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January 27, 2003

Mrs. Blanca S. Bayó  
Division of the Commission Clerk and  
Administrative Services  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, FL 32399-0850

**Re: Docket No.: 020919-TP  
Complaint of AT&T Communications of the Southern  
States, LLC, Teleport Communications Group, Inc., and  
TCG South Florida for Enforcement of Interconnection  
Agreements with BellSouth Telecommunications, Inc.**

Dear Ms. Bayó:

Enclosed is an original and fifteen copies of BellSouth Telecommunications, Inc.'s Motion for Partial Summary Final Order on Issue 1(A), which we ask that you file in the captioned matter.

A copy of this letter is enclosed. Please mark it to indicate that the original was filed and return the copy to me. Copies have been served to the parties shown on the attached Certificate of Service.

Sincerely,



James Meza, III (JA)

cc: All Parties of Record  
Marshall M. Criser III  
R. Douglas Lackey  
Nancy B. White

DOCUMENT NUMBER-DATE

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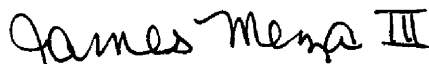
**CERTIFICATE OF SERVICE  
DOCKET NO. 020919-TP**

I HEREBY CERTIFY that a true and correct copy of the foregoing was served via  
First Class U.S. Mail this 27th day of January 2003 to the following:

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Staff Counsel  
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Commission  
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James Meza, III (CA)

**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

In re: Complaint of AT&T Communications )  
of the Southern States, LLC, Teleport )  
Telecommunications Group, Inc., and TCG )     Docket No. 020919-TP  
South Florida for Enforcement of )  
Interconnection Agreements with BellSouth )     Filed: January 27, 2003  
Telecommunications, Inc. )  
\_\_\_\_\_ )

**BELLSOUTH'S MOTION FOR  
PARTIAL SUMMARY FINAL ORDER ON ISSUE 1(A)**

BellSouth Telecommunications, Inc. ("BellSouth"), pursuant to Rule 28-106.204(4), Florida Administrative Code, moves for partial summary final order on Issue I(A) of this proceeding. Specifically, BellSouth requests that the Florida Public Service Commission ("Commission") find that, pursuant to the provisions of the first interconnection agreement ("First Agreement") between BellSouth and AT&T Communications of the Southern States, LLC ("AT&T"), the terms, conditions, and prices of the second interconnection agreement ("Follow-on Agreement") between BellSouth and AT&T, except for the reciprocal compensation rates, apply from June 11, 2000 forward.<sup>1</sup> As established below, there is no genuine issue of material fact as to this issue and BellSouth is entitled to a partial summary final order on Issue 1(A) as a matter of law.

**BACKGROUND**

On August 26, 2002, AT&T filed a Complaint (the "AT&T Complaint") against BellSouth to resolve a dispute relating to the payment of reciprocal compensation for

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<sup>1</sup> The reciprocal compensation rates of the Follow-on Agreement apply from June 1, 2001 forward pursuant to a settlement agreement between BellSouth and AT&T. The remaining terms, conditions, and prices apply from June 11, 2000 forward.

“Local Traffic”, as that phrase is defined in the Follow-on Agreement. In its Complaint, AT&T essentially alleged that it is entitled to (1) apply the terms, conditions, and prices of the Follow-on Agreement retroactively to June 11, 2000, pursuant to Section 2.3 of the First Agreement; and (2) apply the reciprocal compensation rates set forth in the Follow-on Agreement for all Local Traffic (including all LATAwide traffic) from July 1, 2002 to May 31, 2002. BellSouth filed an Answer on September 20, 2002.

On November 26, 2002, the Commission issued Order No. PSC-02-1652-PCO-TP, wherein it identified the issues that would be decided by the Commission, including Issue 1(A). This issue provides as follows: “Do the terms of the [“Follow on Agreement”] as defined in AT&T’s Complaint apply from the expiration date of the [First Agreement] as defined in AT&T’s Complaint, June 11, 2000, forward.” See Order No. PSC-02-1652-PCO-TP at 11. AT&T and BellSouth filed direct testimony on January 15, 2003, and the hearing in this matter is scheduled for May 7, 2003.

#### **STATEMENT OF UNDISPUTED FACTS**

1. In 1997, BellSouth and AT&T entered into the First Agreement. The Commission approved the First Agreement on June 19, 1997 in Order No. PSC-07-0724-FOF-TP. See Shiroishi Affidavit at ¶3, attached hereto as Exhibit A; Direct Testimony of Jeffrey King (“King DT”) at 4, attached hereto as Exhibit B; AT&T’s Complaint at ¶9, attached hereto as Exhibit C. The First Agreement had an effective date of June 10, 1997 and expired three years thereafter. Id.; see also, First Agreement at Preface and General Terms & Conditions (“GTC”) Sec. 2.1, attached hereto as Exhibit D.

2. Under Section 2.2 of the GTC of the First Agreement, “[n]o later than one hundred and eighty (180) days prior to the expiration of [the First Agreement], the Parties agree to commence negotiations with regard to the terms, conditions, and prices of a



follow on agreement for the provision of Services and Elements to be effective on or before the expiration date of [the First Agreement].” Exhibit A at ¶5; Exhibit D, GTC at Section 2.2.

3. Under Section 2.3 of the GTC of the First Agreement, “[i]f within one hundred and thirty-five (135) days of commencing the negotiation referenced to Section 2.2 above, the Parties are unable to satisfactorily negotiate new terms, conditions and prices, either Party may petition the Commission to establish an appropriate Follow-on Agreement pursuant to 47 U.S.C. § 252. The Parties agree that in such event they shall encourage the Commission to issue its order regarding such Follow-on Agreement no later than the expiration date of this Agreement.” Exhibit A at ¶6; Exhibit D, GTC at Section 2.3.

4. In addition, Section 2.3 of the GTC of the First Agreement provided that “[t]he Parties further agree that in the event the Commission does not issue its order by the expiration date of [the First Agreement], or if the Parties continue beyond the expiration date of [the First Agreement] to negotiate without the Commission intervention, **the terms, conditions and prices ultimately ordered by the Commission, or negotiated by the Parties, will be effective, retroactive to the date following the expiration date of this Agreement.**” Exhibit A at ¶7; Exhibit D, GTC at Section 2.3 (emphasis added).

5. Moreover, Section 2.3 of the GTC of the First Agreement provided that “[u]ntil the Follow-on Agreement becomes effective, BellSouth shall provide Services and Elements pursuant to the terms, conditions and prices of [the First Agreement] that are then in effect.” Exhibit A at ¶8; Exhibit D, GTC at Section 2.3

6. Prior to the June 10, 2000 expiration of the First Agreement and pursuant to Section 2.2 of the GTC for the First Agreement, AT&T and BellSouth attempted to negotiate the terms, conditions, and prices for the Follow-on Agreement. Exhibit A at ¶10.

7. Negotiations were unsuccessful. Accordingly, pursuant to Section 2.2 of the GTC for the First Agreement and Section 252 of the Telecommunications Act of 1996 (the “Act”), AT&T requested that the Commission arbitrate the issues in dispute relating to the Follow-on Agreement on June 16, 2000. Id. at ¶11.

8. The Commission assigned Docket No. 000731-TP to the arbitration proceeding and conducted an arbitration hearing on February 14-16, 2001. Id. at ¶12. BellSouth and AT&T executed the Follow-on Agreement and the Commission approved that Agreement on December 7, 2001 in Order No. PSC-01-2357-FOF-TP. Id.

9. The Follow-on Agreement contains an effective date “as of” October 26, 2001. See Exhibit A at ¶13; Preface of AT&T Follow-on Agreement, attached hereto as Exhibit E.

10. AT&T has alleged in its Complaint that, pursuant to Section 2.3 of the First Agreement, “the terms subsequently agreed to by the Parties or so ordered by the Commission in any ‘follow-on’ or ‘second’ agreement would be retroactive to the day following expiration of [the First Agreement], or June 11, 2000, . . . .” Exhibit C at ¶11. Likewise, AT&T submitted pre-filed testimony in this proceeding, wherein it repeated its assertion that the rates, terms, and conditions of the Follow-on Agreement apply from June 11, 2000 forward pursuant to the provisions of the First Agreement. Specifically, AT&T witness Jeffrey King testified:

As discussed above, the Retroactivity Provision found in Section 2.3 of [the First Agreement] clearly provides that in the event [the First Agreement] expired before AT&T and BellSouth had executed another “follow-on” or “second” interconnection agreement, or before the Commission had issued its arbitration order in a “follow-on” or “second” arbitration, then the terms subsequently agreed to by the Parties in the Second Interconnection Agreement or so ordered by the Commission in any “follow-on” or “second” arbitration, would apply “retroactively” to [the First Agreement] as of the day following expiration of [the First Agreement]. Thus, because [the First Agreement] expired as of June 10, 2000, the terms of [the Second Agreement] applied “retroactively” to [the First Agreement] from June 11, 2000 forward.

See Exhibit B at 7.

11. Similarly, BellSouth witness Beth Shiroishi submitted pre-filed testimony in this proceeding wherein she testified that, pursuant to Section 2.3 of the First Agreement, “the terms, conditions, and prices of the [Follow-on Agreement] apply from June 11, 2000 forward.” Exhibit A, Attachment 1 at 3.

12. The First Agreement contained a survival provision which expressly stated that “[a]ny liabilities or obligations of a Party for acts or omissions prior to the cancellation or termination of this Agreement, any obligation of a Party under the provisions regarding indemnification, Confidential Information, limitations of liability, and any other provisions of this Agreement which, by their terms, are contemplated to survive (or to be performed after) termination of this Agreement, shall survive cancellation or termination thereof.” See Exhibit A at ¶9; Exhibit D at GTC, Sec. 22.11.

13. The Follow-on Agreement contained an integration clause which provided that the Follow-on Agreement, including the attachments, appendices and other documents referenced therein, “constitute[d] the entire Agreement between the Parties **concerning the subject matter [thereof]** and supersedes any prior agreements,

representations, statements, negotiations, understandings, proposals or undertakings, oral or written, with **respect to the subject matter expressly set forth [therein].** Exhibit A at ¶14; Exhibit E at GTC, Sec. 24.9.1 (emphasis added).

14. There is no “subject matter expressly set forth” in the Follow-on Agreement that addresses or pertains to the parties’ obligations under Section 2.3 of the First Agreement to apply the terms, conditions, and prices of the Follow-on Agreement from June 11, 2000 forward. Exhibit A at ¶15.

15. Subsequent to the execution of the First Agreement, the parties entered into a settlement agreement, wherein they agreed to apply only the reciprocal compensation rates contained in the Follow-on Agreement from June 1, 2001 forward. Exhibit A at ¶17.

#### **LAW AND ANALYSIS**

Under Rule 28-106.204(4), Florida Administrative Code, “[a]ny party may move for summary final order whenever there is no genuine issue of material fact.” The purpose of summary judgment or of a summary final order is to avoid the expense and delay of trial when no dispute exists as to the material facts. See Order No. PSC-01-1427-FOF-TP at 13. When a party establishes that there is no material fact on any issue is disputed, then the burden shifts to the opponent to demonstrate the falsity of the showing. Id. “If the opponent does not do so, summary judgment is proper and should be affirmed.” Id. There are two requirements for a summary final order: (1) there is no genuine issue of material fact; and (2) a party is entitled to judgment as a matter of law. Id. at 14-15. Regarding Issue 1(A), BellSouth satisfies both requirements.

First, there is no dispute as to any fact, let alone a material fact, regarding Issue 1(A). Both BellSouth and AT&T have testified that the First Agreement expired on June 10, 2000 and that the Follow-on Agreement was not in effect on that date. Exhibit A at ¶4; Exhibit B at 4. Moreover, both BellSouth and AT&T have testified that, because the Follow-on Agreement was not in effect on the date the First Agreement terminated, the parties were obligated under Section 2.3 of the First Agreement to continue to operate under the terms, conditions, and prices of the First Agreement until the Follow-on Agreement became effective. Exhibit A at ¶¶7-8; Exhibit B at 5. Further, both BellSouth and AT&T have testified that the Follow-on Agreement became effective in 2001 and that parties are obligated to apply the terms, conditions, and prices of the Follow on Agreement from June 11, 2000 forward, pursuant to Section 2.3 of the First Agreement. See Exhibit A at ¶17; Exhibit B at 7. Accordingly, there is no genuine issue of material fact as both AT&T and BellSouth contend that the terms, conditions, and prices of the Follow-on Agreement apply from June 11, 2000 forward.<sup>2</sup>

Second, BellSouth is entitled to a final summary order on this issue as a matter of law. The guiding force in the interpretation of contracts is to determine and enforce the parties' intent. See St. Augustine Pools, Inc. v. James M. Baker, Inc., 687 So. 2d 957, 957 (Fla. 5<sup>th</sup> DCA 1997); see also, Royal Oaks Landing Homeowner's Assoc. v. Pelletier, 620 So. 2d 786, 788 (Fla. 4<sup>th</sup> DCA 1993) ("Generally, the intentions of the parties to a contract govern its construction and interpretation. When determining intent, the best evidence is the plain language of the contract."). When a contract is clear and

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<sup>2</sup>However, pursuant to a settlement agreement between the parties, the compensation at issue in AT&T's Complaint only applies from July 1, 2001 forward. See Exhibit A at ¶17. Indeed AT&T is only seeking to apply the reciprocal compensation rates of the Follow-on Agreement from July 1, 2001 to May 31, 2002. See Exhibit C at 5.

unambiguous, the court is required to enforce the contract according to its plain meaning. Feldman v. Kritch, 824 So. 2d 274, 277 (Fla. 4<sup>th</sup> DCA 2002); see also; Jacobs v. Petrino, 351 So. 2d 1036, 1039 (Fla. 4<sup>th</sup> DCA 1976) (“The words found in a contract are to have a meaning attributed to them, and are the best possible evidence of the intent and meaning of the contracting parties.’ ”) (citations omitted).

Here, the clear, unambiguous provisions of the First Agreement, as buttressed by the testimony of both AT&T and BellSouth, make it clear that the parties intended for the terms, conditions, and prices of the First Agreement to expire on June 10, 2000, and that the terms, conditions, and prices of the Follow-on Agreement would apply from June 11, 2000 forward. See Exhibit D at GTC, Sec. 2.3. Accordingly, under Florida contract interpretation principles, the Commission is required to enforce the express terms of the First Agreement and find as a matter of law that the terms, conditions, and prices of the Follow-on Agreement apply from June 11, 2000 forward.

The integration clause in the Follow-on Agreement reinforces this conclusion as it applies only to “the subject matter expressly set forth” in the Follow-on Agreement. Exhibit D at GTC, Sec. 24.9.1. As testified by witness Shiroishi and as confirmed by a review of the agreement, the Follow-on Agreement is entirely silent on the parties’ obligations under Section 2.3 of the First Agreement to apply the terms, conditions, and prices of the Follow-on Agreement from June 11, 2000 forward. See Exhibit A at ¶15. Thus, pursuant to the express terms of the integration clause, that provision has no effect on the parties’ obligations to comply with the obligations set forth in Section 2.3 of the First Agreement. See Feldman, 824 So. 2d at 277; see also, Sugar Cane Growers Co-Op of Florida, Inc. v. Pinnock, 735 So. 2d 530, 538 (Fla. 4<sup>th</sup> DCA 1999) (stating that court’s

“interpretation is based solely on the language in the contract, the best evidence of the intent of the parties.”<sup>3</sup>

Indeed, the entirety of the First Agreement is outside the scope of the integration clause because it is clearly not a prior agreement concerning the express subject matter of the Follow-on Agreement. The express subject matter of the Follow-on Agreement is the terms, conditions, and prices under which BellSouth will provide the referenced services to AT&T (and under which AT&T will provide certain services to BellSouth) during the time to which the Follow-on Agreement applies. Exhibit A at ¶16.

The fact that the First Agreement expired also does not change this conclusion. The First Agreement contained a survival provision, which provided that “[a]ny liabilities or obligations of a Party for acts or omissions prior to the cancellation or termination of this Agreement, any obligation under the provisions regarding indemnification, Confidential Information, limitations on liability, and any other provisions of this Agreement which, by their terms, are contemplated to survive (or to be performed after) termination of [the First Agreement], shall survive cancellation or termination thereof.” See Exhibit D, GTC at Section 22.11. As made clear by the express terms of Section 2.3 of the First Agreement, the parties were required to perform certain obligations after the June 10, 2000 termination of the First Agreement. The obligation to apply the terms, conditions, and prices from the day following expiration forward is undoubtedly a provision contemplated to survive the First Agreement’s expiration. Absent its survival, it would be a meaningless clause, because the First Agreement must end before the Follow-

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<sup>3</sup> The fact that the Follow-on Agreement contains an effective date “as of” October 26, 2001 is also of no consequence because the obligation to apply the terms, conditions, and prices from June 11, 2000 forward lies under the First Agreement and not the Follow-on

on Agreement can be given application. Accordingly, the parties' obligations under Section 2.3 survived the termination of the First Agreement. Thus, notwithstanding the fact that the First Agreement has expired, as a matter of law, BellSouth and AT&T are obligated to apply the terms of the Follow-on Agreement from June 11, 2000 forward, except for the reciprocal compensation rates, which apply from June 1, 2001 forward pursuant to a separate settlement agreement.

### CONCLUSION

For all of these reasons, there is no genuine issue of material fact and BellSouth is entitled to judgment as a matter of law on the issue of whether the terms, conditions, and prices of the Follow-on Agreement apply from June 11, 2000 forward. Therefore, BellSouth requests that the Commission grant its Motion for Partial Summary Final Order and find that, pursuant to Section 2.3 of the First Agreement, BellSouth and AT&T are required to apply the terms, conditions, and prices of the Follow-on Agreement (except for the reciprocal compensation rates) from June 11, 2000 forward.

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Agreement. Thus, the only relevant fact is that the Follow-on Agreement became effective not when it became effective.



Respectfully submitted this 27th day of January, 2003.

BELLSOUTH TELECOMMUNICATIONS,  
INC.

*Nancy B. White*

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*R. Douglas Lackey*

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PC Docs 476440

**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

In re: Complaint of AT&T Communications )  
of the Southern States, LLC, Teleport )  
Telecommunications Group, Inc., and TCG ) Docket No. 020919-TP  
South Florida for Enforcement of )  
Interconnection Agreements with BellSouth ) Filed: January 27, 2003  
Telecommunications, Inc. )  
\_\_\_\_\_ )

**AFFIDAVIT OF ELIZABETH R. A. SHIROISHI**

Before me, the undersigned authority, personally appeared Elizabeth R. A. Shiroishi, who, after being duly sworn, did depose and say:

1. My name is Elizabeth R. A. Shiroishi. I am over the age of 18 and I make this Affidavit on personal knowledge. If called upon to do so, I would testify to each and every fact stated herein in open court.
2. I am employed with BellSouth Telecommunications, Inc. ("BellSouth") as Assistant Director, Interconnection Services Marketing. In this position, I am responsible for negotiating and for overseeing the negotiations of Interconnection Agreements, as well as Local Interconnection issues.
3. In 1997, BellSouth and AT&T Communications of the Southern States, LLC ("AT&T") entered into an interconnection agreement ("First Agreement"). The Florida Public Service Commission ("Commission") approved the First Agreement on June 19, 1997 in Order No. PSC-07-0724-FOF-TP.
4. The First Agreement had an effective date of June 10, 1997, and expired three years thereafter.
5. Section 2.2 of the General Terms and Conditions of the First Agreement provides that "[n]o later than one hundred and eighty (180) days prior to the expiration of [the First Agreement], the Parties agree to commence negotiations with regard to the terms, conditions, and prices of a follow on agreement for the provision of Services and Elements to be effective on or before the expiration date of [the First Agreement]."
6. Section 2.3 of the General Terms and Conditions of the First Agreement provides that, "[i]f within one hundred and thirty-five (135) days of commencing the negotiation referenced to Section 2.2 above, the Parties are unable to satisfactorily negotiate new terms, conditions and prices, either Party may petition the Commission to establish an appropriate Follow-on Agreement pursuant to 47 U.S.C. § 252. The Parties agree that in such event they shall encourage the

**Exhibit A**

Commission to issue its order regarding such Follow-on Agreement no later than the expiration date of this Agreement.”

7. Section 2.3 of the General Terms and Conditions of the First Agreement also provides that “[t]he Parties further agree that in the event the Commission does not issue its order by the expiration date of [the First Agreement], or if the Parties continue beyond the expiration date of [the First Agreement] to negotiate without the Commission intervention, the terms, conditions and prices ultimately ordered by the Commission, or negotiated by the Parties, will be effective, retroactive to the date following the expiration date of this Agreement.”
8. Section 2.3 of the General Terms and Conditions of the First Agreement further provides that “[u]ntil the Follow-on Agreement becomes effective, BellSouth shall provide Services and Elements pursuant to the terms, conditions and prices of [the First Agreement] that are then in effect.”
9. In addition, the First Agreement contains a survival provision which expressly states that “[a]ny liabilities or obligations of a Party for acts or omissions prior to the cancellation or termination of this Agreement, any obligation of a Party under the provisions regarding indemnification, Confidential Information, limitations of liability, and any other provisions of this Agreement which, by their terms, are contemplated to survive (or to be performed after) termination of this Agreement, shall survive cancellation or termination thereof.”
10. Prior to the June 10, 2000 expiration of the First Agreement and pursuant to Section 2.2 of the General Terms and Conditions of the First Agreement, AT&T and BellSouth attempted to negotiate the terms, conditions, and prices for the Follow-on Agreement.
11. The parties were not able to negotiate all of the terms of the Follow-on Agreement. Accordingly, on June 16, 2000, pursuant to Section 2.2 of the General Terms and Conditions of the First Agreement and Section 252 of the Telecommunications Act of 1996, AT&T requested that the Commission arbitrate the issues in dispute relating to the Follow-on Agreement.
12. The Commission assigned Docket No. 000731-TP to the arbitration proceeding and conducted an arbitration hearing on February 14-16, 2001. BellSouth and AT&T executed the Follow-on Agreement and the Commission approved that Agreement on December 7, 2001 in Order No. PSC-01-2357-FOF-TP.
13. The Follow-on Agreement contains an effective date “as of” October 26, 2001.

14. The Follow-on Agreement contains an integration clause which provides that the Follow-on Agreement, including the attachments, appendices and other documents referenced therein, "constitute[d] the entire Agreement between the Parties concerning the subject matter [thereof] and supersedes any prior agreements, representations, statements, negotiations, understandings, proposals or undertakings, oral or written, with respect to the subject matter expressly set forth [therein]."
15. There is no "subject matter expressly set forth" in the Follow-on Agreement that addresses or pertains to the parties' obligations under Section 2.3 of the First Agreement to apply the terms, conditions, and prices of the Follow-on Agreement from June 11, 2000 forward.
16. Further, the express subject matter of the Follow-on Agreement is the terms, conditions, and prices under which BellSouth will provide the referenced services to AT&T (and under which AT&T will provide certain services to BellSouth) during the time period to which the Follow-on Agreement applies.
17. For all of these reasons, both BellSouth and AT&T are obligated under Section 2.3 of the General Terms and Conditions of the First Agreement to apply the terms, conditions, and prices of the Follow-on Agreement from June 11, 2000 forward. However, due to a Settlement between the Parties, compensation at issue in this Complaint would only apply from July 1, 2001 forward.
18. On January 15, 2003, I submitted pre-filed direct testimony in the above-captioned proceeding, which is attached to my affidavit as Attachment 1. By reference, I am incorporating that testimony into this Affidavit, and if called upon to do so, I would testify to each and every fact and/or statement contained therein.


BY:   
ELIZABETH R. A. SHIROISHI

WITNESSED BY:



The foregoing instrument was acknowledged before me this 24th day of January, 2003 by Elizabeth R. A. Shiroishi, who produced a driver's license as identification.

NOTARY PUBLIC

Sign: 

Print: Michele F. Bixler

My Commission Expires:

(SEAL)

MICHEALE F. BIXLER  
Notary Public, Douglas County, Georgia  
My Commission Expires November 3, 2005

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BELLSOUTH TELECOMMUNICATIONS, INC.  
DIRECT TESTIMONY OF BETH SHIROISHI  
BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION  
DOCKET NO. 020919-TP  
January 15, 2003

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

A. My name is Elizabeth R. A. Shiroishi. I am employed by BellSouth as Assistant Director, Interconnection Services Marketing. My business address is 675 West Peachtree Street, Atlanta, Georgia 30375.

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

A. I graduated from Agnes Scott College in Decatur, Georgia, in 1997, with a Bachelor of Arts Degree in Classical Languages and Literature. I began employment with BellSouth in 1998, as a pricing analyst in the Interconnection Services Pricing Organization. I then moved to a position in product management, and now work as Assistant Director, Interconnection Services Marketing. In this position, I am responsible both for negotiating and for overseeing the negotiations of Interconnection Agreements, as well as Local Interconnection issues.

1 Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?

2

3 A. My testimony establishes that BellSouth has applied the appropriate charges  
4 pursuant to the definition of "Local Traffic" in the Interconnection Agreement  
5 between BellSouth and AT&T. Specifically, I testify that the Agreement is clear  
6 on its face, and it was BellSouth's intent at the time it entered into the Agreement,  
7 that calls that originated or terminated via switched access arrangements would  
8 not be included within the definition of "Local Traffic."

9

10 *Issue 1: (a) Do the terms of the Second Interconnection Agreement as defined in*  
11 *AT&T's complaint apply retroactively from the expiration date of the First*  
12 *Interconnection Agreement as defined in AT&T's complaint, June 11, 2000,*  
13 *forward? (b) If the answer to Issue 1(a) is "yes", is AT&T entitled to apply the*  
14 *reciprocal compensation rates and terms of the Second Interconnection*  
15 *Agreement only from July 1, 2001, forward?*

16

17 Q. DO THE TERMS OF THE SECOND INTERCONNECTION AGREEMENT AS  
18 DEFINED IN AT&T'S COMPLAINT APPLY FROM THE EXPIRATION  
19 DATE OF THE FIRST INTERCONNECTION AGREEMENT AS DEFINED IN  
20 AT&T'S COMPLAINT, JUNE 11, 2000, FORWARD?

21

22 A. Yes. Section 2.3 of the General Terms and Conditions of the First  
23 Interconnection Agreement states:

24 The Parties further agree that in the event the Commission does not issue  
25 its order by the expiration date of this Agreement, or if the Parties

1 continue beyond the expiration date of this Agreement to negotiate  
2 without Commission intervention, the terms, conditions and prices  
3 ultimately ordered by the Commission, or negotiated by the Parties, will  
4 be effective, retroactive to the day following the expiration date of this  
5 Agreement. Until the Follow-on Agreement becomes effective, BellSouth  
6 shall provide Services and Elements pursuant to the terms, conditions and  
7 prices of this Agreement that are then in effect.

8  
9 The First Interconnection Agreement expired on June 10, 2000 pursuant to its  
10 express terms. However, the Second Interconnection Agreement or Follow-on  
11 Agreement did not become effective until October 26, 2001. Accordingly,  
12 Section 2.3 of the First Interconnection Agreement was invoked, and the terms,  
13 conditions, and prices of the Second Interconnection Agreement apply from June  
14 11, 2000, forward.

15  
16 Q. IS AT&T ENTITLED TO APPLY THE RECIPROCAL COMPENSATION  
17 RATES AND TERMS OF THE SECOND INTERCONNECTION  
18 AGREEMENT ONLY FROM JULY 1, 2001 FORWARD?

19  
20 A. Yes. The Parties entered into a Confidential Settlement that addresses the  
21 treatment of reciprocal compensation and switched access traffic through July 1,  
22 2001. Thus, the outcome of this case will only apply from July 1, 2001, forward.

1 *Issue 2: Does the term "Local Traffic" as used in the Second Interconnection*  
2 *Agreement identified in AT&T's complaint include all "LATAwide" calls,*  
3 *including all calls originated or terminated through switched access*  
4 *arrangements as established by the state commission or FCC?*

5 *Issue 3: Under the terms of the Second Interconnection Agreement, do reciprocal*  
6 *compensation rates and terms apply to calls originated or terminated through*  
7 *switched access arrangements as established by the state commission or FCC?*

8

9 Q. DOES THE TERM "LOCAL TRAFFIC" AS USED IN THE SECOND  
10 INTERCONNECTION AGREEMENT INCLUDE ALL "LATAWIDE" CALLS,  
11 INCLUDING ALL CALLS ORIGINATED OR TERMINATED THROUGH  
12 SWITCHED ACCESS ARRANGEMENTS AS ESTABLISHED BY THE  
13 STATE COMMISSION OR FCC?

