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February 22, 2005

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

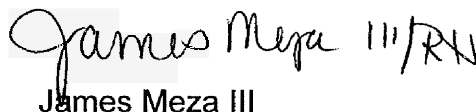
Re: Docket No.: 040130-TP
Joint Petition of NewSouth Communications Corp., *et al.* for Arbitration with BellSouth Telecommunications, Inc.

Dear Ms. Bayó:

Enclosed are an original and fifteen copies of BellSouth Telecommunications, Inc.'s Prehearing Statement, 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,



James Meza III

Enclosures

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

DOCUMENT NUMBER-DATE
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FPSC-COMMISSION CLERK

CERTIFICATE OF SERVICE
DOCKET NO. 040130-TP

I HEREBY CERTIFY that a true and correct copy of the foregoing was served via Electronic Mail and First Class U. S. Mail this 22nd day of February, 2005 to the following:

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James Meza III

BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

In the Matter of	)	
Joint Petition of NewSouth	)	**Docket No. 040130-TP**
Communications Corp. *et al.* for	)	
Arbitration with BellSouth	)	
Telecommunications, Inc.	)	**Filed: February 21, 2005**

<u>BELLSOUTH TELECOMMUNICATIONS, INC.'S PREHEARING STATEMENT</u>

BellSouth Telecommunications, Inc. ("BellSouth"), in compliance with the Order Establishing Procedure (Order No. 04-0807-PCO-TP) issued on August 19, 2004, hereby submits its Prehearing Statement for Docket No. 040130-TP.

A. <u>Witnesses</u>

BellSouth proposes to call the following witness to offer testimony on the issues in this docket:

Witness	**Issue(s)**
Scot Ferguson (Direct and Rebuttal)	2-25, 6-3
Eric Fogle (Direct and Rebuttal)	2-18, 2-19, 2-20, 2-28
Kathy Blake (Direct and Rebuttal)	G-2, G-4, G-5, G-7, G-8, G-9, G-12, 2-5, 2-8, 2-9, 2-32, 2-33, 3-4, 3-6 and Supplemental Issues S-1 through S-7
Carlos Morillo (Direct and Rebuttal) (adopted by Mr. Ferguson and Ms. Blake)	6-5, 7-1, 7-3, 7-5, 7-6, 7-7, 7-8, 7-9 and 7-10
Eddie Owens** (Direct and Rebuttal)	6-11, 7-2

As to Mr. Owens, it should be noted that his issues have been conditionally settled with the Joint Petitioners and that BellSouth anticipates finalization of the settlement in the near future. BellSouth announced this settlement at the Georgia Public Service Commission arbitration hearing and neither party crossed on these issues at that proceeding. Consequently, BellSouth does not anticipate calling Mr. Owens as a witness at the hearing but nevertheless identifies him herein in the unanticipated event that the Joint Petitioners claim that no settlement has been reached.

Additionally, BellSouth reserves the right to call additional witnesses, witnesses to respond to Commission inquiries not addressed in direct and rebuttal testimony and witnesses to address issues not presently designated that may be designated by the Prehearing Officer at the prehearing conference to be held on March 7, 2005. BellSouth has listed the witnesses for whom BellSouth believes testimony will be filed, but reserves the right to supplement that list if necessary.

B. Exhibits

KKB-1 attached to the Direct Testimony of Kathy K. Blake
(Excerpts from Interconnection Agreement)
KKB-2 attached to the Rebuttal Testimony of Kathy K. Blake
(Example of Timeline of Past Due Notices)
ELO-1 attached to the Direct Testimony of Eddie L. Owens
(Mergers and Acquisition Process)

BellSouth reserves the right to file exhibits to any testimony that may be filed under the circumstances identified in Section "A" above. BellSouth also reserves the right to introduce exhibits for cross-examination, impeachment, or any other purpose authorized by the applicable Florida Rules of Evidence and Rules of this Commission.

C. Statement of Basic Position

Each of the individually numbered issues in this docket represent a specific dispute between BellSouth and the Joint Petitioners as to what should be included in the Interconnection Agreement between the parties. Some of these issues involve matters that are not properly within the scope of the Telecommunications Act of 1996 or the jurisdiction of this Commission and should, therefore, not be part of an Arbitrated Agreement. As to all other issues, BellSouth's positions are the more consistent with the 1996 Act, the pertinent rulings of the FCC and the rules of this Commission. Therefore, the Commission should sustain each of BellSouth's positions.

