

**CASE**

**NUMBER:**

99.385

missing At Time of filming



**CASE**

**NUMBER:**

99-385

HISTORY INDEX FOR CASE: 1999-385  
BELLSOUTH TELECOMMUNICATIONS, INC.  
Amend Interconnection Agreements  
ARBITRATION WITH PILGRIM TELEPHONE, INC.

IN THE MATTER OF PILGRIM TELEPHONE, INC. V. BELLSOUTH  
TELECOMMUNICATIONS, INC. FOR A PETITION FOR ARBITRATION  
PURSUANT TO SECTION 252(B) OF THE TELECOMMUNICATIONS ACT OF  
1996

SEQ NBR	ENTRY DATE	REMARKS
0001	09/15/1999	Application.
0002	09/20/1999	Acknowledgement letter.
M0001	10/11/1999	CREIGHTON MERSHON BELLSOUTH-ANSWER & MOTION TO DISMISS
M0002	10/29/1999	PILGRIM TELEPHONE JAMES NEWBERRY-MOTION FOR LEAVE TO FILE RESPONSE (FAX)
M0003	11/01/1999	PILGIM TELEPHONEJAMES NEWBERRY-MOTION FOR LEAVE TO FILE RESPONSE
M0004	11/09/1999	PILGRIM TELEPHONE INC-MOTION FOR COMMISSION DETERMINATION
M0005	11/12/1999	HEIDI NEUFFER PILGRIM TELEPHONE-MOTION FOR PSC DETERMINATION & PETITIONERS RESPONSE TO RESP
0003	01/11/2000	FINAL ORDER; DENIES MOTION TO DISMISS
M0006	01/11/2000	PILGIM TELEPHONE CRAIG PAULUS-PETITIONERS SUPPLEMENTAL BRIEF IN RESPONSE TO RESPONDENTS MOT
M0007	01/21/2000	PILGRAM TELEPHONE CRAIG PAULUS-RESPONSE TO ORDER OF JAN 11,00
M0008	01/25/2000	CREIGHTON MERSHON BELLSOUTH-MOTION FOR RECONSIDERATION
M0009	01/31/2000	CREIGHTON MERSHON BELLSOUTH-RESPONSE TO ORDER OF JAN11,2000
M0010	02/08/2000	CRAIG PAULUS PILGRAM TELEPHONE-RESPONSE TO BELLSOUTH MOTION FOR RECONSIDERATION
0004	02/14/2000	Order scheduling 3/15 hearing; info due 3/8
M0011	02/24/2000	PILGRAM TELEPHONE STEPHANIE CONN-MOTION FOR A CONTINUANCE
0005	03/02/2000	Order rescheduling 3/15 hearing to 4/14
M0012	03/16/2000	WALTER STEIMEL PILGRAM TELEPHONE-NOTICE OF ENTRY OF APPEARANCE
M0013	03/31/2000	CRAIG PAULUS PILGRAM TELEPHONE-MOTION FOR INFORMAL CONFERENCE
0006	04/03/2000	Order scheduling 4/6 informal conference
M0014	04/05/2000	CREIGHTON MERSHON BELLSOUTH-INFO FOR INFORMAL CONFERENCE RESPONSE TO REQ FOR INFO SET IN PI
M0015	04/05/2000	CRAIG PAULUS PILGRAM TELEPHONE-MOTION FOR EXTENSION OF TIME
0007	04/07/2000	Order directing that prefiled direct testimony of both parties is due by 4/10.
M0016	04/10/2000	BELLSOUTH CREIGHTON MERHSON-TESTIMONY OF COX,LILES,MILNER,PATE
0008	04/12/2000	Informal Conference Memorandum
0009	04/13/2000	Order cancelling 4/14 hearing
M0017	04/13/2000	STEPHANIE R. CONN/PILGRIM TELEPHONE-CORRESPONDENCE FROM JAMES H. NEWBERRY
M0018	04/13/2000	JAMES H. NEWBERRY-CONFIRMATION OF CONFERENCE CALL

# WYATT, TARRANT & COMBS

1700 LEXINGTON FINANCIAL CENTER  
LEXINGTON, KENTUCKY 40507-1746

606 233-2012  
FAX: 606 259-0649

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29 MUSIC SQUARE EAST  
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313 E. MAIN STREET, SUITE 1  
HENDERSONVILLE, TN 37075-2546  
615 822-8822

6800 POPLAR AVENUE, SUITE 200  
MEMPHIS, TN 38138-7445  
901 537-1000

WRITER'S DIRECT DIAL NUMBER

606 288-7621

April 13, 2000

Ms. Amy Dougherty, Esq.  
Kentucky Public Service Commission  
211 Sower Boulevard  
P.O. Box 615  
Frankfort, Kentucky 40602

Re: Pilgrim Telephone, Inc. v. BellSouth Telecommunications, Inc.  
Case No. 99-385

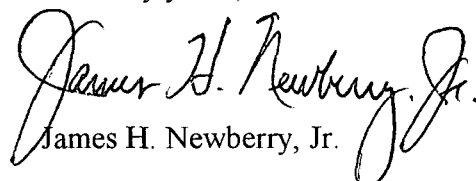
Dear Ms. Dougherty:

This letter will confirm the conference call which you, Lisa Foshee, Walt Steimel and I had earlier today. As we indicated, Pilgrim and BellSouth have made substantial progress in their efforts to negotiate various agreements for service. In order that the parties can attempt to reach a final agreement, Pilgrim and BellSouth have agreed to request that the hearing scheduled for tomorrow be continued for sixty days, subject, of course to the Commission's schedule.

We would appreciate your advising the appropriate parties at the Commission of our request. After the Commission considers our request, I would appreciate your confirming that tomorrow's hearing has been continued.

Thanks for your attention to this matter.

Sincerely yours,

  
James H. Newberry, Jr.

Ms. Amy Dougherty, Esq.

April 13, 2000

Page 2

cc: Walt Steimel, Esq.  
Stan Kugell  
Lisa Foshee, Esq.  
ec; Craig Paulus, Esq.

30180812.1

# WYATT, TARRANT & COMBS

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LEXINGTON, KENTUCKY 40507-1746

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APR 13 2000

GENERAL COUNSEL

## TELECOPY TRANSMITTAL SHEET

DATE: April 13, 2000

TIME: 11:25 a.m.

DELIVER TO:

FAX NUMBER:

CONFIRMATION NO.:

Ms. Amy Dougherty, Esq.

(502) 564-7279

VOICE CONFIRMATION REQUESTED: NO

FROM: James H. Newberry, Jr., Esq.

DIRECT DIAL NUMBER: (606) 288-7621

TOTAL NUMBER OF PAGES INCLUDING COVER SHEET: 3

TIME SENT: \_\_\_\_\_ A.M./P.M BY: \_\_\_\_\_

TIME CONFIRMED: \_\_\_\_\_ A.M./P.M. CONFIRMED BY: \_\_\_\_\_

CONFIRMED WITH: \_\_\_\_\_

ORIGINAL IS BEING SENT VIA U.S. MAIL: NO

IF YOU DO NOT RECEIVE A CLEAR OR COMPLETE FAX, PLEASE CALL OUR SERVICE CENTER AT (606) 233-2012. OUR FAX NUMBER IS (606) 259-0649.

THE INFORMATION CONTAINED IN THIS FAX IS ATTORNEY/CLIENT PRIVILEGED AND CONFIDENTIAL, INTENDED FOR THE USE OF THE INDIVIDUAL OR ENTITY NAMED ABOVE. IF THE READER OF THIS MESSAGE IS NOT THE INTENDED RECIPIENT (OR THE EMPLOYEE OR AGENT RESPONSIBLE TO DELIVER IT TO THE INTENDED RECIPIENT), YOU ARE HEREBY NOTIFIED THAT ANY DISSEMINATION, DISTRIBUTION OR COPYING OF THIS COMMUNICATION IS PROHIBITED. IF YOU HAVE RECEIVED THIS COMMUNICATION IN ERROR, PLEASE NOTIFY US BY COLLECT TELEPHONE AND RETURN THE ORIGINAL MESSAGE TO US AT THE ADDRESS BELOW AT OUR EXPENSE.

MESSAGE: For your review.

CLIENT NAME: Pilgrim Telephone, Inc.

CLIENT NO.: 39251

MATTER NAME: Renegotiation of BellSouth

MATTER NO.: 81733

# WYATT, TARRANT & COMBS

1700 LEXINGTON FINANCIAL CENTER  
LEXINGTON, KENTUCKY 40507-1748

606 233-2012  
FAX: 606 259-0649

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GENERAL COUNSEL

CITIZENS PLAZA  
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502 223-2104

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615 259-6161

313 E. MAIN STREET, SUITE 1  
MEMPHIS, TN 37075-2546  
901 822-8822

6800 POPLAR AVENUE, SUITE 200  
MEMPHIS, TN 38138-7445  
901 537-1000

WRITER'S DIRECT DIAL NUMBER

606 288-7621

April 13, 2000

Ms. Amy Dougherty, Esq.  
Kentucky Public Service Commission  
211 Sower Boulevard  
P.O. Box 615  
Frankfort, Kentucky 40602

Re: Pilgrim Telephone, Inc. v. BellSouth Telecommunications, Inc.  
Case No. 99-385

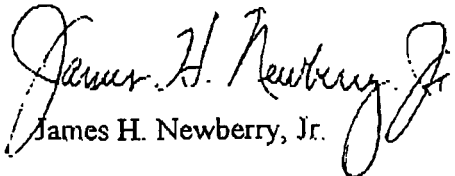
Dear Ms. Dougherty:

This letter will confirm the conference call which you, Lisa Foshee, Walt Steimel and I had earlier today. As we indicated, Pilgrim and BellSouth have made substantial progress in their efforts to negotiate various agreements for service. In order that the parties can attempt to reach a final agreement, Pilgrim and BellSouth have agreed to request that the hearing scheduled for tomorrow be continued for sixty days, subject, of course to the Commission's schedule.

We would appreciate your advising the appropriate parties at the Commission of our request. After the Commission considers our request, I would appreciate your confirming that tomorrow's hearing has been continued.

Thanks for your attention to this matter.

Sincerely yours,

  
James H. Newberry, Jr.



WYATT, TARRANT & COMBS

Ms. Amy Dougherty, Esq.  
April 13, 2000  
Page 2

cc: Walt Steimel, Esq.  
Stan Kugell  
Lisa Foshee, Esq.  
ec; Craig Paulus, Esq.

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LEXINGTON, KENTUCKY 40507-1746

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HENDERSONVILLE, TN 37075-2546  
615 822-8822

6800 POPLAR AVENUE, SUITE 200  
MEMPHIS, TN 38138-7445  
901 537-1000

WRITER'S DIRECT DIAL NUMBER

606 288-7423

April 13, 2000

**VIA HAND DELIVERY**

Mr. Martin J. Huelsmann, Jr.  
Executive Director  
Kentucky Public Service Commission  
211 Sower Boulevard  
Frankfort, Kentucky 40602

Re: Pilgrim Telephone, Inc. v. BellSouth Telecommunications, Inc.  
Case No. 99-385

Dear Mr. Huelsmann:

Pursuant to Amy Dougherty's request, I am enclosing for filing an original and four (4) copies of Mr. Newberry's correspondence confirming that tomorrow's hearing in the above-referenced case has been continued. If you have any questions, please call me at (606) 288-7423.

Thank you for your assistance in this matter.

Sincerely,

WYATT, TARRANT & COMBS



Stephanie R. Conn  
Legal Secretary to James H. Newberry, Jr.

/src

Enclosure

cc: James H. Newberry, Jr.

30180842.1



COMMONWEALTH OF KENTUCKY  
PUBLIC SERVICE COMMISSION

211 SOWER BOULEVARD  
POST OFFICE BOX 615  
FRANKFORT, KY. 40602  
(502) 564-3940

April 13, 2000

Honorable Creighton E. Mershon,  
General Counsel - Kentucky  
BellSouth Telecommunications, Inc.  
601 W. Chestnut, Room 407  
P.O. Box 32410  
Louisville, KY. 40232

Maria Cruz  
Supervisor  
Pilgrim Telephone, Inc.  
One Kendall Square  
Suite 450  
Cambridge, MA. 02139 9171

Honorable James H. Newberry,  
Honorable Craig R. Paulus  
Attorneys for Pilgrim Telephone  
Wyatt, Tarrant & Combs  
1700 Lexington Financial Center  
250 West Main Street  
Lexington, KY. 40507 1746

RE: Case No. 1999-385

We enclose one attested copy of the Commission's Order in  
the above case.

Sincerely,

*Stephanie J. Bell*

Stephanie Bell  
Secretary of the Commission

SB/sa  
Enclosure

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

PILGRIM TELEPHONE, INC. V. BELLSOUTH )  
TELECOMMUNICATIONS, INC. FOR A ) CASE NO. 99-385  
PETITION FOR ARBITRATION PURSUANT )  
TO SECTION 252(b) OF THE TELECOMMUNI- )  
CATIONS ACT OF 1996 )

ORDER

On April 13, 2000, Pilgrim Telephone, Inc. ("Pilgrim") notified the Commission via facsimile that it and BellSouth Telecommunications, Inc. ("BellSouth") have made substantial progress toward negotiation of a settlement. The parties have requested that the hearing scheduled for April 14, 2000 be continued generally to enable them to reach a final agreement. The Commission HEREBY ORDERS that this request be granted. A public hearing in this matter will be rescheduled at a later date if necessary.

Done at Frankfort, Kentucky, this 13th day of April, 2000.