14

15 A. No.

16

17 Q. UNDER THE TERMS OF THE SECOND INTERCONNECTION  
18 AGREEMENT, DO RECIPROCAL COMPENSATION RATES AND TERMS  
19 APPLY TO CALLS ORIGINATED OR TERMINATED THROUGH  
20 SWITCHED ACCESS ARRANGEMENTS AS ESTABLISHED BY THE  
21 STATE COMMISSION OR FCC?

22

23 A. No.

24



1 Q. PLEASE EXPLAIN THE DEFINITION OF "LOCAL TRAFFIC" AS IT IS SET  
2 FORTH IN THE INTERCONNECTION AGREEMENT.

3  
4 A. Section 5.3.1.1 of Attachment 3 of the Interconnection Agreement dated July 19,  
5 2001, defines Local Traffic as follows:

6 The Parties agree to apply a "LATAwide" local concept to this  
7 Attachment 3, meaning that traffic that has traditionally been treated as  
8 intraLATA toll traffic will now be treated as local for intercarrier  
9 compensation purposes, **except for those calls that are originated or**  
10 **terminated through switched access arrangements** as established by  
11 the State Commission or FCC. (emphasis added)

12 Pursuant to this plain and unambiguous language, the Parties agreed to consider  
13 IntraLATA toll traffic as "Local Traffic" unless such traffic "*originated or*  
14 *terminated through switched access arrangements as established by the State*  
15 *Commission or FCC.*" The exclusion is specifically targeted at intraLATA  
16 traffic.

17  
18 Q. IS AT&T'S "INTERPRETATION" OF THE AGREEMENT THAT CALLS THAT  
19 ORIGINATE OR TERMINATE VIA SWITCHED ACCESS  
20 ARRANGEMENTS INCONSISTENT WITH THE EXPRESS LANGUAGE OF  
21 THE AGREEMENT?

22  
23 A. Yes. AT&T is incorrect in its allegation that all calls transported and terminated  
24 within a "LATA" ("LATAwide Traffic") are subject to the local reciprocal  
25 compensation rates set forth in the Agreement. As the language quoted above

1 plainly says, if an intraLATA call originates or terminates through switched  
2 access arrangements, then that call is excluded from the definition of Local  
3 Traffic. Such a call would be governed by BellSouth switched access tariffs and  
4 would be subject to the appropriate switched access rates. BellSouth has not  
5 breached the Interconnection Agreement by charging AT&T switched access  
6 rather than reciprocal compensation rates for intraLATA calls “originated or  
7 terminated through switched access arrangements.”  
8

9 Q. WERE YOU INVOLVED IN THE NEGOTIATION OF THE CONTRACT  
10 LANGUAGE AT ISSUE IN THIS PROCEEDING?

11  
12 A. Yes. I was very involved in the negotiation of this language with the AT&T  
13 negotiation team.  
14

15 Q. WAS THERE DISCUSSION AND NEGOTIATION REGARDING THE  
16 DEFINITION OF LOCAL TRAFFIC?

17  
18 A. Yes. AT&T and BellSouth started the negotiations of the Second Interconnection  
19 Agreement using a definition of local traffic that was similar to the definition in  
20 the First Interconnection Agreement. During the course of negotiations,  
21 BellSouth offered to AT&T a definition that it had used with other carriers. This  
22 new definition expanded what was considered local within the LATA, but still  
23 excluded minutes that traversed switched access arrangements that the carrier had  
24 purchased from BellSouth. After discussion around the meaning of the definition  
25 and the exclusion, AT&T responded to BellSouth that it would agree to this new

1 definition, but proposed a slight language change. The parties agreed upon the  
2 language and incorporated it into the agreement. There was specific discussion  
3 about the exclusion of traffic that originated or terminated through switched  
4 access arrangements.

5  
6 Q. PLEASE DISCUSS THE CHANGE IN LANGUAGE THAT THE PARTIES  
7 NEGOTIATED.

8  
9 A. BellSouth originally proposed that the exclusion language read “except for those  
10 calls that are originated or terminated through switched access arrangements as  
11 established by the ruling regulatory body.” After discussion around what was  
12 meant by “the ruling regulatory body,” the Parties modified the words to read “except  
13 for those calls that are originated or terminated through switched access  
14 arrangements as established by the State Commission or FCC.” In the course of  
15 these discussions, the Parties discussed the fact that this reference was to the  
16 switched access arrangements that are offered for purchase through each Party’s  
17 switched access tariffs, which are approved by the State Commission (for  
18 intrastate switched access) or the FCC (for interstate switched access).

19  
20 Q. WAS IT THE INTENT OF THE PARTIES TO INCLUDE AS LOCAL  
21 TRAFFIC MINUTES THAT ORIGINATED OR TERMINATED THROUGH  
22 SWITCHED ACCESS ARRANGEMENTS?

23  
24 A. Absolutely not. The exclusion was specifically written in order to exclude from  
25 the definition of local traffic calls that are considered switched access under tariff.

1 As stated above, we had extensive discussion about the exclusion of traffic that  
2 originated or terminated through switched access arrangements. In the course of  
3 those discussions, we drew diagrams on the whiteboard and discussed the role of  
4 switched access arrangements as outside the definition of local traffic. I was very  
5 surprised when AT&T informed BellSouth of its position on the definition of  
6 local traffic since we had had specific discussions about the exclusion.

7

8 Q. DOES BELLSOUTH HAVE THIS SAME DEFINITION OF LOCAL TRAFFIC  
9 IN INTERCONNECTION AGREEMENTS WITH OTHER ALECS?

10

11 A. Yes. BellSouth has multiple interconnection agreements with ALECs containing  
12 this same definition of local traffic as in the AT&T agreement, which contains the  
13 exclusion for switched access arrangements.

14

15 Q. HAS ANY OTHER ALEC INTERPRETED THIS LANGUAGE IN THE  
16 MANNER AT&T IS ATTEMPTING?

17

18 A. No.

19

20 Q. DOES BELLSOUTH HAVE AN INTERCONNECTION AGREEMENT WITH  
21 AT&T IN ANOTHER STATE THAT HAS A DEFINITION OF LOCAL  
22 TRAFFIC WHICH INCLUDES ALL TRAFFIC THAT ORIGINATES AND  
23 TERMINATES IN THE LATA?

24

1 A. Yes. In the agreement that governs the parties' relationship in Mississippi, the  
2 parties agreed that *all* calls in the LATA would be considered local. Thus, the  
3 definition simply reads: "Local Traffic means any telephone call that originates  
4 and terminates in the same LATA."

5  
6 Q. IN AT&T'S COMPLAINT ON PAGE 10, AT&T ALLEGES THAT SECTION  
7 5.3.3 STATES THAT IT IS INTERRELATED TO SECTION 5.3.1. PLEASE  
8 EXPLAIN THE REASON THAT THIS STATEMENT WAS INCLUDED IN  
9 THE AGREEMENT.

10  
11 A. Section 5.3.3 states:

12 Switched Access Traffic is defined as telephone calls requiring local  
13 transmission or switching service for the purpose of the origination or  
14 termination of Intrastate InterLATA and Interstate InterLATA traffic.  
15 Switched Access Traffic includes, but is not limited to, the following types  
16 of traffic: Feature group A, Feature Group B, Feature Group D, toll free  
17 access (e.g. 800/877/888), 900 access, and their successors. Additionally,  
18 if BellSouth or AT&T is the other party's end user's presubscribed  
19 interexchange carrier or if an end user uses BellSouth or AT&T as an  
20 interexchange carrier on a 101XXXX basis, BellSouth or AT&T will  
21 charge the other party the appropriate tariff charges for originating  
22 switched access services. The Parties have been unable to agree as to  
23 whether Voice over Internet Protocol ("VOIP") transmissions which cross  
24 local calling area boundaries constitute Switched Access Traffic.  
25

1           Notwithstanding the foregoing, and without waiving any rights with  
2           respect to either Party's position as to the jurisdictional nature of VOIP, the  
3           Parties agree to abide by any effective and applicable FCC rules and  
4           orders regarding the nature of such traffic and the compensation payable  
5           by the Parties for such traffic, if any; provided however, that any VOIP  
6           transmission which originates in one LATA and terminates in another  
7           LATA (i.e, the end-to-end points of the call), shall not be compensated as  
8           Local Traffic. This Section is interrelated to Section 5.3.1.

9  
10           The reference to the interrelationship was added as the Parties were negotiating  
11           mutually agreeable language to deal with Voice over Internet Protocol.

12  
13    Q.    DOES OTHER LANGUAGE IN ATTACHMENT 3 ADDRESS THE  
14           MIGRATION TO THIS NEW DEFINITION OF LOCAL TRAFFIC?

15  
16    A.    Yes. As stated earlier, the Parties agreed that the definition of Local Traffic in the  
17           Second Interconnection Agreement was to be different from the definition of  
18           Local Traffic in the First Interconnection Agreement. Further, the definition in  
19           the Second Interconnection Agreement related to the type of arrangement, or  
20           trunk group, that the traffic originated over or terminated through. As such, the  
21           parties included a provision in the Interconnection Trunking and Routing section  
22           (Section 3) of Attachment 3 that addressed this conversion. Section 3.1 states:

23

1           The Parties will convert all existing interconnection arrangements and  
2           trunks to the interconnection arrangements described in this Attachment in  
3           accordance with this following . . .

4  
5           The Section then goes on to give technical specifications as well as process  
6           information about starting the conversion. Further, and of important note, are the  
7           trunking arrangements described in the interconnection agreement. Sections  
8           3.3.1, 3.17.1, 3.18.1, 3.19.1, and 3.20.1 describe the trunking arrangements that  
9           are available via this interconnection agreement. The pages from these Sections  
10          are attached as exhibit ERAS-1. The descriptions of the trunking arrangements  
11          make clear that they are for local and intraLATA toll traffic, and the trunking  
12          arrangements are not the same as the switched access trunking arrangements set  
13          forth in BellSouth's tariffs. Further, there is no provision in the interconnection  
14          agreement allowing for the combination of switched access arrangements with the  
15          interconnection arrangements set forth in the interconnection agreement.

16  
17    Q.    ARE THE PROVISIONS IN THE INTERCONNECTION AGREEMENT  
18           ADDRESSING THE COMPENSATION OWED FOR TRAFFIC  
19           RECIPROCAL?

20  
21    A.    Yes. Section 5.3.1 of Attachment 3 of the Interconnection states:

22  
23           The Parties agree to apply a "LATAwide" local concept to this Attachment  
24           3, meaning that traffic that has traditionally been treated as intraLATA toll  
25           traffic will now be treated as local for intercarrier compensation purposes,

1                   except for those calls that are originated or terminated through switched  
2                   access arrangements as established by the State Commission or FCC.

3

4                   This language is written reciprocally, and thus applies to each Party equitably. To  
5                   the extent that BellSouth originated or terminated calls through switched access  
6                   arrangements as defined in the tariff, such calls would be subject to switched  
7                   access and not reciprocal compensation.

8

9    Q.           DOES THAT CONCLUDE YOUR DIRECT TESTIMONY?

10

11   A.           Yes.



**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

**In Re: Request for Arbitration ) DOCKET NO. 020919-TP**  
**Concerning Complaint of AT&T )**  
**Communications of the Southern )**  
**States, LLC, Teleport )**  
**Communications Group, Inc., and )**  
**TCG South Florida for )**  
**Enforcement of Interconnection )**  
**Agreements with BellSouth )**  
**Telecommunications, Inc. )**

**DIRECT TESTIMONY OF JEFFREY A. KING**

**ON BEHALF OF**

**AT&T COMMUNICATIONS OF THE SOUTHERN STATES, LLC,**

**TELEPORT COMMUNICATIONS GROUP, INC., AND**

**TCG SOUTH FLORIDA, INC.**

**January 15, 2003**

1 PLEASE STATE YOUR NAME, TITLE, AND BUSINESS ADDRESS.

2

3 A. My name is Jeffrey A. King. I am a District Manager in the Local  
4 Services & Access Management organization of AT&T Corp. ("AT&T").  
5 My business address is 1200 Peachtree Street, N.E., Atlanta, Georgia  
6 30309.

7

8 Q. FOR WHOM ARE YOU FILING TESTIMONY IN THIS PROCEEDING?

9

10 A. I am testifying on behalf of AT&T Communications of the Southern  
11 States, LLC, Teleport Communications Group, Inc., and TCG South  
12 Florida, Inc. (collectively referred to as "AT&T").

13

14 Q. HAVE YOU PREVIOUSLY TESTIFIED IN OTHER REGULATORY  
15 PROCEEDINGS?

16

17 A. Yes. I previously filed testimony on behalf of AT&T regarding various  
18 cost and pricing issues with public service or utility commissions in  
19 Georgia, Florida, Tennessee, North Carolina, Louisiana, Alabama,  
20 Puerto Rico and before the Federal Communications Commission  
21 ("FCC").

22

23 Q. PLEASE PROVIDE A BRIEF DESCRIPTION OF YOUR EDUCATION  
24 AND EXPERIENCE.

25

1 A. I received a Bachelor of Arts degree in Business Administration with  
2 a concentration in Industrial Administration from the University of  
3 Kentucky in 1983. I joined AT&T's Access Information Management  
4 organization in April 1986 and worked developing and testing the  
5 ordering and inventory Access Capacity Management System for  
6 electronically interfacing "High Capacity" access orders with  
7 incumbent local exchange carriers ("ILECs"). In December 1992, I  
8 joined the Access Management organization and managed  
9 customer/supplier relations on interstate access price issues,  
10 including access charge impacts and tariff terms and conditions  
11 analysis, with BellSouth Telecommunications, Inc. ("BellSouth") and  
12 Sprint LTD. In addition, my responsibilities included ILEC cost  
13 study analysis. I began supporting AT&T's efforts to enter the local  
14 services market with the implementation of the Telecommunications  
15 Act of 1996. Since July 1998, my responsibilities have included  
16 analyzing ILEC costs and recommending all cost-based prices  
17 charged by ILECs. My responsibilities also include managing the  
18 rates, terms and conditions of local interconnection and switched  
19 access tariff charges that AT&T pays to ILECs in the nine-state  
20 BellSouth region.

21  
22 Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?

23  
24 A. My testimony addresses the five (5) issues identified in the issue  
25 identification meeting held by the Florida Public Service

1 ("Commission") on November 14, 2002 regarding AT&T's Complaint  
2 filed in this proceeding.

3

4 Q. BRIEFLY DESCRIBE AT&T'S COMPLAINT IN THIS PROCEEDING.

5

6 A. AT&T's Complaint alleges that BellSouth has breached, and  
7 continues to breach, its obligation to charge AT&T local reciprocal  
8 compensation rates for the transport and termination of all "Local  
9 Traffic," including all "LATAwide Traffic," under two interconnection  
10 agreements entered into between AT&T and BellSouth pursuant to  
11 Section 251 of the Telecommunications Act of 1996, Pub. L. No. 104-  
12 104, 110 Stat. 56 ("Act") and approved by the Commission under  
13 Section 252 of the Act. Instead of charging AT&T local reciprocal  
14 compensation rates for such traffic, BellSouth has charged AT&T  
15 intrastate switched access rates for the transport and termination of  
16 certain "Local Traffic," including certain "LATAwide Traffic." By  
17 failing to charge AT&T local reciprocal compensation rates for all  
18 such traffic, AT&T alleges that BellSouth has overcharged, and  
19 continues to overcharge, AT&T for transporting and terminating all  
20 "Local Traffic," including all "LATAwide Traffic." Thus, AT&T seeks  
21 an order from the Commission directing BellSouth: (1) to issue a  
22 credit (including interest) to AT&T for all outstanding "overcharged"  
23 amounts; and (2) on a "going forward" basis, to charge AT&T local  
24 reciprocal compensation rates for BellSouth's transport and  
25 termination of such traffic.

26

1 Q. IN BELLSOUTH'S SEPTEMBER 20, 2002 ANSWER, OTHER THAN  
2 DENYING LIABILITY GENERALLY, DID BELLSOUTH DISPUTE THE  
3 AMOUNT WHICH AT&T ALLEGED IT HAD BEEN OVERCHARGED  
4 BY BELLSOUTH FROM JULY 1, 2001 THROUGH MAY 31, 2002  
5 FOR TRANSPORTING AND TERMINATING CERTAIN "LOCAL  
6 TRAFFIC," INCLUDING "LATAWIDE TRAFFIC?"

7  
8 A. No.

9  
10 Q. PLEASE DISCUSS THE TWO INTERCONNECTION AGREEMENTS AT  
11 ISSUE IN THIS PROCEEDING.

12  
13 A. The first interconnection agreement was executed by AT&T and  
14 BellSouth and approved by the Commission on June 19, 1997 in  
15 Docket No. 960833-TP ("First Interconnection Agreement"). First  
16 Interconnection Agreement was effective June 10, 1997, and was set  
17 to expire three years from its effective date of June 10, 1997, or June  
18 10, 2000. However, there was a "retroactivity" provision included in  
19 Section 2.3 of First Interconnection Agreement ("Retroactivity  
20 Provision") which provided that in the event First Interconnection  
21 Agreement expired before AT&T and BellSouth had executed another  
22 "follow-on" or "second" interconnection agreement ("Second  
23 Interconnection Agreement"), or before the Commission had issued  
24 its arbitration order in a "follow-on" or "second" arbitration, that the

1 terms subsequently agreed to by the Parties in Second  
2 Interconnection Agreement or so ordered by the Commission in any  
3 "follow-on" or "second" arbitration, would apply "retroactively" to the  
4 day following expiration of First Interconnection Agreement. First  
5 Interconnection Agreement also provided that the terms, conditions,  
6 and prices of First Interconnection Agreement would remain in effect  
7 until Second Interconnection Agreement became effective.

8  
9 On September 21, 1999, the Commission approved TCG South  
10 Florida's adoption in its entirety of First Interconnection Agreement.

11  
12 Second Interconnection Agreement was executed by AT&T and  
13 BellSouth and approved by the Commission on December 7, 2001 in  
14 Docket No. 000731-TP. Second Interconnection Agreement applied  
15 to both AT&T of the Southern States, Inc. (predecessor to AT&T of  
16 the Southern States, LLC) and TCG South Florida, Inc. By virtue of  
17 the Retroactivity Provision of First Interconnection Agreement  
18 discussed above, the terms of Second Interconnection Agreement  
19 also applied to First Interconnection Agreement as of June 11, 2000.  
20 Provisions (underlined) from both First and Second Interconnection  
21 Agreements which are relevant to this proceeding are attached  
22 hereto and incorporated herein by this reference as J. A. King  
23 Exhibit No. 1. AT&T requests that the Commission take judicial

1 notice of both First and Second Interconnection Agreements in their  
2 entirety, including those provisions found in J. A. King Exhibit No. 1.

3  
4 **ISSUE A: WHAT IS THE COMMISSION'S JURISDICTION IN THIS**  
5 **MATTER?**

6  
7 Q. DOES THE COMMISSION HAVE JURISDICTION TO GRANT THE  
8 RELIEF REQUESTED BY AT&T IN THIS PROCEEDING?

9  
10 A. Yes. The Commission has jurisdiction to enforce the terms of the  
11 Interconnection Agreements pursuant to Section 252 of the Act and  
12 Sections 364.01 and 364.162(1), Florida Statutes. Moreover, Section  
13 16 of Second Interconnection Agreement, which applied to First  
14 Interconnection Agreement as of June 11, 2000 by virtue of the  
15 Retroactivity Provision discussed above, allows AT&T to petition this  
16 Commission for a resolution of any disputes that arise as to  
17 interpretation of Second Interconnection Agreement.  
18

19 **ISSUE 1: (a) DO THE TERMS OF THE SECOND**  
20 **INTERCONNECTION AGREEMENT AS DEFINED IN AT&T'S**  
21 **COMPLAINT APPLY RETROACTIVELY FROM THE EXPIRATION**  
22 **DATE OF THE FIRST INTERCONNECTION AGREEMENT AS**  
23 **DEFINED IN AT&T'S COMPLAINT, JUNE 11, 2000, FORWARD?**

24  
25 Q. PLEASE DISCUSS WHETHER THE TERMS OF THE SECOND

1 INTERCONNECTION AGREEMENT APPLY RETROACTIVELY TO  
2 FIRST INTERCONNECTION AGREEMENT FROM JUNE 11, 2000  
3 FORWARD.

4  
5 A. As discussed above, the Retroactivity Provision found in Section 2.3  
6 of First Interconnection Agreement clearly provides that in the event  
7 First Interconnection Agreement expired before AT&T and BellSouth  
8 had executed another "follow-on" or "second" interconnection  
9 agreement, or before the Commission had issued its arbitration  
10 order in a "follow-on" or "second" arbitration, then the terms  
11 subsequently agreed to by the Parties in Second Interconnection  
12 Agreement or so ordered by the Commission in any "follow-on" or  
13 "second" arbitration, would apply "retroactively" to First  
14 Interconnection Agreement as of the day following expiration of First  
15 Interconnection Agreement. Thus, because First Interconnection  
16 Agreement expired as of June 10, 2000, the terms of Second  
17 Interconnection Agreement applied "retroactively" to First  
18 Interconnection Agreement from June 11, 2000 forward.

19  
20 Q. IN BELLSOUTH'S SEPTEMBER 20, 2002 ANSWER FILED IN THIS  
21 PROCEEDING, DID BELLSOUTH DISPUTE THE EXISTENCE OF  
22 FIRST AND SECOND INTERCONNECTION AGREEMENTS,  
23 INCLUDING ANY OF THE PROVISIONS FROM FIRST OR SECOND



1 INTERCONNECTION AGREEMENTS, OR THE APPLICATION OF THE  
2 RETROACTIVITY PROVISION OF FIRST INTERCONNECTION  
3 AGREEMENT?

4  
5 A. No.

6  
7 **ISSUE 1: (b) IF THE ANSWER TO ISSUE 1(a) IS "YES," IS AT&T**  
8 **ENTITLED TO APPLY THE RECIPROCAL COMPENSATION RATES**  
9 **AND TERMS OF THE SECOND INTERCONNECTION AGREEMENT**  
10 **ONLY FROM JULY 1, 2001, FORWARD?**

11  
12 Q. PLEASE DISCUSS WHETHER AT&T IS ENTITLED TO APPLY THE  
13 RECIPROCAL COMPENSATION RATES AND TERMS OF THE  
14 SECOND INTERCONNECTION AGREEMENT ONLY FROM JULY 1,  
15 2001, FORWARD.

16  
17 A. Although the terms of Second Interconnection Agreement apply  
18 "retroactively" to First Interconnection Agreement as of June 11,  
19 2000, AT&T and BellSouth agreed in Second Interconnection  
20 Agreement that the local reciprocal compensation rates set forth in  
21 Second Interconnection Agreement would apply to all "Local Traffic,"  
22 including all "LATAwide Traffic," beginning only July 1, 2001  
23 forward. Thus, notwithstanding that the terms of Second

1 Interconnection Agreement apply to First Interconnection Agreement  
2 as of June 11, 2000, BellSouth was not obligated to charge AT&T for  
3 the transport and termination of all "Local Traffic," including all  
4 "LATAwide Traffic" at the local reciprocal compensation rates set  
5 forth in Second Interconnection Agreement until July 1, 2001. The  
6 specific provisions from Second Interconnection Agreement which  
7 establish BellSouth's obligation as of July 1, 2001 to charge AT&T  
8 local reciprocal compensation rates for the transport and  
9 termination of all "Local Traffic," including all "LATAwide Traffic,"  
10 are discussed below in my testimony.

11

12 **ISSUE 2: DOES THE TERM "LOCAL TRAFFIC" AS USED IN THE**  
13 **SECOND INTERCONNECTION AGREEMENT IDENTIFIED IN**  
14 **AT&T'S COMPLAINT INCLUDE ALL "LATAWIDE" CALLS,**  
15 **INCLUDING ALL CALLS ORIGINATED OR TERMINATED**  
16 **THROUGH SWITCHED ACCESS ARRANGEMENTS AS**  
17 **ESTABLISHED BY THE STATE COMMISSION OR FCC?**

18

19 Q. PLEASE DISCUSS THOSE PROVISIONS OF SECOND  
20 INTERCONNECTION AGREEMENT WHICH PROVIDE THAT "LOCAL  
21 TRAFFIC" INCLUDES ALL "LATAWIDE" CALLS, EXCEPT ALL CALLS  
22 ORIGINATED OR TERMINATED THROUGH SWITCHED ACCESS  
23 ARRANGEMENTS AS ESTABLISHED BY THE STATE COMMISSION

1           OR FCC.

2

3    A.    Section 5.3.1.1 of Attachment 3 to Second Interconnection  
4           Agreement provides that with respect to intercarrier compensation  
5           relative to transporting and terminating "Local Traffic," the Parties  
6           agreed "**...to a apply a "LATAwide" local concept, meaning that**  
7           **traffic that has traditionally been treated as intraLATA toll**  
8           **would now be treated as local for intercarrier compensation,**  
9           **except for those calls that are originated or terminated**  
10          **through switched access arrangements as established by the**  
11          **State Commission or FCC."**

12

13          "Switched access arrangements" are not defined in Second  
14          Interconnection Agreement. Rather, Section 5.3.3 of Attachment 3  
15          to Second Interconnection Agreement contains a definition for  
16          **"Switched Access Traffic" to which, by definition, switched**  
17          **access charges may apply.** In this Section, "Switched Access  
18          Traffic" is defined as "... telephone calls requiring local transmission  
19          or switching services for the purpose of the origination or  
20          termination of Intrastate InterLATA and Interstate InterLATA traffic."  
21          Thus, consistent with the "LATAwide" concept for "Local Traffic" as  
22          set forth in Section 5.3.1.1, the definition of "Switched Access  
23          Traffic" also set forth in Section 5.3.3 does not include any

1 "LATAwide Traffic."

2  
3 Moreover, with respect to the definition of "Switched Access Traffic"  
4 as set forth in Section 5.3.3, this is the only type of traffic for which  
5 switched access charges apply under Second Interconnection  
6 Agreement. All other traffic is to be treated as "Local Traffic" and  
7 compensated at local reciprocal compensation rates. Moreover, to  
8 reiterate that "switched access arrangements as established by the  
9 State Commission or FCC" as used in Section 5.3.1.1 track the  
10 definition of "Switched Access Traffic" in Section 5.3.3, the Parties  
11 also agreed in Section 5.3.3 (again the Section which defines  
12 "Switched Access Traffic") that ***[t]his Section is interrelated to***  
13 ***Section 5.3.1.1.*** As discussed above, Section 5.3.1.1 provided that  
14 "...the Parties agree to apply a 'Latawide' local concept to this  
15 Attachment 3, meaning that traffic that has traditionally been  
16 treated as intraLATA toll traffic will now be treated as local for  
17 intercarrier compensation purposes, except for those calls that are  
18 originated or terminated through switched access arrangements as  
19 established by the State Commission or FCC."

20  
21 Q. HAS BELLSOUTH FILED TESTIMONY IN ANY OTHER STATE  
22 REGARDING THE "INTERRELATED" LANGUAGE OF SECTION 5.3.3  
23 DISCUSSED ABOVE (REGARDING THE DEFINITION OF SWITCHED

1 ACCESS TRAFFIC) IN WHICH IT DISPUTES THAT THE DEFINITION  
2 OF SWITCHED ACCESS TRAFFIC APPLIED TO THE PARTIES'  
3 AGREEMENT TO ADOPT A "LATAWIDE CONCEPT" WITH RESPECT  
4 TO THE TRANSPORT AND TERMINATION OF "LOCAL TRAFFIC?"  
5

6 A. Yes. In a similar proceeding in North Carolina, on  
7 December 18, 2002, BellSouth filed the Direct Testimony of  
8 Elizabeth R.A. Shiroishi. In that testimony, Ms. Shiroishi stated that  
9 the "interrelated" language of Section 5.3.3 (which includes the only  
10 definition of "Switched Access Traffic" found anywhere in Second  
11 Interconnection Agreement) was included in Second Interconnection  
12 Agreement "... as the Parties were negotiating mutually agreeable  
13 language to deal with Voice Over Internet Protocol" traffic, thus  
14 implying that there was no "interrelationship" between the definition  
15 of "Switched Access Traffic" in Section 5.3.3 and the use of the term  
16 "Local Traffic" or "LATAwide concept" as used in Section 5.3.1.1.<sup>1</sup>  
17

18 Q. IS MS. SHIROISHI'S "INTERPRETATION" OF THE "INTERRELATED"  
19 LANGUAGE OF SECTION 5.3.3 CREDIBLE?  
20  
21

---

<sup>1</sup> North Carolina Utilities Commission, Docket No. P-55; Sub 1376; Direct Testimony of Elizabeth R. A. Shiroishi filed December 18, 2002, at Pages 8-9.

