ORIGINAL

Legal Department

Nancy B. White
General Counsel - Florida

BellSouth Telecommunications, Inc.
150 South Monroe Street
Room 400
Tallahassee, Florida 32301
(305) 347-5558

September 10, 2003

Mrs. 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. 030513-TP: In re: Request by Essex Acquisition Corporation for waiver of carrier selection requirements of Rule 25-4.118, F.A.C., for transfer of local and long distance customers from NOW Communications, Inc.

Dear Ms. Bayó:

Enclosed is an original and fifteen copies of BellSouth Telecommunications, Inc.'s Protest/Request for Clarification of Proposed Agency Action, 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,

Nancy B. White

Nancy B. White (KA)

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

AUS
CAF
CMP
COM
CTR
ECR
GCL
OPC
MMS
SEC
OTH

Done 9/11/03 hr

CERTIFICATE OF SERVICE
Docket No. 030513-TP

I HEREBY CERTIFY that a true and correct copy of the foregoing was served via First Class U. S. Mail this 10th day of September, 2003 to the following:

Jason Rojas
Florida Public Service Commission
Division of Legal Services
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850
Tel. No. (850) 413-6179
jrojas@psc.state.fl.us

Adminstrative Procedures Committee
Room 120 Holland Building
Tallahassee, FL 32399-1300
Tel. No. (850) 488-9110
Fax. No. (850) 922-6934

NOW Communications, Inc.
Larry W. Seab, Chief Executive Officer
1418 Ellis Avenue
Jackson, MS 39204
Tel. No. (678) 442-9655 X 1000

NOW Communications, Inc.
Mr. R. Scott Seab
711 South Tejon Street, Suite 201
Colorado Springs, CO 80903-4054
Tel. No. (710) 633-3059
Fax. No. (719) 623-0287
rss@nowcommunications.com

Swidler & Berlin Law Firm
Catherine Wang/Ronald W. Del Sesto, Jr.
3000 K Street, N.W. #300
Washington, DC 20007-5116
Tel. No. (202) 424-7500
Fax. No. (202) 424-7645

VeraNet Solutions
Mr. Scott Kellogg
180 North Wacker Drive, Suite 3
Chicago, IL 60606-1612
Tel. No. (312) 658-1056
Fax. No. (312) 658-5487
skellogg@veranet.net

Nancy B. White

Nancy B. White (KA)

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Request by Essex Acquisition Corporation for waiver of carrier selection requirements of Rule 25-4.118, F.A.C.,, for transfer of local and long distance customers from NOW Communications, Inc.	)	Docket No. 030513-TP
	)	FILED: September 10, 2003

BELLSOUTH TELECOMMUNICATION, INC.'S PROTEST/REQUEST FOR CLARIFICATION OF PROPOSED AGENCY ACTION

BellSouth Telecommunications, Inc., ("BellSouth") hereby protests portions of Order No. PSC-03-0956-PAA-TP ("Order") issued on August 22, 2003, in which the Florida Public Service Commission ("Commission") granted a waiver of the carrier selection requirements and approved the transfer of local and long distance customer from NOW Communications, Inc. ("NOW") to ESSEX Acquisition Corporation d/b/a VeraNet Solutions ("VeraNet"). In support of its protest, BellSouth states:

1. BellSouth's official address for its Florida regulatory operations is:

BellSouth Telecommunications, Inc.
150 South Monroe Street
Suite 400
Tallahassee, Florida 32301

2. The names of BellSouth's representatives in this proceeding are:

Nancy B. White 150 West Flagler Street Suite 1910 Miami, Florida 33130	Mary Jo Peed 675 West Peachtree Street Suite 4300 Atlanta, GA 30375

3. BellSouth is a local exchange company providing local exchange and intraLATA toll service in Florida.

4. NOW filed for bankruptcy protection under Chapter 11 of the United States Bankruptcy Code on March 4, 2003 in the United States Bankruptcy Court for the Southern District of Mississippi. On May 23, 2003, NOW filed a Motion to sell substantially all of its assets (the "Sale Motion") with the United States Bankruptcy Court.

5. BellSouth filed an objection to NOW's Sale Motion with the Bankruptcy Court, a copy of which is attached hereto and attached as Exhibit A. In addition to its objection to the proposed sale of assets of NOW to MGC Capital or its assignee in the NOW bankruptcy case, on July 23, 2003, BellSouth filed several other motions in the bankruptcy proceeding which may affect the proposed transaction between NOW and NAC. Those motions have not yet been ruled upon by the bankruptcy court and the Bankruptcy Court has set two of those motions for hearing (described in more detail below), together with the hearing on NOW's motion to sell its assets, for October 1, 2003.

6. One of the motions filed by BellSouth in NOW's bankruptcy case was a Motion, pursuant to section 362(d) of the Bankruptcy Code, to require NOW, upon any approval of the proposed sale of substantially all of the assets of NOW to MGC Capital Corporation or its assignee or a higher bidder over BellSouth's pending objection, (i) contemporaneously deeming the Interconnection Agreement rejected and therefore termination as a matter of law, pursuant to section 365(a) of the Bankruptcy Code; or

(ii) granting stay relief to BellSouth in order that it may terminate the Interconnection Agreement. A copy of BellSouth's Motion requesting the interconnection agreement with NOW to be deemed rejected or granting a stay so that BellSouth could terminate the interconnection agreement is attached hereto as Exhibit "B".

7. BellSouth also filed a Motion with the Bankruptcy Court, pursuant to section 365(d)(2) of the Bankruptcy Code, compelling NOW to assume or reject the Interconnection Agreement within the earlier of (a) twenty (20) days after entry of an Order granting approval of the proposed sale by NOW to MCG Capital Corporation or its designee or (b) September 20, 2003. A copy of the Motion to compel NOW to either assume or reject the interconnection agreement with BellSouth is attached hereto as Exhibit "C".

8. BellSouth asserts that it is not in the public interest to waive the carrier selection requirements of Rule 24-4.118, Florida Administrative Code nor to approve the transfer of local and long distance customers sought herein due to the open issues before the Bankruptcy court involving cure of the substantial indebtedness owed to BellSouth by NOW. In addition, moving forward without the approval of the sale by the Bankruptcy Court is premature. BellSouth's substantial interests are affected by the transfer of these customers.

9. There are issues of material fact concerning the public interest of the requested transfer.

10. BellSouth is entitled to relief under Chapter 120 and Chapter 364, Florida Statutes, and Chapter 25-22, Florida Administrative Code.

WHEREFORE, BellSouth protests the Order discussed herein, requests that a hearing pursuant to Section 120.57 be held on this docket, and requests that the Commission grant such other relief as is necessary and proper under the circumstances.

Respectfully submitted this 10th day of September, 2003.

BELLSOUTH TELECOMMUNICATIONS, INC.

Nancy B. White (LA)
NANCY B. WHITE
c/o Nancy H. Sims
150 South Monroe Street, Suite 400
Tallahassee, FL 32301
(305) 347-5558

Mary Jo. Peed (LA)
MARY JO PEED
Suite 4300
675 W. Peachtree St., NE
Atlanta, GA 30375
(404) 335-0705

504272

UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
JACKSON DIVISION

In re:	)	
	)	**Chapter 11**
NOW COMMUNICATIONS, INC.	)	
	)	**Case No 03-01336-JEE**
	)	
Debtor.	)	
	)	

OBJECTION OF BELLSOUTH TELECOMMUNICATIONS, INC. TO (A) DEBTOR'S MOTION TO SELL SUBSTANTIALLY ALL OF ITS ASSETS PURSUANT TO 11 U.S.C. SECTION 363(b) AND (f), FREE AND CLEAR OF LIENS; AND (B) DEBTOR'S MOTION TO APPROVE BID PROCEDURES AND NOTICE OF SALE OF SUBSTANTIALLY ALL OF DEBTOR'S ASSETS

COMES NOW BellSouth Telecommunications, Inc. ("BellSouth") and files this objection (the "Objection") to: (a) Debtor's Motion to Sell Substantially all of its Assets Pursuant to 11 U.S.C. Section 363(b) and (f), Free and Clear of all Claims and Liens; and (b) Debtor's Motion to Approve Bid Procedures and Notice of Sale of Substantially all of Debtor's Assets, pursuant to sections 363 and 365 of Title 11, Unites States Code (the "Bankruptcy Code") and rules 6006 and 9014 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"). In support hereof, BellSouth respectfully shows the Court as follows:

Preliminary Statement

Pursuant to the Debtor's Motion to Sell Substantially All of its Assets Pursuant to 11 U.S.C. Section 363(b) and (f), Free and Clear of All Claims and Liens (the "Sale Motion") and the Debtor's Motion to Approve Bid Procedures and Notice of Sale of

Substantially All of Debtor's Assets (the "Bid Procedures Motion" and collectively with the Sale Motion, the "Sale & Bid Motions", NOW Communications, Inc., the debtor herein (the "Debtor") seeks to sell all of its assets, as well as the assets of several non-debtor parties, to its prepetition lender, MCG Capital Corporation ("MCG"). With no evidence of the business reasons supporting the sale or the efforts the Debtor undertook to market the assets and to ensure that the highest and best price is received, the Debtor now asserts – little more than 3 months from the filing of this case – that the sale to MCG is in the best interest of creditors and must be completed immediately. Furthermore, the Debtor seeks to accomplish this sale under the provisions of section 363 of the Bankruptcy Code, rather than through a Chapter 11 plan pursuant to the significantly more stringent requirements of section 1129 of the Bankruptcy Code. As set forth below, however, the Debtor has failed to meet the requirements for a sale of substantially all of its assets outside a plan of reorganization. Furthermore, the Sale Motion must also be denied to the extent it seeks assumption and assignment of the agreements between the Debtor and BellSouth, as the Debtor has failed to meet the requirements of section 365 of the Bankruptcy Code necessary for such an assumption and assignment. Finally, numerous provisions of the proposed bid procedures and Asset Purchase Agreement are flawed and cannot be approved, all as more fully explained below.

Background

1. On March 4, 2003 (the "Petition Date"), the Debtor filed a voluntary petition for relief under Chapter 11 of the Bankruptcy Code. Since the Petition Date, the Debtor has continued operating its business and managing its affairs as a debtor in possession pursuant to sections 1107 and 1108 of the Bankruptcy Code.

2. Prior to the Petition Date, BellSouth provided telecommunications services to the Debtor pursuant to various interconnection agreements (the "Interconnection Agreements"). BellSouth is by far the largest unsecured creditor in this Chapter 11 case, with a pre-petition claim in the approximate amount of $5,000,000.

The Sale Motion and the Bid Procedures Motion

3. On May 23, 2003, the Debtor filed the Sale Motion, pursuant to which the Debtor seeks authority to sell substantially all of its assets (the "Assets") pursuant to section 363 of the Bankruptcy Code. Attached to the Sale Motion is a proposed Asset Purchase Agreement between the Debtor, as seller, and MCG, as purchaser (the "Asset Purchase Agreement").[1]

4. The Asset Purchase Agreement contemplates the sale of substantially all of the Debtor's assets, as well as all of each Selling Entities right, title and interest in and to all assets and property used in or useful to the Debtor's business (the "Business").

5. The Asset Purchase Agreement contemplates a purchase price of not less than $4,600,000 (the "Purchase Price"). MCG intends to credit bid the Purchase Price against its alleged prepetition secured claim[2] which includes, among other things, amounts owed under that certain Credit Facility Agreement, dated as of December 30, 1999, as amended, between the Selling Entities and MCG.

---

[1] In addition, the Asset Purchase Agreement contemplates the transfer to MCG of any and all interests in the Assets of certain other non-debtor parties, including NOW Communications of Mississippi; NOW Communications of Virginia, Inc.; NOW Communications of South Dakota, Inc. and Tel-Link, Inc. (collectively, with the Debtor, the "Selling Entities").

[2] According to Schedule D of the Debtor's Schedules of Assets and Liabilities (the "Schedules"), MCG holds a secured claim of $3,691,688.00. However, in the Sale Motion, the Debtor provides that "[t]he Sellers will receive a credit against the entire debt owed to MCG by this Debtor of at least $4,600,000.00 as payment in full."

6. Contemporaneously with the filing of the Sale Motion, the Debtor filed the Debtor's Motion to Approve Bid Procedures and Notice of Sale of Substantially All of Debtor's Assets (the "Bid Procedures Motion"). Pursuant to the Bid Procedures Motion, the Debtor seeks approval of the procedures that will govern the sale of substantially all of the Assets, including: (i) certain bid protections, e.g., payment of a "break-up fee"; and (ii) the form of notice of the proposed sale for interested parties.

7. Pursuant to the Bid Procedures Motion, an auction sale of the Assets will be conducted if, and only if, a competing bid is timely submitted in accordance with the procedures set forth in the Bid Procedures Motion. Upon conclusion of any auction sale, the Debtor will submit a supplemental sale order identifying the ultimate purchaser of the Assets.

Objections

8. BellSouth objects to the Sale Motion and the Bid Procedures Motion (collectively, the "Sale & Bid Motions") on the following bases: (a) the sale contemplated by the Sale & Bid Motions cannot satisfy the requirements for a sale outside the ordinary course of business under section 363(b) of the Bankruptcy Code and should be considered an impermissible *sub rosa* plan of reorganization that circumvents the requirements of section 1129 of the Bankruptcy Code; (b) the Sale & Bid Motions are improper to the extent the Debtor intends to assume and assign the Interconnection Agreements without curing BellSouth's claims or providing BellSouth with adequate assurance of future performance by any proposed assignee; (c) certain of the procedures contemplated by the Sale & Bid Motions are improper and are not contemplated by section 363 of the Bankruptcy Code; and (d) various provisions of the Asset Purchase Agreement are improper and are in

contravention of the Bankruptcy Code. Accordingly, the Sale & Bid Motions should be denied.

The Sale Constitutes an Impermissible *Sub* Rosa Plan that Does Not Meet the Requirements of Section 1129 of the Bankruptcy Code

9. As made clear from the Sale Motion, the Debtor intends to sell substantially all of its Assets by motion pursuant to section 363(b) of the Bankruptcy Code. A sale of this magnitude undoubtedly will have the practical effect of deciding issues that ordinarily would arise and be addressed in connection with the confirmation of a plan of reorganization. More importantly, the proposed sale will deprive parties, such as BellSouth, of substantial rights inherent in the plan confirmation process and will otherwise distort the plan process. See, e.g., In re Crowthers McCall Pattern, Inc., 114 B.R. 877, 884 (S.D.N.Y. 1990) ("major pre-confirmation transactions, such as use, sale or lease of estate property under Section 363(b)...raise the concern that the scheme of Chapter 11 will be distorted").

10. Therefore, the proposed sale must be closely scrutinized by this Court. See, e.g., In re Abbotts Dairies, 788 F.2d 143, 150 (3d Cir. 1986) (section 363(b)(1) should "not be employed to circumvent the creditor protections of Chapter 11, and as such, it mirrors the requirements of section 1129 that the bankruptcy court independently scrutinize the debtor's reorganization plan"). In considering the sale of estate assets, courts consider, among other things, whether a sound business justification exists to approve the sale. In re Crowthers McCall Pattern, Inc., 114 B.R. at 885.

11. In the Sale Motion, the Debtor states in conclusory fashion that "[a]pplying the 'sound business purpose' test to Debtor's proposed sale of assets here to MCG or its designee reveals that [the elements of the test] are easily met." Sale Motion at

¶ 16. The Debtor offers the following "reasons for the sale": (1) the sale provides for the greatest value to the Debtor; (2) without the sale, the value of the Business and the Assets will diminish and there is no indication demand for the assets will increase in the future; and (3) the Debtor lacks sufficient resources to preserve its ongoing business. See Sale Motion at ¶¶ 5-7. The first reason is irrelevant to the issue of whether a sale should be approved outside a plan. It is merely recognition (to the extent correct) that the sale to MCG is better than any other sale offers the Debtor currently has for the Assets. The second reason, while relevant, is not alone sufficient justification for a sale outside of a plan. Further, there is no evidence that it is true, at least in any material fashion. The third reason given in the Sale Motion as a justification for the sale at this time would be far more compelling were it not for the fact that the Debtor's lender is the proposed buyer. Given that MCG already has substantial "skin in the game," it is implausible that they would pull out, thereby forcing a piecemeal liquidation, if forced to purchase the assets through a plan. In fact, it is not at all clear that MCG could "pull out," i.e., defeat a request by the Debtor to use cash collateral through the date of confirmation of a plan, nor is it clear that the Debtor cannot continue to live off of the use of cash collateral if authorized to continue using it.[3]

12. Thus, notwithstanding the Debtor's unsupported, irrelevant or less than compelling reasons for the sale, it is clear that there are no valid business justifications for the sale at this time as: (a) upon sale of the Assets, there will be virtually nothing left to administer or otherwise preserve; (b) the Sale Motion offers no explanation or justification as

[3] In fact, the sale to MCG will not close for many months, indicating that the Debtor can in fact live off the use of cash collateral for a significant time period. See Asset Purchase Agreement at ¶¶ 5.2(g), 6.1(b) ("Outside Date" for closing is **June 1, 2004**).

to why the sale by the Debtor to MCG must be accomplished at this time — little more than three months into the case — rather than pursuant to a plan of reorganization;[4] and (c) there has been no evidence that the Assets are declining in value so as to necessitate such a speedy sale. See, e.g., The Comm. Of Equity Security Holders v. Lionel Corp. (In re the Lionel Corp.), 722 F. 2d 1063, 1071 (2d Cir. 1983).

13. Accordingly, the Debtor cannot set forth a sound business justification for their proposed sale of substantially all of the assets without complying with the requirements of section 1129 by filing a Chapter 11 plan. Therefore, the Sale & Bid Motions should be denied.

BellSouth Objects to the Assumption and Assignment of the Interconnection Agreements

A. ***No Request to Assume or Assign Has Been Made.***

14. As described above, prior to the Petition Date, BellSouth provided telecommunications services to the Debtor pursuant to the Interconnection Agreements. The Interconnection Agreements constitute executory contracts that are governed by section 365 of the Bankruptcy Code. It appears that the Debtor intends to assume the Interconnection Agreements pursuant to section 365 of the Bankruptcy Code and assign them to MCG (or the ultimate purchaser). However, nowhere in the Sale Motion or the Bid Procedures Motion has the Debtor requested permission, pursuant to section 365 of the Bankruptcy Code, to assume and assign any executory contracts, including the Interconnection Agreements.

[4] See In re Public Service Co. of New Hampshire, 90 B.R. 575, 581 (Bankr. D. N.H. 1988) ("an appropriate standard for approval or disapproval of a transaction by the reorganization court [outside the ordinary course of business] is whether good cause has been shown to implement the transaction at this stage of this proceeding")

Furthermore, nowhere in the Asset Purchase Agreement does court approval of the Debtor's assumption and assignment of the Interconnection Agreement appear to be necessary.[5] The Sale & Bid Motions simply assert that all of the Assets will be sold to MCG (or the successful purchaser) free and clear of liens and encumbrances.

15. Section 365 of the Bankruptcy Code makes clear that, while a debtor may assume any of its executory contracts or unexpired leases, it must do so "subject to the court's approval." 11 U.S.C. § 365(a). As drafted, the Sale & Bid Motions do not seek this Court's approval of the assumption and assignment of any of its executory contracts or unexpired leases.[6] Accordingly, BellSouth further objects to the Sale & Bid Motions to the extent the Debtor intends to assume and assign the Interconnection Agreements without properly requesting this Court's approval or satisfying its burden pursuant to section 365 of the Bankruptcy Code.

B. ***The Proposed Cure Amount is Incorrect.***

16. Notwithstanding the Debtor's failure to properly seek permission to assume and assign the Interconnection Agreements, the Debtor also has failed to properly describe the amount necessary to cure the defaults under the Interconnection Agreement.

---

[5] The sole mention of the Debtor's assumption power is in section 5.2(g) of the Asset Purchase Agreement, which provides that: "MCG or Buyer shall have negotiated the assumption of the existing BellSouth Interconnection Agreement upon such terms and conditions as are acceptable to MCG or Buyer." Asset Purchase Agreement at ¶ 5.2(g).

[6] The Sale Motion provides that "[t]he statutory predicates for this Motion are Sections 105(a), 363(b) and (f), 503 and 507 of the Bankruptcy Code." See Sale Motion at ¶ 4. The identical language is contained in the Bid Procedures Motion. See Bid Procedures Motion at ¶ 5. There simply is no mention of section 365 of the Bankruptcy Code in either of the Debtor's pleadings.

17. Upon assumption and assignment, the Debtor must promptly cure any and all outstanding defaults under the Interconnection Agreement. See 11 U.S.C. § 365(b)(1); In re Greenville Auto Mall, Inc., 278 B.R. 414, 422 – 423 (Bankr. N.D. Miss. 2001) ("[I]f...the estate elects to assume the executory contract, then it takes on the burdens associated with that contract, agreeing to cure any outstanding defaults, and committing to perform on a going forward basis").