By the Commission

ATTEST:

*Deputy*   
Executive Director



**Paul E. Patton, Governor**

**Ronald B. McCloud, Secretary  
Public Protection and  
Regulation Cabinet**

**Martin J. Huelsmann  
Executive Director  
Public Service Commission**

**COMMONWEALTH OF KENTUCKY  
PUBLIC SERVICE COMMISSION**  
211 SOWER BOULEVARD  
POST OFFICE BOX 615  
FRANKFORT, KENTUCKY 40602-0615  
www.psc.state.ky.us  
(502) 564-3940  
Fax (502) 564-3460

**B. J. Helton  
Chairman**

**Edward J. Holmes  
Vice Chairman**

**Gary W. Gillis  
Commissioner**

April 12, 2000

**PARTIES OF RECORD:**

RE: Case No. 99-385  
IN THE MATTER OF  
THE PETITION BY PILGRIM TELEPHONE, INC.  
FOR ARBITRATION OF CERTAIN TERMS AND  
CONDITIONS WITH BELLSOUTH  
TELECOMMUNICATIONS, INC. PURSUANT  
TO SECTION 252(b) OF THE  
TELECOMMUNICATIONS ACT OF 1996

Attached please find a memorandum that has been filed in the record of the above-referenced case. Any comments regarding this memorandum's contents should be submitted to the Commission within five (5) days of receipt of this letter. Any questions regarding this memorandum should be directed to Amy Dougherty at 502-564-3940, extension 257.

Sincerely,

A handwritten signature in cursive script that reads "William H. Bowker".

William H. Bowker  
Deputy Executive Director


/AED/rst  
Attachments  
cc: File



INTRA-AGENCY MEMORANDUM

KENTUCKY PUBLIC SERVICE COMMISSION

TO: Main Case File 99-385

FROM: Amy Dougherty 

DATE: April 12, 2000

RE: Pilgrim Telephone, Inc.  
Case No. 99-385  
April 6, 2000 Informal Conference

On April 6, 2000, there was an informal conference at the Commission's offices regarding this proceeding. The discussion at the informal conference centered around the responses filed by BellSouth to the items listed for discussion in Pilgrim's motion for informal conference.

The parties discussed several service scenarios and clarified certain items that had been in dispute.

BellSouth and Pilgrim agreed to keep working on their negotiations but to pre-file their testimony April 10 for the April 14 hearing.

Attached is the sign-in sheet for the informal conference.

/rst  
Attachment  
cc: File

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

THE PETITION BY PILGRIM TELEPHONE, INC. )  
FOR ARBITRATION OF CERTAIN TERMS AND )  
CONDITIONS WITH BELL SOUTH ) CASE NO.  
TELECOMMUNICATIONS, INC. PURSUANT ) 99-385  
TO SECTION 252(B) OF THE )  
TELECOMMUNICATIONS ACT OF 1996 )

INFORMAL CONFERENCE

APRIL 6, 2000

PLEASE SIGN IN:

<u>NAME</u>	<u>REPRESENTS</u>
<u>Amy E. Dougherty</u>	<u>PSC</u>
<u>James H. Newberry, Jr.</u>	<u>Pilgrim Telephone</u>
<u>Graig R. Paulus</u>	<u>Pilgrim Telephone</u>
<u>Stan Kugel</u>	<u>Pilgrim Telephone</u>
<u>Walt Steimel</u>	<u>Pilgrim Telephone</u>
<u>Bill Strack</u>	<u>PSC</u>
<u>CREIGHTON MERSHON</u>	<u>BST</u>
<u>Stephen D. Rausch</u>	<u>BST</u>

PAGE 2

PLEASE SIGN IN:

NAME

REPRESENTS

JEFF JOHNSON

Psc

Kyle Willard

Psc

via Conference call:

SUSAN ARRINGTON

RON PATE

LINDA POINTS

CHARLES JACKSON

BRUCE LILES

CINDY COX

AL VARNER





COMMONWEALTH OF KENTUCKY  
PUBLIC SERVICE COMMISSION

211 SOWER BOULEVARD  
POST OFFICE BOX 615  
FRANKFORT, KY. 40602  
(502) 564-3940

April 7, 2000

Honorable Creighton E. Mershon,  
General Counsel - Kentucky  
BellSouth Telecommunications, Inc.  
601 W. Chestnut, Room 407  
P.O. Box 32410  
Louisville, KY. 40232

Maria Cruz  
Supervisor  
Pilgrim Telephone, Inc.  
One Kendall Square  
Suite 450  
Cambridge, MA. 02139 9171

Honorable James H. Newberry,  
Honorable Craig R. Paulus  
Attorneys for Pilgrim Telephone  
Wyatt, Tarrant & Combs  
1700 Lexington Financial Center  
250 West Main Street  
Lexington, KY. 40507 1746

RE: Case No. 1999-385

We enclose one attested copy of the Commission's Order in  
the above case.

Sincerely,

A handwritten signature in black ink that reads "Stephanie Bell".

Stephanie Bell  
Secretary of the Commission

SB/hv  
Enclosure

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

THE PETITION BY PILGRIM TELEPHONE, INC.	)	
FOR ARBITRATION OF CERTAIN TERMS AND	)	
CONDITIONS WITH BELLSOUTH	)	CASE NO.
TELECOMMUNICATIONS, INC. PURSUANT	)	1999-385
TO SECTION 252(b) OF THE	)	
TELECOMMUNICATIONS ACT OF 1996	)	

O R D E R

On April 5, 2000, Pilgrim Telephone, Inc. requested an extension of time to file its testimony, citing its need to prepare for the April 6, 2000 informal conference and the possibility that certain matters may be resolved at the informal conference.

The Commission, having considered the motion, HEREBY ORDERS that prefiled direct testimony of both parties shall be due no later than April 10, 2000.

Done at Frankfort, Kentucky, this 7th day of April, 2000.

By the Commission

ATTEST:

  
Executive Director

# WYATT, TARRANT & COMBS

1700 LEXINGTON FINANCIAL CENTER  
LEXINGTON, KENTUCKY 40507-1746

606 233-2012  
FAX: 606 259-0649

CITIZENS PLAZA  
LOUISVILLE, KY 40202-2898  
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6800 POPLAR AVENUE, SUITE 200  
MEMPHIS, TN 38138-7445  
901 537-1000

WRITER'S DIRECT DIAL NUMBER

606 288-7646  
cpaulus@wyattfirm.com

April 5, 2000

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PUBLIC SERVICE  
COMMISSION

Mr. Martin J. Huelsmann, Jr., Executive Director  
Public Service Commission  
211 Sower Boulevard  
P.O. Box 615  
Frankfort, Kentucky 40601

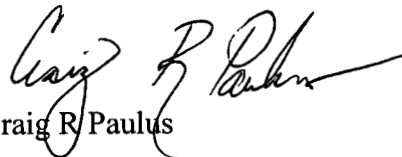
RE: Pilgrim Telephone, Inc.'s Motion Extension of Time

Dear Mr. Huelsmann:

Enclosed for filing in the above-captioned case are the original and ten (10) copies of Pilgrim Telephone Inc.'s Motion for an Extension of Time for the Filing of Direct Testimony.

Sincerely,

WYATT, TARRANT & COMBS

  
Craig R Paulus

CRP/md  
Enclosures  
cc: Parties of Record

30174350.1

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BEFORE THE  
KENTUCKY PUBLIC SERVICE COMMISSION  
CASE NO. 99-385

APR 05 2000

PUBLIC SERVICE  
COMMISSION

PILGRIM TELEPHONE, INC.

PETITIONER

V. **PILGRIM'S MOTION FOR AN EXTENSION OF TIME  
FOR THE FILING OF DIRECT TESTIMONY**

BELLSOUTH TELECOMMUNICATIONS, INC.

RESPONDENT

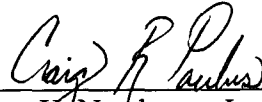
\*\*\*\*\*

Pilgrim Telephone, Inc. ("Pilgrim"), by counsel, respectfully moves the Commission to grant an extension of time for the pre-filing of direct testimony, and permit the parties to pre-file their direct testimony on Monday, April 10, 2000.

In light of the Commission's Order directing the parties to appear at an informal conference on April 6, 2000, Pilgrim believes it would be useful to both parties if the pre-filing of direct testimony were postponed until April 10, 2000. Pilgrim believes that the informal conference may serve to narrow the issues before the Commission, and facilitate more effective communication by clarifying the terminology used by the parties. This narrowing of the issues and clarification of terminology will enable the parties to more effectively articulate their positions to the Commission in the pre-filed testimony, if that testimony may be filed a reasonable time after the informal conference. Further, given the significant efforts Pilgrim has made in preparing for the informal conference, meeting the April 6 deadline for the pre-filing of direct testimony may prove extremely burdensome to Pilgrim.

WHEREFORE, Pilgrim respectfully requests that the Commission grant this motion for an extension of time and order the prefilng of direct testimony by both parties to be made on April 10, 2000.

Respectfully submitted,



---

James H. Newberry, Jr.  
Craig R. Paulus  
Wyatt, Tarrant & Combs  
1700 Lexington Financial Center  
250 West Main Street  
Lexington, KY 40507-1746  
(606) 233-2012

Walter E. Steimel, Jr.  
Greenberg, Traurig  
800 Connecticut Avenue, N.W.  
Suite 500  
Washington, D.C. 20006

Counsel for Pilgrim Telephone, Inc.

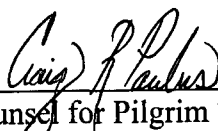
**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a copy of the forgoing was served upon the following, by U.S. mail, postage prepaid, this 5<sup>th</sup> day of April, 2000.

Creighton E. Mershon, Sr., Esq.  
601 West Chestnut Street, Room 407  
P.O. Box 32410  
Louisville, KY 40232  
Counsel for BellSouth Telecommunications, Inc.

R. Douglas Lackey, Esq.  
Bennett L. Ross, Esq.  
Lisa S. Foshee, Esq.  
Suite 4300, BellSouth Center  
675 West Peachtree Street, N.E.  
Atlanta, GA 30375  
Counsel for BellSouth Telecommunications, Inc.

Fred Gerwing  
Regulatory Vice President  
BellSouth Telecommunications, Inc.  
601 West Chestnut street, Room 408  
P.O. Box 32410  
Louisville, KY 40232

  
\_\_\_\_\_  
Counsel for Pilgrim Telephone, Inc.

30179983.1

**BellSouth Telecommunications, Inc.**  
P.O. Box 32410  
Louisville, Kentucky 40232  
or

502 582-8219  
Fax 502 582-1573  
Internet  
Creighton.E.Mershon@bridge.bellsouth.com

**Creighton E. Mershon, Sr.**  
General Counsel - Kentucky

**BellSouth Telecommunications, Inc.**  
601 West Chestnut Street, Room 407  
Louisville, Kentucky 40203

April 5, 2000

**RECEIVED**

APR 05 2000

PUBLIC SERVICE  
COMMISSION

Mr. Martin J. Huelsmann, Jr.  
Executive Director  
Kentucky Public Service Commission  
211 Sower Boulevard  
P. O. Box 615  
Frankfort, KY 40602

RE: 99-385 -- Pilgrim's Arbitration with BellSouth

Dear Mr. Huelsmann:

Enclosed for filing in this case and for use in the informal conference scheduled tomorrow are the original and ten (10) copies of BellSouth's responses to the requests for information set out in Pilgrim's Motion for Informal Conference.

Yours very truly,

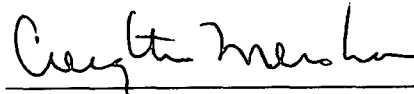
  
Creighton E. Mershon, Sr.

Enclosures

cc: Parties of Record

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served on the individuals on the attached Service List by mailing a copy thereof, this 5th day of April 2000.



\_\_\_\_\_  
Creighton E. Mershon



SERVICE LIST - PSC 99-385

Maria Cruz, Supervisor  
Pilgrim Telephone, Inc.  
One Kendall Square, Suite 450  
Cambridge, MA 02139-9171

Hon. James H. Newberry  
Hon. Craig R. Paulus  
Wyatt, Tarrant & Combs  
1700 Lexington Financial Center  
250 W. Main Street  
Lexington, KY 40507-1746

Hon. Walter E. Steimel, Jr.  
Greenberg, Traurig  
800 Connecticut Avenue, N.W.  
Suite 500  
Washington, D.C. 20006

INDEX OF REQUEST ITEMS

**ISSUES RELATING TO BILLING AND COLLECTION**

- Item No. 1 On what terms does BellSouth want Pilgrim to bill and remit revenues to BellSouth when Pilgrim customers dial BellSouth 900, 976, or n11 numbers which terminate in BellSouth territory?
- Item No. 2 When BellSouth and Pilgrim initiate collect calls and terminate such calls for each other, how are charges calculated and remitted between the parties?
- Item No. 3 Is billing name and address information ("BNA") contained in the customer service records, and are these customer service records accessed in operator service functions, maintenance, and ordering of new service?

**ISSUES RELATING TO 900 NUMBER BLOCKING**

- Item No. 4 To what extent has BellSouth developed billed number screening or selective call blocking, and what are the features of these utilities?
- Item No. 5 Is there a "Get Data" query that permits BNA or other restrictions that may be in a line information database ("LIDB")?
- Item No. 6 Are originating line screen ("OLNS") or FLEX automatic number identification ("ANI") contained in any LIBDs, and how can these databases be accessed?

**TECHNICAL ISSUES**

- Item No. 7 Please provide copies of technical documents, explanations of obscure acronyms, and proper titles and descriptions of services and functions, including describing the datafields available, features, and functions, or a reference to the exact names, ordering numbers, and vendor of these documents for each of the following systems identified in BellSouth's standard interconnection agreement.