D. BellSouth's Position on the Issues

Item No. 2, Issue No. G-2 [Section 1.7]: How should "End User" be defined?

Position: The Parties have not discussed the definition for "End User" other than in the context of high-capacity EELs. Since the issue as stated by the CLECs and raised in the General Terms and Conditions of the Agreement has never been discussed by the Parties, the issue is not appropriate for arbitration. Nevertheless, the term End User should be defined as it is customarily used in the industry; that is, the ultimate user of the telecommunications service. And, to address the Joint Petitioners' concerns while at the same time minimizing the risk that the definition of end user could be interpreted in such a way that allows the Joint Petitioners to use UNEs in a prohibited manner, BellSouth has offered the following definition to the Joint Petitioners: End User means the retail customer of a Telecommunications Service, excluding ISPs/ESPs, and does not include Telecommunication carriers such as CLECs, ICOs and IXCs.

Item No. 4, Issue No. G-4 [Section 10.4.1]: What should be the limitation on each Party's liability in circumstances other than gross negligence or willful misconduct?

Position: The industry standard limitation of liability should apply, which limits the liability of the provisioning party to a credit for the actual cost of the services or functions not performed or improperly performed.

Item No. 5, Issue No. G-5 [Section 10.4.2]: If the CLEC does not have in its contracts with end users and/or tariffs standard industry limitations of liability, who should bear the resulting risks?

Position: If a CLEC elects not to limit its liability to its end users/customers in accordance with industry norms, the CLEC should bear the risk of loss arising from that business decision. The purpose of this provision is to put BellSouth in the same position it would be in if the end user were a BellSouth customer rather than a Joint Petitioner customer. This is because BellSouth is unable to limit its liability to the Joint Petitioner's end users as it would for its own customer and therefore needs the level of protection from the Joint Petitioners in the event the Joint Petitioners choose to deviate from standard industry practices.

Item No. 6, Issue No. G-6 [Section 10.4.4]: How should indirect, incidental or consequential damages be defined for purposes of the Agreement?

Position: The types of damages that constitute and who is entitled to recover (like the Joint Petitioners' end users) indirect, incidental or consequential damages is a matter of state law and should not be dictated by a party to an agreement. The Joint Petitioners concede that their proposed language is of no force and effect. Based on this admission, there is no reason to include their proposed language in the agreement.

Item No. 7, Issue No. G-7 [Section 10.5]: What should the indemnification obligations of the parties be under this Agreement?

Position: The Party providing services should be indemnified, defended and held harmless by the Party receiving services 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. This indemnification obligation shall not apply the extent any claims, loss, or damage is caused by the providing Party's gross negligence or willful misconduct.

Item No. 9, Issue No. G-9 [Section 13.1]: Under what circumstances should a party be allowed to take a dispute concerning the interconnection agreement to a Court of law for resolution first?

Position: This Commission or the FCC should resolve disputes between the parties for matters that are within the Commission's or the FCC's expertise. For matters that lie outside such expertise, the parties should be able to bring disputes to a court of law.

Item No. 12, Issue No. G-12 [Section 32.2]: Should the Agreement explicitly state that all existing state and federal laws, rules, regulations, and decisions apply unless otherwise specifically agreed to by the Parties?

Position: BellSouth's proposed language acknowledges an underlying obligation to provide services in accordance with applicable rules, regulations, etc. and that the parties have negotiated what those obligations are. However, in the unlikely event that an issue arises in the future where the parties dispute whether there is an obligation regarding substantive telecommunications law that has or has not been included in the agreement, and the parties further dispute whether they had or had not negotiated their obligations with respect to that law, then the parties should attempt to resolve the dispute by amending the agreement to define and incorporate include such obligation. In the event that the parties cannot agree on what the obligation is, or whether such obligation exists under the law, then the Commission should resolve that dispute. In the event the Commission finds that at an obligation exists that was not previously included in the interconnection agreement, the parties should then amend the agreement *prospectively* to include such an obligation. To require retrospective compliance in such circumstances would be inappropriate. BellSouth is not attempting to avoid its obligations under the law; it is simply trying to ensure that its obligations are sufficiently defined so that it can comply with them and so that it can expect compliance.