18. Attached to the Asset Purchase Agreement as a schedule, the Debtor has listed the proposed cure amount for the Interconnection Agreements as $150,000.00 (the "Proposed Cure Amount"). See Asset Purchase Agreement at Schedule A. BellSouth objects to the Proposed Cure Amount as it is woefully insufficient to cure the defaults under the Interconnection Agreements. BellSouth's records reflect a prepetition default under the Interconnection Agreements of $5,059,254 (the "BellSouth Claim").[7] Similarly, BellSouth is listed on the Debtor's List of Creditors Holding 20 Largest Unsecured Claims as well as schedule F of the Debtor's Schedules ("Schedule F") as holding a disputed claim of $3,912,470.02. BellSouth objects to the Sale & Bid Motions to the extent the Proposed Cure Amount is not amended to accurately reflect the BellSouth Claim.

C. ***No Offer of Adequate Assurance Has Been Set Forth.***

19. In addition to the Debtor's failure to correctly list the amount necessary to cure the defaults under the Interconnection Agreements, MCG has yet to provide BellSouth with adequate assurance of future performance and no such assurances are provided in the Sale & Bid Motions.

[7] On June 10, 2003, BellSouth filed a Proof of Claim in this amount.

20. Prior to assignment of an executory contract to a non-debtor third party, section 365 of the Bankruptcy Code requires that the assignee of the contract provide the non-debtor party to the contract with adequate assurances of future performance.[8] Accordingly, prior to assumption and assignment of the Interconnection Agreements, MCG (or the ultimate purchaser) must provide BellSouth with adequate assurance. Based upon BellSouth's records and experience with the Debtor, if MCG or its designee[9] is the successful bidder, it must provide BellSouth with $2 million, representing a deposit equal to two months estimated monthly usage, as adequate assurance of future performance.[10] BellSouth hereby objects as no such offer has been made to BellSouth and the Sale & Bid Motions are wholly silent on this issue.

The Proposed Sale Approval Procedure and Certain of the Proposed Bid Procedures are Improper

21. Even if the Court were otherwise inclined to grant the Sale & Bid Motions notwithstanding the arguments contained in paragraphs 9 through 20 above, they

---

[8] See 11 U.S.C. §365(f)(2) ("[t]he trustee may assign an executory contract or unexpired lease of the debtor only if — (A) the trustee assumes such contract or lease in accordance with the provisions of this section; and (B) adequate assurance of future performance by the assignee of such contract or lease is provided, whether or not there has been a default in such contract or lease").

[9] Given MCG can apparently form a thinly-capitalized "newco" to acquire the Assets and take assignment of the Interconnection Agreements, the justification for the deposit becomes even more compelling.

[10] Pursuant to the Order Determining Adequate Assurance for BellSouth (Docket # 28) entered on March 26, 2003, the Debtor is required to pay to BellSouth $250,000 every seven days, to be held and applied by BellSouth pursuant to the terms of the Order; see also In re Currivan's Chapel of Sunset, 51 B.R. 217 (N.D. Cal. 1985) (affirming Bankruptcy Court's decision to require a deposit of nearly two months of rent by debtor who was assuming lease of property where lessor was "reasonably concerned that debtor would not timely perform its obligations under the lease.").

should nevertheless be denied unless the modifications suggested below to the sale approval procedures and bid procedures are made.

A. ***The Proposed Sale Approval Procedure.***

22. The Bid Procedures Motion is procedurally improper and does not comply with the requirements of sections 363 or 365 of the Bankruptcy Code. Specifically, the Bid Procedures Motion seeks approval of procedures that ultimately could strip BellSouth of its ability to (a) object to the ultimate purchaser if it is other than MCG; or (b) object to the assumption and assignment of the Interconnection Agreements for any reason, including the inability of the ultimate purchaser, other than MCG, to provide BellSouth with adequate assurance of future performance. Accordingly, BellSouth objects to the Sale & Bid Motions and asserts that they should be denied.

23. The Sale & Bid Motions set forth a multi-stage process for the sale of the Assets. First, pursuant to the Sale Motion, the Debtor seeks to gain court approval of the Asset Purchase Agreement for the sale of the Debtor's Business, including all of the Assets to MCG (step 1). See Sale Motion at ¶ 14. Next, pursuant to the Bid Procedures Motion, the Debtor seeks to gain approval of (a) the various "stalking horse" protections afforded to MCG, such as a break-up fee and overbid requirement, and (b) the auction procedure to be used if a competing bid is received (step 2). See Bid Procedures Motion at ¶ 8. Finally, upon conclusion of the Auction, the Debtor will submit a supplemental sale order to the court that identifies the purchaser and purchase price, including if such purchaser is other than MCG (step 3). See Bid Procedures Motion at ¶ 7M. Upon approval of the Bid Procedures Motion (i.e., step 2), no further action of this Court is necessary, with the exception of the

signing of any supplemental order submitted pursuant to step 3. Furthermore, upon approval of the Bid Procedures Motion, no further objections of interested parties will be heard.

24. This multistage procedure creates a situation in which BellSouth: (a) may not know the identity of the ultimate purchaser of the Assets until the sale already has been approved, including approval of any assumption and assignment of executory contracts; and (b) will be unable to object the assumption of the Interconnection Agreements for any additional reasons not set forth herein, including the inability of the as yet unknown purchaser to provide BellSouth with adequate assurance of future performance. At the very least, Bellsouth should be provided with some amount of time to examine the ultimate purchaser's ability to perform under the Interconnection Agreements and a further opportunity to object prior to entry of a final order approving the sale. Therefore, BellSouth objects to the Debtor's procedure as it is not contemplated by sections 363 or 365 of the Bankruptcy Code and asserts that the Sale & Bid Motions should be denied.

B. ***The Proposed Bid Procedures.***

25. BellSouth asserts that the following changes should be made to the Notice of Bid Procedures, Auction and Sale Hearing attached as Exhibits A and B to the Bid Procedures Motion (the "Bid Notice"):

i. the confidentiality agreement should be in form and substance "reasonably" satisfactory to Debtor - see Bid Notice at ¶ 1;

ii. undersigned counsel should be included in the list of persons to receive service copies of a Competing Bid Notice - see Bid Notice at ¶ 2;

iii. a Competing Bid should be for "substantially all" of the Assets, not "all" of the Assets, and the phrase "on substantially the same

terms and conditions as those in the Agreement" should be stricken as unnecessarily restrictive - see Bid Notice at ¶ 3(a);[11]

iv. the required evidence of ability to finance the purchase price should be modified by the phrase "reasonably satisfactory to Debtor" - see Bid Notice at ¶ 3(e);

v. paragraph 4 should be stricken, as the ramifications of failure to comply can be evaluated by the Court in light of the circumstances surrounding such failure;

vi. paragraph 5(c) should be restated as follows: "Debtor shall submit for Court-approval what it considers to be the highest and best bid." - see Bid Notice at ¶ 5(c).

BellSouth Objects to Various Terms of the Asset Purchase Agreement

26. Similarly, even if the Court were otherwise inclined to grant the Sale & Bid Motions notwithstanding the arguments contained in paragraphs 9 through 20 above, and even if the sale approval procedures and the bid procedures were modified as suggested in paragraphs 21 through 25 above, the Sale & Bid Motions should nevertheless be denied unless the Asset Purchase Agreement is modified to take into account the following problems:

A. ***The Proposed Sale Violates the Terms of the Cash Collateral Order.***

27. On April 4, 2003, this Court entered the Final Agreed Order Regarding Use of Cash Collateral by Debtor and Granting Adequate Protection (the "Cash Collateral Order"). Pursuant to the Cash Collateral Order:

> The Debtor, the Committee, and/or any creditor or other party-in-interest shall have ninety (90) days from the date of the commencement of the meeting of creditors held pursuant to section 341 of the Bankruptcy Code, or such additional time as the Court for cause permits (the "MCG Bar Date"), within

[11] For example, a bidder may be willing to pay less cash but close months earlier and without the uncertainty of the condition precedent for obtaining regulatory approvals and licensing.

> which to file any such objection or commence an action with respect to MCG's claims or liens.

See Cash Collateral Order at ¶ 10. The first meeting of creditors, pursuant to section 341 of the Bankruptcy Code, was held on May 19, 2003. Accordingly, the MCG Bar Date is on August 18, 2003.

28. The Sale & Bid Motions were filed on May 23, 2003 and are set for hearing on June 17, 2003. If a Competing Bid (as such term is defined in the Asset Purchase Agreement) is received, the Debtor will hold an auction on July 10, 2003 at 11:00 a.m. See Bid Notice. Accordingly, the Debtor seeks to have final approval of the sale of the Assets to MCG (or the successful purchaser), free and clear of liens and encumbrances, no later than July 10, 2003.

29. However, given that the MCG Bar Date will not expire until August 18, 2003 — more than a month after the Auction — it is possible that the Debtor, the Creditors' Committee, a creditor or any interested party, including BellSouth, may seek to invalidate the liens of MCG even after a final order approving the sale of the Assets to MCG has been entered. What makes this problematic is MCG's desire to credit bid the entire amount of the purchase price pursuant to section 363(k) of the Bankruptcy Code. Accordingly, to the extent the Sale Motion seeks a final approval of any sale of the Assets before August 18, 2003, BellSouth objects as it is a violation of a previous order of this Court.[12]

[12] To the extent the Court is otherwise inclined to grant the Sale & Bid Motions (which BellSouth strongly urges against), it should condition such approval on the requirement that MCG post a cash deposit or other security equal to the purchase price so that if its claims or liens ultimately are invalidated, the cash or other security can be substituted for the improper credit bid.

B. ***The Proposed Sale Prejudices BellSouth's Setoff Rights.***

30. Pursuant to the Sale & Bid Motions, the Debtor intends to sell all of the Assets to MCG (or the successful purchaser), free and clear of all liens, claims and encumbrances. See Asset Purchase Agreement at § 1.1(a). Among the Assets being sold are "[a]ll accounts receivable arising out of goods sold or leased, intellectual property or other rights licensed or services provided in the conduct of the Business, including, without limitation, as listed on Schedule F hereto." See Asset Purchase Agreement at Exhibit A. BellSouth is among the numerous non-debtor parties that are listed on Schedule F as owing the Debtor on account.

31. To the extent the Debtor holds accounts receivable against BellSouth as listed on Schedule F to the Asset Purchase Agreement, BellSouth asserts that it may have a valid right of setoff pursuant to section 553 of the Bankruptcy Code for all such amounts. However, upon consummation of the proposed sale and transfer of the accounts receivable to MCG (or the successful purchaser), it is arguable that BellSouth will be stripped of its ability to assert its right of setoff as the requirement of "mutuality" will no longer be present.[13] In effect, BellSouth may lose rights that, absent such a sale, would be considered a secured claim. See 11 U.S.C. § 506(a). Accordingly, to the extent the Debtor seeks to sell the Assets, including the accounts receivable, to MCG (or the successful purchaser) free and

[13] Under section 553 of the Bankruptcy Code, setoff will be permitted where the following conditions are met: (1) the creditor's claim against the debtor arose pre-petition; (2) the creditor also owes a debt to the debtor that arose pre-petition; (3) **the claim and debt are "mutual;"** and (4) the claim and debt are valid and enforceable under state law. 11 U.S.C. § 553 (emphasis added); see also Collier on Bankruptcy ¶ 553.03[3][b], p. 553-58 (15th rev. ed.).

clear of liens, claims and encumbrances, including any of BellSouth's valid rights of setoff pursuant to section 553 of the Bankruptcy Code, BellSouth objects.

C. ***The Debtor May Not Sell Causes of Action Related to Lender Liability.***

32. As discussed above, the Debtor intends to sell all of the Assets to MCG (or the successful purchaser), free and clear of all liens, claims and encumbrances. See Asset Purchase Agreement at § 1.1(a). Among the Assets being sold are all "[c]hoses in action and claims against third parties not otherwise avoidable under §§ 542, 544, 545, 546, 547, 548, 549, 550 and 551 of the Bankruptcy Code." See Asset Purchase Agreement at Exhibit A.

33. Though not specifically mentioned, the language of the Asset Purchase Agreement is broad enough to include the sale of various causes of action the Debtor may have against its lender (commonly referred to as "lender liability claims"). As stated in the Asset Purchase Agreement, MCG was the Debtor's prepetition lender. See Asset Purchase Agreement at ¶ B. Sale of such assets to MCG is highly improper and, if permitted, will essentially absolve MCG of any liability if misdeeds later are discovered. Accordingly, to the extent that the Debtor intends to sell to MCG all of its rights to causes of action against its prepetition lenders, including MCG, BellSouth objects.

D. ***The Management Agreement is Improper.***

34. Pursuant to a Management Agreement (a copy of which is attached as Schedule H to the Asset Purchase Agreement) to be entered into between the Debtor and MCG or its designee, the Debtor purports to appoint MCG or its designee, if they are the successful bidder, as "manager" of its assets with, among other things, "the right to have access to and use of the Regulated Assets". See Management Agreement at § 2. Thus, it appears that irrespective of whether the Interconnection Agreements are assumed and

assigned, MCG or its designee (assuming they are the successful bidder) will have use of the services provided by BellSouth thereunder for the term of the Management Agreement. The term of the Management Agreement, in turn, appears to potentially run through June 1, 2004, **almost a year from now.** The Management Agreement thus clearly constitutes a *de facto* assignment of the Interconnection Agreements (and likely other agreements between the Debtor and third parties) without compliance with section 365 of the Bankruptcy Code. The Debtor should be required to either assume and assign, or reject, the Interconnection Agreements upon approval of any sale, rather than allowing such a *de facto* assignment.

E. ***The Debtor Has Not Adequately Marketed the Assets.***

35. BellSouth objects to the sale of the Assets as proposed in the Sale & Bid Motions as the Debtor has not adequately marketed the Assets. The Debtor provides, with little explanation, that "[t]he marketplace for the Assets has been fully explored and, as a result, the Agreement provides for the greatest value currently available to the Debtor." See Sale Motion at ¶ 5.

36. However, the Debtor has not retained (at least on a post-petition basis) a financial advisor, broker, investment banker or other professional for the express purpose of, among other things, (a) valuing the Assets as a going-concern based upon current market data; (b) conducting a nationwide analysis of potential purchasers; (c) preparing and disseminating a term sheet, prospectus or other materials designed to market the Assets; (d) engaging such potential purchasers in discussions for the purchase of the Assets; and (e) conducting a dedicated marketing campaign for the sale of the Assets. More disturbingly, the Debtor maintains that the Auction will ensure that the best and highest offer has been received for the Assets. However, the Debtor's sole method of providing notice to potential

purchasers is by publication notice "at least once, no less than 14 calendar days prior to the Auction Sale in the Wall Street Journal, the Jackson Clarion-Ledger, and Atlanta Journal-Constitution." See Bid Procedures Motion at ¶ 9.

37. Such notice is insufficient to ensure that the Assets are sold at the highest and best price. Only with the assistance of a professional, as described above, and with adequate allowance for time (after all, this case has been pending for little more than three months) can the Debtor honestly maintain that it is receiving the highest and best price for the Assets and satisfy its duty to creditors in this case. Accordingly, BellSouth objects to the Sale & Bid Motions on this basis as well.

Conclusion

38. For all of the reasons set forth herein, the Sale Motion and the Bid Procedures Motion should be denied.

WHEREFORE, BellSouth respectfully requests that the Court (a) sustain this Objection; (b) deny the Sale Motion; (c) deny the Bid Procedures Motion; and (d) grant such other and further relief as is just and equitable.

Respectfully submitted this _____ day of June, 2003.

BUTLER, SNOW, O'MARA, STEVENS & CANNADA, PLLC

By: _____

Stephen W. Rosenblatt
17th Floor, AmSouth Plaza
Post Office Box 22567
Jackson, Mississippi 39225-2567
(601) 948-5711 (Telephone No.)
(601) 985-4500 (Facsimile No.)

and

KILPATRICK STOCKTON LLP

Todd C. Meyers
Georgia Bar No. 503756
Robbin S. Rahman
Georgia Bar No. 592151
1100 Peachtree Street, Suite 2800
Atlanta, Georgia 30309-4530
(404) 815-6500 (Telephone No.)
(404) 815-6555 (Facsimile No.)

Counsel for BellSouth Telecommunications, Inc.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing **Objection to (a) Debtor's Motion to Sell Substantially all of its Assets Pursuant to 11 U.S.C. Section 363(b) and (f), Free and Clear of all Claims and Liens; and (b) Debtor's Motion to Approve Bid Procedures and Notice of Sale of Substantially all of Debtor's Assets** was served, by regular U.S. Mail, postage prepaid, on the parties listed below, this ___ day of June, 2003:

Eileen N. Shaffer, Esq.
401 Capital Street - Suite 316
Jackson, MS 39201

Office of the United States Trustee
100 West Capitol Street
Suite 707
Jackson, MS 39269

Frank N. White, Esq.
Darryl S. Ladden, Esq.
Arnall Golden Gregory LLP
2800 One Atlantic Center
1201 West Peachtree Street
Atlanta, Georgia 30309

Donald M. Wright, Esq.
Stephen B. Porterfield, Esq.
Sirote & Permutt P.C.
2311 Highland Avenue South
P.O. Box 55727
Birmingham, Alabama 35205

Gregory M. Eells, Esq.
Eells & Allen, LLC
The Oglethorpe Building
Suite 181
2971 Flowers Road South
Atlanta, Georgia 30341-4147

Roy H. Liddell, Esq.
Wells Marble & Hurst, PLLC
Suite 600, Lamar Life Building
317 East Capitol Street
P.O. Box 131
Jackson, Mississippi 39205

Derek A. Henderson, Esq.
111 East Capitol Street
Suite 455
Jackson, Mississippi 39269

By: _____
Stephen W. Rosenblatt

UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
JACKSON DIVISION

06 JUL 23 PM 2:33

BY _____ DEPUTY

In re:	)	
	)	Chapter 11
NOW COMMUNICATIONS, INC.	)	
	)	Case No 03-01336-JEE
	)	
Debtor.	)	
	)	

EXHIBIT B

MOTION OF BELLSOUTH TELECOMMUNICATIONS, INC. FOR ORDER, UPON ANY APPROVAL OF THE PROPOSED SALE OF SUBSTANTIALLY ALL OF DEBTOR'S ASSETS, (i) DEEMING INTERCONNECTION AGREEMENT REJECTED; OR (ii) GRANTING STAY RELIEF TO TERMINATE INTERCONNECTION AGREEMENT

COMES NOW BellSouth Telecommunications, Inc. ("BellSouth"), through its undersigned counsel, and moves the Court for entry of an Order, pursuant to section 362(d) of the Bankruptcy Code, upon any approval of the proposed sale of substantially all of the assets of NOW Communications, Inc., the debtor herein (the "Debtor") to MCG Capital Corporation ("MCG") or a higher bidder over BellSouth's pending objection, (i) contemporaneously deeming the Interconnection Agreement (as defined below) rejected and therefore terminated as a matter of law, pursuant to section 365(a) of the Bankruptcy Code; or (ii) granting stay relief to BellSouth in order that it may terminate the Interconnection Agreement. In support hereof, BellSouth respectfully shows the Court as follows:

Preliminary Statement

As this Court is aware, NOW Communications, Inc., the debtor herein (the "Debtor") is seeking to sell substantially all of its assets (the "Assets") to its prepetition lender, MCG Capital Corporation or its designee ("MCG"). BellSouth has objected to the proposed sale. The Debtor's business operations are dependent entirely upon the telecommunication

services provided by BellSouth to the Debtor pursuant to a certain interconnection agreement between the Debtor and BellSouth, dated January 14, 2003 (the "Interconnection Agreement").[1] Without the Interconnection Agreement, the Debtor will be unable to continue as a going concern. Moreover, in order for the Debtor to accomplish the planned sale of its Assets to MCG, it first must assume and assign the Interconnection Agreement. As is abundantly clear, however, neither the Debtor nor MCG has either the ability or the desire to cure the approximately $5 million in defaults under the Interconnection Agreement (the "BellSouth Cure Amount"). Given the Debtor's own testimony regarding value at the hearing before the Court on June 26, 2003, as well as the Schedules of Assets and Liabilities filed in this case, it is clear that the value of the Assets is substantially less than the BellSouth Cure Amount, let alone the aggregate of the BellSouth Cure Amount and the secured claims encumbering the Assets. Thus, it is inconceivable that a purchaser will have any interest in satisfying the BellSouth Cure Amount.

Instead, the Debtor and MCG are trying to postpone or perhaps even to circumvent the inevitable termination of the Interconnection Agreement by entering into a management agreement (the "Management Agreement") as a part of the sale transaction under which MCG will have access to the Interconnection Agreement for up to a year without ever having to make the decision to assume or reject the Interconnection Agreement, **or even the decision whether to close the sale transaction**.

---

[1] A true and correct copy of Interconnection Agreement is attached hereto as Exhibit "A" and incorporated herein by reference. The exhibits thereto, which total more than 800 pages, are not attached, but will be provided upon request.

During this one-year, post-approval, pre-closing period where MCG will operate the Debtor's assets and utilize the Interconnection Agreement without taking an assignment thereof, the estate will be in complete limbo, and BellSouth will be kept from exercising its contractual remedies, while MCG attempts to circumvent assumption and assignment by forcing through litigation a new direct agreement with BellSouth. Assuming the Court were to countenance such attempts, if MCG is unsuccessful (as BellSouth believes it will be), then MCG would never close the sale transaction. In any event, if the proposed sale is approved, the Debtor will cease to exist for all practical purposes, and thus will have no use for, nor ability to perform under, the Interconnection Agreement.

