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Legal Department

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January 30, 1997

Mrs. Blanca S. Bayo  
Director, Division of Records and Reporting  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, Florida 32399

RE: Docket No. 960833-TP; 960846-TP; 960916-TP

Dear Mrs. Bayo:

Enclosed please find an original and fifteen copies of BellSouth's Proposed Language and Rationale regarding the unresolved and disputed contract provisions contained within the BellSouth and MCIIm Interconnection Agreement. Some of the issues that are unresolved were not arbitrated. Although BellSouth has filed proposed language and rationale on those issues, BellSouth does not believe the issues are properly before this Commission and MCIIm should not be permitted to raise them at this time.

Sincerely,

*Nancy B. White*  
Nancy B. White *NW*

- ACK \_\_\_\_\_
- AFA \_\_\_\_\_
- APP \_\_\_\_\_
- CAF \_\_\_\_\_ Enclosures
- CMU \_\_\_\_\_
- CTR \_\_\_\_\_
- EAG \_\_\_\_\_
- LEE 2 \_\_\_\_\_
- LIJ 5 \_\_\_\_\_
- OP \_\_\_\_\_
- ED \_\_\_\_\_
- STC 1 \_\_\_\_\_
- WAS \_\_\_\_\_
- OTW \_\_\_\_\_

cc: All Parties of Record  
A. M. Lombardo  
R. G. Beatty  
W. J. Ellenberg

DOCUMENT NUMBER-DATE

01154 JAN 30 97

2823

FPSC-RECORDS/REPORTING

CERTIFICATE OF SERVICE  
DOCKET NO. 960833-TP  
DOCKET NO. 960846-TP

I HEREBY CERTIFY that a true and correct copy of the foregoing was served via Federal Express this 30th day of January, 1997 to the following:

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Southern States, Inc.  
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Tallahassee, FL 32301  
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*Nancy B. White (for)*

CERTIFICATE OF SERVICE  
DOCKET NO. 960916-TP

I HEREBY CERTIFY that a true and correct copy of the foregoing was served by Federal Express this 30th day of January, 1997 to the following:

Staff Counsel  
Florida Public Service  
Commission  
2540 Shumard Oak Boulevard  
Tallahassee, FL 32399

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Nancy B. White (for)

## Changes to BellSouth's Network

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### Part A General Terms and Conditions

#### Section 1.2

#### **Issue not addressed in arbitration**

#### BellSouth's Proposed Language

BellSouth shall provide the services pursuant to this Agreement. Except as provided below, BellSouth shall not discontinue or refuse to provide any service provided or required hereunder without MCI's prior written agreement. Such agreement shall not be unreasonably withheld. BellSouth shall not discontinue any telecommunications service available for resale unless BellSouth provides MCI prior written notice of its intent to discontinue any such service. BellSouth agrees to make any such service available to MCI for resale to MCI customers who are subscribers to such services from MCI until the date BellSouth discontinues any such service for BellSouth's customers. BellSouth also agrees to adopt a reasonable, nondiscriminatory transition schedule for BellSouth and MCI customers who may be purchasing any such service.

#### MCI's Proposed Language

BellSouth shall provide the services pursuant to this Agreement. Except as provided below, BellSouth shall not discontinue or refuse to provide any service provided or required hereunder without MCI's prior written agreement. Such agreement shall not be unreasonably withheld. BellSouth shall not discontinue any telecommunications service available for resale unless BellSouth provides MCI prior written notice of its intent to discontinue any such service. BellSouth agrees to make any such service available to MCI for resale to MCI customers who are subscribers to such services from MCI until the date BellSouth discontinues any such service for BellSouth's customers. BellSouth also agrees to adopt a reasonable, nondiscriminatory transition schedule for BellSouth and MCI customers who may be purchasing any such service.

BellSouth shall not reconfigure, reengineer or otherwise redeploy its network in a manner which would impair MCI's ability to offer Telecommunications Services in the manner contemplated by this Agreement, the Act or the FCC's Rules and Regulations.

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FPSC-RECORDS/REPORTING

BellSouth agrees that all obligations undertaken pursuant to this Agreement, including without limitation, performance standards, intervals, and technical requirements are material obligations hereof and that time is of the essence.

### BellSouth's Rationale

The language proposed by BellSouth accurately reflects BellSouth's obligations under the Act as they relate to resale and providing access to BellSouth's network. Acknowledging that MCI may be dependent upon some of the components of BellSouth's network, *i.e.*, unbundled network elements or ancillary services and it may be difficult for MCI to build to replace unbundled network elements within a specific time frame, BellSouth has offered not to discontinue providing those services without prior written consent of MCI. Such coordination between the two parties will allow for a smooth transition from a partially completed MCI network to a fully operational MCI network. As to wholesale services, BellSouth has offered to provide notice to MCI of BellSouth's intent to discontinue the offering of a retail service and has agreed to treat MCI and its end users at parity with BellSouth's customers. BellSouth's proposal recognizes the need for BellSouth to have flexibility in determining the telecommunications services available to its retail customers, and hence its wholesale customers.

AT&T has agreed to the language proposed by BellSouth. It is found in the Terms and Conditions section of the BellSouth/AT&T Agreement, section 1.2.

MCI's language imposes an obligation on BellSouth not to reconfigure, reengineer or otherwise redeploy its network in a manner which would impair MCI's ability to offer telecommunications services. This provision is too broad, as section 251(c)(5) of the Act and FCC in its Second Order and Report authorizes the incumbent local exchange company to change its network upon specific notice to the other users of its network. The notice contemplated by the FCC in its Second Order and Report is sufficient to allow MCI to make the necessary changes to its operations and network to ensure that its operability is not adversely affected. See, FCC Second Order and Report, para. 165-260.

BellSouth objects to the inclusion of the language in MCI's proposal regarding performance standards and intervals being material obligations when these items have not been specifically negotiated to a successful conclusion between the parties. The Commission, in its December 23, 1996 Order directed the parties to continue discussions regarding these issues for 45 days after the approval of the interconnection agreement. To agree to the language proposed by MCI in section 1.2 is premature.

The issues contained in Section 1.2 were not the subject matter of the arbitration proceeding between the companies. MCI<sub>m</sub> should not now to allowed to bring these issues to the Commission for its consideration. Resolution of these issues are not essential to MCI<sub>m</sub>'s successful operation in the local market.

## **Indemnification and Limitation of Liability**

### **Part A      General Terms and Conditions**

#### **Sections 11 and 12**

#### **Issues not addressed in arbitration**

#### **BellSouth's Proposed Language**

##### **11.1. Liability Cap.**

11.1.1 With respect to any claim or suit, whether based in contract, tort or any other theory of legal liability, by MCI, any MCI customer or by any other person or entity, for damages associated with any of the services provided by BellSouth pursuant to or in connection with this Agreement, including but not limited to the installation, provision, preemption, termination, maintenance, repair or restoration of service, and subject to the provisions of the remainder of this Section, BellSouth's liability shall be limited to an amount equal to the proportionate charge for the service provided pursuant to this Agreement for the period during which the service was affected. Notwithstanding the foregoing, claims for damages by MCI, any MCI customer or any other person or entity resulting from the gross negligence or willful misconduct of BellSouth and claims for damages by MCI resulting from the failure of BellSouth to honor in one or more material respects any one or more of the material provisions of this Agreement shall not be subject to such limitation of liability.

11.1.2 With respect to any claim or suit, whether based in contract, tort or any other theory of legal liability, by BellSouth, any BellSouth customer or by any other person or entity, for damages associated with any of the services provided by MCI pursuant to or in connection with this Agreement, including but not limited to the installation, provision, preemption, termination, maintenance, repair or restoration of service, and subject to the provisions of the remainder of this Section, MCI's liability shall be limited to an amount equal to the proportionate charge for the service provided pursuant to this Agreement for the period during which the service was affected. Notwithstanding the foregoing, claims for damages by BellSouth, any BellSouth customer or any other person or entity resulting from the gross negligence or willful misconduct of

MCI and claims for damages by BellSouth resulting from the failure of MCI to honor in one or more material respects any one or more of the material provisions of this Agreement shall not be subject to such limitation of liability.

11.2 Neither party shall be liable for any act or omission of any other telecommunications company to the extent such other telecommunications company provides a portion of a service.

11.3 Neither party shall be liable for damages to the other party's terminal location, Interconnection Point or the other party's customers' premises resulting from the furnishing of a service, including but not limited to the installation and removal of equipment and associated wiring, except to the extent the damage is caused by such party's gross negligence or willful misconduct.