Item No. 23, Issue No. 2-5 [Section 1.11.1]: What rates, terms, and conditions should govern the CLECs' transition of existing network elements that BellSouth is no longer obligated to provide as UNEs to other services?

Position: *****Pursuant to the conference call with Staff and the parties on February 14, 2005 as well as the agreement between BellSouth and the Joint Petitioners on that call, BellSouth submits that this issue should be resolved in the Change of Law Generic Proceeding*****

At the conclusion of the Transition Period, in the absence of an effective FCC ruling that Mass Market Switching, DS1, or equivalent, and higher capacity loops, including dark fiber loops (collectively "Enterprise Market Loops"), and DS1, or equivalent, and higher capacity dedicated transport, including dark fiber transport (collectively "High Capacity Transport") , or any subset thereof (individually or collectively referred to herein as the "Eliminated Elements") are subject to unbundling, the CLEC must transition Eliminated Elements to either Resale, tariffed services, or services offered pursuant to a separate agreement negotiated between the Parties (collectively "Comparable Services") or must disconnect such Eliminated Elements, as set forth below.

<u>Eliminated Elements including Mass Market Switching Function ("Switching Eliminated Elements").</u> In the event that the CLEC has not entered into a separate agreement for the provision of Mass Market Switching or services that include Mass Market Switching, the CLEC will submit orders to either disconnect Switching Eliminated Elements or convert such Switching Eliminated Elements to Resale within thirty (30) days of the last day of the Transition Period. If the

CLEC submits orders to transition such Switching Eliminated Elements to Resale within thirty (30) days of the last day of the Transition Period, applicable recurring and nonrecurring charges shall apply as set forth in the appropriate BellSouth tariff, subject to the appropriate discounts described in the resale attachment of the Agreement. If the CLEC fails to submit orders within thirty (30) days of the last day of the Transition Period, BellSouth shall transition such Switching Eliminated Elements to Resale, and the CLEC shall pay the applicable nonrecurring and recurring charges as set forth in the appropriate BellSouth tariff, subject to the appropriate discounts described in the resale attachment of this Agreement. In such case, the CLEC shall reimburse BellSouth for labor incurred in identifying the lines that must be converted and processing such conversions. If no equivalent Resale service exists, then BellSouth may disconnect such Switching Eliminated Elements if the CLEC does not submit such orders within thirty (30) days of the last day of the Transition Period. In all cases, until Switching Eliminated Elements have been converted to Comparable Services or disconnected, the applicable recurring and nonrecurring rates for Switching Eliminated Elements during the Transition Period shall apply as set forth in the Agreement. Applicable nonrecurring disconnect charges may apply for disconnection of service or conversion to Comparable Services.

Other Eliminated Elements. Upon the end of the Transition Period, the CLEC must transition the Eliminated Elements other than Switching Eliminated Elements ("Other Eliminated Elements") to Comparable Services. Unless the Parties agree otherwise, Other Eliminated Elements shall be handled as follows.

The CLEC will identify and submit orders to either disconnect Other Eliminated Elements or transition them to Comparable Services within thirty (30) days of the last day of the Transition Period. Rates, terms and conditions for Comparable Services shall apply per the applicable tariff for such Comparable Services as of the date the order is completed. Where the CLEC requests to transition a minimum of fifteen (15) circuits per state, the CLEC may submit orders via a spreadsheet process and such orders will be project managed. In all other cases, the CLEC must submit such orders pursuant to the local service request/access service request (LSR/ASR) process, dependent on the Comparable Service elected. For such transitions, the non-recurring and recurring charges shall be those set forth in BellSouth's FCC#1 tariff, or as otherwise agreed in a separately negotiated agreement. Until such time as the Other Eliminated Elements are transitioned to such Comparable Services, such Other Eliminated Elements will be provided pursuant to the rates, terms and conditions applicable to the subject Other Eliminated Elements during the Transition Period as set forth in the Agreement.

