

BEFORE THE PUBLIC SERVICE COMMISSION

In re: Petition for arbitration of certain issues arising in negotiation of interconnection agreement with BellSouth Telecommunications, Inc., by Cbeyond Communications, LLC.

DOCKET NO. 040514-TP
ORDER NO. PSC-05-0198-PCO-TP
ISSUED: February 21, 2005

ORDER ESTABLISHING PROCEDURE

Case Background

On May 28, 2004, Cbeyond Communications, LLC (Cbeyond) filed its Petition for Arbitration of certain issues arising out of negotiation of interconnection agreement with BellSouth Telecommunications, Inc. (BellSouth). On June 22, 2004, BellSouth filed its Response to Cbeyond's Petition for Arbitration. On June 23, 2004, the parties filed a Joint Motion to Hold the Docket in Abeyance for ninety (90) days in anticipation of the Federal Communications Commission's (FCC's) release of its Interim Rules.

On October 15, 2004, parties submitted an updated matrix of issues, and on November 12, 2004, parties submitted a revised matrix of issues as a result of the FCC's Interim Rules and subsequent negotiations. On December 21, 2004, an issue identification was held and as a result this matter has been scheduled for hearing. On February 18, 2005, the parties notified staff regarding the issues settled to date. Parties agree that issues 114, 119 -123 should be rolled into Docket No. 041269-TP, subject to proper procedure being established for translating the results of Docket No. 041269-TP back into this Docket.

Governing Provisions

Part II of the Federal Telecommunications Act of 1996 (Act) sets forth provisions regarding the development of competitive markets in the telecommunications industry. Section 251 of the Act regards interconnection with the incumbent local exchange carrier, and Section 252 sets forth the procedures for negotiation, arbitration, and approval of agreements.

Section 252(b) addresses agreements arrived through compulsory arbitration. Specifically, Section 252(b)(1) states:

(1) Arbitration. - During the period from the 135th to 160th day (inclusive) after the date on which an incumbent local exchange carrier receives a request for negotiation under this section, the carrier or any other party to the negotiation may petition a State commission to arbitrate any open issues.

Section 252(b)(4)(C) states that the State commission shall resolve each issue set forth in the petition and response, if any, by imposing the appropriate conditions as required. This

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FEDERAL COMMUNICATIONS COMMISSION

section requires this Commission to conclude the resolution of any unresolved issues not later than nine months after the date on which the local exchange carrier received the request under this section. The parties have, however, waived the nine-month requirement of Section 252(b)(4)(C).

This Order is issued pursuant to the authority granted by Rule 28-106.211, Florida Administrative Code, which provides that the presiding officer before whom a case is pending may issue any orders necessary to effectuate discovery, prevent delay, and promote the just, speedy, and inexpensive determination of all aspects of the case.

The scope of this proceeding shall be based upon the issues raised by the parties and Commission staff up to and during the prehearing conference, unless modified by the Commission.

Tentative Issues

Attached to this order as Attachment "A" is a tentative list of the issues which have been identified in this proceeding. For purposes of clarity and simplification, the numbering of the issues attached hereto correspond to the numbering used in the petition and responses. Prefiled testimony and prehearing statements shall address the issues set forth in Attachment "A". Parties are encouraged to continue discussions in an effort to further eliminate issues in this proceeding.

Discovery

When discovery requests are served and the respondent intends to seek clarification of the discovery request, the request for clarification shall be made within ten days of service of the discovery request. This procedure is intended to reduce delay in resolving discovery disputes.

The hearing in this docket is set for June 28-30, 2005. Unless authorized by the Prehearing Officer for good cause shown, all discovery shall be completed by June 17, 2005. All interrogatories, requests for admissions, and requests for production of documents shall be numbered sequentially in order to facilitate their identification. The discovery requests will be numbered sequentially within a set, and any subsequent discovery requests will continue the sequential numbering system. Pursuant to Rule 28-106.206, Florida Administrative Code, unless subsequently modified by the Prehearing Officer, the following shall apply: interrogatories, including all subparts, shall be limited to 315, and requests for production of documents, including all subparts, shall be limited to 115. All discovery responses shall be due 20 days after service of the request, with no additional time for mailing. All discovery requests shall be served by e-mail, with a hard copy to follow by U.S. Mail or hand delivery. Responses to interrogatories, and to the extent possible requests for documents, shall also be served by e-mail, with a hard copy to follow by U.S. Mail or hand delivery. Commission staff shall be served with a copy of these and all other filings.