Under these circumstances, the Interconnection Agreement should be deemed rejected upon any approval of the proposed sale. Alternatively, BellSouth should be granted relief from the automatic stay for cause to terminate the Interconnection Agreement and the provision of services thereunder.[2]

Background

1. On March 4, 2003 (the "Petition Date"), the Debtor filed a voluntary petition for relief under Chapter 11 of the Bankruptcy Code. Since the Petition Date, the Debtor has continued operating its business and managing its affairs as a debtor in possession pursuant to sections 1107 and 1108 of the Bankruptcy Code.

2. Prior to the Petition Date, BellSouth provided telecommunications services to the Debtor pursuant to the Interconnection Agreement. The Interconnection

[2] Contemporaneously herewith, BellSouth has filed two separate motions seeking alternative relief. The first such motion is the Motion to Convert to Chapter 7 (the "Conversion Motion"). The second such motion is the Motion for an Order Compelling Debtor to Assume or Reject Interconnection Agreement.

Agreement is an executory contract as such term is used in section 365 of the Bankruptcy Code. BellSouth is by far the largest unsecured creditor in this Chapter 11 case, with a pre-petition claim in the approximate amount of $5,000,000. The Chapter 11 filing was precipitated when BellSouth indicated it would take action to terminate services under the Interconnection Agreement due to the Debtor's massive defaults thereunder.

BellSouth's Sale and Bid Objection

3. On May 23, 2003, the Debtor filed its Debtor's Motion to Sell Substantially all of its Assets Pursuant to 11 U.S.C. Section 363(b) and (f), Free and Clear of all Claims and Liens (the "Sale Motion"), pursuant to which the Debtor sought authority to sell the Assets to MCG.

4. Contemporaneously with the filing of the Sale Motion, the Debtor filed the Debtor's Motion to Approve Bid Procedures and Notice of Sale of Substantially All of Debtor's Assets (the "Bid Procedures Motion"), pursuant to which it sought approval of the procedures that will govern the sale of the Assets.

5. On June 12, 2003, BellSouth filed an objection to the Sale Motion and to the Bid Procedures Motion (the "BellSouth Objection"). Among other things, BellSouth objected to: (a) the assumption and assignment of the Interconnection Agreement absent payment of the BellSouth Cure Amount and the provision of adequate assurance of future performance; (b) certain of the procedures contemplated by the Bid Procedures Motion; and (c) various provisions of the proposed Asset Purchase Agreement, including the provision for entry into the Management Agreement pursuant to which the proposed purchaser, MCG, will have access to, and operate under, the Interconnection Agreement without taking an assignment thereof.

6. Notwithstanding the BellSouth Objection, the Court approved the Bid Procedures Motion pursuant to an Order entered on July 3, 2003. Pursuant to such Order, an auction for the Assets is scheduled for August 5, 2003, with a hearing to approve the sale to be scheduled thereafter.

Relief Requested

7. To the extent the Court denies the Conversion Motion filed contemporaneously herewith, and in the further event that the Court grants the relief requested in the Sale Motion over BellSouth's pending objection, BellSouth requests that the Court contemporaneously enter an Order, pursuant to section 365(a) of the Bankruptcy Code: (a) deeming the Interconnection Agreement rejected and terminated, in order that BellSouth may terminate the provision of services under the Interconnection Agreement; or (b) alternatively, granting BellSouth relief from the automatic stay in order that it may terminate the Interconnection Agreement and the provision of services thereunder, pursuant to section 362(d) of the Bankruptcy Code.

8. If the Sale Motion is approved, the Debtor, which is the only entity legally authorized to operate under the Interconnection Agreement, will for all practical purposes cease to exist, as under the Management Agreement all of its assets will be operated by MCG and all of its employees will be taking direction from MCG. Thus, the Debtor will be unable to perform under the Interconnection Agreement and has no need therefor. Consequently, the Interconnection Agreement should be deemed rejected and terminated as a matter of law pursuant to section 365(a) of the Bankruptcy Code and BellSouth should be permitted to immediately terminate all services provided under the Interconnection Agreement.

9. At least one court in another jurisdiction has deemed a contract (in fact, an interconnection agreement) rejected under virtually identical circumstances. See Operating Subsidiaries of Verizon Comm., Inc. f/k/a Bell Atlantic Corp. and GTE Corp. v. Omniplex Comm. Group, LLC (In re Omniplex Comm. Group, Inc.), Case No. 01-42079-399 (Bankr. E.D. Mo. October 7, 2001) (unreported order granting motion to deem executory contracts rejected upon sale of substantially all of debtor's assets). A true and correct copy of the unreported Omniplex motion, responses thereto and Order is attached hereto as collective Exhibit "B". BellSouth respectfully suggests that this Court should follow Omniplex in rejecting the Debtor's attempt to manipulate section 365 of the Bankruptcy Code through the use of a management agreement.

10. Alternatively, but for the same reasons stated above, cause exists to lift the automatic stay in order that BellSouth may immediately terminate the Interconnection Agreement and the provision of all services thereunder. Pursuant to section 362(d) of the Bankruptcy Code, the Court may grant a party relief from the automatic stay "for cause". See 11 U.S.C. § 362(d). Cause exists to lift the stay with respect to BellSouth. BellSouth should not be stayed from exercising its remedies under the Interconnection Agreement while the only party authorized to obtain services thereunder is but a shell with no ability to receive or pay for such services. The Bankruptcy Code provides for the automatic stay in order that, among other things, the debtor can utilize its executory contracts notwithstanding prepetition defaults thereunder while it determines whether to cure and assume such contracts or reject them. Here, the Debtor will cease to exist without having done either.

11. Under these circumstances, sufficient cause exists to grant BellSouth relief from the automatic stay, pursuant to section 362(d) of the Bankruptcy Code, to terminate the Interconnection Agreement and the provision of services thereunder.

WHEREFORE, BellSouth respectfully requests that the Court enter an Order (a) upon any approval (over BellSouth's pending objection) of the Sale Motion, (i) contemporaneously deeming the Interconnection Agreement rejected and therefore terminated as a matter of law, pursuant to section 365(a) of the Bankruptcy Code; or (ii) granting stay relief to BellSouth in order that it may terminate the Interconnection Agreement, pursuant to section 362(d) of the Bankruptcy Code; and (b) granting such other and further relief as is just and equitable.

Respectfully submitted this 23rd day of July, 2003.

BUTLER, SNOW, O'MARA, STEVENS & CANNADA, PLLC

Stephen W. Rosenblatt
Mississippi Bar No. 5676
17th Floor, AmSouth Plaza
Post Office Box 22567
Jackson, Mississippi 39225-2567
(601) 985-4504 (Telephone No.)
(601) 985-4500 (Facsimile No.)

and

KILPATRICK STOCKTON LLP

Todd C. Meyers
Georgia Bar No. 503756
Robbin S. Rahman
Georgia Bar No. 592151
1100 Peachtree Street, Suite 2800
Atlanta, Georgia 30309-4530
(404) 815-6500 (Telephone No.)
(404) 815-6555 (Facsimile No.)

Counsel for BellSouth Telecommunications, Inc.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing **Motion of BellSouth Telecommunications, Inc. for Order, Upon Any Approval of the Proposed Sale of Substantially All of Debtor's Assets, (i) Deeming Interconnection Agreement Rejected; or (ii) Granting Stay Relief to Terminate Interconnection Agreement** was served, by regular U.S. Mail, postage prepaid, on the parties listed below, this 23rd day of July, 2003:

Eileen N. Shaffer, Esq.
401 Capital Street - Suite 316
Jackson, MS 39201

Office of the United States Trustee
100 West Capitol Street
Suite 707
Jackson, MS 39269

Frank N. White, Esq.
Darryl S. Ladden, Esq.
Arnall Golden Gregory LLP
2800 One Atlantic Center
1201 West Peachtree Street
Atlanta, Georgia 30309

Donald M. Wright, Esq.
Stephen B. Porterfield, Esq.
Sirote & Permutt P.C.
2311 Highland Avenue South
P.O. Box 55727
Birmingham, Alabama 35205

Gregory M. Eells, Esq.
Eells & Allen, LLC
The Oglethorpe Building
Suite 181
2971 Flowers Road South
Atlanta, Georgia 30341-4147

Roy H. Liddell, Esq.
Wells Marble & Hurst, PLLC
Suite 600, Lamar Life Building
317 East Capitol Street
P.O. Box 131
Jackson, Mississippi 39205

Derek A. Henderson, Esq.
111 East Capitol Street
Suite 455
Jackson, Mississippi 39269

By: Stephen W. Rosenblatt
Stephen W. Rosenblatt

JACKSON 777726v1

EXHIBIT "A"

BELLSOUTH / CLEC Agreement

Customer Name: NOW Communications, Inc.

INTERCONNECTION
AGREEMENT
BETWEEN
BELLSOUTH TELECOMMUNICATIONS INC.
AND
NOW Communications, Inc.

TABLE OF CONTENTS

General Terms and Conditions

TABLE OF CONTENTS (cont'd)

AGREEMENT
GENERAL TERMS AND CONDITIONS

THIS AGREEMENT is made by and between BellSouth Telecommunications, Inc., ("BellSouth"), a Georgia corporation, and NOW Communications, Inc. ("NOW"), a Mississippi corporation, and shall be effective on the Effective Date, as defined herein. This Agreement may refer to either BellSouth or NOW or both as a "Party" or "Parties."

W I T N E S S E T H

WHEREAS, BellSouth is a local exchange telecommunications company authorized to provide telecommunications services in the states of Alabama, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina and Tennessee; and

WHEREAS, NOW is or seeks to become a CLEC authorized to provide telecommunications services in the states of Alabama, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina, and Tennessee; and

WHEREAS, NOW wishes to resell BellSouth's telecommunications services and purchase network elements and other services, and, solely in connection therewith, may wish to utilize collocation space as set forth in Attachment 4 of this Agreement); and

WHEREAS, the Parties wish to interconnect their facilities and exchange traffic pursuant to Sections 251 and 252 of the Act.

NOW THEREFORE, in consideration of the mutual agreements contained herein, BellSouth and NOW agree as follows:

Definitions

Affiliate is defined as a person that (directly or indirectly) owns or controls, is owned or controlled by, or is under common ownership or control with, another person. For purposes of this paragraph, the term "own" means to own an equity interest (or equivalent thereof) of more than 10 percent.

Commission is defined as the appropriate regulatory agency in each state of BellSouth's nine-state region (Alabama, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina, and Tennessee).

Competitive Local Exchange Carrier (CLEC) means a telephone company certificated by the Commission to provide local exchange service within BellSouth's franchised area.

Effective Date is defined as the date that the Agreement is effective for purposes of rates, terms and conditions and shall be thirty (30) days after the date of the last signature executing the Agreement. Future amendments for rate changes will also be effective thirty (30) days after the date of the last signature executing the amendment.

End User means the ultimate user of the Telecommunications Service.

FCC means the Federal Communications Commission.

General Terms and Conditions means this document including all of the terms, provisions and conditions set forth herein.

Telecommunications means the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received.

Telecommunications Service means the offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used.

Telecommunications Act of 1996 ("Act") means Public Law 104-104 of the United States Congress effective February 8, 1996. The Act amended the Communications Act of 1934 (47 U.S.C. Section 1 et. seq.).

1. **CLEC Certification**

1.1 Prior to execution of this Agreement, NOW agrees to provide BellSouth in writing NOW's CLEC certification for all states covered by this Agreement except Kentucky prior to BellSouth filing this Agreement with the appropriate Commission for approval.

1.2 To the extent NOW is not certified as a CLEC in each state covered by this Agreement as of the execution hereof, NOW will notify BellSouth in writing and provide CLEC certification when it becomes certified to operate in any other state covered by this Agreement. Upon notification, BellSouth will file this Agreement with the appropriate Commission for approval.

2. **Term of the Agreement**

2.1 The term of this Agreement shall be three years, beginning on the Effective Date and shall apply to the BellSouth territory in the state(s) of Alabama, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina and Tennessee. Notwithstanding any prior agreement of the Parties, the rates, terms and conditions of this Agreement shall not be applied retroactively prior to the Effective Date.

2.2 The Parties agree that by no earlier than two hundred seventy (270) days and no later than one hundred and eighty (180) days prior to the expiration of this Agreement, they shall commence negotiations for a new agreement to be effective beginning on the expiration date of this Agreement ("Subsequent Agreement").

2.3 If, within one hundred and thirty-five (135) days of commencing the negotiation referred to in Section 2.2 above, the Parties are unable to negotiate new terms, conditions and prices for a Subsequent Agreement, either Party may petition the Commission to establish appropriate terms, conditions and prices for the Subsequent Agreement pursuant to 47 U.S.C. 252.

2.4 If, as of the expiration of this Agreement, a Subsequent Agreement has not been executed by the Parties, this Agreement shall terminate. Upon termination of this Agreement, BellSouth shall continue to offer services to NOW pursuant to the terms, conditions and rates set forth in BellSouth's then current standard interconnection agreement. In the event that BellSouth's standard interconnection agreement becomes effective as between the Parties, the Parties may continue to negotiate a Subsequent Agreement or arbitrate disputed issues to reach a Subsequent Agreement as set forth in Section 2.3 above, and the terms of such Subsequent Agreement shall be effective as of the effective date as stated in the Subsequent Agreement.

3. Operational Support Systems

NOW shall pay charges for Operational Support Systems (OSS) as set forth in this Agreement in Attachment 1 and/or in Attachments 2, 3 and 5, as applicable.

4. Parity

When NOW purchases Telecommunications Services from BellSouth pursuant to Attachment 1 of this Agreement for the purposes of resale to End Users, such services shall be equal in quality, subject to the same conditions, and provided within the same provisioning time intervals that BellSouth provides to its Affiliates, subsidiaries and End Users. To the extent technically feasible, the quality of a Network Element, as well as the quality of the access to such Network Element provided by BellSouth to NOW shall be at least equal in quality to that which BellSouth provides to itself, its Affiliates or any other Telecommunications carrier. The quality of the interconnection between the network of BellSouth and the network of NOW shall be at a level that is equal to that which BellSouth provides itself, a subsidiary, an Affiliate, or any other party. The interconnection facilities shall be designed to meet the same technical criteria and service standards that are used within BellSouth's network and shall extend to a consideration of service quality as perceived by BellSouth's End Users and service quality as perceived by NOW.

5. White Pages Listings

5.1 BellSouth shall provide NOW and its customers access to white pages directory listings under the following terms:

5.2 Listings. NOW shall provide all new, changed and deleted listings on a timely basis and BellSouth or its agent will include NOW residential and business customer listings in the appropriate White Pages (residential and business) or alphabetical directories in the geographic areas covered by this Interconnection Agreement. Directory listings will make no distinction between NOW and BellSouth subscribers.

5.2.1 Rates. So long as NOW provides subscriber listing information (SLI) to BellSouth in accordance with Section 5.3 below, BellSouth shall provide to NOW one (1) primary White Pages listing per NOW subscriber at no charge other than applicable service order charges as set forth in BellSouth's tariffs.

5.3 Procedures for Submitting NOW SLI are found in The BellSouth Business Rules for Local Ordering.

5.4 NOW authorizes BellSouth to release all NOW SLI provided to BellSouth by NOW to qualifying third parties via either license agreement or BellSouth's Directory Publishers Database Service (DPDS), General Subscriber Services Tariff (GSST), Section A38.2, as the same may be amended from time to time. Such NOW SLI shall be intermingled with BellSouth's own customer listings and listings of any other CLEC that has authorized a similar release of SLI.

5.4.1 No compensation shall be paid to NOW for BellSouth's receipt of NOW SLI, or for the subsequent release to third parties of such SLI. In addition, to the extent BellSouth incurs costs to modify its systems to enable the release of NOW's SLI, or costs on an ongoing basis to administer the release of NOW SLI, NOW shall pay to BellSouth its proportionate share of the reasonable costs associated therewith. At any time that costs may be incurred to administer the release of NOW's SLI, NOW will be notified. If NOW does not wish to pay its proportionate share of these reasonable costs, NOW may instruct BellSouth that it does not wish to release its SLI to independent publishers, and NOW shall amend this Agreement accordingly. NOW will be liable for all costs incurred until the effective date of the amendment.

5.4.2 Neither BellSouth nor any agent shall be liable for the content or accuracy of any SLI provided by NOW under this Agreement. NOW shall indemnify, hold harmless and defend BellSouth and its agents from and against any damages, losses, liabilities, demands, claims, suits, judgments, costs and expenses (including but not limited to reasonable attorneys' fees and expenses) arising from BellSouth's tariff obligations or otherwise and resulting from or arising out of any third party's claim of inaccurate NOW listings or use of the SLI provided pursuant to this Agreement. BellSouth may forward to NOW any complaints received by BellSouth relating to the accuracy or quality of NOW listings.

5.4.3 Listings and subsequent updates will be released consistent with BellSouth system changes and/or update scheduling requirements.

5.5 Unlisted/Non-Published Subscribers. NOW will be required to provide to BellSouth the names, addresses and telephone numbers of all NOW customers who wish to be omitted from directories. Unlisted/Non-Published SLI will be subject to the rates as set forth in BellSouth's General Subscriber Services Tariff.

5.6 Inclusion of NOW End Users in Directory Assistance Database. BellSouth will include and maintain NOW subscriber listings in BellSouth's Directory Assistance databases at no recurring charge and NOW shall provide such Directory Assistance listings to BellSouth at no recurring charge.

5.7 Listing Information Confidentiality. BellSouth will afford NOW's directory listing information the same level of confidentiality that BellSouth affords its own directory listing information.

5.8 Additional and Designer Listings. Additional and designer listings will be offered by BellSouth at tariffed rates as set forth in the General Subscriber Services Tariff.

5.9 Directories. BellSouth or its agent shall make available White Pages directories to NOW subscribers at no charge or as specified in a separate agreement with BellSouth's agent.

6. Court Ordered Requests for Call Detail Records and Other Subscriber Information

6.1 Subpoenas Directed to BellSouth. Where BellSouth provides resold services or local switching for NOW, BellSouth shall respond to subpoenas and court ordered requests delivered directly to BellSouth for the purpose of providing call detail records when the targeted telephone numbers belong to NOW End Users. Billing for such requests will be generated by BellSouth and directed to the law enforcement agency initiating the request. BellSouth shall maintain such information for NOW End Users for the same length of time it maintains such information for its own End Users.

6.2 Subpoenas Directed to NOW. Where BellSouth is providing to NOW Telecommunications Services for resale or providing to NOW the local switching function, then NOW agrees that in those cases where NOW receives subpoenas or court ordered requests regarding targeted telephone numbers belonging to NOW End Users, and where NOW does not have the requested information, NOW will advise the law enforcement agency initiating the request to redirect the subpoena or court ordered request to BellSouth for handling in accordance with 6.1 above.

6.3 In all other instances, where either Party receives a request for information involving the other Party's End User, the Party receiving the request will advise the law enforcement agency initiating the request to redirect such request to the other Party.

7. Liability and Indemnification

7.1 NOW Liability. In the event that NOW consists of two (2) or more separate entities as set forth in this Agreement and/or any Amendments hereto, all such entities shall be jointly and severally liable for the obligations of NOW under this Agreement.

7.2 Liability for Acts or Omissions of Third Parties. BellSouth shall not be liable to NOW for any act or omission of another Telecommunications company providing services to NOW.

7.3 Limitation of Liability

7.3.1 Except for any indemnification obligations of the Parties hereunder, each Party's liability to the other for any loss, cost, claim, injury, liability or expense, including reasonable attorneys' fees relating to or arising out of any negligent act or omission in its performance of this Agreement, whether in contract or in tort, shall be limited to a credit for the actual cost of the services or functions not performed or improperly performed.

7.3.2 Limitations in Tariffs. A Party may, in its sole discretion, provide in its tariffs and contracts with its End Users and third parties that relate to any service, product or function provided or contemplated under this Agreement, that to the maximum extent permitted by Applicable Law, such Party shall not be liable to the End User or third party for (i) any loss relating to or arising out of this Agreement, whether in contract, tort or otherwise, that exceeds the amount such Party would have charged that applicable person for the service, product or function that gave rise to such loss and (ii) consequential damages. To the extent that a Party elects not to place in its tariffs or contracts such limitations of liability, and the other Party incurs a loss as a result thereof, such Party shall 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 limitations of liability that such other Party included in its own tariffs at the time of such loss.

7.3.3 Neither BellSouth nor NOW shall be liable for damages to the other Party's terminal location, equipment or End User premises resulting from the furnishing of a service, including, but not limited to, the installation and removal of equipment or associated wiring, except to the extent caused by a Party's negligence or willful misconduct or by a Party's failure to ground properly a local loop after disconnection.