LENS	TAG	CRIS	RSAG
SCE/SMS	DBAS	EDI	EDI-PC

**KPSC 99-395**

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Discussion on April 6, 2000

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Item No. 8 Please provide information regarding how customer service records are viewed through TAG or LENS, and what information is contained in these OSS functions.

Item No. 9 Please provide an explanation of the relationship between TAG and LENS, and the relation between those terms and CRIS.



**Issues Relating to Billing and Collection**

**REQUEST:** On what terms does BellSouth want Pilgrim to bill and remit revenues to BellSouth when Pilgrim customers dial BellSouth 900, 976, or n11 numbers which terminate in BellSouth territory?

**RESPONSE:** Taken literally, the question would seem to describe a situation in which Pilgrim is a CLEC and Pilgrim end users make calls to BellSouth 900, 976, and n11 numbers. BellSouth does not provide 900 service content, does not provide intraLATA 900 service, and does not offer 976 or n11 services in Kentucky. (BellSouth does not believe the question elicits a response relative to 411 and 911.) Therefore, this part of the question is moot.

BellSouth does provide exchange access to 900 numbers. So, if Pilgrim, as a CLEC, sends 900/976/n11 calls bound for an interexchange carrier through a BellSouth access tandem, BellSouth would be involved in the switching of those calls and would be compensated for the access traffic of Pilgrim.

BellSouth does provide B&C services to interexchange carriers (IXCs) under contract and tariff that include billing for calls made to 900 numbers.



### **Issues Relating to Billing and Collection**

**REQUEST:** When BellSouth and Pilgrim initiate collect calls and terminate such calls for each other, how are charges calculated and remitted between the parties?

**RESPONSE:** If Pilgrim is a CLEC or an Independent Company (ICO), Pilgrim may elect for BellSouth to serve as their Revenue Accounting Office (RAO) host. The details of RAO Hosting are outlined in Attachment 7, Section 4 of the current BellSouth Interconnection Agreement attached hereto.

If Pilgrim is referring to the Non-InterCompany Settlements (NICS) and Calling Card and Third Number Settlements (CATS) in this question, this settlement is only for intralata toll between local exchange companies. This settlement does not include the interexchange carriers or other type of toll providers.

In a NICS/CATS settlement, the earning (originating) company rates the intralata toll message and forwards it to the billing company via the Centralized Message Distribution System (CMDS), with the appropriate indicator marked as being NICS or CATS qualified (Indicator 5 on the Exchange Message Interface (EMI) category 01 record). Telcordia administers both CMDS and the settlement process. They make a copy of these records and accumulate them all month long. At the end of each month, they send the direct participants, the Regional Bell Operating Company who is the RAO host for the above messages, a report with amounts due each company.

When BellSouth is the RAO host, BellSouth provides the companies hosted (whether they are ICO or CLEC), a copy of this Telcordia report, regardless of the amount. If the netted amount of this revenue exceeds the threshold in their RAO hosting contract (\$50 in the standard), BellSouth then flows this revenue (whether it is due them or due BellSouth) to a Carrier Access Billing System (CABS) C01 bill.

**Attachment 7**

**Billing and Billing Accuracy Certification**



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## BILLING AND BILLING ACCURACY CERTIFICATION

### 1. **Payment and Billing Arrangements**

All negotiated rates, terms and conditions set forth in this Attachment pertain to billing and billing accuracy certifications.

1.1 **Billing.** BellSouth agrees to provide billing through the Carrier Access Billing System (CABS) and through the Customer Records Information System (CRIS) depending on the particular service(s) that CLEC-1 requests. BellSouth will bill and record in accordance with this Agreement those charges CLEC-1 incurs as a result of CLEC-1 purchasing from BellSouth Network Elements and Other Services as set forth in this Agreement. BellSouth will format all bills in CBOS Standard or CLUB/EDI format, depending on the type of service ordered. For those services where standards have not yet been developed, BellSouth's billing format will change as necessary when standards are finalized by the industry forum.

1.1.1 For any service(s) BellSouth orders from CLEC-1, CLEC-1 shall bill BellSouth in CABS format.

1.1.2 If either Party requests multiple billing media or additional copies of bills, the Billing Party will provide these at a reasonable cost.

1.2 **Master Account.** After receiving certification as a local exchange company from the appropriate regulatory agency, CLEC-1 will provide the appropriate BellSouth account manager the necessary documentation to enable BellSouth to establish a master account for Local Interconnection, Network Elements and Other Services, and/or resold services. Such documentation shall include the Application for Master Account, proof of authority to provide telecommunications services, an Operating Company Number ("OCN") assigned by the National Exchange Carriers Association ("NECA"), Carrier Identification Code (CIC), Group Access Code (GAC), Access Customer Name and Address (ACNA) and a tax exemption certificate, if applicable.

1.3 **Payment Responsibility.** Payment of all charges will be the responsibility of CLEC-1. CLEC-1 shall make payment to BellSouth for all services billed. BellSouth is not responsible for payments not received by CLEC-1 from CLEC-1's customer. BellSouth will not become involved in billing disputes that may arise between CLEC-1 and CLEC-1's customer. Payments made to BellSouth as payment on account will be credited to an accounts receivable master account and not to an end user's account.

1.4 **Payment Due.** The payment will be due on or before the next bill date (i.e., same date in the following month as the bill date) and is payable in immediately available funds. Payment is considered to have been made when received by BellSouth.

If the payment due date falls on a Sunday or on a Holiday which is observed on a Monday, the payment due date shall be the first non-Holiday day following such Sunday or Holiday. If the payment due date falls on a Saturday or on a Holiday which is observed on Tuesday, Wednesday, Thursday, or Friday, the payment due date shall be the last non-Holiday day preceding such Saturday or Holiday. If payment is not received by the payment due date, a late payment penalty, as set forth in Section 1.7, below, shall apply.

- 1.5 Tax Exemption. Upon proof of tax exempt certification from CLEC-1, the total amount billed to CLEC-1 will not include those taxes or fees for which the CLEC is exempt. CLEC-1 will be solely responsible for the computation, tracking, reporting and payment of all taxes and like fees associated with the services provided to the end user of CLEC-1.
- 1.6 Late Payment. If any portion of the payment is received by BellSouth after the payment due date as set forth preceding, or if any portion of the payment is received by BellSouth in funds that are not immediately available to BellSouth, then a late payment penalty shall be due to BellSouth. The late payment penalty shall be the portion of the payment not received by the payment due date times a late factor and will be applied on a per bill basis. The late factor shall be as set forth in Section A2 of the General Subscriber Services Tariff, Section B2 of the Private Line Service Tariff or Section E2 of the Intrastate Access Tariff, whichever BellSouth determines is appropriate. CLEC-1 will be charged a fee for all returned checks as set forth in Section A2 of the General Subscriber Services Tariff or pursuant to the applicable state law.
- 1.7 Discontinuing Service to CLEC-1. The procedures for discontinuing service to CLEC-1 are as follows:
- 1.7.1 BellSouth reserves the right to suspend or terminate service for nonpayment of services or in the event of prohibited, unlawful or improper use of BellSouth facilities or service or any other violation or noncompliance by CLEC-1 of the rules and regulations contained in BellSouth's tariffs.
- 1.7.2 If payment of account is not received by the bill date in the month after the original bill date, BellSouth may provide written notice to CLEC-1 that additional applications for service will be refused and that any pending orders for service will not be completed if payment is not received by the fifteenth day following the date of the notice. In addition, BellSouth may, at the same time, give thirty (30) days notice to CLEC-1 at the billing address to discontinue the provision of existing services to CLEC-1 at any time thereafter.
- 1.7.3 In the case of such discontinuance, all billed charges, as well as applicable termination charges, shall become due.

- 1.7.4 If BellSouth does not discontinue the provision of the services involved on the date specified in the thirty days notice and CLEC-1's noncompliance continues, nothing contained herein shall preclude BellSouth's right to discontinue the provision of the services to CLEC-1 without further notice.
- 1.7.5 If payment is not received or satisfactory arrangements made for payment by the date given in the written notification, CLEC-1's services will be discontinued. Upon discontinuance of service on CLEC-1's account, service to the CLEC-1's end users will be denied. BellSouth will reestablish service at the request of the end user or CLEC-1 for BellSouth to reestablish service upon payment of the appropriate connection fee and subject to BellSouth's normal application procedures. CLEC-1 is solely responsible for notifying the end user of the proposed service disconnection. If within fifteen (15) days after an end user's service has been denied and no arrangements to reestablish service have been made consistent with this subsection, the end user's service will be disconnected.
- 1.8 Deposit Policy. When purchasing services from BellSouth, CLEC-1 will be required to complete the BellSouth Credit Profile and provide information regarding credit worthiness. Based on the results of the credit analysis, the Company reserves the right to secure the account with a suitable form of security deposit. Such security deposit shall take the form of cash, an Irrevocable Letter of Credit (BellSouth form), Surety Bond (BellSouth form) or, in its sole discretion, some other form of security. Any such security deposit shall in no way release CLEC-1 from his obligation to make complete and timely payments of his bill. Such security shall be required prior to the inauguration of service. If, in the sole opinion of BellSouth, circumstances so warrant and/or gross monthly billing has increased beyond the level initially used to determine the level of security, the BellSouth reserves the right to request additional security and/or file a Uniform Commercial Code (UCC1) security interest in CLEC-1's "accounts receivables and proceeds." Interest on a security deposit, if provided in cash, shall accrue and be paid in accordance with the terms in the appropriate BellSouth tariff.
- 1.9 Rates. Rates for Optional Daily Usage File (ODUF), Enhanced Optional Daily Usage File (EODUF), Access Daily Usage File (ADUF), and Centralized Message Distribution Service (CMD5) are set out in Exhibit A to this Attachment. If no rate is identified in this Attachment, the rate for the specific service or function will be as set forth in applicable BellSouth tariff or as negotiated by the Parties upon request by either Party.

## 2. **Billing Accuracy Certification**

- 2.1 Upon request, BellSouth and CLEC-1 will agree upon a billing quality assurance program for all billing elements covered in this Agreement that will eliminate the need for post-billing reconciliation. Appropriate terms for access to any BellSouth

documents, systems, records, and procedures for the recording and billing of charges will be part of that program.

- 2.2 As part of the billing quality assurance program, BellSouth and CLEC-1 will develop standards, measurements, and performance requirements for a local billing measurements process. On a regular basis BellSouth will provide CLEC-1 with mutually agreed upon performance measurement data that substantiates the accuracy, reliability, and integrity of the billing process for local billing. In return, CLEC-1 will pay all bills received from BellSouth in full by the payment due date.
- 2.3 Local billing discrepancies will be addressed in an orderly manner via a mutually agreed upon billing exemption process.
  - 2.3.1 Each Party agrees to notify the other Party upon identifying a billing discrepancy. The Parties shall endeavor to resolve any billing discrepancy within sixty (60) calendar days of the notification date. A mutually agreed upon escalation process will be established for resolving local billing discrepancies as part of the billing quality assurance program.
  - 2.3.2 Closure of a specific billing period will occur by joint agreement of the Parties whereby the Parties agree that such billing period is closed to any further analysis and financial transactions except those resulting from regulatory mandates. Closure will take place within a mutually agreed upon time interval from the bill date. The month being closed represents those charges that were billed or should have been billed by the designated bill date.

### 3. **Billing Disputes**

- 3.1 Where the Parties have not agreed upon a billing quality assurance program, billing disputes shall be handled pursuant to the terms of this section.
  - 3.1.1 Each Party agrees to notify the other Party in writing upon the discovery of a billing dispute. In the event of a billing dispute, the Parties will endeavor to resolve the dispute within sixty (60) calendar days of the notification date.
- 3.2 If a Party disputes a charge and does not pay such charge by the payment due date, or if a payment or any portion of a payment is received by either Party after the payment due date, or if a payment or any portion of a payment is received in funds which are not immediately available to the other Party, then a late payment penalty shall be assessed. For bills rendered by either Party for payment, the late payment charge for both Parties shall be calculated based on the portion of the payment not received by the payment due date times the late factor as set forth in the following BellSouth tariffs: for services purchased from the General Subscribers Services Tariff for

purposes of resale and for ports and non-designed loops, Section A2 of the General Subscriber Services Tariff; for services purchased from the Private Line Tariff for purposes of resale, Section B2 of the Private Line Service Tariff; and for network elements and other services and local interconnection charges, Section E2 of the Access Service Tariff. In no event, however, shall interest be assessed by either Party on any previously assessed late payment charges. The Parties shall assess interest on previously assessed late payment charges only in a state where it has the authority pursuant to its tariffs.