Any party intending to provide information pursuant to a discovery request, which it is aware is deemed, or might be deemed, confidential by another party in this proceeding, shall

notify that party prior to submitting such information for the purpose of ensuring conformance with this Commission's rules regarding the handling of such information and continued confidential treatment pending a formal ruling by the Commission. Any information provided pursuant to a discovery request for which proprietary confidential business information status is requested shall be treated by the Commission and the parties as confidential. The information shall be exempt from Section 119.07(1), Florida Statutes, pending a formal ruling on such request by the Commission, or upon the return of the information to the person providing the information. If no determination of confidentiality has been made and the information has not been made a part of the evidentiary record in the proceeding, it shall be returned expeditiously to the person providing the information. If a determination of confidentiality has been made and the information was not entered into the record of the proceeding, it shall be returned to the person providing the information within the time period set forth in Section 364.183(4), Florida Statutes.

Parties shall avail themselves of the liberal discovery allowed by this Order within the time frames set forth above. Parties are cautioned against conducting discovery during cross-examination at the hearing.

Diskette Filings

See Rule 25-22.028(1), Florida Administrative Code, for the requirements of filing on diskette for certain utilities.

Prefiled Testimony and Exhibits

Each party shall prefile, in writing, all testimony that it intends to sponsor. Such testimony shall be typed on 8 ½ inch x 11 inch transcript-quality paper, double-spaced, with 25 numbered lines, on consecutively numbered pages, with left margins sufficient to allow for binding (1.25 inches).

Each exhibit intended to support a witness' prefiled testimony shall be attached to that witness' testimony when filed, identified by his or her initials, and consecutively numbered beginning with 1. All other known exhibits shall be marked for identification at the prehearing conference. After an opportunity for opposing parties to object to introduction of the exhibits and to cross-examine the witness sponsoring them, exhibits may be offered into evidence at the hearing. Exhibits accepted into evidence at the hearing shall be numbered sequentially. The pages of each exhibit shall also be numbered sequentially prior to filing with the Commission.

An original and 15 copies of all testimony and exhibits shall be prefiled with the Director, Division of the Commission Clerk and Administrative Services, by the close of business, which is 5:00 p.m., on the date due. A copy of all prefiled testimony and exhibits shall be served by mail or hand delivery to all other parties and staff no later than the date filed with the Commission. Failure of a party to timely prefile exhibits and testimony from any witness in accordance with the foregoing requirements may bar admission of such exhibits and testimony.

If a demonstrative exhibit or other demonstrative tools are to be used at hearing, they must be identified by the time of the Prehearing Conference.

Prehearing Statement

All parties in this docket shall file a prehearing statement. Staff will also file a prehearing statement. The original and 15 copies of each prehearing statement shall be prefiled with the Director of the Division of the Commission Clerk and Administrative Services by the close of business, which is 5:00 p.m., on the date due. A copy of the prehearing statement shall be served on all other parties and staff no later than the date it is filed with the Commission. Failure of a party to timely file a prehearing statement shall be a waiver of any issue not raised by other parties or by the Commission. In addition, such failure shall preclude the party from presenting testimony in support of its position. Such prehearing statements shall set forth the following information in the sequence listed below:

- (a) The name of all known witnesses that may be called by the party, and the subject matter of their testimony;
- (b) a description of all known exhibits that may be used by the party, whether they may be identified on a composite basis, and the witness sponsoring each;
- (c) a statement of basic position in the proceeding;
- (d) a statement of each question of fact the party considers at issue, the party's position on each such issue, and which of the party's witnesses will address the issue;
- (e) a statement of each question of law the party considers at issue and the party's position on each such issue;
- (f) a statement of each policy question the party considers at issue, the party's position on each such issue, and which of the party's witnesses will address the issue;
- (g) a statement of issues that have been stipulated to by the parties;
- (h) a statement of all pending motions or other matters the party seeks action upon;
- (i) a statement identifying the party's pending requests or claims for confidentiality;
- (j) a statement as to any requirement set forth in this order that cannot be complied with, and the reasons therefore;

- (k) a statement identifying any decision or pending decision of the FCC or any court that has or may either preempt or otherwise impact the Commission's ability to resolve any of the issues presented or the relief requested in this matter; and
- (l) Any objections to a witness's qualifications as an expert must be identified in a party's Prehearing Statement. Failure to identify such objection may result in restriction of a party's ability to conduct voir dire.