1 A. Absolutely not. A review of the entirety of Section 5.3.3 shows that  
2 Ms. Shiroishi's "implication" that the "interrelated language" of  
3 Section 5.3.3 applied only to Voice Over Internet Protocol traffic  
4 violates all proper rules of contract construction and interpretation.  
5 Importantly, the "interrelated" language of Section 5.3.3 uses the  
6 term "Section" with a capital "S," meaning that **all of the language**  
7 **included in Section 5.3.3 is interrelated to Section 5.3.1.1**, and  
8 not just the last two sentences of the Section as implied by Ms.  
9 Shiroishi. Specifically, Section 5.3.3 states in its entirety:

10 ***"Switched Access Traffic is defined as telephone***  
11 ***calls requiring local transmission or switching***  
12 ***service for the purpose of the origination or***  
13 ***termination of Intrastate InterLATA traffic.***

14 Switched Access Traffic includes, but it not limited to,  
15 the following types of traffic: Feature Group A, Feature  
16 Group B, Feature Group D, toll free access (e.g.  
17 800/877/888), 900 access, and their successors.  
18 Additionally, if BellSouth or AT&T is the other party's  
19 end user's presubscribed interexchange carrier or if an  
20 end user uses BellSouth or AT&T as an interexchange  
21 carrier on a 101XXXX basis, BellSouth or AT&T will  
22 charge the other party the appropriate tariff charges  
23 for originating switched access services. The Parties

1           have been unable to agree as to whether Voice over  
2           Internet Protocol ("VOIP") transmissions which cross  
3           local calling area boundaries constitute Switched  
4           Access Traffic. Notwithstanding the foregoing, and  
5           without waiving any rights with respect to either  
6           Party's position as to the jurisdictional nature of VOIP,  
7           the Parties agree to abide by the any effective and  
8           applicable FCC rules and orders regarding the nature  
9           of such traffic and the compensation payable by the  
10          Parties for such traffic, if any; provided, however, that  
11          any VOIP transmission which originates in one LATA  
12          and terminates in another LATA (i.e., the end-to-end  
13          points of the call), shall not be compensated as Local  
14          Traffic. ***This Section is interrelated to Section***  
15          ***5.3.1.1."***

16  
17 Q.    WHEN PROPER RULES OF CONTRACT CONSTRUCTION AND  
18        INTERPRETATION ARE APPLIED, WHAT DOES THE LANGUAGE OF  
19        SECTION 5.3.3 THAT "THIS SECTION IS INTERRELATED TO  
20        SECTION 5.3.1.1" MEAN RELATIVE TO DETERMINING WHICH  
21        TRAFFIC WOULD BE SUBJECT TO LOCAL RECIPROCAL  
22        COMPENSATION RATES AND WHICH TRAFFIC WOULD BE  
23        SUBJECT TO SWITCHED ACCESS RATES?"

1 A. Clearly, as Section 5.3.1.1 specifically provides, with respect to  
2 intercarrier compensation relative to transporting and terminating  
3 “Local Traffic,” the Parties agreed “ ...to a apply a ‘LATAwide’ local  
4 concept, meaning that traffic that has traditionally been treated as  
5 intraLATA toll would now be treated as local for intercarrier  
6 compensation, except for those calls that are originated or  
7 terminated through switched access arrangements as established by  
8 the State Commission or FCC.” Thus, when Section 5.3.1.1 is read  
9 together with its “interrelated” Section 5.3.3, the language “ ... except  
10 those calls that are originated or terminated through switched  
11 access arrangements as established by the State Commission or  
12 FCC,” clearly means Intrastate InterLATA calls (because these calls  
13 are subject to jurisdiction of the “State Commission”) and Interstate  
14 InterLATA calls (because these calls are subject to the jurisdiction of  
15 the “FCC”). This interpretation is correct and appropriate because  
16 Section 5.3.3 contains the only definition of “Switched Access Traffic”  
17 found in Second Interconnection Agreement to which, by definition,  
18 switched access charges may apply. As provided in this Section,  
19 “Switched Access Traffic” is defined as “ ... telephone calls requiring  
20 local transmission or switching services for the purpose of the  
21 origination or termination of Intrastate InterLATA and Interstate  
22 InterLATA traffic.” Thus, by virtue of the “interrelatedness” of the  
23 definition of “Switched Access Traffic” as found in this Section 5.3.3



1 to the "LATAwide" local concept language found in Section 5.3.1.1,  
2 the language in Section 5.3.1.1 "... except those calls that are  
3 originated or terminated through switched access arrangements as  
4 established by the State Commission or FCC," clearly means  
5 Intrastate InterLATA calls (because these calls are subject to  
6 jurisdiction of the "State Commission") and Interstate InterLATA  
7 calls (because these calls are subject to the jurisdiction of the  
8 "FCC").

9  
10 Q. HOW CAN ANY "LATAWIDE" TRAFFIC EVER BE CONSIDERED  
11 INTRASTATE INTERLATA OR INTERSTATE INTERLATA TRAFFIC,  
12 THUS SUPPORTING YOUR POSITION THAT THE LANGUAGE "...  
13 EXCEPT THOSE CALLS THAT ARE ORIGINATED OR TERMINATED  
14 THROUGH SWITCHED ACCESS ARRANGEMENTS AS  
15 ESTABLISHED BY THE STATE COMMISSION OR FCC..." AS FOUND  
16 IN SECTION 5.3.1.1 TRACKS EXACTLY THE DEFINITION OF  
17 SWITCHED ACCESS TRAFFIC (WHICH IS LIMITED TO INTRASTATE  
18 INTERLATA AND INTERSTATE INTRALATA CALLS) IN SECTION  
19 5.3.3?

20  
21 A. BellSouth repeatedly has taken the position in prior regulatory  
22 proceedings that certain calls, even those within a LATA, are not  
23 local calls or even intraLATA calls. One example is BellSouth's

1 position that "dial up" calls to ISP providers that are dialed by using  
2 a local dialing pattern (7 or 10 digits) by a calling party in one LATA  
3 to an ISP in the same LATA are predominately interstate calls and  
4 thus not subject to local reciprocal compensation rates.<sup>2</sup> Another  
5 example is BellSouth's position regarding Voice Over Internet  
6 Protocol where BellSouth has argued that, to the extent " ... calls  
7 provided via Internet Protocol Telephony are long distance calls,  
8 access charges should apply."<sup>3</sup>

9  
10 Q. WHAT DOES SECTION 5.3.3 OF EXHIBIT 1 TO SECOND  
11 AMENDMENT TO SECOND INTERCONNECTION AGREEMENT  
12 PROVIDE?

13  
14 A. This Section provides the local reciprocal compensation rates which  
15 apply to all "Local and ISP Traffic." These rates are as follows:

16 5.3.3.1 Commencing on July 1, 2001, and continuing  
17 until December 31, 2001, \$.0015 per minute of  
18 use;

19 5.3.3.2 Commencing on January 1, 2002, and  
20 continuing until June 30, 2003, \$.0010 per

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<sup>2</sup> Direct Testimony of Elizabeth R. A. Shiroishi on behalf of BellSouth Telecommunications, Inc. at Page 2, filed on December 1, 2000, in Docket No. 000075-TP, before the Florida Public Service Commission.

<sup>3</sup> Direct Testimony of John A. Ruscilli on behalf of BellSouth Telecommunications, Inc. at Page 47, filed on March 12, 2001, in Docket No. 000075-TP (Phase II), before the Florida Public Service Commission.

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minute of use;

5.3.3.3 Commencing on July 1, 2003, and continuing until June 30, 2004, or until further FCC action (whichever is later), \$.0007 per minute of use.

Q. BASED ON THE FOREGOING, DOES THE TERM "LOCAL TRAFFIC" AS USED IN THE SECOND INTERCONNECTION AGREEMENT INCLUDE ALL "LATAWIDE TRAFFIC," INCLUDE ALL CALLS ORIGINATED OR TERMINATED THROUGH SWITCHED ACCESS ARRANGEMENTS AS ESTABLISHED BY THE STATE COMMISSION OR FCC?

A. Yes, except for "LATAwide Traffic" that meet the definition of Switched Access Traffic (Intrastate InterLATA and Interstate InterLATA traffic) as set forth in Section 5.3.3 and as discussed above.

**ISSUE 3: UNDER THE TERMS OF THE SECOND INTERCONNECTION AGREEMENT, DO RECIPROCAL COMPENSATION RATES AND TERMS APPLY TO CALLS ORIGINATED OR TERMINATED THROUGH SWITCHED ACCESS ARRANGEMENTS AS ESTABLISHED BY THE STATE COMMISSION OR FCC?**

1 Q. BASED ON YOUR DISCUSSION OF ISSUE 2, DO LOCAL  
2 RECIPROCAL COMPENSATION RATES APPLY TO CALLS  
3 ORIGINATED OR TERMINATED THROUGH SWITCHED ACCESS  
4 ARRANGEMENTS AS ESTABLISHED BY THE STATE COMMISSION  
5 OR FCC?

6  
7 A. Yes, except for "LATAwide Traffic" that meets the definition of  
8 Switched Access Traffic (Intrastate InterLATA or Interstate InterLATA  
9 traffic) as set forth in Section 5.3.3 and as discussed above. With  
10 respect to intercarrier compensation relative to transporting and  
11 terminating "Local Traffic," in Section 5.3.1.1 the Parties agreed "  
12 ...to apply a "LATAwide" local concept, meaning that traffic that  
13 has traditionally been treated as intraLATA toll would now be treated  
14 as local for intercarrier compensation, except for those calls that are  
15 originated or terminated through switched access arrangements as  
16 established by the State Commission or FCC." When Section  
17 5.3.1.1 is read together with its "interrelated" Section 5.3.3, the  
18 language " ... except those calls that are originated or terminated  
19 through switched access arrangements as established by the State  
20 Commission or FCC," clearly means Intrastate InterLATA calls  
21 (because these calls are subject to jurisdiction of the "State  
22 Commission") and Interstate InterLATA calls (because these calls are  
23 subject to the jurisdiction of the "FCC"). This interpretation is

1 correct and appropriate because Section 5.3.3 contains the only  
2 definition of "Switched Access Traffic" found in Second  
3 Interconnection Agreement to which, by definition, switched access  
4 charges may apply. As provided in this Section, "Switched Access  
5 Traffic" is defined as "... telephone calls requiring local transmission  
6 or switching services for the purpose of the origination or  
7 termination of Intrastate InterLATA and Interstate InterLATA traffic."  
8 Thus, by virtue of the "interrelatedness" of the definition of "Switched  
9 Access Traffic" as found in this Section 5.3.3 to the "LATAwide" local  
10 concept language found in Section 5.3.1.1, the language in Section  
11 5.3.1.1 "... except those calls that are originated or terminated  
12 through switched access arrangements as established by the State  
13 Commission or FCC," clearly means Intrastate InterLATA calls  
14 (because these calls are subject to jurisdiction of the "State  
15 Commission") and Interstate InterLATA calls (because these calls are  
16 subject to the jurisdiction of the "FCC").

17  
18 Q. IN ITS ANSWER FILED IN THIS PROCEEDING, DID BELLSOUTH  
19 RELY UPON THE LANGUAGE IN SECTION 5.3.1.1 REGARDING  
20 "CALLS ORIGINATED OR TERMINATED THROUGH SWITCHED  
21 ACCESS ARRANGEMENTS AS ESTABLISHED BY THE STATE  
22 COMMISSION OR FCC" TO ASSERT THAT IT HAD NO OBLIGATION  
23 TO CHARGE AT&T LOCAL COMPENSATION RATES FOR

1 TRANSPORTING AND TERMINATING ALL "LOCAL TRAFFIC,"  
2 INCLUDING ALL "LATAWIDE TRAFFIC" ?

3

4 A. Yes, but only by taking language in Sections 5.3.1.1 and 5.3.3 out of  
5 context and using improper rules of contract construction and  
6 interpretation.

7

8 Q. WHAT SUPPORTS YOUR POSITION THAT BELLSOUTH HAS TAKEN  
9 LANGUAGE IN SECTIONS 5.3.1.1 AND 5.3.3 OUT OF CONTEXT?

10

11 A. As discussed above, Section 5.3.3 (which follows Section 5.3.1.1)  
12 clearly defines "Switched Access Traffic" as being limited to  
13 "Intrastate InterLATA" and "Interstate InterLATA" calls and does not  
14 include other types of calls, including any "IntraLATA" or "LATAwide  
15 Traffic." Moreover, also as discussed above, at the end of Section  
16 5.3.3, there is clear language that Section 5.3.3 is "interrelated" to  
17 Section 5.3.1.1 which establishes a "LATAwide" local concept for  
18 purposes of intercarrier compensation. Thus the language found in  
19 Section 5.3.1.1 " ... except those calls that are originated or  
20 terminated through switched access arrangements as established by  
21 the State Commission or FCC," tracks precisely the definition of  
22 "Switched Access Traffic" as found in Section 5.3.3. Obviously, the "  
23 ... except those calls that are originated or terminated through

1 switched access arrangements as established by the State  
2 Commission ... ” means “Intrastate InterLATA” calls (over which the  
3 State Commission has jurisdiction) and the language “ ... except  
4 those calls that are originated or terminated through switched  
5 access arrangements as established by the ... FCC” means  
6 “Interstate InterLATA” calls (over which the FCC has jurisdiction).

7  
8 Q. IS THERE OTHER SUPPORT FOR AT&T'S POSITION THAT  
9 BELLSOUTH HAS TAKEN THIS LANGUAGE IN SECTION 5.3.1.1  
10 OUT OF CONTEXT?

11  
12 A. Yes. By definition, switched access charges only can be charged for  
13 transporting and terminating “Switched Access Traffic.” Again, as  
14 discussed above, Section 5.3.3 contains a very clear and  
15 unambiguous definition of “Switched Access Traffic.” However,  
16 BellSouth completely ignores this explicit definition as well as  
17 misconstrues the other language in Section 5.3.3 which specifically  
18 states that “[t]his Section [5.3.3] [definition of “Switched Access  
19 Traffic”] is interrelated to Section 5.3.1.1 [“LATAwide” local concept].  
20 It could not be clearer that these two Sections are to be “read  
21 together.” Yet despite this clear language, BellSouth totally ignores  
22 Section 5.3.3 and its definition of “Switched Access Traffic.”  
23 Accordingly, BellSouth also clearly ignores that Section 5.3.3's

1 definition of "Switched Access Traffic" means that BellSouth's  
2 switched access rates only would apply to InterLATA calls—  
3 Intrastate and/or Interstate—but not calls that are "IntraLATA,"  
4 "within the LATA, or "LATAwide Traffic."

5

6 Q. IS SECTION 5.3.3 THE ONLY PLACE IN SECOND  
7 INTERCONNECTION AGREEMENT WHERE "SWITCHED ACCESS  
8 TRAFFIC" IS DEFINED?

9

10 A. Yes.

11

12 Q. DOES THE DEFINITION OF "SWITCHED ACCESS TRAFFIC" IN  
13 SECTION 5.3.3 INCLUDE ANY INTRALATA OR "LATAWIDE  
14 TRAFFIC?"

15

16 A. Absolutely not. Rather, to the contrary the definition of "Switched  
17 Access Traffic" as set forth in Section 5.3.3 includes only "InterLATA"  
18 traffic and does not include any "IntraLATA" or "LATAwide Traffic."

19

20 Q. IS THERE LANGUAGE IN SECOND INTERCONNECTION  
21 AGREEMENT WHICH PROVIDES THAT BELLSOUTH IS ENTITLED  
22 TO CHARGE AT&T SWITCHED ACCESS RATES, RATHER THAN  
23 LOCAL RECIPROCAL COMPENSATION RATES, FOR "LATAWIDE



1 TRAFFIC" TRANSPORTED AND TERMINATED THROUGH  
2 "SWITCHED ACCESS ARRANGEMENTS AS ESTABLISHED BY THE  
3 STATE COMMISSION OR FCC?"

4

5 A. No.

6

7 Q. HAS BELLSOUTH FILED TESTIMONY IN ANY OTHER STATE  
8 ASSERTING THAT LANGUAGE OTHER THAN IS FOUND IN  
9 SECTIONS 5.3.1.1 AND 5.3.3 GOVERNS ITS OBLIGATION TO  
10 CHARGE AT&T LOCAL RECIPROCAL COMPENSATION RATES FOR  
11 THE TRANSPORT AND TERMINATION OF "LOCAL TRAFFIC,"  
12 INCLUDING ALL "LATAWIDE TRAFFIC?"

13

14 A. Yes. In Ms. Shiroishi's Direct Testimony filed December 18, 2002 in  
15 the North Carolina proceeding discussed above, Ms. Shiroishi states  
16 that the "...definition of [Local Traffic] in Second Interconnection  
17 Agreement related to the type of arrangement, or trunk group, that  
18 the traffic originated over or terminated through."

19

20 Q. IS THERE ANY SUCH LANGUAGE IN SECOND INTERCONNECTION  
21 AGREEMENT, AS MS. SHIROISHI'S STATED IN NORTH CAROLINA,  
22 WHICH PROVIDES THAT "LOCAL TRAFFIC" IS DEPENDENT UPON,  
23 RELATED TO, OR CONDITIONED UPON, THE TYPE OF TRUNK

1 ARRANGEMENT OR TRUNK GROUP THAT THE TRAFFIC  
2 ORIGINATED OVER OR TERMINATED THROUGH?

3  
4 A. Absolutely not. This is yet another BellSouth attempt to avoid the  
5 express provisions of Sections 5.3.1.1 and 5.3.3 of Second  
6 Interconnection Agreement which require BellSouth to charge AT&T  
7 local reciprocal compensation rates for the transport and  
8 termination of "Local Traffic," including all "LATAwide Traffic."

9  
10 **ISSUE 4: IF THE ANSWER TO ISSUE 3 IS "YES," HAS**  
11 **BELLSOUTH BREACHED THE SECOND INTERCONNECTION**  
12 **AGREEMENT?**

13  
14 Q. HAS BELLSOUTH BREACHED SECOND INTERCONNECTION  
15 AGREEMENT? IF SO, IN WHAT MANNER?

16  
17 A. Yes. Second Interconnection Agreement (the terms of which apply to  
18 First Interconnection Agreement as of June 11, 2000 by virtue of the  
19 Retroactivity Provision of First Interconnection Agreement) clearly  
20 provides that BellSouth and AT&T are to transport and terminate  
21 each other's "Local Traffic" at the local reciprocal compensation rates  
22 set forth in the Second Interconnection Agreement. With respect to  
23 defining "Local Traffic," Second Interconnection Agreement clearly

1 provides that the parties agreed to apply a "LATAwide" concept  
2 thereto, meaning that **all** calls transported and terminated within a  
3 "LATA" ("LATAwide Traffic"), would be subject to the local reciprocal  
4 compensation rates set forth in Second Interconnection Agreement.  
5 However, BellSouth has refused to apply local reciprocal  
6 compensation rates to **all** "Local Traffic," including all "LATAwide  
7 Traffic," and instead has applied BellSouth's switched access rates to  
8 certain "Local Traffic."

9  
10 Q. NOTWITHSTANDING BELLSOUTH'S BREACH OF SECOND  
11 INTERCONNECTION AGREEMENT, HAS AT&T CHARGED  
12 BELLSOUTH FOR TRANSPORTING AND TERMINATING  
13 BELLSOUTH'S "LOCAL TRAFFIC," INCLUDING ALL "LATAWIDE"  
14 TRAFFIC" AT LOCAL RECIPROCAL COMPENSATION RATES UNDER  
15 SECOND INTERCONNECTION AGREEMENT?

16  
17 A. Yes. AT&T charges BellSouth the local reciprocal compensation  
18 rates agreed to by the Parties and set forth in Section 5.3.3 of  
19 Exhibit 1 to Second Interconnection Agreement, and not switched  
20 access rates, for all "Local Traffic," including all "LATAwide Traffic,"  
21 which AT&T transports and terminates for BellSouth. Specifically,  
22 having implemented the "LATAwide" concept for "Local Traffic" as  
23 required by Second Interconnection Agreement, AT&T charges

1 BellSouth local reciprocal compensation rates for all "Local Traffic,"  
2 including all "LATAwide Traffic."

3  
4 Q. IS BELLSOUTH AWARE THAT AT&T CHARGES BELLSOUTH LOCAL  
5 RECIPROCAL COMPENSATION RATES, RATHER THAN SWITCHED  
6 ACCESS RATES, FOR ALL "LOCAL TRAFFIC," INCLUDING ALL  
7 BELLSOUTH "LATAWIDE TRAFFIC," WHILE BELLSOUTH REFUSES  
8 TO DO THE SAME FOR AT&T ON A RECIPROCAL BASIS?

9  
10 A. Yes.

11  
12 Q. HAS BELLSOUTH EVER OFFERED TO PAY AT&T SWITCHED  
13 ACCESS RATES, RATHER THAN LOCAL RECIPROCAL  
14 COMPENSATION RATES, FOR AT&T'S TRANSPORT AND  
15 TERMINATION OF BELLSOUTH'S "LOCAL TRAFFIC," INCLUDING  
16 ALL BELLSOUTH "LATAWIDE TRAFFIC?"

17  
18 A. No. Once Second Interconnection Agreement was executed by AT&T  
19 and BellSouth, AT&T began updating its billing systems to charge  
20 BellSouth the local reciprocal compensation rates set forth in Second  
21 Interconnection Agreement for transporting and terminating all  
22 "Local Traffic," including all "LATAwide Traffic." AT&T's compliance  
23 specifically included providing a credit to BellSouth in order to fully

1       comply with the obligations of the Parties under Second  
2       Interconnection Agreement to reciprocally charge each other the  
3       local compensation rates set for in Second Interconnection  
4       Agreement for the transport and termination of all "Local Traffic,"  
5       including all "LATAwide Traffic."

6  
7       **ISSUE 5: IF THE ANSWER TO ISSUE 4 IS "YES," WHAT**  
8       **REMEDIES ARE APPROPRIATE?**

9  
10    Q.    IS AT&T ENTITLED TO RECEIVE, AND IS BELLSOUTH OBLIGATED  
11       TO PROVIDE, A CREDIT (INCLUDING INTEREST) FOR AMOUNTS  
12       WHICH BELLSOUTH HAS OVERCHARGED AT&T FOR FAILURE TO  
13       TRANSPORT AND TERMINATE ALL "LOCAL TRAFFIC," INCLUDING  
14       ALL "LATAWIDE TRAFFIC" AT LOCAL RECIPROCAL  
15       COMPENSATION RATES?

16  
17    A.    Yes. Credits and late payments for improper billings clearly are  
18       allowed under Sections 1.14, 1.15, and 1.16 of Attachment 6 of  
19       Second Interconnection Agreement. Sections 1.14, 1.15, and 1.16 of  
20       Attachment 6 of Second Interconnection Agreement are attached  
21       hereto as J. A. King Exhibit No. 2. Through October 2002, BellSouth  
22       has overcharged AT&T \$6,310,425 for transporting and terminating  
23       certain "Local Traffic," including certain "LATAwide Traffic" at

1 switched access rates, and not at local compensation rates as  
2 required in Second Interconnection Agreement. Regarding the  
3 specifics of this increased overcharged amount, attached hereto and  
4 incorporated by this reference is J. A. King Exhibit No. 3 which  
5 updates Exhibit 4 to AT&T's Complaint. To the extent BellSouth  
6 continues to overcharge AT&T for transporting and terminating all  
7 "Local Traffic," including certain "LATAwide Traffic," J. A. King  
8 Exhibit No. 3 will need to be updated at the time of the hearing in  
9 this proceeding. BellSouth also owes AT&T interest on all  
10 overcharged amounts at the rate of one and one half percent (1 and  
11 ½%) per month from July 1, 2001 until the date such overcharges  
12 are paid by BellSouth to AT&T. Such interest is not included in J. A.  
13 King Exhibit No. 3.

14  
15 Q. IN ADDITION TO CREDITS (AND INTEREST), WHAT OTHER  
16 REMEDIES ARE APPROPRIATE FOR AT&T IN THIS PROCEEDING?

17  
18 A. AT&T entitled to a declaratory ruling from the Commission that  
19 BellSouth is obligated to charge AT&T for the transport and  
20 termination of all "Local Traffic," including all "LATAwide Traffic," at  
21 local reciprocal compensation rates, on a forward going basis. AT&T  
22 should not be forced to bring complaints against BellSouth regarding  
23 this issue in order to have BellSouth transport and terminate such

1 traffic at the appropriate rates, nor should the Commission's  
2 resources be wasted on such efforts. ...

3 Q. DOES THIS CONCLUDE YOUR TESTIMONY?

4

5 A. Yes.

EXHIBIT "C"

WOMBLE  
CARLYLE  
SANDRIDGE  
& RICE  
A PROFESSIONAL LIMITED  
LIABILITY COMPANY

One Atlantic Center  
1201 West Peachtree Street  
Suite 3500  
Atlanta, GA 30309

Telephone: (404) 872-7000  
Fax: (404) 888-7490  
Web site: www.wcsr.com

Loretta A. Cecil  
Direct Dial: (404) 888-7387  
Direct Fax: (404) 870-4826  
E-mail: lcecil@wcsr.com

August 26, 2002

VIA HAND DELIVERY

Mrs. Blanca S. Bayo  
Director, Division of the Commission Clerk  
and Administrative Services  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, FL 32399

020919-TP

Re: Complaint of AT&T Communications of the Southern  
States, LLC, Teleport Communications Group, Inc., and  
TCG South Florida For Enforcement of Interconnection  
Agreements with BellSouth Telecommunications, Inc.

Dear Mrs. Bayo:

Enclosed is an original and fifteen copies of Complaint of AT&T  
Communications of the Southern States, LLC, Teleport Communications  
Group, Inc., and TCG South Florida For Enforcement of Interconnection  
Agreements with BellSouth Telecommunications, Inc.

Please stamp two (2) copies of the Complaint in the usual manner and  
return to us via our courier.

If you have any questions, please do not hesitate to contact me at  
404-888-7437.

Sincerely yours,

*Loretta A. Cecil*  
Loretta A. Cecil

RECEIVED

AUG 28 2002

Enclosure(s)

DIRECTOR-REG. RELATIONS  
TALLAHASSEE, FL



**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

In Re: Complaint Of AT&T Communications )  
Of The Southern States, LLC, Teleport ) Docket No. \_\_\_\_\_  
Telecommunications Group, Inc., And TCG )  
South Florida For Enforcement of ) Filed: August 26, 2002  
Interconnection Agreements With BellSouth )  
Telecommunications, Inc. )  
\_\_\_\_\_ )

**COMPLAINT OF AT&T COMMUNICATIONS OF THE SOUTHERN STATES, LLC, TELEPORT COMMUNICATIONS GROUP, INC., AND TCG SOUTH FLORIDA FOR ENFORCEMENT OF INTERCONNECTION AGREEMENTS WITH BELL SOUTH TELECOMMUNICATIONS, INC.**

AT&T Communications of the Southern States, LLC ("AT&T"), Teleport Communications Group, Inc., and TCG South Florida (hereinafter referred to collectively as "AT&T"), by and through their undersigned counsel, and pursuant to Section 364.01, Florida Statutes, and Rule 25-22.036(2), Florida Administrative Code, and 47 U.S.C. §§251(b)(5) and 252(d)(2) of the Telecommunications Act of 1996 ("Act"),<sup>1</sup> hereby files this Complaint against BellSouth Telecommunications, Inc. ("BellSouth") for BellSouth's breach of its obligation to charge AT&T at reciprocal compensation rates for the transport and termination of local traffic under two interconnection agreements entered into between AT&T and BellSouth pursuant to Section 251 of the Act and approved by the Florida Public Service Commission

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<sup>1</sup> Pub. L. No. 104-104, 110 Stat. 56, amending 47 U.S.C. Section 201, Communications Act of 1934. When referring to the 1996 Act in this Complaint, AT&T will use only the 1996 Act's Section numbers(s) without further reference to the U.S. Code.

("Commission") under Section 252 of the Act (collectively "Interconnection Agreements").<sup>2</sup>

**I. PARTIES**

1. The complete name and address of the Complainant is:

AT&T Communications of the Southern States, LLC  
1200 Peachtree Street, NE  
Suite 8100  
Atlanta, GA 30309

Teleport Communications Group, Inc.  
TCG South Florida  
1 East Broward Boulevard  
Suite 910  
Fort Lauderdale, FL 33301  
(954) 453-4200 (Telephone)  
(954) 453-4444 (Fax)

2. All pleadings, notices, staff recommendations, orders and other documents filed or served in this docket should be served upon the following on behalf of AT&T:

Loretta A. Cecil, Esq.  
Florida Bar No. 358983  
Womble Carlyle Sandridge & Rice PLLC  
1201 West Peachtree Street  
Suite 3500  
Atlanta, GA 30309  
(404) 888-7437 (telephone)  
(404) 870-4826 (facsimile)

With copies sent to:

---

<sup>2</sup> The "effective time periods" and other relevant terms and conditions of the Interconnection Agreements which are the subject of this Complaint are set forth in Paragraphs 9 through 18 below. Throughout this Complaint, AT&T will refer to the Interconnection Agreements individually as "First Interconnection Agreement" and "Second Interconnection Agreement," and collectively as the "Interconnection Agreements."