7.3.4 Under no circumstance shall a Party be responsible or liable for indirect, incidental, or consequential damages, including, but not limited to, economic loss or lost business or profits, damages arising from the use or performance of equipment or software, or the loss of use of software or equipment, or accessories attached thereto, delay, error, or loss of data. In connection with this limitation of liability, each Party recognizes that the other Party may, from time to time, provide advice, make recommendations, or supply other analyses related to the services or facilities described in this Agreement, and, while each Party shall use diligent

efforts in this regard, the Parties acknowledge and agree that this limitation of liability shall apply to provision of such advice, recommendations, and analyses.

7.3.5 To the extent any specific provision of this Agreement purports to impose liability, or limitation of liability, on either Party different from or in conflict with the liability or limitation of liability set forth in this Section, then with respect to any facts or circumstances covered by such specific provisions, the liability or limitation of liability contained in such specific provision shall apply.

7.4 Indemnification for Certain Claims. The Party providing services hereunder, its Affiliates and its parent company, shall be indemnified, defended and held harmless by the Party receiving services hereunder against any claim, loss or damage arising from the receiving Party's use of the services provided under this Agreement pertaining to (1) claims for libel, slander or invasion of privacy arising from the content of the receiving Party's own communications, or (2) any claim, loss or damage claimed by the End User of the Party receiving services arising from such company's use or reliance on the providing Party's services, actions, duties, or obligations arising out of this Agreement.

7.5 Disclaimer. EXCEPT AS SPECIFICALLY PROVIDED TO THE CONTRARY IN THIS AGREEMENT, NEITHER PARTY MAKES ANY REPRESENTATIONS OR WARRANTIES TO THE OTHER PARTY CONCERNING THE SPECIFIC QUALITY OF ANY SERVICES, OR FACILITIES PROVIDED UNDER THIS AGREEMENT. THE PARTIES DISCLAIM, WITHOUT LIMITATION, ANY WARRANTY OR GUARANTEE OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, ARISING FROM COURSE OF PERFORMANCE, COURSE OF DEALING, OR FROM USAGES OF TRADE.

8. Intellectual Property Rights and Indemnification

8.1 No License. No patent, copyright, trademark or other proprietary right is licensed, granted or otherwise transferred by this Agreement. The Parties are strictly prohibited from any use, including but not limited to, in the selling, marketing, promoting or advertising of telecommunications services, of any name, service mark, logo or trademark (collectively, the "Marks") of the Other Party. The Marks include those Marks owned directly by a Party or its Affiliate(s) and those Marks that a Party has a legal and valid license to use. The Parties acknowledge that they are separate and distinct and that each provides a separate and distinct service and agree that neither Party may, expressly or impliedly, state, advertise or market that it is or offers the same service as the Other Party or engage in any other activity that may result in a likelihood of confusion between its own service and the service of the Other Party.

8.2 Ownership of Intellectual Property. Any intellectual property that originates from or is developed by a Party shall remain the exclusive property of that Party. Except for a limited, non-assignable, non-exclusive, non-transferable license to use

patents or copyrights to the extent necessary for the Parties to use any facilities or equipment (including software) or to receive any service solely as provided under this Agreement, no license in patent, copyright, trademark or trade secret, or other proprietary or intellectual property right, now or hereafter owned, controlled or licensable by a Party, is granted to the other Party. Neither shall it be implied nor arise by estoppel. Any trademark, copyright or other proprietary notices appearing in association with the use of any facilities or equipment (including software) shall remain on the documentation, material, product, service, equipment or software. It is the responsibility of each Party to ensure at no additional cost to the other Party that it has obtained any necessary licenses in relation to intellectual property of third Parties used in its network that may be required to enable the other Party to use any facilities or equipment (including software), to receive any service, or to perform its respective obligations under this Agreement.

8.3 Intellectual Property Remedies

8.3.1 Indemnification. The Party providing a service pursuant to this Agreement will defend the Party receiving such service or data provided as a result of such service against claims of infringement arising solely from the use by the receiving Party of such service in the manner contemplated under this Agreement and will indemnify the receiving Party for any damages awarded based solely on such claims in accordance with Section 7 preceding.

8.3.2 Claim of Infringement. In the event that use of any facilities or equipment (including software), becomes, or in the reasonable judgment of the Party who owns the affected network is likely to become, the subject of a claim, action, suit, or proceeding based on intellectual property infringement, then said Party shall promptly and at its sole expense and sole option, but subject to the limitations of liability set forth below:

8.3.2.1 modify or replace the applicable facilities or equipment (including software) while maintaining form and function, or

8.3.2.2 obtain a license sufficient to allow such use to continue.

8.3.2.3 In the event Section 8.3.2.1 or 8.3.2.2 are commercially unreasonable, then said Party may terminate, upon reasonable notice, this contract with respect to use of, or services provided through use of, the affected facilities or equipment (including software), but solely to the extent required to avoid the infringement claim.

8.3.3 Exception to Obligations. Neither Party's obligations under this Section shall apply to the extent the infringement is caused by: (i) modification of the facilities or equipment (including software) by the indemnitee; (ii) use by the indemnitee of the facilities or equipment (including software) in combination with equipment or facilities (including software) not provided or authorized by the indemnitor, provided the facilities or equipment (including software) would not be infringing if used alone; (iii) conformance to specifications of the indemnitee which would

necessarily result in infringement; or (iv) continued use by the indemnitee of the affected facilities or equipment (including software) after being placed on notice to discontinue use as set forth herein.

8.3.4 Exclusive Remedy. The foregoing shall constitute the Parties' sole and exclusive remedies and obligations with respect to a third party claim of intellectual property infringement arising out of the conduct of business under this Agreement.

8.4 Dispute Resolution. Any claim arising under this Section 8 shall be excluded from the dispute resolution procedures set forth in Section 10 and shall be brought in a court of competent jurisdiction.

9. Proprietary and Confidential Information

9.1 Proprietary and Confidential Information. It may be necessary for BellSouth and NOW, each as the "Discloser," to provide to the other Party, as "Recipient," certain proprietary and confidential information (including trade secret information) including but not limited to technical, financial, marketing, staffing and business plans and information, strategic information, proposals, request for proposals, specifications, drawings, maps, prices, costs, costing methodologies, procedures, processes, business systems, software programs, techniques, customer account data, call detail records and like information (collectively the "Information"). All such Information conveyed in writing or other tangible form shall be clearly marked with a confidential or proprietary legend. Information conveyed orally by the Discloser to Recipient shall be designated as proprietary and confidential at the time of such oral conveyance, shall be reduced to writing by the Discloser within forty-five (45) days thereafter, and shall be clearly marked with a confidential or proprietary legend.

9.2 Use and Protection of Information. Recipient agrees to protect such Information of the Discloser provided to Recipient from whatever source from distribution, disclosure or dissemination to anyone except employees of Recipient with a need to know such Information solely in conjunction with Recipient's analysis of the Information and for no other purpose except as authorized herein or as otherwise authorized in writing by the Discloser. Recipient will not make any copies of the Information inspected by it.

9.3 Exceptions. Recipient will not have an obligation to protect any portion of the Information which:

9.3.1 (a) is made publicly available by the Discloser or lawfully by a nonparty to this Agreement; (b) is lawfully obtained by Recipient from any source other than Discloser; (c) is previously known to Recipient without an obligation to keep it confidential; or (d) is released from the terms of this Agreement by Discloser upon written notice to Recipient.

9.4 Recipient agrees to use the Information solely for the purposes of negotiations pursuant to 47 U.S.C. 251 or in performing its obligations under this Agreement

and for no other entity or purpose, except as may be otherwise agreed to in writing by the Parties. Nothing herein shall prohibit Recipient from providing information requested by the FCC or a state regulatory agency with jurisdiction over this matter, or to support a request for arbitration or an allegation of failure to negotiate in good faith.

9.5 Recipient agrees not to publish or use the Information for any advertising, sales or marketing promotions, press releases, or publicity matters that refer either directly or indirectly to the Information or to the Discloser or any of its affiliated companies.

9.6 The disclosure of Information neither grants nor implies any license to the Recipient under any trademark, patent, copyright, application or other intellectual property right that is now or may hereafter be owned by the Discloser.

9.7 Survival of Confidentiality Obligations. The Parties' rights and obligations under this Section 9 shall survive and continue in effect until two (2) years after the expiration or termination date of this Agreement with regard to all Information exchanged during the term of this Agreement. Thereafter, the Parties' rights and obligations hereunder survive and continue in effect with respect to any Information that is a trade secret under applicable law.

10. Resolution of Disputes

Except as otherwise stated in this Agreement, if any dispute arises as to the interpretation of any provision of this Agreement or as to the proper implementation of this Agreement, the aggrieved Party shall have the right to petition the Commission for a resolution of the dispute. However, each Party reserves any rights it may have to seek judicial review of any ruling made by the Commission concerning this Agreement. Additionally, each Party may exercise its lawful right to file an appropriate petition or action in any forum of proper venue and jurisdiction regarding any dispute arising from this Agreement.

11. Taxes

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

11.2 Taxes and Fees Imposed Directly On Either Providing Party or Purchasing Party.

11.2.1 Taxes and fees imposed on the providing Party, which are not permitted or required to be passed on by the providing Party to its customer, shall be borne and paid by the providing Party.

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

11.3 Taxes and Fees Imposed on Purchasing Party But Collected And Remitted By Providing Party.

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

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

11.3.3 If the purchasing Party determines that in its opinion any such taxes or fees are not payable, the providing Party shall not bill such taxes or fees to the purchasing Party if the purchasing Party provides written certification, reasonably satisfactory to the providing Party, stating that it is exempt or otherwise not subject to the tax or fee, setting forth the basis therefor, and satisfying any other requirements under applicable law. If any authority seeks to collect any such tax or fee that the purchasing Party has determined and certified not to be payable, or any such tax or fee that was not billed by the providing Party, the purchasing Party may contest the same in good faith, at its own expense. In any such contest, the purchasing Party shall promptly furnish the providing Party with copies of all filings in any proceeding, protest, or legal challenge, all rulings issued in connection therewith, and all correspondence between the purchasing Party and the taxing authority.

11.3.4 In the event that all or any portion of an amount sought to be collected must be paid in order to contest the imposition of any such tax or fee, or to avoid the existence of a lien on the assets of the providing Party during the pendency of such contest, the purchasing Party shall be responsible for such payment and shall be entitled to the benefit of any refund or recovery.

11.3.5 If it is ultimately determined that any additional amount of such a tax or fee is due to the imposing authority, the purchasing Party shall pay such additional amount, including any interest and penalties thereon.

11.3.6 Notwithstanding any provision to the contrary, the purchasing Party shall protect, indemnify and hold harmless (and defend at the purchasing Party's expense) the providing Party from and against any such tax or fee, interest or penalties thereon, or other charges or payable expenses (including reasonable attorney fees) with

respect thereto, which are incurred by the providing Party in connection with any claim for or contest of any such tax or fee.

11.3.7 Each Party shall notify the other Party in writing of any assessment, proposed assessment or other claim for any additional amount of such a tax or fee by a taxing authority; such notice to be provided, if possible, at least ten (10) days prior to the date by which a response, protest or other appeal must be filed, but in no event later than thirty (30) days after receipt of such assessment, proposed assessment or claim.

11.4 Taxes and Fees Imposed on Providing Party But Passed On To Purchasing Party.

11.4.1 Taxes and fees imposed on the providing Party, which are permitted or required to be passed on by the providing Party to its customer, shall be borne by the purchasing Party.

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

11.4.3 If the purchasing Party disagrees with the providing Party's determination as to the application or basis for any such tax or fee, the Parties shall consult with respect to the imposition and billing of such tax or fee. Notwithstanding the foregoing, the providing Party shall retain ultimate responsibility for determining whether and to what extent any such taxes or fees are applicable, and the purchasing Party shall abide by such determination and pay such taxes or fees to the providing Party. The providing Party shall further retain ultimate responsibility for determining whether and how to contest the imposition of such taxes and fees; provided, however, that any such contest undertaken at the request of the purchasing Party shall be at the purchasing Party's expense.

11.4.4 In the event that all or any portion of an amount sought to be collected must be paid in order to contest the imposition of any such tax or fee, or to avoid the existence of a lien on the assets of the providing Party during the pendency of such contest, the purchasing Party shall be responsible for such payment and shall be entitled to the benefit of any refund or recovery.

11.4.5 If it is ultimately determined that any additional amount of such a tax or fee is due to the imposing authority, the purchasing Party shall pay such additional amount, including any interest and penalties thereon.

11.4.6 Notwithstanding any provision to the contrary, the purchasing Party shall protect, indemnify and hold harmless (and defend at the purchasing Party's expense) the providing Party from and against any such tax or fee, interest or penalties thereon, or other reasonable charges or payable expenses (including reasonable attorneys'

fees) with respect thereto, which are incurred by the providing Party in connection with any claim for or contest of any such tax or fee.

11.4.7 Each Party shall notify the other Party in writing of any assessment, proposed assessment or other claim for any additional amount of such a tax or fee by a taxing authority; such notice to be provided, if possible, at least ten (10) days prior to the date by which a response, protest or other appeal must be filed, but in no event later than thirty (30) days after receipt of such assessment, proposed assessment or claim.

11.5 Mutual Cooperation. In any contest of a tax or fee by one Party, the other Party shall cooperate fully by providing records, testimony and such additional information or assistance as may reasonably be necessary to pursue the contest. Further, the other Party shall be reimbursed for any reasonable and necessary out-of-pocket copying and travel expenses incurred in assisting in such contest.

12. Force Majeure

In the event performance of this Agreement, or any obligation hereunder, is either directly or indirectly prevented, restricted, or interfered with by reason of fire, flood, earthquake or like acts of God, wars, revolution, civil commotion, explosion, acts of public enemy, embargo, acts of the government in its sovereign capacity, labor difficulties, including without limitation, strikes, slowdowns, picketing, or boycotts, unavailability of equipment from vendor, changes requested by NOW, or any other circumstances beyond the reasonable control and without the fault or negligence of the Party affected, the Party affected, upon giving prompt notice to the other Party, shall be excused from such performance on a day-to-day basis to the extent of such prevention, restriction, or interference (and the other Party shall likewise be excused from performance of its obligations on a day-to-day basis until the delay, restriction or interference has ceased); provided, however, that the Party so affected shall use diligent efforts to avoid or remove such causes of non-performance and both Parties shall proceed whenever such causes are removed or cease.

13. Adoption of Agreements

BellSouth shall make available, pursuant to 47 USC § 252 and the FCC rules and regulations regarding such availability, to NOW any interconnection, service, or network element provided under any other agreement filed and approved pursuant to 47 USC § 252, provided a minimum of six months remains on the term of such agreement. The Parties shall adopt all rates, terms and conditions concerning such other interconnection, service or network element and any other rates, terms and conditions that are legitimately related to or were negotiated in exchange for or in conjunction with the interconnection, service or network element being adopted. The adopted interconnection, service, or network element and agreement shall apply to the same states as such other agreement. The term of the adopted agreement or provisions shall expire on the same date as set forth in the agreement that was adopted.

14. Modification of Agreement

14.1 If NOW changes its name or makes changes to its company structure or identity due to a merger, acquisition, transfer or any other reason, it is the responsibility of NOW to notify BellSouth of said change and request that an amendment to this Agreement, if necessary, be executed to reflect said change.

14.2 No modification, amendment, supplement to, or waiver of the Agreement or any of its provisions shall be effective and binding upon the Parties unless it is made in writing and duly signed by the Parties.

14.3 In the event that any effective legislative, regulatory, judicial or other legal action materially affects any material terms of this Agreement, or the ability of NOW or BellSouth to perform any material terms of this Agreement, NOW or BellSouth may, on thirty (30) days' written notice, require that such terms be renegotiated, and the Parties shall renegotiate in good faith such mutually acceptable new terms as may be required. In the event that such new terms are not renegotiated within ninety (90) days after such notice, the Dispute shall be referred to the Dispute Resolution procedure set forth in this Agreement.

15. Non-waiver of Legal Rights

Execution of this Agreement by either Party does not confirm or imply that the executing Party agrees with any decision(s) issued pursuant to the Telecommunications Act of 1996 and the consequences of those decisions on specific language in this Agreement. Neither Party waives its rights to appeal or otherwise challenge any such decision(s) and each Party reserves all of its rights to pursue any and all legal and/or equitable remedies, including appeals of any such decision(s). Additionally, each Party may exercise its lawful right to file an appropriate petition or action in any forum of proper venue and jurisdiction regarding any dispute arising from this Agreement.

16. Indivisibility

The Parties intend that this Agreement be indivisible and nonseverable, and each of the Parties acknowledges that it has assented to all of the covenants and promises in this Agreement as a single whole and that all of such covenants and promises, taken as a whole, constitute the essence of the contract. Without limiting the generality of the foregoing, each of the Parties acknowledges that any provision by BellSouth of collocation space under this Agreement is solely for the purpose of facilitating the provision of other services under this Agreement and that neither Party would have contracted with respect to the provisioning of collocation space under this Agreement if the covenants and promises of the other Party with respect to the other services provided under this Agreement had not been made. The Parties further acknowledge that this Agreement is intended to constitute a single transaction, that the obligations of the Parties under this Agreement are interdependent, and that payment obligations under this Agreement are intended to be recouped against other payment obligations under this Agreement.

17. Waivers

A failure or delay of either Party to enforce any of the provisions hereof, to exercise any option which is herein provided, or to require performance of any of the provisions hereof shall in no way be construed to be a waiver of such provisions or options, and each Party, notwithstanding such failure, shall have the right thereafter to insist upon the performance of any and all of the provisions of this Agreement.

18. Governing Law

Where applicable, this Agreement shall be governed by and construed in accordance with federal and state substantive telecommunications law, including rules and regulations of the FCC and appropriate Commission. In all other respects, this Agreement shall be governed by and construed and enforced in accordance with the laws of the State of Georgia without regard to its conflict of laws principles.

19. Assignments

Any assignment by either Party to any non-affiliated entity of any right, obligation or duty, or of any other interest hereunder, in whole or in part, without the prior written consent of the other Party shall be void. A Party may assign this Agreement in its entirety to an Affiliate of the Party without the consent of the other Party; provided, however, that the assigning Party shall notify the other Party in writing of such assignment thirty (30) days prior to the Effective Date thereof and, provided further, if the assignee is an assignee of NOW, the assignee must provide evidence of Commission CLEC certification. The Parties shall amend this Agreement to reflect such assignments and shall work cooperatively to implement any changes required due to such assignment. All obligations and duties of any Party under this Agreement shall be binding on all successors in interest and assigns of such Party. No assignment or delegation hereof shall relieve the assignor of its obligations under this Agreement in the event that the assignee fails to perform such obligations. Notwithstanding anything to the contrary in this Section, NOW shall not assign this Agreement to any Affiliate or non-affiliated entity unless either (1) NOW pays all bills, past due and current, under this Agreement, or (2) NOW's assignee expressly assumes liability for payment of such bills.

20. Notices

20.1 Every notice, consent, approval, or other communications required or contemplated by this Agreement shall be in writing and shall be delivered by hand, by overnight courier or by US mail postage prepaid, address to:

BellSouth Telecommunications, Inc.

BellSouth Local Contract Manager
600 North 19th Street, 8th floor
Birmingham, Alabama 35203

and

ICS Attorney
Suite 4300
675 W. Peachtree St.
Atlanta, GA 30375

NOW Communications, Inc.

Attn: Larry W. Seab, CEO and President
2000 Newpoint Place, N.W., Suite 900
Lawrenceville, GA 30043

and

NOW Communications, Inc.
Regulatory Offices
R. Scott Seab, Esq.
Vice President – Regulatory Affairs
Colorado Springs, CO 80903

or at such other address as the intended recipient previously shall have designated by written notice to the other Party.

20.2 Unless otherwise provided in this Agreement, notice by mail shall be effective on the date it is officially recorded as delivered by return receipt or equivalent, and in the absence of such record of delivery, it shall be presumed to have been delivered the fifth day, or next business day after the fifth day, after it was deposited in the mails.

20.3 Notwithstanding the foregoing, BellSouth may provide NOW notice via Internet posting of price changes and changes to the terms and conditions of services available for resale per Commission Orders. BellSouth will post changes to business processes and policies, notices of new service offerings, and changes to service offerings not requiring an amendment to this Agreement, notices required to be posted to BellSouth's website, and any other information of general applicability to CLECs.

21. Arm's Length Negotiations

The parties to this Agreement are unrelated to each other.

22. Headings of No Force or Effect

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

23. Multiple Counterparts

This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, but all of which shall together constitute but one and the same document.

24. Filing of Agreement

Upon execution of this Agreement it shall be filed with the appropriate state regulatory agency pursuant to the requirements of Section 252 of the Act, and the Parties shall share equally any filing fees therefor. If the regulatory agency imposes any filing or public interest notice fees regarding the filing or approval of the Agreement, NOW shall be responsible for publishing the required notice and the publication and/or notice costs shall be borne by NOW. Notwithstanding the foregoing, this Agreement shall not be submitted for approval by the appropriate state regulatory agency unless and until such time as NOW is duly certified as a local exchange carrier in such state, except as otherwise required by a Commission.

25. Compliance with Applicable Law

Each Party shall comply at its own expense with Applicable Law.