Prehearing Identification of Exhibits and Testimony

For the purposes of this proceeding, it is the intent that all discovery responses and deposition transcripts with related late-filed exhibits be entered as hearing exhibits. Each party's prehearing statement shall include an identification and list of all responding discovery responses served to parties and staff. Additionally, each party shall identify and list the transcript and related late-filed exhibits of each deposition called by that party.

Each party is required to provide copies of its identified exhibits for the hearing absent good cause shown. The number of copies required of each hearing exhibit will be determined no later than the prehearing conference.

In order to facilitate the introduction at hearing of discovery exhibits, as well as prefiled testimony and exhibits, a sequentially-numbered, comprehensive list of exhibits identified by the parties in the prehearing statements shall be compiled and disseminated to the parties by Commission staff no later than June 1, 2005. Any objections to items on that list, along with a brief statement of the basis for such objection, shall be submitted to the Commission by the close of business on June 8, 2005. Objections, if any, will be addressed at the Prehearing. At the beginning of the hearing in this matter, all exhibits listed on the comprehensive list approved at the Prehearing will be moved into the record. In addition, the prefiled testimony of the parties will be moved into the record as though read. This will be done on a company-by-company basis, with the sponsoring party and the names of the witnesses who have offered testimony being clearly identified.

Prehearing Conference

Pursuant to Rule 28-106.209, Florida Administrative Code, a prehearing conference will be held on June 13, 2005 at the Betty Easley Conference Center, 4075 Esplanade Way, Tallahassee, Florida. Any party who fails to attend the prehearing conference, unless excused by the Prehearing Officer, will have waived all issues and positions raised in that party's prehearing statement.

Prehearing Procedure: Waiver of Issues

Any issue not raised by a party prior to the issuance of the prehearing order shall be waived by that party, except for good cause shown. A party seeking to raise a new issue after the

issuance of the prehearing order shall demonstrate that: it was unable to identify the issue because of the complexity of the matter; discovery or other prehearing procedures were not adequate to fully develop the issue; due diligence was exercised to obtain facts touching on the issue; information obtained subsequent to the issuance of the prehearing order was not previously available to enable the party to identify the issue; and introduction of the issue could not be to the prejudice or surprise of any party. Specific reference shall be made to the information received, and how it enabled the party to identify the issue.

Unless a matter is not at issue for that party, each party shall diligently endeavor in good faith to take a position on each issue prior to issuance of the prehearing order. When a party is unable to take a position on an issue, it shall bring that fact to the attention of the Prehearing Officer. If the Prehearing Officer finds that the party has acted diligently and in good faith to take a position, and further finds that the party's failure to take a position will not prejudice other parties or confuse the proceeding, the party may maintain "no position at this time" prior to hearing and thereafter identify its position in a post-hearing statement of issues. In the absence of such a finding by the Prehearing Officer, the party shall have waived the entire issue. When an issue and position have been properly identified, any party may adopt that issue and position in its post-hearing statement.

Document Identification

Each exhibit submitted shall have the following in the upper right-hand corner: the docket number, the witness's name, the word "Exhibit" followed by a blank line for the exhibit number, and the title of the exhibit.

An example of the typical exhibit identification format is as follows:

Docket No. 12345-TL
J. Doe Exhibit No. _____
Cost Studies for Minutes of Use by Time of Day

Controlling Dates

The following dates have been established to govern the key activities of this case.

- | | |
|--|------------------|
| 1) Direct testimony and exhibits (All) | March 25, 2005 |
| 2) Rebuttal testimony and exhibits (All) | April 29, 2005 |
| 3) Prehearing Statements | May 23, 2005 |
| 4) Prehearing Conference | June 13, 2005 |
| 5) Hearing | June 28-30, 2005 |
| 6) Briefs | August 8, 2005 |

Use of Confidential Information At Hearing

It is the policy of this Commission that all Commission hearings be open to the public at all times. The Commission also recognizes its obligation pursuant to Section 364.183, Florida Statutes, to protect proprietary confidential business information from disclosure outside the proceeding. Any party wishing to use any proprietary confidential business information, as that term is defined in Section 364.183(3), Florida Statutes, shall notify the Prehearing Officer and all parties of record by the time of the Prehearing Conference, or if not known at that time, no later than seven (7) days prior to the beginning of the hearing. The notice shall include a procedure to assure that the confidential nature of the information is preserved as required by statute. Failure of any party to comply with the seven-day requirement described above shall be grounds to deny the party the opportunity to present evidence which is proprietary confidential business information.