11.4 Notwithstanding subsection A of this Section, the party providing services under this Agreement, its affiliates and its parent company shall be indemnified, defended and held harmless by the party receiving such services against any claim, loss or damage arising from the receiving party's use of the services provided under this Agreement, involving: 1) claims for libel, slander, invasion of privacy or copyright infringement arising from the content of the receiving party's own communications; 2) any claim, loss, or damage claimed by the receiving party's customer(s) arising from such customer's use of any service, including 911/E911, that the customer has obtained from the receiving party and that the receiving party has obtained from the supplying party under this Agreement; or 3) all other claims arising out of an act or omission of the receiving party in the course of using services provided pursuant to this Agreement. Notwithstanding the foregoing, to the extent that a claim, loss or damage is caused by the gross negligence or willful misconduct of a supplying party the receiving party shall have no obligation to indemnify, defend and hold harmless the supplying party hereunder. Nothing herein is intended to modify or alter in any way the indemnification obligations set forth in Section 10, *supra*, relating to intellectual property infringement.

11.5 Neither party guarantees or makes any warranty with respect to its services when used in an explosive atmosphere. Notwithstanding subsection A of this Section, each party shall be indemnified, defended and held harmless by the other party or the other party's customer from any and all claims by any person relating to the other party or the other party's customer's use of services so provided.



11.6 Promptly after receipt of notice of any claim or the commencement of any action for which a party may seek indemnification pursuant to this Section, such party (the "Indemnified Party") shall promptly give written notice to the other party (the "Indemnifying Party") of such claim or action, but the failure to so notify the Indemnifying Party shall not relieve the Indemnifying Party of any liability it may have to the Indemnified Party except to the extent the Indemnifying Party has actually been prejudiced thereby. The Indemnifying Party shall be obligated to assume the defense of such claim, at its own expense. The Indemnified Party shall cooperate with the Indemnifying Party's reasonable requests for assistance or information relating to such claim, at the Indemnifying Party's expense. The Indemnified Party shall have the right to participate in the investigation and defense of such claim or action, with separate counsel chosen and paid for by the Indemnified Party.

## Section 12. Limitation of Liability

BellSouth's proposes to delete this section as Limitation of Liability is addressed in BellSouth's version of Section 11.

### MCIm's Proposed Language

## Section 11. Limitation of Liability and Indemnification

11.1 Notwithstanding any limitations in remedies contained in this Agreement, each party (the "Indemnifying Party") will indemnify and hold harmless the other party ("Indemnified Party") from and against any loss, cost, claim, liability, damage and expense (including reasonable attorney's fees) to third parties, relating to or arising out of the libel, slander, invasion of privacy, misappropriation of a name or likeness, negligence or willful misconduct by the Indemnifying Party, its employees, agents, or contractors in the performance of this Agreement or the failure of the Indemnifying Party to perform its obligations under this Agreement. In addition, the Indemnifying Party will, to the extent of its obligations to indemnify hereunder, defend any action or suit brought by a third party against the Indemnified Party.

11.2 The Indemnified Party will notify the Indemnifying Party promptly in writing of any written claim, lawsuit, or demand by third parties for which the Indemnified Party alleges that the Indemnifying Party is responsible under this Section 11 and tender the defense of such claim, lawsuit or demand to the Indemnifying Party. The

Indemnified Party also will cooperate in every reasonable manner with the defense or settlement of such claim, demand, or lawsuit. The Indemnifying Party shall keep the Indemnified Party reasonably and timely apprised of the status of the claim, demand, or lawsuit. The Indemnified Party shall have the right to retain its own counsel, at its expense, and participate in but not direct the defense, provided, however, that if there are reasonable defenses in addition to those asserted by the Indemnifying Party, the Indemnified Party and its counsel may raise and direct such defenses, which shall be at the expense of the Indemnifying Party.

11.3 The Indemnifying Party will not be liable under this Section 11 for settlements or compromises by the Indemnified Party of any claim, demand, or lawsuit unless the Indemnifying Party has approved the settlement or compromise in advance or unless the defense of the claim, demand, or lawsuit has been tendered to the Indemnifying Party in writing and the Indemnifying Party has failed to promptly undertake the defense.

## Section 12. Limitation of Liability

12.1 Neither party shall be liable to the other for any indirect, incidental, special or consequential damages arising out of or related to this Agreement or the provision of service hereunder. Notwithstanding the foregoing limitation, a party's liability shall not be limited by the provisions of this Section 12 in the event of its willful or intentional misconduct, including gross negligence, or its repeated breach of any one or more of its material obligations under this Agreement. A party's lost revenue caused by the other party's breach of this Agreement shall be deemed direct damages. A party's liability shall not be limited with respect to its indemnification obligations.

### BellSouth's Rationale

The preceding language regarding indemnification and *limitation of liabilities* is identical to the language the parties negotiated in the partial interconnection agreement. As this language was the subject of successful negotiations between the parties in a contract, there is no reason to negotiate different language. The partial agreement adequately covers this issue and the language should remain in place. BellSouth has also offered as well, and continues, to offer the language agreed to between BellSouth and AT&T. (See section 10 of the BellSouth/AT&T agreement). MCI's proposed language requires BellSouth to assume liability that exceeds the liability it has to its own end users.

**When BellSouth Fails to Switch a Customer to MCI  
in a Timely Manner BellSouth Will Be Deemed  
to Have Slammed that Customer  
and Penalties Will Be Assessed**

Part A      General Terms and Conditions

Section 15.2

**Issue not addressed in arbitration**

BellSouth's Proposed Language

BellSouth proposes to delete this section.

MCI's Proposed Language

In the event BellSouth fails to switch a subscriber to MCI service as requested through an MCI service request, within the intervals set forth in this Agreement, the continued provision of Telecommunications Services by BellSouth to such subscriber shall be deemed an illegal change in subscriber carrier selection commencing with the time at which BellSouth failed to switch such subscriber. In such event, BellSouth shall reimburse MCI in an amount equal to all charges paid by such subscriber to BellSouth from the time of such failure to switch to the time at which the subscriber switch is accomplished. This remedy shall be in addition to all other remedies available to MCI under this Agreement or otherwise available.

BellSouth's Rationale

MCI's proposal is unreasonable and has no foundation in law or fact. Section 258 of the Act sets forth the remedies available to a telecommunications carrier whose customer has been the subject of an illegal change. Such carrier upon a showing of a violation of FCC rules shall be entitled to charges that would have been paid by the subscriber had the illegal change not occurred. MCI's proposal sets forth a presumption of what constitutes an illegal change and authorizes MCI to collect damages beyond those prescribed by law.

The issue contained in Section 15.2 was not the subject matter of the arbitration proceeding between the companies. MCI should not now be allowed to bring these issues to the Commission for its consideration. Resolution of these issues are not essential to MCI's successful operation in the local market.

## **"Most Favored Nations" Provision**

### Part A          General Terms and Conditions

#### Section 19    (Non-Discriminatory Treatment)

##### **Issue not addressed in arbitration**

##### **BellSouth's Proposed Language**

19.1 In the event that BellSouth, subsequent to February 8, 1996, enters into an agreement with any other telecommunications carrier (an "Other Interconnection Agreement") which provides for the provision of any of the arrangements covered by this Agreement upon rates, terms or conditions that differ in any material respect from the rates, terms and conditions for such arrangements set forth in this Agreement ("Other Terms"), BellSouth shall be deemed thereby to have offered such arrangements to MCI as provided in section 19.3, below. In the event that MCI accepts such offer within sixty (60) days after the Commission approves such Other Interconnection Agreement pursuant to 47 U.S.C. § 252, such Other Terms shall be effective between BellSouth and MCI as of the effective date of such Other Interconnection Agreement. In the event that MCI accepts such offer more than sixty (60) days after the Commission approves such Other Interconnection Agreement pursuant to 47 U.S.C. § 252, such Other Terms shall be effective between BellSouth and MCI as of the date on which MCI accepts such offer.

19.2 In the event that after the effective date of this Agreement BellSouth files and subsequently receives approval for one or more intrastate or interstate tariffs (each, an "Interconnection Tariff") offering to provide within this state any of the arrangements covered by this Agreement upon Other Terms, then upon such Interconnection Tariff becoming effective, BellSouth shall be deemed thereby to have offered such arrangements to MCI as provided in section 19.3, below. In the event that MCI accepts such offer within sixty (60) days after the date on which such Interconnection Tariff becomes effective, such Other Terms shall be effective between BellSouth and MCI as of the effective date of such Interconnection Tariff. In the event that MCI accepts such offer more than sixty (60) days after the date on which such Interconnection Tariff becomes effective, such Other Terms shall be effective between BellSouth and MCI as of the date on which MCI accepts such offer.