**4. RAO Hosting**

- 4.1 RAO Hosting, Calling Card and Third Number Settlement System (CATS) and Non-Intercompany Settlement System (NICS) services provided to CLEC-1 by BellSouth will be in accordance with the methods and practices regularly adopted and applied by BellSouth to its own operations during the term of this Agreement, including such revisions as may be made from time to time by BellSouth.
- 4.2 CLEC-1 shall furnish all relevant information required by BellSouth for the provision of RAO Hosting, CATS and NICS.
- 4.3 Compensation amounts, if applicable, will be billed by BellSouth to CLEC-1 on a monthly basis in arrears. Amounts due from one Party to the other (excluding adjustments) are payable within thirty (30) days of receipt of the billing statement.
- 4.4 CLEC-1 must have its own unique hosted RAO code. Requests for establishment of RAO status where BellSouth is the selected Centralized Message Distribution System (CMDS) interfacing host, require written notification from CLEC-1 to the BellSouth RAO Hosting coordinator at least eight (8) weeks prior to the proposed effective date. The proposed effective date will be mutually agreed upon between the Parties with consideration given to time necessary for the completion of required Telcordia (formerly BellCore) functions. BellSouth will request the assignment of an RAO code from its connecting contractor, currently Telcordia (formerly BellCore), on behalf of CLEC-1 and will coordinate all associated conversion activities.
- 4.5 BellSouth will receive messages from CLEC-1 that are to be processed by BellSouth, another LEC or CLEC in the BellSouth region or a LEC outside the BellSouth region.
- 4.6 BellSouth will perform invoice sequence checking, standard EMI format editing, and balancing of message data with the EMI trailer record counts on all data received from CLEC-1.
- 4.7 All data received from CLEC-1 that is to be processed or billed by another LEC or CLEC within the BellSouth region will be distributed to that LEC or CLEC in

accordance with the Agreement(s) which may be in effect between BellSouth and the involved LEC or CLEC.

- 4.8 All data received from CLEC-1 that is to be placed on the CMDS network for distribution outside the BellSouth region will be handled in accordance with the agreement(s) which may be in effect between BellSouth and its connecting contractor (currently Telcordia (formerly BellCore)).
- 4.9 BellSouth will receive messages from the CMDS network that are destined to be processed by CLEC-1 and will forward them to CLEC-1 on a daily basis.
- 4.10 Transmission of message data between BellSouth and CLEC-1 will be via CONNECT:Direct.
- 4.11 All messages and related data exchanged between BellSouth and CLEC-1 will be formatted in accordance with accepted industry standards for EMI formatted records and packed between appropriate EMI header and trailer records, also in accordance with accepted industry standards.
- 4.12 CLEC-1 will ensure that the recorded message detail necessary to recreate files provided to BellSouth will be maintained for back-up purposes for a period of three (3) calendar months beyond the related message dates.
- 4.13 Should it become necessary for CLEC-1 to send data to BellSouth more than sixty (60) days past the message date(s), CLEC-1 will notify BellSouth in advance of the transmission of the data. If there will be impacts outside the BellSouth region, BellSouth will work with its connecting contractor and CLEC-1 to notify all affected Parties.
- 4.14 In the event that data to be exchanged between the two Parties should become lost or destroyed, both Parties will work together to determine the source of the problem. Once the cause of the problem has been jointly determined and the responsible Party (BellSouth or CLEC-1) identified and agreed to, the company responsible for creating the data (BellSouth or CLEC-1) will make every effort to have the affected data restored and retransmitted. If the data cannot be retrieved, the responsible Party will be liable to the other Party for any resulting lost revenue. Lost revenue may be a combination of revenues that could not be billed to the end users and associated access revenues. Both Parties will work together to estimate the revenue amount based upon historical data through a method mutually agreed upon. The resulting estimated revenue loss will be paid by the responsible Party to the other Party within three (3) calendar months of the date of problem resolution, or as mutually agreed upon by the Parties.
- 4.15 Should an error be detected by the EMI format edits performed by BellSouth on data received from CLEC-1, the entire pack containing the affected data will not be

processed by BellSouth. BellSouth will notify CLEC-1 of the error condition. CLEC-1 will correct the error(s) and will resend the entire pack to BellSouth for processing. In the event that an out-of-sequence condition occurs on subsequent packs, CLEC-1 will resend these packs to BellSouth after the pack containing the error has been successfully reprocessed by BellSouth.

4.16 In association with message distribution service, BellSouth will provide CLEC-1 with associated intercompany settlements reports (CATS and NICS) as appropriate.

4.17 In no case shall either Party be liable to the other for any direct or consequential damages incurred as a result of the obligations set out in this Agreement.

4.18 RAO Compensation

4.18.1 Rates for message distribution service provided by BellSouth for CLEC-1 are as set forth in Exhibit A to this Attachment.

4.18.2 Rates for data transmission associated with message distribution service are as set forth in Exhibit A to this Attachment .

4.18.3 Data circuits (private line or dial-up) will be required between BellSouth and CLEC-1 for the purpose of data transmission. Where a dedicated line is required, CLEC-1 will be responsible for ordering the circuit, overseeing its installation and coordinating the installation with BellSouth. CLEC-1 will also be responsible for any charges associated with this line. Equipment required on the BellSouth end to attach the line to the mainframe computer and to transmit successfully ongoing will be negotiated on a case by case basis. Where a dial-up facility is required, dial circuits will be installed in the BellSouth data center by BellSouth and the associated charges assessed to CLEC-1. Additionally, all message toll charges associated with the use of the dial circuit by CLEC-1 will be the responsibility of CLEC-1. Associated equipment on the BellSouth end, including a modem, will be negotiated on a case by case basis between the Parties.

4.18.4 All equipment, including modems and software, that is required on the CLEC-1 end for the purpose of data transmission will be the responsibility of CLEC-1.

4.19 Intercompany Settlements Messages

4.19.1 This Section addresses the settlement of revenues associated with traffic originated from or billed by CLEC-1 as a facilities based provider of local exchange telecommunications services outside the BellSouth region. Only traffic that originates in one Bell operating territory and bills in another Bell operating territory is included. Traffic that originates and bills within the same Bell operating territory will be settled on a local basis between CLEC-1 and the involved company(ies), unless that company is participating in NICS.



- 4.19.2 Both traffic that originates outside the BellSouth region by CLEC-1 and is billed within the BellSouth region, and traffic that originates within the BellSouth region and is billed outside the BellSouth region by CLEC-1, is covered by this Agreement (CATS). Also covered is traffic that either is originated by or billed by CLEC-1, involves a company other than CLEC-1, qualifies for inclusion in the CATS settlement, and is not originated or billed within the BellSouth region (NICS).
- 4.19.3 Once CLEC-1 is operating within the BellSouth territory, revenues associated with calls originated and billed within the BellSouth region will be settled via Telcordia (formerly BellCore)'s, its successor or assign, NICS system.
- 4.19.4 BellSouth will receive the monthly NICS reports from Telcordia (formerly BellCore), its successor or assign, on behalf of CLEC-1. BellSouth will distribute copies of these reports to CLEC-1 on a monthly basis.
- 4.19.5 BellSouth will receive the monthly Calling Card and Third Number Settlement System (CATS) reports from Telcordia (formerly BellCore), its successor or assign, on behalf of CLEC-1. BellSouth will distribute copies of these reports to CLEC-1 on a monthly basis.
- 4.19.6 BellSouth will collect the revenue earned by CLEC-1 from the Bell operating company in whose territory the messages are billed (CATS), less a per message billing and collection fee of five cents (\$0.05), on behalf of CLEC-1. BellSouth will remit the revenue billed by CLEC-1 to the Bell operating company in whose territory the messages originated, less a per message billing and collection fee of five cents (\$0.05), on behalf of CLEC-1. These two amounts will be netted together by BellSouth and the resulting charge or credit issued to CLEC-1 via a monthly Carrier Access Billing System (CABS) miscellaneous bill.
- 4.19.7 BellSouth will collect the revenue earned by CLEC-1 within the BellSouth territory from another CLEC also within the BellSouth territory (NICS) where the messages are billed, less a per message billing and collection fee of five cents (\$0.05), on behalf of CLEC-1. BellSouth will remit the revenue billed by CLEC-1 within the BellSouth region to the CLEC also within the BellSouth region, where the messages originated, less a per message billing and collection fee of five cents (\$0.05). These two amounts will be netted together by BellSouth and the resulting charge or credit issued to CLEC-1 via a monthly Carrier Access Billing System (CABS) miscellaneous bill.

BellSouth and CLEC-1 agree that monthly netted amounts of less than fifty dollars (\$50.00) will not be settled.

**5. Optional Daily Usage File**

5.1 Upon written request from CLEC-1, BellSouth will provide the Optional Daily Usage File (ODUF) service to CLEC-1 pursuant to the terms and conditions set forth in this section.

5.2 The CLEC-1 shall furnish all relevant information required by BellSouth for the provision of the Optional Daily Usage File.

5.3 The Optional Daily Usage Feed will contain billable messages that were carried over the BellSouth Network and processed in the BellSouth Billing System, but billed to a CLEC-1 customer.

Charges for delivery of the Optional Daily Usage File will appear on the CLEC-1s' monthly bills. The charges are as set forth in Exhibit A to this Attachment.

5.4 The Optional Daily Usage Feed will contain both rated and unrated messages. All messages will be in the standard Alliance for Telecommunications Industry Solutions (ATIS) EMI record format.

5.5 Messages that error in the billing system of the CLEC-1 will be the responsibility of the CLEC-1. If, however, the CLEC-1 should encounter significant volumes of errored messages that prevent processing by the CLEC-1 within its systems, BellSouth will work with the CLEC-1 to determine the source of the errors and the appropriate resolution.

5.6 The following specifications shall apply to the Optional Daily Usage Feed.

5.6.1 Usage To Be Transmitted

5.6.1.1 The following messages recorded by BellSouth will be transmitted to the CLEC-1:

- Message recording for per use/per activation type services (examples: Three Way Calling, Verify, Interrupt, Call Return, ETC.)
- Measured billable Local
- Directory Assistance messages
- IntraLATA Toll
- WATS & 800 Service
  
- N11
- Information Service Provider Messages
- Operator Services Messages
- Operator Services Message Attempted Calls (Network Element only)
- Credit/Cancel Records

- Usage for Voice Mail Message Service

5.6.1.2 Rated Incollects (originated in BellSouth and from other companies) can also be on Optional Daily Usage File. Rated Incollects will be intermingled with BellSouth recorded rated and unrated usage. Rated Incollects will not be packed separately.

5.6.1.3 BellSouth will perform duplicate record checks on records processed to Optional Daily Usage File. Any duplicate messages detected will be deleted and not sent to CLEC-1.

5.6.1.4 In the event that CLEC-1 detects a duplicate on Optional Daily Usage File they receive from BellSouth, CLEC-1 will drop the duplicate message (CLEC-1 will not return the duplicate to BellSouth).

5.6.2 Physical File Characteristics

5.6.2.1 The Optional Daily Usage File will be distributed to CLEC-1 via an agreed medium with CONNECT:Direct being the preferred transport method. The Daily Usage Feed will be a variable block format (2476) with an LRECL of 2472. The data on the Daily Usage Feed will be in a non-compacted EMI format (175 byte format plus modules). It will be created on a daily basis (Monday through Friday except holidays). Details such as dataset name and delivery schedule will be addressed during negotiations of the distribution medium. There will be a maximum of one dataset per workday per OCN.

5.6.2.2 Data circuits (private line or dial-up) may be required between BellSouth and CLEC-1 for the purpose of data transmission. Where a dedicated line is required, CLEC-1 will be responsible for ordering the circuit, overseeing its installation and coordinating the installation with BellSouth. CLEC-1 will also be responsible for any charges associated with this line. Equipment required on the BellSouth end to attach the line to the mainframe computer and to transmit successfully ongoing will be negotiated on a case by case basis. Where a dial-up facility is required, dial circuits will be installed in the BellSouth data center by BellSouth and the associated charges assessed to CLEC-1. Additionally, all message toll charges associated with the use of the dial circuit by CLEC-1 will be the responsibility of CLEC-1. Associated equipment on the BellSouth end, including a modem, will be negotiated on a case by case basis between the Parties. All equipment, including modems and software, that is required on CLEC-1 end for the purpose of data transmission will be the responsibility of CLEC-1.

5.6.3 Packing Specifications

5.6.3.1 A pack will contain a minimum of one message record or a maximum of 99,999 message records plus a pack header record and a pack trailer record. One transmission can contain a maximum of 99 packs and a minimum of one pack.

- 5.6.3.2 The OCN, From RAO, and Invoice Number will control the invoice sequencing. The From RAO will be used to identify to CLEC-1 which BellSouth RAO that is sending the message. BellSouth and CLEC-1 will use the invoice sequencing to control data exchange. BellSouth will be notified of sequence failures identified by CLEC-1 and resend the data as appropriate.

The data will be packed using ATIS EMI records.

5.6.4 Pack Rejection

- 5.6.4.1 CLEC-1 will notify BellSouth within one business day of rejected packs (via the mutually agreed medium). Packs could be rejected because of pack sequencing discrepancies or a critical edit failure on the Pack Header or Pack Trailer records (i.e. out-of-balance condition on grand totals, invalid data populated). Standard ATIS EMI Error Codes will be used. CLEC-1 will not be required to return the actual rejected data to BellSouth. Rejected packs will be corrected and retransmitted to CLEC-1 by BellSouth.

5.6.5 Control Data

CLEC-1 will send one confirmation record per pack that is received from BellSouth. This confirmation record will indicate CLEC-1 received the pack and the acceptance or rejection of the pack. Pack Status Code(s) will be populated using standard ATIS EMI error codes for packs that were rejected by CLEC-1 for reasons stated in the above section.

5.6.6 Testing

- 5.6.6.1 Upon request from CLEC-1, BellSouth shall send test files to CLEC-1 for the Optional Daily Usage File. The Parties agree to review and discuss the file's content and/or format. For testing of usage results, BellSouth shall request that CLEC-1 set up a production (LIVE) file. The live test may consist of CLEC-1's employees making test calls for the types of services CLEC-1 requests on the Optional Daily Usage File. These test calls are logged by CLEC-1, and the logs are provided to BellSouth. These logs will be used to verify the files. Testing will be completed within 30 calendar days from the date on which the initial test file was sent.