When confidential information is used in the hearing, parties must have copies for the Commissioners, necessary staff, and the court reporter, in envelopes clearly marked with the nature of the contents. Any party wishing to examine the confidential material that is not subject to an order granting confidentiality shall be provided a copy in the same fashion as provided to the Commissioners, subject to execution of any appropriate protective agreement with the owner of the material. Counsel and witnesses are cautioned to avoid verbalizing confidential information in such a way that would compromise the confidential information. Therefore, confidential information should be presented by written exhibit when reasonably possible to do so. At the conclusion of that portion of the hearing that involves confidential information, all copies of confidential exhibits shall be returned to the proffering party. If a confidential exhibit has been admitted into evidence, the copy provided to the court reporter shall be retained in the Division of the Commission Clerk and Administrative Services' confidential files.

Post-Hearing Procedure

Each party shall file a post-hearing statement of issues and positions. A summary of each position of no more than 50 words, set off with asterisks, shall be included in that statement. If a party's position has not changed since the issuance of the prehearing order, the post-hearing statement may simply restate the prehearing position; however, if the prehearing position is longer than 50 words, it must be reduced to no more than 50 words. If a party fails to file a post-hearing statement in conformance with the rule, that party shall have waived all issues and may be dismissed from the proceeding.

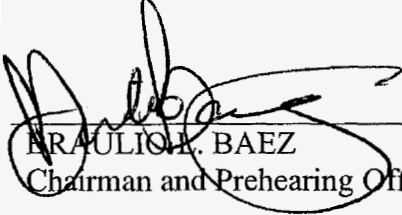
Pursuant to Rule 28-106.215, Florida Administrative Code, a party's proposed findings of fact and conclusions of law, if any, statement of issues and positions, and brief, shall together total no more than 40 pages, and shall be filed at the same time.

Based upon the foregoing, it is

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ORDERED by Chairman Braulio L. Baez, as Prehearing Officer, that the provisions of this Order shall govern this proceeding unless modified by the Commission.

By ORDER of Chairman Braulio L. Baez, as Prehearing Officer, this 21st day of February, 2005.



BRAULIO L. BAEZ
Chairman and Prehearing Officer

(SEAL)

JLS

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

Any party adversely affected by this order, which is preliminary, procedural or intermediate in nature, may request: (1) reconsideration within 10 days pursuant to Rule 25-22.0376, Florida Administrative Code; or (2) judicial review by the Florida Supreme Court, in the case of an electric, gas or telephone utility, or the First District Court of Appeal, in the case of a water or wastewater utility. A motion for reconsideration shall be filed with the Director, Division of the Commission Clerk and Administrative Services, in the form prescribed by Rule 25-22.060, Florida Administrative Code. Judicial review of a preliminary, procedural or intermediate ruling or order is available if review of the final action will not provide an adequate

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remedy. Such review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.

Attachment A

1. How should the term "End User" be defined?
2. What should be the limitation on each Party's liability in circumstances other than gross negligence or willful misconduct?
3. To the extent that a Party does not or is unable to include specific limitation of liability terms in all of its tariffs and End User contracts (past, present and future), should it be obligated to indemnify the other Party for liabilities not eliminated?
4. 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?
5. What should the indemnification obligations of the Parties be under the Agreement?
6. What language should be included in the Agreement regarding a Party's use of the other Party's name, service marks, logo and trademarks?
7. Should a court of law be included in the venues available for initial dispute resolution?
8. What should be the effective date of future rate impacting amendments?
9. Resolved.
10. Resolved.
11. 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?
12. Resolved.
13. 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?
14. 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?
15. 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?

16. Should Cbeyond be permitted to connect UNEs and Other Services provided by BellSouth to other UNEs and Other Services provided by 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?
17. Should BellSouth be required to comply with industry standard requirements in providing to Cbeyond access to UNEs and Other Services under the Attachment 2?
18. 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?
19. 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?
20. 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?
21. Should BellSouth be required to accept liability and write a letter of apology to Cbeyond's End User for disconnecting a Cbeyond End User while converting Cbeyond wholesale services to UNEs or Combinations?
22. This issue has been replaced by Issue No. 122.
23. (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?

