

**ORIGINAL**

**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

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In the Matter of: )  
)  
Petition by IGC TELECOM GROUP, INC. )  
for Arbitration of an Interconnection )  
Agreement with BELLSOUTH )  
TELECOMMUNICATIONS, INC. Pursuant to )  
Section 252(b) of the Telecommunications )  
Act of 1996. )  
\_\_\_\_\_ )

Docket No. 990691-TP  
Filed September 7, 1999

**ICG TELECOM GROUP, INC.'S MOTION TO STRIKE**

ICG Telecom Group, Inc. (ICG) hereby files this motion to strike a portion of Alphonso J. Varner's direct testimony on the grounds that it is outside the scope of the issues framed by ICG's petition and BellSouth Telecommunications, Inc.'s (BellSouth's) response to the petition, and is therefore an illegally impermissible attempt to expand the matters properly before the Commission. For these reasons, ICG requests that the testimony beginning on line 10 at page 24 continuing to line 25 at page 36 of Mr. Varner's testimony, inclusive (copy attached as Exhibit 1), be stricken.

**MEMORANDUM IN SUPPORT OF MOTION TO STRIKE**

- TPA \_\_\_\_\_
- APP \_\_\_\_\_
- GAT \_\_\_\_\_
- CMU \_\_\_\_\_
- OTR \_\_\_\_\_
- EAG \_\_\_\_\_
- LSG \_\_\_\_\_
- MAB \_\_\_\_\_
- CPC \_\_\_\_\_
- PAI \_\_\_\_\_
- SEC \_\_\_\_\_
- WAW \_\_\_\_\_
- OTH \_\_\_\_\_

The Telecommunications Act of 1996 (Act) provides that parties involved in negotiating an interconnection agreement may petition the state commission to arbitrate disputed issues. Section 252 (b)(4) of the Act clearly states that during arbitration "the State commission shall limit its consideration of any petition . . . to the issues set forth in the petition and in the response."

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ICG's Petition for Arbitration delineates twenty-six issues, the first of which focuses on the reciprocal compensation issue that arose during negotiations. Issue One -- taken directly from ICG's petition -- asks, "Until the FCC adopts a rule with prospective application, should dial-up calls to Internet service providers (ISPs) be treated as if they were local calls for purposes of reciprocal compensation?" In BellSouth's Response to ICG's Petition for Arbitration, BellSouth stated its position:

No. The FCC's recent Declaratory Ruling, FCC 99-38 in CC Docket Nos. 96-98 and 99-68, released February 26, 1999 ("Declaratory Ruling"), confirmed unequivocally that the FCC has, will retain, and will exercise jurisdiction over ISP traffic. In short, the FCC determined that ISP traffic is interstate traffic, not local traffic. Under the provisions of the 1996 Act and FCC rules, only local traffic is subject to reciprocal compensation obligations. Thus, reciprocal compensation is not applicable to ISP-bound traffic. Clearly, treating ISP calls as local calls for reciprocal compensation purposes is inconsistent with the law and is not sound public policy.

Nowhere in its response does BellSouth suggest that BellSouth should be compensated by ICG as a consequence of ISP traffic. This is not surprising, inasmuch as BellSouth never advanced such a theory and never asserted such a claim during negotiations with ICG.

However, in prefiled direct testimony, Mr. Varner characterizes ISP traffic as "exchange access service" that BellSouth and ICG jointly provide to "carriers." Extending this premise further, he postulates that the revenues ICG collects from its ISP customers should be shared with BellSouth.

Because the assertion that BellSouth should be compensated by ICG for ISP traffic was never discussed in negotiations, never raised in ICG's petition, and never mentioned in BellSouth's response to ICG's petition, the Telecommunications Act of 1996 prohibits this Commission from considering the contention. Accordingly, the sections of Mr. Varner's testimony that treat this claim should be

stricken.<sup>1</sup>

**WHEREFORE**, ICG moves this Commission for an Order striking the portions of BellSouth witness Alphonso J. Varner's testimony designated herein.