**6. Access Daily Usage File**

- 6.1. Upon written request from CLEC-1, BellSouth will provide the Access Daily Usage File (ADUF) service to CLEC-1 pursuant to the terms and conditions set forth in this section.

- 6.2 The CLEC-1 shall furnish all relevant information required by BellSouth for the provision of the Access Daily Usage File.
- 6.3 The Access Daily Usage Feed will contain access messages associated with a port that CLEC-1 has purchased from BellSouth
- 6.4 Charges for delivery of the Access Daily Usage File will appear on the CLEC-1s' monthly bills. The charges are as set forth in Exhibit A to this Attachment. All messages will be in the standard Alliance for Telecommunications Industry Solutions (ATIS) EMI record format.
- 6.5 Messages that error in the billing system of the CLEC-1 will be the responsibility of the CLEC-1. If, however, the CLEC-1 should encounter significant volumes of errored messages that prevent processing by the CLEC-1 within its systems, BellSouth will work with the CLEC-1 to determine the source of the errors and the appropriate resolution.
- 6.6 Usage To Be Transmitted
- 6.6.1 The following messages recorded by BellSouth will be transmitted to CLEC-1:
- Originating and terminating interstate and intrastate access records associated with a port.
- Terminating access records for undetermined jurisdiction access records associated with a port.
- 6.6.2 When CLEC-1 purchases Network Element ports from BellSouth and calls are made using these ports, BellSouth will handle the calls as follows:
- Originating from Network Element and carried by Interexchange Carrier:
- BellSouth will bill network element to CLEC and send access record to the CLEC via ADUF
- Originating from network element and carried by BellSouth (CLEC-1 is BellSouth's toll customer):
- BellSouth will bill resale toll rates to CLEC-1 and send toll record for the end user toll billing purposes via ODUF (Optional Daily Usage File). Access record will be sent to CLEC-1 via ADUF.
- Terminating on network element and carried by Interexchange Carrier:

BellSouth will bill network element to CLEC-1 and send access record to CLEC-1.

Terminating on network element and carried by BellSouth:

BellSouth will bill network element to CLEC-1 and send access record to CLEC-1.

6.6.3 BellSouth will perform duplicate record checks on records processed to the Access Daily Usage File. Any duplicate messages detected will be dropped and not sent to CLEC-1.

6.6.4 In the event that CLEC-1 detects a duplicate on the Access Daily Usage File they receive from BellSouth, CLEC-1 will drop the duplicate message (CLEC-1 will not return the duplicate to BellSouth.)

6.6.5 Physical File Characteristics

6.6.5.1 The Access Daily Usage File will be distributed to CLEC-1 via an agreed medium with CONNECT:Direct being the preferred transport method. The Daily Usage Feed will be a fixed block format (2476) with an LRECL of 2472. The data on the Daily Usage Feed will be in a non-compacted EMI format (210 byte format plus modules). It will be created on a daily basis (Monday through Friday except holidays). Details such as dataset name and delivery schedule will be addressed during negotiations of the distribution medium. There will be a maximum of one dataset per workday per OCN.

6.6.5.2 Data circuits (private line or dial-up) may be required between BellSouth and CLEC-1 for the purpose of data transmission. Where a dedicated line is required, CLEC-1 will be responsible for ordering the circuit, overseeing its installation and coordinating the installation with BellSouth. CLEC-1 will also be responsible for any charges associated with this line. Equipment required on the BellSouth end to attach the line to the mainframe computer and to transmit successfully ongoing will be negotiated on a case by case basis. Where a dial-up facility is required, dial circuits will be installed in the BellSouth data center by BellSouth and the associated charges assessed to CLEC-1. Additionally, all message toll charges associated with the use of the dial circuit by CLEC-1 will be the responsibility of CLEC-1. Associated equipment on the BellSouth end, including a modem, will be negotiated on a case by case basis between the Parties. All equipment, including modems and software, that is required on CLEC-1 end for the purpose of data transmission will be the responsibility of CLEC-1.

6.6.6 Packing Specifications

6.6.6.1 A pack will contain a minimum of one message record or a maximum of 99,999 message records plus a pack header record and a pack trailer record. One transmission can contain a maximum of 99 packs and a minimum of one pack.

- 6.6.6.2 The OCN, From RAO, and Invoice Number will control the invoice sequencing. The From RAO will be used to identify to CLEC-1 which BellSouth RAO that is sending the message. BellSouth and CLEC-1 will use the invoice sequencing to control data exchange. BellSouth will be notified of sequence failures identified by CLEC-1 and resend the data as appropriate.

The data will be packed using ATIS EMI records.

6.6.7 Pack Rejection

- 6.6.7.1 CLEC-1 will notify BellSouth within one business day of rejected packs (via the mutually agreed medium). Packs could be rejected because of pack sequencing discrepancies or a critical edit failure on the Pack Header or Pack Trailer records (i.e. out-of-balance condition on grand totals, invalid data populated). Standard ATIS EMI Error Codes will be used. CLEC-1 will not be required to return the actual rejected data to BellSouth. Rejected packs will be corrected and retransmitted to CLEC-1 by BellSouth.

6.6.8 Control Data

CLEC-1 will send one confirmation record per pack that is received from BellSouth. This confirmation record will indicate CLEC-1 received the pack and the acceptance or rejection of the pack. Pack Status Code(s) will be populated using standard ATIS EMI error codes for packs that were rejected by CLEC-1 for reasons stated in the above section.

6.6.9 Testing

- 6.6.9.1 Upon request from CLEC-1, BellSouth shall send test files to CLEC-1 for the Access Daily Usage File. Testing shall consist of actual calls made from live accounts. A call log shall be supplied along with test request information. The Parties agree to review and discuss the file's content and/or format.

**7. Enhanced Optional Daily Usage File**

- 7.1 Upon written request from CLEC-1, BellSouth will provide the Enhanced Optional Daily Usage File (EODUF) service to CLEC-1 pursuant to the terms and conditions set forth in this section. EODUF will only be sent to existing ODUF subscribers who request the EODUF option.
- 7.2 The CLEC-1 shall furnish all relevant information required by BellSouth for the provision of the Enhanced Optional Daily Usage File.

7.3 The Enhanced Optional Daily Usage File (EODUF) will provide usage data for local calls originating from resold Flat Rate Business and Residential Lines.

Charges for delivery of the Enhanced Optional Daily Usage File will appear on the CLEC-1s' monthly bills. The charges are as set forth in Exhibit A to this Attachment.

7.4 All messages will be in the standard Alliance for Telecommunications Industry Solutions (ATIS) EMI record format.

7.5 Messages that error in the billing system of the CLEC-1 will be the responsibility of the CLEC-1. If, however, the CLEC-1 should encounter significant volumes of errored messages that prevent processing by the CLEC-1 within its systems, BellSouth will work with the CLEC-1 to determine the source of the errors and the appropriate resolution.

7.6 The following specifications shall apply to the Optional Daily Usage Feed.

7.6.1 Usage To Be Transmitted

7.6.1.1 The following messages recorded by BellSouth will be transmitted to the CLEC-1:

Customer usage data for flat rated local call originating from CLEC end user lines (1FB or 1FR). The EODUF record for flat rate messages will include:

Date of Call  
From Number  
To Number  
Connect Time  
Conversation Time  
Method of Recording  
From RAO  
Rate Class  
Message Type  
Billing Indicators  
Bill to Number

7.6.1.2 BellSouth will perform duplicate record checks on EODUF records processed to Optional Daily Usage File. Any duplicate messages detected will be deleted and not sent to CLEC-1.

7.6.1.3 In the event that CLEC-1 detects a duplicate on Enhanced Optional Daily Usage File they receive from BellSouth, CLEC-1 will drop the duplicate message (CLEC-1 will not return the duplicate to BellSouth).



## 7.6.2 Physical File Characteristics

- 7.6.2.1 The Enhanced Optional Daily Usage Feed will be distributed to CLEC-1 over their existing Optional Daily Usage File (ODUF) feed. The EODUF messages will be intermingled among CLEC-1's Optional Daily Usage File (ODUF) messages. The EODUF will be a variable block format (2476) with an LRECL of 2472. The data on the EODUF will be in a non-compacted EMI format (175 byte format plus modules). It will be created on a daily basis (Monday through Friday except holidays).
- 7.6.2.2 Data circuits (private line or dial-up) may be required between BellSouth and CLEC-1 for the purpose of data transmission. Where a dedicated line is required, CLEC-1 will be responsible for ordering the circuit, overseeing its installation and coordinating the installation with BellSouth. CLEC-1 will also be responsible for any charges associated with this line. Equipment required on the BellSouth end to attach the line to the mainframe computer and to transmit successfully ongoing will be negotiated on a case by case basis. Where a dial-up facility is required, dial circuits will be installed in the BellSouth data center by BellSouth and the associated charges assessed to CLEC-1. Additionally, all message toll charges associated with the use of the dial circuit by CLEC-1 will be the responsibility of CLEC-1. Associated equipment on the BellSouth end, including a modem, will be negotiated on a case by case basis between the Parties. All equipment, including modems and software, that is required on CLEC-1 end for the purpose of data transmission will be the responsibility of CLEC-1.

## 7.6.3 Packing Specifications

- 7.6.3.1 A pack will contain a minimum of one message record or a maximum of 99,999 message records plus a pack header record and a pack trailer record. One transmission can contain a maximum of 99 packs and a minimum of one pack.
- 7.6.3.2 The Operating Company Number (OCN), From Revenue Accounting Office (RAO), and Invoice Number will control the invoice sequencing. The From RAO will be used to identify to CLEC-1 which BellSouth RAO that is sending the message. BellSouth and CLEC-1 will use the invoice sequencing to control data exchange. BellSouth will be notified of sequence failures identified by CLEC-1 and resend the data as appropriate.

The data will be packed using ATIS EMI records.



**Issues Relating to Billing Name and Address**

**REQUEST:** Is billing name and address information ("BNA") contained in the customer service records, and are these customer service records accessed in operator service functions, maintenance, and ordering of new service?

**RESPONSE:** The billing name and the billing address for a BellSouth end user customer is contained on the Customer Service Record ("CSR").

BellSouth refers to those as the "billing name" and the "billing address", not the "BNA". It appears that the "BNA" terminology being used by Pilgrim is related to a database for interexchange carriers, provided via tariff, which assists in billing for casual-use and calling card customers.

The ("CSR") Customer Service Record is not accessed for operator service functions.

For maintenance functions, if the customer is reporting a feature problem, then the Trouble Administration and Facilitation Interface ("TAFI") will verify that the given feature is on the customer service record ("CSR"). TAFI is the same maintenance and trouble repair system offered to CLECs that BellSouth employs for its retail units.

The CSR is not accessed for the ordering of new service because a customer service record does not exist yet for new service. However, if BellSouth or a CLEC were ordering a new service feature as an addition to an existing customer account, then there may be occasions where the existing CSR would be accessed.



**Issues Relating to 900 Number Blocking**

**REQUEST:** To what extent has BellSouth developed billed number screening or selective call blocking, and what are the features of these utilities?

**RESPONSE:** Attached please see BellSouth's General Subscriber Services Tariff A13.12 Selective Class of Call Screening Service and A13.20 Call Screening and Restriction Services – Customized Code Restriction (CCR). These tariffs describe the billed number screening and selective call blocking services as such services are available to BellSouth's retail customers. These services are also available to CLECs via resale at the wholesale discount and when the unbundled switch port is purchased by a facilities-based CLEC.

BELLSOUTH  
TELECOMMUNICATIONS, INC.  
KENTUCKY

GENERAL SUBSCRIBER SERVICES TARIFF

PSC KY, TARIFF 2A  
Eighth Revised Page 8  
Cancels Seventh Revised Page 8  
EFFECTIVE: July 1, 1998

ISSUED: June 1, 1998  
BY: E.C. Roberts, Jr., President - KY  
Louisville, Kentucky

**A13. MISCELLANEOUS SERVICE ARRANGEMENTS**

**A13.11 Remote Call Forwarding (Cont'd)**

**A13.11.5 Rates And Charges (Cont'd)**

C. Message Charges (Cont'd)

2. (Cont'd)

b. Between the call forwarding location and the terminating station line (Cont'd)

For calls forwarded outside the Full Local Calling Area, the Remote Call Forwarding customer is responsible for the applicable toll charges specified in this Tariff or any other applicable tariff for the duration of each call answered, even though such calls might not be accepted at the answering location after their charge conditions are explained.

D. Subsequent Additions And Changes (Including Area Calling Service)

1. Additional Access Paths, first addition

	Installation Charge	Monthly Rate	USOC
a) Per occasion	\$12.00	\$18.50	RCA
2. Additional Access Paths, at same time as 1.(a) preceding			
a) Each	-	18.50	RCA
3. To change the number at the call forwarding location (A nonrecurring charge specified in Section A4. of this Tariff is applicable.)			
a) Each change	-	-	NA
4. To change the number to which calls are forwarded at the request of the customer (A nonrecurring charge specified in Section A4. of this Tariff is applicable.)			
a) Each change	-	-	NA

E. Directory Listing

One listing in the directory covering the exchange in which the call forwarding central office is located is provided without additional charge.