If the CLEC fails to identify and submit orders for any Other Eliminated Elements within thirty (30) days of the last day of the Transition Period, BellSouth may transition such Other Eliminated Elements to Comparable Services. The rates, terms and conditions for such Comparable Services shall apply as of the date

following the end of the Transition Period. If no Comparable Services exist, then BellSouth may disconnect such Other Eliminated Elements if the CLEC does not submit such orders within thirty (30) days of the last day of the Transition Period. In such case the CLEC shall reimburse BellSouth for labor incurred in identifying such Other Eliminated Elements and processing such orders and the CLEC shall pay the applicable disconnect charges set forth in this Agreement. Until such time as the Other Eliminated Elements are disconnected pursuant to this Agreement, such Other Eliminated Elements will be provided pursuant to the rates, terms and conditions applicable to the subject Other Eliminated Elements during the Transition Period as set forth in this Agreement.

In the event that the Interim Rules are vacated by a court of competent jurisdiction, the CLEC should immediately transition Mass Market Switching, Enterprise Market Loops and High Capacity Transport as set forth above, applied from the effective date of such vacatur, without regard to the Interim Period or Transition Period.

In the event that any Network Element, other than those addressed above, is no longer required to be offered by BellSouth pursuant to Section 251 of the Act, the CLEC shall immediately transition such elements as set forth above, applied from the effective date of the order eliminating such obligation.

Item No. 26, Issue No. 2-8 [Section 1.13]: Should BellSouth be required to commingle UNEs or Combinations with any service, network element or other offering that it is obligated to make available pursuant to Section 271 of the Act?

Position: No, consistent with the FCC's errata to the Triennial Review Order, there is no requirement to commingle UNEs or combinations with services, network elements or other offerings made pursuant to Section 271 of the Act.

Item No. 36, Issue No. 2-18 [Section 2.12.1]: (A) How should Line Conditioning be defined in the Agreement? (B) What should BellSouth's obligations be with respect to line conditioning?

Position: As set forth in paragraph 643 of the TRO, BellSouth has an obligation to provide the Joint Petitioners with line conditioning in a nondiscriminatory fashion. Thus, BellSouth is obligated to provide and has agreed to provide the Joint Petitioners with line conditioning pursuant to the same rates, terms, and conditions that it provides to its own customers. Accordingly, the Interconnection Agreement should provide that BellSouth will perform line conditioning functions as defined in 47 C.F.R. 51.319(a)(1)(iii) to the extent the function is a routine network modification that BellSouth regularly undertakes to provide xDSL to its own customers.

Item No. 37, Issue No. 2-19 [Section 2.12.2]: Should the Agreement contain specific provisions limiting the availability of Line Conditioning to copper loops of 18,000 feet or less?

Position: Yes, current industry technical standards require the placement of load coils on copper loops greater than 18,000 feet in length to support voice service and BellSouth does not remove them for BellSouth retail end users on copper loops of over 18,000 feet in length; therefore, such a modification would not constitute a routine network modification and is not required by the FCC.

Item No. 38, Issue No. 2-20 [Section 2.12.3, 2.12.4]: Under what rates, terms and conditions should BellSouth be required to perform Line Conditioning to remove bridged taps?

Position: For any copper loop being ordered by CLEC which has over 6,000 feet of combined bridged tap will be modified, upon request from CLEC, so that the loop will have a maximum of 6,000 feet of bridged tap. This modification will be performed at no additional charge to CLEC. Line conditioning orders that require the removal of bridged tap that serves no network design purpose on a copper loop that will result in a combined level of bridged tap between 2,500 and 6,000 feet will be performed at the rates set forth in Exhibit A of this Attachment. CLEC may request removal of any unnecessary and non-excessive bridged tap (bridged tap between 0 and 2,500 feet which serves no network design purpose), at rates pursuant to BellSouth's Special Construction Process contained in BellSouth's FCC No. 2 as mutually agreed to by the Parties. BellSouth is only required to perform line conditioning that it performs for its own xDSL customers and is not required to create a superior network for CLECs. The situations outlined above where BellSouth will remove bride taps for the Joint Petitioners was agreed to with CLECs in the Shared Loop Collaborative and thus BellSouth has offered these conditions to the Joint Petitioners.