  
\_\_\_\_\_  
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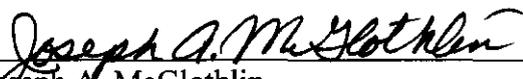
<sup>1</sup> To be clear, the filing of this motion on legal grounds does not imply that ICG acknowledges any substantive merit in Mr. Varner's new "construct." To the contrary, ICG regards the argument as a specious attempt to distract the Commission from the authority and need to fashion in this proceeding a mechanism that includes ISP traffic for purposes of reciprocal compensation for costs incurred in handling calls by creating the appearance that a countervailing argument exists. In view of the time frames involved, ICG necessarily will address the fallacies in BellSouth's argument in rebuttal testimony prior to the decision on this motion. However, this motion is the appropriate vehicle for a ruling on the separate principle that the material is unrelated to the issues allowed to be arbitrated by the 1996 Act.

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy ICG Telecom Group, Inc.'s Motion to Strike has been furnished by (\*) hand-delivery or United States mail this 7th day of September, 1999 to:

\*Lee Fordham  
Florida Public Service Commission  
Division of Legal Services  
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\_\_\_\_\_  
Joseph A. McGlothlin

1 Diagram D is different from Diagram C in only one respect. The LXC has been  
2 replaced by an ISP. The network used to transport ISP-bound traffic is exactly  
3 the same network used to deliver traffic to LXC's. However, rather than through  
4 receipt of normal switched access charges, the LEC is compensated for the  
5 access service it provides to the ISP by the business rates it charges the ISP.  
6 The important point is that both LXC's and ISPs receive the same service and,  
7 although they are charged different prices, the prices they pay are designed to  
8 cover the same costs. That cost is the full cost of providing service to them.

9  
10 Q. WHAT DOES BELLSOUTH CONSIDER TO BE THE APPROPRIATE  
11 COMPENSATION MECHANISM FOR ISP-BOUND TRAFFIC?

12  
13 A. In its Comments and Reply Comments to the FCC's Notice of Proposed  
14 Rulemaking in CC Docket No. 99-68, In the Matter of Inter-Carrier  
15 Compensation for ISP-Bound Traffic ("Inter-Carrier Compensation NPRM"),  
16 BellSouth puts forth its proposal for the appropriate inter-carrier compensation  
17 mechanism. (See Exhibit AJV-3) BellSouth's proposal is guided by and is  
18 consistent with FCC precedent regarding inter-carrier compensation for jointly  
19 provided interstate services. BellSouth's proposal recognizes, as does the  
20 FCC, that the revenue source for ISP-bound traffic is derived from the service  
21 provided to the ISP. (See In the Matter of Access Charge Reform, Price Cap  
22 Performance Review for Local Exchange Carriers, Transport Rate Structure  
23 and Pricing and End User Common Line Charges, CC Docket Nos. 96-262,94-  
24 1, 91-213 and 95-72, *First Report and Order*, 12 FCC Rcd 15982, 16133-16134  
25 (1997)) Equally important, BellSouth's proposal ties the level of inter-carrier

1 compensation directly to the level of compensation that each carrier derives  
2 from the jointly provided service.

3  
4 Exhibit AJV-4 to my testimony consists of two diagrams illustrating the  
5 consistency of compensating carriers for access traffic based on the revenue  
6 that is derived from the jointly provided service. Diagram E illustrates a call  
7 that originates on a LEC's network and is delivered to an IXC/ISP, and shows  
8 that the IXC/ISP pays the LEC for access services to cover the cost of getting  
9 the traffic to the IXC/ISP. Diagram F illustrates an IXC/ISP-bound call that  
10 originates on a LEC's network and interconnects with another carrier's  
11 network (ICO/CLEC) for routing of the call to the IXC/ISP. In this situation,  
12 the IXC/ISP is the other carrier's customer. The revenue this other carrier  
13 receives from the IXC/ISP for access services covers the cost of delivering the  
14 traffic to the IXC/ISP.