(B) In the event of such conversion, what rates should apply?
24. 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?
25. What rates, terms and conditions should apply for Routine Network Modifications pursuant to 47 C.F.R. § 51.319(a)(8) and (e)(5)?
26. 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?

27. Should BellSouth be permitted to charge Cbeyond for dispatching and testing required to confirm the working status of a Network Element or Other Service provided by BellSouth?
28. Resolved.
29. Should the recurring charges for UNEs, Combinations and Other Services be prorated based upon the number of days that the UNEs are in service?
30. (A) What terms and conditions should apply for Cbeyond's access to the local loop on an unbundled basis?

(B) How should the local loop network element be defined?

(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?
31. Should the local loop element include all electronics used to establish the transmission path to the End User's customer premises?
32. Should the Agreement 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?
33. (A) What terms and conditions should apply to Cbeyond's access to the copper loop on an unbundled basis?
(B) How should the copper loop be defined for purposes of the Agreement?
(C) Should any requirement or restriction applicable to the copper loop similarly be applied to DS1 and DS3 copper loops provided by BellSouth?
34. (A) What terms and conditions should apply for Cbeyond's access to the hybrid loop on an unbundled basis?
(B) How should the hybrid loop be defined for purposes of the Agreement?
35. (A) Is unbundling relief provided under FCC Rule 319(a)(3) applicable to Fiber-to-the-Home Loops deployed prior to October 2, 2003?
(B) How should a "fiber-to-the-home loop" be defined?
36. Should BellSouth be required to retire existing copper loops pursuant to all applicable FCC and Commission orders?
37. 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?

38. How should "Dark Fiber Loops" be defined?
39. What legal standard applies to BellSouth's obligation to test all loops provisioned to Cbeyond?
40. 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?
41. Should BellSouth offer to Cbeyond a 4-Wire HDSL-Compatible Loop up to 18,000 feet long?
42. Are DS3 loops subject to a mileage-based charge?
43. (A) How should Line Conditioning be defined in the Agreement? (B) What should BellSouth's obligations be with respect to line conditioning?
44. Should the Agreement contain specific provisions limiting the availability of load coil removal to copper loops and sub-loops of 18,000 feet or less in length?
45. Under what rates, terms and conditions should BellSouth be required to perform Line Conditioning to remove bridged taps?
46. Should BellSouth, upon request by Cbeyond, modify a Loop so that it no longer meets the technical parameters of the existing loop type?
47. Resolved.
48. (A) Should Cbeyond be compelled to provide to BellSouth unbundled access to Unbundled Network Terminating Wire? (B) Should Cbeyond be required to install UNTW Access Terminals for use by BellSouth at no charge to BellSouth?
49. Resolved.
50. Resolved.
51. 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?
52. Resolved.
53. Should BellSouth be permitted to bill 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?

54. Should Cbeyond be required to provide to BellSouth copies of its billing records to substantiate the date on which Cbeyond activated its UNTW pairs?
55. (A) Should BellSouth be required to provide written confirmation of the availability of a dark fiber loop within a designated period of time? (B) If so, what should that timeframe be? (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? (D) If so, what should that timeframe be?
56. If Dark Fiber (loop or transport) requested by Cbeyond is available, what interval should apply for BellSouth to provision such Dark Fiber to Cbeyond?
57. 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?
58. Should language incorporating the FCC's High Capacity EEL Service Eligibility Criteria use the word "customer" or "end user"?
59. What requirements should apply to EEL audits?
60. How should "Dark Fiber Transport" be defined under the Agreement?
61. 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?
62. Should BellSouth make available to Cbeyond SS7 Interconnection?
63. Should BellSouth provide to Cbeyond access to Operations Support Systems on an unbundled basis?
64. Should Cbeyond be required to pay 100% of the recurring and nonrecurring charges for two-way trunks carrying Transit Traffic?
65. 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?
66. Resolved subject to final document check: What provisions should apply regarding a failure to provide accurate and detailed usage data necessary for the billing and collection of access revenues?

67. Resolved subject to final document check: Should BellSouth be allowed to charge Cbeyond a Tandem Intermediary Charge for the transport and termination of Local Transit Traffic and ISP-Bound Transit Traffic?
68. Should BellSouth be allowed to charge Cbeyond a Tandem Intermediary Charge for the transport and termination of Local Transit Traffic and ISP-Bound Transit Traffic?
69. 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?
70. (A) With the exception of toll-free Transit calls, should transit charges apply only to the carrier originating Transit Traffic?

