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November 12, 2004

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



**Re: Docket No.: 040514-TP
Petition of Cbeyond Communications, LLC for Arbitration of
Interconnection Agreements with BellSouth Telecommunications, Inc.
Pursuant to Section 252(b) of the Communications Act of 1934, as
Amended**

Dear Ms. Bayó:

Enclosed are an original and fifteen copies of the Revised Joint Issues Matrix on behalf of BellSouth Telecommunications, Inc. and Cbeyond Communications, LLC, which we ask that you file in the captioned docket.

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,


Andrew D. Shore 

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

DOCUMENT NUMBER - DATE

12131 NOV 12 8

FPSC-COMMISSION CLERK

**CERTIFICATE OF SERVICE
DOCKET NO. 040514-TP**


I HEREBY CERTIFY that a true and correct copy of the foregoing was served via Electronic Mail and First Class U.S. Mail this 12th day of November, 2004 to the following:

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Andrew D. Shore

**CBEYOND COMMUNICATIONS, LLC – BELLSOUTH TELECOMMUNICATIONS, INC.
JOINT ARBITRATION ISSUES MATRIX**

**FLORIDA PUBLIC SERVICE COMMISSION, DOCKET NO. 040514-TP
GEORGIA PUBLIC SERVICE COMMISSION, DOCKET NO. 18995-U**

ISSUE No.	ATT.-ITEM No.	§	UNRESOLVED ISSUE	CBEYOND POSITION	BELLSOUTH POSITION
GT&Cs (MAIN)					
1	G-1	Defini- tions	<i>How should the term "End User" be defined?</i>	Because BellSouth insists on using the term "End User" in various instances where the FCC rules use the term "customer", the definition of "End User" should be broad enough to encompass any customer of either BellSouth or Cbeyond that uses the telecommunications service provided by that Party.	The term End User should be defined as it is customarily used in industry; that is, the ultimate user of the telecommunication service. This is not as broad as a "customer" which may be a reseller of the service. As such, the End User, as it is used throughout the agreement, was negotiated by BellSouth to reflect the ultimate user of the telecommunications service (i.e. a business or residential end user customer). Cbeyond raised this issue very late in negotiations, and particularly with the attachment related to UNEs. The term End User, however, is used throughout the entire agreement, and to change the definition in the General Terms and Conditions of the agreement may change the intent of how the term End User is used throughout the entire agreement. At no time was the agreement negotiated to incorporate and end user that was not the ultimate

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					user of the telecommunications service like a business or residential user.
2	G-2	7.3	<i>What should be the limitation on each Party's liability in circumstances other than gross negligence or willful misconduct?</i>	The Agreement should not contain BellSouth's standard elimination of liability provision. In cases other than gross negligence and willful misconduct by the other Party, or other specified exemptions as set forth in Cbeyond's proposed language, liability should be limited to an aggregate amount over the entire term of the Agreement equal to 7.5% of the aggregate fees, charges or other amounts paid or payable for any and all services provided or to be provided pursuant to the Agreement as of the day immediately preceding the date of assertion or filing of the applicable claim or suit. Cbeyond's proposal represents a hybrid between the limitation of liability provisions typically found in commercial contracts between sophisticated buyers and sellers, in the absence of overwhelming market dominance by one party, and the provision proposed by BellSouth that effectively eliminates each Party's liability for any damages associated with the services provided pursuant to or in connection with this Agreement.	The industry standard limitation of liability should apply, which limits the liability of the provisioning party to a credit for the actual cost of the services or functions not performed or improperly performed.
3	G-3	7.3.1	<i>To the extent that a Party does not or is unable to include specific limitation of liability terms in all of</i>	NO. BellSouth should not be able to dictate the terms of service between Cbeyond and its customers by, among other things, holding Cbeyond liable for failing to mirror	BellSouth elects to limit its liability to its End Users in accordance with industry norms. Therefore, in the event Cbeyond does not put any limitation of

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			<i>its tariffs and End User contracts (past, present and future), should it be obligated to indemnify the other Party for liabilities not eliminated?</i>	BellSouth's limitation of liability and indemnification provisions in Cbeyond's End User tariffs and/or contracts. To the extent that a Party does not, or is unable to, include specific elimination-of-liability terms in all of its tariffs and customer contracts (past, present and future), and provided that the non-inclusion of such terms is commercially reasonable, in the particular circumstances, that Party should not be required to indemnify and reimburse the other Party for that portion of the loss that would have been limited had the first Party included in its tariffs and contracts the elimination-of-liability terms that such other Party was successful in including in its tariffs at the time of such loss.	liability in its tariff for a service purchased by its End User, and that service is being re-sold using BellSouth's network, BellSouth should not be held fully liable for Cbeyond's liability due to its failure to appropriately limit its liability in its tariffs for that service offering.
4	G-4	7.3.3	<i>Should the Agreement expressly state that liability for claims or suits for damages incurred by Cbeyond's (or BellSouth's) customers/End Users resulting directly and in a reasonably foreseeable manner from BellSouth's (or Cbeyond's) performance of obligations set forth in the Agreement are not indirect, incidental or consequential damages?</i>	YES. The limitation of liability terms in the Agreement should not preclude damages that Cbeyond's (or BellSouth's) customers incur as a foreseeable result of BellSouth's (or Cbeyond's) performance of its obligations, including its provisioning of UNEs and other services. Damages to customers/End Users that result directly, proximately, and in a reasonably foreseeable manner from either Party's performance of obligations set forth in the Agreement that were not otherwise caused by or are the result of that Party's failure to act at all relevant times in a commercially	The limitation of liability for the damages specified in the contract are limited to the specific provision in the agreement.

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				reasonable manner in compliance with such Party's duties of mitigation with respect to such damage should be considered direct and compensable (rather than indirect, incidental or consequential) under the Agreement.	
5	G-5	7.4	<i>What should the indemnification obligations of the Parties be under the Agreement?</i>	The Party providing services under the Agreement should be indemnified, defended and held harmless by the Party receiving services under the Agreement against any claim, loss or damage arising from the receiving Party's use of the services provided under the Agreement pertaining to claims for libel, slander, or invasion of privacy arising from the content of the receiving Party's communications. Additionally, customary provisions should be included to specify that the Party receiving services under the Agreement should be indemnified, defended and held harmless by the Party providing services under the Agreement against any claim, loss or damage to the extent arising from the providing Party's failure to abide by Applicable Law, or the providing Party's negligence, gross negligence or willful misconduct.	The party receiving services should indemnify the party providing services from any claim of loss or damages from claims for libel, slander or invasion of privacy arising from the content of the receiving party's own communications.
6	G-6	9.1	<i>What language should be included in the Agreement regarding a Party's use of the other Party's name,</i>	Given the complexity of and variability in intellectual property law, the Agreement should simply state that no patent, copyright, trademark or other proprietary	Except for factual references to BellSouth name as necessary to respond to direct inquires from customers or potential customers regarding the source

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			<i>service marks, logo and trademarks?</i>	right is licensed, granted or otherwise transferred by the Agreement and that a Party's use of the other Party's name, service mark and trademark should be in accordance with Applicable Law.	of the underlying services or the identity of repair technicians, CLECs should not be entitled to use BellSouth's name service marks, logo or trademark.
7	G-7	11	<i>Should a court of law be included in the venues available for initial dispute resolution?</i>	Either Party should be able to petition the Commission, the FCC or a court of law for resolution of a dispute concerning the Agreement. Given the difficulties experienced in achieving efficient dispute resolution, and the ongoing debate as to whether state commissions have jurisdiction to enforce interconnection agreements and as to whether the FCC will otherwise engage in such enforcement action, no legitimate dispute resolution venue should be foreclosed. There is no question that courts of law have jurisdiction to entertain such disputes, and indeed, in certain instances, courts of law may be better equipped to adjudicate a dispute and may provide a more efficient alternative to litigating before the Commission or to waiting for the FCC to decide whether it will or won't accept an enforcement role given the particular facts.	NO. This PSC or the FCC should resolve disputes as to the interpretation of the Agreement or as to the proper implementation of the Agreement. A party should be entitled to seek judicial review of any ruling made by the PSC or the FCC concerning this Agreement, but should not be initially entitled to take such disputes to a Court of law without first exhausting its administrative remedies at the PSC or the Commission.
8	G-8	16.3	<i>What should be the effective date of future rate impacting amendments?</i>	Future amendments incorporating Commission-approved rates should be effective as of the effective date of the Commission order, if an amendment is requested within 30 calendar days of that	Future rate impacting amendments should be Effective 30 Days after last signature of the amendment incorporating those new rates.

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				date. Otherwise, such amendments should be effective 10 calendar days after such request.	
9	G-9	22.3	<p><i>(A) Should the Agreement contain a provision regarding notice of certain changes to BellSouth's rates, terms and conditions of services available for resale?</i></p> <p><u>For Cbeyond:</u></p> <p><i>(B) Should notice of changes to business processes and policies, new service offerings and changes to service offerings not requiring an amendment to the Agreement be excluded from the Agreement's general notice provision and instead be posted only on BellSouth's website?</i></p> <p><u>For BellSouth:</u></p> <p><i>(B) May BellSouth provide notice of changes to business processes and</i></p>	<p>(A) NO. The Agreement does not include resale provisions. Therefore, this section is unnecessary.</p> <p>(B) NO. For the purpose of providing notice to Cbeyond of changes to BellSouth's business processes and policies, new service offerings and changes to BellSouth's service offerings not requiring an amendment to the Agreement, BellSouth should comply with the requirements for all Notices agreed upon by BellSouth and Cbeyond and set forth in Sections 22.1 and 22.2 of the Agreement, and should not be permitted to provide such Notices only via Internet posting.</p>	<p>YES. This Agreement does not include Resale provisions. However, resale provisions can be incorporated into this interconnection Agreement.</p> <p>B) YES. BellSouth provides various notices related to processes, new offerings, and changes to various guides provided by BellSouth almost every day of the year to CLECs. This is essential for immediate notice to the CLEC community and notice would be hindered if every notice had to go via U.S. mail.</p>

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			<i>policies, new service offerings and changes to service offerings not requiring an amendment to the Agreement be excluded from the Agreement's general notice provision and instead be posted only on BellSouth's website?</i>		
10	G-10	25	<p>Resolved subject to final document check:</p> <p><i>Should the Agreement explicitly state that the headings of Attachments and Sections of the Agreement are for convenience and reference only?</i></p>	NO. In the event that the Agreement is interpreted by the FCC or Commission, or by some other body of competent jurisdiction, the terms of the Agreement should not explicitly foreclose the use of headings of Attachments and Sections as a tool for such interpretation of the Agreement consistent with the intent of the Parties.	YES. As in most commercial agreements, there are numerous headings to break up the various sections and parts of the agreement. Therefore, headings are used more as a guide than as an intentional meaning to obligate the Parties of the agreement. Therefore, a provision is expressly needed to state that the headings were put in to the agreement for convenience only and meant to be a guide for finding language throughout the agreement. The substantive language in the agreement should be relied upon for interpretation not the headings.
11	G-11	28.2	<i>Should the Agreement explicitly state that all existing state and federal laws, rules, regulations, and decisions apply unless otherwise specifically agreed to by the Parties?</i>	YES. Nothing in the Agreement should be construed to limit a Party's rights or exempt a Party from obligations under Applicable Law, as defined in the Agreement, except in such cases where the Parties have explicitly agreed to a limitation or exemption. This is a basic legal tenet is consistent with both	NO. This Agreement constitutes a negotiation of the contractual obligations of the Parties to each other and should not be subject to further negotiation subsequent to being fully negotiated and arbitrated. This is why it is a negotiation based on current laws,

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				federal and Georgia law (agreed to by the parties), and it should be explicitly stated in the Agreement in order to avoid unnecessary disputes and litigation.	orders, and rules. The applicable laws, orders, and rules are negotiated in to the agreement. The purpose of Section 251 and 252 of the Act to negotiate provides for this interpretation. If there is additional interpretation of a rule that comes from an order, that interpretation should be negotiated in to the agreement and agreed to or arbitrated. This is exactly what has been done with this negotiated agreement. Therefore, a party can't agree as to how the rule is to be interpreted currently, and then rely on language from an order that is in direct contravention to the reading of the language in the negotiated agreement.
12	G-12	28.3	<p><i>Resolved subject to final document check:</i></p> <p><u>For Cbeyond:</u></p> <p><i>How should the Parties deal with non-negotiated deviations from the state Commission- approved rates in the rate sheets attached to the Agreement?</i></p> <p><u>For BellSouth:</u></p> <p><i>Are the Parties responsible</i></p>	Any non-negotiated deviations from state Commission-approved rates for network elements or services provided under the Agreement should be corrected by an amendment to the Agreement, and by retroactive true-up within 30 calendar days of the Effective Date of the Agreement.	YES. This is a contract and therefore a signature is not a mere ornament. Therefore, as the Parties have carefully reviewed the rates, terms, and conditions of the agreement prior to execution of the agreement, any non-negotiated deviations from ordered rates should be changed by amendment of the agreement upon discovery by a party and should be applied prospectively regardless of whether the rate increases or decreases as a result of such amendment.

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			<i>for reviewing the rates in the Agreement prior to executing the agreement?</i>		
13	G-13	35	<i>If BellSouth changes a provision of one or more of its Guides that would cause Cbeyond to incur a material cost or expense to implement the change, how should those changes be incorporated into the Agreement, if at all?</i>	If the contemplated change to one or more of BellSouth's Guides would cause Cbeyond to incur a material cost or expense to implement the change, BellSouth and Cbeyond should negotiate an amendment to the Agreement to incorporate such change.	BellSouth's Guides apply equally and in a non-discriminatory manner to all CLECs. If a CLEC elects to opt out of the requirements of a Guide, the CLEC should notify BellSouth of its decision to do so. If it does not elect to opt out, and uses the processes outlined in the Guide, the CLEC should be responsible for its actions in acknowledging and using the prescribed procedures set forth in the change in the Guide.
NETWORK ELEMENTS (ATTACHMENT 2)					
14	2-1	1.1.1	<i>Should the Agreement limit BellSouth's obligation to provide and Cbeyond's right to obtain access to and use UNEs in a manner not required by FCC or Commission rules and Orders?</i>	NO. The Agreement should not contain a provision limiting BellSouth's obligation to provide and Cbeyond's right to obtain access to and use UNEs in a manner not required by FCC or Commission rules. The language proposed by BellSouth may be broadly and unilaterally interpreted by BellSouth to limit or restrict Cbeyond's access to BellSouth's Network Elements in manner that is inconsistent with Applicable Law. Cbeyond has not sought and BellSouth has proposed no consideration in exchange for offering more limited access than Applicable Law requires it to provide to Cbeyond.	The Parties have negotiated in to this attachment the obligations of the Parties with respect to unbundled network elements (UNEs). Therefore, nothing in addition to and nothing less than what has been negotiated and agreed to should be permitted unless the agreement is modified. If the FCC's rules change with respect to UNEs such that the language in the agreement is non-compliant with the then-current rules, the agreement should be amended pursuant to a request by either party and pursuant to the modification of agreement section in the general terms and conditions of the agreement.

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					Having a broad clause that uses “Applicable Law” gives both Parties a wide array of interpretation as to what the “Applicable Law” is that may differ from the time of negotiating this Agreement and the time of the new “Applicable Law”. It only permits arbitration and gamesmanship as to the appropriate interpretation of what the Parties intended when negotiating this agreement as to the Parties’ current rights and obligations with respect use of UNEs.
15	2-2	1.1.1	<i>Should the Commission arbitrate a provision regarding rates when the Parties have actually agreed to language that resolves the issue in another section of the Agreement?</i>	NO. Section 1.11 of Attachment 2 addresses rates for UNEs, Combinations and Other Services offered pursuant to Attachment 2 of the Agreement. The language proposed by BellSouth in Section 1.1.1 to address circumstances where no rate is contained in the Agreement is confusingly broad (as it is not limited to Attachment 2) and is at odds with language already agreed to by the Parties in Section 1.11.1. The Commission should not adopt BellSouth’s proposed Section 1.1.1.	YES. The agreement should provide that if no rate for a requested Network Element is provided for in the agreement, then the rate will be as set forth in the applicable BellSouth tariff or as negotiated by the Parties.
16	2-3	1.5	<i>Should Cbeyond be permitted to connect UNEs and Other Services provided by BellSouth to other UNEs and Other Services provided by</i>	YES. The FCC’s rules entitle Cbeyond to connect UNEs, Combinations, Other Services to each other and to other wholesale products provided by BellSouth or third parties, as well as to facilities provided by Cbeyond. This provision is	BellSouth will provide UNEs, and other services in accordance with the terms of the interconnection agreement as they are negotiated to comply with the current law.

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			<i>BellSouth; to other wholesale/access services provided by BellSouth; to Cbeyond's network elements, services or facilities; or to facilities provided to Cbeyond by third parties?</i>	needed to ensure that BellSouth does not attempt to make UNEs, Combinations or any other service or facility useless by mandating that they be isolated. For example, having access to a UNE loop that cannot be connected to other network facilities would be useless and would render meaningless BellSouth's unbundling obligation.	
17	2-4	1.6	<i>Should BellSouth be required to comply with industry standard requirements in providing to Cbeyond access to UNEs and Other Services under the Attachment 2?</i>	YES. Unless the Parties mutually agree otherwise, BellSouth should be required to comply with relevant industry standard requirements in providing to Cbeyond access to UNEs and Other Services under Attachment 2.	NO. BellSouth is meeting its unbundling obligation by unbundling its existing network which complies in most cases with industrial standards. The standards they meet are outlined in BellSouth Technical References and is the same as offered to our retail customers. There is no obligation to meet standards not adopted within BellSouth's network.
18	2-5	1.7	<i>Should the Agreement expressly permit BellSouth to re-rate or disconnect UNEs or Combinations in the event that BellSouth no longer is required to provide such UNEs or Combinations pursuant to FCC rules and orders?</i>	NO. The Agreement should not permit BellSouth to re-rate or disconnect UNEs or Combinations in the event that BellSouth believes that it no longer is required to provide such UNEs or Combinations pursuant to FCC rules and orders. The Parties already have agreed in Section 16.4 of the General Terms and Conditions that changes in law should be incorporated into the Agreement only by written agreement to amend the Agreement. Should a change of law take place while this arbitration is	BellSouth may disconnect those Network Elements, combinations of Network Elements or services upon thirty (30) calendar days notice.