15

16 Q. PLEASE DESCRIBE HOW ICG REQUESTS THAT IT BE  
17 COMPENSATED FOR ISP-BOUND TRAFFIC.

18

19 A. Exhibit AJV-5 to my testimony consists of a Diagram G which illustrates  
20 ICG's request that BellSouth pay reciprocal compensation for ISP-bound  
21 traffic where the ISP is ICG's customer. It is obvious from this diagram that  
22 ICG is simply attempting to augment the revenues it receives from its ISP  
23 customer at the expense of BellSouth's end user customers. In other words,  
24 paying ICG reciprocal compensation for ISP-bound traffic would result in  
25 BellSouth's end user customers subsidizing ICG's operations. Indeed, the

1 FCC has recognized that the source of revenue for transporting ISP-bound  
2 traffic is the access service charges that ISPs pay. ICG receives this payment  
3 from its ISP customers. There is no legal or policy basis for ISPs to be  
4 subsidized simply because they choose a different carrier to provide their  
5 access service.

6

7 Q. WHY IS AN INTER-CARRIER COMPENSATION ARRANGEMENT  
8 APPROPRIATE FOR ISP TRAFFIC?

9

10 A. The interstate access connection that permits an ISP to communicate with its  
11 subscribers falls within the scope of exchange access and, accordingly,  
12 constitutes an access service as defined by the FCC:

13 *Access Service* includes services and facilities provided for the  
14 origination or termination of any interstate or foreign  
15 telecommunications. (Emphasis added)

16 The fact that the FCC has exempted enhanced service providers, including  
17 ISPs, from paying interstate switched access charges does not alter the fact that  
18 the connection an ISP obtains is an access connection. Instead, the exemption  
19 limits the compensation that a LEC in providing such a connection can obtain  
20 from an ISP. Further, under the access charge exemption, the compensation  
21 derived by a LEC providing the service to an ISP has been limited to the rates  
22 and charges associated with business exchange services. Nevertheless, the  
23 ISP's service involves interstate communications. The ISP obtains a service  
24 that enables a communications path to be established by its subscriber. The  
25 ISP, in turn, recovers the cost of the telecommunications services it uses to

1 deliver its service through charges it assesses on the subscribers of the ISP's  
2 service.

3 -

4 Where two or more carriers are involved in establishing the communications  
5 path between the ISP and the ISP's subscriber, the access service to the ISP is  
6 jointly provided. Such jointly provided access arrangements are not new or  
7 unique nor are the associated mechanisms to handle inter-carrier compensation.  
8 The services ISPs obtain for access to their subscribers are technically similar  
9 to the line side connections available under Feature Group A. For such line  
10 side arrangements, the FCC has relied on revenue sharing agreements for the  
11 purpose of inter-carrier compensation. The long history and precedent  
12 regarding inter-carrier compensation for interstate services are instructive and  
13 relevant to the FCC's determinations in this proceeding.

14

15 Q. PLEASE EXPLAIN FURTHER WHY A SEPARATE SHARING PLAN IS  
16 NEEDED FOR ACCESS SERVICE PROVIDED TO ISPs?

17

18 A. The need for a separate sharing plan is created by the FCC's decree that the  
19 price charged for access service provided to ISPs is the business exchange rate.  
20 Unlike other switched access services, which are billed on a usage-sensitive  
21 basis, business exchange service prices are flat-rated.

22

23 Because non-ISP switched access service is billed on a usage-sensitive basis, it  
24 is relatively easy for each carrier to be compensated for the portion of the  
25 access service that it provides. Generally, there are two methods used for such

1 compensation. Under the first method, each carrier bills the IXC directly for  
2 the portion of access service provided. For example, for originating access, the  
3 originating LEC bills the IXC for the switching and for the portion of transport  
4 that the originating LEC provides, and the terminating LEC bills the IXC for  
5 the portion of transport that it provides. Under the second method, the  
6 terminating LEC bills the IXC for all of the access service, and the originating  
7 LEC bills the terminating LEC for the portion of access services that it  
8 provides.

9  
10 With ISP traffic, these methods are unworkable. Since the ISP is billed  
11 business exchange service rates, only one LEC can bill the ISP. Also, since the  
12 rate paid by the ISP is a flat rate charge designed for another service, i.e.,  
13 business exchange service, there is no structural correlation between the cost  
14 incurred by the LEC and the price paid by the ISP. However, the business  
15 exchange rate paid by the ISP is the only source of revenue to cover any of the  
16 costs incurred in provisioning access service to the ISP. Therefore, a plan to  
17 share the access revenue paid by the ISP among all the carriers involved in  
18 sending traffic to the ISP is needed.