Virginia Tate, Esq.  
AT&T Communications of the Southern States, LLC  
1200 Peachtree Street, N.E.  
Suite 8100  
Atlanta, Georgia 30309

3. AT&T Communications of the Southern States, LLC is authorized to provide local exchange telecommunications services in the State of Florida pursuant to "Alternative Local Exchange Telecommunications Certificate No. 4037" issued by Order of the Commission on May 7, 1996. Teleport Communications Group, Inc. is the holding company parent of TCG South Florida. TCG South Florida is authorized to provide local exchange telecommunications service in the State of Florida pursuant to "Alternative Local Exchange Telecommunications Certificate No. 3519" issued by Order of the Commission to TCG on October 19, 1995.

4. The complete name and principal place of business of Respondent is:

BellSouth Telecommunications, Inc.  
150 West Flagler Street  
Suite 1910  
Miami, Florida 33130.

5. BellSouth is a "local exchange telecommunications company" as defined in Section 364.02(2), Florida Statutes, and certificated by the Commission to provide local exchange telecommunications service within

the State of Florida. BellSouth also is an "incumbent local exchange carrier" as defined in Section 251(h)(1) of the Act.

## **II. SUMMARY OF RELIEF REQUESTED**

6. AT&T asks the Commission to declare, and find, that:

(a) "local traffic" ("Local Traffic"), as that term is used in Second Interconnection Agreement, includes all "LATAwide" calls, meaning all calls within a local access and transport area as defined in Section 3(a)(1)(2)(43) of the Act ("LATAwide Traffic");

(b) the reciprocal compensation rates set forth in Section 5.3.3 of Exhibit 1 to First Amendment to Second Interconnection Agreement ("Reciprocal Compensation Rates") apply to all Local Traffic (including LATAwide Traffic) transported and terminated by BellSouth for AT&T;

(c) BellSouth's switched access rates ("Switched Access Rates") apply only to calls requiring transmission or switching services for the purposes of the origination and termination of intrastate interLATA and interstate interLATA calls ("Switched Access Traffic");

(d) all terms of Second Interconnection Agreement (including, specifically, the definitions of Local Traffic and Switched Access Traffic as set forth in Paragraph 6(a) and 6(c) above and the Reciprocal Compensation Rates set forth in Paragraph 6(b) above) apply retroactively to First Interconnection Agreement from June 11, 2000 forward ("Retroactivity Provision");

(e) BellSouth has breached the Interconnection Agreements and violated Section 252(d)(2) of the Act by failing to charge AT&T the Reciprocal Compensation Rates set forth in Second Interconnection Agreement (and issue appropriate credits to AT&T) for BellSouth's transport and termination of Local Traffic (including all LATAwide Traffic), as that term is used in Second Interconnection Agreement, and applies retroactively to First Interconnection Agreement by virtue of the Retroactivity Provision;

(f) AT&T is entitled to enforcement of the Interconnection Agreements, and BellSouth is ordered to charge AT&T the Reciprocal Compensation Rates set forth in Second Interconnection Agreement for transportation and termination of Local Traffic (including all LATAwide Traffic), and issue credits owed to AT&T in the amount of \$4,630,821 for the period beginning July 1, 2001, inclusive, through May 31, 2002<sup>3</sup>;

(g) BellSouth is obligated to AT&T for late payments at the rate of one and one half percent (1 and ½%) per month, times all credit amounts owed, beginning July 1, 2001.

(h) BellSouth is obligated to charge AT&T, and the Commission orders BellSouth to charge AT&T, the Reciprocal Compensation Rates as

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<sup>3</sup> The credit amount of \$4,630,821 represents overbilling by BellSouth to AT&T from July 1, 2001 through May 31, 2002. To the extent BellSouth has improperly charged, and continues to improperly charge, AT&T at BellSouth's Switched Access Rates for the transport and termination of Local Traffic (including all LATAwide Traffic) beyond May 31, 2002, AT&T requests the Commission also to order BellSouth to credit AT&T for any overbillings in excess of \$4,630,821, plus applicable late payments.

set forth in the Second Interconnection Agreement for BellSouth's transport and termination of Local Traffic (including all LATAwide Traffic) on a going forward basis.

### **III. JURISDICTION OF THE COMMISSION**

7. This Commission has jurisdiction to enforce the terms of the Interconnection Agreements pursuant to Section 252 of the Act and Section 364.01, Florida Statutes. Moreover, Section 16 of Second Interconnection Agreement, which applies to First Interconnection Agreement by virtue of the Retroactivity Provision, allows AT&T to petition this Commission for a resolution of any disputes that arise as to interpretation of the Interconnection Agreements.

### **IV. NATURE OF THE CONTROVERSY**

8. This controversy involves enforcement of the Interconnection Agreements entered into between AT&T and BellSouth regarding BellSouth's obligation to charge AT&T Reciprocal Compensation Rates for the transport and termination of Local Traffic (including all LATAwide Traffic) as agreed to by BellSouth in Second Interconnection Agreement. BellSouth's obligation to charge AT&T Reciprocal Compensation Rates for the transport and termination of Local Traffic (including all LATAwide Traffic) also applies to First Interconnection Agreement by virtue of the Retroactivity Agreement.

9. First Interconnection Agreement was executed by AT&T Communications of the Southern States, Inc. (the predecessor to AT&T

Communications of the Southern States, LLC) and BellSouth following negotiations and an arbitration decided by this Commission in Docket No. 960833-TP. It was approved by this Commission by Order PSC-97-0724-FOF-TP on June 19, 1997; was effective beginning June 10, 1997; and by its own terms continued until Second Interconnection Agreement became effective.<sup>4</sup> Provisions from First Interconnection Agreement which are relevant to this Complaint are attached hereto and incorporated by this reference as Exhibit 1.<sup>5</sup>

10. Subsequently, on September 21, 1999, in Order No. PSC-99-1877-FOF-TP, the Commission approved TCG South Florida's adoption in its entirety of First Interconnection Agreement.

11. Although First Interconnection Agreement was to expire three years from its effective date of June 10, 1997, or June 10, 2000, the Retroactivity Provision included in Section 2.3 thereof continued the effectiveness of First Interconnection Agreement for some time thereafter. Specifically, Section 2.3 provided that in the event First Interconnection Agreement expired before BellSouth and AT&T had executed another "follow-on" or "second" interconnection agreement, or before this Commission had issued its arbitration order in any "follow-on" or "second"

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<sup>4</sup> For a discussion of the continuation of First Interconnection Agreement until Second Interconnection Agreement became effective, see Paragraph 11 below.

<sup>5</sup> AT&T requests that the Commission take judicial notice of the entirety of First Interconnection Agreement.

arbitration, that the terms subsequently agreed to by the Parties or so ordered by this Commission in any "follow-on" or "second" arbitration would be retroactive to the day following expiration of First Interconnection Agreement, or June 11, 2000, and that First Interconnection Agreement would remain in effect until the "follow-on" or "second" interconnection agreement became effective. Relevant language of Section 2.3 of the General Terms and Conditions of First Interconnection Agreement is as follows:

The Parties further agree that in the event the Commission does not issue its Order by the expiration date of this Agreement, or if the Parties continue beyond the expiration date of this Agreement to negotiate without Commission intervention, the terms, conditions and prices ultimately ordered by the Commission, or negotiated by the Parties, ***will be retroactive to the day following the expiration of this Agreement. Until the Follow-on Agreement becomes effective, BellSouth shall provide Services and Elements pursuant to the terms, conditions, and prices of this Agreement that are then in effect.*** [Emphasis Added]

12. Thereafter, Second Interconnection Agreement was executed by AT&T and BellSouth following another period of negotiations and a second arbitration decided by this Commission in Docket No. 000731-TP. Second Interconnection Agreement was approved by this Commission on December 7, 2001, in Order No. PSC-01-2357-FOF-TP and again was effective for another three-year term, beginning October 26, 2001, as to both AT&T Communications of the Southern States, Inc. (predecessor to AT&T Communications of the Southern States, LLC) and TCG South Florida. Provisions from Second Interconnection Agreement which are relevant to



this Complaint are attached hereto and incorporated by this reference as Exhibit 2.<sup>6</sup>

13. Regarding BellSouth's obligation to charge AT&T Reciprocal Compensation Rates for the transport and termination of Local Traffic (including all LATAwide Traffic), Section 5.3.1 of Attachment 3<sup>7</sup> of Second Interconnection Agreement provides as follows:

For the treatment of local and ISP bound traffic in this Agreement, the Parties agree to implement the FCC's Order on Remand and Report and Order in CC Docket No. 96-98 and 96-68 released April 27, 2001 ("ISP Order on Remand"). The Parties further agree to amend this agreement, within sixty days of execution, to incorporate language reflecting the FCC ISP Order on Remand. At such time as that amendment is finalized, the Parties agree to work cooperatively to "true-up" compensation amounts consistent with the terms of the amended language from the effective date of the FCC Order on Remand to the date that the amendment is finalized...***Additionally, the Parties agree to apply a "LATAwide" local concept to this Attachment 3, meaning that traffic that has traditionally been treated as intraLATA toll traffic will now be treated as local for intercarrier compensation purposes, except those calls that are originated or terminated through switched access arrangements as established by the State Commission or FCC.*** [Emphasis Added]

14. As to LATAwide Traffic that was to be treated as Local Traffic for purposes of intercarrier compensation, AT&T and BellSouth agreed to a definition of Switched Access Traffic, which was "interrelated" to Section

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<sup>6</sup> AT&T requests that the Commission take judicial notice of the entirety of Second Interconnection Agreement, as well as those provisions from Exhibit 2.

<sup>7</sup> Attachment 3 of Second Interconnection Agreement governs numerous "interconnection" issues between BellSouth and AT&T, including pricing and reciprocal compensation obligations.

5.3.1. of Attachment 3 discussed in Paragraph 13 above. In particular, Section 5.3.3 of Attachment 3 to Second Interconnection Agreement provides as follows:

***Switched Access Traffic is defined as telephone calls requiring local transmission or switching services for the purpose of the origination or termination of Intrastate InterLATA and Interstate InterLATA traffic.*** Switched Access Traffic includes, but is not limited to, the following types of traffic: Feature group A, Feature Group B, Feature Group D, toll free access (e.g., 800/877/888), 900 access, and their successors. Additionally, if BellSouth or AT&T is the other party's end user's presubscribed interexchange carrier or if an end user uses BellSouth or AT&T as an interexchange carrier on a 101XXXX basis, BellSouth or AT&T will charge the other party the appropriate tariff charges for originating switched access services. The Parties have been unable to agree as to whether Voice over Internet Protocol ("VOIP") transmissions which cross local calling area boundaries constitute Switched Access Traffic. Notwithstanding the foregoing, and without waiving in rights with respect to either Party's position as to the jurisdictional nature of VOIP, the Parties agree to abide by an effective and applicable FCC rules and orders regarding the nature of such traffic and the compensation payable by the Parties for such traffic; if any, provided, however, that any VOIP transmission which originates in one LATA and terminated in another LATA (i.e., the end-to-end points of the call), shall not be compensated as Local Traffic. ***This Section is interrelated to Section 5.3.1.1.*** [Emphasis Added.]

15. Effective April 18, 2002, AT&T and BellSouth executed First Amendment to the Second Interconnection Agreement "implementing" the FCC's ISP Order on Remand. This "implementation" was memorialized in Exhibit 1 to First Amendment of Second Interconnection Agreement. The parties subsequently filed First Amendment to Second Interconnection

Agreement, and its accompanying Exhibit 1, with this Commission in Docket No. 000731-TP; the Commission's approval is pending. A copy of First Amendment to Second Interconnection Agreement, and its accompanying Exhibit 1, is attached hereto and incorporated by this reference as Exhibit 3.<sup>8</sup>

16. In Section 5.3.3 of Exhibit 1 of First Amendment to Second Interconnection Agreement, BellSouth agreed with AT&T to the following Reciprocal Compensation Rates for the transport and termination of Local Traffic (including all LATAwide Traffic):

- 5.3.3 All Local and ISP Traffic that is exchanged pursuant to this Agreement shall be compensated as follows:
  - 5.3.3.1 Commencing on July 1, 2001 and continuing until December 31, 2001, \$.0015 per minute of use.
  - 5.3.3.2 Commencing on January 1, 2002 and continuing until June 30, 2003, \$.0010 per minute of use.
  - 5.3.3.4 Commencing on July 1, 2003 and continuing until June 30, 2004, or until further FCC action (whichever is later), \$.0007 per minute of use.
  - 5.3.3.4 No other per MOU charges shall apply to the carriage of Local and ISP Traffic by either Party for the other Party except as set forth above...

17. Additionally, regarding the application of the Reciprocal Compensation Rates to Local Traffic (including all LATAwide Traffic), the Parties also continued to apply a "LATAwide concept" by repeating the "LATAwide concept" language from Section 5.3.1 of Second Interconnection

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<sup>8</sup> AT&T requests that the Commission take judicial notice of First Amendment to Second Interconnection Agreement, and its accompanying Exhibit 1.

Agreement (as set forth in Paragraph 13 above) in Section 5.3.1.1 of Exhibit 1 to First Amendment to Second Interconnection Agreement. The Parties also continued to define Switched Access Traffic by repeating the definition of Switched Access Traffic from Section 5.3.3 of the Second Interconnection Agreement (as set forth in Paragraph 14 above) in Section 5.3.10 of Exhibit 1 to First Amendment to Second Interconnection Agreement.

18. Accordingly, Reciprocal Compensation Rates for all Local Traffic (including all LATAwide Traffic) transported and terminated by BellSouth for AT&T are as set forth in Paragraph 16 above.

19. For the period July 1, 2001 through May 31, 2002, BellSouth improperly charged AT&T for transporting and terminating Local Traffic (including all LATAwide Traffic) by charging AT&T at BellSouth's higher Switched Access Rates.

20. For the period July 1, 2001 through May 31, 2002, BellSouth should have charged AT&T for transporting and terminating Local Traffic (including all LATAwide Traffic) at the lower Reciprocal Compensation Rates set forth in Section 5.3.3 of Exhibit 1 to First Amendment of Second Interconnection Agreement.

21. AT&T has asked BellSouth to charge AT&T (and issue appropriate credits) for transporting and terminating Local Traffic (including all LATAwide Traffic) at the lower Reciprocal Compensation Rates set forth in Second Interconnection Agreement, but to date, BellSouth has refused.

Thus, BellSouth has improperly charged AT&T for transporting and terminating Local Traffic (including all LATAwide Traffic) by \$4,630,821 for the period July 1, 2001 through May 31, 2002.<sup>9</sup> Details regarding such improper charges by BellSouth are attached hereto and incorporated by this reference as Exhibit 4.

22. Because AT&T has paid BellSouth for these improper charges, AT&T is entitled to an immediate credit from BellSouth in the amount of \$4,630,821 for the period July 1, 2001 through May 31, 2002, plus potential additional credits for any improper charges billed beyond May 31, 2002.

23. AT&T also is entitled to recover late payments from BellSouth at the rate of one and one half percent (1 and ½%) per month, times all credit amounts owed, beginning July 1, 2001.

24. BellSouth's failure to properly charge and credit AT&T for the transport and termination of Local Traffic (including all LATAwide Traffic) in accordance with the Reciprocal Compensation Rates set forth in Second Interconnection Agreement not only constitutes a breach of the Interconnection Agreements, but such failure also violates the 1996 Act. Specifically, Section 252(d)(2) imposes a duty upon BellSouth to charge

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<sup>9</sup> Again, to the extent BellSouth has improperly charged, and continues to improperly charge, AT&T at BellSouth's Switched Access Rates for transporting and terminating Local Traffic (including all LATAwide Traffic) beyond May 31, 2002, AT&T requests the Commission also to order BellSouth to credit AT&T for any overbillings in excess of \$4,630,821, plus applicable late payments.

AT&T on a reciprocal basis for the transport and termination of "local" calls that originate on AT&T's network, but terminate on BellSouth's network.

**V. COUNT I: DECLARATORY RELIEF**

25. AT&T restates and incorporates by reference each and every allegation stated above as though fully set forth herein.

26. AT&T requests the Commission to declare that:

(a) "local traffic" ("Local Traffic") as that term is used in the Second Interconnection Agreement, includes all LATAwide calls, meaning all calls within a local access and transport area as defined in Section 3(a)(1)(2)(43) of the Act ("LATAwide Traffic");

(b) the reciprocal compensation rates in Section 5.3.3 of Exhibit 1 to First Amendment to Second Interconnection Agreement ("Reciprocal Compensation Rates") apply to all Local Traffic (including LATAwide Traffic) transported and terminated by BellSouth for AT&T;

(c) BellSouth's switched access rates ("Switched Access Rates") apply only to calls requiring transmission or switching services for the purposes of the origination and termination of intrastate interLATA and interstate interLATA calls "(Switched Access Traffic");

(d) all terms of Second Interconnection Agreement (including, specifically, the definitions of Local Traffic and Switched Access Traffic as set forth in Paragraph 6(a) and 6(c) above and the Reciprocal Compensation Rates set forth in Paragraph 6(b) above) apply retroactively to the First

Interconnection Agreement from June 11, 2000 forward ("Retroactivity Provision");

(e) BellSouth has breached the Interconnection Agreements and violated Section 252(d)(2) of the Act by failing to charge AT&T the Reciprocal Compensation Rates set forth in Second Interconnection Agreement (and issue appropriate credits to AT&T) for BellSouth's transport and termination of Local Traffic (including all LATAwide Traffic), as that term is used in Second Interconnection Agreement, and applies to First Interconnection Agreement by virtue of the Retroactivity Provision;

(f) AT&T is entitled to enforcement of the Interconnection Agreements, and BellSouth is ordered to charge AT&T the Reciprocal Compensation Rates set forth in Second Interconnection Agreement for transportation and termination of Local Traffic (including all LATAwide Traffic), and issue credits owed to AT&T in the amount of \$4,630,821 for the period beginning July 1, 2001, inclusive, through May 31, 2002, plus potential additional credits for any improper charges billed beyond May 31, 2002;

(g) BellSouth is obligated to AT&T for late payments at the rate of one and one half percent (1 and %) per month, times all credit amounts owed, beginning July 1, 2001.

(h) BellSouth is obligated to charge AT&T, and the Commission orders BellSouth to charge AT&T, the Reciprocal Compensation Rates as set

forth in the Second Interconnection Agreement for BellSouth's transport and termination of Local Traffic (including all LATAwide Traffic) on a going forward basis.

**VI. COUNT II: BREACH OF INTERCONNECTION AGREEMENT**

27. AT&T restates and incorporates by reference each and every allegation in the above paragraphs as though fully set forth herein.

28. AT&T requests the Commission declare that:

(a) "local traffic" ("Local Traffic") as that term is used in the Second Interconnection Agreement, includes all LATAwide calls, meaning all calls within a local access and transport area as defined in Section 3(a)(1)(2)(43) of the Act ("LATAwide Traffic);

(b) the reciprocal compensation rates in Section 5.3.3 of Exhibit 1 to First Amendment to Second Interconnection Agreement ("Reciprocal Compensation Rates") apply to all Local Traffic (including LATAwide Traffic) transported and terminated by BellSouth for AT&T;

(c) BellSouth's switched access rates ("Switched Access Rates") apply only to calls requiring transmission or switching services for the purposes of the origination and termination of intrastate interLATA and interstate interLATA calls (Switched Access Traffic);

(d) all terms of Second Interconnection Agreement (including, specifically, the definitions of Local Traffic and Switched Access Traffic as set forth in Paragraph 6(a) and 6(c) above and the Reciprocal Compensation



Rates set forth in Paragraph 6(b) above) apply retroactively to the First Interconnection Agreement from June 11, 2000 forward ("Retroactivity Provision");

(e) BellSouth has breached the Interconnection Agreements and violated Section 252(d)(2) of the Act by failing to charge AT&T the Reciprocal Compensation Rates set forth in Second Interconnection Agreement (and issue appropriate credits to AT&T) for BellSouth's transport and termination of Local Traffic (including all LATAwide Traffic), as that term is used in Second Interconnection Agreement, and applies to First Interconnection Agreement by virtue of the Retroactivity Provision;

(f) AT&T is entitled to enforcement of the Interconnection Agreements, and BellSouth is ordered to charge AT&T the Reciprocal Compensation Rates set forth in Second Interconnection Agreement for transportation and termination of Local Traffic (including all LATAwide Traffic), and issue credits owed to AT&T in the amount of \$4,630,821 for the period beginning July 1, 2001, inclusive, through May 31, 2002, plus potential additional credits for any improper charges billed beyond May 31, 2002;

(g) BellSouth is obligated to AT&T for late payments at the rate of one and one half percent (1 and %) per month, times on all credit amounts owed, beginning July 1, 2001;

(h) BellSouth is obligated to charge AT&T, and the Commission orders BellSouth to charge AT&T, the Reciprocal Compensation Rates as set forth in the Second Interconnection Agreement for BellSouth's transport and termination of Local Traffic (including all LATAwide Traffic) on a going forward basis.

## **VII. PRAYER FOR RELIEF**

WHEREFORE, AT&T requests that the Commission to declare and find that:

(a) "local traffic" ("Local Traffic") as that term is used in the Second Interconnection Agreement, includes all LATAwide Traffic, meaning all calls within a local access and transport area as defined in Section 3(a)(1)(2)(43) of the Act ("LATAwide Traffic");

(b) the reciprocal compensation rates in Section 5.3.3 of Exhibit 1 to First Amendment to Second Interconnection Agreement ("Reciprocal Compensation Rates") apply to all Local Traffic (including LATAwide Traffic) transported and terminated by BellSouth for AT&T;

(c) BellSouth's switched access rates ("Switched Access Rates") apply only to calls requiring transmission or switching services for the purposes of the origination and termination of intrastate interLATA and interstate interLATA calls ("Switched Access Traffic");

(d) all terms of Second Interconnection Agreement (including, specifically, the definitions of Local Traffic and Switched Access Traffic as

set forth in Paragraph 6(a) and 6(c) above and the Reciprocal Compensation Rates set forth in Paragraph 6(b) above) apply retroactively to the First Interconnection Agreement from June 11, 2000 forward ("Retroactivity Provision");

(e) BellSouth has breached the Interconnection Agreements and violated Section 252(d)(2) of the Act by failing to charge AT&T the Reciprocal Compensation Rates set forth in Second Interconnection Agreement (and issue appropriate credits to AT&T) for BellSouth's transport and termination of Local Traffic (including all LATAwide Traffic), as that term is used in Second Interconnection Agreement, and applies to First Interconnection Agreement by virtue of the Retroactivity Provision;

(f) AT&T is entitled to enforcement of the Interconnection Agreements, and BellSouth is ordered to charge AT&T the Reciprocal Compensation Rates set forth in Second Interconnection Agreement for transportation and termination of Local Traffic (including all LATAwide Traffic), and issue credits owed to AT&T in the amount of \$4,630,821 for the period beginning July 1, 2001, inclusive, through May 31, 2002, plus potential additional credits for any improper charges billed beyond May 31, 2002;

(g) BellSouth is obligated to AT&T for late payments at the rate of one and one half percent (1 and ½%) per month times, times all credit amounts owed, beginning July 1, 2001;

(h) BellSouth is obligated to charge AT&T, and the Commission orders BellSouth to charge AT&T, the Reciprocal Compensation Rates as set forth in the Second Interconnection Agreement for BellSouth's transport and termination of Local Traffic (including all LATAwide Traffic) on a going forward basis; and

(i) for such other relief as the Commission deems appropriate.

Respectfully submitted this 26th day of August 2002.



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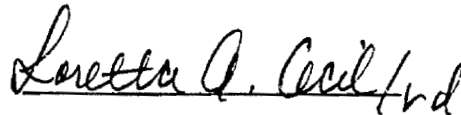
**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a copy of the Complaint of AT&T against BellSouth Telecommunications, Inc. was furnished by U. S. Mail this 26th day of August 2002 to the following:

Nancy White, Esq.  
c/o Nancy Sims  
BellSouth Telecommunications, Inc.  
150 N. Monroe Street  
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Tallahassee, FL 32301

Beth Keating, Esq.  
Division of Legal Services  
Room 370  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, FL 32399-0850

Roxanne Douglas  
AT&T Communications of the Southern States LLC  
Suite 8100  
1200 Peachtree Street, NE  
Atlanta, GA 30309

A handwritten signature in cursive script that reads "Loretta A. Cecil" followed by a horizontal line and the initials "Lrd".

Loretta A. Cecil, Esq.

AGREEMENT

between

BellSouth Telecommunications, Inc.

and AT&T Communications of the Southern States, Inc.

Effective Date: June 10, 1997

FLORIDA

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## ATTACHMENTS

Attachment 1	Alternative Dispute Resolution
Attachment 2	Services Description: Unbundled Network Elements
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Attachment 4	Provisioning and Ordering
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Attachment 15	Interface Requirements for Ordering and Provisioning, Maintenance and Repair, and Pre- Ordering

## AGREEMENT

### PREFACE

This Agreement, which shall become effective as of the 10th day of June, 1997, is entered into by and between AT&T Communications of the Southern States, Inc., a New York Corporation, having an office at 1200 Peachtree Street, N.E., Atlanta, Georgia 30309, on behalf of itself, its successors and assigns, (individually and collectively "AT&T"), and BellSouth Telecommunications, Inc. ("BellSouth"), a Georgia corporation, on behalf of itself, its successors and assigns, having an office at 675 West Peachtree Street, Atlanta, Georgia 30375.

### RECITALS

WHEREAS, The Telecommunications Act of 1996 (the "Act") was signed into law on February 8, 1996; and

WHEREAS, the Act places certain duties and obligations upon, and grants certain rights to Telecommunications Carriers; and

WHEREAS, BellSouth is an Incumbent Local Exchange Carrier; and

WHEREAS, BellSouth is willing to provide Telecommunications Services for resale, Interconnection, Unbundled Network Elements and Ancillary Functions which include, but are not limited to, access to poles, ducts, conduits and rights-of-way, and collocation of equipment at BellSouth's Premises on the terms and subject to the conditions of this Agreement; and

WHEREAS, AT&T is a Telecommunications Carrier and has requested that BellSouth negotiate an Agreement with AT&T for the provision of Interconnection, Unbundled Network Elements, and Ancillary Functions as well as Telecommunications Services for resale, pursuant to the Act and in conformance with BellSouth's duties under the Act,

NOW, THEREFORE, in consideration of the promises and the mutual covenants of this Agreement, AT&T and BellSouth hereby agree as follows:

### DEFINITIONS and ACRONYMS

For purposes of this Agreement, certain terms have been defined in Attachment 11 and elsewhere in this Agreement to encompass meanings that may differ from, or be in addition to, the normal connotation of the defined word. Unless the context clearly indicates otherwise, any term defined or used

in the singular shall include the plural. The words "shall" and "will" are used interchangeably throughout this Agreement and the use of either connotes a mandatory requirement. The use of one or the other shall not mean a different degree of right or obligation for either Party. A defined word intended to convey its special meaning is capitalized when used. Other terms that are capitalized, and not defined in this Agreement, shall have the meaning in the Act. For convenience of reference, Attachment 10 provides a list of acronyms used throughout this Agreement.

## GENERAL TERMS AND CONDITIONS

### 1. Provision of Local Service and Unbundled Network Elements

This Agreement sets forth the terms, conditions and prices under which BellSouth agrees to provide (a) Telecommunications Service that BellSouth currently provides, or may offer hereafter for resale along with the Support Functions and Service Functions set forth in this Agreement (hereinafter collectively referred to as "Local Services") and (b) certain unbundled Network Elements, or combinations of such Network Elements ("Combinations") and (c) Ancillary Functions to AT&T (Local Services, Network Elements, Combinations, and Ancillary Functions, collectively referred to as "Services and Elements"). This Agreement also sets forth the terms and conditions for the interconnection of AT&T's network to BellSouth's network and the mutual and reciprocal compensation for the transport and termination of telecommunications. BellSouth may fulfill the requirements imposed upon it by this Agreement by itself or, in the case of directory listings for white pages may cause BellSouth Advertising and Publishing Company ("BAPCO") to take such actions to fulfill BellSouth's responsibilities. This Agreement includes Parts I through IV, and their Attachments 1 - 15 and all accompanying Appendices and Exhibits. Unless otherwise provided in this Agreement, BellSouth will perform all of its obligations hereunder throughout its entire service area. The Parties further agree to comply with all provisions of the Act, including Section 271(e) (1).

1.A The Services and Elements provided pursuant to this Agreement may be connected to other Services and Elements provided by BellSouth or to any Services and Elements provided by AT&T itself or by any other vendor. AT&T may purchase unbundled Network Elements for the purpose of combining Network Elements in any manner that is technically feasible, including recreating existing BellSouth services.