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				pending, the Parties will need to discuss and the Commission will need to decide how best to address it. Cbeyond reserves all rights in this regard.	
19	2-6	1.8.2	<i>What charges should apply for conversion of services to UNEs or combinations for arrangements that require re-termination or other rearrangement of circuits to comply with the terms of the Agreement?</i>	For conversion of services to UNEs for arrangements that require re-termination or other rearrangement of circuits to comply with the terms of the Agreement, nonrecurring charges for a UNE cross-connect, if applicable, should apply. For such conversions, BellSouth should not be permitted to impose on Cbeyond termination charges, re-connect charges or disconnect fees, or "full" nonrecurring charges associated with establishing a service for the first time.	For arrangements that require a re-termination or other physical rearrangement of circuits to comply with the terms of this Agreement, nonrecurring charges for the applicable UNE(s) from Exhibit A of this Attachment will apply. To the extent re-termination or other physical rearrangement is required in order to comply with a tariff or separate agreement, the applicable rates, terms and conditions of such tariff or separate agreement shall apply. Applicable disconnect charges will apply to a UNE/Combination that is rearranged or disconnected.
20	2.7	1.8.3	<i>When should BellSouth's billing to Cbeyond be adjusted to reflect conversions from a wholesale service or a group of wholesale services to a UNE or UNE Combination?</i>	Conversions should be effective (<i>i.e.</i> , reflect billing as UNEs only) within 10 days of submission of the request for such conversion, except that conversions of DS1 loops should be effective in 5 days and DS1 EELs should be effective in 7 days.	BellSouth is under no obligation to continue the "old" rates that are no longer applicable to specific services. The rates will be effective as of the next billing cycle following BellSouth's completion of the conversion request from Cbeyond.
21	2-8	1.8.4	<i>Should BellSouth be required to accept liability and write a letter of</i>	YES. Converting between wholesale services and UNEs or Combinations should be a seamless process that does not affect	BellSouth will provide conversions of wholesale services and UNEs on a non-discriminatory basis. BellSouth shall be

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			<i>apology to Cbeyond's End User for disconnecting a Cbeyond End User while converting Cbeyond wholesale services to UNEs or Combinations?</i>	the customer's perception of service quality. If BellSouth does disconnect Cbeyond's End User during a conversion, BellSouth should be required to write a letter of apology to Cbeyond's End User and accept all liability that may ensue from such action.	limited to liability as outlined in the general terms and conditions.
22	2-9	1.8.5	<i>This issue has been replaced by Issue No. 122.</i>		
23	2-10	1.8.6	<p><i>(A) Should Cbeyond be required to submit a BFR/NBR to convert a UNE or Combination (or part thereof) to Other Services or tariffed BellSouth access services?</i></p> <p><i>(B) In the event of such conversion, what rates should apply?</i></p>	<p>(A) NO. Cbeyond should not be required to submit a BFR/NBR to convert a UNE or Combination (or part thereof) to Other Services or tariffed BellSouth access services. Rather, Cbeyond should be allowed to submit an LSR or ASR, as appropriate.</p> <p>(B) For a conversion of a UNE or Combination (or part thereof) to Other Services or tariffed BellSouth access services, the non-recurring charges should be as set forth in Exhibit A of Attachment 2 or the relevant tariff, as appropriate. In addition, such charges should be commensurate with the work required to effectuate the conversion (cross connect only, "switch-as-is" billing change/records update only, etc.).</p>	<p>(A) If Cbeyond requests to convert an element that does not have a Special Access equivalent, then a BFR/NBR is required. Otherwise, depending in the number of elements, an ASR or spreadsheet will be used.</p> <p>(B) If a Cbeyond converts from a UNE to SPA the NRC (for the UNE element converted to the equivalent tariffed SPA service) shall apply per the terms and conditions of the SPA tariff since this will be the new SPA circuit. This will include all Non-recurring Charges associated with the new Circuit for elements including but not limited to Local Channels, Inter-office Channels, Interfaces, Channel Systems, and Multiplexers. If a DS3 Element is converted to a SPA DS3 and placed under a minimum of a 12 month TPP arrangement, the Non-recurring charge is waived, per FCC #1 tariff.</p>

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24	2-11	1.8.7	<i>Should the Agreement expressly require that Cbeyond use Network Elements and Other Services only to provide services that are consistent with industry standards and applicable BellSouth Technical References?</i>	NO. The Agreement should not expressly limit or restrict the services that Cbeyond may provide using Network Elements and Other Services, as such limitation or restriction may discourage or curtail innovation by Cbeyond. Cbeyond will utilize Network Elements and Other Services provided by BellSouth in manner consistent with Applicable Law, as defined in the General Terms and Conditions of the Agreement. The FCC's rules do not permit BellSouth to restrict the use of UNEs in the manner proposed by BellSouth.	YES. The Agreement should expressly limit or restrict the services to comply with industry standards and BellSouth's Technical References. Without adherence industry standards or BellSouth's Technical References, BellSouth cannot ensure quality and functionality of the Network Elements and Other Services.
25	2-12	1.9.1	<i>What rates, terms and conditions should apply for Routine Network Modifications pursuant to 47 C.F.R. § 51.319(a)(8) and (e)(5)?</i>	If BellSouth has anticipated such Routine Network Modifications and performs them during normal operations, then BellSouth should perform such Routine Network Modifications at no additional charge and within its standard provisioning intervals. If BellSouth has not anticipated a requested or necessary network modification as being a Routine Network Modification and, as such, has not recovered the costs of such Routine Network Modifications in the rates set forth in Exhibit A of Attachment 2, then BellSouth should notify Cbeyond of the required Routine Network Modification and should request that Cbeyond submit a Service Inquiry to have the work performed. Each unique request should be handled as a project on an individual case basis.	BellSouth will perform Routine Network Modifications in accordance with FCC 47 C.F.R. 51.319(a)(8) and (e)(5). Except to the extent expressly provided otherwise in Attachment 2, if BellSouth has anticipated such Routine Network Modifications and performs them during normal operations and has recovered the costs for performing such modifications through the rates set forth in Exhibit A of Attachment 2, then BellSouth shall perform such Routine Network Modifications at no additional charge. Routine Network Modifications shall be performed within the intervals established for the UNE and subject to the performance measurements and associated remedies set forth in

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				<p>BellSouth should provide a TELRIC-compliant price quote for the request, and upon receipt of a firm order from Cbeyond, BellSouth should perform the Routine Network Modification within a reasonable and nondiscriminatory interval. However, BellSouth shall not charge Cbeyond for such Routine Network Modifications when it does not charge its own affiliates, End Users or third parties for such modifications.</p>	<p>Attachment 9 to the extent such Routine Network Modifications were anticipated in the setting of such intervals. If BellSouth has not anticipated a requested network modification as being a Routine Network Modification and has not recovered the costs of such Routine Network Modifications in the rates set forth in Exhibit A of this Attachment, then CLEC must submit a service inquiry (SI) to have the work performed. Each request will be handled as a project on an individual case basis. BellSouth will provide a price quote for the request, and upon receipt of payment from CLEC, BellSouth shall perform the Routine Network Modification. Each request will be handled as a project on an individual case basis.</p>
26	2-13	1.10.3	<p><i>Should BellSouth be required to permit commingling of UNEs or Combinations with any service, network element or other offering that it is obligated to make available pursuant to Section 271 of the Act?</i></p>	<p>YES. BellSouth should be required to permit Cbeyond to “commingle” UNEs or Combinations with any service, network element, or other offering that it is obligated to make available pursuant to Section 271 of the Act.</p>	<p>NO, consistent with the FCC’s errata to the Triennial Review Order, there is no requirement to commingle UNEs or combinations with services, network elements or other offerings under Section 271 of the Act.</p>
27	2-14	1.10.4	<p><i>Should BellSouth be permitted to charge</i></p>	<p>NO. The Agreement should not expressly permit BellSouth to impose a new charge on</p>	<p>YES. It is the CLEC’s obligation to isolate a trouble to the BellSouth</p>

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			<i>Cbeyond for dispatching and testing required to confirm the working status of a Network Element or Other Service provided by BellSouth?</i>	Cbeyond for dispatching and testing (both inside and outside the Central Office (CO)) required to confirm the working status of a Network Element or Other Service provided by BellSouth.	network prior to sending in a trouble report. If a trouble report is submitted and there is actually no trouble on the loop, then BellSouth should be allowed to recover it's costs for confirming that the circuit is working properly.
	2-15	1.11.3	<i>Resolved subject to final document check:</i> <i>Should the Agreement incorporate the rates, terms and conditions that apply if Cbeyond modifies an order after being sent a Firm Order Confirmation (FOC) from BellSouth for such order?</i>	YES. If Cbeyond modifies an order for UNEs, Combinations or Other Services provisioned pursuant to Attachment 2, after being sent a Firm Order Confirmation (FOC) from BellSouth, a TELRIC-complaint (Order Modification Charge (OMC)) should be paid for by Cbeyond in accordance with the rates terms and conditions set forth in Attachment 2 and Exhibit A thereto.	If Cbeyond modifies an order (Order Modification Charge (OMC)) after being sent a Firm Order Confirmation (FOC) from BellSouth, any costs incurred by BellSouth to accommodate the modification will be paid by Cbeyond in accordance with FCC No. 1 Tariff, Section 5.
29	2-16	1.11.4	<i>Should the recurring charges for UNEs, Combinations and Other Services be prorated based upon the number of days that the UNEs are in service?</i>	YES. The recurring charges for UNEs, Combinations, and Other Services should be prorated based upon the number of days that the UNEs, Combinations, and Other Services are in service. Imposition of a one month minimum billing period is inconsistent with the FCC's pricing rules and the pricing requirements set forth in the Act.	A one month minimum billing period shall apply to all Network Elements and Other Services. After the one month minimum billing period has been attained, fractional billing shall apply to all UNEs and Combinations such that recurring charges will be prorated based upon the number of days that the UNEs are in service. Non-recurring charges shall not be fractionalized.
30	2-17	2.1.1	<i>(A) What terms and conditions should apply for Cbeyond's access to the local loop on an unbundled</i>	(A) BellSouth should provide Cbeyond with nondiscriminatory access to the local loop on an unbundled basis, in accordance with Section 251(c)(3) of the Act and FCC	(A) BellSouth shall provide Cbeyond with nondiscriminatory access to the local loop on an unbundled basis, in accordance with Section 251(c)(3) of

ISSUE NO.	ATT.-ITEM NO.	§	UNRESOLVED ISSUE	CBEYOND POSITION	BELLSOUTH POSITION
			<p><i>basis?</i></p> <p><i>(B) How should the local loop network element be defined?</i></p> <p><i>(C) Should the Agreement include a provision declaring that facilities that terminate to another carrier's switch or premises, a cell site, Mobile Switching Center or base station do not constitute loops?</i></p>	<p>and Commission rules and orders.</p> <p>(B) The local loop network element should be defined as a transmission facility between a distribution frame (or its equivalent) in a BellSouth central office and the loop demarcation point at an End User's customer premises, including inside wire owned or controlled by BellSouth.</p> <p>(C) NO. The Agreement should not include a provision declaring that facilities that terminate to another carrier's switch or premises, a cell site, Mobile Switching Center, or base station do not constitute loops. Such a provision would be inconsistent with the FCC's <i>Triennial Review Order</i>.</p>	<p>the Act and 51.319 (a) of the FCC Order.</p> <p>(B) The local loop network element is defined as a transmission facility between a distribution frame (or its equivalent) in a BellSouth's central office and the loop demarcation point at an End User's customer premises, including inside wire owned by BellSouth.</p> <p>(C) YES. By the FCC's definition, a loop terminates at the End User's customer premises, not a cell site, carrier's switch/premises, mobile switching center or base station.</p>
31	2-18	2.1.1.1	<p><i>Should the local loop element include all electronics used to establish the transmission path to the End User's customer premises?</i></p>	<p>YES, consistent with the FCC's definition, the local loop element should include all electronics used to establish a transmission path to the end user customer premises as well as any inside wire owned or controlled by BellSouth that is part of the transmission path.</p>	<p>NO. Local loop element includes all features, functions, and capabilities of such transmission facility, including the network interface device, optronics and intermediate devices (including repeaters and load coils) used to establish the transmission path to the End User's customer premises. The TRO makes it clear that any electronics or other devices used to provide packet switching is not included as a part of the loop.</p>
32	2-19	2.1.2	<p><i>Should the Agreement</i></p>	<p>NO. The Agreement should not include a</p>	<p>YES. BellSouth is not required to</p>

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			<p><i>include a provision that expressly limits the purchase of Loops by Cbeyond, or otherwise prevents Cbeyond from converting Special Access circuits to Loops, if such Loops will be used by Cbeyond to provide wireless telecommunications services?</i></p>	<p>provision that would preclude Cbeyond from purchasing Loops, or from converting Special Access circuits to Loops, if such Loops would be used by Cbeyond to provide wireless telecommunications services. BellSouth's proposal is contrary to the FCC's <i>Triennial Review Order</i> conclusion that wireless telecommunications services are qualifying services.</p>	<p>unbundled facilities that do not terminate at a demarcation point at an End User customer premises, including, by way of example, but not limited to, facilities that terminate to another carrier's switch or premises, a cell site, Mobile Switching Center or base station.</p>
33	2-20	2.2.1	<p><i>(A) What terms and conditions should apply to Cbeyond's access to the copper loop on an unbundled basis?</i></p> <p><i>(B) How should the copper loop be defined for purposes of the Agreement?</i></p> <p><i>(C) Should any requirement or restriction applicable to the copper loop similarly be applied to DS1 and DS3 copper loops provided by BellSouth?</i></p>	<p>(A) BellSouth should provide Cbeyond with nondiscriminatory access to the copper loop on an unbundled basis.</p> <p>(B) A copper loop is a stand-alone local loop comprised entirely of copper wire or cable. Copper loops include two-wire and four-wire analog voice-grade copper loops, digital copper loops (e.g., DS0s and integrated services digital network lines), as well as two-wire and four-wire copper loops conditioned to transmit the digital signals needed to provide digital subscriber line services, regardless of whether the copper loops are in service or held as spares. The copper loop includes attached electronics using time division multiplexing technology, but does not include packet switching capabilities as defined in FCC</p>	<p>(A) BellSouth will provide access to unbundled Copper Loops as required by FCC Rules 51.319(a)(1).</p> <p>(B) BellSouth will provide access to unbundled Copper Loops as defined by FCC Rules 51.319(a)(1).</p> <p>(C) BellSouth will provide access to unbundled Copper Loops as required by FCC Rules 51.319(a)(1)</p>

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				<p>Rule 51.319(a)(2)(i).</p> <p>(C) The availability of DS1 and DS3 copper loops should not be subject to any requirement or restriction applicable to copper loops under this Section 2.2.1 of Attachment 2 of the Agreement.</p>	
34	2-21	2.2.2	<p>(A) <i>What terms and conditions should apply for Cbeyond's access to the hybrid loop on an unbundled basis?</i></p> <p>(B) <i>How should the hybrid loop be defined for all purposes of the Agreement?</i></p>	<p>(A) BellSouth should provide Cbeyond with nondiscriminatory access to the time division multiplexing features, functions, and capabilities of the hybrid loop (or their packet-based equivalent), including DS0, DS1 or DS3 capacity. However, BellSouth should not be required to provide unbundled access to the packet switched features, functions and capabilities of its hybrid loops. Packet switching capability is the routing or forwarding of packets, frames, cells, or other data units based on address or other routing information contained in the packets, frames, cells or other data units, and the functions that are performed by the digital subscriber line access multiplexers, including but not limited to the ability to terminate an end-user customer's copper loop (which includes both a low-band voice channel and a high-band data channel, or solely a data channel); the ability to forward the voice channels, if present, to a circuit switch or multiple circuit switches; the ability to extract data units from the data</p>	<p>(A) BellSouth will provide access to unbundled Hybrid Loops as required by FCC 51.319(a)(2).</p> <p>(B) BellSouth will provide access to unbundled Hybrid Loops as defined by FCC 51.319(a)(2).</p>

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				<p>channels on the loops; and the ability to combine data units from multiple loops onto one or more trunks connecting to a packet switch or packet switches.</p> <p>(B) A hybrid loop is a local loop composed of both fiber optic cable, usually in the feeder plant, and copper wire or cable, usually in the distribution plant.</p>	
35	2-22	2.2.3	<p>(A) <i>Is unbundling relief provided under FCC Rule 319(a)(3) applicable to Fiber-to-the-Home Loops deployed prior to October 2, 2003?</i></p> <p>(B) <i>How should a "fiber-to-the-home loop" be defined?</i></p>	<p>(A) NO. The unbundling relief provided under FCC Rule 319(a)(3) is only applicable to Fiber-to-the-Home Loops deployed on or after October 2, 2003 (the effective date of the FCC's <i>Triennial Review Order</i>).</p> <p>(B) A fiber-to-the-home loop should be defined as set forth in FCC Rule 319(a)(3).</p>	<p>(A) YES. The unbundling relief provided under FCC Rule 319(a)(3) is applicable to all Fiber-to-the-Home Loops on the Effective date of the FCC's Triennial Review Order.</p> <p>(B) BellSouth will provide access to unbundled Fiber-to-the-Home loops as required by FCC Rule 51.319(a)(3).</p>
36	2-23	2.2.3.1.1, 2.2.3.1.3	<p><i>Should BellSouth be required to retire existing copper loops pursuant to all applicable FCC and Commission orders?</i></p>	<p>YES. BellSouth must maintain existing copper loop connected to the particular customer premises after deploying the fiber-to-the-home loop and provide nondiscriminatory access to that copper loop on an unbundled basis unless BellSouth retires the copper loop pursuant to all applicable FCC and Commission rules and orders. If there is an aspect of Applicable Law to which BellSouth seeks to be exempt, the Parties must mutually and explicitly agree to such exemption.</p>	<p>YES. BellSouth will provide the existing copper loop connected to the particular customer premises after deploying the fiber-to-the-home loop and provide nondiscriminatory access to that copper loop on an unbundled basis unless BellSouth retires the copper loop pursuant to all applicable FCC and Commission rules.</p>

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37	2-24	2.3.2	<i>Should language incorporating the FCC's cap on unbundled DS3 loops track FCC Rule 319(a)(5)(iii) or incorporate alternative wording proposed by BellSouth?</i>	The terms and conditions of the Agreement that set forth BellSouth's obligation to provide to Cbeyond access to DS3 Loop on an unbundled basis should be consistent with the FCC's rules, and therefore should use the term "customer" as it is used in the FCC's rules. Use of the term "end user" may result in a deviation from the FCC's rules to which Cbeyond is unwilling to agree.	The term End User should be defined as it is customarily used in industry; that is, the ultimate user of the telecommunication service. This is not as broad as a "customer" which may be a reseller of the service. As such, the End User, as it is used throughout the agreement, was negotiated by BellSouth to reflect the ultimate user of the telecommunications service (i.e. a business or residential end user customer). Cbeyond raised this issue very late in negotiations, and particularly with the attachment related to UNEs. The term End User, however, is used throughout the entire agreement, and to change the definition in the General Terms and Conditions of the agreement may change the intent of how the term End User is used throughout the entire agreement. At no time was the agreement negotiated to incorporate and end user that was not the ultimate user of the telecommunications service like a business or residential user.
38	2-25	2.3.3	<p><u>For Cbeyond:</u></p> <p><i>How should "Dark Fiber Loops" be defined?</i></p> <p><u>For BellSouth:</u></p>	As set forth in FCC Rule 319(a)(6), a Dark Fiber Loop is fiber within an existing fiber optic cable that has not been activated through the use of optronics to render it capable of carrying communications services.	BellSouth will provide access to unbundled Dark Fiber Loops as required by FCC Rule 51.319(a)(6), if applicable.