19.3 In the event that BellSouth is deemed to have offered MCI the arrangements covered by this Agreement upon Other Terms, MCI in its sole discretion may accept such offer either --

- a. by accepting such Other Terms in their entirety; or
- b. by accepting the Other Terms that directly relate to any of the following arrangements as a whole:
  1. local interconnection,
  2. interLATA and IntraLATA toll traffic interconnection,
  3. unbundled access to network elements, which include: local loops, loop distribution, loop concentrator/multiplexer, network interface devices, switching capability, interoffice transmission facilities, signaling networks and call-related databases, operations support systems functions, operator services and directory assistance, and any elements that result from subsequent bona fide requests,
  4. access to poles, ducts, conduits and rights-of-way,
  5. access to 911/E911 emergency network,
  6. collocation,
  7. access to telephone numbers, or
  8. resale.

The terms of this Agreement, other than those affected by the Other Terms accepted by MCI, shall remain in full force and effect.

#### MCI's Proposed Language

19.1 In addition to the provisions under the Act and the FCC's Rules and Regulations, in the event BellSouth provides any of the services provided hereunder to any other entity by tariff or agreement BellSouth will permit MCI an opportunity to inspect such tariff or agreement and upon MCI's request, BellSouth will immediately offer MCI such service on the same material terms, with effect from the date BellSouth first made such tariff effective or entered into such

arrangement and for the remainder of the term of this Agreement. The other services covered by this Agreement shall remain unaffected and as to such services this Agreement shall remain in full force and effect.

### BellSouth's Rationale

BellSouth's Proposed Language clearly sets forth BellSouth's obligations of section 252(i) of the Act. BellSouth must make available to other telecommunications carriers provisions of negotiated or arbitrated agreements as they relate to specific arrangements. These arrangements, as set forth in BellSouth's Proposed Language, are the logical subjects that are negotiated together. That is to say that BellSouth has a legal obligation, arising out of section 252(i) to offer to MCI all of the terms and conditions negotiated with another carrier as they relate to interconnection, or resale.

The issue contained in Section 15.3 was not the subject matter of the arbitration proceeding between the companies. MCI should not now be allowed to bring these issues to the Commission for its consideration. Resolution of these issues are not essential to MCI's successful operation in the local market.

## **Transition Period Following Termination**

### **Part A        General Terms and Conditions**

#### **Section 20.2**

#### **Issue not addressed in arbitration**

#### **BellSouth's Proposed Language**

MCIIm may terminate any Services provided under this Agreement upon thirty (30) days written notice to BellSouth unless a different notice period or different conditions are specified for termination of such Services in this Agreement, or pursuant to any applicable tariff, in which event such specific period or conditions shall apply. Where there is no such different notice period or different condition specified, MCIIm's liability shall be limited to payment of the amounts due for any terminated Local Service(s), Network Element(s), Combination(s), or ancillary service(s) provided up to and including the date of termination. Notwithstanding the foregoing, the provisions of section 11, *supra*, shall still apply. Upon termination, BellSouth agrees to cooperate in an orderly and efficient transition to MCIIm or another vendor such that the level and quality of the services and Elements is not degraded and to exercise its best efforts to effect an orderly and efficient transition. MCIIm agrees that it may not terminate the entire Agreement pursuant to this section.

#### **MCIIm's Proposed Language**

MCIIm may terminate any Local Service(s), Network Element(s), Combination(s), or ancillary service(s) provided under this Agreement upon thirty (30) days written notice to BellSouth unless a different notice period or different conditions are specified for termination of services in this Agreement. Upon termination, BellSouth agrees to cooperate in an orderly and efficient transition to MCIIm or another vendor such that the level and quality of the services is not degraded and to exercise its best efforts to effect an orderly and efficient transition. MCIIm agrees that it may not terminate the entire Agreement pursuant to this section.

### BellSouth's Rationale

BellSouth's Proposed Language allows for the termination of wholesale services, unbundled elements or ancillary services as MCI's needs requires. Under certain circumstances, MCI may purchase a service that provides a term discount. Generally, such term discounts come with a termination liability. MCI should not be able to receive the benefit the term discount, yet terminate early without any termination liability.

Further, BellSouth's language states that the liability and indemnification language of the contract shall apply through termination of services during the term of the Agreement.

The language proposed by BellSouth is contained within the Interconnection Agreement between AT&T and BellSouth. See, General Terms and Conditions, section 3.1.

This issue was not the subject matter of the arbitration proceeding between the companies. MCI should not now to allowed to bring these issues to the Commission for its consideration. Resolution of these issues are not essential to MCI's successful operation in the local market.



## **Audits**

Part A        General Terms and Conditions

Section 22   Entire Section

**Issue not addressed in arbitration**

### **BellSouth's Proposed Language**

22.1 As used herein "Audit" shall mean a comprehensive review of services performed under this Agreement; "Examination" shall mean an inquiry into a specific element of or process related to services performed under this Agreement. Either party may perform up to one Audit per 12-month period, commencing with the Effective Date and may perform Examinations as they deem necessary.

22.2 Upon thirty (30) days written notice, either party shall have the right through its authorized representative to make an Audit or Examination, during normal business hours, of any records, accounts and processes which contain information bearing upon the provision of the services provided and performance standards agreed to under this Agreement. Within the above-described 30-day period, the parties shall reasonably agree upon the scope of the Audit or Examination, the documents and processes to be reviewed, and the time, place and manner in which the Audit or Examination shall be performed. Both parties agree to provide Audit or Examination support, including appropriate access to and use of facilities (*e.g.*, conference rooms, telephones, copying machines).

22.3 Each party shall bear its own expenses, including the cost of special data extraction that may be required, in connection with the conduct of the Audit or Examination. For purposes of this Section 22.3, a "Special Data Extraction" shall mean the creation of an output record or informational report (from existing data files) that is not created in the normal course of business. If any program is developed to specifications and at the auditing or examining party's expense, the auditing or examining party shall specify at the time of request whether the program is to be retained by the audited or examined party for reuse for any subsequent Audit or Examination.

22.4 Adjustments, credits or payments, including any underbilling, shall be made and any corrective action shall commence within thirty (30) days from the audited or examined party's receipt of the final audit report to compensate for any errors or omissions which are

disclosed by such Audit or Examination and are agreed to by the parties.

#### MCIIm's Proposed Language

22.1 As used herein "Audit" shall mean a comprehensive review of services performed under this Agreement; "Examination" shall mean an inquiry into a specific element of or process related to services performed under this Agreement. MCIIm may perform up to four Audits per 12 month period commencing with the Effective Date. MCIIm may perform Examinations as MCIIm deems necessary.

22.2 Upon thirty (30) days written notice by MCIIm to BellSouth, MCIIm shall have the right through its authorized representative to make an Audit or Examination, during normal business hours, of any records, accounts and processes which contain information bearing upon the provision of the services provided and performance standards agreed to under this Agreement. Within the above-described 30-day period, the parties shall reasonably agree upon the scope of the Audit or Examination, the documents and processes to be reviewed, and the time, place and manner in which the Audit or Examination shall be performed. BellSouth agrees to provide Audit or Examination support, including appropriate access to and use of BellSouth's facilities (e.g., conference rooms, telephones, copying machines).

22.3 Each party shall bear its own expenses in connection with the conduct of the Audit or Examination. The reasonable cost of special data extractions required by MCIIm to conduct the Audit or Examination will be paid for by MCIIm. For purposes of this Section 22.3, a "Special Data Extraction" shall mean the creation of an output record or informational report (from existing data files) that is not created in the normal course of business. If any program is developed to specifications and at MCIIm's expense, MCIIm shall specify at the time of request whether the program is to be retained by BellSouth for reuse for any subsequent Audit or Examination. Notwithstanding the foregoing, BellSouth shall pay all of MCIIm's expenses in the event an Audit or Examination results in an adjustment in the charges or in any invoice paid or payable by MCIIm hereunder in an amount that is, on an annualized basis, greater than one percent (1%) of the aggregate charges for all services purchased under this Agreement.