1.1 Subject to the requirements of this Agreement, AT&T may, at any time add, relocate or modify any Services and Elements purchased hereunder. Requests for additions or other changes shall be handled pursuant to the Bona Fide Request Process provided in Attachment 14. Terminations of any

Services or Elements shall be handled pursuant to Section 3.1 of the General Terms and Conditions of this Agreement.

- 1.2 BellSouth shall not discontinue any Network Element, Ancillary Function, or Combination provided hereunder without the prior written consent of AT&T. Such consent shall not be unreasonably withheld. BellSouth shall not discontinue any Local Service provided hereunder unless BellSouth provides AT&T prior written notice of intent to discontinue any such service. BellSouth agrees to make any such service available to AT&T for resale to AT&T's Customers who are subscribers of such services from AT&T until the date BellSouth discontinues any such service for BellSouth's customers. BellSouth also agrees to adopt a reasonable, nondiscriminatory transition schedule for BellSouth or AT&T Customers who may be purchasing any such service.
- 1.3 This Agreement may be amended from time to time as mutually agreed in writing between the Parties. The Parties agree that neither Party will take any action to proceed, nor shall either have any obligation to proceed on a requested change unless and until a modification to this Agreement is signed by authorized representatives of each Party.
2. **Term of Agreement**
- 2.1 When executed by authorized representatives of BellSouth and AT&T, this Agreement shall become effective as of the Effective Date stated above, and shall expire three (3) years from the Effective Date unless terminated in accordance with the provisions of Section 3.2 of the General Terms and Conditions.
- 2.2 No later than one hundred and eighty (180) days prior to the expiration of this Agreement, the Parties agree to commence negotiations with regard to the terms, conditions, and prices of a follow-on agreement for the provision of Services and Elements to be effective on or before the expiration date of this Agreement ("Follow-on Agreement"). The Parties further agree that any such Follow-on Agreement shall be for a term of no less than three (3) years unless the Parties agree otherwise.
- 2.3 If, within one hundred and thirty-five (135) days of commencing the negotiation referenced to Section 2.2, above, the Parties are unable to satisfactorily negotiate new terms, conditions and prices, either Party may petition the Commission to establish an appropriate Follow-on Agreement pursuant to 47 U.S.C. § 252. The Parties agree that in such event they shall encourage the Commission to issue its order regarding such Follow-on Agreement no later than the expiration date of this Agreement. The Parties further agree that in the event the Commission does not issue its order by the expiration date of this Agreement, or if the Parties continue beyond the expiration date of this

Agreement to negotiate without Commission intervention, the terms, conditions and prices ultimately ordered by the Commission, or negotiated by the Parties, will be effective, retroactive to the day following the expiration date of this Agreement. Until the Follow-on Agreement becomes effective, BellSouth shall provide Services and Elements pursuant to the terms, conditions and prices of this Agreement that are then in effect. Prior to filing a Petition pursuant to this Section 2.3, the Parties agree to utilize the informal dispute resolution process provided in Section 3 of Attachment 1.

3. **Termination of Agreement; Transitional Support**

3.1 AT&T may terminate any Local Service(s), Network Element(s), Combination(s), or Ancillary Function(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 such Local Services(s), Network Element(s), or Combination(s) in this Agreement or pursuant to any applicable tariff, in which event such specific period or conditions shall apply, provided such period or condition is reasonable, nondiscriminatory and narrowly tailored. Where there is no such different notice period or different condition specified, AT&T'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 provided up to and including the date of termination. Notwithstanding the foregoing, the provisions of section 10, infra, shall still apply. Upon termination, BellSouth agrees to cooperate in an orderly and efficient transition to AT&T 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. AT&T agrees that it may not terminate the entire Agreement pursuant to this section.

3.2 If a Party is in breach of a material term or condition of this Agreement ("Defaulting Party"), the other Party shall provide written notice of such breach to the Defaulting Party. The Defaulting Party shall have ten (10) business days from receipt of notice to cure the breach. If the breach is not cured, the Parties shall follow the dispute resolution procedure of Section 16 of the General Terms and Conditions and Attachment 1. If the Arbitrator determines that a breach has occurred and the Defaulting Party fails to comply with the decision of the Arbitrator within the time period provided by the Arbitrator (or a period of thirty (30) days if no time period is provided for in the Arbitrator's order), this Agreement may be terminated in whole or part by the other Party upon sixty (60) days prior written notice.

4. **Good Faith Performance**

In the performance of their obligations under this Agreement, the Parties shall act in good faith and consistently with the intent of the Act. Where notice,

approval or similar action by a Party is permitted or required by any provision of this Agreement, (including, without limitation, the obligation of the Parties to further negotiate the resolution of new or open issues under this Agreement) such action shall not be unreasonably delayed, withheld or conditioned.

5. **Option to Obtain Local Services, Network Elements and Combinations Under Other Agreements**

If as a result of any proceeding or filing before any Court, State Commission, or the Federal Communications Commission, voluntary agreement or arbitration proceeding pursuant to the Act or pursuant to any applicable state law, BellSouth becomes obligated to provide Services and Elements, whether or not presently covered by this Agreement, to a third Party at rates or on terms and conditions more favorable to such third Party than the applicable provisions of this Agreement, AT&T shall have the option to substitute such more favorable rates, terms, and conditions for the relevant provisions of this Agreement which shall apply to the same States as such other Party, and such substituted rates, terms or conditions shall be deemed to have been effective under this Agreement as of the effective date thereof. BellSouth shall provide to AT&T any BellSouth agreement between BellSouth and any third Party within fifteen (15) days of the filing of such agreement with any state Commission.

6. **Responsibility of Each Party**

Each Party is an independent contractor, and has and hereby retains the right to exercise full control of and supervision over its own performance of its obligations under this Agreement and retains full control over the employment, direction, compensation and discharge of all employees assisting in the performance of such obligations. Each Party will be solely responsible for all matters relating to payment of such employees, including compliance with social security taxes, withholding taxes and all other regulations governing such matters. Each Party will be solely responsible for proper handling, storage, transport and disposal at its own expense of all (i) substances or materials that it or its contractors or agents bring to, create or assume control over at Work Locations or, (ii) Waste resulting therefrom or otherwise generated in connection with its or its contractors' or agents' activities at the Work Locations. Subject to the limitations on liability and except as otherwise provided in this Agreement, each Party shall be responsible for (i) its own acts and performance of all obligations imposed by Applicable Law in connection with its activities, legal status and property, real or personal and, (ii) the acts of its own affiliates, employees, agents and contractors during the performance of that Party's obligations hereunder.

7. **Governmental Compliance**

- 7.1 AT&T and BellSouth each shall comply at its own expense with all Applicable Law that relates to (i) its obligations under or activities in connection with this Agreement or (ii) its activities undertaken at, in connection with or relating to Work Locations. AT&T and BellSouth each agree to indemnify, defend (at the other Party's request) and save harmless the other, each of its officers, directors and employees from and against any losses, damages, claims, demands, suits, liabilities, fines, penalties and expenses (including reasonable attorneys' fees) that arise out of or result from (i) its failure or the failure of its contractors or agents to so comply or (ii) any activity, duty or status of it or its contractors or agents that triggers any legal obligation to investigate or remediate environmental contamination. BellSouth, at its own expense, will be solely responsible for obtaining from governmental authorities, building owners, other carriers, and any other persons or entities, all rights and privileges (including, but not limited to, space and power), which are necessary for BellSouth to provide the Services and Elements pursuant to this Agreement. AT&T, at its own expense, will be solely responsible for obtaining from governmental authorities, building owners, other carriers, and any other persons or entities, all rights and privileges which are AT&T's obligation as a provider of telecommunications services to its Customers pursuant to this Agreement.
- 7.2 BellSouth shall accept orders for Service and Elements in accordance with the Federal Communications Commission Rules or State Commission Rules.
8. **Responsibility For Environmental Contamination**
- 8.1 AT&T shall in no event be liable to BellSouth for any costs whatsoever resulting from the presence or Release of any Environmental Hazard or Hazardous Materials that AT&T did not introduce to the affected Work Location so long as AT&T's actions do not cause or substantially contribute to the release of any Environmental Hazard or Hazardous Materials. BellSouth shall indemnify, defend (at AT&T's request) and hold harmless AT&T, each of its officers, directors and employees from and against any losses, damages, claims, demands, suits, liabilities, fines, penalties and expenses (including reasonable attorneys' fees) that arise out of or result from (i) any Environmental Hazard or Hazardous Materials that BellSouth, its contractors or agents introduce to the Work Locations or (ii) the presence or Release of any Environmental Hazard or Hazardous Materials for which BellSouth is responsible under Applicable Law, to the extent the release of any Environmental Hazard or Hazardous Materials is not caused or substantially contributed to by AT&T's actions.
- 8.2 BellSouth shall in no event be liable to AT&T for any costs whatsoever resulting from the presence or Release of any Environmental Hazard or Hazardous Materials that BellSouth did not introduce to the affected Work

Location, so long as BellSouth's actions do not cause or substantially contribute to the release of any Environmental Hazards or Hazardous Materials. AT&T shall indemnify, defend (at BellSouth's request) and hold harmless BellSouth, each of its officers, directors and employees from and against any losses, damages, claims, demands, suits, liabilities, fines, penalties and expenses (including reasonable attorneys' fees) that arise out of or result from (i) any Environmental Hazard or Hazardous Materials that AT&T, its contractors or agents introduce to the Work Locations or (ii) the presence or Release of any Environmental Hazard or Hazardous Materials for which AT&T is responsible under Applicable Law, to the extent the release of any Environmental Hazard or Hazardous Materials is not caused or substantially contributed to by BellSouth's actions.

9. **Regulatory Matters**

- 9.1 BellSouth shall be responsible for obtaining and keeping in effect all Federal Communications Commission, State Commissions, franchise authority and other regulatory approvals that may be required in connection with the performance of its obligations under this Agreement. AT&T shall be responsible for obtaining and keeping in effect all Federal Communications Commission, state regulatory Commission, franchise authority and other regulatory approvals that may be required in connection with its offering of services to AT&T Customers contemplated by this Agreement. AT&T shall reasonably cooperate with BellSouth in obtaining and maintaining any required approvals for which BellSouth is responsible, and BellSouth shall reasonably cooperate with AT&T in obtaining and maintaining any required approvals for which AT&T is responsible.
- 9.2 In the event that BellSouth is required by any governmental authority to file a tariff or make another similar filing ("Filing") in order to implement this Agreement, BellSouth shall (i) consult with AT&T reasonably in advance of such Filing about the form and substance of such Filing, (ii) provide to AT&T its proposed tariff and obtain AT&T's agreement on the form and substance of such Filing, and (iii) take all steps reasonably necessary to ensure that such Filing imposes obligations upon BellSouth that are no less favorable than those provided in this Agreement and preserves for AT&T the full benefit of the rights otherwise provided in this Agreement. In no event shall BellSouth file any tariff to implement this Agreement that purports to govern Services and Elements that is inconsistent with the rates and other terms and conditions set forth in this Agreement unless such rate or other terms and conditions are more favorable than those set forth in this Agreement.
- 9.3 In the event that any final and nonappealable legislative, regulatory, judicial or other legal action materially affects any material terms of this Agreement, or the ability of AT&T or BellSouth to perform any material terms of this Agreement,



AT&T or BellSouth may, on thirty (30) days' written notice (delivered not later than thirty (30) days following the date on which such action has become legally binding and has otherwise become final and nonappealable) require that such terms be renegotiated, and the Parties shall renegotiate in good faith such mutually acceptable new terms as may be required. In the event that such new terms are not renegotiated within ninety (90) days after such notice, the Dispute shall be referred to the Alternative Dispute Resolution procedures set forth in Attachment 1.

10. **Liability and Indemnity**

- 10.1 Liabilities of BellSouth - Unless expressly stated otherwise in this Agreement, the liability of BellSouth to AT&T during any Contract Year resulting from any and all causes shall not exceed the amount due and owing by AT&T to BellSouth during the Contract Year in which such cause arises or accrues.
- 10.2 Liabilities of AT&T - Unless expressly stated otherwise in this Agreement, the liability of AT&T to BellSouth during any Contract Year resulting from any and all causes shall not exceed the amount due and owing by AT&T to BellSouth during the Contract Year in which such cause arises or accrues.
- 10.3 Each party shall, to the greatest extent permitted by Applicable Law, include in its local switched service tariff (if it files one in a particular State) or in any State where it does not file a local service tariff, in an appropriate contract with its customers that relates to the Services and Elements provided under this Agreement, a limitation of liability (i) that covers the other Party to the same extent the first Party covers itself and (ii) that limits the amount of damages a customer may recover to the amount charged the applicable customer for the service that gave rise to such loss.
- 10.4 **No Consequential Damages - NEITHER AT&T NOR BELLSOUTH SHALL BE LIABLE TO THE OTHER PARTY FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, RELIANCE, OR SPECIAL DAMAGES SUFFERED BY SUCH OTHER PARTY (INCLUDING WITHOUT LIMITATION DAMAGES FOR HARM TO BUSINESS, LOST REVENUES, LOST SAVINGS, OR LOST PROFITS SUFFERED BY SUCH OTHER PARTIES), REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, WARRANTY, STRICT LIABILITY, OR TORT, INCLUDING WITHOUT LIMITATION NEGLIGENCE OF ANY KIND WHETHER ACTIVE OR PASSIVE, AND REGARDLESS OF WHETHER THE PARTIES KNEW OF THE POSSIBILITY THAT SUCH DAMAGES COULD RESULT. EACH PARTY HEREBY RELEASES THE OTHER PARTY AND SUCH OTHER PARTY'S SUBSIDIARIES AND AFFILIATES, AND THEIR RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES AND AGENTS FROM ANY SUCH CLAIM. NOTHING CONTAINED IN THIS SECTION 10 SHALL LIMIT BELLSOUTH'S OR AT&T'S**

LIABILITY TO THE OTHER FOR (i) WILLFUL OR INTENTIONAL MISCONDUCT (INCLUDING GROSS NEGLIGENCE); (ii) BODILY INJURY, DEATH OR DAMAGE TO TANGIBLE REAL OR TANGIBLE PERSONAL PROPERTY PROXIMATELY CAUSED BY BELLSOUTH'S OR AT&T'S NEGLIGENT ACT OR OMISSION OR THAT OF THEIR RESPECTIVE AGENTS, SUBCONTRACTORS OR EMPLOYEES, NOR SHALL ANYTHING CONTAINED IN THIS SECTION 10 LIMIT THE PARTIES' INDEMNIFICATION OBLIGATIONS AS SPECIFIED HEREIN.

- 10.5 **Obligation to Indemnify** - Each Party shall, and hereby agrees to, defend at the other's request, indemnify and hold harmless the other Party and each of its officers, directors, employees and agents (each, an "Indemnitee") against and in respect of any loss, debt, liability, damage, obligation, claim, demand, judgment or settlement of any nature or kind, known or unknown, liquidated or unliquidated, including without limitation all reasonable costs and expenses incurred (legal, accounting or otherwise) (collectively, "Damages") arising out of, resulting from or based upon any pending or threatened claim, action, proceeding or suit by any third Party (a "Claim") (i) alleging any breach of any representation, warranty or covenant made by such indemnifying Party (the "Indemnifying Party") in this Agreement, (ii) based upon injuries or damage to any person or property or the environment arising out of or in connection with this Agreement that are the result of the Indemnifying Party's actions, breach of Applicable Law, or status of its employees, agents and subcontractors, or (iii) for actual or alleged infringement of any patent, copyright, trademark, service mark, trade name, trade dress, trade secret or any other intellectual property right, now known or later developed (referred to as "Intellectual Property Rights") to the extent that such claim or action arises from AT&T or AT&T's Customer's use of the Services and Elements provided under this Agreement.
- 10.6 **Obligation to Defend; Notice; Cooperation** - Whenever a Claim shall arise for indemnification under this Section 10, the relevant Indemnitee, as appropriate, shall promptly notify the Indemnifying Party and request the Indemnifying Party to defend the same. Failure to so notify the Indemnifying Party shall not relieve the Indemnifying Party of any liability that the Indemnifying Party might have, except to the extent that such failure prejudices the Indemnifying Party's ability to defend such Claim. The Indemnifying Party shall have the right to defend against such liability or assertion in which event the Indemnifying Party shall give written notice to the Indemnitee of acceptance of the defense of such Claim and the identity of counsel selected by the Indemnifying Party. Except as set forth below, such notice to the relevant Indemnitee shall give the Indemnifying Party full authority to defend, adjust, compromise or settle such Claim with respect to which such notice shall have been given, except to the extent that any compromise or settlement shall prejudice the Intellectual Property Rights of the relevant Indemnitees. The

Indemnifying Party shall consult with the relevant Indemnitee prior to any compromise or settlement that would affect the Intellectual Property Rights or other rights of any Indemnitee, and the relevant Indemnitee shall have the right to refuse such compromise or settlement and, at the refusing Party's or refusing Parties' cost, to take over such defense, provided that in such event the Indemnifying Party shall not be responsible for, nor shall it be obligated to indemnify the relevant Indemnitee against, any cost or liability in excess of such refused compromise or settlement. With respect to any defense accepted by the Indemnifying Party, the relevant Indemnitee shall be entitled to participate with the Indemnifying Party in such defense if the Claim requests equitable relief or other relief that could affect the rights of the Indemnitee and also shall be entitled to employ separate counsel for such defense at such Indemnitee's expense. In the event the Indemnifying Party does not accept the defense of any indemnified Claim as provided above, the relevant Indemnitee shall have the right to employ counsel for such defense at the expense of the Indemnifying Party. Each Party agrees to cooperate and to cause its employees and agents to cooperate with the other Party in the defense of any such Claim and the relevant records of each Party shall be available to the other Party with respect to any such defense.

11. **Audits and Inspections**

- 11.1 For carrier billing purposes, the Parties have agreed pursuant to Section 12 of Attachment 6, to create a process for pre-bill certification. Until such time as that process is in place, the audit process provided in Section 11.1 shall apply.
- 11.1.1 Subject to BellSouth's reasonable security requirements and except as may be otherwise specifically provided in this Agreement, AT&T may audit BellSouth's books, records and other documents once in each Contract Year for the purpose of evaluating the accuracy of BellSouth's billing and invoicing. AT&T may employ other persons or firms for this purpose. Such audit shall take place at a time and place agreed on by the Parties no later than thirty (30) days after notice thereof to BellSouth.
- 11.1.2 BellSouth shall promptly correct any billing error that is revealed in an audit, including making refund of any overpayment by AT&T in the form of a credit on the invoice for the first full billing cycle after the Parties have agreed upon the accuracy of the audit results. Any Disputes concerning audit results shall be resolved pursuant to the Alternate Dispute Resolution procedures described in Section 16 of the General Terms and Conditions and Attachment 1.
- 11.1.3 BellSouth shall cooperate fully in any such audit, providing reasonable access to any and all appropriate BellSouth employees and books, records and other documents reasonably necessary to assess the accuracy of BellSouth's bills.

- 11.1.4 AT&T may audit BellSouth's books, records and documents more than once during any Contract Year if the previous audit found previously uncorrected net variances or errors in invoices in BellSouth's favor with an aggregate value of at least two percent (2%) of the amounts payable by AT&T for Services and Elements or Combinations provided during the period covered by the audit.
- 11.1.5 Audits shall be at AT&T's expense, subject to reimbursement by BellSouth in the event that an audit finds an adjustment in the charges or in any invoice paid or payable by AT&T hereunder by an amount that is, on an annualized basis, greater than two percent (2%) of the aggregate charges for the Services and Elements during the period covered by the audit.
- 11.1.6 Upon (i) the discovery by BellSouth of overcharges not previously reimbursed to AT&T or (ii) the resolution of disputed audits, BellSouth shall promptly reimburse AT&T the amount of any overpayment times the highest interest rate (in decimal value) which may be levied by law for commercial transactions, compounded daily for the number of days from the date of overpayment to and including the date that payment is actually made. In no event, however, shall interest be assessed on any previously assessed or accrued late payment charges.
- 11.2 Subject to reasonable security requirements, either Party may audit the books, records and other documents of the other for the purpose of evaluating usage pertaining to transport and termination of local traffic. Where such usage data is being transmitted through CABS, the audit shall be conducted in accordance with CABS or other applicable requirements approved by the appropriate State Commission. If data is not being transferred via CABS, either Party may request an audit for such purpose once each Contract Year. Either Party may employ other persons or firms for this purpose. Any such audit shall take place no later than thirty (30) days after notice thereof to the other Party.
- 11.2.1 Either Party shall promptly correct any reported usage error that is revealed in an audit, including making payment of any underpayment after the Parties have agreed upon the accuracy of the audit results. Any Disputes concerning audit results shall be resolved pursuant to the Alternate Dispute Resolution procedures described in Section 16 of the General Terms and Conditions and Attachment 1.
- 11.2.2 The Parties shall cooperate fully in any such audit, providing reasonable access to any and all appropriate employees and books, records and other documents reasonably necessary to assess the usage pertaining to transport and terminating of local traffic.

**12. Performance Measurement**

- 12.1 In providing Services and Elements, BellSouth will provide AT&T with the quality of service BellSouth provides itself and its end-users. BellSouth's performance under this Agreement shall provide AT&T with the capability to meet standards or other measurements that are at least equal to the level that BellSouth provides or is required to provide by law or its own internal procedures. BellSouth shall satisfy all service standards, measurements, and performance requirements set forth in the Agreement and the Direct Measures of Quality ("DMOQs") that are specified in Attachment 12 of this Agreement. In the event that BellSouth demonstrates that the level of performance specified in Attachment 12 of this Agreement are higher than the standards or measurements that BellSouth provides to itself and its end users pursuant to its own internal procedures, BellSouth's own level of performance shall apply.
- 12.2 The Parties acknowledge that the need will arise for changes to the DMOQ's specified in Attachment 12 during the term of this Agreement. Such changes may include the addition or deletion of measurements or a change in the performance standard for any particular metric. The parties agree to review all DMOQ's on a quarterly basis to determine if any changes are appropriate.
- 12.3 The Parties agree to monitor actual performance on a monthly basis and develop a Process Improvement Plan to continually improve quality of service provided as measured by the DMOQs.

**13. DELETED****14. Force Majeure**

- 14.1 Neither Party shall be liable for any delay or failure in performance of any part of this Agreement caused by a Force Majeure condition, including acts of the United States of America or any state, territory or political subdivision thereof, acts of God or a public enemy, fires, floods, disputes, freight embargoes, strikes, earthquakes, volcanic actions, wars, civil disturbances, or other causes beyond the reasonable control of the Party claiming excusable delay or other failure to perform. Force Majeure shall not include acts of any Governmental Authority relating to environmental, health or safety conditions at Work Locations. If any Force Majeure condition occurs, the Party whose performance fails or is delayed because of such Force Majeure condition shall give prompt notice to the other Party, and upon cessation of such Force Majeure condition, shall give like notice and commence performance hereunder as promptly as reasonably practicable.
- 14.2 Notwithstanding Subsection 1, no delay or other failure to perform shall be excused pursuant to this Section 14 by the acts or omission of a Party's

subcontractors, material persons, suppliers or other third persons providing products or services to such Party unless: (i) such acts or omissions are themselves the product of a Force Majeure condition, (ii) such acts or omissions do not relate to environmental, health or safety conditions at Work Locations and, (iii) unless such delay or failure and the consequences thereof are beyond the control and without the fault or negligence of the Party claiming excusable delay or other failure to perform. Notwithstanding the foregoing, this Section 14 shall not excuse failure or delays where BellSouth is required to implement Disaster Recovery plans to avoid such failures and delays in performance.

15. **Certain Federal, State and Local Taxes**

15.1 **Definition** For purposes of this Section 15, the terms "taxes" and "fees" shall include but not be limited to federal, state or local sales, use, excise, gross receipts or other taxes or tax-like fees of whatever nature and however designated (including tariff surcharges and any fees, charges or other payments, contractual or otherwise, for the use of public streets or rights of way, whether designated as franchise fees or otherwise) imposed on, or sought to be imposed, either of the parties and measured by the charges or payments, for the services furnished hereunder, excluding any taxes levied on income.

15.2 **Taxes And Fees Imposed Directly On Either Seller Or Purchaser**

15.2.1 Taxes and fees imposed on the providing Party, which are neither permitted nor required to be passed on by the providing Party to its Customer, shall be borne and paid by the providing Party.

15.2.2 Taxes and fees imposed on the purchasing Party, which are not required to be collected and/or remitted by the providing Party, shall be borne and paid by the purchasing Party.

15.3 **Taxes And Fees Imposed On Purchaser But Collected And Remitted By Seller**

15.3.1 Taxes and fees imposed on the purchasing Party shall be borne by the purchasing Party, even if the obligation to collect and/or remit such taxes or fees is placed on the providing Party.

15.3.2 To the extent permitted by Applicable Law, any such taxes and/or fees shall be shown as separate items on applicable billing documents between the Parties. Notwithstanding the foregoing, the purchasing Party shall remain liable for any such taxes and fees regardless of whether they are actually billed by the providing Party at the time that the respective service is billed.

- 15.3.3 If the purchasing Party determines that in its opinion any such taxes or fees are not lawfully due, the providing Party shall not bill such taxes or fees to the purchasing Party if the purchasing Party provides written certification, reasonably satisfactory to the providing Party, stating that it is exempt or otherwise not subject to the tax or fee, setting forth the basis therefor, and satisfying any other requirements under applicable law. If any authority seeks to collect any such tax or fee that the purchasing Party has determined and certified not to be lawfully due, or any such tax or fee that was not billed by the providing Party, the purchasing Party may contest the same in good faith, at its own expense. In the event that such contest must be pursued in the name of the providing Party, the providing Party shall permit the purchasing Party to pursue the contest in the name of providing Party and providing Party shall have the opportunity to participate fully in the preparation of such contest. In any such contest, the purchasing Party shall promptly furnish the providing Party with copies of all filings in any proceeding, protest, or legal challenge, all rulings issued in connection therewith, and all correspondence between the purchasing Party and the taxing authority.
- 15.3.4 In the event that all or any portion of an amount sought to be collected must be paid in order to contest the imposition of any such tax or fee, or to avoid the existence of a lien on the assets of the providing Party during the pendency or such contest, the purchasing Party shall be responsible for such payment and shall be entitled to the benefit of any refund or recovery.
- 15.3.5 If it is ultimately determined that any additional amount of such a tax or fee is due to the imposing authority, the purchasing Party shall pay such additional amount, including any interest and penalties thereon.
- 15.3.6 Notwithstanding any provision to the contrary, the purchasing Party shall protect, indemnify and hold harmless (and defend at the purchasing Party's expense) the providing Party from and against any such tax or fee, interest or penalties thereof, or other charges or payable expenses (including reasonable attorney fees) with respect thereto, which are reasonably and necessarily incurred by the providing Party in connection with any claim for or contest of any such tax or fee.
- 15.3.7 Each Party shall notify the other Party in writing of any assessment, proposed assessment or other claim for any additional amount of such a tax or fee by a taxing authority; such notice to be provided, if possible, at least ten (10) days prior to the date by which a response, protest or other appeal must be filed, but in no event later than thirty (30) days after receipt of such assessment, proposed assessment or claim.
- 15.4 **Taxes And Fees Imposed On Seller But Passed On To Purchaser**

- 15.4.1 Taxes and fees imposed on the providing Party, which are permitted or required to be passed on by the providing Party to its Customer, shall be borne by the purchasing Party.
- 15.4.2 To the extent permitted by applicable law, any such taxes and/or fees shall be shown as separate items on applicable billing documents between the Parties. Notwithstanding the foregoing, the purchasing Party shall remain liable for any such taxes and fees regardless of whether they are actually billed by the providing Party at the time that the respective service is billed.
- 15.4.3 If the purchasing Party disagrees with the providing Party's determination as to the application or basis for any such tax or fee, the Parties shall consult with respect to the imposition and billing of such tax or fee and with respect to whether to contest the imposition of such tax or fee. Notwithstanding the foregoing, the providing Party shall retain responsibility for determining whether and to what extent any such taxes or fees are applicable. The providing Party shall further retain responsibility for determining whether and how to contest the imposition of such taxes or fees, provided, however, the Parties agree to consult in good faith as to such contest and that any such contest undertaken at the request of the purchasing Party shall be at the purchasing Party's expense. In the event that such contest must be pursued in the name of the providing Party, providing Party shall permit purchasing Party to pursue the contest in the name of the providing Party and the providing Party shall have the opportunity to participate fully in the preparation of such contest.
- 15.4.4 If, after consultation in accordance with the preceding Section 15.4.3, the purchasing Party does not agree with the providing Party's final determination as to the application or basis of a particular tax or fee, and if the providing Party, after receipt of a written request by the purchasing Party to contest the imposition of such tax or fee with the imposing authority, fails or refuses to pursue such contest or to allow such contest by the purchasing Party, the purchasing Party may utilize the dispute resolution process outlined in Section 16 of the General Terms and Conditions of this Agreement and Attachment 1. Utilization of the dispute resolution process shall not relieve the purchasing party from liability for any tax or fee billed by the providing Party pursuant to this subsection during the pendency of such dispute resolution proceeding. In the event that the purchasing Party prevails in such dispute resolution proceeding, it shall be entitled to a refund in accordance with the final decision therein. Notwithstanding the foregoing, if at any time prior to a final decision in such dispute resolution proceeding the providing Party initiates a contest with the imposing authority with respect to any of the issues involved in such dispute resolution proceeding, the dispute resolution proceeding shall be dismissed as to such common issues and the final decision rendered in the contest with the imposing authority shall control as to such issues.