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			<i>What terms and conditions should apply for Cbeyond's access to the Dark Fiber Loops on an unbundled basis?</i>		
39	2-26	2.4.5	<i>What legal standard applies to BellSouth's obligation to test all loops provisioned to Cbeyond?</i>	BellSouth must test all loops in a nondiscriminatory manner and at parity with BellSouth (at parity with the manner in which it tests such loops for itself, its customers, its affiliates or any telecommunications carrier).	BellSouth will test loops in a non-discriminatory manner and at parity with the tests BellSouth provides to its own customers.
40	2-27	2.5.3	<i>Should the Agreement incorporate the rates for overtime charges that may apply for Order Coordination (OC) and Order Coordination-Time Specific(OC-TS) outside BellSouth's normal work hours?</i>	YES. Overtime charges for Order Coordination (OC) and Order Coordination-Time Specific (OC-TS) outside BellSouth's normal work hours should be applied based on the amount of overtime worked, and should be in accordance with the rates set forth in Exhibit A to Attachment 2 of the Agreement. Except in cases where the Parties have mutually agreed otherwise, rates for services provided under the Agreement should be included in the Agreement.	The overtime rates for Order Coordination – Time Specific are set forth in BellSouth's Access Tariff. These rates may change as provided for in the industry (such as CWA requirements to update the tariff to incorporate those changes in rates). This cannot be a specific rate that BellSouth is obligated to put in to the agreement.
41	2-28	2.12.5	<i>Should BellSouth offer to Cbeyond a 4-Wire HDSL-Compatible Loop up to 18,000 feet long?</i>	YES. BellSouth should be required to unbundle 4-Wire HDSL-Compatible Loops that are up to 18,000 feet long with up to 2,500 feet of bridged tap (inclusive of Loop length).	NO. BellSouth should not be required to unbundle 4-Wire HDSL-Compatible Loops that are up to 18,000 feet long with up to 2,500 feet of bridge tap (inclusive of Loop length). There are no industry standards or Carrier Serving Area (CSA) specification for HDSL

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42	2-29	2.12.8.1	Are DS3 loops subject to a mileage-based charge?	NO. DS3 Loops should not be subject to a mileage-based charge.	Loops 18,000 feet long with up to 2,500 of bridge tap. However, BellSouth does offer copper loops up to 18,000 feet in length which Cbeeyond may use to provide HDSL service.
43	2-30	2.14.1	For Cbeeyond: (A) How should Line Conditioning be defined in the Agreement? (B) What should BellSouth's obligations be with respect to line conditioning? For BellSouth: How should Line Conditioning be defined in the Agreement?	(A) Line Conditioning should be defined in the Agreement as set forth in FCC Rule 47 CFR 51.319 (a)(1)(iii)(A). (B) BellSouth should perform line conditioning in accordance with FCC Rule 47 C.F.R. 51.319(a)(1)(iii) and any other applicable FCC and Commission rules and orders. Insofar as it is technically feasible, BellSouth should test and report troubles for all the features, functions and capabilities of conditioned copper lines, and should not restrict its testing to voice transmission only.	Line Conditioning is defined as routine network modification that BellSouth regularly undertakes to provide xDSL services to its own customers. This may include the removal of any device, from a copper Loop or copper Sub-loop that may diminish the capability of the Loop or Subloop to deliver high-speed switched wireline telecommunications capability, including xDSL service. Such devices include, but are not limited to, load coils, excessive bridged taps, low pass filters, and range extenders. Excessive bridged taps are bridged taps that serve no network design purpose and that are beyond the limits set according to industry standards and/or the BellSouth TR 73600.
44	2-31	2.14.1.1	Should the Agreement	NO. The agreement should not contain	YES. BellSouth will remove load coils

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			<i>contain specific provisions limiting the availability of load coil removal to copper loops and sub-loops of 18,000 feet or less in length?</i>	specific provisions limiting the availability of load coil removal to copper loops and sub-loops of 18,000 feet or less in length. The proposed limitation is inconsistent with the FCC's Line Conditioning requirements and may interfere with Cbeyond's ability to use UNEs for the innovative and advanced services it seeks to provide to its customers.	only on copper loops and sub-loops that are less than 18,000 feet in length. Excessive bridged taps are bridged taps that serves no network design purpose and that are beyond the limits set according to industry standards and/or the BellSouth TR 73600.
45	2-32	2.14.2, 2.14.2.1	<i>Under what rates, terms and conditions should BellSouth be required to perform Line Conditioning to remove bridged taps?</i>	Any copper loop being ordered by Cbeyond which has over 6,000 feet of combined bridged tap should be modified, upon request from Cbeyond and at no additional cost to Cbeyond, so that the loop will have a maximum of 2,500 feet of bridged tap. Line conditioning orders that require the removal of other bridged tap should be performed at TELRIC-compliant rates set forth in Exhibit A of Attachment 2. BellSouth's proposed limitation on bridged tap removal is inconsistent with the FCC's Line Conditioning requirements and may interfere with Cbeyond's ability to use UNEs for the innovative and advanced services it seeks to provide to its customers.	For any copper loop being ordered by Cbeyond which has over 6,000 feet of combined bridged tap will be modified, upon request from Cbeyond, so that the loop will have a maximum of 6,000 feet of bridged tap. This modification will be performed at no additional charge to Cbeyond. Loop conditioning orders that require the removal of bridged tap that serves no network design purpose on a copper loop that will result in a combined total of bridged tap between 2,500 and 6,000 feet will be performed at the rates set forth in Exhibit A of this Attachment. This is consistent with the TRO and the conditioning that BellSouth performs for its own customers.
46	2-33	2.14.4	<i>Should BellSouth, upon request by Cbeyond, modify a Loop so that it no longer meets the technical parameters of the existing</i>	YES. In those cases where Cbeyond has requested that BellSouth modify a Loop so that it no longer meets the technical parameters of the original loop type, the resulting modified Loop should be	NO. BellSouth should not modify a Loop in such a way that it no longer meets the technical parameters of the original Loop type (e.g., voice grade, ADSL, etc.) being ordered. Modifying

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			<i>loop type?</i>	maintained as the ordered loop type.	a loop in such a manner would not be consistent with industry standards and would cause maintenance and repair problems.
47	2-34	2.18.5.2	<p><i>Resolved subject to final document check:</i></p> <p><u>For Cbeyond:</u></p> <p><i>Is BellSouth required to provide to Cbeyond Unbundled Network Terminating Wire (UNTW) in Multi-Dwelling Units and/or Multi-Tenant Units where BellSouth owns, controls or leases multiunit premises wiring?</i></p> <p><u>For BellSouth:</u></p> <p><i>Under what terms and conditions should the Parties be required to provide to Cbeyond Unbundled Network Terminating Wire (UNTW) in Multi-Dwelling Units and/or Multi-Tenant Units?</i></p>	YES. Consistent with FCC rules and orders, BellSouth must provide Unbundled Network Terminating Wire (UNTW) in Multi-Dwelling Units and/or Multi-Tenant Units or any multiunit premises where BellSouth owns, controls or leases multiunit premises wiring.	This element will be provided in Multi-Dwelling Units (MDUs) and/or Multi-Tenants Units (MTUs) where either Party owns wiring all the way to the End User's premises. Neither Party will provide this element in locations where the property owner provides its own wiring to the End User's premises, where a third party owns the wiring to the End User's premises.
48	2-35	2.18.5.2	<i>(A) Should Cbeyond be</i>	<i>(A) NO.</i> The FCC's unbundling rules (and	<i>(A) YES.</i> In locations where Cbeyond

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		2.18.5.3.2, 2.18.5.3.2.1, 2.18.5.3.2.2, 2.18.5.3.3, 2.18.5.3.4, 2.18.5.3.5, 2.18.5.3.6 2.18.5.3.7, 2.18.5.3.8, 2.18.5.3.9	<i>compelled to provide to BellSouth unbundled access to Unbundled Network Terminating Wire?</i> <i>(B) Should Cbeyond be required to install UNTW Access Terminals for use by BellSouth at no charge to BellSouth?</i>	related orders) do not impose unbundling obligations on Cbeyond. Cbeyond should not be required to provide to BellSouth Unbundled Network Terminating Wire in Multi-Dwelling Units, Multi-Tenant Units or other multiunit premises where Cbeyond owns, controls or leases multiunit premises wiring. (B) NO. The FCC's unbundling rules (and related orders) do not impose unbundling obligations on Cbeyond. Cbeyond should not be required to install UNTW Access Terminals for BellSouth, at no additional charge to BellSouth, under any circumstances.	owns the UNTW cables, BellSouth should be allowed to access those cables under the same terms and conditions that BellSouth provides to Cbeyond. (B) NO. BellSouth is not asking to have access terminals placed at no charge. Instead, BellSouth should pay to Cbeyond the same rates that Cbeyond pays to BellSouth.
49	2-36	2.18.5.3.1, 2.18.5.3.3	Resolved subject to final document check: <i>How should BellSouth provide access to UNTW pairs?</i>	Upon request, BellSouth should provide Cbeyond access to UNTW pairs on an Access Terminal that functions as a single point of interconnection. BellSouth should provide access to such UNTW pairs on an Access Terminal adjacent to each (or an individual) BellSouth Garden Terminal or inside (or an individual) BellSouth Wiring Closet.	BellSouth will agree with Cbeyond's position.
50	2-37	2.18.5.3.2	Resolved subject to final document check: <u>For Cbeyond:</u> <i>Under what circumstances,</i>	BellSouth should not be required to install new or additional NTW beyond existing NTW unless it would do so upon request from one of its own end users or is otherwise required to do so in order to comply with FCC or Commission rules and	The Provisioning Party shall not be required to install new or additional NTW beyond existing NTW to provision the services of the Requesting Party, unless it would do so upon request from one of its own end users.

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			<p><i>if any, should BellSouth be required to extend or install additional UNTW?</i></p> <p><u>For BellSouth:</u></p> <p><i>Under what circumstances, if any, should the Requesting Party be required to extend or install additional UNTW?</i></p>	orders.	
51	2-38	2.18.5.3.3	<p><i>Should the Network Interface Device (NID) be permitted to serve an access terminal for purposes related to BellSouth's provision of Unbundled Network Terminating Wire to Cbeyond?</i></p>	YES. The Network Interface Device (NID) should be permitted to serve an access terminal for purposes related to BellSouth's provision of Unbundled Network Terminating Wire to Cbeyond.	NO. The NID is terminating point of the UNTW cable as is located inside the customer premises. An access terminal must be placed at a Garden Terminal or equipment closet to provide such access.
52	2-39	2.18.5.3.3	<p><i>Resolved subject to final document check:</i></p> <p><u>For Cbeyond:</u></p> <p><i>Should Cbeyond have to agree to language that requires them to "ensure" that a customer that has asked to switch service to Cbeyond is already no</i></p>	Cbeyond should not be required to "ensure" that a customer that has asked to switch service from another carrier is no longer using that carrier's service on a particular pair. Rather, a provision obligating Cbeyond to use commercially reasonable efforts to access only an "available pair" should be sufficient.	YES. Prior to connecting the Requesting Party's service on a pair previously used by the Provisioning Party, the Requesting Party is responsible for ensuring the End User is no longer using the Provisioning Party's service or another CLEC's service before accessing UNTW pairs.

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			<p><i>longer using another carrier's service on that pair -- or -- will language obligating Cbeyond to use commercially reasonable efforts to access only an "available pair" suffice?</i></p> <p><u>For BellSouth:</u></p> <p><i>Should the Requesting Party is responsible for ensuring the End User is no longer using the Provisioning Party's service or another CLEC's service before accessing UNTW pairs?</i></p>		
53	2-40	2.18.5.3.8.1	<p><i>Should BellSouth be permitted to bill to Cbeyond a nonrecurring charge equal to the actual cost of provisioning an Access Terminal in the event that Cbeyond has not activated at least 10 percent of such Access Terminal within 6 months of installation by BellSouth?</i></p>	<p>NO. BellSouth should not be permitted to bill to Cbeyond a nonrecurring charge equal to the actual cost of provisioning an Access Terminal in the event that Cbeyond has not activated at least 10 percent of such Access Terminal within 6 months of installation by BellSouth. The nonrecurring charge proposed by BellSouth is a penalty provision that should not be incorporated into the Agreement.</p>	<p>YES. BellSouth should be permitted to bill to Cbeyond a nonrecurring charge equal to the actual cost of provisioning an Access Terminal in the event that Cbeyond has not activated at least 10 percent of such Access Terminal within 6 months of installation by BellSouth. If Cbeyond has not activated at least 10 percent of such Access Terminal in 6 months, Cbeyond will have caused BellSouth to incur an unnecessary cost by having a under utilized Access Terminal.</p>

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54	2-41	2.18.5.3.9	<i>Should Cbeyond be required to provide to BellSouth copies of its billing records to substantiate the date on which Cbeyond activated its UNTW pairs?</i>	NO. In the event that BellSouth determines that Cbeyond is using UNTW pairs without reporting activation of such pairs, Cbeyond should provide, upon request by BellSouth, reasonable assurances to substantiate the date on which such UNTW pairs were activated. It is unnecessary to exchange copies of actual bills.	Upon request, the Requesting Party will provide copies of its billing record to substantiate such date. However, if other documentation is available to substantiate the date on which the Requesting Party activated its UNTW pairs, it will suffice.
55	2-42	2.19.3.4, 7.7.3	<p><i>Resolved subject to final document check (sub-issues A and B only):</i></p> <p><i>(A) Should BellSouth be required to provide written confirmation of the availability of a dark fiber loop within a designated period of time?</i></p> <p><i>(B) If so, what should that timeframe be?</i></p> <p><i>(C) Upon request by Cbeyond, should BellSouth hold for Cbeyond available Dark Fiber (loop or transport) requested by Cbeyond for a designated period of time?</i></p> <p><i>(D) If so, what should that</i></p>	<p>(A) YES. Just as it has agreed to with respect to dark fiber transport, it is reasonable to require that BellSouth provide written confirmation of the availability of a dark fiber loop within a designated period of time.</p> <p>(B) It is reasonable to require that BellSouth provide written confirmation of the availability of a dark fiber loop within 10 business days (as it has agreed to with respect to dark fiber transport).</p> <p>(C) It is reasonable to require BellSouth to hold the requested Dark Fiber for Cbeyond's use for a discrete period of time.</p> <p>(D) From the time of the SI submitted by Cbeyond to 10 business days after Confirmation, BellSouth should hold the requested Dark Fiber for Cbeyond's use and should not allow any other Party to use such media.</p>	<p>(A) BellSouth has agreed to provide a written confirmation regarding a dark fiber loop or transport's availability within a designated period of time.</p> <p>(B) BellSouth has agreed to provide a written confirmation regarding a dark fiber loop or transport's availability within 10 business days.</p> <p>(C) It is unreasonable to require BellSouth to hold a facility, dark fiber or any other, just in case a CLEC might want to place an order for it. There is no justification for such a request to hold facilities and sets potential circumstance for abuse, gaming, and takes facility away from the carrier of last resort.</p> <p>(D) No hold time should be required.</p>