Item No. 46, Issue No. 2-28 [Sections 3.10.4]: Should the CLEC be permitted to incorporate the Fast Access language from the FDN and/or Supra interconnection agreements, respectively docket numbers 010098-TP and 001305-TP, for the term of this Agreement?

Position: This issue is not appropriate for arbitration in this proceeding because it involves a request by the CLECs that is not encompassed within BellSouth's obligations pursuant to Section 251 of the Act. Moreover, pursuant to the FCC's recent "all or nothing rule" regarding Section 251(i) and the Interim Rules, the CLECs cannot adopt any agreement that requires BellSouth to provision FastAccess over UNE-P or UNE-L.

Further, BellSouth should not be required to provide DSL transport or DSL services over UNEs to CLEC and its End Users as BellSouth's DSLAMs are not

subject to unbundling. The FCC specifically stated in paragraph 288 of the TRO that they would "not require incumbent LECs to provide unbundled access to any electronics or other equipment used to transmit packetized information."

If BellSouth elects to offer these services to CLEC, they should be pursuant to a separately negotiated commercial agreement between the parties or a tariff, and should not be subject to arbitration in this proceeding as they are not services required pursuant to Section 251 of the Act.

Item No. 51, Issue No. 2-33 [Sections 5.2.6, 5.2.6.1]: (A) This issue has been resolved.

(B) Should there be a notice requirement for BellSouth to conduct an audit and what should the notice include?

(C) Who should conduct the audit and how should the audit be performed?

Position: This issue is only appropriate for arbitration to the extent that high capacity EELs are available to CLECs and the associated service eligibility criteria apply. In the event that high capacity loops and transport are not available as UNEs pursuant to Section 251, this issue is not appropriate for arbitration.

(B) BellSouth will provide notice to CLECs stating the cause upon which BellSouth rests its allegations of noncompliance with the service eligibility criteria at least 30 calendar days prior to the date of the audit. The TRO does not obligate BellSouth to identify the audits that support the cause for the audit or limit its audit right to only those circuits that are identified in a notice.

(C) The audit shall be conducted by an independent auditor, and the auditor must perform its evaluation in accordance with the standards established by the American Institute for Certified Public Accountants (AICPA). The auditor will perform an "examination engagement" and issue an opinion regarding CLEC's compliance with the qualifying service eligibility criteria. The independent auditor's report will conclude whether CLEC has complied in all material respects with the applicable service eligibility criteria. Consistent with standard auditing practices, such audits require compliance testing designed by the independent auditor, which typically include an examination of a sample selected in accordance with the independent auditor's judgment. The TRO does not require mutual agreement on the selection of an auditor and any concerns the Joint Petitioners may have about the independence of an auditor should be alleviated by BellSouth's agreement that the audit will be performed in accordance with AICPA standards.

Item No. 63, Issue No. 3-4 [Section 10.11.6 (KMC), 10.8.6 (NSC/NVX), 10.11.6 (XSP)]: Under what terms should CLEC be obligated to reimburse BellSouth for amounts BellSouth pays to third party carriers that terminate BellSouth transited/CLEC originated traffic?

Position: ***The Parties have conditionally settled this issue*** In the event that a terminating third party carrier imposes on BellSouth any charges or costs for the delivery of Transit Traffic originated by CLEC, CLEC should reimburse BellSouth for all charges paid by BellSouth.

Item No. 65, Issue No. 3-6 [Section 10.11. 1 (KMC/XSP), 10.8.1 (NSC/NVX)]: Should BellSouth be allowed to charge the CLEC a Transit Intermediary Charge for the transport and termination of Local Transit Traffic and ISP-Bound Transit Traffic?

Position: Yes, BellSouth is not obligated to provide the transit function and the CLEC has the right pursuant to the Act to request direct interconnection to other carriers. Additionally, BellSouth incurs costs beyond those for which the Commission ordered rates were designed to address, such as the costs of sending records to the CLECs identifying the originating carrier. BellSouth does not charge the CLEC for these records and does not recover those costs in any other form. Moreover, this issue is not appropriate for arbitration in this proceeding because it involves a request by the CLECs that is not encompassed within BellSouth's obligations pursuant to Section 251 of the Act.

Item No. 86, Issue No. 6-3 [Sections 2.5.6.2, 2.5.6.3]: (B) How should disputes over alleged unauthorized access to CSR information be handled under the Agreement?