- 15.4.5 In the event that all or any portion of an amount sought to be collected must be paid in order to contest the imposition of any such tax or fee with the imposing authority, or to avoid the existence of a lien on the assets of the providing Party during the pendency of such contest, the purchasing Party shall be responsible for such payment and shall be entitled to the benefit of any refund or recovery.
- 15.4.6 If it is ultimately determined that any additional amount of such a tax or fee is due to the imposing authority, the purchasing Party shall pay such additional amount, including any interest and penalties thereon.
- 15.4.7 Notwithstanding any provision to the contrary, the purchasing Party shall protect, indemnify and hold harmless (and defend at the purchasing Party's expense) the providing Party from and against any such tax or fee, interest or penalties thereon, or other reasonable charges or payable expenses (including reasonable attorney fees) with respect thereto, which are incurred by the providing Party in connection with any claim for or contest of any such tax or fee.
- 15.4.8 Each Party shall notify the other Party in writing of any assessment, proposed assessment or other claim for any additional amount of such a tax or fee by a taxing authority, such notice to be provided, if possible, at least ten (10) days prior to the date by which a response, protest or other appeal must be filed, but in no event later than thirty (30) days after receipt of such assessment, proposed assessment or claim.

15.5 **Mutual Cooperation**

In any contest of a tax or fee by one Party, the other Party shall cooperate fully by providing records, testimony and such additional information or assistance as may reasonably be necessary to pursue the contest. Further, the other Party shall be reimbursed for any reasonable and necessary out-of-pocket copying and travel expenses incurred in assisting in such contest. Each Party agrees to indemnify and hold harmless the other Party from and against any losses, damages, claims, demands, suits, liabilities, and expenses, including reasonable attorney's fees, that arise out of its failure to perform its obligations under this Section.

16. **Alternative Dispute Resolution**

- 16.1 All disputes, claims or disagreements (collectively "Disputes") arising under or related to this Agreement or the breach hereof shall be resolved in accordance with the procedures set forth in Attachment 1, except: (i) disputes arising pursuant to Attachment 6, Connectivity Billing; and (ii) disputes or matters for which the Telecommunications Act of 1996 specifies a particular remedy or procedure. Disputes involving matters subject to the Connectivity Billing

provisions contained in Attachment 6, shall be resolved in accordance with the Billing Disputes section of Attachment 6. In no event shall the Parties permit the pendency of a Dispute to disrupt service to any AT&T Customer contemplated by this Agreement. The foregoing notwithstanding, neither this Section nor Attachment 1 shall be construed to prevent either Party from seeking and obtaining temporary equitable remedies, including temporary restraining orders. A request by a Party to a court or a regulatory authority for interim measures or equitable relief shall not be deemed a waiver of the obligation to comply with Attachment 1.

17.

**Notices**

Any notices or other communications required or permitted to be given or delivered under this Agreement shall be in hard-copy writing (unless otherwise specifically provided herein) and shall be sufficiently given if delivered personally or delivered by prepaid overnight express service to the following (unless otherwise specifically required by this Agreement to be delivered to another representative or point of contact):

If to AT&T:

Pamela A. Nelson  
Vendor Management  
AT&T  
1200 Peachtree St., N.E.  
Atlanta, GA 30309

If to BellSouth:

Randy Jenkins  
Interconnection Services  
Suite 410  
1960 W. Exchange Place  
Tucker, GA 30064

Either Party may unilaterally change its designated representative and/or address for the receipt of notices by giving seven (7) days prior written notice to the other Party in compliance with this Section. Any notice or other communication shall be deemed given when received.

18.

**Confidentiality and Proprietary Information**

18.1

For the purposes of this Agreement, "Confidential Information" means confidential or proprietary technical or business information given by the Discloser to the Recipient. All information which is disclosed by one Party to the other in connection with this Agreement shall automatically be deemed proprietary to the Discloser and subject to this Agreement, unless otherwise

confirmed in writing by the Discloser. In addition, by way of example and not limitation, all orders for Services and Elements placed by AT&T pursuant to this Agreement, and information that would constitute Customer Proprietary Network pursuant to the Act and the rules and regulations of the Federal Communications Commission, and Recorded Usage Data as described in Attachment 7, whether disclosed by AT&T to BellSouth or otherwise acquired by BellSouth in the course of the performance of this Agreement, shall be deemed Confidential Information of AT&T for all purposes under this Agreement.

- 18.2 For a period of five (5) years from the receipt of Confidential Information from the Discloser, except as otherwise specified in this Agreement, the Recipient agrees (a) to use it only for the purpose of performing under this Agreement, (b) to hold it in confidence and disclose it to no one other than its employees having a need to know for the purpose of performing under this Agreement, and (c) to safeguard it from unauthorized use or disclosure with at least the same degree of care with which the Recipient safeguards its own Confidential Information. If the Recipient wishes to disclose the Discloser's Confidential Information to a third Party agent or consultant, the agent or consultant must have executed a written agreement of non-disclosure and non-use comparable in scope to the terms of this Section.
- 18.3 The Recipient may make copies of Confidential Information only as reasonably necessary to perform its obligations under this Agreement. All such copies shall bear the same copyright and proprietary rights notices as are contained on the original.
- 18.4 The Recipient agrees to return all Confidential Information in tangible form received from the Discloser, including any copies made by the Recipient, within thirty (30) days after a written request is delivered to the Recipient, or to destroy all such Confidential Information, except for Confidential Information that the Recipient reasonably requires to perform its obligations under this Agreement. If either Party loses or makes an unauthorized disclosure of the other Party's Confidential Information, it shall notify such other Party immediately and use reasonable efforts to retrieve the lost or wrongfully disclosed information.
- 18.5 The Recipient shall have no obligation to safeguard Confidential Information: (a) which was in the possession of the Recipient free of restriction prior to its receipt from the Discloser; (b) after it becomes publicly known or available through no breach of this Agreement by the Recipient; (c) after it is rightfully acquired by the Recipient free of restrictions on its disclosure; or (d) after it is independently developed by personnel of the Recipient to whom the Discloser's Confidential Information had not been previously disclosed. In addition, either Party shall have the right to disclose Confidential Information to

any mediator, arbitrator, state or federal regulatory body, the Department of Justice or any court in the conduct of any mediation, arbitration or approval of this Agreement or in any proceedings concerning the provision of interLATA services by BellSouth that are or may be required by the Act. Additionally, the Recipient may disclose Confidential Information if so required by law, a court, or governmental agency, so long as the Discloser has been notified of the requirement promptly after the Recipient becomes aware of the requirement. In all cases, the Recipient must undertake all lawful measures to avoid disclosing such information until Discloser has had reasonable time to seek and comply with a protective order that covers the Confidential Information to be disclosed.

18.6 Each Party's obligations to safeguard Confidential Information disclosed prior to expiration or termination of this Agreement shall survive such expiration or termination.

18.7 Except as otherwise expressly provided elsewhere in this Agreement, no license is hereby granted under any patent, trademark, or copyright, nor is any such license implied, solely by virtue of the disclosure of any Confidential Information.

18.8 Each Party agrees that the Discloser would be irreparably injured by a breach of this Agreement by the Recipient or its representatives and that the Discloser shall be entitled to seek equitable relief, including injunctive relief and specific performance, in the event of any breach of the provisions of this Agreement. Such remedies shall not be deemed to be the exclusive remedies for a breach of this Agreement, but shall be in addition to all other remedies available at law or in equity.

19. **Branding**

The Parties agree that the services offered by AT&T that incorporate Services and Elements made available to AT&T pursuant to this Agreement shall be branded as AT&T services, unless BellSouth determines to unbrand such Services and Elements for itself, in which event BellSouth may provide unbranded Services and Elements. AT&T shall provide the exclusive interface to AT&T Customers, except as AT&T shall otherwise specify. In those instances where AT&T requires BellSouth personnel or systems to interface with AT&T Customers, such personnel shall identify themselves as representing AT&T, and shall not identify themselves as representing BellSouth. Except for material provided by AT&T, all forms, business cards or other business materials furnished by BellSouth to AT&T Customers shall be subject to AT&T's prior review and approval. In no event shall BellSouth, acting on behalf of AT&T pursuant to this Agreement, provide information to AT&T local service Customers about BellSouth products or services. BellSouth

agrees to provide in sufficient time for AT&T to review and provide comments, the methods and procedures, training and approaches, to be used by BellSouth to assure that BellSouth meets AT&T's branding requirement. For installation and repair services, AT&T agrees to provide BellSouth with branded material at no charge for use by BellSouth ("Leave Behind Material"). AT&T will reimburse BellSouth for the reasonable and demonstrable costs BellSouth would otherwise incur as a result of the use of the generic leave behind material. BellSouth will notify AT&T of material supply exhaust in sufficient time that material will always be available. BellSouth may leave a generic card if BellSouth does not have an AT&T specific card available. 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 AT&T's Leave Behind Material.

**20. Directory Listings Requirements**

20.1 BellSouth shall make available to AT&T, for AT&T subscribers, non-discriminatory access to its telephone number and address directory listings ("Directory Listings"), under the below terms and conditions. In no event shall AT&T subscribers receive Directory Listings that are at less favorable rates, terms or conditions than the rates, terms or conditions that BellSouth provides its subscribers.

20.1.1 **DELETED**

20.1.2 **DELETED**

20.1.3 Subject to execution of an Agreement between AT&T and BellSouth's affiliate, BellSouth Advertising & Publishing Corporation ("BAPCO") substantially in the form set forth in Attachment 13: (1) listings shall be included in the appropriate White Pages or local alphabetical directories (including Foreign Language directories as appropriate), via the BellSouth ordering process, (basic listing shall be at no charge to AT&T or AT&T's subscribers); (2) AT&T's business subscribers' listings shall also be included in the appropriate Yellow Pages or local classified directories, via the BellSouth ordering process, at no charge to AT&T or AT&T's subscribers; (3) copies of such directories shall be delivered by BAPCO to AT&T's subscribers; (4) AT&T will sell enhanced White Pages Listings to AT&T subscribers and BellSouth shall provide the enhanced White Listings; and (5) Yellow Pages Advertising will be sold and billed to AT&T subscribers.

20.1.4 BAPCO will provide AT&T the necessary publishing information to process AT&T's subscribers directory listings requests including, but not limited to:

1. Classified Heading Information

2. Telephone Directory Coverage Areas by NPA/NXX
3. Publishing Schedules
4. Processes for Obtaining Foreign Directories
5. Information about Listing AT&T's Customer Services, including telephone numbers, in the Customer Call Guide Pages.

20.2 BellSouth will provide AT&T the proper format for submitting subscriber listings as outlined in the OLEC Handbook. BellSouth and BAPCO will accord AT&T's directory listing information the same level of confidentiality that BellSouth and BAPCO accord BellSouth's and BAPCO'S own directory listing information, and BellSouth shall limit access to AT&T's Customer proprietary, confidential directory information to those BellSouth or BAPCO employees who are involved in the preparation of listings.

20.3 BellSouth will include AT&T subscriber listings in BellSouth's directory assistance databases and BellSouth will not charge AT&T to maintain the Directory Assistance database. The Parties agree to cooperate with each other in formulating appropriate procedures regarding lead time, timeliness, format, and content of listing information.

20.4 **DELETED**

21. **Subscriber List Information/Local Number Portability**

21.1 **DELETED**

21.2 BellSouth shall refer any requests from third parties for AT&T's Subscriber List Information to AT&T.

21.3 Local Number Portability shall be provided as set forth in Attachment 8.

21.A **Insurance Requirements**

At all times during the term of this Agreement, each Party shall maintain, at its own expense, (i) all insurance required by applicable Law including insurance and approved self insurance for statutory workers compensation coverage and (ii) commercial general liability coverage in the amount of not less than ten million dollars (\$10,000,000) or a combination of commercial general liability and excess/umbrella coverage totaling ten million dollars (\$10,000,000 ). Upon request from the other Party, each Party shall furnish the other Party with certificates of insurance which evidence the minimum levels of insurance set forth herein. Each Party may satisfy all or part of the coverage specified herein through self insurance. Each Party shall give the other Party at least thirty (30)

days advance written notice of any cancellation or non-renewal of insurance required by this Section.

**21.B Costs**

Except as otherwise specified in this Agreement, the Act, or any Commission order, each Party shall be responsible for all costs and expenses that it incurs to comply with its obligations under this Agreement.

**21.B.1 DELETED**

**21.C Pre-Ordering Information**

**21.C.1** BellSouth shall provide AT&T with access on a real-time basis via electronic interfaces to all services and features technically available from each switch, by switch CLLI and access to street address detail for the provisioning of a service request. This information is currently contained in BellSouth's Regional Street Address Guide ("RSAG") and Products and Services Inventory Management (P/SIMS).

**21.C.2** If AT&T dials in, AT&T will obtain from BellSouth a security card featuring a unique password identification which will be changed periodically by BellSouth. A nonrecurring charge of One Hundred (\$100.00) Dollars will be applied to each security card provided, including duplicates furnished to additional users or furnished as a replacement of lost or stolen cards.

**21.C.3** AT&T acknowledges that (i) this information is provided for the limited purposes of facilitating the establishment of new Customer accounts and identifying services and features available in specific BellSouth central offices. AT&T agrees that it will not sell or otherwise transfer such information to any third Party for any purpose whatsoever without the prior written consent of BellSouth; (ii) BellSouth does not warrant that services provided under this Section will be uninterrupted or error free. In the event of interruptions, delays, errors or other failure of the services, BellSouth's obligation shall be limited to using reasonable efforts under the circumstances to restore the services. BellSouth shall have no obligation to retrieve or reconstruct any transmitted messages or transmission data which may be lost or damaged. AT&T is responsible for providing back-up for data deemed by BellSouth to be necessary to its operations; (iii) the services provided under this Section are provided "As Is." BellSouth makes no warranty, express or implied, with respect to the services, including but not limited to any warranty of merchantability or fitness for a particular purpose, which warranties are hereby expressly disclaimed.

**21.D Disaster Recovery**

BellSouth and AT&T agree to jointly develop and implement a detailed service restoration plan and disaster recovery plan to be in effect by December 31, 1997. A joint task team will commence development no later than November 1, 1996, for implementation throughout 1997 reaching full deployment by December 31, 1997.

Such plans shall incorporate BellSouth Emergency Contingency Plans for Residence and Business Repair Centers. The Plans shall conform to the FCC Restoration Guidelines, to the National Security Emergency Preparedness ("NSEP") procedures and adhere to the guidelines developed by the Telecommunications Service Priority ("TSP") System office within the National Communications System ("NCS") Agency.

In developing the plans, the team will address the following AT&T proposed terms: (i) provision for immediate notification to AT&T via the Electronic Interface, to be established pursuant to Section 3 of Attachment 6 of the Agreement, of the existence, location, and source of any emergency network outage affecting AT&T Customers; (ii) establishment of a single point of contact responsible for initiating and coordinating the restoration of all Local Services and Network Elements or Combinations; (iii) establishment of procedures to provide AT&T with real-time access to information relating to the status of restoration efforts and problem resolution during the restoration process; (iv) provision of an inventory and description of mobile restoration equipment by locations; (v) establishment of methods and procedures for the dispatch of mobile equipment to the restoration site; (vi) establishment of methods and procedures for re-provisioning all Services and Elements, after initial restoration; (vii) provision for equal priority, as between AT&T Customers and BellSouth Customers, for restoration efforts, consistent with FCC Service Restoration guidelines, including, but not limited to, deployment of repair personnel and access to spare parts and components; and (viii) establishment of a mutually agreeable process for escalation of maintenance problems, including a complete, up-to-date list of responsible contacts, available twenty-four (24) hours per day, seven (7) days per week.

Such plans shall be modified and updated as necessary. For purposes of this Section, an emergency network outage is defined as 5,000 or more blocked call attempts in a ten (10) minute period in a single exchange.

In the event the Parties are unable to reach agreement on either plan, the matter shall be resolved pursuant to Section 16 and Attachment 1 of this Agreement.

## 22. **Miscellaneous**

### 22.1 **Delegation or Assignment**



BellSouth may not assign any of its rights or delegate any of its obligations under this Agreement without the prior written consent of AT&T which will not be unreasonably withheld. Notwithstanding the foregoing, BellSouth may assign its rights and benefits and delegate its duties and obligations under this Agreement without the consent of AT&T to a 100 percent owned Affiliate company of BellSouth if such Affiliate provides wireline communications, provided that the performance of any such assignee is guaranteed by the assignor. Any prohibited assignment or delegations shall be null and void.

## 22.2 **Subcontracting**

If any Party's obligation under this Agreement is performed by a subcontractor or Affiliate, the Party subcontracting the obligation nevertheless shall remain fully responsible for the performance of this Agreement in accordance with its terms, and shall be solely responsible for payments due its subcontractors or Affiliate. In entering into any contract, subcontract or other agreement for the performance of any obligation under this Agreement, the Party shall not enter into any agreement that it would not enter into if the supplier was performing services directly for said Party.

## 22.3 **Nonexclusive Remedies**

Except as otherwise expressly provided in this Agreement, each of the remedies provided under this Agreement is cumulative and is in addition to any remedies that may be available at law or in equity.

## 22.4 **No Third-Party Beneficiaries**

Except as may be specifically set forth in this Agreement, this Agreement does not provide and shall not be construed to provide third Parties with any remedy, claim, liability, reimbursement, cause of action, or other privilege.

## 22.5 **Referenced Documents**

Whenever any provision of this Agreement refers to a technical reference, technical publication, AT&T Practice, BellSouth Practice, any publication of telecommunications industry administrative or technical standards, or any other document specifically incorporated into this Agreement, it will be deemed to be a reference to the most recent version or edition (including any amendments, supplements, addenda, or successors) of such document that is in effect, and will include the most recent version or edition (including any amendments, supplements, addenda, or successors) of each document incorporated by reference in such a technical reference, technical publication, AT&T Practice, BellSouth Practice, or publication of industry standards (unless AT&T elects otherwise). Should there be an inconsistency between or among publications

or standards, the Parties shall mutually agree upon which requirement shall apply. If the Parties cannot reach agreement, the matter shall be handled pursuant to Attachment 1 of this Agreement.

**22.6 Applicable Law**

The validity of this Agreement, the construction and enforcement of its terms, and the interpretation of the rights and duties of the Parties shall be governed by the laws of the State of Florida other than as to conflicts of laws, except insofar as federal law may control any aspect of this Agreement, in which case federal law shall govern such aspect. The Parties submit to personal jurisdiction in Atlanta, Georgia, and waive any objections to a Georgia venue.

**22.7 Publicity and Advertising**

Neither Party shall publish or use any advertising, sales promotions or other publicity materials that use the other Party's logo, trademarks or service marks without the prior written approval of the other Party.

**22.8 Amendments or Waivers**

Except as otherwise provided in this Agreement, no amendment or waiver of any provision of this Agreement, and no consent to any default under this Agreement, shall be effective unless the same is in writing and signed by an officer of the Party against whom such amendment, waiver or consent is claimed. In addition, no course of dealing or failure of a Party strictly to enforce any term, right or condition of this Agreement shall be construed as a waiver of such term, right or condition.

**22.9 Severability**

If any term, condition or provision of this Agreement is held to be invalid or unenforceable for any reason, such invalidity or unenforceability shall not invalidate the entire Agreement, unless such construction would be unreasonable. The Agreement shall be construed as if it did not contain the invalid or unenforceable provision or provisions, and the rights and obligations of each Party shall be construed and enforced accordingly; provided, however, that in the event such invalid or unenforceable provision or provisions are essential elements of this Agreement and substantially impair the rights or obligations of either Party, the Parties shall promptly negotiate a replacement provision or provisions.

**22.10 Entire Agreement**

This Agreement, which shall include the Attachments, Appendices and other documents referenced herein, constitutes the entire Agreement between the

Parties concerning the subject matter hereof and supersedes any prior agreements, representations, statements, negotiations, understandings, proposals or undertakings, oral or written, with respect to the subject matter expressly set forth herein.

**22.11 Survival of Obligations**

Any liabilities or obligations of a Party for acts or omissions prior to the cancellation or termination of this Agreement, any obligation of a Party under the provisions regarding indemnification, Confidential Information, limitations on liability, and any other provisions of this Agreement which, by their terms, are contemplated to survive (or to be performed after) termination of this Agreement, shall survive cancellation or termination thereof.

**22.12 Executed in Counterparts**

This Agreement may be executed in any number of counterparts, each of which shall be deemed an original; but such counterparts shall together constitute one and the same instrument.

**22.13 Headings of No Force or Effect**

The headings of Articles and Sections of this Agreement are for convenience of reference only, and shall in no way define, modify or restrict the meaning or interpretation of the terms or provisions of this Agreement.

**By and Between**

**BellSouth Telecommunications, Inc.**

**And**

**AT&T Communications of the Southern States, Inc.,  
d/b/a AT&T**

**AGREEMENT**

**between**

**BellSouth Telecommunications, Inc.**

**and**

**AT&T Communications of the Southern States, Inc., d/b/a AT&T**

**FLORIDA**

**AGREEMENT**

**PREFACE**

This Agreement, which shall become effective as of the 26<sup>th</sup> day of October 26, 2001, is entered into by and between AT&T Communications of the Southern States, Inc., d/b/a AT&T, a New York corporation, having an office at 1200 Peachtree Street, N.E., Atlanta, Georgia, 30309, on behalf of itself and its Affiliates (individually and collectively "AT&T"), and BellSouth Telecommunications, Inc. ("BellSouth"), a Georgia corporation, having an office at 675 West Peachtree Street, Atlanta, Georgia 30375, on behalf of itself and its successors and assigns.

**RECITALS**

WHEREAS, The Telecommunications Act of 1996 (the "Act") was signed into law on February 8, 1996; and

WHEREAS, the Act places certain duties and obligations upon, and grants certain rights to Telecommunications Carriers; and

WHEREAS, BellSouth is an Incumbent Local Exchange Carrier; and

WHEREAS, AT&T is a Telecommunications Carrier and has requested that BellSouth negotiate an Agreement pursuant to the Act,

NOW, THEREFORE, in consideration of the promises and the mutual covenants of this Agreement, AT&T and BellSouth hereby agree as follows:

**DEFINITIONS and ACRONYMS**

For purposes of this Agreement, certain terms have been defined in the body of the Agreement to encompass meanings that may differ from, or be in addition to, the normal connotation of the defined word. Unless the context clearly indicates otherwise, any term defined or used in the singular shall include the plural. The words "shall" and "will" are used interchangeably throughout this Agreement and the use of either connotes a mandatory requirement. The use of one or the other shall not mean a different degree of right or obligation for either Party. A defined word intended to convey its special meaning is capitalized when used. Other terms that are capitalized, and not defined in this Agreement, shall have the meaning in the Act. For convenience of reference, Attachment 11 provides a list of acronyms used throughout this Agreement.

**GENERAL TERMS AND CONDITIONS**

- 1. Provision of Local Service and Unbundled Network Elements**
- 1.1 This Agreement sets forth the terms, conditions and prices under which BellSouth agrees to provide: (a) telecommunications services that BellSouth currently provides, or may offer hereafter for resale; (b) interconnection of BellSouth's network to AT&T's network; (c) certain unbundled Network Elements ("Network Elements") and certain combinations of such unbundled Network Elements ("Combinations"); (d) access to poles, rights of way and conduits; and (e) collocation (resale, interconnection, Network Elements and Combinations, access to rights of way, poles and conduits, and collocation shall collectively be referred to as "Services and Elements"). BellSouth may fulfill the requirements imposed upon it by this Agreement by itself or, in the case of directory listings for white pages may cause BellSouth Advertising and Publishing Company ("BAPCO") to take such actions to fulfill BellSouth's responsibilities. This Agreement includes Attachments 1 – 13 and all accompanying Appendices and Exhibits. Unless otherwise provided in this Agreement, BellSouth will perform all of its obligations hereunder throughout its entire service area.
- 1.2 Subject to the requirements of this Agreement, AT&T may, at any time add, relocate or modify any Services and Elements purchased hereunder. Requests for additions or other changes shall be handled pursuant to the process provided in Attachment 10. Terminations of any Services or Elements shall be handled pursuant to Section 3 of the General Terms and Conditions of this Agreement.
- 1.3 BellSouth shall not discontinue Services and Elements provided hereunder without the prior written consent of AT&T. Such consent shall not be unreasonably withheld; provided, however, BellSouth may discontinue any telecommunications service available for resale as long as BellSouth provides AT&T prior written notice of intent to discontinue any such service. BellSouth further agrees to make any such service available to AT&T for resale to AT&T's end users who are subscribers of such services from AT&T until the date BellSouth discontinues any such service for BellSouth's customers. BellSouth also agrees to adopt a reasonable, nondiscriminatory transition schedule for BellSouth or AT&T end users who may be purchasing any such service.
- 1.4 This Agreement may be amended from time to time as mutually agreed in writing between the Parties. The Parties agree that neither Party will take any action to proceed, nor shall either have any obligation to proceed on a requested change unless and until a

modification to this Agreement is signed by authorized representatives of each Party.

**2. Term of Agreement**

2.1 When executed by authorized representatives of BellSouth and AT&T, this Agreement shall become effective as of the Effective Date stated above, and shall expire three (3) years from the Effective Date unless terminated in accordance with the provisions of Section 3 of the General Terms and Conditions.

2.2 The Parties agree that by no later than one hundred and eighty (180) days prior to the expiration of this Agreement, they may commence negotiations for a subsequent agreement ("Subsequent Agreement") with regard to the terms, conditions and obligations contained in this Agreement.

2.3 If, within one hundred and thirty-five (135) days of commencing the negotiation referred to in Section 2.2, above, the Parties are unable to satisfactorily negotiate the Subsequent Agreement, either Party may petition the Commission to establish appropriate terms and conditions for those unresolved issues pursuant to 47 U.S.C. 252. If the Commission fails to issue an order setting new terms and conditions prior to the expiration of this Agreement, the terms of this agreement shall continue in effect, on a month-to-month basis, at the same terms, conditions and prices as those in effect at the end of the then-current term, until resolved by the Commission.

2.4 The Parties must have commenced good faith negotiations within the time period set forth in Sections 2.2 and 2.3 of the Terms and Conditions of this Agreement in order for the Agreement to continue on a month-to-month basis. If such good faith negotiations have not commenced, unless the Parties agree otherwise, the Parties agree to submit the issue of having this Agreement continued on a month-to-month basis to the appropriate Commission. If such a request is made to the Commission, this Agreement will remain in effect on a month-to-month basis until the Commission has ruled.

**3. Termination of Agreement; Transitional Support**

3.1 AT&T may terminate any Services and Elements 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 and Elements in this Agreement or pursuant to any applicable tariff, in which event such specific period or conditions shall apply, provided such period or condition is reasonable, nondiscriminatory and narrowly tailored. Where there is



no such different notice period or different condition specified, AT&T's liability shall be limited to payment of the amounts due for any terminated Services and Elements provided up to and including the date of termination. Notwithstanding the foregoing, the provisions of Section 10, infra, shall still apply. Upon termination, BellSouth agrees to cooperate in an orderly and efficient transition to AT&T 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. AT&T agrees that it may not terminate the entire Agreement pursuant to this section.

3.2 If a Party is in breach of a material term or condition of this Agreement ("Defaulting Party"), the other Party shall provide written notice of such breach to the Defaulting Party. The Defaulting Party shall have ten (10) business days from receipt of notice to cure the breach. If the breach is not cured, the Parties shall follow the dispute resolution procedure set forth in Section 16 of the General Terms and Conditions of this Agreement.

4. **Good Faith Performance**

4.1 In the performance of their obligations under this Agreement, the Parties shall act in good faith and consistently with the intent of the Act. Where notice, approval or similar action by a Party is permitted or required by any provision of this Agreement, (including, without limitation, the obligation of the Parties to further negotiate the resolution of new or open issues under this Agreement) such action shall not be unreasonably delayed, withheld or conditioned.

5. **Option to Obtain Services and Elements and Combinations Under Other Agreements**

5.1 BellSouth shall make available and AT&T may elect to adopt pursuant to 47 U.S.C. § 252 and the FCC rules and regulations regarding such availability any interconnection, service, or network element provided under an agreement approved pursuant to 47 U.S.C. § 252. The adopted interconnection, service, or network element shall apply to the same states as such other agreement and for the identical term of such other agreement. AT&T may exercise this option by delivering written notice to BellSouth, which may include a proposed amendment to this Agreement to incorporate the prices, terms and conditions, in whole or in part found in the other agreement.