19  
20 Q. DOESN'T BELLSOUTH COVER THE COST OF ORIGINATING TRAFFIC  
21 TO ISPs FROM ITS OWN END USERS?

22  
23 A. No, nor would it be appropriate to do so. Again, ISPs purchase access services,  
24 albeit at business exchange rates. The local exchange rates paid by end user  
25 customers were never intended to recover costs associated with providing

1 access service and were established long before the Internet became popular.

2

3 Q. YOU HAVE STATED THAT IT IS NOT APPROPRIATE FOR THE  
4 COMMISSION TO ADDRESS ISP-BOUND TRAFFIC IN THE CONTEXT  
5 OF SECTION 251 OF THE ACT. SHOULD THE COMMISSION  
6 ADDRESS ISP-BOUND TRAFFIC AS ACCESS TRAFFIC?

7

8 A. If the Commission wishes to address this issue at all in this arbitration, it  
9 should be in the context of an interim compensation mechanism for ISP-bound  
10 access traffic. As I have stated previously, only local traffic is governed by  
11 Section 251 of the Act. ISP-bound traffic is not local traffic but is instead  
12 access traffic under the jurisdiction of the FCC. Therefore, the Commission  
13 could address ISP-bound traffic as access traffic by establishing an inter-carrier  
14 compensation mechanism. Such a mechanism would be interim until such  
15 time as the FCC completes its rulemaking proceeding on inter-carrier  
16 compensation.

17

18 Q. SHOULD THIS COMMISSION ADOPT AN INTERIM INTER-CARRIER  
19 COMPENSATION MECHANISM PRIOR TO THE FCC COMPLETING ITS  
20 RULEMAKING PROCEEDING, WHAT DOES BELLSOUTH PROPOSE AS  
21 AN APPROPRIATE INTERIM MECHANISM?

22

23 A. BellSouth proposes an interim flat-rated sharing mechanism that is based on  
24 apportionment of revenues collected for the access service among the carriers  
25 incurring costs to provide the service. The revenue to be apportioned among

1 carriers is the charge for the business exchange service that the ISP pays.  
2 Typically, the ISP purchases Primary Rate ISDN ("PRI") service as the  
3 business exchange product used to provide the access service. BellSouth  
4 believes that, in the interim, a flat-rated compensation process is appropriate  
5 since the revenues collected are based on flat-rated charges. Exhibit AJV-6  
6 attached to this testimony is BellSouth's Proposed Interim ISP Inter-Carrier  
7 Access Service Compensation Plan ("Interim Plan").

8  
9 In describing BellSouth's Interim Plan, I use the term "Serving LEC" to refer  
10 to a LEC that has an ISP as an end user customer and the term "Originating  
11 LEC" to refer to a LEC whose end user customers originate traffic that is  
12 delivered to the Serving LEC's network and is bound for an ISP. BellSouth's  
13 Interim Plan takes into account the following facts:

- 14 1) Only the Serving LEC bills the ISP for access service. The ISP is billed  
15 at rates established by the Serving LEC;
- 16 2) The FCC has limited the price for an ISP dial-up connection to the  
17 equivalent business exchange service rate;
- 18 3) the Originating LEC incurs costs to carry ISP-bound traffic to the  
19 Serving LEC;
- 20 4) the Originating LEC has no means to recover its costs directly from the  
21 ISP (unless, of course, the Originating LEC and the Serving LEC are  
22 one in the same); and
- 23 5) The Originating LEC must recover its costs, to the extent possible,  
24 from the Serving LEC.

25

1 BellSouth's Interim Plan presumes that all LECs who serve ISPs will  
2 participate in the plan. Otherwise, only those parties that will benefit will  
3 participate – i.e., a LEC that originates more ISP-bound traffic than it  
4 transports to an ISP will be a net receiver.