**A13.11.6 Reserved For Future Use**

**A13.11.7 Reserved For Future Use**

**A13.12 Selective Class Of Call Screening Service**

**A13.12.1 General**

- A. Selective Class of Call Screening Service enables a customer to secure central office blocking of 1+, 101XXXX 1+, 976, 900, and screening information to prevent operator assisted calls from being billed to the subscriber's line. Information digits are also passed to long distance providers, other than the Company, to identify the line as requiring special operator handling.
- B. Subscribing to this service does not relieve the subscriber of responsibility for calls, other than intraLATA calls carried by South Central Bell, which originate from his number. Failure of other long distance providers to act on the information digits passed to them could result in charges being placed on the subscriber's number.
- C. Selective Class of Call Screening Service will be established only where operator identification is provided through the use of automated equipment arranged to furnish this service, or where a line or trunk is directly connected to a Company toll switchboard from the subscriber's premises. After the effective date of this Tariff, Selective Class of Call Screening Service will not be established for any new customers in locations served by toll switchboards.

(C)

BELLSOUTH  
TELECOMMUNICATIONS, INC.  
KENTUCKY  
ISSUED: July 12, 1995  
BY: M. H. Greene, President - KY  
Louisville, Kentucky

## GENERAL SUBSCRIBER SERVICES TARIFF

PSC KY. TARIFF 2A  
Original Page 8.1

EFFECTIVE: August 14, 1995

**A13. MISCELLANEOUS SERVICE ARRANGEMENTS****A13.12 Selective Class Of Call Screening Service (Cont'd)****A13.12.1 General (Cont'd)**

- D. Selective Class of Call Screening is offered subject to the availability of suitable facilities. (M)
- E. This service is available to all residence and business customers. (M)
- F. Selective Class of Call Screening can be suspended as specified in A2.3.16 of this Tariff. During the period of suspension, no recurring charge applies. (N)

Material appearing on this page previously appeared on page(s) 8 of this section

BELLSOUTH  
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KENTUCKY

GENERAL SUBSCRIBER SERVICES TARIFF

PSC KY. TARIFF 2A  
Fourth Revised Page 9  
Cancels Third Revised Page 9  
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ISSUED: June 28, 1999  
BY: E.C. Roberts, Jr., President - KY  
Louisville, Kentucky

**A13. MISCELLANEOUS SERVICE ARRANGEMENTS**

**A13.12 Selective Class Of Call Screening Service (Cont'd)**

**A13.12.2 Rates And Charges**

The following rates and charges will apply in addition to Secondary Service Charge.

1. MultiServ <sup>®</sup> service and PBX trunks			(T)
			(T)
		<b>Monthly</b>	
		<b>Rate</b>	<b>USOC</b>
(a) Per Central Office line equipped for screening including MultiServ <sup>®</sup> service main station lines	\$1.25		SRG (T)
(b) Obsoleted See Section A113	-		NA
(c) Per PBX trunk equipped for screening	8.20		SRG (C)
2. ESSX-1, ESSX <sup>®</sup> service, Digital ESSX <sup>®</sup> service, MultiServ <sup>®</sup> PLUS service and BellSouth <sup>®</sup> Centrex service			
(a) per NAR equipped for screening	8.20		SRGBB
(b) Per main station line equipped for screening	-		SRGPL

**A13.13 Reserved For Future Use**

**A13.14 Toll Trunks (Toll Terminals)**

**A13.14.1 General**

- A. A toll trunk is a special access trunk extending from a customer's premises to the Company's premises for the purpose of completing toll calls originated at the customer's location. These facilities may be arranged to:
  - 1. Route all long distance calls to an operator for completion.
  - 2. Route all Dial Station-to-Station calls directly to a toll network and route all other long distance calls to an operator for completion.
- B. A toll trunk may be arranged, at the customer's request, for Selective Class of Call Screening Service, as outlined in Section A13. of this Tariff. This service enables a customer, by means of an operator, to restrict outgoing toll calls from station users to certain types of calls such as those which are charged to the called number, a third number, or a Company calling card.
- C. Connections will not be established between a toll trunk and exchange station lines or other toll trunks in the exchange area where the toll trunk is located.
- D. Toll trunks are furnished only to customers who have local exchange service concurrently. Also, all local calls and calls to certain Company numbers such as repair service, Public Emergency Service (911), etc. will be permitted from the customer's establishment only on regular exchange service facilities of the customer.
- E. Outward connections only will be established from a toll trunk.
- F. Service arrangements, requested by the customer, in excess of the intent of this Tariff may be provided at charges based on cost.
- G. This service is furnished only where facilities permit.
- H. If appropriate, in addition to rates and charges listed following, Company Foreign Exchange channel charges are applicable when this service is extended over such dedicated facilities from a foreign exchange.

**A13.14.2 Rates And Charges**

- A. The monthly rate per toll trunk is equivalent to the Business Individual Line Flat Rate in the area containing the customer's premises from which the trunk extends.

1. Per toll trunk			
		<b>Rate</b>	<b>USOC</b>
(a) Charge		\$-	LD2

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GENERAL SUBSCRIBER SERVICES TARIFF

PSC KY. TARIFF 2A  
Fourth Revised Page 15  
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EFFECTIVE: November 23, 1999

ISSUED: October 22, 1999

BY: E.C. Roberts, Jr., President - KY  
Louisville, Kentucky

## A13. MISCELLANEOUS SERVICE ARRANGEMENTS

### A13.20 Call Screening And Restriction Services - Customized Code Restriction (CCR)

#### A13.20.1 General

Customized Code Restriction is a service which enables customers to restrict certain types of outgoing calls from being placed over their exchange lines/trunks. This capability is provided only by means of recorded announcement restriction. It is offered with options containing various sets of codes to be restricted, and is available to basic exchange customers with individual line residence or business service or PBX trunks in either flat, message or measured rate service environments.

#### A13.20.2 Regulations

- A. Customers may subscribe to whichever option meets their needs, but only one option may be provided on a line/trunk or group of lines/trunks. Also, options of this service may not be combined with Selective Class of Call Screening in A13.12. preceding or Toll Trunks specified in A13.14. preceding. The options of this service with their respective sets of codes are listed under A13.20.2.H. following and are available at the rates specified in A13.20.3. following.
- B. CCR is furnished only from central offices equipped to provide this service and where facilities permit.
- C. When CCR is provided from central offices other than the customer's normal serving central office, Foreign Central Office or Foreign Exchange charges as specified in Tariff Section A9., whichever is appropriate, will apply to all lines/trunks equipped with this service.
- D. CCR does not provide restriction of non-chargeable calls to Company numbers, such as repair service, public emergency service numbers (911), or toll free 1+8XX calling (*including 1+8XX calling card calls*). (T)
- E. Subscribing to CCR does not relieve customers of responsibility for calls charged to their numbers.
- F. It is the responsibility of the customer to notify all users of their service that an operator cannot be reached.
- G. The Company shall not be liable to any person for damages of any nature or kind arising out of, or resulting from, or in connection with the provision of this service, including without limitation, the inability of station users to access the operator for any purpose, or any other restricted codes specified for the options listed in A13.20.2.H. following.
- H. Residence customers who subscribe to any of the Area Plus<sup>®</sup> services may restrict 1+InterLATA calls while allowing 1+IntraLATA calls to be completed by subscribing to CCR Option #7. (N)
- I. CCR - Options (T)
- The codes shown for CCR options are not to be considered all inclusive. Codes may be changed and new or different codes may be added as deemed appropriate by the Company.
1. Option #1 Restricted Codes (T)  
Vacant Code Recording 1+, 0-, 0+, 00-, (1+/0+) 411, 976, NPA 900, IDDD 01+, IDDD 011+, 101XXXX
  2. Option #2 Restricted Codes  
Vacant Code Recording 0-, 0+, 00-, IDDD 01+, 976
  3. Option #3 Restricted Codes (T)  
Vacant Code Recording 1+, 0-, 0+, 00-, IDDD 01+, NPA 900, 101XXXX
  4. Option #4 Restricted Codes  
Vacant Code Recording 976, NPA 900
  5. Reserved for future use. (N)
  6. Reserved for future use. (N)
  7. Option #7 Restricted Codes (N)  
1+InterLATA, Vacant Code Recording 0-, 0+, 00-, (1+/0+) 411, 976, NPA 900, IDDD 01+, IDDD 011+, 101XXXX (N)
- J. Customized Code Restrictions can be suspended as specified in A2.3.16 of this Tariff. During the period of suspension, no recurring charge applies. (T)
- K. Customized Code Restriction will be established and provided at no charge for customers receiving Lifeline service from A3.31 of this Tariff. (T)

**A13. MISCELLANEOUS SERVICE ARRANGEMENTS**

**A13.20 Call Screening And Restriction Services - Customized Code Restriction (CCR)  
 (Cont'd)**

**A13.20.3 Rates And Charges**

A. The following rates and charges apply for all CCR options and are in addition to all applicable service charges, monthly rates and nonrecurring charges for exchange lines/trunks and other services or equipment with which they may be associated. Only one option may be provided on a line/trunk or group of lines/trunks.

1.	Option #1 Restricted Codes		Monthly Rate	USOC	
	a) Residence Line or PBX trunk, each		\$2.20	CREX1	(T)
	b) Business Line or PBX trunk, each		4.50	CREX1	(T)
2.	Option #2 Restricted Codes				
	a) Residence Line or PBX trunk, each		2.20	CREX2	(T)
	b) Business Lines or PBX trunk, each		4.50	CREX2	(T)
3.	Option #3 Restricted Codes				
	a) Residence Line or PBX trunk, each		2.20	CREX3	(T)
	b) Business Line or PBX trunk, each		4.50	CREX3	(T)
4.	Option #4 Restricted Codes <sup>1,2</sup>				
	a) Residence Line or PBX trunk, each		-	CREX4	(T)
	b) Business Line or PBX trunk, each		-	CREX4	
5.	Option #7 Restricted Codes <sup>3</sup>				(N)
	(a) Residence Line		2.20	CREX7	(N)

**A13.21 Reserved For Future Use**

**A13.22 Reserved For Future Use**

**A13.23 Reserved For Future Use**

**Note 1:** On the first occurrence of adjustment due to unauthorized or mistaken 900 and/or 976 service calls blocking shall be offered to the customer at no charge. However, on the second occurrence of adjustment or customer refusal to pay the 900 and/or 976 service charges, Company initiated blocking may be imposed. The customer will be notified at the time the request for adjustment is being processed.

**Note 2:** Service charges do not apply when a customer subscribes to Option #4.

**Note 3:** Option #7 is restricted to subscribers of any Area Plus<sup>®</sup> service.

(N)



**Issues Relating to 900 Number Blocking**

REQUEST: Is there a "Get Data" query that permits BNA or other restrictions that may be in a line information database ("LIDB")?

RESPONSE: No, "Get Data" query is not utilized by BellSouth's LIDB. Further, BNA ("Billing Name & Address") is not contained in BellSouth's LIDB.

As information, "GetData" is a LIDB application that provides flexible query and data element definition capabilities that allow LIDB owners to rapidly develop and store new data elements on a per-line basis. The GetData query is a service-independent LIDB query (and associated responses) that can be used to request specific data elements from a record in LIDB. To support the GetData query, Query Originators (QOs) access the LIDB associated with a service key (e.g., the line number provided by a calling customer) to obtain data element information stored with the given line number. The data that is available from LIDB via a GetData query includes many of the parameters that are returned in the OLNS, Alternate Billing Service (ABS), and Calling Name services (which BellSouth does not utilize), as well as any custom elements defined by a LIDB owner. Included as part of the LIDB GetData service is a mechanism that allows LIDB owners to define customized LIDB data elements via the interface between the Administration System for LIDB (AS/LIDB) and the LIDB database.



### Issues Relating to 900 Number Blocking

REQUEST: Are originating line screen ("OLNS") or FLEX automatic number identification ("ANI") contained in any LIDBs and how can these databases be accessed?

RESPONSE: Neither OLNS nor FLEX automatic number identification are contained in BellSouth's LIDB.

As information, Originating Line Number Screening ("OLNS") is the feature that queries LIDB to determine what service and equipment indicators billing or service restrictions (if any) are associated with the calling station. Such a determination does not require any validation of billing name and address information. OLNS is a means of providing an operator services platform with information about the line originating a telephone call. Operator Services platforms access originating line information by launching OLNS queries over the Common Signaling System ("CCS") network using Signaling System 7 ("SS7") protocol to the LIDB containing the originating line. Originating line information may be used to determine things such as billing and service restrictions, the Originating InterLATA Carrier (OIC), IntraLATA Presubscription (ILP) information, and Service Provider.

BellSouth is unclear as to what functionality Pilgrim refers to as "FLEX ANI". FLEX ANI information is contained against the end users class of service and transmitted in the signaling format used between service providers. The information digits are typically used to identify Smart Line coin service (27), Smart Set coin lines (70) and Inmate services (29). However, selective screening of ANI-identified calls to an operator services switch is possible. Currently, information digit 7 or 07 is used to identify a call requiring special screening. Candidates for special screening are calls from such locations as coinless public telephones (including inmate calling), post-pay coin telephones, hospitals, and other public institutions such as college dormitories. Here again, special screening is accomplished through the use of information digits 7 or 07 rather than using billing name and address information associated with the originating line. OLNS functionality moves the provision of originating line information from operator services platform internal tables to centralized databases, such as LIDB.



**Technical Issues**

**REQUEST:** Please provide copies of technical documents, explanations of obscure acronyms, and proper titles and descriptions of services and functions, including describing the datafields available, features, and functions, or a reference to the exact names, ordering numbers, and vendor of these documents for each of the following systems identified in BellSouth's standard interconnection agreement.

LENS  
TAG  
CRIS  
RSAG  
SCE/SMS  
DBAS  
EDI  
EDI-PC

**RESPONSE:** On September 20, 1999, BellSouth responded to Pilgrim's August 9, 1999 letter which contained a similar request. (See attached for a copy of BellSouth's response.) The following discussion provides more explanation and the location of additional information and how it can be accessed on the website that BellSouth has established to assist CLECs with their questions. Examples of the website pages are also provided.