5.2 Any dispute between the Parties concerning any election or exercise of an option by AT&T under this Section 5 shall be resolved pursuant

to the dispute resolution procedure set forth in Section 16 of the General Terms and Conditions of this Agreement.

**6. Responsibility of Each Party**

**6.1** Each Party is an independent contractor, and has and hereby retains the right to exercise full control of and supervision over its own performance of its obligations under this Agreement and retains full control over the employment, direction, compensation and discharge of all employees assisting in the performance of such obligations. Each Party will be solely responsible for all matters relating to payment of such employees, including compliance with social security taxes, withholding taxes and all other regulations governing such matters. Each Party will be solely responsible for proper handling, storage, transport and disposal at its own expense of all (i) substances or materials that it or its contractors or agents bring to, create or assume control over at Work Locations or, (ii) Waste resulting therefrom or otherwise generated in connection with its or its contractors' or agents' activities at the Work Locations. Subject to the limitations on liability and except as otherwise provided in this Agreement, each Party shall be responsible for (i) its own acts and performance of all obligations imposed by Applicable Law in connection with its activities, legal status and property, real or personal and, (ii) the acts of its own affiliates, employees, agents and contractors during the performance of that Party's obligations hereunder.

**7. Governmental Compliance**

**7.1** AT&T and BellSouth each shall comply at its own expense with all Applicable Law that relates to (i) its obligations under or activities in connection with this Agreement or (ii) its activities undertaken at, in connection with or relating to Work Locations. AT&T and BellSouth each agree to indemnify, defend (at the other Party's request) and save harmless the other, each of its officers, directors and employees from and against any losses, damages, claims, demands, suits, liabilities, fines, penalties and expenses (including reasonable attorneys' fees) that arise out of or result from (i) its failure or the failure of its contractors or agents to so comply or (ii) any activity, duty or status of it or its contractors or agents that triggers any legal obligation to investigate or remediate environmental contamination. BellSouth, at its own expense, will be solely responsible for obtaining from governmental authorities, building owners, other carriers, and any other persons or entities, all rights and privileges (including, but not limited to, space and power), which are necessary for BellSouth to provide the Services and Elements pursuant to this Agreement.

AT&T, at its own expense, will be solely responsible for obtaining from governmental authorities, building owners, other carriers, and any other persons or entities, all rights and privileges which are AT&T's obligation as a provider of telecommunications services to its end users pursuant to this Agreement.

**8. Responsibility For Environmental Contamination**

**8.1** AT&T shall in no event be liable to BellSouth for any costs whatsoever resulting from the presence or Release of any Environmental Hazard or Hazardous Materials that AT&T did not introduce to the affected Work Location so long as AT&T's actions do not cause or substantially contribute to the release of any Environmental Hazard or Hazardous Materials. BellSouth shall indemnify, defend (at AT&T's request) and hold harmless AT&T, each of its officers, directors and employees from and against any losses, damages, claims, demands, suits, liabilities, fines, penalties and expenses (including reasonable attorneys' fees) that arise out of or result from (i) any Environmental Hazard or Hazardous Materials that BellSouth, its contractors or agents introduce to the Work Locations or (ii) the presence or Release of any Environmental Hazard or Hazardous Materials for which BellSouth is responsible under Applicable Law, to the extent the release of any Environmental Hazard or Hazardous Materials is not caused or substantially contributed to by AT&T's actions.

**8.2** BellSouth shall in no event be liable to AT&T for any costs whatsoever resulting from the presence or Release of any Environmental Hazard or Hazardous Materials that BellSouth did not introduce to the affected Work Location, so long as BellSouth's actions do not cause or substantially contribute to the release of any Environmental Hazards or Hazardous Materials. AT&T shall indemnify, defend (at BellSouth's request) and hold harmless BellSouth, each of its officers, directors and employees from and against any losses, damages, claims, demands, suits, liabilities, fines, penalties and expenses (including reasonable attorneys' fees) that arise out of or result from (i) any Environmental Hazard or Hazardous Materials that AT&T, its contractors or agents introduce to the Work Locations or (ii) the presence or Release of any Environmental Hazard or Hazardous Materials for which AT&T is responsible under Applicable Law, to the extent the release of any Environmental Hazard or Hazardous Materials is not caused or substantially contributed to by BellSouth's actions.

**8.3** For purposes of this Section 8, the following terms shall have the following meaning:

- 8.3.1 **Environmental Hazard** means (1) a release, discharge, leak, spill or disposal (collectively referred to hereafter as "release") of HAZARDOUS MATERIALS has occurred on premises or property that is related to the performance of this Agreement and that such affected material or media is demonstrated through applicable or appropriate testing method to require remediation or removal as determined by all laws, ordinances, statutes, codes, rules, regulations, orders and decrees of the United States, the state, county, city or any other political subdivision in which the release has occurred, and any other political subdivision, agency or instrumentality exercising jurisdiction over the release, including any applicable federal and state case law and common law interpreting any of the foregoing; or (2) any event involving, or exposure to, HAZARDOUS MATERIALS which poses risks to human health, safety or the environment (including, without limitation, indoor or outdoor environment(s) and is regulated under any applicable laws or regulations as described in (1);
- 8.3.2 **"Hazardous Materials"** means any hazardous or toxic substance, material or waste listed in the United States Department of Transportation HAZARDOUS MATERIALS Table at 49 CFR 172.101; any hazardous substance listed by the Environmental Protection Agency ("EPA") under the Comprehensive Environmental, Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. §§ 9601, et seq., as amended, and found at 40 CFR Part 302; any hazardous waste listed under the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. §§ 6901, et seq., as amended, and found at 40 CFR Part 261; any toxic substance regulated by the Toxic Substances Control Act, 15 U.S.C. §§ 2601, et seq., as amended; any insecticide, fungicide, or rodenticide regulated by the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. §§ 136, et seq.; and the following specified substances or materials, that may or may not be regulated by the above: (1) asbestos or asbestos-containing materials; (2) petroleum or petroleum-based or derived products or by-products; (3) polychlorinated biphenyls ("PCBs"); and (4) radon.
- 8.3.3 **"Release"** means any release, spill, emission, leaking, pumping, injection, deposit, disposal, discharge, dispersal, leaching, or migration, including without limitation, the movement of Environmental Hazards through or in the air, soil, surface water or groundwater, or any action or omission that causes Environmental Hazards to spread or become more toxic or more expensive to investigate or remediate.
- 8.3.4 **"Waste"** means all hazardous and non-hazardous substances and materials which are intended to be discarded, scrapped, or recycled, associated with activities AT&T or BellSouth or their respective contractors or agents perform at Work Locations. It shall be presumed

that all substances or materials associated with such activities, that are not in use or incorporated into structures (including without limitation damaged components or tools, leftovers, containers, garbage, scrap, residues or byproducts), except for substances and materials that AT&T, BellSouth or their respective contractors or agents intend to use in their original form in connection with similar activities, are Waste. "Waste" shall not include substances, materials or components incorporated into structures (such as cable routes) even after such components or structure are no longer in current use.

**9. Regulatory Matters**

9.1 BellSouth shall be responsible for obtaining and keeping in effect all Federal Communications Commission, State Commission, franchise authority and other regulatory approvals that may be required in connection with the performance of its obligations under this Agreement. AT&T shall be responsible for obtaining and keeping in effect all Federal Communications Commission, State Commission, franchise authority and other regulatory approvals that may be required in connection with its offering of services to AT&T end users contemplated by this Agreement. AT&T shall reasonably cooperate with BellSouth in obtaining and maintaining any required approvals for which BellSouth is responsible, and BellSouth shall reasonably cooperate with AT&T in obtaining and maintaining any required approvals for which AT&T is responsible.

9.2 In the event that BellSouth is required by any governmental authority to file a tariff or make another similar filing ("Filing") in order to implement this Agreement, BellSouth shall (i) consult with AT&T reasonably in advance of such Filing about the form and substance of such Filing, (ii) provide to AT&T its proposed tariff and obtain AT&T's agreement on the form and substance of such Filing, and (iii) take all steps reasonably necessary to ensure that such Filing imposes obligations upon BellSouth that are no less favorable than those provided in this Agreement and preserves for AT&T the full benefit of the rights otherwise provided in this Agreement. In no event shall BellSouth file any tariff to implement this Agreement that purports to govern Services and Elements that is inconsistent with the rates and other terms and conditions set forth in this Agreement unless such rate or other terms and conditions are more favorable than those set forth in this Agreement.

9.3 In the event that any final legislative, regulatory, judicial or other legal action materially affects any material terms of this Agreement, or the ability of AT&T or BellSouth to perform any material terms of this Agreement, AT&T or BellSouth may, on ninety (90) days' written notice

(delivered not later than ninety (90) days following the date on which such action has become legally binding and has otherwise become final) require that such terms be renegotiated, and the Parties shall renegotiate in good faith such mutually acceptable new terms as may be required. In the event that such new terms are not renegotiated within ninety (90) days after such notice, the dispute shall follow the dispute resolution procedures set forth in Section 16 of the General Terms and Conditions of this Agreement.

**10. Liability and Indemnity**

**10.1 Liabilities of BellSouth - Unless expressly stated otherwise in this Agreement, the financial liability of BellSouth to AT&T during any Contract Year resulting from any and all causes of action arising under this Agreement shall not exceed the amount due and owing by AT&T to BellSouth during the Contract Year in which such cause arises or accrues.**

**10.2 Liabilities of AT&T - Unless expressly stated otherwise in this Agreement, the financial liability of AT&T to BellSouth during any Contract Year resulting from any and all causes of action arising under this Agreement shall not exceed the amount due and owing by AT&T to BellSouth during the Contract Year in which such cause arises or accrues.**

**10.3 Each Party shall, to the greatest extent permitted by Applicable Law, include in its local switched service tariff (if it files one in a particular State) or in any State where it does not file a local service tariff, in an appropriate contract with its end users that relates to the Services and Elements provided under this Agreement, a limitation of liability (i) that covers the other Party to the same extent the first Party covers itself and (ii) that limits the amount of damages a customer may recover to the amount charged the applicable customer for the service that gave rise to such loss.**

**10.4 No Consequential Damages - NEITHER AT&T NOR BELLSOUTH SHALL BE LIABLE TO THE OTHER PARTY FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, RELIANCE, OR SPECIAL DAMAGES SUFFERED BY SUCH OTHER PARTY (INCLUDING WITHOUT LIMITATION DAMAGES FOR HARM TO BUSINESS, LOST REVENUES, LOST SAVINGS, OR LOST PROFITS SUFFERED BY SUCH OTHER PARTIES), REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, WARRANTY, STRICT LIABILITY, OR TORT, INCLUDING WITHOUT LIMITATION NEGLIGENCE OF ANY KIND WHETHER ACTIVE OR PASSIVE, AND REGARDLESS OF WHETHER THE PARTIES KNEW OF THE POSSIBILITY THAT SUCH DAMAGES COULD RESULT. EACH**

PARTY HEREBY RELEASES THE OTHER PARTY AND SUCH OTHER PARTY'S SUBSIDIARIES AND AFFILIATES, AND THEIR RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES AND AGENTS FROM ANY SUCH CLAIM. NOTHING CONTAINED IN THIS SECTION 10 SHALL LIMIT BELLSOUTH'S OR AT&T'S LIABILITY TO THE OTHER FOR (i) WILLFUL OR INTENTIONAL MISCONDUCT (INCLUDING GROSS NEGLIGENCE); (ii) BODILY INJURY, DEATH OR DAMAGE TO TANGIBLE REAL OR TANGIBLE PERSONAL PROPERTY PROXIMATELY CAUSED BY BELLSOUTH'S OR AT&T'S NEGLIGENT ACT OR OMISSION OR THAT OF THEIR RESPECTIVE AGENTS, SUBCONTRACTORS OR EMPLOYEES, NOR SHALL ANYTHING CONTAINED IN THIS SECTION 10 LIMIT THE PARTIES' INDEMNIFICATION OBLIGATIONS AS SPECIFIED HEREIN. FOR PURPOSES OF THIS SECTION 10, BELLSOUTH'S FAILURE TO MEET PERFORMANCE STANDARDS OR MEASUREMENTS PURSUANT TO ATTACHMENT 9 OF THIS AGREEMENT, TO THE EXTENT APPLICABLE, SHALL NOT BE CONSIDERED TO BE INDIRECT, INCIDENTAL, CONSEQUENTIAL, RELIANCE, OR SPECIAL DAMAGES.

- 10.5 **Obligation to Indemnify – Except as provided in Section 11 (Intellectual Property Rights and Indemnification), each Party shall, and hereby agrees to, defend at the other's request, indemnify and hold harmless the other Party and each of its officers, directors, employees and agents (each, an "Indemnitee") against and in respect of any loss, debt, liability, damage, obligation, claim, demand, judgment or settlement of any nature or kind, known or unknown, liquidated or unliquidated, including without limitation all reasonable costs and expenses incurred (legal, accounting or otherwise) (collectively, "Damages") arising out of, resulting from or based upon any pending or threatened claim, action, proceeding or suit by any third Party (a "Claim") (i) alleging any breach of any representation, warranty or covenant made by such indemnifying Party (the "Indemnifying Party") in this Agreement, or (ii) based upon injuries or damage to any person or property or the environment arising out of or in connection with this Agreement that are the result of the Indemnifying Party's actions, breach of Applicable Law, or status of its employees, agents and subcontractors.**
- 10.6 **Obligation to Defend; Notice; Cooperation - Whenever a Claim shall arise for indemnification under this Section 10, the relevant Indemnitee, as appropriate, shall promptly notify the Indemnifying Party and request the indemnifying Party to defend the same. Failure to so notify the Indemnifying Party shall not relieve the Indemnifying Party of any liability that the Indemnifying Party might have, except to the extent that such failure prejudices the Indemnifying Party's ability**

to defend such Claim. The Indemnifying Party shall have the right to defend against such liability or assertion in which event the Indemnifying Party shall give written notice to the Indemnitee of acceptance of the defense of such Claim and the identity of counsel selected by the Indemnifying Party. Except as set forth below, such notice to the relevant Indemnitee shall give the Indemnifying Party full authority to defend, adjust, compromise or settle such Claim with respect to which such notice shall have been given, except to the extent that any compromise or settlement shall prejudice the Intellectual Property Rights of the relevant Indemnitees. The Indemnifying Party shall consult with the relevant Indemnitee prior to any compromise or settlement that would affect the Intellectual Property Rights or other rights of any Indemnitee, and the relevant Indemnitee shall have the right to refuse such compromise or settlement and, at the refusing Party's or refusing Parties' cost, to take over such defense, provided that in such event the Indemnifying Party shall not be responsible for, nor shall it be obligated to indemnify the relevant Indemnitee against, any cost or liability in excess of such refused compromise or settlement. With respect to any defense accepted by the Indemnifying Party, the relevant Indemnitee shall be entitled to participate with the Indemnifying Party in such defense if the Claim requests equitable relief or other relief that could affect the rights of the Indemnitee and also shall be entitled to employ separate counsel for such defense at such Indemnitee's expense. In the event the Indemnifying Party does not accept the defense of any indemnified Claim as provided above, the relevant Indemnitee shall have the right to employ counsel for such defense at the expense of the Indemnifying Party. Each Party agrees to cooperate and to cause its employees and agents to cooperate with the other Party in the defense of any such Claim and the relevant records of each Party shall be available to the other Party with respect to any such defense.

**11. Intellectual Property Rights and Indemnification**

- 11.1 Use of Mark. Both Parties are strictly prohibited from any use, including but not limited to in sales and in marketing or advertising of telecommunications services of any name, trade name, service mark or trademark of the other Party.
- 11.2 Ownership of Intellectual Property. Any intellectual property which originates from or is developed by a Party shall remain in the exclusive ownership of that Party. Except for limited licenses, to the extent necessary for the Parties to use any facilities or equipment (including software) or to receive any services solely as provided under this Agreement, no patent, copyright, trademark, trade name or other



proprietary right is licensed, granted or otherwise transferred by this Agreement.

- 11.3 BellSouth and AT&T (if and to the extent BellSouth uses AT&T facilities or equipment, including software) warrants that each other may use any facilities or equipment, including software, provided hereunder that contains intellectual property owned or controlled by third parties without being subject to any claims of infringement by such third parties. Each Party further warrants that it will not enter into any licensing agreements with respect to any facilities or equipment, including software, that contain provisions that would disqualify the other Party from using or interconnecting with such facilities or equipment, including software, pursuant to the terms of this Agreement. Each Party further warrants that it has not and will not intentionally modify any existing license agreements for any network facilities or equipment, including software, in whole or in part for the purpose of disqualifying the other Party from using or interconnecting with such facilities or equipment, including software, pursuant to the terms of this Agreement. To the extent that providers of facilities or equipment, including software, in either Party's network provide indemnities covering intellectual property liabilities and those indemnities allow a flow-through of protection to third parties, the indemnified party shall flow those indemnity protections through to the other Party. Finally each Party shall indemnify the other pursuant to the terms of this Agreement, with respect to the other Party's use of intellectual property associated with any new network facilities or equipment, including software, acquisitions.
- 11.4 BellSouth Indemnification. BellSouth will defend AT&T against claims of infringement arising solely from the use by AT&T of Services and Elements and will indemnify AT&T for any damages awarded based solely on such claims in accordance with Section 11 of this Agreement.
- 11.4.1 For purposes of Section 11.4 of this Agreement, BellSouth's obligation to indemnify AT&T shall include the obligation to indemnify and hold AT&T harmless from and against any loss, cost, expense or liability arising out of a claim that AT&T's use, pursuant to the terms of this Agreement, of BellSouth's facilities, equipment or software infringes the intellectual property rights of a third party. Should any such facilities, equipment or software, or any portion thereof, provided by BellSouth hereunder become, or, in BellSouth's reasonable opinion, be likely to become the subject of a claim of infringement, or should BellSouth's use thereof be finally enjoined, then BellSouth shall, at its expense, after consultation with AT&T, (i) procure for AT&T the right to continue using such facilities, equipment or software or portion

thereof; or (ii) replace or modify such facilities, equipment or software or portion thereof to make it non-infringing, provided, however, that such replacement or modification shall be functionally equivalent to the facilities, equipment or software or portion thereof that is replaced or modified.

- 11.5 AT&T Indemnification. AT&T (if and only to the extent AT&T provides BellSouth access to its facilities and equipment, including software) will defend BellSouth against claims of infringement arising solely from the use by BellSouth of AT&T facilities or equipment, including software, and to the extent BellSouth uses AT&T facilities or equipment, including software, and will indemnify BellSouth for any damages awarded based solely on such claims in accordance with Section 11 of this Agreement.
- 11.5.1 For purposes of Section 11.5 of this Agreement, AT&T's obligation to indemnify BellSouth shall include the obligation to indemnify and hold BellSouth harmless from and against any loss, cost, expense or liability arising out of a claim that BellSouth's use, pursuant to the terms of this Agreement, of AT&T facilities or equipment, including software, infringes the intellectual property rights of a third party. Should any such facilities or equipment, including software, or any portion thereof, provided by AT&T hereunder become, or, in AT&T's reasonable opinion, be likely to become the subject of a claim of infringement, or should AT&T's use thereof be finally enjoined, then AT&T shall, at its expense, after consultation with BellSouth, (i) procure for BellSouth the right to continue using such facilities, equipment or software or portion thereof; or (ii) replace or modify such facilities, equipment or software or portion thereof to make it non-infringing, provided, however, that such replacement or modification shall be functionally equivalent to the facilities, equipment or software or portion thereof that is replaced or modified.
- 11.6 In the event that the provisions of Section 11.4.1 or Section 11.5.1 of this Agreement are unreasonable for the indemnifying party to perform, then the indemnified party shall have the right, in its sole discretion, to waive its indemnification rights under either Section 11.4 or Section 11.5 of this Agreement or to terminate the portion of the Agreement, upon thirty (30) days written notice, solely with respect to the facilities or equipment, including software, provided through the use of the infringing facilities or equipment, including software.
- 11.7 The Party providing access to its facilities or equipment, including software, will inform the other Party of any pending or threatened intellectual property claims of which it is aware and will provide to the other Party periodic and timely updates of such notification, as

appropriate, so that the other Party receives maximum notice of any intellectual property risks that it may want to address.

- 11.8 In no event shall either Party be responsible for obtaining any license or right to use agreement associated with any facilities or equipment, including software, by either Party.
- 11.9 **Exception to Obligations.** Both Parties' obligations under this Section shall not apply to the extent the infringement is caused by: (i) modification of the facilities or equipment (including software) by the indemnitee; (ii) use by the indemnitee of the facilities or equipment (including software) in combination with equipment or facilities (including software) not provided or authorized by the indemnitor provided the facilities or equipment (including software) would not be infringing if used alone; (iii) conformance to specifications of the indemnitee which would necessarily result in infringement; or (iv) continued use by the indemnitee of the affected facilities or equipment (including software) after being placed on notice to discontinue use as set forth herein.
- 11.10 **Exclusive Remedy.** The foregoing shall constitute the sole and exclusive remedies and obligations with respect to a third party claim of intellectual property infringement arising out of the conduct of business under this Agreement.
12. **Audits and Inspections**
- 12.1 For carrier billing purposes, the Parties have agreed pursuant to Section 12 of Attachment 6, to create a process for pre-bill certification. Until such time as that process is in place, the audit process provided in this Section 12 shall apply.
- 12.1.1 Subject to BellSouth's reasonable security requirements and except as may be otherwise specifically provided in this Agreement, AT&T may audit BellSouth's books, records and other documents once in each Contract Year for the purpose of evaluating the accuracy of BellSouth's billing and invoicing. AT&T may employ other persons or firms for this purpose. Such audit shall take place at a time and place agreed on by the Parties no later than thirty (30) days after notice thereof to BellSouth.
- 12.1.2 BellSouth shall promptly correct any billing error that is revealed in an audit, including making refund of any overpayment by AT&T in the form of a credit on the invoice for the first full billing cycle after the Parties have agreed upon the accuracy of the audit results. Any Disputes concerning audit results shall be resolved pursuant to the

dispute resolution procedures described in Section 16 of the General Terms and Conditions of this Agreement.

- 12.1.3 BellSouth shall cooperate fully in any such audit, providing reasonable access to any and all appropriate BellSouth employees and books, records and other documents reasonably necessary to assess the accuracy of BellSouth's bills.
- 12.1.4 AT&T may audit BellSouth's books, records and documents more than once during any Contract Year if the previous audit found previously uncorrected net variances or errors in invoices in BellSouth's favor with an aggregate value of at least two percent (2%) of the amounts payable by AT&T for Services and Elements or Combinations provided during the period covered by the audit.
- 12.1.5 Audits shall be at AT&T's expense, subject to reimbursement by BellSouth in the event that an audit finds an adjustment in the charges or in any invoice paid or payable by AT&T hereunder by an amount that is, on an annualized basis, greater than two percent (2%) of the aggregate charges for the Services and Elements during the period covered by the audit.
- 12.1.6 Upon (i) the discovery by BellSouth of overcharges not previously reimbursed to AT&T or (ii) the resolution of disputed audits, BellSouth shall promptly reimburse AT&T the amount of any overpayment times the highest interest rate (in decimal value) which may be levied by law for commercial transactions, compounded daily for the number of days from the date of overpayment to and including the date that payment is actually made. In no event, however, shall interest be assessed on any previously assessed or accrued late payment charges.
- 12.2 Subject to reasonable security requirements, either Party may audit the books, records and other documents of the other for the purpose of evaluating usage pertaining to transport and termination of local traffic. Where such usage data is being transmitted through CABS, the audit shall be conducted in accordance with CABS or other applicable requirements approved by the appropriate State Commission. If data is not being transferred via CABS, either Party may request an audit for such purpose once each Contract Year. Either Party may employ other persons or firms for this purpose. Any such audit shall take place no later than thirty (30) days after notice thereof to the other Party.
- 12.2.1 Either Party shall promptly correct any reported usage error that is revealed in an audit, including making payment of any underpayment after the Parties have agreed upon the accuracy of the audit results.

Any Disputes concerning audit results shall be resolved pursuant to the dispute resolution procedures described in Section 16 of the General Terms and Conditions of this Agreement.

- 12.2.2 The Parties shall cooperate fully in any such audit, providing reasonable access to any and all appropriate employees and books, records and other documents reasonably necessary to assess the usage pertaining to transport and terminating of local traffic.
13. **Service Quality Measurement**
- 13.1 Service Quality Measurements, Enforcement Measurements and any applicable enforcement mechanisms shall be as set forth in Attachment 9, incorporated herein by this reference.
- 13.2 BellSouth shall provide telecommunications services pursuant to Attachment 1 to AT&T for resale that are equal in quality, subject to the same conditions, and provided within the same provisioning time intervals that BellSouth provides these services to others, including end users.
- 13.3 BellSouth shall provide, for the facilities and equipment of AT&T, interconnection with BellSouth's network that is at a level of quality that is equal to that which BellSouth provides itself, a subsidiary, an affiliate, or any other third party.
- 13.4 To the extent technically feasible, the quality of a Network Element, as well as the quality of the access to such Network Element, provided to AT&T by BellSouth shall be at least equal in quality to that which BellSouth provides to itself.
14. **Force Majeure**
- 14.1 Neither Party shall be liable for any delay or failure in performance of any part of this Agreement caused by a Force Majeure condition, including acts of the United States of America or any state, territory or political subdivision thereof, acts of God or a public enemy, fires, floods, disputes, freight embargoes, strikes, labor disputes, earthquakes, volcanic actions, wars, civil disturbances, or other causes beyond the reasonable control of the Party claiming excusable delay or other failure to perform. Force Majeure shall not include acts of any Governmental Authority relating to environmental, health or safety conditions at Work Locations. If any Force Majeure condition occurs, the Party whose performance fails or is delayed because of such Force Majeure condition shall give prompt notice to the other Party, and upon cessation of such Force Majeure condition, shall give

like notice and commence performance hereunder as promptly as reasonably practicable.

- 14.2 Notwithstanding Section 14.1 of this Agreement, no delay or other failure to perform shall be excused pursuant to this Section 14 by the acts or omission of a Party's subcontractors, material persons, suppliers or other third persons providing products or services to such Party unless: (i) there is a Force Majeure condition that affects the performance of said subcontractors, material persons, suppliers or other third persons, (ii) such acts or omissions do not relate to environmental, health or safety conditions at Work Locations and, (iii) unless such delay or failure and the consequences thereof are beyond the control and without the fault or negligence of the Party claiming excusable delay or other failure to perform. Notwithstanding the foregoing, this Section 14 shall not excuse failure or delays where either Party is required to implement Disaster Recovery plans to avoid such failures and delays in performance.

**15. Certain Federal, State and Local Taxes**

- 15.1 **Definition.** For purposes of this Section 15, the terms "taxes" and "fees" shall include but not be limited to federal, state or local sales, use, excise, gross receipts or other taxes or tax-like fees of whatever nature and however designated (including tariff surcharges and any fees, charges or other payments, contractual or otherwise, for the use of public streets or rights of way, whether designated as franchise fees or otherwise) imposed on, or sought to be imposed, either of the Parties and measured by the charges or payments, for the services furnished hereunder, excluding any taxes levied on income.

**15.2 Taxes And Fees Imposed Directly On Either Seller Or Purchaser**

- 15.2.1 Taxes and fees imposed on the providing Party, which are neither permitted nor required to be passed on by the providing Party to its Customer, shall be borne and paid by the providing Party.

- 15.2.2 Taxes and fees imposed on the purchasing Party, which are not required to be collected and/or remitted by the providing Party, shall be borne and paid by the purchasing Party.

**15.3 Taxes And Fees Imposed On Purchaser But Collected And Remitted By Seller**

- 15.3.1 Taxes and fees imposed on the purchasing Party shall be borne by the purchasing Party, even if the obligation to collect and/or remit such taxes or fees is placed on the providing Party.