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			<i>timeframe be?</i>		
56	2-43	2.19.3.5, 7.7.4	<i>If Dark Fiber (loop or transport) requested by Cbeyond is available, what interval should apply for BellSouth to provision such Dark Fiber to Cbeyond?</i>	If Dark Fiber requested by Cbeyond is available, BellSouth should use commercially reasonable efforts to provision such Dark Fiber to Cbeyond within 20 days after Cbeyond submits a valid, error free LSR.	If Dark Fiber requested by Cbeyond is available, and required to be provided pursuant to the UNEs Attachment of the interconnection agreement, BellSouth should only be required to use commercially reasonable efforts to provision such Dark Fiber to Cbeyond within 20 business days after Cbeyond submits a valid, error free LSR.
57	2-44	2.20.1.3	<i>Under what circumstances should BellSouth be required to provide Cbeyond with Loop Makeup information on a BellSouth facility used or leased by a carrier other than BellSouth?</i>	BellSouth should provide Cbeyond Loop Makeup Information on a particular loop upon request by Cbeyond. Such access to information about BellSouth's network and facilities should not be contingent upon receipt of an LOA from a third party carrier.	BellSouth's provisioning of LMU information to the requesting CLEC for facilities is contingent upon either BellSouth or the requesting CLEC controlling the Loop(s) that serve the service location for which LMU information has been requested by the CLEC. The requesting CLEC is not authorized to receive LMU information on a facility used or controlled by another CLEC unless BellSouth receives a Letter of Authorization (LOA) from the voice CLEC (owner) or its authorized agent

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					on the LMUSI submitted by the requesting CLEC.
58	2-45	5.2.5.2, 5.2.5.2.1, 5.2.5.2.2, 5.2.5.2.3, 5.2.5.2.4, 5.2.5.2.5, 5.2.5.2.7	<i>Should language incorporating the FCC's High Capacity EEL Service Eligibility Criteria use the word "customer" or "end user"?</i>	The High Capacity EEL Service Eligibility Criteria should use the term "customer", as is used in the FCC's rules. Use of the term "End User" may result in a deviation from the FCC's rules to which Cbeyond in unwilling to agree.	The issue is not an arbitration issue. The term End User should be defined as it is customarily used in industry; that is, the ultimate user of the telecommunication service.
59	2-46	5.2.6.1, 5.2.6.2	<i>What requirements should apply to EEL audits?</i>	<p>To invoke its limited right to audit Cbeyond's records in order to verify compliance with the High Capacity EEL Service Eligibility Criteria, BellSouth should send a Notice of Audit to Cbeyond, identifying the particular circuits for which BellSouth alleges non-compliance and the cause upon which BellSouth rests its allegations. BellSouth must establish such cause prior to proceeding with an audit of any circuit. The Notice of Audit should also include all supporting documentation upon which BellSouth establishes the cause that forms the basis of BellSouth's allegations of noncompliance. Such Notice of Audit should be delivered to Cbeyond with all supporting documentation no less than thirty (30) days prior to the date upon which BellSouth seeks to commence an audit.</p> <p>The audit should be conducted by a third</p>	<p>BellSouth proposes to track the language of the TRO unless the parties have agreed otherwise. For instance, BellSouth will send a Notice of an Audit to Cbeyond, which is not a TRO requirement. However, the TRO does not impose specific timeframes on BellSouth.</p> <p>Additionally, there is no requirement for BellSouth to have a cause, much less a requirement to "establish" a cause to Cbeyond's satisfaction for any circuit or group of circuits. BellSouth has an annual audit right as stated repeatedly in Paragraph 626 of the TRO.</p> <p>BellSouth proposes to track the language of the TRO with regard the requirements surrounding the auditor, which do not require that the parties agree to a particular auditor. The TRO</p>

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				<p>party independent auditor mutually agreed-upon by the Parties and retained and paid for by BellSouth.</p> <p>The audit should commence at a mutually agreeable location (or locations) no sooner than thirty (30) days after the parties have reached agreement on the auditor.</p>	<p>sets forth thorough guidelines for an acceptable auditor. No further "acceptance" should be required by Cbeyond.</p> <p>Additionally, although practical considerations demand that the parties attempt to agree on an audit location, the audit location should not contractually be subject Cbeyond's agreement since Cbeyond could chose to refuse every location and avoid an audit altogether.</p>
60	2-47	7.1.1.2	<i>How should "Dark Fiber Transport" be defined under the Agreement?</i>	Dark Fiber Transport is defined as unactivated optical Dedicated Transport. The parties agreed on a definition for Dedicated Transport in Section 7.1.1.1 of Attachment 2 of the Agreement.	Dark Fiber Transport, if required to be provided as a UNE, is unactivated optical fiber dedicated to the CLEC between BellSouth serving wire centers.
61	2-48	8.2	<i>Should the Agreement contain a provision liberating BellSouth from any obligation send SS7 messages or call-related database queries to Cbeyond or to a third party, unless otherwise agreed to by the Parties under a separate agreement?</i>	NO. The Agreement should not include a provision that would expressly liberate BellSouth from any obligation to send SS7 messages or call-related database queries to Cbeyond or to a third party, unless otherwise agree to by BellSouth and Cbeyond under a separate agreement.	There is a separate agreement governing SS7 queries/responses to databases. This includes such services as Calling Name, 800 Service and Line Information Database service. Queries/responses associated with basic CLASS features (features not requiring a query/response to an external database) are typically included as part of the basic agreement. BellSouth should not have an additional obligation to do anything other than permit access to BellSouth's call related databases as required by the Act.

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62	2-49	14.1	<i>Should BellSouth make available to Cbeyond SS7 Interconnection?</i>	YES. BellSouth should make SS7 Interconnection available, including interconnection at the A and/or B link levels, to Cbeyond consistent with the Act and applicable FCC and Commission rules and orders, upon request by Cbeyond and pursuant to terms and conditions subsequently negotiated and/or arbitrated pursuant to Section 252 of the Act by BellSouth and Cbeyond.	BellSouth has always made SS7 interconnection available to facilities based CLECs using either A-links if the CLEC has a central office or B-links if the CLEC has STPs. This issue should be addressed in coordination with language in Attachment 3 – Local Interconnection and not Attachment 2 – UNEs. A non-facilities-based CLEC using/selling unbundled central office lines to its customers also has SS7 access since all of BellSouth’s central offices have SS7 interconnection. It is not technically feasible for that line to have a different database access (say to a third party database provider) than those databases accessed by the other (non-UNE) lines in the same switch. It is similarly infeasible to provide A-link or B-link access to an unbundled subscriber line.
63	2-50	18.1	<i>Should BellSouth provide to Cbeyond access to Operations Support Systems on an unbundled basis?</i>	YES. BellSouth should provide to Cbeyond nondiscriminatory access to Operations Support Systems (OSS) in accordance with 47 C.F.R. 319(g) and FCC and Commission rules and orders, and as set forth in Attachment 6 of the Agreement. Operations Support Systems functions consist of pre-ordering, ordering,	YES. BellSouth shall provide to Cbeyond nondiscriminatory access to its Operations Support Systems (OSS) and the information contained therein in order that Cbeyond can perform the functions of pre-ordering, ordering, provisioning, maintenance and repair, and billing in accordance with FCC and

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				provisioning, maintenance and repair, and billing functions supported by BellSouth's databases and information. BellSouth, as part of its duty to provide access to the pre-ordering function, should provide to Cbeyond nondiscriminatory access to the same detailed information about the loop that is available to BellSouth.	Commission rules and orders.
INTERCONNECTION (ATTACHMENT 3)					
64	3-1	4.5	<i>Should Cbeyond be required to pay 100% of the recurring and nonrecurring charges for two-way trunks carrying Transit Traffic?</i>	NO. Two way trunks used for traffic exchanged between the Parties should not become Cbeyond's sole responsibility simply because Transit Traffic also is routed over such trunks. Transit Traffic goes both ways. To the extent that Transit Traffic trunks are excluded from the bill-and-keep regime agreed-upon by the Parties, the Parties should pay a proportional share based on the amount of Transit Traffic each sends to the other at the rates set forth in Exhibit A to Attachment 3.	YES. Since BellSouth neither originates nor terminates Transit Traffic, then BellSouth should not be required to bear any of the costs associated with Transit Traffic trunks and facilities.
65	3-2	4.9.2.3	<i>Should Feature Group A traffic be excepted from the language that states that BellSouth will not switch switched access traffic through more than one BellSouth access tandem?</i>	YES. Feature Group A traffic can involve switching at one or more access tandems.	NO. Feature Group A traffic cannot be switched through more than one access tandem due to the fact that Feature Group A is a line-side service and the Access Tandems are only trunk-side capable. It is therefore not technically, feasible.
66	3-3	7.1.5	<i>Resolved subject to final document check:</i>	(A) YES. Upon request by Cbeyond, BellSouth should provide a written root cause analysis report for all global outages,	(A) BellSouth should provide a written root cause analysis for global outages, but not for other outages.

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67	3-4	8.4.6	<p>(A) <i>Should BellSouth be required to provide upon request, for a global outage or any trunk group outage that has occurred 3 or more times in a 60 day period, a written root cause analysis report?</i></p> <p>(B) <i>If so, how soon should such report be provided?</i></p> <p>Resolved subject to final document check:</p> <p><i>What provisions should apply regarding a failure to provide accurate and detailed usage data necessary for the billing and collection of access revenues?</i></p>	<p>and for any trunk group outage that has occurred 3 or more times in a 60 day period.</p> <p>(B) BellSouth should use commercially reasonable efforts to provide a written root cause analysis report to Cbeyond within 5 days after Cbeyond's request for such report is made.</p> <p>In the event that either Party fails to provide accurate and detailed switched access usage data to the other Party within 90 days after the recording date and the receiving Party is unable to bill and/or collect access revenues due to the sending Party's failure to provide such data within said time period, then the Party failing to send the specified data should be liable to the other Party in an amount equal to the unbillable or uncollectible revenues.</p>	<p>(B) The target interval for root cause analysis on global outages should be 10-30 days.</p> <p>In the event that either Party was provided the accurate switched access detailed usage data in a manner that allowed that Party to generate and provide such data to the other Party in a reasonable timeframe and the other Party is unable to bill and/or collect access revenues due to the sending Party's failure to provide such data within said time period, then the sending Party shall be liable to the other Party in an amount equal to the unbillable or uncollectible revenues. Each company will provide complete documentation to the other to substantiate any claim of such unbillable or uncollectible revenues.</p>
68	3-5	8.5.1	<p><i>Should BellSouth be allowed to charge Cbeyond a Tandem Intermediary</i></p>	<p>NO. BellSouth should not be permitted to impose upon Cbeyond a Tandem Intermediary Charge ("TIC") for the</p>	<p>YES, BellSouth is not obligated to provide the transit function and Cbeyond has the right pursuant to the</p>

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			<i>Charge for the transport and termination of Local Transit Traffic and ISP-Bound Transit Traffic?</i>	transport and termination of Local Transit Traffic and ISP-Bound Transit Traffic. The TIC is a non-TELRIC based additive charge which exploits BellSouth's market power and is discriminatory.	Act to request direct interconnection to other carriers. Additionally, BellSouth incurs costs beyond those for which the PSC ordered rates were designed to address, such as the costs of sending records to Cbeyond identifying the originating carrier. BellSouth does not charge Cbeyond for these records and does not recover those costs in any other form. Moreover, this issue is not appropriate for arbitration in this proceeding because it involves a request by Cbeyond that is not encompassed within BellSouth's obligations pursuant to Section 251 of the Act.
69	3-6	8.5.4	<i>Under what terms should Cbeyond be obligated to reimburse BellSouth for amounts BellSouth pays to third party carriers that terminate BellSouth transited/Cbeyond originated traffic?</i>	In the event that a terminating third party carrier imposes on BellSouth any charges or costs for the delivery of Transit Traffic originated by Cbeyond, Cbeyond should reimburse BellSouth for all charges paid by BellSouth, which BellSouth is contractually obligated to pay, provided that BellSouth provides reasonable, nondiscriminatory and timely notice to Cbeyond, and upon request, provides Cbeyond with a copy of such invoice, if available, or other equivalent supporting documentation, in a timely, reasonable and nondiscriminatory manner. BellSouth should diligently review, dispute and pay such third party invoices (or equivalent) in a manner that is at parity with	In the event that a terminating third party carrier imposes on BellSouth any charges or costs for the delivery of Transit Traffic originated by Cbeyond, Cbeyond should reimburse BellSouth for all charges paid by BellSouth.

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				its own practices for reviewing, disputing and paying such invoices (or equivalent) when no similar reimbursement provision applies. Cbeyond should not be obligated to reimburse BellSouth for switched access billing on local traffic for which BellSouth has assumed liability through a settlement agreement with a third party ILEC.	
70	3-7	8.5.5, 8.5.6	<p><i>(A) With the exception of toll-free Transit calls, should transit charges apply only to the carrier originating Transit Traffic?</i></p> <p>Resolved subject to final document check (sub-issue B only):</p> <p><i>(B) Should transit charges apply only to the carrier terminating toll-free Transit Traffic?</i></p>	<p>(A) Except for toll free Transit Traffic, transit charges should only be assessed on the carrier originating Transit Traffic, and should not be assessed on the terminating carrier.</p> <p>(B) Transit charges associated with the provisioning of toll free services (e.g., 800/888/877) should only be assessed on the terminating carrier, and should not be imposed on the originating carrier.</p>	<p>(A) Except for toll free Transit Traffic, transit charges should only be assessed on the carrier originating Transit Traffic, and should not be assessed on the terminating carrier.</p> <p>(B) Transit charges associated with the provisioning of toll free services (e. g., 800/ 888/ 877) should only be assessed on the terminating carrier, and should not be imposed on the originating carrier.</p>
COLLOCATION (ATTACHMENT 4)					
71	4-1	5.19	<p><u>For Cbeyond:</u></p> <p><i>In circumstances not covered by the scope of the 47 C.F.R 51.233 (which relates to Advanced Services equipment) what</i></p>	Provisions should be included to restrict the installation and operation of any equipment or services that (1) endangers or damages the equipment or facilities of any other collocated telecommunications carrier; (2) inappropriately compromises the privacy of communications routed through the	This Attachment should include language restricting the installation and operation of any equipment, facilities or services that (1) significantly degrades (defined as an action that noticeably impairs a service from a user's perspective), interferes with or impairs

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			<p><i>restrictions should apply to Cbeyond's use of collocation space or collocated equipment and/or facilities that impact others?</i></p> <p><u>For BellSouth:</u></p> <p><i>What restrictions should apply to Cbeyond's use of collocation space or collocated equipment/facilities that impact others?</i></p>	<p>BellSouth Premises; and (3) creates an unreasonable risk of injury or death to any individual or to the public.</p>	<p>service provided by BellSouth or by any other entity or any person's use of its telecommunications services; (2) endangers or damages the equipment, facilities or any other property of BellSouth or of any other entity or person; (3) compromises the privacy of any communications routed through the Premises; or (4) creates an unreasonable risk of injury or death to any individual or to the public.</p>
72	4-2	8.1, 8.5	<p><u>For Cbeyond:</u></p> <p><i>To the extent that Cbeyond paid for space preparation and power on a non-recurring or ICB basis, how should those payments be accounted for in light of the current collocation rate structure?</i></p> <p><u>For BellSouth:</u></p> <p><i>How should grandfathered rates apply?</i></p>	<p>Such payments should result in "grandfathering," wherein the rates that should apply are those rates that were in effect prior to the Effective Date of the Agreement, unless application of such rates would be inconsistent with the underlying purpose for grandfathering. With respect to charges for power, such rates may not eliminate double payment and over-recovery, if the prior agreement did not include a grandfathering provision. With respect to space preparation charges, the space preparation charges provided for in the Agreement should not apply where Cbeyond has paid space preparation charges through previously billed ICB or</p>	<p>When rates have been "grandfathered," the rates that would apply are those rates that were in effect prior to the Effective Date of the Agreement or as otherwise specified within the Agreement. There should be no other exceptions allowed for the application of "grandfathered" rates, nor should Cbeyond be permitted to pick a more current rate, if lower than the "grandfathered" rate, for billing purposes.</p> <p>With respect to DC power, for which Cbeyond paid the installation costs under an individual case basis or non-recurring charge rate schedule, Cbeyond</p>

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				nonrecurring space preparation charges.	<p>should only be required to pay the monthly recurring charge that includes an AC usage component and that portion of the monthly recurring charges that recovers the DC power infrastructure costs for ongoing activities associated with maintaining, repairing, and upgrading the existing DC power infrastructure in the central office.</p> <p>With respect to space preparation fees, if these fees were billed to and paid in full by Cbeyond under an individual case basis or non-recurring charge pricing structure at the time Cbeyond initially occupied the assigned collocation space, then Cbeyond should not be assessed any further space preparation fees for this collocation space. However, any new requests for collocation space or augmentations requesting additional space for an existing collocation arrangement should be billed pursuant to the current monthly recurring space preparation fees set forth in Exhibit B of this Attachment.</p>
73	4-3	8.3	<i>When should BellSouth commence billing of recurring charges for power?</i>	Billing for recurring charges for power, if drawn from BellSouth, should commence on the date upon which the primary and redundant connections from Cbeyond's	If Cbeyond has met the applicable fifteen (15) calendar day walkthrough interval specified in Section 4.1 of this Attachment, billing for recurring power

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				equipment in the Collocation Space to the BellSouth power board or BDFB are installed.	charges should commence upon the Space Acceptance Date. If Cbeyond fails to complete an acceptance walkthrough within the applicable fifteen (15) calendar day interval, billing for recurring power charges should commence on the Space Ready Date. If Cbeyond occupies the space prior to the Space Ready Date, then the date Cbeyond occupies the space should be deemed the new Space Acceptance Date and billing for recurring power charges should begin on that date.
74	4-4		<p><i>Resolved subject to final document check:</i></p> <p><i>Under what terms should Cbeyond be provided escorted access to a BellSouth manhole?</i></p>	BellSouth should provide to Cbeyond, at the rates set forth in the Agreement, escorted access to any BellSouth manhole specified by Cbeyond. The rates assessed Cbeyond for a security escort provided by BellSouth should begin with the scheduled escort time. BellSouth should wait one half (1/2) hour after the scheduled time for such an escort and Cbeyond should pay for such half hour charges in the event Cbeyond fails to show up. Such rates should not apply, and Cbeyond should not be charged, where BellSouth or its supplier causes the need for Cbeyond to require escorted access to the manhole. In cases where BellSouth fails to show up within one half (1/2) hour of the scheduled time for an escort, Cbeyond should not be charged for such an escort,	BellSouth should only be required to provide Cbeyond with escorted security access to the BellSouth zero manhole for a particular BellSouth Premises in which Cbeyond currently has or is in the process of obtaining collocation space. The rates assessed to Cbeyond for a security escort provided by BellSouth should begin with the scheduled escort time, unless otherwise indicated in this Attachment, pursuant to the fees set forth in Exhibit B. Such rates should not apply, and Cbeyond should not be charged in those cases in which BellSouth or its BellSouth Certified Supplier causes the need for Cbeyond or Cbeyond's BellSouth Certified Supplier to require escorted access to a BellSouth