Position: This issue addresses when a party is in violation of federal law as well as the Interconnection Agreement by obtaining unauthorized access to CSR information. In such an instance and when the offending party cannot prove that the violation has been cured, the non-offending party should have the right to suspend and terminate service after an explicit cure period. If there is a legitimate dispute as to whether that was unauthorized access to CSR information, the parties should resolve the dispute at the Commission via expedited resolution.

Item No. 88, Issue No. 6-5 [Section 2.6.5]: What rate should apply for Service Date Advancement (a/k/a service expedites)?

Position: BellSouth is not required to provide expedited service pursuant to The Act. If BellSouth elects to offer expedite capability as an enhancement to a CLEC, BellSouth's tariffed rates for service date advancement should apply. Moreover, this issue is not appropriate for arbitration in this proceeding because it involves a request by the CLECs that is not encompassed within BellSouth's obligations pursuant to Section 251 of the Act.

Item No. 94, Issue No. 6-11 [Sections 3.1.2, 3.1.2.1]: (A) Should the mass migration of customer service arrangements resulting from mergers, acquisitions and asset transfers be accomplished by the submission of an electronic LSR or spreadsheet? (B) If so, what rates should apply?

(C) What should be the interval for such mass migrations of services?

Position: *****The Parties have conditionally settled this issue***** This issue (including all subparts) is not appropriate for arbitration in this proceeding because it involves a request by the CLECs that is not encompassed within BellSouth's obligations pursuant to Section 251 of the Act.

(A) No, each and every Merger, Acquisition and Asset Transfer is unique and requires project management and planning to ascertain the appropriate manner in which to accomplish the transfer, including how orders should be submitted. The vast array of services that may be the subject of such a transfer, under the agreement and both state and federal tariffs, necessitates that various forms of documentation may be required.

(B) The rates by necessity must be negotiated between the Parties based upon the particular services to be transferred and the work involved.

(C) No finite interval can be set to cover all potential situations. While shorter intervals can be committed to and met for small, simple projects, larger and more complex projects require much longer intervals and prioritization and cooperation between the Parties.

Item No. 96, Issue No. 7-2 [Section 1.2.2]: ***(A) What charges, if any, should be imposed for records changes made by the Parties to reflect changes in corporate names or other LEC identifiers such as OCN, CC, CIC and ACNA? (B) What intervals should apply to such changes?***

Position: *****The Parties have conditionally settled this issue***** This issue (including all subparts) is not appropriate for arbitration in this proceeding because it involves a request by the CLECs that is not encompassed within BellSouth's obligations pursuant to Section 251 of the Act.

(A) BellSouth is permitted to recover its costs and CLEC should be charged a reasonable records change charge. Requests for this type of change should be submitted to the BFR/NBR process.

(B) The Interval of any such project would be determined by the BFR/NBR process based upon the complexity of the project.

Item No. 97, Issue No. 7-3 [Section 1.4]: ***When should payment of charges for service be due?***

Position: Payment for services should be due **<u>on or before</u>** the next bill date (Payment Due Date) in immediately available funds.

Item No. 100, Issue No. 7-6 [Section 1.7.2]: Should CLEC be required to calculate and pay past due amounts in addition to those specified in BellSouth's notice of suspension or termination for nonpayment in order to avoid suspension or termination?

Position: Yes, if CLEC receives a notice of suspension or termination from BellSouth as a result of CLEC's failure to pay timely, CLEC should be required to pay all amounts that are past due as of the date of the pending suspension or termination action.

Item No. 101, Issue No. 7-7 [Section 1.8.3]: How many months of billing should be used to determine the maximum amount of the deposit?

Position: The average of two (2) months of actual billing for existing customers or estimated billing for new customers, which is consistent with the telecommunications industry's standard and BellSouth's practice with its end users.

Item No. 102, Issue No. 7-8 [Section 1.8.3.1]: Should the amount of the deposit BellSouth requires from CLEC be reduced by past due amounts owed by BellSouth to CLEC?

Position: No, CLEC's remedy for addressing late payment by BellSouth should be suspension/termination of service or application of interest/late payment charges similar to BellSouth's remedy for addressing late payment by CLEC.