- 15.3.2 To the extent permitted by Applicable Law, any such taxes and/or fees shall be shown as separate items on applicable billing documents between the Parties. Notwithstanding the foregoing, the purchasing Party shall remain liable, to the extent permitted by Applicable law, for any such taxes and fees regardless of whether they are actually billed by the providing Party at the time that the respective service is billed.
- 15.3.3 If the purchasing Party determines that in its opinion any such taxes or fees are not lawfully due, the providing Party shall not bill such taxes or fees to the purchasing Party if the purchasing Party provides written certification, reasonably satisfactory to the providing Party, stating that it is exempt or otherwise not subject to the tax or fee, setting forth the basis therefor, and satisfying any other requirements under Applicable Law. If any authority seeks to collect any such tax or fee that the purchasing Party has determined and certified not to be lawfully due, or any such tax or fee that was not billed by the providing Party, the purchasing Party may contest the same in good faith, at its own expense. In the event that such contest must be pursued in the name of the providing Party, the providing Party shall permit the purchasing Party to pursue and control the contest in the name of providing Party and providing Party shall have the opportunity to participate fully in the preparation of such contest. In any such contest, the purchasing Party shall promptly furnish the providing Party with copies of all filings in any proceeding, protest, or legal challenge, all rulings issued in connection therewith, and all correspondence between the purchasing Party and the taxing authority.
- 15.3.4 In the event that all or any portion of an amount sought to be collected must be paid in order to contest the imposition of any such tax or fee, or to avoid the existence of a lien on the assets of the providing Party during the pendency of such contest, the purchasing Party shall be responsible for such payment and shall be entitled to the benefit of any refund or recovery.
- 15.3.5 If it is ultimately determined that any additional amount of such a tax or fee is due to the imposing authority, the purchasing Party shall pay such additional amount, including any interest and penalties thereon.
- 15.3.6 Notwithstanding any provision to the contrary, the purchasing Party shall protect, indemnify and hold harmless (and defend at the purchasing Party's expense) the providing Party from and against any such tax or fee, interest or penalties thereof, or other charges or payable expenses (including reasonable attorney fees) with respect thereto, which are reasonably and necessarily incurred by the providing Party in connection with any claim for or contest of any such tax or fee.

- 15.3.7 Each Party shall notify the other Party in writing of any assessment, proposed assessment or other claim for any additional amount of such a tax or fee by a taxing authority; such notice to be provided, if possible, at least ten (10) days prior to the date by which a response, protest or other appeal must be filed, but in no event later than thirty (30) days after receipt of such assessment, proposed assessment or claim.
- 15.4 Taxes And Fees Imposed On Seller But Passed On To Purchaser
- 15.4.1 Taxes and fees imposed on the providing Party, which are permitted or required to be passed on by the providing Party to its Customer, shall be borne by the purchasing Party.
- 15.4.2 To the extent permitted by Applicable Law, any such taxes and/or fees shall be shown as separate items on applicable billing documents between the Parties. Notwithstanding the foregoing, to the extent permitted by Section 15 with respect to the billing of services provided hereunder, the purchasing Party shall remain liable for any such taxes and fees regardless of whether they are actually billed by the providing Party at the time that the respective service is billed.
- 15.4.3 If the purchasing Party disagrees with the providing Party's determination as to the application or basis for any such tax or fee, the Parties shall consult with respect to the imposition and billing of such tax or fee and with respect to whether to contest the imposition of such tax or fee. Notwithstanding the foregoing, the providing Party shall retain responsibility for determining whether and to what extent any such taxes or fees are applicable. The providing Party shall further retain responsibility for determining whether and how to contest the imposition of such taxes or fees, provided, however, the Parties agree to consult in good faith as to such contest and that any such contest undertaken at the request of the purchasing Party shall be at the purchasing Party's expense. In the event that such contest must be pursued in the name of the providing Party, providing Party shall permit purchasing Party to pursue the contest in the name of the providing Party and the providing Party shall have the opportunity to participate fully in the preparation of such contest.
- 15.4.4 If, after consultation in accordance with the preceding Section 15.4.3, the purchasing Party does not agree with the providing Party's final determination as to the application or basis of a particular tax or fee, and if the providing Party, after receipt of a written request by the purchasing Party to contest the imposition of such tax or fee with the imposing authority, fails or refuses to pursue such contest or to allow such contest by the purchasing Party, the purchasing Party may utilize



the dispute resolution process outlined in Section 16 of the General Terms and Conditions of this Agreement. Utilization of the dispute resolution process shall not relieve the purchasing party from liability for any tax or fee billed by the providing Party pursuant to this subsection during the pendency of such dispute resolution proceeding. In the event that the purchasing Party prevails in such dispute resolution proceeding, it shall be entitled to a refund in accordance with the final decision therein. Notwithstanding the foregoing, if at any time prior to a final decision in such dispute resolution proceeding the providing Party initiates a contest with the imposing authority with respect to any of the issues involved in such dispute resolution proceeding, the dispute resolution proceeding shall be dismissed as to such common issues and the final decision rendered in the contest with the imposing authority shall control as to such issues.

- 15.4.5 In the event that all or any portion of an amount sought to be collected must be paid in order to contest the imposition of any such tax or fee with the imposing authority, or to avoid the existence of a lien on the assets of the providing Party during the pendency of such contest, the purchasing Party shall be responsible for such payment and shall be entitled to the benefit of any refund or recovery.
- 15.4.6 If it is ultimately determined that any additional amount of such a tax or fee is due to the imposing authority, the purchasing Party shall pay such additional amount, including any interest and penalties thereon.
- 15.4.7 Notwithstanding any provision to the contrary, the purchasing Party shall protect, indemnify and hold harmless (and defend at the purchasing Party's expense) the providing Party from and against any such tax or fee, interest or penalties thereon, or other reasonable charges or payable expenses (including reasonable attorney fees) with respect thereto, which are incurred by the providing Party in connection with any claim for or contest of any such tax or fee which purchasing party elects to contest or which purchasing party provides written authorization for the providing party to undertake on behalf of the purchasing party.
- 15.4.8 Each Party shall notify the other Party in writing of any assessment, proposed assessment or other claim for any additional amount of such a tax or fee by a taxing authority, such notice to be provided, if possible, at least ten (10) days prior to the date by which a response, protest or other appeal must be filed, but in no event later than thirty (30) days after receipt of such assessment, proposed assessment or claim.

**15.5**      **Mutual Cooperation**

**15.5.1**      In any contest of a tax or fee by one Party, the other Party shall cooperate fully by providing records, testimony and such additional information or assistance as may reasonably be necessary to pursue the contest. Further, the other Party shall be reimbursed for any reasonable and necessary out-of-pocket copying and travel expenses incurred in assisting in such contest. Each Party agrees to indemnify and hold harmless the other Party from and against any losses, damages, claims, demands, suits, liabilities, and expenses, including reasonable attorney's fees, that arise out of its failure to perform its obligations under this section.

**16.**            **Dispute Resolution Process**

Except as otherwise stated in this Agreement, i.e. the process for resolving billing disputes as described in Attachment 6, Section 1.15, the Parties agree that any other dispute that arises as to the interpretation of any provision of this Agreement or as to the proper implementation of this Agreement, may be taken to the Commission for resolution. The Parties may, by mutual agreement, agree to an alternative dispute resolution mechanism for any dispute, except billing disputes shall be resolved as described in Attachment 6, Section 1.15. Each Party reserves the rights it may have to seek judicial review of any ruling made by the Commission concerning this Agreement.

**17.**            **Notices**

**17.1**            Any notices or other communications required or permitted to be given or delivered under this Agreement shall be in hard-copy writing (unless otherwise specifically provided herein) and shall be sufficiently given if delivered personally or delivered by prepaid overnight express service to the following (unless otherwise specifically required by this Agreement to be delivered to another representative or point of contact):

**If to AT&T:**

    Bill Peacock  
    AT&T  
    1200 Peachtree St., N.E.  
    Suite 12254  
    Atlanta, GA 30309

    Chief Commercial Attorney

AT&T  
Legal Department  
1200 Peachtree St., N.E.  
Suite 8100  
Atlanta, GA 30309

If to BellSouth:

Assistant Vice President  
AT&T Account Team  
Interconnection Services  
Suite 410  
1960 W. Exchange Place  
Tucker, GA 30064

General Attorney-Commercial Unit  
BellSouth  
Legal Department  
675 W. Peachtree St., Suite 4300  
Atlanta, GA 30375

- 17.2 Either Party may unilaterally change its designated representative and/or address for the receipt of notices by giving seven (7) days prior written notice to the other Party in compliance with this Section. Any notice or other communication shall be deemed given when received.
18. **Confidentiality and Proprietary Information**
- 18.1 For the purposes of this Agreement, "Confidential Information" means confidential or proprietary technical or business information given by one Party (the "Discloser") to the other Party (the "Recipient") and identified by the Discloser as Confidential Information in accordance with this Section. All information which is to be treated as Confidential Information under this Agreement shall:
- 18.1.1 If in written, graphic, electromagnetic, or other tangible form, be marked as "Confidential Information"; and
- 18.1.2 If oral, (i) be identified by the Discloser at the time of disclosure to be "Confidential Information", and (ii) be set forth in a written summary which identifies the information as "Confidential Information" and which is delivered by the Discloser to the Recipient within ten (10) days after the oral disclosure.
- 18.1.3 Each Party shall have the right to correct an inadvertent failure to identify information as Confidential Information by giving written notification within thirty (30) days after the information is disclosed.

The Recipient shall, from that time forward, treat such information as Confidential Information.

- 18.2 In addition to any requirements imposed by 47 U.S.C. § 222, for a period of five (5) years from the receipt of Confidential Information from the Discloser, except as otherwise specified in this Agreement, the Recipient agrees (a) to use it only for the purpose of performing under this Agreement, (b) to hold it in confidence and disclose it to no one other than its employees having a need to know for the purpose of performing under this Agreement, and (c) to safeguard it from unauthorized use or disclosure with at least the same degree of care with which the Recipient safeguards its own Confidential Information. If the Recipient wishes to disclose the Discloser's Confidential Information to a third Party agent or consultant, the agent or consultant must have executed a written agreement of non-disclosure and non-use comparable in scope to the terms of this Section.
- 18.3 The Recipient may make copies of Confidential Information only as reasonably necessary to perform its obligations under this Agreement. All such copies shall bear the same copyright and proprietary rights notices as are contained on the original.
- 18.4 The Recipient agrees to return all Confidential Information in tangible form received from the Discloser, including any copies made by the Recipient, within thirty (30) days after a written request is delivered to the Recipient, or to destroy all such Confidential Information, except for Confidential Information that the Recipient reasonably requires to perform its obligations under this Agreement. If either Party loses or makes an unauthorized disclosure of the other Party's Confidential Information, it shall notify such other Party immediately and use reasonable efforts to retrieve the lost or wrongfully disclosed information.
- 18.5 The Recipient shall have no obligation to safeguard Confidential Information: (a) which was in the possession of the Recipient free of restriction prior to its receipt from the Discloser; (b) after it becomes publicly known or available through no breach of this Agreement by the Recipient; (c) after it is rightfully acquired by the Recipient free of restrictions on its disclosure; or (d) after it is independently developed by personnel of the Recipient to whom the Discloser's Confidential Information had not been previously disclosed. In addition, either Party shall have the right to disclose Confidential Information to any mediator, arbitrator, state or federal regulatory body, the Department of Justice or any court in the conduct of any mediation, arbitration or approval of this Agreement or in any proceedings concerning the provision of interLATA services by BellSouth that are or may be

required by the Act. Additionally, the Recipient may disclose Confidential Information if so required by law, a court, or governmental agency, so long as the Discloser has been notified of the requirement promptly after the Recipient becomes aware of the requirement. In all cases, the Recipient must undertake all lawful measures to avoid disclosing such information until Discloser has had reasonable time to seek and comply with a protective order that covers the Confidential Information to be disclosed.

- 18.6 Each Party's obligations to safeguard Confidential Information disclosed prior to expiration or termination of this Agreement shall survive such expiration or termination.
- 18.7 Except as otherwise expressly provided elsewhere in this Agreement, no license is hereby granted under any patent, trademark, or copyright, nor is any such license implied, solely by virtue of the disclosure of any Confidential Information.
- 18.8 Each Party agrees that the Discloser would be irreparably injured by a breach of this Agreement by the Recipient or its representatives and that the Discloser shall be entitled to seek equitable relief, including injunctive relief and specific performance, in the event of any breach of the provisions of this Agreement. Such remedies shall not be deemed to be the exclusive remedies for a breach of this Agreement, but shall be in addition to all other remedies available at law or in equity.
19. **Branding**
- 19.1 AT&T shall provide the exclusive interface to AT&T end users, except as AT&T shall otherwise specify. In those instances where AT&T requires BellSouth personnel or systems to interface with AT&T end users, such personnel shall identify themselves as representing AT&T, and shall not identify themselves as representing BellSouth. Except for material provided by AT&T, all forms, business cards or other business materials furnished by BellSouth to AT&T end users shall be subject to AT&T's prior review and approval. In no event shall BellSouth, acting on behalf of AT&T pursuant to this Agreement, provide information to AT&T local service Customers about BellSouth products or services. BellSouth agrees to provide in sufficient time for AT&T to review and provide comments, the methods and procedures, training and approaches, to be used by BellSouth to assure that BellSouth meets AT&T's branding requirement. For installation and repair services, AT&T agrees to provide BellSouth with branded material at no charge for use by BellSouth ("Leave Behind Material"). AT&T will reimburse BellSouth for the reasonable and demonstrable costs BellSouth would otherwise incur as a result of the use of the

generic leave behind material. BellSouth will notify AT&T of material supply exhaust in sufficient time that material will always be available. 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 AT&T's Leave Behind Material.

**20. Directory Listings Requirements**

**20.1** BellSouth shall make available to AT&T, for AT&T subscribers, non discriminatory access to its telephone number and address directory listings ("Directory Listings"), under the following terms and conditions. In no event shall AT&T subscribers receive Directory Listings that are at less favorable rates, terms or conditions than the rates, terms or conditions that BellSouth provides its subscribers.

**20.1.1** BellSouth has delegated certain authority to its affiliate, BellSouth Advertising & Publishing Corporation ("BAPCO"), and has required BAPCO to carry out certain BellSouth obligations imposed by the Act regarding the publication of directories. AT&T and BAPCO have entered into an agreement, which is appended as Attachment 13 to this Agreement and incorporated herein by this reference, regarding BAPCO's treatment of AT&T's end users' directory listing information in directories published by BAPCO. BellSouth shall maintain the Directory Listings database, which includes AT&T's end users' directory listing information, used by BAPCO in publishing such directories in accordance with Section 20.2.1 below. Subject to execution of such agreement between AT&T and BAPCO, BAPCO shall publish directory listings as follows:

**20.1.1.1** White Pages Basic Directory Listings. BellSouth shall publish in all BellSouth's white pages Directories at no charge to AT&T or any AT&T Customer one white pages basic Directory Listing for each AT&T Customer for all of such Customer's phone numbers located in the geographic region covered by any white pages Directory. Notwithstanding the foregoing, BellSouth shall not publish any white pages basic Directory Listing for any AT&T Customer whose Directory Listing has been identified as non-published. AT&T will be required to provide to BellSouth the names, addresses and telephone numbers of all AT&T end users that wish to be omitted from directories.

**20.1.1.2** Enhanced White Pages Listings. Where BellSouth offers to publish, at no charge, in its white pages directory Enhanced White Pages Listings to its retail customers, BellSouth shall publish such listings, at no charge and under the same terms and conditions, for AT&T for its end users. Where BellSouth charges its retail customers for Enhanced White Pages Listings, BellSouth shall publish such listings

under the same terms and conditions to AT&T for its Customers at the applicable wholesale discount set forth in Attachment 1.

- 20.1.1.3 **Yellow Pages Basic Directory Listings.** Where BellSouth offers to publish in its Yellow Pages Directory free Yellow Pages listings to its retail end users, BellSouth shall publish such listings, at no charge and under the same terms and conditions to AT&T for its end users. Where BellSouth charges business customers for Yellow Pages basic Directory Listings, BellSouth shall provide one Yellow Pages basic Directory Listing for each AT&T end user, who subscribes to business services, at BellSouth tariffed rates at the applicable wholesale discount set forth in Attachment 1. BellSouth shall not provide "lead" information on AT&T end users to its Yellow Pages directory publishing Affiliate without written permission from AT&T.
- 20.1.2 **Treatment of Directory Listings.** BellSouth shall treat all Directory Listings with the same level of confidentiality that BellSouth accords its own directory listing information, and BellSouth shall limit access to AT&T's end user proprietary confidential directory information to those BellSouth employees who are involved in the preparation of listings. Directory Listings of AT&T Customers shall be alphabetically commingled with the Directory Listings of all other telecommunications carriers, including BellSouth. All Directory Listings published by BellSouth will be as accurate and complete as BellSouth's own listings or those of its Affiliates.
- 20.1.3 **Reserved Rights.** AT&T reserves the right to withhold Directory Listing information from BellSouth if BellSouth charges AT&T a rate for inclusion of AT&T's unlisted numbers in the BellSouth directory databases exceeding the BellSouth retail tariffed charge for unlisted numbers.
- 20.2 **Directory Listings Database**
  - 20.2.1 **Maintenance.** BellSouth shall maintain a Directory Listings database that shall include the directory listings of BellSouth, AT&T and any other carrier for whom BellSouth has agreed to publish Directory Listings. AT&T and BellSouth shall cooperate to ensure that Directory Listing information relating to AT&T end users is delivered to BellSouth and reflected in such database in a timely and accurate manner (and in no event in a manner that is less timely or accurate than the manner in which BellSouth's Directory Listings database is updated for information relating to BellSouth's end user). Data should be generated from the local service order process and other data feeds for facility-based carriers and should be subject to the same rigorous edits that are applied to BellSouth local service orders.

BellSouth shall use all commercially reasonable efforts to maintain the Directory Listings database in good order. BellSouth shall advise AT&T as soon as possible, but in no event fewer than six (6) months in advance, of any changes in the maintenance of the Directory Listings database or any mechanisms or interfaces, whether industry standard or not, pursuant to which BellSouth will provide Directory Listings to AT&T.

20.2.2 **Third Party Access to Directory Listings Database.** AT&T authorizes BellSouth to provide Directory Listings of AT&T end users to third parties on terms and conditions that comport with the Communications Act and the relevant FCC rules and orders and on the same terms and conditions applicable to the release of Directory Listings of BellSouth end users to third parties. This data shall not be used for any other purpose than publishing a directory.

20.2.3 **Co-operation.** AT&T and BellSouth agree to co-operate in good faith to resolve any issue regarding a Directory Listing raised by an AT&T end user (e.g., publication of a nonpublished Directory Listing, etc.) Upon request by either party, AT&T and BellSouth will in good faith mutually develop a process for escalating and resolving such issues.

**21. Insurance Requirements**

21.1 At all times during the term of this Agreement, each Party shall maintain, at its own expense, (i) all insurance required by applicable Law including insurance and approved self insurance for statutory workers compensation coverage and (ii) commercial general liability coverage in the amount of not less than ten million dollars (\$10,000,000) or a combination of commercial general liability and excess/umbrella coverage totaling ten million dollars (\$10,000,000). Upon request from the other Party, each Party shall furnish the other Party with certificates of insurance which evidence the minimum levels of insurance set forth herein. Each Party may satisfy all or part of the coverage specified herein through self insurance. Each Party shall give the other Party at least thirty (30) days advance written notice of any cancellation or non-renewal of insurance required by this Section.

**22. Costs**

22.1 Except as otherwise specified in this Agreement, the Act, or any Commission order, each Party shall be responsible for all costs and expenses that it incurs to comply with its obligations under this Agreement.

**23. Disaster Recovery**



23.1 The Party's Disaster Recovery Plan is as set forth in Exhibit A of this Agreement.

**24. Miscellaneous**

**24.1 Delegation or Assignment**

24.1.1 BellSouth may not assign any of its rights or delegate any of its obligations under this Agreement without the prior written consent of AT&T which will not be unreasonably withheld. Notwithstanding the foregoing, BellSouth may assign its rights and benefits and delegate its duties and obligations under this Agreement without the consent of AT&T to a 100 percent owned Affiliate company of BellSouth if such Affiliate provides wireline communications, provided that the performance of any such assignee is guaranteed by the assignor. Any prohibited assignment or delegations shall be null and void. In no event shall BellSouth require that this Agreement be assigned to an Affiliate of AT&T in order for such Affiliate to order Interconnection, Network Elements or services hereunder.

**24.1.2 Transfer of Exchanges**

If BellSouth wishes to sell, exchange, or otherwise transfer ownership of any exchange in a portion of Florida served by BellSouth as an incumbent local exchange carrier ("Transfer") to a third party, BellSouth shall first apply to and gain written approval of the Florida Public Service Commission of such Transfer pursuant to FL Statute Ann. §364.05. As used in the previous sentence, the term incumbent local exchange carrier shall be defined as stated in 47 U.S.C. § 251(h). BellSouth will use its best efforts to facilitate discussions between AT&T and the purchaser or transferee of the exchange. BellSouth is not obligated to advocate on behalf of AT&T for the purchaser or transferee to adopt the interconnection terms.

**24.2 Subcontracting**

24.2.1 If any Party's obligation under this Agreement is performed by a subcontractor or Affiliate, the Party subcontracting the obligation nevertheless shall remain fully responsible for the performance of this Agreement in accordance with its terms, and shall be solely responsible for payments due its subcontractors or Affiliate. In entering into any contract, subcontract or other agreement for the performance of any obligation under this Agreement, the Party shall

not enter into any agreement that it would not enter into if the supplier was performing services directly for said Party.

**24.3 Nonexclusive Remedies**

24.3.1 Except as otherwise expressly provided in this Agreement, each of the remedies provided under this Agreement is cumulative and is in addition to any remedies that may be available at law or in equity.

**24.4 No Third-Party Beneficiaries**

24.4.1 Except as may be specifically set forth in this Agreement, this Agreement does not provide and shall not be construed to provide third Parties with any remedy, claim, liability, reimbursement, cause of action, or other privilege.

**24.5 Referenced Documents**

24.5.1 Whenever any provision of this Agreement refers to a technical reference, technical publication, AT&T Practice, BellSouth Practice, any publication of telecommunications industry administrative or technical standards, or any other document specifically incorporated into this Agreement, it will be deemed to be a reference to the most recent version or edition (including any amendments, supplements, addenda, or successors) of such document that is in effect, and will include the most recent version or edition (including any amendments, supplements, addenda, or successors) of each document incorporated by reference in such a technical reference, technical publication, AT&T Practice, BellSouth Practice, or publication of industry standards (unless AT&T elects otherwise). Should there be an inconsistency between or among publications or standards, the Parties shall mutually agree upon which requirement shall apply. If the Parties cannot reach agreement, the matter shall be handled pursuant to Section 16 of the General Terms and Conditions of this Agreement.

**24.6 Applicable Law**

24.6.1 The validity of this Agreement, the construction and enforcement of its terms, and the interpretation of the rights and duties of the Parties shall be governed by the laws of the State of Georgia other than as to conflicts of laws, except insofar as federal law may control any aspect of this Agreement, in which case federal law shall govern such aspect. The Parties submit to personal jurisdiction in Atlanta, Georgia, and waive any objections to a Georgia venue.

**24.7 Amendments or Waivers**

24.7.1 Except as otherwise provided in this Agreement, no amendment or waiver of any provision of this Agreement, and no consent to any default under this Agreement, shall be effective unless the same is in writing and signed by an officer of the Party against whom such amendment, waiver or consent is claimed. In addition, no course of dealing or failure of a Party strictly to enforce any term, right or condition of this Agreement shall be construed as a waiver of such term, right or condition. By entering into this Agreement, neither Party waives any rights granted to them pursuant to the Act.

**24.8 Severability**

24.8.1 If any term, condition or provision of this Agreement is held to be invalid or unenforceable for any reason, such invalidity or unenforceability shall not invalidate the entire Agreement, unless such construction would be unreasonable. The Agreement shall be construed as if it did not contain the invalid or unenforceable provision or provisions, and the rights and obligations of each Party shall be construed and enforced accordingly; provided, however, that in the event such invalid or unenforceable provision or provisions are essential elements of this Agreement and substantially impair the rights or obligations of either Party, the Parties shall promptly negotiate a replacement provision or provisions.

**24.9 Entire Agreement**

24.9.1 This Agreement, which shall include the Attachments, Appendices and other documents referenced herein, constitutes the entire Agreement between the Parties concerning the subject matter hereof and supersedes any prior agreements, representations, statements, negotiations, understandings, proposals or undertakings, oral or written, with respect to the subject matter expressly set forth herein.

**24.10 Survival of Obligations**

24.10.1 Any liabilities or obligations of a Party for acts or omissions prior to the cancellation or termination of this Agreement, any obligation of a Party under the provisions regarding indemnification, Confidential Information, limitations on liability, and any other provisions of this Agreement which, by their terms, are contemplated to survive (or to be performed after) termination of this Agreement, shall survive cancellation or termination thereof.

**24.11 Executed In Counterparts**

- 24.11.1 This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but such counterparts shall together constitute one and the same instrument.
- 24.12 **Headings of No Force or Effect**
- 24.12.1 The headings of Articles and Sections of this Agreement are for convenience of reference only, and shall in no way define, modify or restrict the meaning or interpretation of the terms or provisions of this Agreement.
- 24.13 **Notice of Network Changes**
- 24.13.1 BellSouth shall comply with the requirements of 47 C.F.R. § 51.325, et seq., regarding notice to AT&T of any network change that will affect AT&T's performance or ability to provide service or that will affect BellSouth's interoperability with AT&T. This section shall be construed in accordance with the obligations contained within 47 C.F.R. § 51.325, et seq.
- 24.14 **Court Ordered Requests for Call Detail Records and Other Subscriber Information**
- 24.14.1 To the extent technically feasible, BellSouth maintains call detail records for AT&T end users for limited time periods and can respond to subpoenas and court ordered requests for this information. BellSouth shall maintain such information for AT&T end users for the same length of time it maintains such information for its own end users.
- 24.14.2 AT&T agrees that BellSouth will respond to subpoenas and court ordered requests delivered directly to BellSouth for the purpose of providing call detail records when the targeted telephone numbers belong to AT&T end users. Billing for such requests will be generated by BellSouth and directed to the law enforcement agency initiating the request.
- 24.14.3 Where BellSouth is providing to AT&T telecommunications services for resale or providing to AT&T the local switching function, then AT&T agrees that in those cases where AT&T receives subpoenas or court ordered requests regarding targeted telephone numbers belonging to AT&T end users, if AT&T does not have the requested information, AT&T will advise the law enforcement agency initiating the request to redirect the subpoena or court ordered request to BellSouth. Where the request has been forwarded to BellSouth, billing for call detail

information will be generated by BellSouth and directed to the law enforcement agency initiating the request.

24.14.4 In all other instances, AT&T will provide AT&T end user and/or other customer information that is available to AT&T in response to subpoenas and court orders for their own end user records. When BellSouth receives subpoenas or court ordered requests regarding targeted telephone numbers belonging to AT&T end users, BellSouth will advise the law enforcement agency initiating the request to redirect the subpoena or court ordered request to AT&T.

**24.15 Filing of Agreement**

24.15.1 Upon execution of this Agreement, it shall be filed with the appropriate state regulatory agency pursuant to the requirements of Section 252 of the Act. If the regulatory agency imposes any filing or public interest notice fees regarding the filing or approval of the Agreement, the Parties shall equally share the cost of such filing and/or public interest notice fee.

**24.16 Other Proceedings**

24.16.1 Upon written request by AT&T, BellSouth agrees to negotiate rates, (if appropriate), terms and conditions to incorporate into this Agreement any obligation or commitment regarding interconnection, resale or access to Network Elements made by BellSouth to any state or federal regulatory authority or the U.S. Department of Justice ("Governmental Body") in connection with any merger or regulatory proceeding regarding BellSouth's obligations under the Act, including 47 U.S.C. § 271 thereunder. If the Parties cannot reach an agreement regarding the rates, terms and conditions, either Party may, within sixty (60) days after receipt of the request from AT&T, petition the state regulatory commission for resolution of the issue(s). The language to be negotiated and incorporated within this Agreement will be effective consistent with the effective date of the commitment or obligation made by BellSouth to the Governmental Body. AT&T's rights pursuant to this Section shall be cumulative with, and not in lieu of or in limitation of, any other rights provided to AT&T under this Agreement.

**25. Reservation of Rights**

25.1 Execution of the Interconnection Agreement by either Party does not confirm or infer that the executing Party agrees with any decision(s) issued pursuant to the Telecommunications Act of 1996 and the consequences of those decisions on specific language in this Agreement. Neither Party waives its rights to appeal or otherwise

challenge any such decision(s) and each Party reserves all of its rights to pursue any and all legal and/or equitable remedies, including appeals of any such decision(s). If such appeals or challenges result in changes in the decision(s), the Parties agree that appropriate modifications to this Agreement will be made promptly to make its terms consistent with those changed decision(s).

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IN WITNESS WHEREOF, the Parties have executed this Agreement through their authorized representatives.

AT&T COMMUNICATIONS OF  
THE SOUTHERN STATES, INC.

BELLSOUTH  
TELECOMMUNICATIONS, INC.

By: Gregory P. Terry  
Gregory P. Terry  
Vice President  
Local Services and  
Access Management

By: Pat Clark  
PATRICK EMLEN  
MANAGEMENT DIRECTOR  
INTERNATIONAL SERVICES

Date: 10-27-01

Date: 10-26-01