26. Necessary Approvals

Each Party shall be responsible for obtaining and keeping in effect all approvals from, and rights granted by, governmental authorities, building and property owners, other carriers, and any other persons that may be required in connection with the performance of its obligations under this Agreement. Each Party shall reasonably cooperate with the other Party in obtaining and maintaining any required approvals and rights for which such Party is responsible.

27. Good Faith Performance

Each Party shall act in good faith in its performance under this Agreement and, in each case in which a Party's consent or agreement is required or requested hereunder, such Party shall not unreasonably withhold or delay such consent or agreement.

28. Nonexclusive Dealings

This Agreement does not prevent either Party from providing or purchasing services to or from any other person nor, except as provided in Section 252(i) of the Act, does it obligate either Party to provide or purchase any services (except insofar as the Parties are obligated to provide access to Interconnection, services and Network Elements to NOW as a requesting carrier under the Act).

29. Rate True-Up

29.1 This section applies to Network Interconnection and/or Unbundled Network Elements and Other Services rates that are expressly subject to true-up under this Agreement.

29.2 The designated true-up rates shall be trued-up, either up or down, based on final prices determined either by further agreement between the Parties, or by a final order (including any appeals) of the Commission. The Parties shall implement the true-up by comparing the actual volumes and demand for each item, together with the designated true-up rates for each item, with the final prices determined for each item. Each Party shall keep its own records upon which the true-up can be based, and any final payment from one Party to the other shall be in an amount agreed upon by the Parties based on such records. In the event of any disagreement as between the records or the Parties regarding the amount of such true-up, the Parties shall submit the matter to the Dispute Resolution process in accordance with the provisions of Section 10 of the General Terms and Conditions of this Agreement.

29.3 An effective order of the Commission that forms the basis of a true-up shall be based upon cost studies submitted by either or both Parties to the Commission and shall be binding upon BellSouth and NOW specifically or upon all carriers generally, such as a generic cost proceeding.

30. Survival

The Parties' obligations under this Agreement which by their nature are intended to continue beyond the termination or expiration of this Agreement shall survive the termination or expiration of this Agreement.

31. Entire Agreement

31.1 This Agreement means the General Terms and Conditions, the Attachments identified in Section 31.2 below, and all documents identified therein, as such may be amended from time to time and which are incorporated herein by reference, all of which, when taken together, are intended to constitute one indivisible agreement. This Agreement sets forth the entire understanding and supersedes prior agreements between the Parties relating to the subject matter contained in this Agreement and merges all prior discussions between them. Any orders placed under prior agreements between the Parties shall be governed by the terms of this Agreement and NOW acknowledges and agrees that any and all amounts and

obligations owed for services provisioned or orders placed under prior agreements between the Parties, related to the subject matter hereof, shall be due and owing under this Agreement and be governed by the terms and conditions of this Agreement as if such services or orders were provisioned or placed under this Agreement. Neither Party shall be bound by any definition, condition, provision, representation, warranty, covenant or promise other than as expressly stated in this Agreement or as is contemporaneously or subsequently set forth in writing and executed by a duly authorized officer or representative of the Party to be bound thereby.

31.2 This Agreement includes Attachments with provisions for the following:

Resale
Network Elements and Other Services
Network Interconnection
Collocation
Access to Numbers and Number Portability
Pre-Ordering, Ordering, Provisioning, Maintenance and Repair
Billing
Rights-of-Way, Conduits and Pole Attachments
Performance Measurements
BellSouth Disaster Recovery Plan
Bona Fide Request/New Business Request Process

31.3 The following services are included as options for purchase by NOW pursuant to the terms and conditions set forth in this Agreement. NOW may elect to purchase said services by written request to its Local Contract Manager if applicable:

Optional Daily Usage File (ODUF)
Enhanced Optional Daily Usage File (EODUF)
Access Daily Usage File (ADUF)
Line Information Database (LIDB) Storage
Centralized Message Distribution Service (CMDS)
Calling Name (CNAM)
LNP Data Base Query Service

IN WITNESS WHEREOF, the Parties have executed this Agreement the day and year written below.

BellSouth Telecommunications, Inc.	NOW Communications, Inc.
By: Original Signature on File	By: Original Signature on File
Name: Elizabeth R. A. Shiroishi	Name: Larry W. Seab
Title: Assistant Director	Title: CEO and President
Date: 1/14/03	Date: 1/7/03

EXHIBIT "B"

Document No. 1
To Exhibit "B"

UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

2001 SEP -7 P 4:20

In re:	Case No. 01-42079-399
OMNIPLEX COMMUNICATIONS GROUP, LLC	Chapter 11
Debtor.	**MOTION FOR ORDER DEEMING INTERCONNECTION AGREEMENTS REJECTED OR, ALTERNATIVELY, FOR RELIEF FROM THE AUTOMATIC STAY**
OPERATING SUBSIDIARIES OF VERIZON COMMUNICATIONS INC. f/k/a BELL ATLANTIC CORPORATION and GTE CORPORATION	**Hearing Date: October 9, 2001**
	Hearing Time: 9:00 a.m.
	Honorable Barry S. Schermer
Movants,	Darryl S. Laddin Arnall Golden Gregory LLP 2800 One Atlantic Center 1201 West Peachtree Street Atlanta, GA 30309-3400
vs.	
OMNIPLEX COMMUNICATIONS GROUP, LLC,	and
Respondent	John J. Hall Lewis, Rice & Fingersh, L.C. 500 N. Broadway, Suite 2000 St. Louis, Missouri 63102 (314) 444-7600
	Attorneys for the operating subsidiaries of Verizon Communications Inc. f/k/a Bell Atlantic Corporation and GTE Corporation

COME NOW the operating subsidiaries of Verizon Communications Inc. f/k/a Bell Atlantic Corporation and GTE Corporation (such subsidiaries collectively, "Verizon" or the

"Verizon Operating Telephone Companies") pursuant to 11 U.S.C. §§ 365 and 362, and for their Motion for Order Deeming Interconnection Agreements Rejected or, Alternatively, for Relief From the Automatic Stay, state as follows:

INTRODUCTION

1. On February 28, 2001 (the "Petition Date"), the Debtor filed its voluntary petition for Relief under Chapter 11 of the United States Bankruptcy Code.

2. From the Petition Date through approximately August 27, 2001, the Debtor continued to operate its business as a debtor in possession under 11 U.S.C. §§ 1107 and 1108. On information and belief, after August 27, 2001, the Debtor ceased operations and sold its assets to Ciera Network Systems, Inc. ("Ciera").

3. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §157(b)(1) and (b)(2), 11 U.S.C. §362, and Federal Rules of Bankruptcy Procedure 4001 and 9014. This is a "core" proceeding under 28 U.S.C. §157(b)(2)(G) and a "contested matter" under Bankruptcy Rules 4001 and 9014.

4. Venue is proper in this Court pursuant to 28 U.S.C. §1409.

FACTUAL BACKGROUND

5. The Telecommunications Act of 1996, 47 U.S.C. § 151 et. seq., restructured local telephone markets in order to make them more competitive. To do this, the Act required incumbent local exchange carriers ("ILECs"), such as Verizon, to make their networks available to competitors on a wholesale basis so that the competitors could serve end user customers on a retail basis. This was accomplished, in part, by requiring ILECs to enter into interconnection agreements with competitors. In order for competitive local exchange carriers ("CLECs") like the Debtor to provide telecommunications services to their customers, they will enter into

interconnection agreements with the applicable incumbent carrier, e.g., Verizon, in each state in which the Debtors operate. The debtors have executed 13 such interconnection agreements with Verizon (the "Verizon Agreements").[1]

6. Without the Verizon services and facilities provided to the Debtor under the Verizon Agreements, the Debtor was unable to continue to provide its service to its end users in the states governed by the Verizon Agreements and no purchaser could acquire the Debtor's assets as a going concern in the local markets served by Verizon. Despite the critical nature of the Verizon Agreements to the Debtor's business and to any purchaser, the Debtor sought to sell substantially all of its assets, including its rights under the Verizon Agreements, to Ciera pursuant to that certain Motion for Approval of Asset Purchase Agreement and Authority to (1) Sell Substantially All Its Assets Free and Clear of all Liens, Claims and Encumbrances, (2) Assume and Assign Certain Executory Contracts and Unexplained Leases, and (3) Establish Cure Amounts ("Sale Motion") without complying with the assumption and assignment requirements of section 365 of the Bankruptcy Code.

7. On or about August 9, 2001, Verizon filed its Limited Objection to the Sale Motion, whereby Verizon sought to ensure that any use of the Verizon Agreements by Ciera complied with the requirements of section 365 of the Bankruptcy Code. In the event that it was determined that the Debtor was not seeking an assumption and assignment of its contracts with Verizon, then Verizon also requested that the Court deem the contracts to be rejected as of the date of the hearing on the Sale Motion and allow Verizon to terminate all services being provided pursuant to such contracts.

[1] Verizon and Omniplex have executed interconnection agreements in Missouri, Ohio, Wisconsin, California, Illinois, Kentucky, Michigan, Pennsylvania, Texas, Virginia, Maryland, New Jersey, and the District of Columbia.

8. On August 27, 2001, following a hearing on August 23, 2001 (the "Hearing"), this Court entered its Order ("Order") conditionally approving the Sale Motion.

9. At the Hearing, this Court made clear the Court's intent and understanding that any approval of the Sale Motion would be subject to the right of Verizon to exercise its rights under the Verizon Agreements, including the right to terminate services upon the closing, pursuant to Article III, Paragraph 4 of the standard Verizon Agreement[2].

10. Despite the Court's understanding with respect to Verizon's absolute right to terminate services under the Verizon Agreements, Paragraph 9 of the Order provides that Verizon may terminate such services only "upon further order of this Court."

11. By separate motion, Verizon is seeking to amend the Order to reflect the Court's understanding regarding termination of the Verizon Agreements.

RELIEF REQUESTED

12. Verizon brings this Motion, at the Court's request, to request again the relief it sought in its Limited Objection. Specifically, because the Debtor ceased to exist as a going concern upon closing of its sale to Ciera and the Verizon Agreements were not assumed and assigned to Ciera, the Debtor is no longer able to perform under the Verizon Agreements and has no need for the Verizon Agreements. Consequently, the Verizon Agreements should be deemed

---

[2] That paragraph reads as follows:

> 4. Assignment
>
> Any assignment by either Party of any right, obligation, or duty, in whole or in part, or of any interest, without the written consent of the other Party shall be void, except that either Party may assign all of its rights, and delegate its obligations, liabilities and duties under this Agreement, either in whole or in part, to any entity that is, or that was immediately preceding such assignment, a Subsidiary or Affiliate of that Party without consent, but with written notification. The effectiveness of an assignment shall be conditioned upon the assignee's written assumption of the rights, obligations, and duties of the assigning Party.

rejected and terminated as a matter of law and Verizon should be permitted to immediately terminate all services provided under the Verizon Agreements. Alternatively, Verizon should be permitted to exercise all rights and remedies under applicable law and under the Verizon Agreements, including the right to terminate services, as contemplated by the Court at the August 23 hearing.

13. Cause exists to lift the stay with respect to Verizon, as this will allow Verizon to realize the benefit of its bargain with the Debtor, as explicitly set forth in the Verizon Agreements. Moreover, in the absence of any attempt by the Debtor to assume and assign the Verizon Agreements under 11 U.S.C. § 365 and in light of the sale of substantially all of the Debtor's assets, the Verizon Agreements are of no benefit to the Debtor's estate and no grounds exist for not lifting the stay as requested.

14. By this Motion, Verizon also seeks clarification, in conjunction with its separate Motion to reconsider the Order, that no stay, whether under 11 U.S.C. § 362, § 105 or any order of this Court, applies to any non-debtor entity. This clarification is sought in light of (a) the Debtor's request in its Sale Motion to essentially extend the protections of the stay to Ciera, and (b) the Order as currently written that appears to extend a stay to non-debtor Ciera. Under § 362, the automatic stay applies only to the Debtor, the Debtor's assets and property of the estate. In re Veeco Investment Co, L.P., 157 B.R. 452, 454 (Bankr. E.D. Mo. 1993) (Schermer, J.); In re Veliotis, 79 B.R. 846, 848 (Bankr. E.D. Mo. 1987); see also Croyden Assoc. v. Alleco, Inc., 969 F.2d 675, 677 (8th Cir. 1992). Only in "unusual circumstances" may the stay be extended to a non-debtor. Id. "Unusual circumstances" exist only when there is such an identity of interest between the Debtor and the non-debtor that the non-debtor entity is the real party in interest whose interests must be protected. See id. In the instant case, upon closing of the sale, the

Debtor will have no employees or business remaining, and the assets sold will become property of non-debtor Ciera. The Debtor and Ciera are not so "inexorably intertwoven" so as to necessitate the extension of the stay to Ciera. See Veeco, 157 B.R. at 455. Based on the evidence at the August 23 hearing, the Debtor and Ciera purport to have negotiated at arms-length and are not insiders of each other. Thus, there are no grounds for, and there would be no benefit to the Debtor's estate upon, extending the automatic stay to Ciera by preventing Verizon from exercising its rights under the Verizon Agreements.

15. Likewise, no reason exists for an "equitable stay" in favor of Ciera under § 105. Courts that have employed § 105 to stay certain actions against a non-debtor in connection with a Chapter 11 case have recognized that such a stay might be appropriate in the context of a *reorganization* case, where such a stay was determined to be essential to the rehabilitation of the debtor. See Veliotis, 79 B.R. at 849 (denying request for equitable injunction in a liquidation case). The instant case is a liquidating case, and any stay against Verizon benefits only Ciera, not the Debtor. Therefore, a stay pursuant to §105 would be inappropriate. See Veeco, 157 B.R. at 455 (denying request for application of stay under §§ 362 and 105 to prevent action against a non-debtor, even where the non-debtor was a guarantor of debtor and it was alleged that non-debtor's contribution to the Chapter 11 estate was essential to the Debtor's plan and estate).

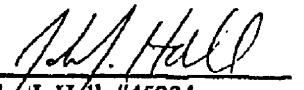
16. For the foregoing reasons, (i) the Verizon Agreements should be deemed rejected and terminated as a matter of law and Verizon should be permitted to immediately terminate all services provided under the Verizon Agreements, and (ii) it should be clarified that no stay applies to any non-debtor entity such as Ciera, or, alternatively, (iii) the automatic stay should be lifted pursuant to 11 U.S.C. § 362(d)(1) for cause to allow Verizon to exercise its rights against the Debtor, Ciera or any other party under the Verizon Agreements.

WHEREFORE, Verizon respectfully requests that this Court enter its Order granting the foregoing relief and granting such other and further relief as this Court deems just and proper.

Dated: September 7, 2001.

Respectfully submitted,

LEWIS, RICE & FINGERSH, L.C.



John J. Hall, #45224
500 N. Broadway, Suite 2000
St. Louis, MO 63102
(314) 444-7635

-and-

ARNALL GOLDEN GREGORY LLP
Darryl S. Laddin
Georgia Bar No. 460793
Felton E. Parrish
Georgia Bar No. 564910

2800 One Atlantic Center
1201 West Peachtree Street
Atlanta, GA 30309-3400
(404) 873-8500

Attorneys for Verizon Communications Inc. f/k/a Bell Atlantic Corporation and GTE Corporation

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing was mailed first-class, postage prepaid this 7th day of September 2001, to the following:

Scott Greenberg
Sandberg, Phoenix & von Gontard
One City Centre, 15th Floor
St. Louis, Mo. 63101

Trent Rosenthal
Boyar & Miller
4265 San Felipe, Suite 1200
Houston, Texas 77017

Robert Eggmann
231 S. Bemiston Avenue, Suite 1220
St. Louis, Mo. 63105

E. Rebecca Case
7733 Forsyth, Suite 500
St. Louis, Mo. 63105

Karen Fries
Bryan Cave, LLP
211 N. Broadway, Ste. 3600
St. Louis, MO 63102

Francis X. Buckley
Thompson Coburn, LLC
One Mercantile Center
St. Louis, MO 63101

John J. Hall

Document No. 2
To Exhibit "B"

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

In Re:	)	**Case No. 01-42079-399**
	)	
OMNIPLEX COMMUNICATIONS GROUP, LLC	)	**Chapter 11**
	)	
	)	
Debtor.	)	
	)	

CIERA NETWORK SYSTEMS, INC.'S RESPONSE TO MOTION FOR ORDER DEEMING INTERCONNECTION AGREEMENTS REJECTED OR, ALTERNATIVELY, FOR RELIEF FROM THE AUTOMATIC STAY

Ciera Network Systems, Inc. ("Ciera"), successor in interest by assignment to CCC GlobalCom Communications Corporation, and Buyer under that certain Asset Purchase Agreement dated July 13, 2001, as amended (the "Purchase Agreement"), hereby files this its Response (the "Response") to the Motion of the Operating Subsidiaries of Verizon Communications Inc. for Order Deeming Interconnection Agreements Rejected or, Alternatively, for Relief From the Automatic Stay (the "Motion"), and, in support thereof, states:

GENERAL RESPONSE

1. Ciera admits the allegations in paragraph 1.

2. Ciera admits that following the Petition Date, the Debtor has been operating as a debtor in possession under 11 U.S.C. §§1107 and 1108, but denies that the Debtor ceased operations after August 27, 2001. The Debtor admits that the Debtor has sold substantially all of its assets to Ciera.

3. Ciera admits the allegations in paragraph 3.

158

4. Ciera admits the allegations in paragraph 4.

5. Ciera admits the allegations contained in the last sentence of paragraph 5. Otherwise, Ciera lacks information sufficient to admit or deny the remaining allegations in paragraph 5 as such allegations require legal conclusions, and therefore denies such allegations.

6. Ciera denies the allegations in paragraph 6.

7. With respect to the allegations in paragraph 7, Ciera states that the Limited Objection to the Sale Motion[1] filed by Verizon speaks for itself.

8. Ciera admits the allegations in paragraph 8.

9. Ciera denies the allegations in paragraph 9. The Court's intent is reflected in the Sale Order[2].

10. With respect to the allegations in paragraph 10, Ciera admits that paragraph 9 of the Sale Order provides that Verizon may terminate services under the Verizon Agreements (as defined in the Motion) only "upon further order of the Court," and denies the remaining allegations in paragraph 10.

11. With respect to the allegations in paragraph 11, Ciera admits that Verizon has filed a motion seeking certain relief related to the Sale Order, but denies the remaining allegations in paragraph 11. Ciera hereby adopts and incorporates herein by reference its Response to Verizon's Motion to Reconsider the Sale Order filed by Ciera on or about September 12, 2001 (the "Reconsideration Response").

---

[1] Sale Motion refers to that certain Motion for Approval of Asset Purchase Agreement and Authority to (1) Sell Substantially All Its Assets Free and Clear of All Liens, Claims and Encumbrances, (2) Assume and Assign Certain Executory Contracts and Unexpired Leases, and (3) Establish Cure Amounts.

[2] Sale Order refers to the Order Approving Asset Purchase Agreement and Authorizing Debtor to (1) Sell Substantially

12. With respect to the allegations in paragraph 12, Ciera admits that the sale of assets from the Debtor to Ciera has closed, but denies the remaining allegations in paragraph 12.

13. Ciera denies the allegations in paragraph 13.

14. Paragraphs 14 through 16 contain requests for relief and legal arguments to which Ciera is neither required to admit or deny; but Ciera nonetheless denies such allegations.

RELEVANT BACKGROUND

15. On August 27, 2001, this Court entered the Sale Order approving the consummation by the Debtor of the Purchase Agreement and certain related transactions and agreements, including, without limitation, a Services Agreement between Ciera and the Debtor executed on or about September 11, 2001 ("Services Agreement").

16. The Purchase Agreement provides, among other things, for the sale of substantially all of the assets and business of the Debtor to Ciera, and the assumption and assignment of only those certain executory contracts and unexpired leases specifically listed in Schedule 1 attached to the Purchase Agreement. Neither the Purchase Agreement nor the Sale Motion filed by the Debtor requesting approval of the Purchase Agreement sought to assume and assign to Ciera any interconnection agreements by and between the Debtor and any incumbent local exchange carriers ("ILECs"), including Verizon.

17. To the contrary, the intent of the Debtor and Ciera and the bargain struck by such parties is for the Debtor to continue to operate for a certain period of time following the closing of the Purchase Agreement in order for Ciera to, in accordance with applicable regulatory rules and

---

all Its Assets Free and Clear of All Liens, Claims and Encumbrances, (2) Assume and Assign Certain Executory Contracts and Unexpired Leases, and (3) Establish Cure Amounts.

regulations, re-provision the Debtor's customers to Ciera's existing or newly acquired interconnection agreements.

18. To accomplish this end, Ciera and the Debtor entered into the Services Agreement. The Services Agreement provides, among other things, that Ciera will pay the cost, charges and expenses that are incurred following the closing of the sale to Ciera under the interconnection agreements of the Debtor listed in an exhibit to the Services Agreement, including the Verizon Agreements.

19. The Services Agreement and the continuation of the Debtor's interconnection agreements is probably the most integral element of the bargain struck by the Debtor and Ciera, because, without the continuation of service to the Debtor's customers under the Debtor's interconnection agreements for the period stated in the Services Agreement, the business purchased by Ciera from the Debtor will become something less than what the Debtor intended to sell to Ciera and what Ciera intended to purchase for the approximate $8.125 million purchase price.