22.4 Adjustments, credits or payments, including any underbilling, shall be made and any corrective action shall commence within thirty (30) days from BellSouth's receipt of the final audit report to compensate for any errors or commissions which are disclosed by

such Audit or Examination and are agreed to by the parties. The highest interest rate allowable by law for commercial transactions shall be assessed and shall be computed by compounding daily from the time of the overcharge to the day of payment.

BellSouth's Rationale

BellSouth's proposal regarding audits and inspections represents a reasonable accommodation of MCI's request to conduct audits and inspections of the business relationship between the parties. AT&T has accepted similar BellSouth language. MCI's proposal authorizes up to four audits a year and as many examinations as it deems appropriate. MCI's constant presence on BellSouth's premises and in business affairs would cause serious disruption. Further, if BellSouth agreed to the MCI demands, this provision may have to be made available to all telecommunications companies. The disruptive effect of the MCI language could potentially be increased a hundred-fold. BellSouth is willing, as demonstrated by its agreement with AT&T, to make reasonable accommodations for audits of the business relationship between the companies.

The issue contained in Section 22 was not the subject matter of the arbitration proceeding between the companies. MCI should not now be allowed to bring these issues to the Commission for its consideration. Resolution of these issues are not essential to MCI's successful operation in the local market.

**Limitation of Liability for BellSouth's Actions  
when Distributing Materials on Behalf of MCI**

Part A      General Terms and Conditions

Section 25.7

**Issue not addressed in arbitration**

**BellSouth's Proposed Language**

BellSouth will not be liable for any error, mistake or omission, other than intentional acts or omissions or gross negligence, resulting from the requirements to distribute MCI's materials.

**MCI's Proposed Language**

MCI proposes to delete this language.

**BellSouth's Rationale**

BellSouth's proposed language, which was agreed to with AT&T, protects BellSouth and its employees in cases of simple negligence or mistakes that may arise as a result of serving as agents for a number of different telecommunications companies. A BellSouth employee may mistakenly provide the wrong material or the wrong company's material to a customer, thus exposing BellSouth to liability.

## Prices

Attachment I      Price Schedule

Entire Attachment is Disagreed

### Issue addressed in arbitration

BellSouth's proposed price schedule contains all of the Commission ordered rates. These rates are found on pages 3, 4, and 6. The Commission did not order specific rates for a number of services including AIN, physical and virtual collocation, rights of way and conduit access, intermediary transport, LIDB validation, 800 access screening, Calling Name query and DA Interconnection. Where BellSouth has proposed an interim rate, it is duly noted by footnote. BellSouth is proposing interim rates so that if MCI requires such services prior to the establishment of a permanent rate, there will be a rate available.

Furthermore, MCI proposes text that is overreaching. For example, in its proposed section 1.2, MCI proposes language whereby, unless otherwise specified in the agreement, BellSouth would be responsible for all costs and expenses incurred, *inter alia*, in complying with the agreement and in the development, modification, installation and maintenance of systems required to comply with the agreement. MCI proposes this language in an effort to create a trap. It knows full well there are a number of costs not covered in the agreement that MCI is required to incur by the Telecommunications Act of 1996, 47 U.S.C. §252(d)(1), and by the FCC in the First Report and Order in Docket 96-98, In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996 (the "FCC Order") (See, e.g., FCC Order, at ¶ 382, where, in the context of sub-loop unbundling, the FCC stated: "Some modification of incumbent LEC facilities, such as loop conditioning, is encompassed within the duty imposed by section 251(c)(3). The requesting carrier would, however, bear the cost of compensating the incumbent LEC for such conditioning.")

MCI also creates, out of whole cloth, a provision for volume discounts. (See, Section 6 of MCI's proposed Attachment I.) BellSouth is not obligated to provide volume discounts, nor is it willing to agree to volume discounts of the type demanded. By submitting that section to this Commission, MCI is simply attempting to have this Commission award it a benefit it is not entitled to receive.

In contrast, BellSouth's text is straight-forward, direct and to the point. This Commission should adopt BellSouth's version in its entirety.

## **Performance Measurements**

### **Attachment III Network Elements**

#### **Section 13.4.2.25 (including 13.4.2.25.1 through 13.4.2.25.4)**

#### **Issue addressed in arbitration**

#### **BellSouth's proposed language**

With the exception of 13.4.2.25.3, which will be implemented on the effective date of this Agreement, BellSouth shall utilize its best efforts to implement the performance measurements delineated in 13.4.2.25.1 and 13.4.2.25.2 within 6 months of the effective date of this Agreement.

13.4.2.25.1 Percent messages processed within one second

13.4.2.25.2 Percent LIDB queries handled in a round trip time of two seconds or less.

13.4.2.25.3 BellSouth and MCIIm agree to establish a LIDB forum that may include representatives from other CLECs. Said forum shall determine other measurements necessary to demonstrate service parity.

13.4.2.25.4 To identify CLEC-by-CLEC performance, approximately six months development time is required.

#### **MCIIm's proposed language**

Both MCIIm and BellSouth developed their respective proposals up to the time of filing and did not exchange proposals in advance of filing. The parties intend to continue negotiations on this issue.

#### **BellSouth's Rationale**

The Commission's decision clearly stated that "BellSouth provide to AT&T and MCIIm telecommunications services for resale and access to unbundled network elements at the same level of quality that it provides to itself and its affiliates." Arbitration Order, at pp. 73-74. BellSouth's proposal is consistent with the Commission's decision. The measurements reflected above will, upon completion of the necessary adjustments to BellSouth's measurement systems, report BellSouth's performance for MCIIm vis a vis its own retail customers. To adopt specific benchmarks, as proposed by MCIIm,

is to go well beyond the Commission's intent. Further, the measurements proposed by BellSouth will only require modification to BellSouth's current measurements. On the other hand, those measurements proposed by MCI that are not included in BellSouth's proposal are not currently tracked and measured today for BellSouth's own retail purposes.

## **Definition of Local Calling Area**

Attachment IV Interconnection

Section 2.2.2 (including 2.2.2.1 and 2.2.2.2)

**Issue not addressed in arbitration**

### **BellSouth's Proposed Language**

BellSouth proposes to delete sections 2.2.2, 2.2.2.1 and 2.2.2.2.

### **MCI's Proposed Language**

2.2.2 The IP determines the point at which the originating carrier shall pay the terminating carrier for the completion of that traffic. The following compensation elements shall apply:

2.2.2.1 "Transport", which includes the transmission and any necessary tandem switching of local telecommunications traffic from the interconnection point between the two carriers to the terminating carrier's end-office switch that directly serves the called end-user.

2.2.2.2 "Termination", which includes the switching of Local Traffic at the terminating carrier's end office switch.

### **BellSouth's Rationale**

BellSouth has objected to MCI's inclusion of a definition of "Interconnection Point" in this section. It only serves to confuse the issue of reciprocal compensation. The topography of the network is irrelevant in determining the character of a call as local or toll. Instead, the determining factor is the location of the originating and terminating points.



**Tandem Deemed an End Office  
for Purposes of Compensating MCI**

Attachment IV      Interconnection

Section 2.4.1

**Issue not addressed in arbitration**

**BellSouth's Proposed Language**

When calls from MCI are terminating on BellSouth's network through the BellSouth tandem, MCI will pay to BellSouth local interconnection rates.

**MCI's Proposed Language**

When calls from MCI are terminating on BellSouth's network through the BellSouth tandem, MCI will pay to BellSouth dedicated transport charges from the IP to the tandem for dedicated or common transport. MCI shall also pay a charge for tandem switching, dedicated or common transport to the end office (with mileage calculated as the weighted average of all end offices subtending that tandem), and end-office termination.

**BellSouth's Rationale**

See rationale under Section 2.4.3, below

**Tandem Deemed an End Office  
for Purposes of Compensating MCI**

Attachment IV      Interconnection

Section 2.4.2

**Issue not addressed in arbitration**

BellSouth's Proposed Language

When BellSouth terminates calls to MCI's subscribers using MCI's switch, BellSouth shall pay to MCI local interconnection rates.

MCI's Proposed Language

When BellSouth terminates calls to MCI's subscribers using MCI's switch, *BellSouth shall pay to MCI dedicated transport charges from the IP to the MCI Switching Center for dedicated or common transport. BellSouth shall also pay to MCI a charge symmetrical to its own charges for tandem switching, tandem-to-end-office transport, and end office termination as identified in Section 2.4.1.*

BellSouth's Rationale

See rationale under Section 2.4.3, below.