Resolved subject to final document check for sub-issue B only.

71. In circumstances not covered by the scope of the 47 C.F.R 51.233 (which relates to Advanced Services equipment) what restrictions should apply to Cbeyond's use of collocation space or collocated equipment and/or facilities that impact others?
72. Issue has been removed.
73. **When should BellSouth** commence billing of recurring charges for power?
74. Resolved.
75. What rates should apply for BellSouth-supplied DC power?
76. (A) Under the fused amp billing option, how should recurring and non-recurring charges be applied? (B) What should the charges be?
77. (A) Should Cbeyond be permitted to choose between a fused amp billing option and a power usage metering option? (B) If power usage metering is allowed, how will recurring and non-recurring charges be applied and what should those charges be?
78. 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?
79. (A) Should Cbeyond be required to provide to BellSouth electronic access to Cbeyond's customer record information within firm intervals? (B) Should Cbeyond be required to

- provide to BellSouth manual access to Cbeyond's customer record information within firm intervals?
80. (A) What procedures should apply when one Party alleges, via written notice, that the other Party has engaged in unauthorized access to CSR information? (B) How should disputes over alleged unauthorized access to CSR information be handled under the Agreement?
 81. Should BellSouth, upon request by Cbeyond, be required to provide to Cbeyond a root cause analysis within 48 hours of receiving Cbeyond's request?
 82. What procedures should apply to credit Cbeyond's account for maintenance and Services charges paid by Cbeyond in the event 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.
 83. Should charges for substantially similar OSS functions performed by the parties be reciprocal?
 84. Should Cbeyond be required to return a FOC for porting a number to BellSouth within a firm interval?
 85. Resolved.
 86. 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?
 87. (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? (B) If so, what rates should apply? (C) What should be the interval for such mass migrations of services?
 88. What time limits should apply to backbilling, over-billing, and under-billing?
 89. Resolved.
 90. (A) What charges, if any, should be imposed for records changes made by the Parties to reflect changes in corporate names or other LEC identifiers such as OCN, CC, CIC and ACNA? (B) What intervals should apply to such changes?
 91. Resolved.
 92. Resolved.

93. 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?
94. Resolved sub-issue A only.

(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?
95. Should the Parties be required to comply with all applicable FCC and Commission rules and orders regarding discontinuance or termination of service?
96. Resolved.
97. Resolved.
98. Resolved.
99. Resolved.
100. Resolved.
101. Resolved.
102. Resolved.
103. Resolved.
104. Resolved.
105. Resolved.
106. Resolved subject to final document check.
107. Resolved subject to final document check.
108. Resolved.
109. 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?
110. Resolved.

111. Resolved.
112. 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?
113. (A) Should BellSouth be permitted to charge Cbeyond a fee to cover BellSouth's development costs associated with a BFR? (B) If so, how should these costs be recovered?
114. How should the Final FCC Unbundling Rules¹ be incorporated into the Agreement?
115. (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? (B) How should any intervening State Commission Order relating to unbundling obligations, if any, be incorporated into the Agreement?
116. If FCC 04-1792¹ is vacated or otherwise modified by a court of competent jurisdiction, how should such order or decision be incorporated into the Agreement?
117. At the end of the Interim Period, assuming that the Transition Period set forth in FCC 04-179 is neither vacated, modified, nor superseded, should the Agreement automatically incorporate the Transition Period set forth in the Interim Order?
118. (A) What rates, terms and conditions relating to switching, enterprise market loops and dedicated transport were "frozen" by FCC 04-179? (B) How should these rates, terms and conditions be incorporated into the Agreement?
119. (A) Is BellSouth obligated to provide unbundled access to DS1 loops, DS3 loops and dark fiber loops? (B) If so, under what rates, terms and conditions?
120. (A) Is BellSouth obligated to provide unbundled access to DS1 dedicated transport, DS3 dedicated transport and dark fiber transport? (B) If so, under what rates, terms and conditions?

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.

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).

¹ *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).

121. (A) 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?
(B) If BellSouth is required to unbundle any of these elements, what rates, terms and conditions should apply?
122. What rates, terms and conditions should govern Cbeyond's transition of existing network elements that BellSouth no longer is obligated to provide as UNEs?
123. 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?