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				and a new escort should be scheduled by Cbeyond, and provided by BellSouth without charge.	zero manhole for a particular BellSouth Premises in which Cbeyond currently has or is in the process of obtaining collocation space. In the event BellSouth fails to show up within one-half (1/2) hour of the scheduled time for a security escort, Cbeyond should not be charged for such escort, and a new security escort should be scheduled by Cbeyond and will be provided by BellSouth at no charge. BellSouth will wait for one half (1/2) hour after the scheduled time for such a security escort and Cbeyond should be required to pay for such half hour charges if Cbeyond or Cbeyond's BellSouth Certified Supplier fails to show up.
75	4-5	8.10, 8.10.1, 8.10.2	<i>What rates should apply for BellSouth-supplied DC power?</i>	Applicable rates should vary depending on whether Cbeyond elects to be billed on a "fused amp" basis, by electing to remain (or install new collocations or augments) under the traditional collocation power billing method, or on a "used amp" basis, by electing to convert collocations to (or install new collocations or augments under) the power usage metering option set forth in Section 9 of Attachment 4 (<i>see Issue No. 77, Item No. 4-7</i>). Under either billing method, there will be rates applicable to grandfathered	Recurring charges for -48V DC power should be assessed on a "per fused amp" basis, in accordance with the BellSouth Certified Supplier engineered and installed power feed fused ampere capacity. Under this "per fused amp" billing methodology, there will be rates applicable to grandfathered collocations for which power plant infrastructure costs have been prepaid under an ICB pricing or non-recurring charge arrangement and there will be rates applicable where such grandfathering does not apply and power plant

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				<p>collocations for which power plant infrastructure costs have been prepaid under an ICB pricing or non-recurring charge arrangement, and there will be rates applicable where such grandfathering does not apply and power plant infrastructure is instead recovered via recurring charges, as currently set by the Commission (<i>see Issue No. 72, Item No. 4-2</i>).</p> <p>Under the fused amp billing option, Cbeyond will be billed at the Commission's most recently approved fused amp recurring rate for DC power. However, if certain arrangements are grandfathered as a result of Cbeyond having paid installation costs under an ICB or non-recurring rate schedule for the collocation arrangement power installation, Cbeyond should only be billed the recurring rate for the DC power in effect prior to the Effective Date of the Agreement, or, if rates that excluded the infrastructure component had not been incorporated into the Parties' most recent interconnection agreement, the most recent Commission approved rate excluding an infrastructure component should apply.</p> <p>Under the power usage metering option, recurring charges for DC power are subdivided into a power infrastructure</p>	<p>infrastructure is instead recovered via monthly recurring charges.</p> <p>Cbeyond should be billed at the Commission's most recent approved fused amp recurring rate for DC power. However, if the Parties either previously agreed to "grandfather" such arrangements or such arrangements are grandfathered as a result of Cbeyond having provided documentation to BellSouth demonstrating that Cbeyond has fully paid the installation costs under an individual case basis or non-recurring charge rate structure for the collocation arrangement power installation, then Cbeyond should only be billed the monthly recurring rate for the DC power in effect prior to the effective date of the Agreement, or, if such grandfathered rates had not been incorporated into the Parties' most recent Agreement, the rates contained in Exhibit B of this Attachment, which reflect only that portion of the monthly recurring charges associated with AC usage and the DC power infrastructure costs for ongoing activities associated with maintaining, repairing and upgrading the existing DC power infrastructure in the central office.</p>

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				component and an AC usage component (based on DC amps consumed). However, if certain arrangements are grandfathered as a result of Cbeyond having paid installation costs under an ICB or non-recurring rate schedule for the collocation arrangement power installation, Cbeyond should only be billed a recurring rate for the AC usage based on the most recent Commission approved rate exclusive of an infrastructure component (as set by the Commission).	
76	4-6	9.1.1	<p><u>For Cbeyond:</u></p> <p><i>Under the fused amp billing option, how should recurring and non-recurring charges be applied?</i></p> <p><u>For BellSouth:</u></p> <p><i>(A) How should recurring and non-recurring charges be applied?</i></p> <p><i>(B) What should the charges be?</i></p>	Under the fused amp billing option, monthly recurring charges for -48V DC power should be assessed per fused amp per month in a manner consistent with Commission orders and as set forth in Section 8 of Attachment 4 (see Issue No. 75, Item No. 4-5). Non-recurring charges for -48V DC power distribution should be as set by the Commission.	<p>(A) Monthly recurring charges for -48V DC power should be assessed per fused amp per month based upon the BellSouth Certified Supplier engineered and installed power feed fused amperage capacity, in a manner consistent with Commission orders and as set forth in Section 8 of Attachment 4 (See Issue 4-5 above). Non-recurring charges for -48V DC power would not apply under the Commission's current rate structure.</p> <p>(B) The monthly recurring charges for -48V DC power should be the current rates ordered by the Commission, as set forth in Exhibit B of the Attachment.</p>
77	4-7	9.1.2, 9.1.3, 9.1.3.1.	<p><u>For Cbeyond:</u></p> <p><i>(A) Should Cbeyond be</i></p>	(A) YES. Cbeyond should be permitted to choose between a fused amp billing option and a power usage metering option.	(A) NO. Cbeyond should not be permitted to choose between a fused amp billing option and a power usage

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		9.1.3.2, 9.1.3.3, 9.1.3.4, 9.1.3.5, 9.1.3.6	<p><i>permitted to choose between a fused amp billing option and a power usage metering option?</i></p> <p><i>(B) If power usage metering is allowed, how will recurring and non-recurring charges be applied and what should those charges be?</i></p> <p><u>For BellSouth:</u></p> <p><i>(A) Should Cbeyond be permitted to choose between a fused amp billing option and a power usage metering option?</i></p> <p><i>(B) If power usage metering is allowed, how will recurring and non-recurring charges be applied, and what should those charges be?</i></p>	<p>(B) If Cbeyond chooses the power usage metering option, monthly recurring charges for -48V DC power will be assessed based on a consumption component and, if applicable, an infrastructure component, as set forth in Section 8 of Attachment 4 (<i>see Issue No. 75, Item No. 4-5</i>). The Commission should ensure that its most recently approved recurring rates are apportioned appropriately into the consumption and infrastructure components. Non-recurring charges for -48V DC power distribution should be as prescribed by the Commission.</p>	<p>metering option. Although the Florida and Georgia Commissions have ordered that a power usage metering option be implemented, these Commissions have not yet determined the appropriate power metering rate structure and the associated rate elements that would be assessed to CLECs that choose this option. Therefore, BellSouth cannot offer a power usage metering option in Florida and Georgia until these issues have been resolved by the respective State Commissions.</p> <p>(B) BellSouth Position: If power usage metering is allowed, monthly recurring charges for -48V DC power should be assessed based on (1) an AC usage component of the DC power consumed by Cbeyond, as determined by Cbeyond's actual metered usage for each power feed (the A and B feeds), or at least 10 amps of AC power for each A and B feed associated with each power cable and (2) a power infrastructure component based on Cbeyond's requested fused amperage capacity, which would recover the costs of the DC power plant and the associated equipment required to convert AC power to DC power.</p>

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					<p>The Commission's current approved monthly recurring DC power rate (which is a fused amp rate) would be apportioned appropriately into the AC usage component and the power infrastructure component based upon the cost study inputs used initially to develop the Commission ordered DC power rate.</p> <p>Monthly recurring charges would also be assessed, on a per site basis, for Cbeyond's collocation arrangements in each state, to recover: 1) BellSouth's expenses to program the applicable billing systems to accept and process the power usage measurement option, 2) BellSouth's expenses associated with its workforce loading the measured power usage data into BellSouth's OSS and billing systems, and 3) the costs for a BellSouth employee or BellSouth Certified Supplier to provide the clamp-on ammeter or other measurement device and perform the task of measuring the actual power usage at each requested collocation site.</p> <p>The monthly recurring charges for the AC usage component, the power</p>

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					<p>infrastructure component, and the Meter Reading expense would be included in and assessed pursuant to Exhibit B of this Attachment.</p> <p>A non-recurring "Additional Meter Reading Trip Charge" would be assessed on a per site basis when Cbeyond requests an unscheduled power usage reading be taken at a particular central office or if Cbeyond fails to provide access to its collocation space or fails to provide BellSouth or the BellSouth Certified Supplier with sufficient notification of the necessity to cancel and/or reschedule the initial agreed-upon appointment. This charge would appear on Cbeyond's next monthly billing statement.</p> <p>The non-recurring charge associated with the submission of a Subsequent Application, to convert existing collocation arrangements to a power metering option or to remove or install telecommunications equipment in Cbeyond's space, would be billed on the date that BellSouth provides an Application Response to the Subsequent Application.</p>

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					The non-recurring "Additional Meter Reading Trip Charge" and the Subsequent Application Fee would be included in and assessed pursuant to Exhibit B of this Attachment.
ORDERING (ATTACHMENT 6)					
78	6-1	1.2	<i>For the purpose of BellSouth's provisioning functions that are not managed by BellSouth's Customer Wholesale Interconnection Network Services (CWINS) Centers or BellSouth's Local Carrier Service (LSC) Centers, how should BellSouth's normal working hours be defined for the purpose of establishing when overtime charges do not apply?</i>	For those BellSouth provisioning functions that are not covered by Sections 1.2.1 and 1.2.2 of the Agreement, BellSouth shall provision services during normal working hours which should be defined as hours during which it does not pay a technician overtime.	BellSouth will provision requests during normal business hours as referenced on BellSouth's interconnection website. Provisioning support required by Cbeyond outside of those hours will be considered outside of normal business hours and will be subject to overtime billing.
79	6-2	2.1.3.1, 2.1.3.2	(A) <i>Should Cbeyond be required to provide to BellSouth electronic access to Cbeyond's customer record information within firm intervals?</i> (B) <i>Should Cbeyond be required to provide to BellSouth manual access to</i>	(A) NO. Cbeyond is not required by law to commit to specific intervals, and does not have any electronic system in place to handle CSR requests. Moreover, BellSouth refuses to commit to deliver CSRs within a firm interval. Cbeyond should not be required to provide to BellSouth electronic access to Cbeyond's customer record information, within firm intervals. Cbeyond does not have an electronic access	(A) & (B) While BellSouth does not believe that Cbeyond must provide to BellSouth electronic access to CSRs, Cbeyond should be required to provide CSR information within specified intervals, whether electronically or manually. BellSouth is required to provide CSRs to CLEC in intervals prescribed by this PSC that, if not met, require BellSouth to remit SEEMs

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			<i>Cbeyond's customer record information within firm intervals?</i>	<p>capability.</p> <p>(B) NO. Cbeyond is not required by law to commit to specific intervals. Moreover, BellSouth refuses to commit to deliver CSRs within a firm interval. Cbeyond, however, will commit to use commercially reasonable efforts to provide CSRs to BellSouth within an average of 48 hours of a complete and accurate request by BellSouth, exclusive of weekends and holidays, calculated in the same manner in which BellSouth is required to calculate its own average intervals.</p>	<p>penalties. If CLEC is not held to the same standard, the End User customer is impaired by being unable to receive the same service interval from all local service providers</p>
80	6-3	2.1.4.1	<p><i>(A) What procedures should apply when one Party alleges, via written notice, that the other Party has engaged in unauthorized access to CSR information?</i></p> <p><i>(B) How should disputes over alleged unauthorized access to CSR information be handled under the Agreement?</i></p>	<p>(A) Either Party, in the event it suspects that the other Party has accessed CSR information without having obtained the proper End User authorization, should send written notice to the other Party specifying the alleged noncompliance. The Party receiving the notice should be obligated to acknowledge receipt of the notice as soon as practicable, and provide appropriate proof of authorization within seven (7) days or provide notice that appropriate corrective measures have been taken or will be taken as soon as practicable.</p> <p>(B) If one Party disputes the other Party's assertion of non-compliance, that Party should notify the other Party in writing of</p>	<p>(A) The Party receiving such notice should provide documentation within seven (7) business days to prove authorization</p> <p>(B) In its written notice to the other Party the alleging Party will state that additional applications for service may be refused, that any pending orders for service may not be completed, and/or that access to ordering systems may be suspended if such use is not corrected or ceased by the fifth (5th) calendar day following the date of the notice. In addition, the alleging Party may, at the same time, provide written notice to the person designated by the other Party to</p>

ISSUE No.	ATT.-ITEM NO.	§	UNRESOLVED ISSUE	CBEYOND POSITION	BELL SOUTH POSITION
				<p>the basis for its assertion of compliance. If the receiving Party fails to provide the other Party with notice that appropriate corrective measures have been taken within a reasonable time or provide the other Party with proof sufficient to persuade the other Party that it erred in asserting the non-compliance, the requesting Party should proceed pursuant to the Dispute Resolution provisions set forth in the General Terms and Conditions and the Parties should cooperatively seek expedited resolution of the dispute. "Self help", in the form of suspension of access to ordering systems and discontinuance of service, is inappropriate and coercive. Moreover, it effectively denies one Party the ability to avail itself to the Dispute Resolution process otherwise agreed to by the Parties.</p>	<p>receive notices of noncompliance that the alleging Party may terminate the provision of access to ordering systems to the other Party and may discontinue the provisioning of existing services if such use is not corrected or ceased by the tenth (10th) calendar day following the date of the initial notice. If the other Party disagrees with the alleging Party's allegations of unauthorized use, the other Party shall proceed pursuant to the dispute resolution provisions set forth in the General Terms and Conditions</p>
81	6-4	2.1.6.1	<p><i>Should BellSouth, upon request by Cbeyond, be required to provide to Cbeyond a root cause analysis within 48 hours of receiving Cbeyond's request?</i></p>	<p>YES. BellSouth should furnish root cause analyses for trouble reports as requested by Cbeyond within 48 hours of receiving Cbeyond's request.</p>	<p>NO. BellSouth shall provide analysis to CLECs in accordance with the guidelines of the Change Control Process (CCP).</p>
82	6-5	2.1.7.1	<p><i>What procedures should apply to credit Cbeyond's account for Maintenance and Services charges paid by Cbeyond in the event</i></p>	<p>If Cbeyond performs additional testing of the same facilities, after receiving a "no trouble found" response from BellSouth, and finds that the trouble has not been eliminated and does not reside on</p>	<p>If Cbeyond performs additional testing of the same facilities and finds that the trouble has not been eliminated and does not reside on Cbeyond's side of the demarcation point, then Cbeyond shall</p>

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			<i>that BellSouth, in response to a subsequent trouble ticket submitted by Cbeyond, determines that the trouble reported by Cbeyond actually resides on BellSouth's side of the demarcation point?</i>	Cbeyond's side of the demarcation point, then Cbeyond shall submit an additional trouble ticket to BellSouth. If, after testing has been performed by Bellsouth, the trouble is actually determined to be on BellSouth's side of the demarcation point, BellSouth will not charge Cbeyond for the submission of the trouble ticket. BellSouth shall also credit Cbeyond's account for the amount of the original Maintenance of Services charge on this same facility, within the next billing cycle.	submit an additional trouble ticket to BellSouth. If, after testing has been performed by BellSouth, the trouble is actually determined to be on BellSouth's side of the demarcation point, BellSouth will not charge Cbeyond for the submission of the trouble ticket.
83	6-6	2.10	<i>Should charges for substantially similar OSS functions performed by the parties be reciprocal?</i>	YES. The Parties should bill each other OSS rates pursuant to the terms, conditions and rates for OSS as set forth in Exhibit A of Attachment 2 of the Agreement. If BellSouth charges Cbeyond for providing a certain functionality/service then Cbeyond should be able to charge BellSouth the same rate for the same functionality/service. If BellSouth refuses to pay that same rate, it should be denied access to that functionality.	YES. However, Cbeyond shall bill BellSouth a single manual OSS charge (SOMAN) per local service request associated with the 'port back' of a telephone number to BellSouth as set forth in Exhibit A of Attachment 2 of this Agreement.
84	6-7	3.2.2	<i>Should Cbeyond be required to return a FOC for porting a number to BellSouth within a firm interval?</i>	NO. Cbeyond is not required by law to commit to specific intervals. Moreover, BellSouth refuses to commit to deliver a FOC for porting a number to Cbeyond within a firm interval. Cbeyond, however, will commit to use commercially reasonable efforts to return a FOC for porting a number to BellSouth within an average of 48 hours	YES. BellSouth is required to provide FOCs to CLECs in intervals prescribed by this PSC that, if not met, require BellSouth to remit SEEMs penalties. If Cbeyond is not held to the same standard, the End User customer is impaired by being unable to receive the same service interval from all Local