**Tandem Deemed an End Office  
for Purposes of Compensating MCI**

Attachment IV      Interconnection

Section 2.4.3

**Issue not addressed in arbitration**

BellSouth's Proposed Language

MCI may choose to establish direct trunking to any given end office. If MCI leases trunks from BellSouth, it shall pay charges for dedicated or common transport. For calls terminating from MCI to subscribers served by these directly-trunked end offices, MCI shall also pay BellSouth's local interconnection rates. For BellSouth traffic terminating to MCI over the direct end office trunking, BellSouth shall pay the same *interconnection rates*.

MCI's Proposed Language

MCI may choose to establish direct trunking to any given end office. If MCI leases trunks from BellSouth, it shall pay charges for dedicated or common transport. For calls terminating from MCI to subscribers served by these directly-trunked end offices, MCI shall also pay an end-office termination. For BellSouth traffic terminating to MCI over the direct end office trunking, compensation payable by BellSouth shall be the same as that detailed in Section 2.4.2 above. At BellSouth's expense, BellSouth may require trunking directly to MCI's end office in which case, the tandem charges would not apply.

BellSouth's Rationale

MCI is seeking a windfall. It is demanding to be compensated for something it is not providing. The substance of its request is that BellSouth should pay MCI tandem switching charges in situations where there is no MCI tandem switch. In support of its position, MCI relies on an FCC rule that is stayed, and that is completely contrary to cost-based pricing. Instead, BellSouth should pay MCI for the elements it uses, and likewise MCI should compensate BellSouth in the same manner. To do otherwise would be a disincentive for MCI to build its own facilities, because the more facilities of BellSouth that MCI uses, the greater the windfall to MCI.

## **Definition of Spare Capacity**

Attachment VI Rights of Way (ROW), Conduits, Pole Attachments

### **Section 1.1.28 "Spare Capacity"**

#### **Issue addressed in arbitration**

#### **BellSouth's Proposed Language**

The term "spare capacity" refers to any pole attachment space, conduit, duct or inner-duct not currently assigned or subject to a pending application for attachment/occupancy. Spare capacity does not include an inner-duct (not to exceed one inner-duct per party) reserved by BellSouth, MCI, or a third party for maintenance, repair, or emergency restoration.

#### **MCI's Proposed Language**

The term "spare capacity" refers to any pole attachment space, conduit, duct or inner-duct not currently assigned or subject to a pending application for attachment/occupancy. Spare capacity does not include an inner-duct reserved for maintenance, repair, or emergency restoration.

#### **BellSouth's Rationale**

The issue contained within the definition of spare capacity is related to the issue of a common emergency duct, as proposed by MCI or a maintenance, repair or emergency restoration reserved duct for any telecommunications carrier who wishes to reserve such capacity. BellSouth's reservation of a spare for emergency purposes, and allowing other carriers similarly to reserve spares, is consistent with this Commission's decision regarding the reservation of space. The common emergency duct raises question and potential confusion about access to the common duct and priority of service restoration, which could inappropriately complicate responding to emergencies.

**Encumbrances on BellSouth's Ability  
to Convey its Property Rights**

Attachment VI      Rights of Way (ROW), Conduits, Pole Attachments

Section 1.2.6 No Effect on BellSouth's Right to Convey Property

**Issue not addressed in arbitration**

BellSouth's Proposed Language

Nothing contained in this Attachment or in any license issued hereunder shall in any way affect the right of BellSouth to convey to any other person or entity any interest in real or personal property, including any poles, conduit or ducts to or in which MCIIm has attached or placed facilities pursuant to licenses issued under this Section provided however that BellSouth shall give MCIIm reasonable advance written notice of such intent to convey.

MCIIm's Proposed Language

Nothing contained in this Attachment or in any license issued hereunder shall in any way affect the right of BellSouth to convey to any other person or entity any interest in real or personal property, including any poles, conduit or ducts to or in which MCIIm has attached or placed facilities pursuant to licenses issued under this Attachment provided however that BellSouth shall give MCIIm reasonable advance written notice of such intent to convey and such conveyance shall be subject to MCIIm's rights hereunder.

BellSouth's Rationale

Nothing in the Act or in the FCC's Order or Rules in effect requires BellSouth to encumber its real property in the fashion requested by MCIIm. BellSouth has agreed, and AT&T accepted its proposal, to provide notice to its licensees when BellSouth intends to convey any real property where licensees are present.

The issue contained in Section 1.2.6 was not the subject matter of the arbitration proceeding between the companies. MCIIm should not now be allowed to bring these issues to the Commission for its consideration. Resolution of these issues are not essential to MCIIm's successful operation in the local market.

**MCI's Request for Exclusive Rights  
to an Emergency Inner Duct**

Attachment VI      Rights of Way (ROW), Conduits, Pole Attachments

Section 1.2.9.5

**Issue not addressed in arbitration**

BellSouth's Proposed Language

BellSouth proposes to delete this section

MCI's Proposed Language

Where BellSouth has available ducts and inner ducts, BellSouth shall offer such ducts and inner ducts to MCI for MCI's use. One full-sized (typically 4 inch diameter) duct and inner duct shall be assigned for emergencies. If BellSouth or any other service provider utilizes the emergency duct or inner duct, and such duct or inner duct was the last unoccupied full-sized duct or inner duct in the applicable cross-section, said provider shall, at its expense, reestablish a clear, full-sized duct or inner duct for emergency restoration as soon as possible. If occupancy of the emergency duct or inner duct by BellSouth or other service provider was for non-emergency purposes, such occupancy shall be subject to immediate removal should an emergency arise calling for the need of a restoration conduit. In the event that an emergency situation causes a service outage, pole and/or duct access will be afforded without discrimination to service providers, with the following prioritization: (i) fire, police and/or hospital facilities, and (ii) facilities impacting the greatest number of people consistent with an intention to best serve the needs of the people.

BellSouth's Rationale

BellSouth will reserve space for itself for maintenance spares, that will also be utilized by BellSouth in cases of emergency, based upon a one-year forecast. Further, in compliance with the Commission's decision, BellSouth will allow any telecommunications provider to reserve such space for maintenance and emergency purposes, based upon a one-year forecast. BellSouth's position is consistent with the Commission's determination on this issue and is also the most efficient approach to the issue of use of space in cases of emergency. MCI's position is quite the contrary. MCI requires that BellSouth assign a full-sized duct for emergencies that will be common for all occupants of the conduit space. In cases where the

emergency is service-affecting to more than one occupant, the access to the common emergency duct would be determined by a priority list as set forth by MCI in its contract language. MCI's common emergency duct is simply not practical. BellSouth's experience shows that most emergencies affect all occupants of the space and therefore prioritization of need would, more often than not, be an issue. Secondly, allowing all telecommunications providers to reserve a maintenance or emergency duct totally avoids the issues of prioritization and access to the common duct. Lastly, MCI's position is contrary to the Commission's determination. The Commission's determination provides a solution to the issue of emergencies while MCI's language merely adds a level of complexity and will require BellSouth to reserve additional space in conduit for emergencies.

BellSouth's reservation of a spare for emergency purposes, and allowing other carriers similarly to reserve spares, is consistent with the Commission's decision regarding reservation of space. The common emergency duct raises questions and potential confusion about access to the common duct and priority of service restoration, which could inappropriately complicate responding to emergencies.

The issue contained in Section 1.2.9.5 was not the subject matter of the arbitration proceeding between the companies. MCI should not now be allowed to bring these issues to the Commission for its consideration. Resolution of these issues are not essential to MCI's successful operation in the local market.

Notwithstanding the foregoing, BellSouth has no objection to MCI reserving a duct for itself for emergency purposes and then to offer to share such capacity with other telecommunications carriers willing to enter into such a sharing arrangement.

**Compliance with BellSouth's Practices  
Relating to Pumping and Purging BellSouth's Manholes**

Attachment VI      Rights of Way (ROW), Conduits, Pole Attachments

Section 1.3.6.7

**Issue not addressed in arbitration**

BellSouth's Proposed Language

Manhole pumping and purging required in order to allow MCI's work operations to proceed shall be performed by MCI or its contractor in compliance with BellSouth Practice Sec. 620-145-011BT, "Manhole Contaminants, Water, Sediment or Debris Removal and Reporting Procedures," and any amendments, revisions or supplements thereto and in compliance with all regulations and standards established by the United States Environmental Protection Agency and by any applicable state or local environmental regulators.