Item No. 103, Issue No. 7-9 [Section 1.8.6]: Should BellSouth be entitled to terminate service to CLEC pursuant to the process for termination due to non-payment if CLEC refuses to remit any deposit required by BellSouth within 30 calendar days?

Position: Yes, thirty (30) calendar days is a commercially reasonable time period within which CLEC should have met its fiscal responsibilities as well as the already agreed-upon right for BellSouth to obtain a deposit.

Item No. 104, Issue No. 7-10 [Section 1.8.7]: What recourse should be available to either Party when the Parties are unable to agree on the need for or amount of a reasonable deposit?

Position: If CLEC does not agree with the amount or need for a deposit requested by BellSouth, CLEC may file a petition with the Commission for resolution of the dispute and BellSouth would cooperatively seek expedited resolution of such dispute. BellSouth shall not terminate service during the pendency of such a proceeding provided that CLEC posts a payment bond for half of the amount of the requested deposit during the pendency of the proceeding.

Item No. 108, Issue No. S-1: How should the final FCC unbundling rules be incorporated into the Agreement?

Position: *****Pursuant to the conference call with Staff and the parties on February 14, 2005 as well as the agreement between BellSouth and the Joint Petitioners on that call, BellSouth submits that this issue should be resolved in the Change of Law Generic Proceeding*****

The Agreement should automatically incorporate the FCC Final Unbundling Rules immediately upon those rules becoming effective.

Item No. 109, Issue No. S-2: (A) How should any intervening FCC Order adopted in CC Docket 01-338 or WC Docket 04-313 be incorporated into the Agreement? (B) How should any intervening State Commission order relating to unbundling obligations, if any, be incorporated into the Agreement?

Position: *****Pursuant to the conference call with Staff and the parties on February 14, 2005 as well as the agreement between BellSouth and the Joint Petitioners on that call, BellSouth submits that this issue should be resolved in the Change of Law Generic Proceeding*****

If the FCC enters an intervening order prior to issuing the Final FCC Unbundling Rules, the requirements of the intervening order should take precedence over rates, terms, and conditions in the Agreement that are inconsistent with the rates, terms, and conditions set forth in the intervening order. In order to effectuate this, the Agreement should automatically incorporate any intervening order on the effective date of such order.

Regarding subsection (B), state commissions are preempted from making any changes to the FCC findings in FCC 04-179, except for the issuance of an order increasing rates for frozen elements, as set forth in FCC 04-179. Consequently, any state commission order (other than one increasing rates for the frozen elements) should not be incorporated into the Agreement.

In addition, subsection (B) is inappropriate for arbitration because it exceeds the scope of the parties' agreement regarding what could be raised as a supplemental issue.

Item No. 110, Issue No. S-3: If FCC 04-179 is vacated or otherwise modified by a court of competent jurisdiction, how should such order or decision be incorporated into the Agreement?

Position: ***Pursuant to the conference call with Staff and the parties on February 14, 2005 as well as the agreement between BellSouth and the Joint Petitioners on that call, BellSouth submits that this issue should be resolved in the Change of Law Generic Proceeding***

In the event a court of competent jurisdiction vacates all or part of FCC 04-179, there will be no valid impairment findings with respect to the vacated elements. Thus, the Agreement should automatically incorporate the state of the law on the date the order or decision becomes effective.

Item No. 111, Issue No. S-4 What post Interim Period transition plan should be incorporated into the Agreement?

Position: ***Pursuant to the conference call with Staff and the parties on February 14, 2005 as well as the agreement between BellSouth and the Joint Petitioners on that call, BellSouth submits that this issue should be resolved in the Change of Law Generic Proceeding***

FCC 04-179 states that, in the absence of Final FCC Unbundling Rules that modify the requirements of the Transition Period, the Transition Period specified in FCC 04-179 will take effect at the end of the Interim Period. Therefore, the Agreement should automatically incorporate the FCC's Transition Period once it becomes effective. In the event the Final FCC's Unbundling Rules or an intervening order of the FCC modifies the requirements of the FCC's Transition Period, such modified requirements should take effect in accordance with BellSouth's position on Issues 1 and 2 above.

