BELLSOUTH

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

615 214-6301
Fax 615 214-7406

Guy M. Hicks
General Counsel

REC'D TN
REGULATORY AUTH.
'99 SEP 23 PM 4 11
OFFICE OF THE
EXECUTIVE SECRETARY

September 23, 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 an amended Issues Matrix, which incorporates ICG's expanded comments in the above-referenced arbitration proceeding. Copies of the enclosed are being provided to counsel of record for ICG.

Very truly yours,

Guy M. Hicks

GMH/jem

Enclosure

FILE

179702

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

ISSUE	ICG TELECOM GROUP POSITION	BELLSOUTH POSITION
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? *<u>If so, what are the proposed rates</u>*?	ICG for these capabilities are TELRIC-based, it is necessary that all packet-switched capabilities be available as UNEs. ICG, through discovery, will obtain BellSouth's cost data and, after studying that data, file testimony proposing TELRIC-based rates for these capabilities. ICG has not, in any sense, broadened this issue but agrees that the issue, as now worded, better conveys the meaning of how BellSouth is to "make available" these services.	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? *<u>If so, what is the proposed rate</u>*?	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. After reviewing BellSouth's cost studies, ICG will recommend appropriate rates for UNEs.	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 <u>currently combined</u> 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.

ISSUE	ICG TELECOM GROUP POSITION	BELLSOUTH POSITION
		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? *<u>If so, what level of damages, concessions or remedies are appropriate? What time intervals</u>*?	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.

ISSUE	ICG TELECOM GROUP POSITION	BELLSOUTH POSITION
	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? <u>*If so, what are they*</u>?	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. Once BellSouth provides its Tennessee cost studies, ICG can determine the appropriate amount of such discounts and, based on these findings, propose appropriate discounts at the hearing.	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? <u>*If so, according to what schedule or at what rate*</u>?	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. Once ICG receives BellSouth's cost studies, ICG will proposed an appropriate termination rate.	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 buildout 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,	Yes. As explained in Issue 5, ICG believes that the TRA should adopt the performance standards and	BellSouth disagrees that the so called "performance measures" and performance "guarantees" proposed by

ISSUE	ICG TELECOM GROUP POSITION	BELLSOUTH POSITION
provisioning benchmarks, maintenance benchmarks, performance measures and liquidated damages be approved by the arbitrators? *This information needs to be provided by ICG*.	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.	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.

CERTIFICATE OF SERVICE

I hereby certify that on September 23, 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
P. O. Box 198062
Nashville, TN 37219-8062

177508