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				of Cbeyond's receipt of a valid LSR from BellSouth, exclusive of weekends and holidays, calculated in the same manner in which BellSouth is required to calculate its own average intervals.	service providers
85	6-8	3.2.3	<i>Should Cbeyond be required to provide a Reject Response to BellSouth within a firm interval?</i>	NO. Cbeyond is not required by law to commit to specific intervals. Moreover, BellSouth refuses to commit to provide a Reject Response to Cbeyond within a firm interval. Cbeyond, however, will commit to use commercially reasonable efforts to provide a Reject Response to BellSouth within an average of 72 hours of Cbeyond's receipt of an LSR from BellSouth which is incomplete or incorrectly formatted, exclusive of weekends and holidays, calculated in the same manner in which BellSouth is required to calculate its own average intervals.	YES. BellSouth is required to provide FOCs to CLECs in intervals prescribed by this PSC that, if not met, require BellSouth to remit SEEMs penalties. If Cbeyond is not held to the same standard, the End User customer is impaired by being unable to receive the same service interval from all Local service providers
86	6-9	3.6	<i>When multiple UNEs are ordered on a single LSR based on inaccurate BellSouth loop make-up information as to some of the UNEs, should Cbeyond be entitled to cancel all or a subset of the UNEs, Combinations or Other Services on the LSR without incurring a cancellation charge?</i>	If Cbeyond places an LSR based upon BellSouth's loop makeup information, and such information is inaccurate resulting in the inability of BellSouth to provision the network elements requested and another spare compatible facility cannot be found with the transmission characteristics of the network elements originally requested, cancellation charges should not apply. Where Cbeyond places a single LSR for multiple network elements or services based	BellSouth has established processes to accommodate a large number of CLECs, and BellSouth has determined from experience, when CLECs place a single LSR for multiple network elements, these elements are not coupled. Thus, where Cbeyond places a single LSR for multiple network elements or services based upon loop makeup information, and information as to some, but not all, of the network elements or services is inaccurate, if BellSouth cannot

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				<p>upon loop makeup information, and that loop make-up information as to some, but not all, of the network elements or services is inaccurate, if BellSouth cannot provision the network elements or services that were the subject of the inaccurate loop makeup information, Cbeyond should be able to cancel its request for all or any subset of those network elements or services requested on the LSR without incurring cancellation charges. Cbeyond's ability to serve a customer typically is contingent upon its ability to have access to all of the network elements or services requested on the LSR – getting some, but not all of them, typically leaves Cbeyond unable to provide the proposed service to the customer.</p>	<p>provision the network elements or services that were the subject of the inaccurate loop makeup information, Cbeyond may cancel its request for those network elements or services without incurring cancellation charges as described in this Section. In such instance, should Cbeyond elect to cancel the entire LSR, cancellation charges as described in this Section shall apply to those elements and services that were not the subject of inaccurate loop makeup.</p>
87	6-10	3.9, 3.9.1	<p><i>(A) Should the mass migration of customer service arrangements resulting from mergers, acquisitions and asset transfers be accomplished by the submission of an electronic LSR or spreadsheet?</i></p> <p><i>(B) If so, what rates should apply?</i></p> <p><i>(C) What should be the</i></p>	<p>(A) YES. Mass migration of customer service arrangements (e.g., UNEs, Combinations) should be accomplished pursuant to submission of electronic LSR or, if mutually agreed to by the Parties, by submission of a spreadsheet in a mutually agreed-upon format. Until such time as an electronic LSR process is available, a spreadsheet containing all relevant information should be used.</p> <p>(B) An electronic OSS charge should be assessed per service arrangement migrated. In addition, BellSouth should only charge</p>	<p>This issue (including all subparts) is not appropriate for arbitration in this proceeding because it involves a request by the CLECs that is not encompassed within BellSouth's obligations pursuant to Section 251 of the Act.</p> <p>(A) NO, each and every Merger, Acquisition and Asset Transfer is unique and requires project management and planning to ascertain the appropriate manner in which to accomplish the transfer, including how orders should be submitted. The vast array of services</p>

ISSUE NO.	ATT.-ITEM NO.	§	UNRESOLVED ISSUE	CBEYOND POSITION	BELL SOUTH POSITION
			<i>interval for such mass migrations of services?</i>	<p>Cbeyond a TELRIC-based records change charge, as set forth in Exhibit A of Attachment 2, for migrations of customers for which no physical re-termination of circuits must be performed. Similarly, BellSouth should only charge Cbeyond a TELRIC-based charge, as set forth in Exhibit A of Attachment 2, for migrations of customers for which physical re-termination of circuits is required.</p> <p>(C) Migrations should be completed within 10 calendar days of an LSR or spreadsheet submission.</p>	<p>that may be the subject of such a transfer, under the agreement and both state and federal tariffs, necessitates that various forms of documentation may be required.</p> <p>(B) The rates by necessity must be negotiated between the Parties based upon the particular services to be transferred and the work involved.</p> <p>(C) No finite interval can be set to cover all potential situations. While shorter intervals can be committed to and met for small, simple projects, larger and more complex projects require much longer intervals and prioritization and cooperation between the Parties.</p>
BILLING (ATTACHMENT 7)					
88	7-1	1.1.3	<p><u>For Cbeyond:</u></p> <p><i>What time limits should apply to backbilling?</i></p> <p><u>For BellSouth:</u></p> <p><i>What limitations period should apply to charges under the agreement and should such limitations period apply to all issue</i></p>	<p>BellSouth should not be permitted to backbill (<i>i.e.</i>, bill for services rendered more than 60 days past).</p>	<p>All charges incurred under the agreement should be subject to the state's statute of limitations or applicable PSC rules. Back-billing alone should not be subject to a shorter limitations period than any other claims related to billing under the agreement.</p>

ISSUE NO.	ATT.-ITEM NO.	§	UNRESOLVED ISSUE	CBEYOND POSITION	BELL SOUTH POSITION
			<i>related to billing under the agreement?</i>		
89	7-2	1.1.4	<p>Resolved subject to final document check:</p> <p><u>For Cbeyond:</u></p> <p><i>Should the Agreement explicitly require payment by Cbeyond to BellSouth of those charges related to local switching services that BellSouth does not provide to Cbeyond under the Agreement?</i></p> <p><u>For BellSouth:</u></p> <p><i>Should there be conditional language that requires Cbeyond to pay BellSouth for charges related to local switching if Cbeyond purchases local switching from BellSouth?</i></p>	<p>NO. The Agreement should not explicitly address or require payment by Cbeyond to BellSouth of charges related to local switching services provided by BellSouth, including but not limited to 911 and E911 charges, End Users common line charges, federal subscriber line charges, telecommunications relay charges (TRS) and franchise fees. The Agreement does not include terms and conditions for Local Switching services provided by BellSouth. Pursuant to Section 3.1 of Attachment 2 of the Agreement, Local Switching and associated UNEs will be provided by BellSouth to Cbeyond pursuant to the terms and conditions subsequently negotiated and/or arbitrated by the Parties pursuant to Section 252 of the Act.</p>	<p>YES. If Cbeyond purchases local switching from BellSouth, then charges related to local switching services including but not limited to 911 and E911 Charges, End Users common line charges, federal subscriber line charges, telecommunications relay charges (TRS) and franchise fee are due to BellSouth from Cbeyond.</p>
90	7-3	1.3	<p><i>(A) What charges, if any, should be imposed for records changes made by the Parties to reflect changes in corporate names or other LEC</i></p>	<p>(A) A Party should be entitled to make one "LEC Change" (i.e. corporate name change, OCN, CC, CIC, ACNA change) per state in any 12 month period without charge by the other Party for updating its databases, systems and records solely to reflect such</p>	<p>This issue (including all subparts) is not appropriate for arbitration in this proceeding because it involves a request by the CLECs that is not encompassed within BellSouth's obligations pursuant to Section 251 of the Act.</p>

ISSUE No.	ATT.-ITEM No.	§	UNRESOLVED ISSUE	CBEYOND POSITION	BELLSOUTH POSITION
			<p><i>identifiers such as OCN, CC, CIC and ACNA?</i></p> <p><i>(B) What intervals should apply to such changes?</i></p>	<p>change. For any additional LEC Changes, a TELRIC compliant rate, as set forth in Exhibit A to Attachment 7 of the Agreement, should be charged.</p> <p>(B) "LEC Changes" should be accomplished in 30 calendar days and should result in no delay or suspension of ordering or provisioning of any element or service provided pursuant to this Agreement, or access to any pre-order, order, provisioning, maintenance or repair interfaces. At the request of a Party, the other Party should establish a new BAN within 10 calendar days.</p>	<p>(A) BellSouth is permitted to recover its costs and CLEC should be charged a reasonable records change charge. Requests for this type of change should be submitted to the BFR/NBR process.</p> <p>(B) The Interval of any such project would be determined by the BFR/NBR process based upon the complexity of the project.</p>
91	7-4	1.5	<p><i>Resolved subject to final document check:</i></p> <p><i>When should payment of charges for service be due?</i></p>	<p>Payment of charges for services provided should be due 30 calendar days from receipt or website posting of a complete and fully readable bill or within 30 calendar days from receipt or website posting of a corrected or retransmitted bill in those cases where correction or retransmission is necessary for processing.</p>	<p>Payment for services should be due on or before the next bill date (Payment Due Date) in immediately available funds.</p>
92	7-5	1.8	<p><i>Resolved subject to final document check:</i></p> <p><i>(A) Should the right to impose Late Payment Charges under the Agreement be reciprocal?</i></p>	<p>(A) YES. To the extent that BellSouth fails to pay in a timely manner, it, too, should have to pay Late Payment Charges.</p> <p>(B) The late payment charge should be in an amount equal to the amount not received by the billing party on the payment due date, multiplied by a late factor. The late</p>	<p>(A) Yes. Late Payment Charges under this Agreement should be reciprocal.</p> <p>(B) The late factor shall be as set forth in Section A2 of the GSST, Section B2 of the Private Line Service Tariff or Section E2 of the Interstate Access Tariff, as appropriate.</p>

ISSUE NO.	ATT.-ITEM NO.	§	UNRESOLVED ISSUE	CBEYOND POSITION	BELL SOUTH POSITION
			<p>(B) <i>What late payment charges should apply for amounts received after the payment due date, or otherwise in funds not immediately available to the billing party?</i></p> <p>(C) <i>What fee should be assessed for returned checks?</i></p>	<p>factor should be a uniform charge set at the three month Commercial Paper Rate applicable on the first business day of each calendar year.</p> <p>(C) In addition to any applicable late payment charges, a uniform \$20 fee for all returned checks should apply.</p>	<p>(C) The PSC approved rate from the GSST should apply or, in the absence of such, the amount permitted by state law.</p>
93	7-6	1.9.1	<p><i>What recourse should a Party have if it believes the other Party is engaging in prohibited, unlawful or improper use of its facilities or services, abuse of the facilities or noncompliance with the Agreement or applicable tariffs?</i></p>	<p>Each Party should have the right to suspend access to ordering systems for and to terminate particular services or access to facilities that are being used in an unlawful, improper or abusive manner. However, such remedial action should be limited to the services or facilities in question and such suspension or termination should not be imposed unilaterally by one Party over the other's written objections to or denial of such accusations. In the event of such a dispute, "self help" should not supplant the Dispute Resolution process set forth in the Agreement.</p>	<p>Each Party reserves the right to suspend or terminate service in the event of prohibited, unlawful or, in the case of resold services, improper use of the other Party's facilities or service (e.g. making calls in a manner reasonably to be expected to frighten, abuse, torment or harass another, etc.) as described under the providing Party's tariff, abuse of the other Party's facilities, or any other violation or noncompliance with this Agreement and/or each Party's tariffs where applicable. However, thirty (30) days after the detecting Party provides notice to the other Party of noncompliance, the detecting Party may terminate the provision of all existing services to the other Party if such use is not corrected.</p>
94	7-7	1.9.2	<p><i>Resolved subject to final</i></p>	<p>(A) YES. BellSouth, too, should be subject</p>	<p>(A) YES, the Parties should be subject</p>

ISSUE NO.	ATT.-ITEM NO.	§	UNRESOLVED ISSUE	CBEYOND POSITION	BELLSOUTH POSITION
			<p><i>document check (sub-issue A only):</i></p> <p><i>(A) Should the right to suspend or terminate service for nonpayment be reciprocal?</i></p> <p><i>(B) Should Cbeyond be required to pay past due amounts in addition to those specified in BellSouth's notice of suspension or termination for nonpayment in order to avoid suspension or termination?</i></p>	<p>to suspension and termination of service for nonpayment provisions.</p> <p>(B) NO. If Cbeyond receives a notice of suspension or termination from BellSouth with a limited time to pay nondisputed past due amounts, Cbeyond should, in order to avoid suspension or termination, be required to pay only the amount past due as of the date of the notice and as expressly and plainly indicated on the notice. Otherwise, Cbeyond will risk suspension or termination due to possible calculation and timing errors.</p>	<p>to suspension and termination of service for nonpayment.</p> <p>(B) YES. By definition, the collections process is triggered when a customer does not pay their bills according to the terms of the Agreement. Once in collections, the risk associated with the customer is higher, based on the customer's own behavior. Under the CLEC proposal, BellSouth would be limited to collecting the amount that past due in the letter regardless of the customer's payment performance of subsequent bill cycles. BST has the right and responsibility to protect itself from the higher risk associated with nonpayment by insuring that customers are not allowed to continue to stretch the terms of the contract and increase the likelihood of bad debt.</p>
95	7-8	1.9.4	<p><i>Should the Parties be required to comply with all applicable FCC and Commission rules and orders regarding discontinuance or termination of service?</i></p>	<p>YES. The Parties should be required to comply with all applicable FCC and Commission rules and orders regarding discontinuance or termination of service.</p>	<p>YES. The Parties should be required to comply with all applicable FCC and Commission rules and orders regarding discontinuance or termination of service. However, the Parties should state specifically the FCC rule that is applicable. Through out the proposed interconnection Agreement between the Parties, the specific FCC rule that is applicable is listed.</p>

ISSUE NO.	ATT.-ITEM NO.	§	UNRESOLVED ISSUE	CBEYOND POSITION	BELLSOUTH POSITION
96	7-9	1.10, 1.10.1, 1.10.2	<p>Resolved subject to final document check:</p> <p>(A) <i>Should different deposit requirements apply to new CLEC customers and existing CLEC customers of BellSouth?</i></p> <p>(B) <i>If so, how should "new" and "existing" CLEC customers be defined?</i></p>	<p>(A) YES, BellSouth should apply different deposit requirements to new CLECs and to existing CLECs with which it has already developed a business relationship.</p> <p>(B) A new CLEC should be defined an entity with no existing relationship with BellSouth for the purchase of wholesale services as of the Effective Date of the Agreement. An existing CLEC should be defined as an entity with an existing relationship with BellSouth for the purchase of wholesale services as of the Effective Date of the Agreement.</p>	<p>A new CLEC is a customer who does not have an existing relationship with ICS. This could be a new company, a CLEC who left and has been gone from our network, a company who has never been with ICS. An existing CLEC customer is one who has a relationship at present with ICS and therefore we have in addition to other credit information, we also have pay history with BST.</p>
97	7-10	1.10	<p>Resolved subject to final document check:</p> <p><i>Should the form of credit profile BellSouth seeks Cbeyond to complete be attached to the Agreement?</i></p>	<p>YES. The form credit profile that BellSouth may request Cbeyond to complete should be attached to the Agreement as Exhibit B to Attachment 7.</p>	<p>The Credit Profile is posted on the Internet at the ICS customer web site and is available to any customer who wants it. The Customer Profile is a public document and therefore there is no reason why it should be attached to the contract.</p>
98	7-11	1.10.1	<p>Resolved subject to final document check:</p> <p><i>In the case of a bankruptcy filing by Cbeyond, under what circumstances should BellSouth be entitled to treat Cbeyond as a new customer?</i></p>	<p>If Cbeyond has filed for bankruptcy protection within 12 months prior to the Effective Date of the Agreement, BellSouth may treat Cbeyond, for the purposes of establishing security on its accounts, as a new CLEC.</p>	<p>Once Cbeyond emerges from bankruptcy, Cbeyond will be treated as a new company. While in bankruptcy, pay history is distorted since they must pay prompt by court order. Financial data and other areas of the company have gone through a reorganization and are for credit purposes, a new customer.</p>

ISSUE NO.	ATT. ITEM NO.	§	UNRESOLVED ISSUE	CBEYOND POSITION	BELLSOUTH POSITION
99	7-12	1.10.2	<p>Resolved subject to final document check:</p> <p><i>What form of security deposit should be acceptable under the Agreement?</i></p>	<p>The security required by BellSouth should take the form of cash, an Irrevocable Letter of Credit (BellSouth Form or substantially similar in substantive parts to BellSouth Form), or Surety Bond (BellSouth Form or substantially similar in substantive parts to BellSouth Form).</p>	<p>The security required by BellSouth shall take the form of cash, an Irrevocable Letter of Credit (BellSouth Form) or Bond (BellSouth Form). If a customer is unable to get their bank or the bond company to use our form, we also accept cash and pay interest at the tariff rate.</p>
100	7-13	1.10.2, 1.10.7.1	<p>Resolved subject to final document check:</p> <p><i>(A) How many months of billing should be used to determine the maximum amount of the deposit?</i></p> <p><i>(B) Should the amount of the deposit BellSouth requires from Cbeyond be reduced by past due amounts owed by BellSouth to Cbeyond?</i></p> <p><i>(C) Should deposit requirements for existing CLECs be based on an average of monthly billings for the most recent six months?</i></p>	<p>(A) The amount of a deposit should not exceed two month's estimated billing for new CLECs or one and one-half month's actual billing for existing CLECs (based on average monthly billings for the most recent 6 month period). The one and one-half month's actual billing deposit limit for existing CLECs is reasonable given that balances can be predicted with reasonable accuracy and that significant portions of services are billed in advance.</p> <p>(B) YES. The amount of security due from Cbeyond should be reduced by amounts due Cbeyond by BellSouth aged over 30 calendar days. BellSouth may request additional security in an amount equal to such reduction once BellSouth demonstrates a good payment history, as defined in the deposit provisions of Attachment 7. This provision is appropriate given that the Agreement's deposit provisions are not reciprocal and that BellSouth's payment</p>	<p>(A) The average of two (2) months of actual billing for existing customers or estimated billing for new customers, which is consistent with the telecommunications industry's standard and BellSouth's practice with its end users.</p> <p>(B) NO, CLEC's remedy for addressing late payment by BellSouth should be suspension/termination of service or application of interest/late payment charges similar to BellSouth's remedy for addressing late payment by CLEC.</p> <p>(C) YES. BellSouth requirements for deposit for an existing CLEC will be based on the most recent six months of monthly billing.</p>