RESPONSE TO ARGUMENTS

20. In its Motion, Verizon requests that the Court deem the Verizon Agreements rejected because, as of the closing of the Purchase Agreement, the Debtor ceased to exist and is no longer able to perform under the Verizon Agreements. This is just not the case. As stated above, the Purchase Agreement and the Services Agreement specifically contemplate, among other things, (i) the continued existence of the Debtor for at least the period of time stated in the Services Agreements, (ii) the continued employment of certain employees of the Debtor by the Debtor (the cost and expenses associated therewith -- post-closing only - to be paid by Ciera), and (iii) the

continued provision of telecommunication services to the Debtor's customers through certain of the Debtor's interconnection agreements (again, the cost, charges and expenses associated therewith – post-closing only - to be paid by Ciera). Upon information and belief, near the time of termination of the Services Agreement, the Debtor will file a liquidating plan of reorganization through which it plans to liquidate any remaining assets and dissolve as an entity. Accordingly, the Debtor has not ceased operations, the Debtor is continuing to provide telecommunication services in accordance with the Services Agreement and, consequently, there is no justification to deem the Verizon Agreements rejected.

21. Verizon next argues that the specific terms of the Verizon Agreements grant it the right to terminate such agreements. In this regard, Verizon argues that the Verizon Agreements prohibit the assignment of such agreements to a third party without the prior written consent of Verizon and, since Verizon has not consented to any assignment by the Debtor to Ciera, Verizon can deem the agreements void. Again, Verizon misses the mark. As detailed above, the Debtor has not sought to assign the Verizon Agreements to Ciera. To the contrary, the Purchase Agreement and the Services Agreement contemplate that the Debtor will continue to provide services to its customers under the Verizon Agreements and that Verizon will be paid in accordance with the terms of the Verizon Agreements for charges incurred thereunder following the closing of the Purchase Agreement. The assignment provisions in the Verizon Agreements are not applicable and do not provide any justification for the deemed rejection of the Verizon Agreements at this time.

22. Since there is no justification for an immediate deemed rejection of the Verizon

Agreements, Verizon must therefore (although not specifically requested in the Motion) be requesting that the Court set a specific time period within which the Debtor must decide whether to assume or reject the Verizon Agreements.

23. The Bankruptcy Code is clear that a Debtor has until the confirmation of a plan to reject or assume an executory contract, unless the Court otherwise provides. 11 U.S.C. §365(d)(2); *Bank of Honolulu v. Anderson (In re Anderson)*, 36 B.R. 120, 125 (Bankr. D. Hawaii 1983). While a court may not order a debtor to either assume or reject an unexpired lease or executory contract (See e.g., *In re GHR Energy Corp.*, 41 B.R. 668, 670 (Bankr. D. Mass. 1984); *In Re Will*, 33 B.R. 843 (Bankr. M.D. Fla. 1983)), it may, in its discretion, fix a specific period of time for assumption or rejection by the debtor (See e.g., *Hiser v. Blue Cross of Greater Philadelphia (In re St. Mary Hospital)*, 89 B.R. 503, 513 (Bankr. E.D. Pa. 1988); *GHR Energy Corp.*, 41 B.R. at 670; *In re The Lionel Corporation*, 23 B.R. 224, 225 (Bankr. S.D. N.Y. 1982)); provided that the "specific period of time" under Section 365(d)(2) is a "reasonable" amount of time (See e.g., *Lionel*, 23 B.R. at 225; *Philadelphia Company v. Dibble*, 312 U.S. 168, 174 (1941)).

24. To determine what is a reasonable amount of time, courts have considered the following factors:

(1) the nature of the interests at stake,

(2) the balance of hurt to the litigants,

(3) the good to be achieved, and

(4) whether the action to be taken is so in derogation of Congress' scheme that the Court may be said to be arbitrary.

St. Mary Hospital, 89 B.R. at 513; *Lionel*, 23 B.R. at 225; *Matter of Midtown Skating Corp.*, 3 B.R. 194, 198 (Bankr. S.D. N.Y. 1980).

25. In the instant case, all the above factors weigh heavily in favor of granting the Debtor until the earlier of (i) confirmation of its to be filed liquidating plan, (ii) the termination of the Verizon Agreements by the Debtor in accordance with the Services Agreement, or (iii) the termination of the Services Agreement (herein, referred to as the "Decision Period") to assume or reject the Verizon Agreements.

26. The most significant interest at stake has to be that of the consummation of the Purchase Agreement and the Services Agreement in accordance with the intent of the parties thereto. The Purchase Agreement has provided the means by which most, if not all, of the secured claim of the largest secured creditor of the Debtor will be assumed by Ciera, as well as indirectly provides the means by which a $250,000 fund will be established for the benefit of the Debtor's unsecured creditors. To provide the benefit of the bargain to Ciera (the party that has made this all possible) requires that the time period to assume or reject the Verizon Agreements be the Decision Period.

27. The hurt to the litigants factor also weighs heavily in favor of ordering that the Decision Period be the time period for the Debtor to assume or reject. Ciera will be severely hurt if the Debtor is required to assume or reject the Verizon Agreements in a significantly shorter period of time. Ciera may lose the benefit of its bargain for which it has provided valuable consideration ($8.125 million) that has substantially benefited the Debtor's estate. There is no denying that the continuation of service by the Debtor under its interconnection agreements for the

period of time stated in the Services Agreement is a vital and material part of the overall agreement between the Debtor and Ciera. To eliminate that part of the agreement will severely prejudice Ciera. In addition, the Debtor's estate could be harmed if it is not able to perform under the Services Agreement. If the Debtor defaults under the Services Agreement and as a result causes Ciera damage, Ciera may be entitled to an administrative claim to the extent of such damage, thereby reducing the possible recovery to the general unsecured creditors of the estate.

28. On the other hand, Verizon will not be prejudiced if the Debtor is granted the full Decision Period within which to assume or reject the Verizon Agreements. The law provides that "[a]s long as the debtor continues to receive benefits under [the] contract [prior to deciding whether to assume or reject] it must also bear the burdens and obligations imposed under the contract." *GHR Energy Corp.*, 41 B.R. at 670. Verizon will be paid for any service provided to the Debtor following the closing of the Purchase Agreement and during the Decision Period. In fact, the Services Agreement provides that Ciera will pay the charges, costs and expenses incurred under the applicable interconnection agreements of the Debtor for the period stated therein, which in essence, corresponds to the Decision Period.

29. The good to be achieved is likewise clear. Granting the Debtor the Decision Period within which to assume or reject the Verizon Agreements would permit a negotiated transaction that has provided substantial benefit to the Debtor's estate to be consummated in accordance with the fullest intent of the parties thereto. This, in and of itself, is a compelling reason to order that the period for the Debtor to assume or reject the Verizon Agreements be the Decision Period. Coupled with fact that Verizon will suffer little, if any, harm under applicable Bankruptcy law,

WHEREFORE, Ciera requests that Verizon's Motion be denied, that the Debtor be granted the Decision Period within which to decide whether to assume or reject the Verizon Agreements and that it and the Debtor be granted such other and further relief as is just and proper.

Respectfully submitted this 18th day of September 2001.

By: E. Rebecca Case
E. Rebecca Case, EDMO #2800
Local Counsel, not listed

By: Steven Kesten
Trent L. Rosenthal
Texas State Bar No. 17282300
Federal ID No. 129
Steven D. Kesten
Texas State Bar No. 11361750

OF COUNSEL:

STONE, LEYTON & GERSHMAN
7733 Forsyth Boulevard
Suite 500
St. Louis, Missouri 63105
Telephone: (314) 721-7011
Facsimile: (314) 721-8660

BOYAR & MILLER, P.C.
Trent L. Rosenthal
Steve D. Kesten
4265 San Felipe, Suite 1200
Houston, TX 77027
Telephone: (713) 850-7766
Facsimile: (713) 552-1758
ATTORNEYS FOR CIERA

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing was served by facsimile and/or U. S. First Class Mail, postage pre-paid, the 18th day of September, 2001 to the following parties:

(Via Fax)Scott Greenberg, Esq., Sandberg, Phoenix & von Gontard, One City Centre, 15th Floor, St. Louis, MO 63101; **(Via Fax)Karen Fries, Esq.** and **Lloyd A. Palans**, Bryan Cave, LLP, One Metropolitan Square, St. Louis, MO 63101; **(Via Fax)Francis X. Buckley, Esq.**, Thompson Coburn, One Firstar Plaza, St. Louis, MO 63101; **Robert E. Eggmann, Esq.**, Attorney for Creditor's Committee, 231 S. Bemiston Ave., Suite 1220, St. Louis, MO 63105; **Office of the U.S. Trustee**, Thomas F. Eagleton U.S. Courthouse, 111 S. 10th Street, Room 6353, St. Louis, MO 63102; **Phillip C. Rouse, Esq., Jennifer L. Benedict, Esq.**, Douthit Frest Rouse & Gentile, L.L.C., 10401 Holmes Rd., Suite 220, Kansas City, MO 64131; **Chris Lenhart, Esq.**, Dorsey & Whitney, 220 S. Sixth St., Minneapolis, MN 55402; **(Via Fax)Darryl S. Laddin, Esq.**, Arnall Golden & Gregory, 2800 One Atlantic Center, 1201 W. Peachtree Street, Atlanta, GA 30309-3450; **(Via Fax)John J. Hall, Esq.**, Lewis, Rice & Fingersh, L.C., 500 N. Broadway, Suite 2000, St. Louis, MO 63102; **David L. Going, Esq.**, Armstrong Teasdale, One Metropolitan Square, #2600, St. Louis, MO 63102; **W. Keith Fendrick, Esq.**, Foley & Lardner, 100 North Tampa Street, Suite 2700, Tampa, FL 33602-5804; **James M. Meister, Esq.**, Stinson, Mag & Fizzell, PC, 100 South 4th Street, Suite 700, St. Louis, MO 63102; **Mark A. Shaiken, Esq.**, Stinson, Mag & Fizzell, PC, 1201 Walnut Street, Suite 2800, Kansas City, MO 64106, **Paul Kizel, Esq.** and **Robert D. Towey, Esq.**, Lowenstein Sandler PC, 65 Livingston Avenue, Roseland, NJ 07068; **Mark S. Schuver, Esq.**, Mathis, Marifian, Richter & Grandy, Ltd., 720 West Main Street, Suite 100, Belleville, IL 62220; **Marc E. Elkins, Esq.** Morrison & Hecker, LLP, 2600 Grand Avenue, Kansas City, MO 64108 and to **Missouri Department of Revenue, Bankruptcy Unit, Gary L. Barnhart, Esq.**, P.O. Box 475, Jefferson City, MO 64105-0475. **A copy was also served by fax on counsel for Verizon and counsel for the Debtor on this 12th day of September 2001.**

E. Rebecca Case

Document No. 3
To Exhibit "B"

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

In Re:	)	
	)	**Case No. 01-42079-399**
OMNIPLEX COMMUNICATIONS, GROUP, LLC	)	
	)	**Chapter 11**
Debtor.	)	

DEBTOR'S RESPONSE TO MOTION FOR ORDER DEEMING INTERCONNECTION AGREEMENTS REJECTED OR, ALTERNATIVELY, FOR RELIEF FROM THE AUTOMATIC STAY FILED BY VERIZON COMMUNICATIONS, INC.

COMES NOW Debtor, and for its Response, states:

1. Debtor admits the allegations set forth in paragraph 1.

2. Debtor denies that paragraph 2 accurately sets forth the facts as it relates to Debtor's operations and the sale of its business.

3. Debtor admits the allegations set forth in paragraph 3.

4. Debtor admits the allegations set forth in paragraph 4.

5. Paragraph 5 does not assert factual allegations to which Debtor must respond.

6. Debtor admits the allegations set forth in paragraph 6 relating to the fact that Debtor sought for approval to sell substantially all of its assets to Ciera Network Systems, Inc. ("Ciera"). Further answering, Debtor states that the Verizon Agreements, speak for themselves.

7. Debtor admits that on or about August 9, 2001, Verizon filed its limited objection to the Sale Motion. Further answering, Debtor states that the terms of the Sale Motion speaks for itself.

8. Debtor denies the allegation set forth in paragraph 8 that the Court "conditionally" approved the Sale Motion.

9. Debtor denies the allegations in paragraph 9.

10. Debtor denies the allegations set forth in paragraph 10.

11. Debtor admits that Verizon has filed a separate Motion to Amend this court's prior Order as alleged in paragraph 11.

12. Debtor denies the allegations set forth in paragraph 12.

13. Debtor denies the allegations set forth in paragraph 13.

14. Debtor denies the allegations set forth in paragraph 14.

15. Debtor denies the allegations set forth in paragraph 15.

16. Debtor denies the allegations set forth in paragraph 16.

17. Further answering, Debtor states that there is no cause to reject the Verizon Agreements at this time. Verizon has a deposit and an Order pursuant to Motion it previously filed under 11 U.S.C. §366 granting it adequate assurance of future performance. The Debtor has not defaulted in its obligations and continues to pay Verizon pursuant to the terms of the adequate assurance order previously entered.

UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
JACKSON DIVISION

03 JUL 23 P 2:35

In re:	)	
	)	**Chapter 11**
NOW COMMUNICATIONS, INC.	)	
	)	Case No 03-01336-JEE
	)	
Debtor.	)	
	)	

EXHIBIT C

MOTION OF BELLSOUTH TELECOMMUNICATIONS, INC. FOR ORDER COMPELLING DEBTOR TO ASSUME OR REJECT INTERCONNECTION AGREEMENT

COMES NOW BellSouth Telecommunications, Inc. ("BellSouth"), through its undersigned counsel, and moves the Court for entry of an Order, pursuant to section 365(d)(2) of the Bankruptcy Code, compelling the Debtor to assume or reject the Interconnection Agreement (as defined below) within the earlier of (a) twenty (20) days after entry of any Order granting approval of the proposed sale by NOW Communications, Inc., the debtor herein (the "Debtor") to MCG Capital Corporation or its designee ("MCG") or (b) September 20, 2003. In support hereof, BellSouth respectfully shows the Court as follows:

Preliminary Statement

As this Court is aware, NOW Communications, Inc., the debtor herein (the "Debtor") is seeking to sell substantially all of its assets (the "Assets") to its prepetition lender, MCG Capital Corporation or its designee ("MCG"). BellSouth has objected to the proposed sale. The Debtor's business operations are dependent entirely upon the telecommunication services provided by BellSouth to the Debtor pursuant to a certain interconnection agreement

between the Debtor and BellSouth, dated January 14, 2003 (the "Interconnection Agreement").[1] Without the Interconnection Agreement, the Debtor will be unable to continue as a going concern. Moreover, in order for the Debtor to accomplish the planned sale of its Assets to MCG, it first must assume and assign the Interconnection Agreement. As is abundantly clear, however, neither the Debtor nor MCG has either the ability or the desire to cure the approximately $5 million in defaults under the Interconnection Agreement (the "BellSouth Cure Amount"). Given the Debtor's own testimony regarding value at the hearing before the Court on June 26, 2003, as well as the Schedules of Assets and Liabilities filed in this case, it is clear that the value of the Assets is substantially less than the BellSouth Cure Amount, let alone the aggregate of the BellSouth Cure Amount and the secured claims encumbering the Assets. Thus, it is inconceivable that a purchaser will have any interest in satisfying the BellSouth Cure Amount.

Instead, the Debtor and MCG are trying to postpone or perhaps even to circumvent the inevitable termination of the Interconnection Agreement by entering into a management agreement (the "Management Agreement") as a part of the sale transaction under which MCG will have access to the Interconnection Agreement for up to a year without ever having to make the decision to assume or reject the Interconnection Agreement, **or even the decision whether to close the sale transaction.**

During this one-year, post-approval, pre-closing period where MCG will operate the Debtor's assets and utilize the Interconnection Agreement without taking an assignment

[1] A true and correct copy of Interconnection Agreement is attached hereto as Exhibit "A" and incorporated herein by reference. The exhibits thereto, which total more than 800 pages, are not attached, but will be provided upon request.

thereof, the estate will be in complete limbo, and BellSouth will be kept from exercising its contractual remedies, while MCG attempts to circumvent assumption and assignment by forcing through litigation a new direct agreement with BellSouth. Assuming the Court were to countenance such attempts, if MCG is unsuccessful (as BellSouth believes it will be), then MCG would never close the sale transaction.

In any event, the Debtor has all information necessary with which to make the decision to assume or reject the Interconnection Agreement, which is its principal contract and asset. Under these circumstances, the Debtor should be compelled to assume or reject the Interconnection Agreement within the earlier of (a) twenty (20) days after entry of any Order granting approval of the proposed sale of the Debtor's assets or (b) September 20, 2003.[2]

Background

1. On March 4, 2003 (the "Petition Date"), the Debtor filed a voluntary petition for relief under Chapter 11 of the Bankruptcy Code. Since the Petition Date, the Debtor has continued operating its business and managing its affairs as a debtor in possession pursuant to sections 1107 and 1108 of the Bankruptcy Code.

2. Prior to the Petition Date, BellSouth provided telecommunications services to the Debtor pursuant to the Interconnection Agreement. The Interconnection Agreement is an executory contract as such term is used in section 365 of the Bankruptcy Code. BellSouth is by far the largest unsecured creditor in this Chapter 11 case, with a

[2] Contemporaneously herewith, BellSouth has filed two separate motions seeking alternative relief. The first such motion is the Motion to Convert to Chapter 7 (the "Conversion Motion"). The second such motion is the Motion for an Order, Upon Any Approval of the Proposed Sale of Substantially All of Debtor's Assets, (i) Deeming Interconnection Agreement Rejected; or (ii) Granting Stay Relief to Terminate Interconnection Agreement.

pre-petition claim in the approximate amount of $5,000,000. The Chapter 11 filing was precipitated when BellSouth indicated it would take action to terminate services under the Interconnection Agreement due to the Debtor's massive defaults thereunder.

BellSouth's Sale and Bid Objection

3. On May 23, 2003, the Debtor filed its Debtor's Motion to Sell Substantially all of its Assets Pursuant to 11 U.S.C. Section 363(b) and (f), Free and Clear of all Claims and Liens (the "Sale Motion"), pursuant to which the Debtor sought authority to sell the Assets to MCG.

4. Contemporaneously with the filing of the Sale Motion, the Debtor filed the Debtor's Motion to Approve Bid Procedures and Notice of Sale of Substantially All of Debtor's Assets (the "Bid Procedures Motion"), pursuant to which it sought approval of the procedures that will govern the sale of the Assets.

5. On June 12, 2003, BellSouth filed an objection to the Sale Motion and to the Bid Procedures Motion (the "BellSouth Objection"). Among other things, BellSouth objected to: (a) the assumption and assignment of the Interconnection Agreement absent payment of the BellSouth Cure Amount and the provision of adequate assurance of future performance; (b) certain of the procedures contemplated by the Bid Procedures Motion; and (c) various provisions of the proposed Asset Purchase Agreement, including the provision for entry into the Management Agreement pursuant to which the proposed purchaser, MCG, will have access to, and operate under, the Interconnection Agreement without taking an assignment thereof.

6. Notwithstanding the BellSouth Objection, the Court approved the Bid Procedures Motion pursuant to an Order entered on July 3, 2003. Pursuant to such Order, an

auction for the Assets is scheduled for August 5, 2003, with a hearing to approve the sale to be scheduled thereafter.

Relief Requested

7. To the extent the Court denies the Conversion Motion filed contemporaneously herewith BellSouth requests that the Court, pursuant to section 365(d)(2) of the Bankruptcy Code, enter an order compelling the Debtor to assume or reject the Interconnection Agreement by the earlier of (a) twenty (20) days after entry of any Order approving the Sale Motion or (b) September 20, 2003.

8. Pursuant to section 365(d)(2) of the Bankruptcy Code, upon request of any party to a contract or lease, the court "may order the trustee to determine within a specified period of time whether to assume or reject such contract or lease." See 11 U.S.C. § 365(d)(2).

9. While the Debtor should be afforded a reasonable period of time in which to make the decision to assume or reject its executory contracts, any additional time to assume or reject the Interconnection Agreement will be used not to evaluate that decision or gain additional information necessary to make such decision, but rather to keep BellSouth in limbo while MCG attempts to circumvent assumption and assignment of the Interconnection Agreement. Such is hardly the purpose envisioned by Congress in granting the debtor sufficient time to make the assumption/rejection decision. Where, as here, the Debtor has all the information necessary to make the assumption/rejection decision, and the contract at issue is its principal operating contract, shortening the decision to assume or reject is appropriate. See In re Travelot Co., 286 B.R. 447, 468-69 (Bankr. S.D. Ga. 2002) (granting motion to compel assumption or rejection where contract was "sole purpose of [debtor's]

existence and for its presence in this Chapter 11 reorganization proceeding"; holding that "[p]rolonging the suspense will not serve the purposes of Chapter 11. [Debtor] has all the facts before it and now must make a decision . . . The time has come for Debtor to act one way or the other.").

