REC'D TN BELLSOUTH
REGULATORY AUTH.

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OFFICE OF THE
EXECUTIVE SECRETARY

September 7, 1999

**VIA HAND DELIVERY**

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

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 Issues Matrix in the above-referenced arbitration proceeding. Copies of the enclosed are being provided to counsel of record for all parties.

Very truly yours,

Guy M. Hicks

GMH/jem

Enclosure

FILE

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

| ISSUE | ICG TELECOM GROUP POSITION | BELLSOUTH POSITION |
|---|---|---|
| **I. General Issues** | | |
| Issue 1:<br>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. | 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.<br><br>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.<br><br>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:<br>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- | Yes. | 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 |

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| 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*? | | 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).<br><br>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.<br><br>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:<br>Should a local loop combined with dedicated transport be provided as a UNE? *If so, what is the proposed rate*? | Yes. | 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.<br><br>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. |

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| | | BellSouth, however, is willing to provide this combination through commercial agreement. |
| Issue 5:<br>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. ICG supports adoption of the performance standards and liquidated damages recently adopted by the Texas Public Utilities Commission. | 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.<br><br>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. |
| Issue 6:<br>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. | 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. |

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| Issue 7:<br>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 CFR Section 51.711(a)(3) | 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:<br>Should BellSouth commit to the requisite network buildout and necessary support when ICG agrees to a binding forcast of its traffic requirements in a specified period? | Yes. | 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:<br>Should the following installation benchmarks, provisioning benchmarks, maintenance benchmarks, performance measures and liquidated damages be approved by the arbitrators? *This information needs to be provided by ICG*. | Yes. ICG supports adoption of the performance standards and liquidated damages recently adopted by the Texas Public Utilities Commission. | 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.<br><br>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. |

## CERTIFICATE OF SERVICE

I hereby certify that on September 7, 1999, a copy of the foregoing document was served on the parties of record, via the method indicated:

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|---|---|
| [✓] Hand<br>[ ] Mail<br>[ ] Facsimile<br>[ ] Overnight | Richard Collier, Esquire<br>Tennessee Regulatory Authority<br>460 James Robertson Parkway<br>Nashville, TN 37243-0500 |
| [ ] Hand<br>[ ] Mail<br>[✓] Facsimile<br>[ ] Overnight | Henry Walker, Esquire<br>Boult, Cummings, et al.<br>414 Union Ave., #1600<br>P. O. Box 198062<br>Nashville, TN 37219-8062 |

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