ISSUE No.	ATT-ITEM No.	§	UNRESOLVED ISSUE	CBEYOND POSITION	BELL SOUTH POSITION
101	7-14	1.10.3	<p>Resolved subject to final document check:</p> <p><i>Does the security submitted to BellSouth by Cbeeyond impact Cbeeyond's payment obligations under the Agreement or its ability to dispute charges per the bill dispute provisions set forth in Section 2 of Attachment 7 of the Agreement?</i></p>	<p>history with CLECs is often poor.</p> <p>(C) YES. Basing deposit requirements for existing CLECs on an average of monthly billings for the most recent six months will avoid disputes over whether deposits should be based on unusually high or low billing months.</p> <p>NO. Any security deposit shall in no way release Cbeeyond from its make a complete and time payments of its bills, subject to the dispute resolution provisions set forth in Section 2 of Attachment 7 of the Agreement. Cbeeyond will not pay disputed amounts prior to final resolution of the dispute.</p>	<p>NO. Any security deposit shall in no way release Cbeeyond from its obligations to make a complete and time payments of its bills, subject to the dispute resolution provisions set forth in Section 2 of Attachment 7 of the Agreement.</p>
102	7-15	1.10.4.1	<p>Resolved subject to final document check:</p> <p><i>(A) For purposes of collecting, offsetting and returning deposits under the Agreement, how should "good payment history" be defined?</i></p> <p><i>(B) Should determination</i></p>	<p>(A) A good payment history should mean that less than 20% of the non-disputed receivable balance is received over thirty (30) calendar days past the payment due date.</p> <p>(B) The determination of good payment history should be predicated on the payment due date standard ultimately determined in this arbitration (see Issue No. 91, Item No. 7-4).</p>	<p>(A) A good payment history shall mean that less than 5% of the non-disputed receivable balance is aged over 30 days.</p> <p>(B) Industry standard is 30 days from invoice date. BellSouth is subject to SEEMS penalties if the bill goes out is late.</p>

ISSUE NO.	ATT-ITEM No.	§	UNRESOLVED ISSUE	CBEYOND POSITION	BELLSOUTH POSITION
103	7-16	1.10.4, 1.10.4.1, 1.10.4.2, 1.10.4.3, 1.10.4.3.1, 1.10.4.3.2, 1.10.4.3.3	<p><i>of a good payment history be predicated on "net-thirty" day terms from the date of the invoice or based on the payment due date standard ultimately decided in this arbitration (see Issue No. 91, Item No. 7-4).</i></p> <p>Resolved subject to final document check:</p> <p><i>What factors may be considered by BellSouth in its determination to impose a security deposit requirement on an existing customer?</i></p>	<p><i>BellSouth may require a deposit when Cbeyond fails to maintain a good payment history to BellSouth (see Issue No. 102, Item No. 7-15). Payment history with BellSouth is the only relevant factor that should be considered in determining whether a deposit is required.</i></p>	<p>BellSouth may seek additional security, subject to a standard of commercial reasonableness, if a material change in the circumstances of CLEC so warrants and/or gross monthly billing has increased beyond the level most recently used to determine the level of security deposit. Pay history is an indicator of past performance and future willingness but not future ability to pay. Other factors must also be looked at in order to determine credit worthiness, such as pay history with others, financial condition, press releases.</p>
104	7-17	1.10.5	<p>Resolved subject to final document check:</p> <p><i>Should BellSouth be entitled to additional security in the event that Cbeyond files for bankruptcy protection</i></p>	<p>NO. The determination of what constitutes adequate assurance in the bankruptcy setting should be determined by the bankruptcy court that assumes jurisdiction over a bankruptcy.</p>	<p>Once a customer emerges from bankruptcy, they will be treated as a new customer and deposit is in order due to the high risk of a customer with a recent history of bankruptcy.</p>

ISSUE NO.	ATT.-ITEM NO.	§	UNRESOLVED ISSUE	CBEYOND POSITION	BELL SOUTH POSITION
			<i>during the term of the Agreement?</i>		
105	7-18	1.10.6	<p>Resolved subject to final document check:</p> <p><i>Should BellSouth be entitled to terminate service to Cbeyond pursuant to Section 1.10.7 of Attachment 7 of the Agreement upon notice of default of a bank or other loan provider and upon Cbeyond's failure to obtain a waiver from such default?</i></p>	<p>NO. BellSouth should not be entitled to terminate service to Cbeyond pursuant to Section 1.10.7 of Attachment 7 of the Agreement upon notice of default of a bank or other loan provider and upon Cbeyond's failure to obtain a waiver from such default. Furthermore, in such event, Cbeyond should not be required by BellSouth to demonstrate to BellSouth's satisfaction that Cbeyond has amply liquidity to fund its debt should the debt payment obligation become accelerated.</p>	<p>A customer's ability to pay, obtain financing, pay history with their bank, are extremely relevant. The bank can force a customer in to bankruptcy for defaulting on the loan covenants. Bellsouth would not "terminate" due to this failure but would request a 2 month deposit.</p>
106	7-19	1.10.7, 1.10.7.1, 10.7.2	<p>Resolved subject to final document check:</p> <p><u>For Cbeyond:</u></p> <p><i>Should BellSouth be entitled to terminate service to Cbeyond if Cbeyond refuses to remit any deposit demanded by BellSouth within 30+2 calendar days?</i></p> <p><u>For BellSouth:</u></p>	<p>NO. BellSouth should have a right to terminate services to Cbeyond for failure to remit a deposit requested by BellSouth only in cases where (a) Cbeyond has expressly agreed with BellSouth that a particular amount of deposit is required by the Agreement and has not provided such deposit to BellSouth within 30 days of such express written agreement; or (b) the Commission has ordered payment of a particular amount of deposit. A dispute over a requested deposit should be addressed via the Agreement's Dispute Resolution provisions and not through BellSouth "self-help".</p>	<p>If, at any time during the term of this Agreement, a CLEC fails to remit payment for an initial or subsequent request for a deposit, BellSouth should have the opportunity to disconnect that CLEC pursuant to this Agreement for failure to secure its accounts provided under this Agreement.</p> <p>BellSouth is willing to provide Cbeyond with two (2) business day's notice of default. If Cbeyond fails to cure said default within the two (2) business day</p>

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107	7-20	1.10.7.2	<p><i>When Should BellSouth be able to terminate service to Cbeyond if Cbeyond refuses to remit a deposit?</i></p> <p>Resolved subject to final document check:</p> <p><i>What recourse should be available to either Party when the Parties are unable to agree on the need for or amount of a reasonable deposit?</i></p>	<p>A dispute over a requested deposit should be addressed via the Agreement's Dispute Resolution provisions and not through BellSouth "self-help". If the Parties are unable to agree on the need for or amount of a reasonable deposit, either Party should be able to file a petition for resolution of the dispute and both Parties should cooperatively seek expedited resolution of such dispute.</p>	<p>notice period, BellSouth shall have the right to begin termination of services provided under this Agreement without regard to any other provision contained within this Agreement but in compliance with PSC requirements.</p> <p>If CLEC does not agree with the amount or need for a deposit requested by BellSouth, CLEC may file a petition with the PSC for resolution of the dispute and BellSouth would cooperatively seek expedited resolution of such dispute. BellSouth shall not terminate service during the pendency of such a proceeding provided that CLEC posts a payment bond for the amount of the requested deposit during the pendency of the proceeding.</p>
108	7-21	1.10.8	<p>Resolved subject to final document check:</p> <p><i>Under what circumstances should BellSouth be required to refund, release or return Cbeyond's security deposit on its accounts submitted to BellSouth?</i></p>	<p>BellSouth should refund, release or return any security, including all accrued interest, if any, within 30 days of its determination that such security no longer is required by the terms of Section 1.10 of Attachment 7 of the Agreement or within 30 days of Cbeyond establishing good payment history, as defined in Cbeyond's proposed Section 1.10.4 of Attachment 7 of the Agreement. Cbeyond may make the requisite showing in a letter directed to the Notices recipients set forth in the General</p>	<p>Cbeyond may request the return of its deposit, 12 months after posting such deposit, credit worthiness as outlined in Section 1.10.4.1, 1.10.4.2, 1.10.4.3, 1.10.4.3.1-1.10.4.3.3.</p>

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				Terms and Conditions of the Agreement. At any such time as the provision of services to Cbeyond is terminated, the amount of the deposit should be credited against Cbeyond's account(s) and any credit balance should be refunded immediately.	
109	7-22	1.11, 1.11.1	<i>To whom should BellSouth be required to send bills and notices regarding billing matters, including notice of suspension or termination of services provided to Cbeyond by BellSouth under the Agreement?</i>	All bills and notices regarding billing matters, including notices relating to security deposits, suspension or termination of services, and rejection of additional orders from Cbeyond, should be forwarded to the billing contacts and/or addresses designated by each Party in establishment of its billing account(s). Notices sent pursuant to Attachment 7 of the Agreement also should be sent via certified mail to the individual(s) listed in the Notices provision of the General Terms and Conditions of the Agreement. Cbeyond will not agree to an exemption from the already agreed-upon Notice requirements in the General Terms and Conditions for such critical notices.	Notwithstanding anything to the contrary in this Agreement, all bills and notices regarding billing matters, including notices relating to security deposits, disconnection of services for nonpayment of charges, and rejection of additional orders from Cbeyond, shall be forwarded to the individual and/or address provided by Cbeyond in establishment of its billing account(s) with BellSouth, or to the individual and/or address subsequently provided by Cbeyond as the contact for billing information. All monthly bills and notices described in this Section shall be forwarded to the same individual and/or address.
110	7-23	2.1.5	<i>Resolved subject to final document check:</i> <i>How should the Parties proceed to resolve a billing dispute in the event that the Parties are unable to resolve such billing dispute</i>	If the Parties are unable within 60 calendar days of the notification date to reach resolution of a billing dispute, then the unresolved dispute <i>may</i> be resolved in accordance with the dispute resolution provisions in the General Terms and Conditions of the Agreement. However, the Agreement should not absolutely require	In the event of a billing dispute, the Parties will endeavor to resolve the dispute within sixty (60) calendar days of the notification date. Within five (5) business days of BellSouth's denial, or partial denial, of the billing dispute, if Cbeyond is not satisfied with BellSouth's resolution of the billing

ISSUE NO.	ATT.-ITEM NO.	§	UNRESOLVED ISSUE	CBEYOND POSITION	BELL SOUTH POSITION
			<i>within 60 calendar days of the notification date?</i>	that such billing dispute be resolved in accordance with the dispute resolution provisions in the General Terms and Conditions of the Agreement upon expiration of the 60 calendar day period immediately following notification of such dispute, or otherwise foreclose resolution of the billing dispute by other means, including further negotiations between the Parties.	dispute or if no response to the billing dispute has been received by Cbeyond by such sixtieth (60th) day, Cbeyond must pursue the escalation process as outlined in the Billing Dispute Escalation Matrix, set forth on BellSouth's Interconnection Services website, or the billing dispute shall be considered denied and closed. If, after escalation, the Parties are unable to reach resolution, then the aggrieved Party, if it elects to pursue the dispute, shall pursue dispute resolution in accordance with the General Terms and Conditions of this Agreement.
111	7-24	2.3	<p><i>Resolved subject to final document check:</i></p> <p><i>(A) In the event that a billing dispute is resolved in favor of the billing party, in what time period should the disputing Party be required to make payment of the disputed amounts owed to the billing Party?</i></p> <p><i>(B) In the event that a billing dispute is resolved in favor of the billed Party,</i></p>	(A) If the billing dispute is resolved in favor of the billing Party, the disputing Party will make payment of the disputed amount owed to the billing Party within 30 calendar days. Upon resolution of a billing dispute, it is not always practicable for the disputing Party (whether BellSouth or Cbeyond) to immediately make payment of such disputed amounts. The 30-day period for payment of such disputed amounts proposed by Cbeyond would guarantee prompt payment by the disputing party, and would avoid further disagreement between the Parties to the extent that immediate payment by the disputing party is not feasible.	<p>(A) Cbeyond's language would allow 30 additional days for the customer to pay valid charges—at the point that the billing dispute is resolved, the outstanding amount is most likely already 120 days past due. Once the dispute is resolved, BST expects immediate payment.</p> <p>(B) BST commits to credit the customer's account immediately upon resolution where the billing is found to be in error.</p>

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			<i>during what time period should the billing party be required to credit the billed Party's account?</i>	(B) If the billing dispute is resolved in favor of the billed Party, any credits due to the billed Party, pursuant to the billing dispute, should be applied to the billed Party's account by the billing Party within 30 calendar days. The 30-day period proposed by Cbeyond for applying credits due to the billed Party's account would guarantee prompt action by the billing party, and would avoid further disagreement between the Parties to the extent that immediate action by the billing party is not technically feasible.	
112	7-25	2.4	<i>In the event that a billing dispute is resolved in favor of the billing Party, should the billing Party be permitted to assess interest (Late Payment Charges) on disputed amounts withheld by the disputing Party?</i>	If a billing dispute is resolved in favor of the billing Party, then the billing Party may assess Late Payment Charges on the amount withheld, however, the amount assessed should be capped at 60 days from the bill date, as that is the time period in which such disputes should be resolved. In no event should a Late Payment Charge be assessed by either Party on any previously assessed Late Payment Charge.	<p>If a Party disputes a charge and does not pay such charge by the payment due date, or if a payment or any portion of a payment is received by either Party after the payment due date, or if a payment or any portion of a payment is received in funds which are not immediately available to the other Party, then a late payment charge-where applicable, shall be assessed. Such late payment charge shall be calculated in accordance with Section 1.8.</p> <p>BST does not assess late payment charges if the dispute is valid and is ultimately resolved in the customer's favor. However, if the billing is not in</p>

ISSUE NO.	ATT-ITEM NO.	§	UNRESOLVED ISSUE	CBEYOND POSITION	BELL SOUTH POSITION
					error, and the customer has chosen to withhold payment on valid billing, late payment charges are due to BST.
BFR/NBR (ATTACHMENT 11)					
113	11-1	2.4. 2.4.1 2.4.2	<p><u>For Cbeyond:</u></p> <p><i>Should BellSouth be permitted to charge Cbeyond a fee to cover BellSouth's development of costs associated with a BFR?</i></p> <p><u>For BellSouth:</u></p> <p><i>(A) Should BellSouth be permitted to charge Cbeyond a fee to cover BellSouth's development costs associated with a BFR?</i></p> <p><i>(B) If so, how should these costs be recovered?</i></p>	NO. The charges associated with the development of a BFR should be apportioned via recurring charges among CLECs who will benefit from the UNE(s) that is/are the subject of the BFR submitted to BellSouth by Cbeyond.	<p>(A) YES. BellSouth is entitled to recover its costs in provisioning services to Cbeyond. Since this is a unique request that Cbeyond is making, Cbeyond should bear the full development costs.</p> <p>(B) Cbeyond should be obligated to pay these costs upon request so that BellSouth may proceed with the development of the BFR.</p>
SUPPLEMENTAL ISSUES					
114	S-1		<i>How should the Final FCC Unbundling Rules¹ be incorporated into the</i>	The Agreement should not automatically incorporate the Final FCC Unbundling Rules. Upon release of the Final FCC	The Agreement should automatically incorporate the FCC Final Unbundling Rules immediately upon those rules

¹ FINAL FCC UNBUNDLING RULES – is defined as an effective order of the FCC adopted pursuant to the Notice of Proposed Rulemaking, WC Docket No. 04-313, released August 20, 2004, and effective September 13, 2004.