MCI's Proposed Language

Manhole pumping and purging required in order to allow MCI's work operations to proceed shall be performed by MCI or its contractor in compliance with all regulations and standards established by the United States Environmental Protection Agency and by any applicable state or local environmental regulators.

BellSouth's Rationale

BellSouth is providing access to its conduit systems that are generally accessed through BellSouth manholes. In that these manholes are property of BellSouth, it is entirely appropriate that the pumping and purging required to allow MCI's operations be done pursuant to the standards set forth in BellSouth's practices. AT&T has agreed to these identical provisions.



**MCIm's Development of Procedures  
to Ensure Compliance with this Section**

Attachment VI      Rights of Way (ROW), Conduits, Pole Attachments

Section 1.3.9.3

**Issue not addressed in arbitration**

BellSouth's Proposed Language

MCIm shall establish appropriate procedures and controls to assure compliance with all requirements of this section. BellSouth will be afforded a reasonable opportunity to review such procedures and controls and provide comments that will be reasonably considered in advance of their implementation. Review and comment by BellSouth pursuant to this section will be provided in a timely manner.

MCIm's Proposed Language

MCIm proposes to delete this section

BellSouth's Rationale

In other parts of the Attachment, MCIm has agreed to comply with all appropriate statutes, rules, regulations (*see*, Section 1.4.3), yet MCIm refuses to agree to establish appropriate procedures and controls to assure compliance with the statutes, rules and regulations. The failure to agree to establish such procedures calls into question their intent to comply with statutes, rules and regulations regarding use of poles, ducts, conduits and rights of way.

Moreover, MCIm is not willing to afford BellSouth the opportunity to review MCIm's procedures. Yet, MCIm has insisted on the right to review various aspects of BellSouth's performance. (*See*, Attachment III, Section 15.1.2.5, "MCIm may review such testing results and may notify BellSouth of any deficiencies that are detected;" and Attachment VIII, Section 4.1.5.2, "MCIm shall review the file and verify that it conforms to agreed upon EMR standards".)

## **Practices Relating to Compliance with Environmental Laws**

### **Attachment VI Rights of Way (ROW), Conduits, Pole Attachments**

#### **Section 1.3.9.4**

#### **Issue not addressed in arbitration**

#### **BellSouth's Proposed Language**

MCIIm and all personnel performing work on MCIIm's behalf shall comply with such standards and practices as BellSouth and MCIIm may from time to time mutually agree to adopt to comply with environmental laws and regulations including, without limitation, BellSouth Practice Sec. 620-145-011BT, "Manhole Contaminants, Water, Sediment or Debris Removal and Reporting Procedures". Pursuant to this practice, neither MCIIm nor BellSouth nor personnel performing work on either party's behalf shall discharge water or any other substance from any BellSouth manhole or other conduit facility onto public or private property, including any storm water drainage system, without first testing such water or substance for contaminants in accordance with mutually agreed standards and practices and determining that such discharge would not violate any environmental law, create any environmental risk or hazard, or damage the property of any person. Proper handling and disposal of any waste material from a BellSouth manhole by MCIIm or its contractor shall be the responsibility of MCIIm. No such waste material shall be deposited on BellSouth premises for storage or disposal.

#### **MCIIm's Proposed Language**

MCIIm and all personnel performing work on MCIIm's behalf shall comply with MCIIm standards and practices and such standards and practices as BellSouth and MCIIm may from time to time mutually agree to adopt in order to comply with environmental laws and regulations.

#### **BellSouth's Rationale**

BellSouth is providing access to its conduit systems that are generally accessed through BellSouth manholes. In that these manholes are property of BellSouth, it is entirely appropriate that the pumping and purging required to allow MCIIm's operations be done pursuant to the standards set forth in BellSouth's practices. AT&T has agreed to these identical provisions.

Attachment VI Rights of Way (ROW), Conduits, Pole Attachments

Section 1.3.10 Compliance with Other Governmental Requirements

The parties reached agreement on this provision subsequent to BellSouth's preparation of the contract for filing.

Agreed Language

MCIIm agrees that its facilities attached to BellSouth's facilities shall be constructed, placed, maintained, and removed in accordance with the ordinances, rules, and regulations of any governing body having jurisdiction of the subject matter. MCIIm shall comply with all applicable statutes, ordinances, rules, regulations and other laws requiring the marking and lighting of aerial wires, cables and other structures to ensure that such wires, cables and structures are not a hazard to aeronautical navigation. MCIIm shall establish appropriate procedures and controls to assure such compliance.

**BellSouth's Provision of Information  
Relating to Availability of Space**

Attachment VI      Rights of Way (ROW), Conduits, Pole Attachments

Section 1.5.2.2

**Issue Not Subject Of Arbitration**

BellSouth's Proposed Language

BellSouth shall provide pole, conduit and right-of-way availability information in response to a request from MCIIm which identifies with reasonable specificity the facilities for which such information is desired. MCIIm may elect to be present at any field based survey of facilities identified pursuant to this paragraph and BellSouth shall provide MCIIm at least forty-eight (48) hours notice prior to initiating such field survey. MCIIm employees or agents shall be permitted to enter BellSouth manholes and inspect such structures to confirm usability and/or evaluate condition of the structure(s) with at least forty-eight (48) hours notice to BellSouth, with a BellSouth representative present and at MCIIm's expense.

MCIIm's Proposed Language

For any information that is readily available, BellSouth must produce said information within three (3) business days of the written requests. MCIIm may elect to be present at any field based survey of facilities identified pursuant to this paragraph and BellSouth shall provide MCIIm at least forty-eight (48) hours notice prior to initiating such field survey. MCIIm employees or agents shall be permitted to enter *BellSouth manholes and inspect such structures to confirm usability and/or evaluate condition of the structure(s) with at least forty-eight (48) hours notice to BellSouth, with a BellSouth representative present and at MCIIm's expense.*

BellSouth's Rationale

MCIIm demands that BellSouth respond to requests for determination of availability of space within 3 business days of the written request. Such a demand is not reasonable. BellSouth must provide access to poles, conduits, ducts, and rights of way on a non-discriminatory, first-come, first-serve basis. The ability of BellSouth to turn requests around in 3 business days is dependent on a number of factors, including but not limited to, the number

of other pending requests from other carriers; the magnitude of the request from MCI and the complexity of the requests from MCI and other carriers. AT&T has agreed that such operational issues can be dealt with outside of the agreement through a task force that shall determine the appropriate time frames. (See, AT&T, Attachment 3, section 3.7.5.3). The approach agreed upon between AT&T and BellSouth is entirely reasonable.

The issue contained in Section 1.5.2.2 was not the subject matter of the arbitration proceeding between the companies. MCI should not now be allowed to bring these issues to the Commission for its consideration. Resolution of these issues are not essential to MCI's successful operation in the local market.

**Information Relating to Environmental,  
Health and Safety Inspections**

Attachment VI      Rights of Way (ROW), Conduits, Pole Attachments

Section 1.6.3

**Issue not addressed in arbitration**

BellSouth's Proposed Language

BellSouth proposes to delete this section.

MCI's Proposed Language

Within ten (10) business days after MCI has submitted its written application for a license, BellSouth shall advise MCI whether an environmental, health and safety inspection has been performed and shall supply MCI with any inspection report including, but not limited to, Phase I and Phase II site assessments.

BellSouth's Rationale

MCI has requested that if an environmental, health and safety inspection has been performed, including but not limited to, Phase I and Phase II site assessments, that BellSouth provide such reports to MCI within 10 business days. BellSouth investigated this request and found that because of the nature of the interest held by BellSouth--an easement or a statutory or constitutional right to use rights of way--it was highly unlikely that BellSouth would have actual knowledge of any inspection or assessment that had been performed. Moreover, BellSouth would have to check in a great number of different departments and locations to determine if any employee knew of such an inspection or assessment. Because of the improbability of BellSouth's having such knowledge and the time and expense associated with checking to ensure that BellSouth did not have such knowledge, BellSouth has not agreed to this contractual provision. BellSouth further states on knowledge and belief that it has not be required by law to perform such inspections or assessments on rights of way owned or controlled by BellSouth.

Further, the issue of environmental, health and safety inspections was not specifically addressed by MCI in its arbitration petition nor in the arbitration proceeding itself. The issue is not related to the Commission's decision nor is compliance with MCI's request required by the Act . It is thus a category 2 issue. At this time in the proceeding, MCI should not be allowed to bring new issues before the Commission for its consideration.