5

6 Q. PLEASE DESCRIBE THE SPECIFICS OF BELLSOUTH'S INTERIM  
7 PLAN.

8

9 A. BellSouth's Interim Plan contains the following steps that are further described  
10 in Exhibit AJV-6:

11 (1) Each Serving LEC will be responsible for identifying all minutes of use  
12 ("MOUs") which are ISP-bound that each Originating LEC delivers to  
13 the Serving LEC's network;

14 (2) each trunk (DS0-equivalent) will be assumed to carry 9,000 MOUs on  
15 average per month (equates to 150 hours per trunk per month);

16 (3) based on ISP-bound MOUs identified by the Serving LEC and provided  
17 to the Originating LEC, the Originating LEC will calculate the quantity  
18 of DS1 facilities required to transport the Originating LEC's ISP-bound  
19 traffic to the Serving LEC as follows:

20 **(ISP-bound MOUs / 9,000 MOUs per trunk / 24 trunks per DS1);**

21 (4) Serving LEC will advise Originating LECs of the average PRI rate  
22 charged to ISPs. The Serving LEC can use either its tariffed rate or the  
23 average rate actually charged to ISPs;

24 (5) Originating LEC calculates compensation due to it by the Serving LEC  
25 as follows:

1                   (Quantity of DS1s x Serving LEC's PRI rate x sharing percentage);  
2                   (6) Originating LEC bills the Serving LEC on a quarterly basis; and  
3                   (7) The ISP-bound MOUs and the PRI rates as reported by the Serving  
4                   LEC are subject to audit by the Originating LEC(s). The amount of  
5                   compensation could be affected by results of an audit.

6  
7                   To the extent two parties have additional issues, contract negotiations between  
8                   the parties can determine other terms and conditions. For example, due to  
9                   technical capabilities, the two LECs may agree that the Originating LEC will  
10                  identify the ISP-bound minutes of use.

11

12 Q.           WHAT IS THE BASIS FOR USING 9,000 MOUs AS THE AVERAGE  
13           MONTHLY USAGE PER TRUNK?

14

15 A.           Nine thousand (9,000) MOUs is a proxy that was used by the FCC for FGA  
16           access before actual usage could be measured. Further, this average level of  
17           usage has been used in other situations as a proxy for IXC usage.

18

19 Q.           WHAT SHARING PERCENTAGE DOES BELLSOUTH PROPOSE BE  
20           APPLIED TO THE SERVING LEC'S REVENUES TO COMPENSATE  
21           BELLSOUTH FOR ITS NETWORK USED TO CARRY ISP-BOUND  
22           TRAFFIC?

23

24 A.           BellSouth proposes a sharing percentage of 8.6% that will be applied to the  
25           Serving LEC's ISP revenues to calculate the compensation due BellSouth

1 when BellSouth is an Originating LEC. Likewise, when BellSouth is the  
2 Serving LEC, BellSouth proposes that a sharing percentage of 8.6% will be  
3 applied by the Originating LEC(s) when calculating compensation BellSouth  
4 owes.

5

6 Q. HOW DID BELLSOUTH DETERMINE THE SHARING PERCENTAGE IT  
7 PROPOSES?

8

9 A. BellSouth's calculation of its sharing percentage is shown in Exhibit AJV-7  
10 attached to this testimony. First, BellSouth considered that switching, transport  
11 and loop costs are incurred to carry traffic from the Originating LEC's end  
12 office to the ISP location. Since the Serving LEC incurs the loop cost between  
13 its end office and the ISP location, the Serving LEC should retain revenues to  
14 cover its loop cost. However, switching and transport costs are jointly incurred  
15 by both the Originating LEC and the Serving LEC.

16

17 Therefore, BellSouth believes that an appropriate sharing percentage is  
18 developed by determining the ratio of switching and transport costs to total  
19 costs (switching, transport and loop), and then dividing that percentage by two  
20 since each carrier bears a portion of the switching and transport cost. In order  
21 to determine the ratio, BellSouth looked to the Benchmark Cost Proxy Model  
22 ("BCPM") results filed in Florida in the Universal Service Fund proceedings.  
23 The average, statewide voice grade loop, switching and transport capital costs  
24 produced by BCPM are \$14.62, \$2.90 and \$.14, respectively. Therefore, the  
25 loop capital cost represents 82.8% of the total average statewide capital cost,

1           which means that the switching and transport capital costs represent 17.2% of  
2           the total capital cost. Again, dividing the 17.2% by two in order to account for  
3           the fact that both carriers incur switching and transport costs results in a  
4           sharing percentage of 8.6%.