**LENS - Local Exchange Navigation System.**

LENS is a web-based graphical user interface ("GUI"). With the release of version 6.0 of LENS on January 14, 2000, LENS became a GUI to the Telecommunications Access Gateway ("TAG") gateway. LENS now uses TAG's architecture and gateway, and therefore has TAG's pre-ordering functionality for resale services and UNEs, and TAG's ordering functionality for resale services. The LENS GUI requires software development only on BellSouth's side of the interface. In order to use LENS, a CLEC must have, at a minimum, a personal computer, web browser software, and an internet connection to use LENS (of course, the CLEC must also test with BellSouth, attend training, and obtain a password). Further information can be obtained from the user guides on the BellSouth website (<http://www.interconnection.bellsouth.com/guides/guides.html>). See the



RESPONSE: (Cont'd)

attached for an illustration of the links to this site from the BellSouth Interconnection website.

**TAG – Telecommunications Access Gateway.**

TAG is an Application Program Interface (API) that allows a CLECs to establish a machine-to-machine interface with BellSouth for pre-ordering and ordering functionality for resale services and UNEs. TAG follows the industry standard protocol (CORBA) for pre-ordering and the industry standard Ordering and Billing Forum (“OBF”) guidelines for Local Service Requests (“LSRs”). CLECs must develop their own presentation layer GUI. The electronic business rules for pre-ordering and ordering are found in the BellSouth Pre-Order Business Rules documents and the Local Exchange Ordering (“LEO”) Implementation Guides located at the CLEC Customer Guides on the BellSouth website (<http://www.interconnection.bellsouth.com/guides/guides.html>). For TAG development the OSS Information Center page contains a password-protected link to documentation. The documentation includes the TAG API Reference Guide, the Testing Plan and Guidelines for TAG, and the TAG Programmer's Job Aid. In conjunction with using these guides, the CLEC programmer would need to take the TAG training course delivered by BellSouth. Additional information on TAG and gaining access to these documents can be obtained from the CLEC's Account Manager.

**CRIS – Customer Record Information System.**

CRIS is BellSouth's proprietary corporate database and billing system for non-access customers and services. CRIS accrues charges to customer accounts and generates billing invoices according to the formatting options selected by the customer. CRIS is designed to accumulate call record details and details on billable events (e.g. activation of a vertical service feature which is billed on a “per-use” basis) which are to be accrued individually against a specific end user service. CLECs have access to the CRIS database to obtain Customer Service Records (CSRs) subject to CPNI rules as defined by each state's public utilities commission, the 1996 Telecom Act, and the FCC. CLEC service representatives using TAG or LENS sends a inquiry to, and receives a response from, the CRIS database. Both TAG and LENS provides the CLEC with on-line view and print capabilities for the CSR.

RESPONSE: (Cont'd)

**RSAG – Regional Street Address Guide.**

RSAG is the BellSouth database containing street addresses validated to be accurate with state and local governments. The address information obtained from RSAG is used to ensure a consistent and accurate address for purposes of matching loop facilities available to the address and for dispatching field technicians. After an end user has provided a street address, in order to validate the address, a CLEC service representative sends an inquiry to, and receives a response from, the RSAG database via LENS or TAG. The returned validated address provides the properly-formatted address information for population of the LSR, in order to prevent errors caused by invalid addresses.

**SCE/SMS - SERVICE CREATION ENVIRONMENT (SCE) AND SERVICE MANAGEMENT SYSTEM (SMS).**

The Advanced Intelligent Network ("AIN") is an evolving network and service control architecture. AIN is an outgrowth of the architectures that were deployed for the intelligent network 800 Database Service and Alternate Billing Service ("ABS"). The basic concept of AIN is to migrate some service control functions from the switch to a LEC-programmable system so new services can be created rapidly and independently of the traditional switch vendor generic release cycles. AIN relies on the Common Channel Signaling/Signaling System 7 ("CCS/SS7") protocol and provides a set of service-independent capabilities to allow the Local Exchange Carriers ("LECs") and their customers to program new services.

The AIN Service Switching Point ("SSP") functionality allows a switching system to identify calls associated with AIN services. When the SSP detects that conditions for AIN service are met, it initiates a dialogue with the AIN Service Control Point ("SCP") in which service information for the requested service resides.

When an AIN SSP detects that AIN service control is needed, it sends a CCS/SS7 message containing information, such as calling/called party identity and other call processing information, to the appropriate SCP. The SCP uses service control logic and subscription information to return a message to the SSP requesting it to perform some further processing of a call or customer service request. AIN SCPs contain AIN service logic or service-related applications.

RESPONSE: (Cont'd)

The Service Management System ("SMS") is one of several Operations Systems ("OSSs") that may be used in the AIN architecture. These OSSs, together with capabilities provided by SSPs and SCPs, support functions necessary to provision, maintain, and administer AIN services. The SMS is specifically designed to facilitate the provisioning and administration of service and subscription data required by the SCP.

The AIN architecture includes the following elements:

- AIN Service Switching Points ("SSPs"), which contain specific trigger and event handling routines that instruct the switch to interact with an AIN SCP for routing instructions.
- AIN SCPs, which execute a number of different AIN services on a single platform
- AIN Service Creation Environment ("SCE") and Service Management Systems ("SMSs"), which together provide a development and provisioning environment for new services.
- Intelligent Peripherals ("IPs"), which provide specialized resource related functions such as announcement invocation, voice recognition, and digit collection to voice and fax messaging.
- Service Nodes ("SNs"), which typically combine the functions of an AIN SCP and IP into a single system, often coupling these functions with a programmable switching platform in order to offer enhanced services such as pre-paid calling cards or unified messaging platforms.

**DBAS – Database Administration System.**

DBAS II is a database administration system for LIDB. The vendor is Telecordia and this product is used for the purposes of updating LIDB.

**EDI – Electronic Data Interchange.**

EDI is a machine-to-machine interface for CLECs for ordering functionality for resale services and UNEs. EDI is not used to access pre-ordering OSS. EDI follows the industry standard protocol (EDI) for ordering and the industry standard OBF guidelines for LSRs. EDI has been available to any interested CLEC since December 1996. The business rules for EDI can be found in the Local Exchange Ordering ("LEO") Implementation Guide (Volume 4) located on the customer guides page for the BellSouth website (<http://www.interconnection.bellsouth.com/guides/guides.html>). See the

RESPONSE: (Cont'd)

attached for an illustration of the links to this site from the BellSouth Interconnection website.

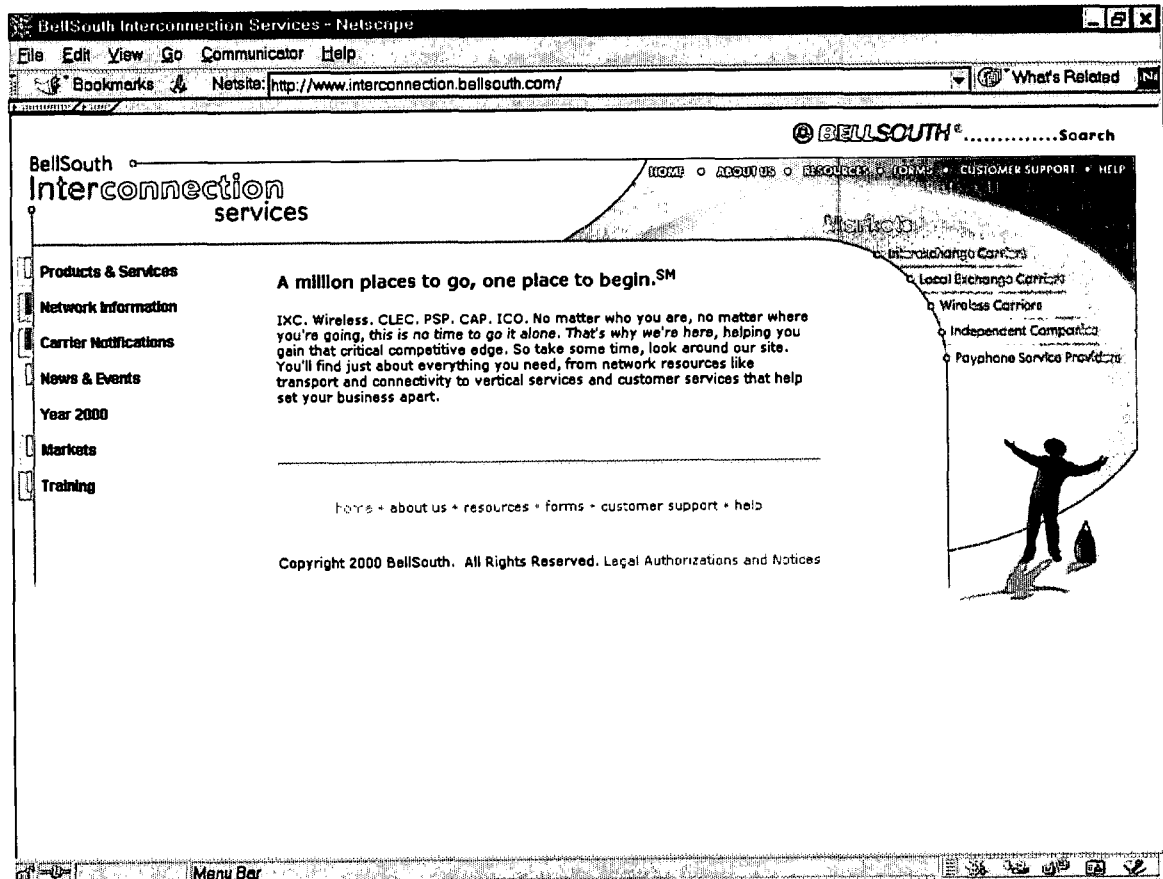
**EDI-PC - Electronic Data Interchange - Personal Computer.**

EDI-PC is a human-to-machine interface for CLECs for ordering functionality for resale services and UNEs. EDI-PC uses a commercially available PC-based customer interface package that provides a Graphical User Interface ("GUI") for the EDI ordering system. EDI-PC is a PC based program that allows CLECs to submit orders via BellSouth's EDI ordering interface without having to incur the expense to build their own interface to EDI.

EDI-PC has been provided to EDI customers by Harbinger, a Value Added Network provider through its TrustedLink™ Commerce software package. While Harbinger software is Y2K compatible, it could not be expanded to handle the business rules for EDI Version #9 or higher. Harbinger notified BellSouth that it would no longer support further development work for the TrustLink™ Commerce EDI-PC package. The CLEC community was notified of this change via Carrier Notification Letter SN91081477 posted on the BellSouth website ([http://interconnection.bellsouth.com/carrier/carrier\\_let\\_99.html](http://interconnection.bellsouth.com/carrier/carrier_let_99.html)) on April 5, 1999.

RESPONSE: (Cont'd)

## BELLSOUTH INTERCONNECTION WEBSITE Home Page



Double click on link in upper right hand corner to "Local Exchange Carriers"

RESPONSE: (Cont'd)

## BELLSOUTH INTERCONNECTION WEBSITE Local Exchange Carriers

The screenshot shows a Netscape browser window displaying the BellSouth Interconnection Services website. The page title is "Local Exchange Carriers - BellSouth Interconnection Services - Netscape". The address bar shows the URL "http://www.interconnection.bellsouth.com/markets/lec.html". The website header includes the BellSouth logo and navigation links: HOME, ABOUT US, RESOURCES, FORMS, CUSTOMER SUPPORT, and HELP. The main content area is titled "Local Exchange Carriers" and features a table of links:

CLEC Brochure	Customer Guides	INSSC
CLEC Products	Customer Newsletters	Forms
CLEC Training	Customer Service Centers	Network Operations Centers
CLEC Reports	Disaster Basic 911/E911 by State/Co	DSS Information Center
Billing and Collections		

Below the table, there is a section titled "Weigh Your Options" with the following text:

**More return on less investment**

You're in business to get ahead - and stay there. As a Competitive Local Exchange Carrier (CLEC), dialtone is just the beginning. You need to deliver a full range of products, superior reliability and responsive service, while squeezing the most from every penny you spend. So where do you start?

With BellSouth. We're the people who put the most extensive telecommunications network in the Southeast right at your fingertips. Everything you need to get up and running is right here...at a price that won't put you out of business.

**More value, less stress**

Success is all about building value...for customers and your business. Start with fiber and switches

The browser status bar at the bottom indicates "Applet slider running".

Double click on link in middle column to "Customer Guides"

RESPONSE: (Cont'd)  
 BELLSOUTH INTERCONNECTION WEBSITE  
 Customer Guides

BellSouth Interconnection Services - Customer Guides - Netscape

File Edit View Go Communicator Help

Bookmarks Netsite: <http://www.interconnection.bellsouth.com/guides/guides.html> What's Related

BELLSOUTH Search

HOME • ABOUTUS • RESOURCES • FORMS • CUSTOMER SUPPORT • HELP

BellSouth Interconnection services

Products & Services  
 Network Information  
 Carrier Notifications  
 News & Events  
 Year 2000  
 Markets  
 Training

### CLEC Customer Guides

Note: All guides are now available in PDF format for *easy printing and searching* on the Download Guides page. For on-line navigation, click the desired link below.

Visit the Guide Descriptions page for a listing of what is available in each guide.