Attachment VI Rights of Way (ROW), Conduits, Pole Attachments

Section 1.8.2.2

The parties reached agreement on this provision subsequent to BellSouth's preparation of the contract for filing.

Agreed Language

BellSouth shall designate the manner in which MCI's facilities will enter and exit BellSouth's conduit system, and the specific location and manner of installation of any associated equipment which is permitted by BellSouth to occupy the conduit system. BellSouth shall provide to MCI space in manholes for racking and storage of up to fifty (50) feet of cable, provided space is available.

## **Dark Fiber**

**Attachment VI Rights of Way (ROW), Conduits, Pole Attachments**

**Section 2 Entire Section**

**Issue not addressed in arbitration**

### **BellSouth's Proposed Language**

BellSouth proposes to delete this section.

### **BellSouth's Rationale**

The Commission ruled that dark fiber is not a network element, and BellSouth is thus not obligated to provide MCI with access to dark fiber. MCI's proposed Section 2, which addresses the provisioning of dark fiber, should thus be deleted.



**BellSouth's Provision of Customer  
Credit History through Electronic Interfaces**

Attachment VIII Business Process Requirements

Section 2.1.5.3

**Issue not addressed in arbitration**

BellSouth's Proposed Language

This section should be deleted

MCI's Proposed Language

BellSouth shall provide to MCI a real-time, electronic interface to BellSouth subscriber information systems which will allow MCI to obtain the customer payment history as detailed above.

BellSouth's Rationale

MCI is inappropriately seeking to treat a customer's credit history as CPNI. In fact, the FCC has determined that credit information is not CPNI. See, Filing and Review of Open Network Architecture Plans, 4 FCC Record 1, ¶ 412 (1988).

**BellSouth's Provision of Customer  
Credit History with a Blanket Letter of Authorization**

Attachment VIII Business Process Requirements

Section 2.1.5.4

**Issue not addressed in arbitration**

BellSouth's Proposed Language

This section should be deleted.

MCI's Proposed Language

*BellSouth shall provide MCI with requested customer payment history information as detailed above, based upon MCI's blanket representation that MCI will obtain the subscriber's authorization to obtain such data in advance of any request.*

BellSouth's Rationale

A blanket letter of authorization does not adequately safeguard a customer's right of privacy with respect to credit history. BellSouth agreed to provide credit history on the condition the customer authorizes it to do so. Customer authorization is not appropriately reflected in a blanket letter of authorization.

**Date for On-line Access  
to Telephone Numbers**

Attachment VIII Business Process Requirements

Section 2.3.2.6

**Issue not addressed in arbitration**

BellSouth's Proposed Language

BellSouth will provide MCIIm on-line access to telephone number reservations by December 31, 1996, but no later than April 1, 1997. Until on-line access is available via electronic interface, BellSouth agrees to provide MCIIm with a ready supply of telephone numbers as described in Section 2.1.8.2.

MCIIm's Proposed Language

BellSouth will provide MCIIm on-line access to telephone number reservations by January 1, 1997.

BellSouth's Rationale

BellSouth's language reflects its intent to provide on-line access as expeditiously as practicable. The dates reflected in BellSouth's proposal are realistic and are consistent with the testimony of BellSouth witnesses.

## Performance Measurements

Attachment VIII Business Process Requirements

Section 2.5

**Issue addressed in arbitration**

### BellSouth's Proposed Language

BellSouth will use its best efforts to implement the performance measurements as set forth below within six months of the effective date of this Agreement.

Installation functions performed by BellSouth will be measured in the following manner:

Percent Central Office Completions in 0 to 1 days (Includes all N, T, and C order activity requiring Central Office work). This measurement shall reflect all CLEC activity vis a vis BellSouth activity.

Percent Installations Provisioned in 5 calendar days

Percent Missed Appointments

Percent Trouble Reports within 30 days of a Service Order (Measures Percent of Total Trouble Reports caused by Troubles on Access lines with Service Order Activity)

Percent Firm Order Confirmations provided within 24 hours

Percent Notice of Order Reject or Error within 1 hour of receipt

### MCI's proposed language

Both MCI and BellSouth developed their respective proposals up to the time of filing and did not exchange proposals in advance of filing. The parties intend to continue negotiations on this issue.

### BellSouth's Rationale

The Commission's decision clearly stated that "BellSouth provide to AT&T and MCI telecommunications services for resale and access to unbundled network elements at the same level of quality that it provides to itself and its

affiliates." Arbitration Order, at pp. 73-74. BellSouth's proposal is consistent with the Commission's decision. The measurements reflected above will, upon completion of the necessary adjustments to BellSouth's measurement systems, report BellSouth's performance for MCI<sub>m</sub> vis a vis its own retail customers. To adopt specific benchmarks, as proposed by MCI<sub>m</sub>, is to go well beyond the Commission's intent. Further, the measurements proposed by BellSouth will only require modification to BellSouth's current measurements. On the other hand, those measurements proposed by MCI<sub>m</sub> that are not included in BellSouth's proposal are not currently tracked and measured today for BellSouth's own retail purposes.

## **Performance Measurements**

### **Attachment VIII Business Process Requirements**

#### **Section 3.4**

#### **Issue addressed in arbitration**

#### **BellSouth's Proposed Language**

BellSouth and MCIIm will incorporate the Connectivity Billing and Recording service into the BellSouth and MCIIm Future Optimum State (FOS) billing Forum. Said forum will develop the appropriate billing measurements for service parity.

#### **MCIIm's proposed language**

Both MCIIm and BellSouth developed their respective proposals up to the time of filing and did not exchange proposals in advance of filing. The parties intend to continue negotiations on this issue.

#### **BellSouth's Rationale**

The Commission's decision clearly stated that "BellSouth provide to AT&T and MCIIm telecommunications services for resale and access to unbundled network elements at the same level of quality that it provides to itself and its affiliates." Arbitration Order, at pp. 73-74. BellSouth's proposal is consistent with the Commission's decision. MCIIm's previous proposals relating to billing have included standards that are in many cases immeasurable, and are also unattainable. BellSouth's proposal to use the standards developed through the Future Optimum State (FOS) billing Forum is a reasonable and appropriate compromise.

## **Performance Measurements**

### **Attachment VIII Business Process Requirements**

#### **Section 4.5**

#### **Issue addressed in arbitration**

#### **BellSouth's Proposed Language**

BellSouth and MCIIm will incorporate the OLEC Daily Usage File (ODUF) service into the BellSouth and MCIIm Future Optimum State (FOS) billing Forum. Said forum will develop the appropriate billing measurements for service parity.

#### **MCIIm's proposed language**

Both MCIIm and BellSouth developed their respective proposals up to the time of filing and did not exchange proposals in advance of filing. The parties intend to continue negotiations on this issue.

#### **BellSouth's Rationale**

The Commission's decision clearly stated that "BellSouth provide to AT&T and MCIIm telecommunications services for resale and access to unbundled network elements at the same level of quality that it provides to itself and its affiliates." Arbitration Order, at pp. 73-74. BellSouth's proposal is consistent with the Commission's decision. MCIIm's previous proposals relating to the daily usage file have included standards that are in many cases immeasurable, as well as unattainable. BellSouth's proposal to use the standards developed through the Future Optimum State (FOS) billing Forum is a reasonable and appropriate compromise.

## **Performance Measurements**

### **Attachment VIII Business Process Requirements**

#### **Section 5.4**

#### **Issue addressed in arbitration**

#### **BellSouth's Proposed Language**

The maintenance measurements set forth below shall be implemented on the effective date of this Agreement.

Maintenance functions performed by BellSouth will be measured in the following manner:

Percent Out of Service (OOS) Troubles Cleared within 24 hours

Percent Missed Appointments for BellSouth reasons

Repeat Trouble Reports in 30 days

Percent Calls Answered within 20 seconds. This measurement shall reflect all CLEC activity vis a vis BellSouth activity.

#### **MCI's proposed language**

At the time of filing, MCI had not provided BellSouth with its most recent proposal for performance measurements. Similarly, BellSouth had not provided MCI with the proposal it filed in its Proposed Interconnection Agreement. Both MCI and BellSouth developed its proposals up to the time of filing and did not exchange proposals in advance of filing. The parties intend to continue negotiations on this issue.