Item No. 112, Issue No. S-5: (A) What rates, terms and conditions relating to switching, enterprise market loops and dedicated transport were "frozen" by FCC 04-179? (B) How should these rates, terms and conditions be incorporated into the Agreement?

Position: ***Pursuant to the conference call with Staff and the parties on February 14, 2005 as well as the agreement between BellSouth and the Joint Petitioners on that call, BellSouth submits that this issue should be resolved in the Change of Law Generic Proceeding***

The rates, terms and conditions for the following defined elements were frozen:

Switching -- Mass Market Switching and all elements that must be made available when switching is made available. Mass Market Switching is unbundled access to local switching except when the CLEC: (1) serves an End User with four (4) or more voice-grade (DSO) equivalents or lines served by the ILEC in Density Zone 1 of the top 50 MSAs; or (2) serves an End User with a DS1 or higher capacity service or UNE Loop.

Enterprise Market Loops -- those transmission facilities between a distribution frame (or its equivalent) in the ILEC's central office and the loop demarcation point at an end user customer premises at a DS1 or higher level capacity, including dark fiber loops.

Dedicated Transport -- the transmission facilities connecting ILEC switches and wire centers in a LATA. at a DS1 or higher level capacity, including dark fiber transport.

Item No. 113, Issue No. S-6: (A) Is BellSouth obligated to provide unbundled access to DSI loops, DS3 loops and dark fiber loops? (B) If so, under what rates, terms and conditions?

Position: *****Pursuant to the conference call with Staff and the parties on February 14, 2005 as well as the agreement between BellSouth and the Joint Petitioners on that call, BellSouth submits that this issue should be resolved in the Change of Law Generic Proceeding*****

USTA II vacated any FCC requirement that obligated ILECs to provide high capacity loops and dark fiber. Pursuant to the Act, there can be no obligation to unbundle any element unless the FCC has found impairment. In fact, the FCC recognized that *USTA II* eliminated impairment findings for these facilities and thus issued *Interim Rules Order* to address how these facilities will be provisioned for a twelve-month transition period for existing CLEC customers. The refusal of the Joint Petitioners to recognize the straightforward and clear wording of the *Interim Rules Order* reveals that their strategy is to use the Commission to circumvent orders of the FCC. Furthermore, the Joint Petitioners are attempting to expand the scope this issue to address BellSouth's Section 271 obligation or state requirements, which his inappropriate and outside the jurisdiction of the Commission. Fundamentally, a Section 252 arbitration proceeding is not the proper forum to address these arguments and the Commission should reject them. Finally, this issue is inappropriate for arbitration because it exceeds the scope of the parties' agreement regarding what could raised as a supplemental issue.

Item No. 114, Issue No. S-7: (A) Is BellSouth obligated to provide unbundled access to DS1

dedicated transport, DS3 dedicated transport and dark fiber transport? (B) If so, under what rates, terms and conditions?

Position: *****Pursuant to the conference call with Staff and the parties on February 14, 2005 as well as the agreement between BellSouth and the Joint Petitioners on that call, BellSouth submits that this issue should be resolved in the Change of Law Generic Proceeding*****

USTA II vacated any FCC requirement that obligated ILECs to provide high capacity loops and dark fiber. Pursuant to the Act, there can be no obligation to unbundle any element unless the FCC has found impairment. In fact, the FCC recognized that *USTA II* eliminated impairment findings for these facilities and thus issued *Interim Rules Order* to address how these facilities will be provisioned for a twelve-month transition period for existing CLEC customers. The refusal of the Joint Petitioners to recognize the straightforward and clear wording of the *Interim Rules Order* reveals that their strategy is to use the Commission to circumvent orders of the FCC. Furthermore, the Joint Petitioners are attempting to expand the scope this issue to address BellSouth's Section 271 obligation or state requirements, which his inappropriate and outside the jurisdiction of the Commission. Fundamentally, a Section 252 arbitration proceeding is not the proper forum to address these arguments and the Commission should reject them. Finally, this issue is inappropriate for arbitration because it exceeds the scope of the parties' agreement regarding what could raised as a supplemental issue.

E. Stipulations

None.

F. Pending Motions

BellSouth is not aware of any pending motions in this proceeding.

Respectfully submitted this 22nd day of February, 2005.

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