10. As was the case in Travelot, the contract at issue herein is the single, most important contract and asset of the Debtor, and its breach the precipitating factor for the Chapter 11. As was the case in Travelot, this proceeding will have been pending approximately 6 months without a decision on whether to assume or reject the Interconnection Agreement. Like the debtor in Travelot, the Debtor has all the facts before it to make the assumption/rejection decision – it knows that it must assume the Interconnection Agreement in order to operate its business. Thus, like the debtor in Travelot, the Debtor should be compelled to assume or reject the Interconnection Agreement (if the alternative forms of relief requested above are not granted instead).[3] BellSouth asserts that such decision should be made within twenty (20) days of the entry of any Order approving the Sale Motion. If no such approval is granted, then the Debtor should be compelled to assume or reject the Interconnection Agreement by no later than September 20, 2003.

WHEREFORE, BellSouth respectfully requests that the Court, pursuant to section 365(d)(2) of the Bankruptcy Code, enter an Order: (1) compelling the Debtor to assume or reject the Interconnection Agreement within the earlier of (a) twenty (20) days after entry of any

[3] In fact, the primary defense to the motion to compel in Travelot was the allegation that the movant was in breach of the contract at issue. No such allegation (which was in any event insufficient to cause denial of the motion) has been, or could be, made in the case at bar.

Order granting approval of the proposed sale or (b) September 20, 2003; and (2) granting such other and further relief as is just and equitable.

Respectfully submitted, this 23rd day of July, 2003.

BUTLER, SNOW, O'MARA, STEVENS & CANNADA, PLLC

Stephen W. Rosenblatt
Mississippi Bar No. 5676
17th Floor, AmSouth Plaza
Post Office Box 22567
Jackson, Mississippi 39225-2567
(601) 948-5711 (Telephone No.)
(601) 985-4500 (Facsimile No.)

and

KILPATRICK STOCKTON LLP

Todd C. Meyers
Georgia Bar No. 503756
Robbin S. Rahman
Georgia Bar No. 592151
1100 Peachtree Street, Suite 2800
Atlanta, Georgia 30309-4530
(404) 815-6500 (Telephone No.)
(404) 815-6555 (Facsimile No.)

Counsel for BellSouth Telecommunications, Inc.

EXHIBIT "A"

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing **Motion of BellSouth Telecommunications, Inc. for Order Compelling Debtor to Assume or Reject Interconnection Agreement** was served, by regular U.S. Mail, postage prepaid, on the parties listed below, this 23rd day of July, 2003:

Eileen N. Shaffer, Esq.
401 Capital Street - Suite 316
Jackson, MS 39201

Office of the United States Trustee
100 West Capitol Street
Suite 707
Jackson, MS 39269

Frank N. White, Esq.
Darryl S. Ladden, Esq.
Arnall Golden Gregory LLP
2800 One Atlantic Center
1201 West Peachtree Street
Atlanta, Georgia 30309

Donald M. Wright, Esq.
Stephen B. Porterfield, Esq.
Sirote & Permutt P.C.
2311 Highland Avenue South
P.O. Box 55727
Birmingham, Alabama 35205

Gregory M. Eells, Esq.
Eells & Allen, LLC
The Oglethorpe Building
Suite 181
2971 Flowers Road South
Atlanta, Georgia 30341-4147

Roy H. Liddell, Esq.
Wells Marble & Hurst, PLLC
Suite 600, Lamar Life Building
317 East Capitol Street
P.O. Box 131
Jackson, Mississippi 39205

Derek A. Henderson, Esq.
111 East Capitol Street
Suite 455
Jackson, Mississippi 39269

By: Stephen W. Rosenblatt
Stephen W. Rosenblatt

JACKSON 777521v1

BELLSOUTH / CLEC Agreement

Customer Name: NOW Communications, Inc.

INTERCONNECTION
AGREEMENT
BETWEEN
BELLSOUTH TELECOMMUNICATIONS INC.
AND
NOW Communications, Inc.

TABLE OF CONTENTS

TABLE OF CONTENTS (cont'd)

AGREEMENT
GENERAL TERMS AND CONDITIONS

THIS AGREEMENT is made by and between BellSouth Telecommunications, Inc., ("BellSouth"), a Georgia corporation, and NOW Communications, Inc. ("NOW"), a Mississippi corporation, and shall be effective on the Effective Date, as defined herein. This Agreement may refer to either BellSouth or NOW or both as a "Party" or "Parties."

W I T N E S S E T H

WHEREAS, BellSouth is a local exchange telecommunications company authorized to provide telecommunications services in the states of Alabama, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina and Tennessee; and

WHEREAS, NOW is or seeks to become a CLEC authorized to provide telecommunications services in the states of Alabama, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina, and Tennessee; and

WHEREAS, NOW wishes to resell BellSouth's telecommunications services and purchase network elements and other services, and, solely in connection therewith, may wish to utilize collocation space as set forth in Attachment 4 of this Agreement); and

WHEREAS, the Parties wish to interconnect their facilities and exchange traffic pursuant to Sections 251 and 252 of the Act.

NOW THEREFORE, in consideration of the mutual agreements contained herein, BellSouth and NOW agree as follows:

Definitions

Affiliate is defined as a person that (directly or indirectly) owns or controls, is owned or controlled by, or is under common ownership or control with, another person. For purposes of this paragraph, the term "own" means to own an equity interest (or equivalent thereof) of more than 10 percent.

Commission is defined as the appropriate regulatory agency in each state of BellSouth's nine-state region (Alabama, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina, and Tennessee).

Competitive Local Exchange Carrier (CLEC) means a telephone company certificated by the Commission to provide local exchange service within BellSouth's franchised area.

Effective Date is defined as the date that the Agreement is effective for purposes of rates, terms and conditions and shall be thirty (30) days after the date of the last signature executing the Agreement. Future amendments for rate changes will also be effective thirty (30) days after the date of the last signature executing the amendment.

End User means the ultimate user of the Telecommunications Service.

FCC means the Federal Communications Commission.

General Terms and Conditions means this document including all of the terms, provisions and conditions set forth herein.

Telecommunications means the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received.

Telecommunications Service means the offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used.

Telecommunications Act of 1996 ("Act") means Public Law 104-104 of the United States Congress effective February 8, 1996. The Act amended the Communications Act of 1934 (47 U.S.C. Section 1 et. seq.).

1. CLEC Certification

1.1 Prior to execution of this Agreement, NOW agrees to provide BellSouth in writing NOW's CLEC certification for all states covered by this Agreement except Kentucky prior to BellSouth filing this Agreement with the appropriate Commission for approval.

1.2 To the extent NOW is not certified as a CLEC in each state covered by this Agreement as of the execution hereof, NOW will notify BellSouth in writing and provide CLEC certification when it becomes certified to operate in any other state covered by this Agreement. Upon notification, BellSouth will file this Agreement with the appropriate Commission for approval.

2. Term of the Agreement

2.1 The term of this Agreement shall be three years, beginning on the Effective Date and shall apply to the BellSouth territory in the state(s) of Alabama, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina and Tennessee. Notwithstanding any prior agreement of the Parties, the rates, terms and conditions of this Agreement shall not be applied retroactively prior to the Effective Date.

2.2 The Parties agree that by no earlier than two hundred seventy (270) days and no later than one hundred and eighty (180) days prior to the expiration of this Agreement, they shall commence negotiations for a new agreement to be effective beginning on the expiration date of this Agreement ("Subsequent Agreement").

2.3 If, within one hundred and thirty-five (135) days of commencing the negotiation referred to in Section 2.2 above, the Parties are unable to negotiate new terms, conditions and prices for a Subsequent Agreement, either Party may petition the Commission to establish appropriate terms, conditions and prices for the Subsequent Agreement pursuant to 47 U.S.C. 252.

2.4 If, as of the expiration of this Agreement, a Subsequent Agreement has not been executed by the Parties, this Agreement shall terminate. Upon termination of this Agreement, BellSouth shall continue to offer services to NOW pursuant to the terms, conditions and rates set forth in BellSouth's then current standard interconnection agreement. In the event that BellSouth's standard interconnection agreement becomes effective as between the Parties, the Parties may continue to negotiate a Subsequent Agreement or arbitrate disputed issues to reach a Subsequent Agreement as set forth in Section 2.3 above, and the terms of such Subsequent Agreement shall be effective as of the effective date as stated in the Subsequent Agreement.

3. Operational Support Systems

NOW shall pay charges for Operational Support Systems (OSS) as set forth in this Agreement in Attachment 1 and/or in Attachments 2, 3 and 5, as applicable.

4. Parity

When NOW purchases Telecommunications Services from BellSouth pursuant to Attachment 1 of this Agreement for the purposes of resale to End Users, such services shall be equal in quality, subject to the same conditions, and provided within the same provisioning time intervals that BellSouth provides to its Affiliates, subsidiaries and End Users. To the extent technically feasible, the quality of a Network Element, as well as the quality of the access to such Network Element provided by BellSouth to NOW shall be at least equal in quality to that which BellSouth provides to itself, its Affiliates or any other Telecommunications carrier. The quality of the interconnection between the network of BellSouth and the network of NOW shall be at a level that is equal to that which BellSouth provides itself, a subsidiary, an Affiliate, or any other party. The interconnection facilities shall be designed to meet the same technical criteria and service standards that are used within BellSouth's network and shall extend to a consideration of service quality as perceived by BellSouth's End Users and service quality as perceived by NOW.

5. White Pages Listings

5.1 BellSouth shall provide NOW and its customers access to white pages directory listings under the following terms:

5.2 Listings. NOW shall provide all new, changed and deleted listings on a timely basis and BellSouth or its agent will include NOW residential and business customer listings in the appropriate White Pages (residential and business) or alphabetical directories in the geographic areas covered by this Interconnection Agreement. Directory listings will make no distinction between NOW and BellSouth subscribers.

5.2.1 Rates. So long as NOW provides subscriber listing information (SLI) to BellSouth in accordance with Section 5.3 below, BellSouth shall provide to NOW one (1) primary White Pages listing per NOW subscriber at no charge other than applicable service order charges as set forth in BellSouth's tariffs.

5.3 Procedures for Submitting NOW SLI are found in The BellSouth Business Rules for Local Ordering.

5.4 NOW authorizes BellSouth to release all NOW SLI provided to BellSouth by NOW to qualifying third parties via either license agreement or BellSouth's Directory Publishers Database Service (DPDS), General Subscriber Services Tariff (GSST), Section A38.2, as the same may be amended from time to time. Such NOW SLI shall be intermingled with BellSouth's own customer listings and listings of any other CLEC that has authorized a similar release of SLI.

5.4.1 No compensation shall be paid to NOW for BellSouth's receipt of NOW SLI, or for the subsequent release to third parties of such SLI. In addition, to the extent BellSouth incurs costs to modify its systems to enable the release of NOW's SLI, or costs on an ongoing basis to administer the release of NOW SLI, NOW shall pay to BellSouth its proportionate share of the reasonable costs associated therewith. At any time that costs may be incurred to administer the release of NOW's SLI, NOW will be notified. If NOW does not wish to pay its proportionate share of these reasonable costs, NOW may instruct BellSouth that it does not wish to release its SLI to independent publishers, and NOW shall amend this Agreement accordingly. NOW will be liable for all costs incurred until the effective date of the amendment.

5.4.2 Neither BellSouth nor any agent shall be liable for the content or accuracy of any SLI provided by NOW under this Agreement. NOW shall indemnify, hold harmless and defend BellSouth and its agents from and against any damages, losses, liabilities, demands, claims, suits, judgments, costs and expenses (including but not limited to reasonable attorneys' fees and expenses) arising from BellSouth's tariff obligations or otherwise and resulting from or arising out of any third party's claim of inaccurate NOW listings or use of the SLI provided pursuant to this Agreement. BellSouth may forward to NOW any complaints received by BellSouth relating to the accuracy or quality of NOW listings.

5.4.3 Listings and subsequent updates will be released consistent with BellSouth system changes and/or update scheduling requirements.

5.5 Unlisted/Non-Published Subscribers. NOW will be required to provide to BellSouth the names, addresses and telephone numbers of all NOW customers who wish to be omitted from directories. Unlisted/Non-Published SLI will be subject to the rates as set forth in BellSouth's General Subscriber Services Tariff.

5.6 Inclusion of NOW End Users in Directory Assistance Database. BellSouth will include and maintain NOW subscriber listings in BellSouth's Directory Assistance databases at no recurring charge and NOW shall provide such Directory Assistance listings to BellSouth at no recurring charge.

5.7 Listing Information Confidentiality. BellSouth will afford NOW's directory listing information the same level of confidentiality that BellSouth affords its own directory listing information.

5.8 Additional and Designer Listings. Additional and designer listings will be offered by BellSouth at tariffed rates as set forth in the General Subscriber Services Tariff.

5.9 Directories. BellSouth or its agent shall make available White Pages directories to NOW subscribers at no charge or as specified in a separate agreement with BellSouth's agent.

6. Court Ordered Requests for Call Detail Records and Other Subscriber Information

6.1 Subpoenas Directed to BellSouth. Where BellSouth provides resold services or local switching for NOW, BellSouth shall respond to subpoenas and court ordered requests delivered directly to BellSouth for the purpose of providing call detail records when the targeted telephone numbers belong to NOW End Users. Billing for such requests will be generated by BellSouth and directed to the law enforcement agency initiating the request. BellSouth shall maintain such information for NOW End Users for the same length of time it maintains such information for its own End Users.

6.2 Subpoenas Directed to NOW. Where BellSouth is providing to NOW Telecommunications Services for resale or providing to NOW the local switching function, then NOW agrees that in those cases where NOW receives subpoenas or court ordered requests regarding targeted telephone numbers belonging to NOW End Users, and where NOW does not have the requested information, NOW will advise the law enforcement agency initiating the request to redirect the subpoena or court ordered request to BellSouth for handling in accordance with 6.1 above.

6.3 In all other instances, where either Party receives a request for information involving the other Party's End User, the Party receiving the request will advise the law enforcement agency initiating the request to redirect such request to the other Party.

7. Liability and Indemnification

7.1 NOW Liability. In the event that NOW consists of two (2) or more separate entities as set forth in this Agreement and/or any Amendments hereto, all such entities shall be jointly and severally liable for the obligations of NOW under this Agreement.

7.2 Liability for Acts or Omissions of Third Parties. BellSouth shall not be liable to NOW for any act or omission of another Telecommunications company providing services to NOW.

7.3 Limitation of Liability

7.3.1 Except for any indemnification obligations of the Parties hereunder, each Party's liability to the other for any loss, cost, claim, injury, liability or expense, including reasonable attorneys' fees relating to or arising out of any negligent act or omission in its performance of this Agreement, whether in contract or in tort, shall be limited to a credit for the actual cost of the services or functions not performed or improperly performed.

7.3.2 Limitations in Tariffs. A Party may, in its sole discretion, provide in its tariffs and contracts with its End Users and third parties that relate to any service, product or function provided or contemplated under this Agreement, that to the maximum extent permitted by Applicable Law, such Party shall not be liable to the End User or third party for (i) any loss relating to or arising out of this Agreement, whether in contract, tort or otherwise, that exceeds the amount such Party would have charged that applicable person for the service, product or function that gave rise to such loss and (ii) consequential damages. To the extent that a Party elects not to place in its tariffs or contracts such limitations of liability, and the other Party incurs a loss as a result thereof, such Party shall 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 limitations of liability that such other Party included in its own tariffs at the time of such loss.

7.3.3 Neither BellSouth nor NOW shall be liable for damages to the other Party's terminal location, equipment or End User premises resulting from the furnishing of a service, including, but not limited to, the installation and removal of equipment or associated wiring, except to the extent caused by a Party's negligence or willful misconduct or by a Party's failure to ground properly a local loop after disconnection.

7.3.4 Under no circumstance shall a Party be responsible or liable for indirect, incidental, or consequential damages, including, but not limited to, economic loss or lost business or profits, damages arising from the use or performance of equipment or software, or the loss of use of software or equipment, or accessories attached thereto, delay, error, or loss of data. In connection with this limitation of liability, each Party recognizes that the other Party may, from time to time, provide advice, make recommendations, or supply other analyses related to the services or facilities described in this Agreement, and, while each Party shall use diligent

efforts in this regard, the Parties acknowledge and agree that this limitation of liability shall apply to provision of such advice, recommendations, and analyses.

7.3.5 To the extent any specific provision of this Agreement purports to impose liability, or limitation of liability, on either Party different from or in conflict with the liability or limitation of liability set forth in this Section, then with respect to any facts or circumstances covered by such specific provisions, the liability or limitation of liability contained in such specific provision shall apply.

7.4 Indemnification for Certain Claims. The Party providing services hereunder, its Affiliates and its parent company, shall be indemnified, defended and held harmless by the Party receiving services hereunder against any claim, loss or damage arising from the receiving Party's use of the services provided under this Agreement pertaining to (1) claims for libel, slander or invasion of privacy arising from the content of the receiving Party's own communications, or (2) any claim, loss or damage claimed by the End User of the Party receiving services arising from such company's use or reliance on the providing Party's services, actions, duties, or obligations arising out of this Agreement.

7.5 Disclaimer. EXCEPT AS SPECIFICALLY PROVIDED TO THE CONTRARY IN THIS AGREEMENT, NEITHER PARTY MAKES ANY REPRESENTATIONS OR WARRANTIES TO THE OTHER PARTY CONCERNING THE SPECIFIC QUALITY OF ANY SERVICES, OR FACILITIES PROVIDED UNDER THIS AGREEMENT. THE PARTIES DISCLAIM, WITHOUT LIMITATION, ANY WARRANTY OR GUARANTEE OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, ARISING FROM COURSE OF PERFORMANCE, COURSE OF DEALING, OR FROM USAGES OF TRADE.

8. Intellectual Property Rights and Indemnification

8.1 No License. No patent, copyright, trademark or other proprietary right is licensed, granted or otherwise transferred by this Agreement. The Parties are strictly prohibited from any use, including but not limited to, in the selling, marketing, promoting or advertising of telecommunications services, of any name, service mark, logo or trademark (collectively, the "Marks") of the Other Party. The Marks include those Marks owned directly by a Party or its Affiliate(s) and those Marks that a Party has a legal and valid license to use. The Parties acknowledge that they are separate and distinct and that each provides a separate and distinct service and agree that neither Party may, expressly or impliedly, state, advertise or market that it is or offers the same service as the Other Party or engage in any other activity that may result in a likelihood of confusion between its own service and the service of the Other Party.

8.2 Ownership of Intellectual Property. Any intellectual property that originates from or is developed by a Party shall remain the exclusive property of that Party. Except for a limited, non-assignable, non-exclusive, non-transferable license to use

patents or copyrights to the extent necessary for the Parties to use any facilities or equipment (including software) or to receive any service solely as provided under this Agreement, no license in patent, copyright, trademark or trade secret, or other proprietary or intellectual property right, now or hereafter owned, controlled or licensable by a Party, is granted to the other Party. Neither shall it be implied nor arise by estoppel. Any trademark, copyright or other proprietary notices appearing in association with the use of any facilities or equipment (including software) shall remain on the documentation, material, product, service, equipment or software. It is the responsibility of each Party to ensure at no additional cost to the other Party that it has obtained any necessary licenses in relation to intellectual property of third Parties used in its network that may be required to enable the other Party to use any facilities or equipment (including software), to receive any service, or to perform its respective obligations under this Agreement.

8.3 Intellectual Property Remedies

8.3.1 Indemnification. The Party providing a service pursuant to this Agreement will defend the Party receiving such service or data provided as a result of such service against claims of infringement arising solely from the use by the receiving Party of such service in the manner contemplated under this Agreement and will indemnify the receiving Party for any damages awarded based solely on such claims in accordance with Section 7 preceding.

8.3.2 Claim of Infringement. In the event that use of any facilities or equipment (including software), becomes, or in the reasonable judgment of the Party who owns the affected network is likely to become, the subject of a claim, action, suit, or proceeding based on intellectual property infringement, then said Party shall promptly and at its sole expense and sole option, but subject to the limitations of liability set forth below:

8.3.2.1 modify or replace the applicable facilities or equipment (including software) while maintaining form and function, or

8.3.2.2 obtain a license sufficient to allow such use to continue.

8.3.2.3 In the event Section 8.3.2.1 or 8.3.2.2 are commercially unreasonable, then said Party may terminate, upon reasonable notice, this contract with respect to use of, or services provided through use of, the affected facilities or equipment (including software), but solely to the extent required to avoid the infringement claim.

8.3.3 Exception to Obligations. Neither Party's obligations under this Section shall apply to the extent the infringement is caused by: (i) modification of the facilities or equipment (including software) by the indemnitee; (ii) use by the indemnitee of the facilities or equipment (including software) in combination with equipment or facilities (including software) not provided or authorized by the indemnitor, provided the facilities or equipment (including software) would not be infringing if used alone; (iii) conformance to specifications of the indemnitee which would

necessarily result in infringement; or (iv) continued use by the indemnitee of the affected facilities or equipment (including software) after being placed on notice to discontinue use as set forth herein.

8.3.4 Exclusive Remedy. The foregoing shall constitute the Parties' sole and exclusive remedies and obligations with respect to a third party claim of intellectual property infringement arising out of the conduct of business under this Agreement.