5

6           BellSouth also reviewed ARMIS data and determined that the relationship  
7           between loop, switching and transport investment as reported in ARMIS is  
8           very similar to the relationship calculated from the BCPM results. The ARMIS  
9           data shows that, for 1998, in Florida, total loop investment was  
10          \$7,381,715,000, switching investment was \$989,297,000 and transport  
11          investment was \$182,062,000 resulting in ratios of 86.30% for loop, 11.57%  
12          for switching and 2.13% for transport which are close to the ratios that result  
13          from the BCPM data.

14

15 Q.       DOES BELLSOUTH'S PROPOSED SHARING PERCENTAGE ONLY  
16           APPLY TO TRAFFIC IT ORIGINATES TO A SERVING LEC?

17

18 A.       No. When BellSouth is the Serving LEC and a CLEC's end users call an ISP  
19           served by BellSouth, BellSouth should compensate the CLEC. BellSouth  
20           proposes to use the same method and sharing percentage (8.6%) to compensate  
21           the CLEC as it proposes for billing the CLEC.

22

23 Q.       WHAT IMPACT WOULD BELLSOUTH'S PROPOSAL HAVE ON A CLEC  
24           SUCH AS ICG?

25

1 A. As an example, I will assume that ICG serves its ISP customers with PRI  
2 service which is equivalent to a DS1 (24 DS0s). Further, I will assume that  
3 ICG charges its ISP customers a market-based rate of \$850 per month per PRI.  
4 If BellSouth as the Originating LEC generates 55 million ISP-bound MOUs per  
5 month to ICG, then the amount of monthly compensation that BellSouth's  
6 proposal would result in ICG owing to BellSouth is calculated as follows:

$$7 \quad 55,000,000 / 9000 / 24 = 254.63 \text{ DS1s}$$

$$8 \quad 254.63 \text{ DS1s} \times \$850.00 \times .086 = \$18,613.45$$

9 At a PRI rate of \$850, ICG will collect \$216,436 in revenue from its ISP  
10 customer(s) just for the traffic originated by BellSouth. Total compensation  
11 ICG owes to BellSouth for the 55,000,000 MOUs BellSouth originated to ICG  
12 would be \$18,613.45.

13

14 Q. HOW DOES YOUR PROPOSAL AFFECT THE RELATIVE COST  
15 RECOVERY OF THE LECs INVOLVED IN PROVIDING THE ACCESS  
16 SERVICE?

17

18 A. Since the FCC has ordered that ISPs are to be provided service at business  
19 exchange rates, the fact is that when the access service is provided by a single  
20 LEC to the ISP, the rates it charges the ISP are typically not fully  
21 compensatory. This situation arises because the ISP is being charged a flat rate  
22 charge (which was intended for another service) for a high volume usage-  
23 sensitive service. Under BellSouth's sharing proposal, each carrier should  
24 recover roughly the same percentage of its costs. For example, if the carrier  
25 would have recovered 50% of its costs if it served the ISP alone, the underlying

1 premise of this proposal is that each carrier should recover roughly 50% of its  
2 costs.

3

4 Q. SHOULD THIS PLAN BE CONTINUED ONCE THE FCC ESTABLISHES  
5 A USAGE-BASED COMPENSATION MECHANISM?

6

7 A. Probably not. The need for this plan was created by the fact that ISPs currently  
8 pay business exchange rates for access service. Should the FCC change the  
9 application of access charges to ISPs or establish a different compensation  
10 mechanism, this plan should be re-evaluated.

11

12 Q. IN LIGHT OF YOUR COMMENTS WHAT ACTION ARE YOU  
13 RECOMMENDING TO THE FLORIDA PSC?

14

15 A. The FCC has determined that ISP-bound traffic is interstate and has asserted  
16 jurisdiction. This issue is not subject to arbitration under Section 252 of the  
17 Act. Parties should be instructed to negotiate a revenue sharing arrangement  
18 for this traffic just as has been done for jointly-provided access service since  
19 divestiture. If those negotiations are not fruitful, however, they should be  
20 referred to the FCC. Should, however, this Commission adopt an interim inter-  
21 carrier compensation mechanism prior to the FCC completing its rulemaking  
22 proceeding, BellSouth recommends the Commission adopt the Interim Plan  
23 mechanism outlined above.

24

25