutilized as defined in this section or for exhausted BellSouth switch locations. ICG shall provide to BellSouth sufficient justification for the quantity of trunks contained within the binding forecast. The due date contained in the binding forecast shall be no less than three months from the date of the binding forecast. Once the binding forecast is submitted to BellSouth, ICG agrees to make no changes to said forecast.

3.6.5.2 BellSouth shall provide the total amount of requested trunks from either tandem or end offices depending on trunk and facilities availability.

3.6.5.3 A binding forecast shall not replace the ASR process of ordering trunks and BellSouth shall order the quantity of trunks from ICG set forth in the binding forecast. BellSouth shall request due dates on the trunk orders to coincide with the due dates specified in the binding forecast, and the Parties shall provision the ordered trunks by the due date.

3.6.5.4 To recover the cost associated with assuring that the quantity of trunk port terminations needed to meet the binding forecast are available on the agreed upon due date, ICG shall pay to BellSouth ICG shall pay $305.00 for the first DS1 trunk port and $152.50 for each additional DS1 trunk port forecasted in a trunk group (i.e. between an A to Z location or BellSouth switch location to an ICG switch location).

3.6.5.5 If, within 180 days of the installation of the trunks, 60 percent of the capacity of the trunks is not being utilized, ICG will pay BellSouth a percentage of the total monthly recurring trunk and facility charges as set forth in BellSouth's tariffs for the percentage of the trunks' capacity that is not being utilized.

3.6.5.6 If, within 360 days of the installation of the trunks, 85 percent of the capacity of the trunks is not being utilized, ICG will pay BellSouth a percentage of the total monthly recurring trunk and facility charges as set forth in BellSouth's tariffs for the percentage of the trunks' capacity that is not being utilized.

3.6.5.7 If, within 405 days of the installation of the trunks, the trunks are not being utilized to 85 percent of the capacity of the trunks, the excess trunks may be disconnected by BellSouth.

3.6.5.8 Utilization on BellSouth reciprocal interconnection trunk groups associated with a binding forecast shall be measured monthly and shall be measured at the time consistent busy hour. The charges as a result of under-utilization as described in the preceding section shall apply monthly.

3.6.5.9 Except in the instance of underutilization by ICG in section 3.6.5.5, neither Party shall charge the other for nonrecurring trunk and recurring, if applicable, trunk charges associated with a binding forecast.

BellSouth's Rationale for Position—

The Arbitrators decided "to require BellSouth to commit to the requisite network buildout and necessary support when ICG agrees to binding forecast of its traffic requirements in the specified period <u>and agrees to assume financial responsibility for the provision of the buildout</u>." (Order at 9.)

ICG's arbitration request was to authorize it to submit to BellSouth a request that BellSouth commit, within a certain timeframe and on a certain date, to install a quantity of trunks to connect BellSouth's network to ICG's. These trunks would be utilized for the purpose of **delivering BellSouth traffic** to ICG. (Order at 8.) BellSouth and ICG have negotiated in good faith to reach agreement on language to implement the Authority's decision regarding the binding forecast issue.

A number of issues have caused the Parties to not reach agreement. The first issue is that BellSouth incurs a cost to reserve the requisite number of trunk port terminations on its switch. These costs should be recovered from ICG.

The reservation of trunk port terminations is outside of BellSouth's ordinary business practices. In the ordinary course of business, forecasts are utilized for planning purposes, however, no carrier or customer is guaranteed that the requisite facilities will be available upon BellSouth's receipt of a order for service. Today customers, including other CLECs, interexchange carriers, wireless carriers, independent companies and retail customers, order services that require trunk port terminations. There are a finite number of trunk port terminations on the BellSouth switch. When ICG submits its binding forecast order, BellSouth must manage the finite number of trunk port terminations to ensure that the requisite number are available for the ICG request.

Therefore, a binding forecast causes BellSouth to have to reserve trunk port terminations to ensure that the terminations will be available on the installation due date. To ensure that the trunk ports are available on the installation due date, BellSouth will incur additional costs. A BellSouth employee will be required to access a database, locate the requisite number of trunk port terminations which may or may not be located adjacent to one another, and mark the trunk port terminations in the database as reserved. In preparation for the provisioning of the trunks on the due date, the BellSouth employee will again have to access the same database, locate the reserved trunk port terminations and transfer the location information of the trunk port terminations to the appropriate provisioning forms for use by the network technicians. It is estimated that the approximate employee time is 4 hours and the rates set forth in BellSouth's proposal at section 3.6.5.4 is consistent with the Authority's cost methodology adopted as a result of the cost standard set forth in the Act.

The second issue relates to the charges incurred by ICG when the trunks installed are underutilized. BellSouth has proposed a two phased ramp-up period for ICG whereafter, if the trunks are underutilized, ICG will pay a percentage of the **tariffed** charges for the trunks installed. The tariffed charges are appropriate because the underutilization has caused BellSouth to forego the use of those trunk port terminations for other customers, the majority of which would purchased tariffed services. Further, the implementation of the binding forecast may have caused capital expenditure on the part of BellSouth. The tariffed rate is appropriate.

The third issue relates to the appropriate percentage to determine utilization. It is important to recall that the binding forecast is to be utilized for the purposes of provisioning trunks to carry BellSouth **originated** traffic **to** ICG, and therefore the percentage of capacity utilized should be consistent with **BellSouth's** standard of utilization. BellSouth utilizes a 90% capacity factor in its own network and this factor represents an efficient and economical use of facilities. Less than 85% utilization causes BellSouth to incur unnecessary capital expense in the provision of additional unnecessary trunks. However, BellSouth recognizes that its network may be more mature than the network of ICG. As such BellSouth's proposal, in section 3.6.5.5, contains a two-phased approach. BellSouth's proposes that utilization not be measured until the 180th day after installation. At that time, BellSouth should expect that the trunks it installed to carry BellSouth originated traffic to ICG to be utilized at 60% capacity. This utilization factor is entirely reasonable in that it allows ICG six months for its customer base to cause enough BellSouth originated traffic to be carried over the trunks to reach a utilization factor that represents only 10% more than half of the trunks full capacity. BellSouth has then proposed that an 85% utilization factor be utilized after 360 days from installation. This period of time allows ICG to ramp up the usage on the trunks that it stated were required.

Therefore, for the reasons stated above, the Arbitrators should, consistent with their decision in the Final Order, adopt BellSouth's proposed language regarding binding forecasts.

CERTIFICATE OF SERVICE

I hereby certify that on August 31, 2000, a copy of the foregoing document was served on the parties of record, via the method indicated:

[ ] Hand [✓] Mail [ ] Facsimile [ ] Overnight	Henry Walker, Esquire Boult, Cummings, et al. 414 Union Ave., #1600 P. O. Box 198062 Nashville, TN 37219-8062
[ ] Hand [✓] Mail [ ] Facsimile [ ] Overnight	Jeff Binder, Esquire Dickstein, Shapiro, Morin & Oshinsky 2101 L Street, NW Washington, DC 20037-1526

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