8.4 Dispute Resolution. Any claim arising under this Section 8 shall be excluded from the dispute resolution procedures set forth in Section 10 and shall be brought in a court of competent jurisdiction.

9. Proprietary and Confidential Information

9.1 Proprietary and Confidential Information. It may be necessary for BellSouth and NOW, each as the "Discloser," to provide to the other Party, as "Recipient," certain proprietary and confidential information (including trade secret information) including but not limited to technical, financial, marketing, staffing and business plans and information, strategic information, proposals, request for proposals, specifications, drawings, maps, prices, costs, costing methodologies, procedures, processes, business systems, software programs, techniques, customer account data, call detail records and like information (collectively the "Information"). All such Information conveyed in writing or other tangible form shall be clearly marked with a confidential or proprietary legend. Information conveyed orally by the Discloser to Recipient shall be designated as proprietary and confidential at the time of such oral conveyance, shall be reduced to writing by the Discloser within forty-five (45) days thereafter, and shall be clearly marked with a confidential or proprietary legend.

9.2 Use and Protection of Information. Recipient agrees to protect such Information of the Discloser provided to Recipient from whatever source from distribution, disclosure or dissemination to anyone except employees of Recipient with a need to know such Information solely in conjunction with Recipient's analysis of the Information and for no other purpose except as authorized herein or as otherwise authorized in writing by the Discloser. Recipient will not make any copies of the Information inspected by it.

9.3 Exceptions. Recipient will not have an obligation to protect any portion of the Information which:

9.3.1 (a) is made publicly available by the Discloser or lawfully by a nonparty to this Agreement; (b) is lawfully obtained by Recipient from any source other than Discloser; (c) is previously known to Recipient without an obligation to keep it confidential; or (d) is released from the terms of this Agreement by Discloser upon written notice to Recipient.

9.4 Recipient agrees to use the Information solely for the purposes of negotiations pursuant to 47 U.S.C. 251 or in performing its obligations under this Agreement

and for no other entity or purpose, except as may be otherwise agreed to in writing by the Parties. Nothing herein shall prohibit Recipient from providing information requested by the FCC or a state regulatory agency with jurisdiction over this matter, or to support a request for arbitration or an allegation of failure to negotiate in good faith.

9.5 Recipient agrees not to publish or use the Information for any advertising, sales or marketing promotions, press releases, or publicity matters that refer either directly or indirectly to the Information or to the Discloser or any of its affiliated companies.

9.6 The disclosure of Information neither grants nor implies any license to the Recipient under any trademark, patent, copyright, application or other intellectual property right that is now or may hereafter be owned by the Discloser.

9.7 Survival of Confidentiality Obligations. The Parties' rights and obligations under this Section 9 shall survive and continue in effect until two (2) years after the expiration or termination date of this Agreement with regard to all Information exchanged during the term of this Agreement. Thereafter, the Parties' rights and obligations hereunder survive and continue in effect with respect to any Information that is a trade secret under applicable law.

10. Resolution of Disputes

Except as otherwise stated in this Agreement, if any dispute arises as to the interpretation of any provision of this Agreement or as to the proper implementation of this Agreement, the aggrieved Party shall have the right to petition the Commission for a resolution of the dispute. However, each Party reserves any rights it may have to seek judicial review of any ruling made by the Commission concerning this Agreement. Additionally, each Party may exercise its lawful right to file an appropriate petition or action in any forum of proper venue and jurisdiction regarding any dispute arising from this Agreement.

11. Taxes

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

11.2 Taxes and Fees Imposed Directly On Either Providing Party or Purchasing Party.

11.2.1 Taxes and fees imposed on the providing Party, which are not permitted or required to be passed on by the providing Party to its customer, shall be borne and paid by the providing Party.

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

11.3 Taxes and Fees Imposed on Purchasing Party But Collected And Remitted By Providing Party.

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

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

11.3.3 If the purchasing Party determines that in its opinion any such taxes or fees are not payable, the providing Party shall not bill such taxes or fees to the purchasing Party if the purchasing Party provides written certification, reasonably satisfactory to the providing Party, stating that it is exempt or otherwise not subject to the tax or fee, setting forth the basis therefor, and satisfying any other requirements under applicable law. If any authority seeks to collect any such tax or fee that the purchasing Party has determined and certified not to be payable, or any such tax or fee that was not billed by the providing Party, the purchasing Party may contest the same in good faith, at its own expense. In any such contest, the purchasing Party shall promptly furnish the providing Party with copies of all filings in any proceeding, protest, or legal challenge, all rulings issued in connection therewith, and all correspondence between the purchasing Party and the taxing authority.

11.3.4 In the event that all or any portion of an amount sought to be collected must be paid in order to contest the imposition of any such tax or fee, or to avoid the existence of a lien on the assets of the providing Party during the pendency of such contest, the purchasing Party shall be responsible for such payment and shall be entitled to the benefit of any refund or recovery.

11.3.5 If it is ultimately determined that any additional amount of such a tax or fee is due to the imposing authority, the purchasing Party shall pay such additional amount, including any interest and penalties thereon.

11.3.6 Notwithstanding any provision to the contrary, the purchasing Party shall protect, indemnify and hold harmless (and defend at the purchasing Party's expense) the providing Party from and against any such tax or fee, interest or penalties thereon, or other charges or payable expenses (including reasonable attorney fees) with

respect thereto, which are incurred by the providing Party in connection with any claim for or contest of any such tax or fee.

11.3.7 Each Party shall notify the other Party in writing of any assessment, proposed assessment or other claim for any additional amount of such a tax or fee by a taxing authority; such notice to be provided, if possible, at least ten (10) days prior to the date by which a response, protest or other appeal must be filed, but in no event later than thirty (30) days after receipt of such assessment, proposed assessment or claim.

11.4 Taxes and Fees Imposed on Providing Party But Passed On To Purchasing Party.

11.4.1 Taxes and fees imposed on the providing Party, which are permitted or required to be passed on by the providing Party to its customer, shall be borne by the purchasing Party.

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

11.4.3 If the purchasing Party disagrees with the providing Party's determination as to the application or basis for any such tax or fee, the Parties shall consult with respect to the imposition and billing of such tax or fee. Notwithstanding the foregoing, the providing Party shall retain ultimate responsibility for determining whether and to what extent any such taxes or fees are applicable, and the purchasing Party shall abide by such determination and pay such taxes or fees to the providing Party. The providing Party shall further retain ultimate responsibility for determining whether and how to contest the imposition of such taxes and fees; provided, however, that any such contest undertaken at the request of the purchasing Party shall be at the purchasing Party's expense.

11.4.4 In the event that all or any portion of an amount sought to be collected must be paid in order to contest the imposition of any such tax or fee, or to avoid the existence of a lien on the assets of the providing Party during the pendency of such contest, the purchasing Party shall be responsible for such payment and shall be entitled to the benefit of any refund or recovery.

11.4.5 If it is ultimately determined that any additional amount of such a tax or fee is due to the imposing authority, the purchasing Party shall pay such additional amount, including any interest and penalties thereon.

11.4.6 Notwithstanding any provision to the contrary, the purchasing Party shall protect, indemnify and hold harmless (and defend at the purchasing Party's expense) the providing Party from and against any such tax or fee, interest or penalties thereon, or other reasonable charges or payable expenses (including reasonable attorneys'

fees) with respect thereto, which are incurred by the providing Party in connection with any claim for or contest of any such tax or fee.

11.4.7 Each Party shall notify the other Party in writing of any assessment, proposed assessment or other claim for any additional amount of such a tax or fee by a taxing authority; such notice to be provided, if possible, at least ten (10) days prior to the date by which a response, protest or other appeal must be filed, but in no event later than thirty (30) days after receipt of such assessment, proposed assessment or claim.

11.5 Mutual Cooperation. In any contest of a tax or fee by one Party, the other Party shall cooperate fully by providing records, testimony and such additional information or assistance as may reasonably be necessary to pursue the contest. Further, the other Party shall be reimbursed for any reasonable and necessary out-of-pocket copying and travel expenses incurred in assisting in such contest.

12. Force Majeure

In the event performance of this Agreement, or any obligation hereunder, is either directly or indirectly prevented, restricted, or interfered with by reason of fire, flood, earthquake or like acts of God, wars, revolution, civil commotion, explosion, acts of public enemy, embargo, acts of the government in its sovereign capacity, labor difficulties, including without limitation, strikes, slowdowns, picketing, or boycotts, unavailability of equipment from vendor, changes requested by NOW, or any other circumstances beyond the reasonable control and without the fault or negligence of the Party affected, the Party affected, upon giving prompt notice to the other Party, shall be excused from such performance on a day-to-day basis to the extent of such prevention, restriction, or interference (and the other Party shall likewise be excused from performance of its obligations on a day-to-day basis until the delay, restriction or interference has ceased); provided, however, that the Party so affected shall use diligent efforts to avoid or remove such causes of non-performance and both Parties shall proceed whenever such causes are removed or cease.

13. Adoption of Agreements

BellSouth shall make available, pursuant to 47 USC § 252 and the FCC rules and regulations regarding such availability, to NOW any interconnection, service, or network element provided under any other agreement filed and approved pursuant to 47 USC § 252, provided a minimum of six months remains on the term of such agreement. The Parties shall adopt all rates, terms and conditions concerning such other interconnection, service or network element and any other rates, terms and conditions that are legitimately related to or were negotiated in exchange for or in conjunction with the interconnection, service or network element being adopted. The adopted interconnection, service, or network element and agreement shall apply to the same states as such other agreement. The term of the adopted agreement or provisions shall expire on the same date as set forth in the agreement that was adopted.

14. Modification of Agreement

14.1 If NOW changes its name or makes changes to its company structure or identity due to a merger, acquisition, transfer or any other reason, it is the responsibility of NOW to notify BellSouth of said change and request that an amendment to this Agreement, if necessary, be executed to reflect said change.

14.2 No modification, amendment, supplement to, or waiver of the Agreement or any of its provisions shall be effective and binding upon the Parties unless it is made in writing and duly signed by the Parties.

14.3 In the event that any effective legislative, regulatory, judicial or other legal action materially affects any material terms of this Agreement, or the ability of NOW or BellSouth to perform any material terms of this Agreement, NOW or BellSouth may, on thirty (30) days' written notice, require that such terms be renegotiated, and the Parties shall renegotiate in good faith such mutually acceptable new terms as may be required. In the event that such new terms are not renegotiated within ninety (90) days after such notice, the Dispute shall be referred to the Dispute Resolution procedure set forth in this Agreement.

15. Non-waiver of Legal Rights

Execution of this Agreement by either Party does not confirm or imply that the executing Party agrees with any decision(s) issued pursuant to the Telecommunications Act of 1996 and the consequences of those decisions on specific language in this Agreement. Neither Party waives its rights to appeal or otherwise challenge any such decision(s) and each Party reserves all of its rights to pursue any and all legal and/or equitable remedies, including appeals of any such decision(s). Additionally, each Party may exercise its lawful right to file an appropriate petition or action in any forum of proper venue and jurisdiction regarding any dispute arising from this Agreement.

16. Indivisibility

The Parties intend that this Agreement be indivisible and nonseverable, and each of the Parties acknowledges that it has assented to all of the covenants and promises in this Agreement as a single whole and that all of such covenants and promises, taken as a whole, constitute the essence of the contract. Without limiting the generality of the foregoing, each of the Parties acknowledges that any provision by BellSouth of collocation space under this Agreement is solely for the purpose of facilitating the provision of other services under this Agreement and that neither Party would have contracted with respect to the provisioning of collocation space under this Agreement if the covenants and promises of the other Party with respect to the other services provided under this Agreement had not been made. The Parties further acknowledge that this Agreement is intended to constitute a single transaction, that the obligations of the Parties under this Agreement are interdependent, and that payment obligations under this Agreement are intended to be recouped against other payment obligations under this Agreement.

17. Waivers

A failure or delay of either Party to enforce any of the provisions hereof, to exercise any option which is herein provided, or to require performance of any of the provisions hereof shall in no way be construed to be a waiver of such provisions or options, and each Party, notwithstanding such failure, shall have the right thereafter to insist upon the performance of any and all of the provisions of this Agreement.

18. Governing Law

Where applicable, this Agreement shall be governed by and construed in accordance with federal and state substantive telecommunications law, including rules and regulations of the FCC and appropriate Commission. In all other respects, this Agreement shall be governed by and construed and enforced in accordance with the laws of the State of Georgia without regard to its conflict of laws principles.

19. Assignments

Any assignment by either Party to any non-affiliated entity of any right, obligation or duty, or of any other interest hereunder, in whole or in part, without the prior written consent of the other Party shall be void. A Party may assign this Agreement in its entirety to an Affiliate of the Party without the consent of the other Party; provided, however, that the assigning Party shall notify the other Party in writing of such assignment thirty (30) days prior to the Effective Date thereof and, provided further, if the assignee is an assignee of NOW, the assignee must provide evidence of Commission CLEC certification. The Parties shall amend this Agreement to reflect such assignments and shall work cooperatively to implement any changes required due to such assignment. All obligations and duties of any Party under this Agreement shall be binding on all successors in interest and assigns of such Party. No assignment or delegation hereof shall relieve the assignor of its obligations under this Agreement in the event that the assignee fails to perform such obligations. Notwithstanding anything to the contrary in this Section, NOW shall not assign this Agreement to any Affiliate or non-affiliated entity unless either (1) NOW pays all bills, past due and current, under this Agreement, or (2) NOW's assignee expressly assumes liability for payment of such bills.

20. Notices

20.1 Every notice, consent, approval, or other communications required or contemplated by this Agreement shall be in writing and shall be delivered by hand, by overnight courier or by US mail postage prepaid, address to:

BellSouth Telecommunications, Inc.

BellSouth Local Contract Manager
600 North 19th Street, 8th floor
Birmingham, Alabama 35203

and

ICS Attorney
Suite 4300
675 W. Peachtree St.
Atlanta, GA 30375

NOW Communications, Inc.

Attn: Larry W. Seab, CEO and President
2000 Newpoint Place, N.W., Suite 900
Lawrenceville, GA 30043

and

NOW Communications, Inc.
Regulatory Offices
R. Scott Seab, Esq.
Vice President – Regulatory Affairs
Colorado Springs, CO 80903

or at such other address as the intended recipient previously shall have designated by written notice to the other Party.

20.2 Unless otherwise provided in this Agreement, notice by mail shall be effective on the date it is officially recorded as delivered by return receipt or equivalent, and in the absence of such record of delivery, it shall be presumed to have been delivered the fifth day, or next business day after the fifth day, after it was deposited in the mails.

20.3 Notwithstanding the foregoing, BellSouth may provide NOW notice via Internet posting of price changes and changes to the terms and conditions of services available for resale per Commission Orders. BellSouth will post changes to business processes and policies, notices of new service offerings, and changes to service offerings not requiring an amendment to this Agreement, notices required to be posted to BellSouth's website, and any other information of general applicability to CLECs.

21. Arm's Length Negotiations

The parties to this Agreement are unrelated to each other.

22. Headings of No Force or Effect

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

23. Multiple Counterparts

This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, but all of which shall together constitute but one and the same document.

24. Filing of Agreement

Upon execution of this Agreement it shall be filed with the appropriate state regulatory agency pursuant to the requirements of Section 252 of the Act, and the Parties shall share equally any filing fees therefor. If the regulatory agency imposes any filing or public interest notice fees regarding the filing or approval of the Agreement, NOW shall be responsible for publishing the required notice and the publication and/or notice costs shall be borne by NOW. Notwithstanding the foregoing, this Agreement shall not be submitted for approval by the appropriate state regulatory agency unless and until such time as NOW is duly certified as a local exchange carrier in such state, except as otherwise required by a Commission.

25. Compliance with Applicable Law

Each Party shall comply at its own expense with Applicable Law.

26. Necessary Approvals

Each Party shall be responsible for obtaining and keeping in effect all approvals from, and rights granted by, governmental authorities, building and property owners, other carriers, and any other persons that may be required in connection with the performance of its obligations under this Agreement. Each Party shall reasonably cooperate with the other Party in obtaining and maintaining any required approvals and rights for which such Party is responsible.

27. Good Faith Performance

Each Party shall act in good faith in its performance under this Agreement and, in each case in which a Party's consent or agreement is required or requested hereunder, such Party shall not unreasonably withhold or delay such consent or agreement.

28. Nonexclusive Dealings

This Agreement does not prevent either Party from providing or purchasing services to or from any other person nor, except as provided in Section 252(i) of the Act, does it obligate either Party to provide or purchase any services (except insofar as the Parties are obligated to provide access to Interconnection, services and Network Elements to NOW as a requesting carrier under the Act).

29. Rate True-Up

29.1 This section applies to Network Interconnection and/or Unbundled Network Elements and Other Services rates that are expressly subject to true-up under this Agreement.

29.2 The designated true-up rates shall be trued-up, either up or down, based on final prices determined either by further agreement between the Parties, or by a final order (including any appeals) of the Commission. The Parties shall implement the true-up by comparing the actual volumes and demand for each item, together with the designated true-up rates for each item, with the final prices determined for each item. Each Party shall keep its own records upon which the true-up can be based, and any final payment from one Party to the other shall be in an amount agreed upon by the Parties based on such records. In the event of any disagreement as between the records or the Parties regarding the amount of such true-up, the Parties shall submit the matter to the Dispute Resolution process in accordance with the provisions of Section 10 of the General Terms and Conditions of this Agreement.

29.3 An effective order of the Commission that forms the basis of a true-up shall be based upon cost studies submitted by either or both Parties to the Commission and shall be binding upon BellSouth and NOW specifically or upon all carriers generally, such as a generic cost proceeding.

30. Survival

The Parties' obligations under this Agreement which by their nature are intended to continue beyond the termination or expiration of this Agreement shall survive the termination or expiration of this Agreement.

31. Entire Agreement

31.1 This Agreement means the General Terms and Conditions, the Attachments identified in Section 31.2 below, and all documents identified therein, as such may be amended from time to time and which are incorporated herein by reference, all of which, when taken together, are intended to constitute one indivisible agreement. This Agreement sets forth the entire understanding and supersedes prior agreements between the Parties relating to the subject matter contained in this Agreement and merges all prior discussions between them. Any orders placed under prior agreements between the Parties shall be governed by the terms of this Agreement and NOW acknowledges and agrees that any and all amounts and

obligations owed for services provisioned or orders placed under prior agreements between the Parties, related to the subject matter hereof, shall be due and owing under this Agreement and be governed by the terms and conditions of this Agreement as if such services or orders were provisioned or placed under this Agreement. Neither Party shall be bound by any definition, condition, provision, representation, warranty, covenant or promise other than as expressly stated in this Agreement or as is contemporaneously or subsequently set forth in writing and executed by a duly authorized officer or representative of the Party to be bound thereby.

31.2 This Agreement includes Attachments with provisions for the following:

Resale
Network Elements and Other Services
Network Interconnection
Collocation
Access to Numbers and Number Portability
Pre-Ordering, Ordering, Provisioning, Maintenance and Repair
Billing
Rights-of-Way, Conduits and Pole Attachments
Performance Measurements
BellSouth Disaster Recovery Plan
Bona Fide Request/New Business Request Process

31.3 The following services are included as options for purchase by NOW pursuant to the terms and conditions set forth in this Agreement. NOW may elect to purchase said services by written request to its Local Contract Manager if applicable:

Optional Daily Usage File (ODUF)
Enhanced Optional Daily Usage File (EODUF)
Access Daily Usage File (ADUF)
Line Information Database (LIDB) Storage
Centralized Message Distribution Service (CMDS)
Calling Name (CNAM)
LNP Data Base Query Service

IN WITNESS WHEREOF, the Parties have executed this Agreement the day and year written below.

BellSouth Telecommunications, Inc.	NOW Communications, Inc.
By: Original Signature on File	By: Original Signature on File
Name: Elizabeth R. A. Shiroishi	Name: Larry W. Seab
Title: Assistant Director	Title: CEO and President
Date: 1/14/03	Date: 1/7/03

CERTIFICATE OF SERVICE

I, Thomas B. Alexander, attorney of record for BellSouth Telecommunications, Inc., ("BellSouth") hereby certify that I have this day caused to be hand-delivered the original and fourteen (14) copies of BellSouth's Response and Objection to Brian U. Ray, Executive Secretary, Mississippi Public Service Commission, 2nd Floor, Woolfolk Building, Jackson, Mississippi 39201.

I further certify that I have also caused to be hand delivered or mailed a true and correct copy of the aforesaid Response and Objection, by first class United States mail, postage prepaid, to the following:

Stanley Q. Smith, Esq.
Watkins Ludlum Winter & Stennis
Post Office Box 427
Jackson, Mississippi 39205-0427

George Fleming, Esq.
General Counsel
Mississippi Public Utilities Staff
3rd Floor
Woolfolk Building
Jackson, MS

David L. Campbell, Esq.
General Counsel
Mississippi Public Service Commission
2nd Floor
Woolfolk Building
Jackson, MS

This the 15th day of August, 2003.

Thomas B. Alexander
THOMAS B. ALEXANDER