#### **BellSouth's Rationale**

The Commission's decision clearly stated that "BellSouth provide to AT&T and MCI telecommunications services for resale and access to unbundled network elements at the same level of quality that it provides to itself and its affiliates." Arbitration Order, at pp. 73-74. BellSouth's proposal is consistent with the Commission's decision. The measurements reflected above will, upon completion of the necessary adjustments to BellSouth's measurement systems, report BellSouth's performance for MCI vis a vis its own retail customers. To adopt specific benchmarks, as proposed by MCI, is to go well beyond the Commission's intent. Further, the measurements



proposed by BellSouth will only require modification to BellSouth's current measurements. On the other hand, those measurements proposed by MCI that are not included in BellSouth's proposal are not currently tracked and measured today for BellSouth's own retail purposes.

## **Special Calling Cards**

Attachment VIII Business Process Requirements

Section 6.1.3.3.3.3

**Issue not addressed in arbitration**

### **BellSouth's Proposed Language**

BellSouth shall complete calls that are billed to a calling card and MCI shall designate to BellSouth the acceptable types of billing for Special Calling Cards (SCC) that can be accepted.

### **MCI's Proposed Language**

BellSouth shall complete calls that are billed to a calling card and MCI shall designate to BellSouth the acceptable types of billing for Special Calling Cards (SCC) or credit cards that can be accepted.

### **BellSouth's Rationale**

The difference between the two proposals is that BellSouth has not yet agreed to allow MCI to designate acceptable credit cards. BellSouth is investigating the viability of MCI's proposal and will continue to negotiate this issue.

**Busy Line Verification in Context of Interim  
Number Portability**

Attachment VIII Business Process Requirements

Section 6.1.3.15

**Issue not addressed in arbitration**

BellSouth's Proposed Language

BellSouth shall explore the technical feasibility of the following:  
Where INP is deployed and when BLV/BLI request for a ported number is directed to a BellSouth operator and the query is not successful (*i.e.*, the request yields an abnormal result), the operator shall confirm whether the number has been ported and shall direct the request to the appropriate operator.

MCI's Proposed Language

Where INP is deployed and when BLV/BLI request for a ported number is directed to a BellSouth operator and the query is not successful (*i.e.*, the request yields an abnormal result), the operator shall confirm whether the number has been ported and shall direct the request to the appropriate operator.

BellSouth's Rationale

BellSouth is attempting to determine whether MCI's request is technically feasible.

**Electronic Interfaces  
Date of Implementation**

Attachment VIII Business Process Requirements

Sections 6.1.4.1

**Issue not addressed in Arbitration**

BellSouth's Proposed Language

BellSouth shall accept orders via electronic interface in accordance with approved TCIF EDI technical mapping within nine (9) months of published release of that approved standard. In the interim, BellSouth shall create a standard format for electronic exchange by which MCI can place directory listing orders for resold single line residence and resold simple business, six lines or less, by April 1, 1997. BellSouth shall provide electronic exchange for directory listing orders associated with interim number portability, unbundled loops and unbundled ports no later than April 1, 1997.

MCI's Proposed Language

BellSouth shall accept orders via electronic interface in accordance with OBF Directory Service Request standards (TCIF EDI Technical Mapping) within - nine (9) months of final standard adoption. In the interim, BellSouth shall create a standard format and order process by which MCI can place an order via electronic exchange no later than January 1, 1997.

BellSouth's Rationale

BellSouth's language reflects its intent to provide on-line access as expeditiously as practicable. The dates reflected in BellSouth's proposal are realistic and are consistent with the testimony of BellSouth witnesses.

**BellSouth's Provision of Fraud Prevention  
Features and Functionalities**

Attachment IX      Security Requirements

Section 3.1

**Issue not addressed in arbitration**

BellSouth's Proposed Language

BellSouth shall make available to MCIIm all present and future fraud prevention or revenue protection features, including prevention, detection, or control functionality embedded within any of the Network Elements. These features include, but are not limited to screening codes, information digits assigned such as code 07 which indicate special handling of the call is required, call blocking of domestic, international, 800, 888, 900, NPA-976 numbers.

MCIIm's Proposed Language

BellSouth shall make available to MCIIm all present and future fraud prevention or revenue protection features, including prevention, detection, or control functionality embedded within any of the Network Elements. These features include, but are not limited to screening codes, information digits assigned such as information digits "29" and "70" which indicate prison and COCOT pay phone originating line types respectively, call blocking of domestic, international, 800, 888, 900, NPA-976 numbers.

BellSouth's Rationale

The distinction between BellSouth's proposal and the language proposed by MCIIm lies in the specific information digits to be used in the payphone context. BellSouth currently sends the 07 code. This code reflects the call requires special handling. Moreover, as a result of the FCC's Order regarding the passing of blocking and screening codes, BellSouth is developing a query system that will allow MCIIm and others to gain further information when the "07" code is sent. In the Matter of Policies and Rules Concerning Operator Service Access and Pay Telephone Compensation, Third Report and Order, 61 FR 26466, Adopted April 5, 1996. BellSouth's current system is in compliance with the FCC's Order. Moreover, the FCC recognized in that Order that the 29 and 70 codes MCIIm is demanding "would generally be included in the larger 06 or 07 categories." *Id.*, at ¶ 19.

## **Liability for Lost Revenues Resulting from Hacker Fraud**

Attachment IX      Security Requirements

Section 3.1.2

**Issue not addressed in arbitration**

### BellSouth's Proposed Language

Uncollectible or unbillable revenues resulting from the accidental or malicious alteration of software underlying Network Elements or their subtending operational support systems by unauthorized third parties shall be the responsibility of the party having administrative control of access to said Network Element or operational support system software to the extent such unbillable or uncollectible revenue results from the gross negligence or willful act or omission of the party having such administrative control.

### MCI's Proposed Language

Uncollectible or unbillable revenues resulting from the accidental or malicious alteration of software underlying Network Elements or their subtending operational support systems by unauthorized third parties shall be the responsibility of the party having administrative control of access to said Network Element or operational support system software.

### BellSouth's Rationale

MCI has requested that BellSouth assume risk associated with third party fraud upon the network and reimburse MCI for its losses associated with third party fraud. Such assumption of liability is not appropriate. It would place BellSouth in the position of being an insurer against the actions of others, including the illegal acts of third parties. Moreover, the pricing requirements of 252(d) do not contemplate the cost associated with the assumption of such risk. Finally, because this issue was not the subject of arbitration, MCI's demand should be rejected.

**Liability for Lost Revenues Resulting from  
Clip-On Fraud and Other Illegal or  
Unauthorized Entry into the BellSouth Network**

Attachment IX Security Requirements

Section 3.1.2

**Issue not addressed in arbitration**

**BellSouth's Proposed Language**

BellSouth proposes to delete this section

**MCI's Proposed Language**

BellSouth shall be responsible for any uncollectible or unbillable revenues resulting from the unauthorized use of the service provider network whether that compromise is initiated by software or physical attachment to loop facilities from Main Distribution Frame up to and including the Network Interface Device, including clip on fraud. BellSouth shall provide soft dial tone to allow only the completion of calls to final termination points required by law.

**BellSouth's Rationale**

MCI has requested that BellSouth assume risk associated with third party fraud upon the network and reimburse MCI for its losses associated with third party fraud. Such assumption of liability is not appropriate. It would place BellSouth in the position of being an insurer against the actions of third parties, including the illegal acts of third parties. Moreover, the pricing requirements of 252(d) do not contemplate the cost associated with the assumption of such risk. Finally, because this issue was not the subject of arbitration, MCI's demand should be rejected.

**MCI's Proposed Penalty  
(Liquidated Damages) Provision**

Attachment X      Credits for Performance Standards Failures

Entire Attachment is Disagreed

**Issue addressed in arbitration**

BellSouth's Proposed Language

BellSouth proposes to delete this section

BellSouth's Rationale

This Commission has ruled that it cannot impose a penalty or liquidated damages provisions of the type sought by MCI. Specifically, the Commission stated as follows:

We conclude that we should limit our consideration in this arbitration proceeding to the items enumerated in Sections 251 and 252 of the act, and matters necessary to implement those items. A liquidated damages provision does not meet that standard. The Act does not require parties to include in their agreements any particular method to resolve disputes. Further, it is not appropriate for us to arbitrate a liquidated damages provision under state law. If we did, we would be, in effect, awarding damages to one party for a breach of contract. We lack the authority to award money damages. (Citation omitted.) If we cannot award money damages directly, we cannot do so indirectly by imposing a liquidated damages arrangement on the parties.

Arbitration Order, at pp. 74-75.