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			<i>Agreement?</i>	<p>Unbundling Rules, the Parties should endeavor to negotiate contract language that reflects an agreement to abide by those rules or to other standards, if they mutually agree to do so. Any issues which the Parties are unable to resolve should be resolved through Commission arbitration. The Effective Date of the resulting rates, terms and conditions should be the same as all others – ten (10) calendar days after the date of the last signature executing the Agreement.</p> <p style="text-align: center;">*****</p> <p><i>Cbeyond reserves the right to modify all position statements, as Cbeyond has not received BellSouth's proposed redline to Attachment 2 incorporating language that forms the basis for this issue. Cbeyond anticipates that it will counter-propose alternative language that may also form the basis for this issue.</i></p>	becoming effective.
115	S-2		<p><u>For Cbeyond:</u></p> <p><i>(A) How should any intervening FCC Order adopted in CC Docket No. 01-338 or WC Docket No. 04-313 be incorporated into the Agreement?</i></p>	<p>(A) The Agreement should not automatically incorporate an “intervening FCC order” adopted in CC Docket 01-338 or WC Docket 04-313 that addresses unbundling issues but does not purport to be the “final” unbundling order released as a result of the Notice of Proposed Rulemaking (NPRM) released as document FCC 04-179 on August 20, 2004 or an FCC</p>	<p>YES. If the FCC enters an intervening order prior to issuing the Final FCC Unbundling Rules, the requirements of the intervening order should take precedence over rates, terms, and conditions in the Agreement that are inconsistent with the rates, terms, and conditions set forth in the intervening order. In order to effectuate this, the</p>

ISSUE NO.	ATT.-ITEM NO.	§	UNRESOLVED ISSUE	CBEYOND POSITION	BELL SOUTH POSITION
			<p>(B) <i>How should any intervening State Commission Order relating to unbundling obligations, if any, be incorporated into the Agreement?</i></p> <p><u>For BellSouth:</u></p> <p><i>Should the Agreement automatically incorporate any intervening order of the FCC adopted in WC Docket 04-313 or CC Docket 01-338 prior to the issuance of the Final FCC Unbundling Rules to the extent any rates, terms or requirements set forth in such order are in conflict with, in addition to, or otherwise different from the rates, terms, and requirements set forth in the Agreement?</i></p>	<p>order further addressing the interim rules adopted in the FCC's order also released as document FCC 04-179 on August 20, 2004. Upon release of an intervening FCC Order adopted in CC Docket 01-338 or WC Docket 04-313, the Parties should endeavor to negotiate contract language that reflects an agreement to abide by the intervening FCC order, or to other standards, if they mutually agree to do so. Any issues which the Parties are unable to resolve should be resolved through Commission arbitration. The Effective Date of the resulting rates, terms and conditions should be the same as all others – ten (10) calendar days after the date of the last signature executing the Agreement.</p> <p>(B) The Agreement should not automatically incorporate a new order adopted by the Commission that addresses BellSouth's unbundling obligations. Upon release of an "intervening" Commission order that addresses BellSouth's unbundling obligations, the Parties should endeavor to negotiate contract language that reflects an agreement to abide by the intervening Commission order, or to other standards, if they mutually agree to do so. Any issues which the Parties are unable to resolve should be resolved through Commission</p>	<p>Agreement should automatically incorporate any intervening order on the effective date of such order.</p> <p>Further, state commissions are preempted from making any changes to the FCC findings in FCC 04-179, except for the issuance of an order increasing rates for frozen elements, as set forth in FCC 04-179. Consequently, any state commission order (other than one increasing rates for the frozen elements) should not be incorporated into the Agreement.</p>

ISSUE NO.	ATT.-ITEM NO.	§	UNRESOLVED ISSUE	CBEYOND POSITION	BELL SOUTH POSITION
				<p>arbitration. The Effective Date of the resulting rates, terms and conditions should be the same as all others – ten (10) calendar days after the date of the last signature executing the Agreement.</p> <p style="text-align: center;">*****</p> <p><i>Cbeyond reserves the right to modify all position statements, as Cbeyond has not received BellSouth's proposed redline to Attachment 2 incorporating language that forms the basis for this issue. Cbeyond anticipates that it will counter-propose alternative language that may also form the basis for this issue.</i></p>	
116	S-3		<p><i>If FCC 04-179² is vacated or otherwise modified by a court of competent jurisdiction, how should such order or decision be incorporated into the Agreement?</i></p>	<p>If FCC 04-179 is vacated or otherwise modified by a court of competent jurisdiction, the Agreement should not automatically incorporate the court order. After release of such a court order and mandate, the Parties should endeavor to negotiate contract language that reflects an agreement to abide by the court order (to the extent the court order effectuates a change in law with practical consequences), or other standards, if they mutually agree to do so. Any issues which the Parties are unable to resolve should be resolved through</p>	<p>In the event a court of competent jurisdiction vacates all or part of FCC 04-179, there will be no valid impairment findings with respect to the vacated elements. Thus, the Agreement should automatically incorporate the state of the law on the date the order or decision becomes effective.</p>

² *In the Matter of Unbundled Access to Network Elements, Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, WC Docket No. 04-313 and CC Docket No. 01-338, FCC 04-179, Order and Notice of Proposed Rulemaking (rel. Aug. 20, 2004).

ISSUE NO.	ATT.-ITEM NO.	§	UNRESOLVED ISSUE	CBEYOND POSITION	BELL SOUTH POSITION
				<p>Commission arbitration. The Effective Date of the resulting rates, terms and conditions should be the same as all others – ten (10) calendar days after the last signature executing the Agreement.</p> <p style="text-align: center;">*****</p> <p><i>Cbeyond reserves the right to modify all position statements, as Cbeyond has not received BellSouth’s proposed redline to Attachment 2 incorporating language that forms the basis for this issue. Cbeyond anticipates that it will counter-propose alternative language that may also form the basis for this issue.</i></p>	
117	S-4		<p><u>For Cbeyond:</u></p> <p><i>What post Interim Period³ transition plan should be incorporated into the Agreement?</i></p> <p><u>For BellSouth:</u></p> <p><i>At the end of the Interim Period, assuming that the Transition Period set forth in FCC 04-179 is neither</i></p>	<p>The “Transition Period” or plan proposed by the FCC for the six months following the Interim Period has not been adopted by the FCC, but was merely proposed in FCC 04-179. The FCC sought comment on the proposal and on transition plans in general. Upon release of the Final FCC Unbundling Rules, the Parties should endeavor to negotiate contract language that reflects an agreement to abide by the transition plan adopted therein or to other standards, if they mutually agree to do so. Any issues which the Parties are unable to resolve should be</p>	<p>YES. FCC 04-179 states that, in the absence of Final FCC Unbundling Rules that modify the requirements of the Transition Period, the Transition Period specified in FCC 04-179 will take effect at the end of the Interim Period. Therefore, the Agreement should automatically incorporate the FCC’s Transition Period once it becomes effective. In the event the Final FCC’s Unbundling Rules or an intervening order of the FCC modifies the requirements of the FCC’s Transition</p>

³ INTERIM PERIOD – as set forth in ¶ 29 of FCC 04-179, is defined as the period that ends on the earlier of (1) March 1, 2005 or (2) the effective date of the initial unbundling rules adopted by the FCC pursuant to the Notice of Proposed Rulemaking described in FCC 04-179.

ISSUE No.	ATT.-ITEM No.	§	UNRESOLVED ISSUE	CBEYOND POSITION	BELLSOUTH POSITION
			<i>vacated, modified, nor superceded, should the Agreement automatically incorporate the Transition Period set forth in the Interim Order?</i>	<p>resolved through Commission arbitration. The Effective Date of the resulting rates, terms and conditions should be the same as all others – ten (10) calendar days after the last signature executing the Agreement.</p> <p style="text-align: center;">*****</p> <p><i>Cbeyond reserves the right to modify all position statements, as Cbeyond has not received BellSouth's proposed redline to Attachment 2 incorporating language that forms the basis for this issue. Cbeyond anticipates that it will counter-propose alternative language that may also form the basis for this issue.</i></p>	<p>Period, such modified requirements should take effect in accordance with BellSouth's position on Issues 114 and 115 above.</p>
118	S-5		<p>(A) <i>What rates, terms and conditions relating to switching, enterprise market loops and dedicated transport were "frozen" by FCC 04-179?</i></p> <p>(B) <i>How should these rates, terms and conditions be incorporated into the Agreement?</i></p>	<p>(A) Rates, terms and conditions relating to switching, enterprise market loops and dedicated transport from Cbeyond's interconnection agreement that was in effect as of June 15, 2004 were "frozen" by FCC 04-179.</p> <p>(B) The frozen rates, terms and conditions should be incorporated into the Agreement as they appeared in Cbeyond's interconnection agreement that was in effect as of June 15, 2004. In so doing, it should be made clear that the loop provisions frozen are frozen with respect to DS1 and higher capacity loop facilities, including dark fiber. The frozen provisions should</p>	<p>The rates, terms and conditions for the following defined elements were frozen:</p> <p>Switching – Mass Market Switching and all elements that must be made available when switching is made available. Mass Market Switching is unbundled access to local switching except when the CLEC: (1) serves an End User with four (4) or more voice-grade (DSO) equivalents or lines served by the ILEC in Density Zone 1 of the top 50 MSAs; or (2) serves an End User with a DS1 or higher capacity service or UNE Loop.</p>

ISSUE NO.	ATT.-ITEM NO.	§	UNRESOLVED ISSUE	CBEYOND POSITION	BELL SOUTH POSITION
				<p>not be modified to reflect BellSouth's proposed, more restrictive definition of Dedicated Transport.</p> <p style="text-align: center;">*****</p> <p><i>Cbeyond reserves the right to modify all position statements, as Cbeyond has not received BellSouth's proposed redline to Attachment 2 incorporating language that forms the basis for this issue. Cbeyond anticipates that it will counter-propose alternative language that may also form the basis for this issue.</i></p>	<p>Enterprise Market Loops – those transmission facilities between a distribution frame (or its equivalent) in the ILEC's central office and the loop demarcation point at an end user customer premises at a DS1 or DS3, or Dark Fiber level capacity, including dark fiber loops.</p> <p>Dedicated Transport – the transmission facilities connecting ILEC switches and wire centers in a LATA. at a DS1 or higher level capacity, including dark fiber transport.</p>
119	S-6		<p><u>For Cbeyond:</u></p> <p><i>(A) Is BellSouth obligated to provide unbundled access to DS1 loops, DS3 loops and dark fiber loops?</i></p> <p><i>(B) If so, under what rates, terms and conditions?</i></p> <p><u>For BellSouth:</u></p> <p><i>Did USTA II vacate the FCC's unbundling requirements, if any, relating to high-capacity loops and dark fiber?</i></p>	<p>(A) Yes, <i>USTA II</i> did not vacate the FCC's rules which require BellSouth to make available DS1, DS3 and dark fiber loop UNEs. <i>USTA II</i> also did not eliminate Section 251, CLEC impairment, Section 271 or this Commission's authority under federal or state law to require BellSouth to provide unbundled access to DS1, DS3 and dark fiber loops.</p> <p>(B) BellSouth is obligated to provide access to DS1, DS3 and dark fiber loop UNEs at TELRIC compliant rates approved by this Commission. DS1, DS3 and dark fiber loops unbundled on other than a Section 251 statutory basis should be made available at TELRIC compliant rates</p>	<p>YES. While not mentioned specifically by name, the rationale and logic of <i>USTA II</i> clearly indicates that the D.C. Circuit intended to vacate any FCC requirement that obligated ILECs to provide high capacity loops and dark fiber. <i>USTA II</i>'s vacatur of the FCC's prior unbundling rules applied to all high capacity (DS1 or above) transmission facilities, which includes high capacity loops, high capacity transport and dark fiber.</p>

ISSUE NO.	ATT.-ITEM NO.	§	UNRESOLVED ISSUE	CBEYOND POSITION	BELL SOUTH POSITION
				<p>approved by this Commission until such time as it is determined that another pricing standard applies and the Commission approves rates pursuant to that standard.</p> <p style="text-align: center;">*****</p> <p><i>Cbeyond reserves the right to modify all position statements, as Cbeyond has not received BellSouth's proposed redline to Attachment 2 incorporating language that forms the basis for this issue. Cbeyond anticipates that it will propose alternative language that may also form the basis for this issue.</i></p>	
120	S-7		<p>(A) <i>Is BellSouth obligated to provide unbundled access to DS1 dedicated transport, DS3 dedicated transport and dark fiber transport?</i></p> <p>(B) <i>If so, under what rates, terms and conditions?</i></p>	<p>(A) YES. USTA II did not eliminate Section 251, CLEC impairment, Section 271 or this Commission's authority under federal or state law to require BellSouth to provide unbundled access to DS1, DS3 and dark fiber transport.</p> <p>(B) Pursuant to Section 251, BellSouth is obligated to provide access to DS1, DS3 and dark fiber transport UNEs at TELRIC compliant rates approved by this Commission. DS1, DS3 and dark fiber loops unbundled on other than a Section 251 statutory basis should be made available at TELRIC compliant rates approved by this Commission until such time as it is determined that another pricing</p>	<p>This issue should not be added to this arbitration because it is beyond the scope of the issues that the parties agreed could be added as a supplemental issue. The Parties agreed to only add to the arbitration new issues related to USTA II and the Interim Rules Order. Cbeyond's issue regarding BellSouth's obligation to provide unbundled access to DS1 dedicated transport, DS3 dedicated transport and dark fiber transport is beyond the scope of this agreement. To the extent the Commission considers this issue, which it should not, USTA II extinguished BellSouth's obligation to provide high-capacity transport. There is no</p>

ISSUE No.	ATT.-ITEM No.	§	UNRESOLVED ISSUE	CBEYOND POSITION	BELL SOUTH POSITION
				<p>standard applies and the Commission approves rates pursuant to that standard.</p> <p>*****</p> <p><i>Cbeyond reserves the right to modify all position statements, as Cbeyond has not received BellSouth's proposed redline to Attachment 2 incorporating language that forms the basis for this issue. Cbeyond anticipates that it will counter-propose alternative language that may also form the basis for this issue.</i></p>	<p>independent Section 251 obligation to provide access specifically to high-capacity transport on an unbundled basis. In addition, BellSouth has no 271 obligation to provide these elements at TELRIC prices, and the Commission may not impose any inconsistent requirements under the guise of state law, as Cbeyond seems to suggest would be appropriate.</p>
121	S-8		<p>(A) <i>To what extent, if any, is BellSouth obligated to provide unbundled access to other network elements, including but not limited to packet/fiber broadband loop elements?</i></p> <p>(B) <i>If BellSouth is required to unbundle any of these elements, what rates, terms and conditions should apply?</i></p>	<p>(A) BellSouth should be required to unbundle <i>packet/fiber broadband loop elements to the full extent required by Section 251, FCC rules, Section 271 and any finding by this Commission under federal or state law to require BellSouth to provide unbundled access to such network elements.</i></p> <p>(B) Unbundled access to packet/fiber broadband loop elements should be made available at TELRIC compliant rates approved by this Commission until such time as it is determined that another pricing standard applies and the Commission approves rates pursuant to that standard.</p> <p>*****</p> <p><i>Cbeyond reserves the right to modify all</i></p>	<p>This issue should not be added to this arbitration because it is beyond the scope of the issues that the parties agreed could be added as a supplemental issue.</p>

ISSUE NO.	ATT-ITEM NO.	§	UNRESOLVED ISSUE	CBEYOND POSITION	BELL SOUTH POSITION
				<p><i>position statements, as Cbeyond has not received BellSouth's proposed redline to Attachment 2 incorporating language that forms the basis for this issue. Cbeyond anticipates that it will counter-propose alternative language that may also form the basis for this issue.</i></p>	
122	S-9		<p><i>What rates, terms and conditions should govern Cbeyond's transition of existing network elements that BellSouth no longer is obligated to provide as UNEs?</i></p>	<p>In the event UNEs or Combinations are no longer offered pursuant to, or are not in compliance with, the terms set forth in the Agreement, including any transition plan set forth therein, it should be BellSouth's obligation to identify the specific service arrangements that it insists be transitioned to other services pursuant to Attachment 2. There should be no service order, labor, disconnection or other nonrecurring charges associated with the transition of section 251 UNEs to other services.</p> <p style="text-align: center;">*****</p> <p><i>Cbeyond reserves the right to modify all position statements, as Cbeyond has not received BellSouth's proposed redline to Attachment 2 incorporating language that forms the basis for this issue. Cbeyond anticipates that it will counter-propose alternative language that may also form the basis for this issue.</i></p>	<p>The rates, terms, and conditions set forth in Section ____ of Attachment 2, as set forth in Exhibit _____, should govern the CLECs' transition of existing network elements that ILECs are no longer obligated to provide as UNEs to other services.</p>
123	S-10			<p>The Agreement should require that</p>	<p>YES. The FCC determined in the TRO</p>

ISSUE No.	ATT.-ITEM No.	§	UNRESOLVED ISSUE	CBEYOND POSITION	BELL SOUTH POSITION
			<p><i>Should the Agreement provide that BellSouth is not required to offer unbundled access to newly-deployed or 'greenfield' fiber loops, including fiber loops deployed to the minimum point of entry ("MPOE") of a multiple dwelling unit that is predominantly residential regardless of the ownership of the inside wiring from the MPOE to each end user?</i></p>	<p>BellSouth provide access to unbundled Fiber-to-the-Home Loops ("FTTH") as required by FCC Rule 51.319(a)(3). FTTH facilities include fiber loops deployed to the minimum point of entry (MPOE) of a multiple dwelling unit (MDU) that is predominantly residential, regardless of the ownership of the inside wiring from the MPOE to each end user in the MDU. BellSouth's obligation to provide enterprise market loops such as DS1s is not impacted by the fiber loop unbundling relief granted by the FCC.</p> <p style="text-align: center;">*****</p> <p><i>Cbeyond reserves the right to modify all position statements, as Cbeyond has not received BellSouth's proposed redline to Attachment 2 incorporating language that forms the basis for this issue. Cbeyond anticipates that it will counter-propose alternative language that may also form the basis for this issue.</i></p>	<p>that "greenfield" fiber loops are not subject to unbundling under Section 251 of the Act. Further, in the FCC's Order on Reconsideration of the TRO, the FCC found that BellSouth is entitled to unbundling relief for loops consisting of fiber to the MPOE that serve multiple dwelling units ("MDUs") that are predominately residential. Therefore, all existing interconnection agreements should be deemed amended to incorporate this finding.</p>
123	S-11		<p><u>For Cbeyond:</u></p> <p><i>Cbeyond opposes identifying a separate issue.</i></p>	<p>BellSouth's proposed issue is covered by Item No. 120 / Issue S-7. To the extent that BellSouth's proposed issue is not encompassed by Item No. 120 / Issue S-7, BellSouth's proposed issue appears to be beyond the scope of the abeyance</p>	<p>Yes. In the TRO, the FCC limited the definition of dedicated transport to those transmission facilities connecting ILEC switches and wire centers in a LATA. Thus, transport between ILEC switches and CLEC switches or points of</p>

ISSUE NO.	ATT.-ITEM NO.	§	UNRESOLVED ISSUE	CBEYOND POSITION	BELLSOUTH POSITION
			<p><u>For BellSouth:</u></p> <p><i>Should the Agreement define dedicated transport as including only DS0 level facilities between switches and wire centers owned by BellSouth?</i></p>	<p>agreement.</p>	<p>presence (i.e., entrance facilities) are no longer required to be unbundled. While ILECs are still required to provide DS1 and higher level transport facilities pursuant to the <i>Interim Order</i> for a limited period of time, ILECs are no longer required to unbundle such facilities except as set forth in the <i>Interim Order</i>.</p>