	<u>Date Posted</u>	<u>Issue #<sup>1</sup></u>	<u>Next Issue</u>
<b>CLEC Activation Requirements (formerly called Starter Kits)</b>			
Resale Activation Requirements	Mar 29, 1999	Issue 1	
Facility Based Activation Requirements	May 21, 1999	Issue 1a	
Tandem Level ACNA/BNA Lists	Mar 20, 2000	Issue 1	
Bellsouth Ordering Guide for CLECs	Aug 30, 1999	Issue 3B	TBD
Bellsouth Guide to Interconnection	Feb 16, 2000	Issue 9A	TBD

BellSouth Interconnection Services - Customer Guides - Netscape

File Edit View Go Communicator Help

Bookmarks Netsite: <http://www.interconnection.bellsouth.com/guides/guides.html> What's Related

Electronic Business Rules for Local Ordering (OSS '99)	Dec 20, 1999	Issue 9A	TBD
LEO Implementation Guide (Volume 2)	July 21, 1999	Issue 6B	TBD
LEO Implementation Guide (Volume 3)	Sep 24, 1998	Issue 3A	TBD
LEO IG (Volume 4) - TCIF7 *	Nov 11, 1999	Issue 7F	TBD
LEO IG (Volume 4) - OSS '99 *	Nov 29, 1999	Issue 9A	TBD
* Available in PDF format only. Acrobat Reader required.			
<b>Bellsouth Pre-Order Business Rules</b>			
Bellsouth Pre-Order Business Rules	Jan 31, 2000	Version 3.0	TBD
Bellsouth Pre-Order Business Rules - Appendix	Jan 31, 2000	Version 3.0	TBD
Bellsouth Pre-Order Business Rules Data Dictionary	Dec 15, 1999	Version 1.0	TBD
<b>Bellsouth Internet Call Waiting Service</b>			
Bellsouth Internet Call Waiting Service User's Guide	Mar 07, 2000	Version 2.0	
Bellsouth Internet Call Waiting Service Application	Mar 07, 2000	Version 2.0	
<b>OSS Guides</b>			
Local Exchange Navigation System (LENS) Version 6.0 User Guide	Mar 6, 2000	Issue 8B	
Local Exchange Navigation System (LENS) Version 5.3 User Guide	Feb 23, 2000	Issue 7C	
CLEC TAFE User Guide*	Mar 02, 2000	Issue 1	

RESPONSE: (Cont'd)  
 Customer Guides (continued)

BellSouth Interconnection Services - Customer Guides - Netscape			
File Edit View Go Communicator Help			
Bookmarks Netsite: <a href="http://www.interconnection.bellsouth.com/guides/guides.html">http://www.interconnection.bellsouth.com/guides/guides.html</a> What's Related			
CLEC TAF: User Guide*	Mar 02, 2000	Issue 1	
CLEC TAF: End-User Training Manual*	Mar 02, 2000	Issue 1	
* Available in PDF format only. Acrobat Reader required.			
LENS Version 6.0 Training Windows 95/98/2000 Platform	Jan 10, 2000	Issue 1	TBD
LENS Version 6.0 Training Windows NT 4.0 Platform	Jan 10, 2000	Issue 1	TBD
<b>Non-Telecommunication Services</b>			
Messaging Services Reseller	Feb 13, 1998	Issue E	TBD
<b>Work Aids</b>			
Local Exchange Navigation System Release 6.0 Work Aid	Mar 06, 2000	Issue 1	
BellSouth Work Aid for Ordering Complex Services	Feb 17, 2000	Issue 3	TBD
Electronic Interface Change Control (EICC) Process	May 11, 1998	Issue 1	TBD
<b>Uniform Service Order Codes (USOCs)</b>			
CLEC JSOC Manual (Product Catalog)-- Listed by Service Category	July 9, 1999	Issue 2	
CLEC JSOC Manual (Product Catalog)-- Listed by Service Category	July 9, 1999	Issue 2	
BellSouth Interconnection Services - Customer Guides - Netscape			
File Edit View Go Communicator Help			
Bookmarks Netsite: <a href="http://www.interconnection.bellsouth.com/guides/guides.html">http://www.interconnection.bellsouth.com/guides/guides.html</a> What's Related			
Interconnection USOC Manual (CRIS/CABS) Listed Alphanumerically	July 15, 1999	Issue 2	
Interconnection USOC CSV File	July 15, 1999		
<b>Other Guides and Manuals</b>			
Project Manager Implementation Guidelines	Mar 31, 2000	Issue 1	TBD
BellSouth Start-Up Guide (Available in PDF Only)	Apr 3, 2000	Issue 1	TBD
Products & Services Interval Guide	Jan 06, 2000	Issue 2B	Mar 31, 2000
Colocation Handbook	Sept 16, 1999	Issue 8	TBD
Local Number Portability Ordering Guide for CLECs	Oct 27, 1999	Issue 1B	TBD
CLEC Service Order Tracking System User Guide	Nov 17, 1999	Issue 2	TBD
BellSouth FID Glossary for CLEC's	Feb 11, 2000	Issue 1	TBD
<ol style="list-style-type: none"> <li>1. A summary of revisions is included in each guide.</li> <li>2. Archived issues of selected guides are available in .pdf format at this page.</li> <li>3. To purchase paper copies of any of these guides, please print and fax the ordering form or call 1-888-404-9899.</li> </ol>			
<a href="#">home</a> • <a href="#">about us</a> • <a href="#">resources</a> • <a href="#">forms</a> • <a href="#">customer support</a> • <a href="#">help</a>			
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**BellSouth Interconnection Services**

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Susan M. Arrington  
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(404) 529-7839


September 20, 1999

James N. Newberry, Jr.  
Wyatt, Tarrant & Combs  
1700 Lexington Financial Center  
Lexington, Kentucky 40507-1746

Dear Mr. Newberry:

Enclosed herein are BellSouth's responses to the questions posed by Pilgrim in its August 9, 1999 letter to Leah Cooper. If you have any questions, or need any additional information on these issues, please let me know.

Sincerely,



Susan M. Arrington  
Manager, Interconnection Services/Pricing

cc: Leah Cooper

BellSouth's Responses to Questions  
Posed by Pilgrim Telephone on August 9, 1999

**Request #1:**

Please provide us detailed technical documents describing the data fields available, features, and functions, or a reference to the exact names, ordering numbers and vendor of these documents, for each of the following systems as referenced in Attachments 1 and 2: LENS, TAG, CRIS, RSAG, SCE/SMS, DBAS, EDI, EDI-PC.

**Response:**

Information about each of these systems/services can be found on BellSouth's interconnection website: [www.interconnection.bellsouth.com](http://www.interconnection.bellsouth.com) and is also covered during CLEC Basic Training. CLEC Basic Training is conducted after the parties have negotiated and signed an agreement. User guides are available on the website and will be provided to CLECs as needed, by the account managers during the implementation of their agreement.

**Request #2:**

Pilgrim may wish to provide a facilities-based voice mail service to compete with BellSouth's Memory Call service. For the purposes of this request, please assume that a subscriber elects to buy dialtone from BellSouth, and that Pilgrim wants to offer that subscriber Voice Mail service in competition with BellSouth's Memory Call. Also, please assume that Pilgrim owns all the switching and equipment necessary to provide the service, except for those components of the service that, by their nature, must be provided by the dialtone provider. Please inform us if BellSouth is willing to provide Pilgrim the services necessary to perform the following functions, all of which BellSouth provides itself, and all of which are necessary for Pilgrim to provide a competitive service:

**Response:**

BellSouth maintains that its Memory Call service is not a telecom service and therefore BellSouth is not required to make this service available for resale. BellSouth has agreed to make Memory Call available for resale on its own accord, however, the resale discount does not apply. To the extent the services which Pilgrim needs to provide for its own form of "voice mail service" are offered either through resale or through BellSouth's tariffs. BellSouth will provide these services to Pilgrim upon request at the tariffed rates.

**Request #3:**

Please provide us a copy of the document referenced in Attachment 2, Paragraph 10.6.4.1, or reference to a vendor for that document.

**RESPONSE:**

This is a Nortel document and can be obtained from a Nortel representative.

**Request #4:**

Regarding DADAS service referenced in Attachment 2, Paragraph 10, where are the interface points at which BellSouth provides this service?

**Response:**

The point of access for the DADAS service is in Jackson, Mississippi, although the service has been provided out of the Charlotte office with additional arrangements negotiated between the customer and BellSouth.

**Request #5:**

Please identify the databases provided as referenced in Attachment 2, Paragraph 12.2.1.2. For each of the databases so identified, please provide us detailed technical documents describing the data fields available, features, and functions, or reference to the exact names, ordering numbers, and vendors of these documents.

**Response:**

The databases listed in Attachment 2 Paragraph 12.2.1.2 are Toll free dialing, Call Name database, LNP database and LIDB. Information regarding the features and functions of these databases is available at [www.interconnection.bellsouth.com](http://www.interconnection.bellsouth.com)

**Request #6:**

Please provide us with a list of the customer data items with Pilgrim would have to provide in order to support each required LIDB function pursuant to Attachment 2, Paragraph 13.4.2.2.

**Response:**

Please see the attached document for a list of the customer data items required for LIDB.

**Request #7:**

In Attachment 2, Exhibit A, Paragraph I.C.a., for subscribers in LIDB, CLEC appears to be required to provide BST payments for calls made by CLEC subscribers. Does BST offer a reciprocal payment for calls made by BST subscribers?

**Response:**

The BellSouth LIDB stores certain subscriber information, at no charge to the CLEC, at the request of CLEC, and provides access to such information to BellSouth, LIDB customers, and other CLECs. LIDB is accessed for the purpose of billed number screening, calling card validation and fraud control. Reciprocal payments for LIDB are not appropriate since Pilgrim does not have its own LIDB.

**Request #8:**

In Attachment 3, Paragraph 1.5, RCF and FX subscribers are often not in the same physical location as an NPA/NXX serving wire center. How is this handled?

**Response:**

BellSouth requests that CLECs utilize their NPA/NXXs in such a way as to provide the necessary information so that BellSouth can distinguish local from intraLATA toll traffic for BellSouth customers. CLEC's end users' assigned NPA/NXX line numbers shall be physically located in the BellSouth rate center with which the NPA/NXX has been associated when BellSouth delivers traffic to CLEC for termination. If BellSouth is unable to determine the jurisdiction of the traffic due to the manner in which CLEC has utilized its NXX codes, BellSouth will treat such traffic as toll, unless CLEC provides BellSouth sufficient information to determine the appropriate jurisdiction of the traffic.

**Request #9:**

Please explain the nature of the obligations set forth in Attachment 3, Paragraph 1.7. Who bills AT&T? Both parties?

**Response:**

Each party bills the IXC (AT&T) their own access service rates. The party providing the end office function will bill the interconnection charge.

**Request #10:**

We have a series of questions relating to Attachment 3, Paragraph 8:

(a) What happens when our customer dials a BST 976 or N11 number?

**Response:**

The CLEC obtains a 7 or 10 digit local number to route the calls made to the three digit number. All switches within the basic local calling area are programmed to translate the three digit code to the designated point-to number. When the caller dials the three-digit code associated with a subscriber's information service and/or customer service organization the switch recognizes the three-digit code as an abbreviated dialing string, deletes the three-digits from the dialing string and translates them in to the 7 or 10 digit point-to number the switch routes the call to the 7 or 10 digit point-to number.

(b) Are we billed for the premium charge, does BST do that itself, or are the calls blocked?

**Response:**

CLEC has the option to request blocking on those calls.

- (c) Does BST offer a reciprocal treatment under (b) for calls going the other direction?

**Response:**

Reciprocal compensation is paid by both parties for the costs of transporting and terminating calls on each other's networks. Traffic to ISPs and ESPs is considered to be interLATA traffic and not local traffic, therefore, this type of traffic excluded from this arrangement.

- (d) If BST bills us, and we must bill our end users, how do we get rate information from BST?

**Response:**

Pilgrim charges its own rates. BellSouth bills the CLEC and provides usage records for the CLEC's end-users or for the UNEs ordered by the CLEC.

- (e) How can we offer a competitive 976 or N11 service with BST?

**Response:**

BellSouth does provide market business plans for CLECs.

- (f) How do we work reciprocal compensation for each other's N11 and 976 traffic, both the transport and premium portion thereof?

**Response:**

BellSouth does not understand Pilgrim's request. Please provide a more detailed explanation of your specific request.

- (g) ESP/ISP traffic exclusion appears to reserve this portion of the market to BST. Please explain the rationale for the exclusion.

**Response:**

The FCC ruled that ISP/ESP traffic is interLATA, not local, therefore reciprocal compensation does not apply.

- (h) Is BST willing to make alternate reciprocal compensation arrangements for ESP/ISP traffic?

**Response:**

No. As stated above the FCC has ruled that this type of traffic is interLATA, not local, therefore reciprocal compensation does not apply.

**Request #11:**

With regard to Attachment 5, Paragraph 1, how do we gain access to 976 and N11 numbers for our customers?

**Response:**

BellSouth N11 Service is currently available in Alabama, Florida, Georgia, Louisiana and Tennessee. Complete rate, regulation and specific N11 code availability information is available in Section A39 of the BellSouth General Subscriber Services Tariff for each respective state. Numbers are available

through the CLEC's account manager. The account manager can provide information on the process for obtaining the numbers and will provide the implementation forms.

976 numbers are available only where facilities permit and central offices are equipped. The CLEC account manager provides information on obtaining 976 numbers. The appropriate tariffs and the CLEC Handbook contain pertinent information about this service, as does BellSouth's interconnection web site.

**Request #12:**

Would SPNP, as defined in Attachment 5, Paragraph 3.1, be available to Pilgrim if it attempts to win business from BST's 976 and N11 customers?

**Response:**

BellSouth does not understand Pilgrim's request. However, SPNP is an interim service arrangement whereby an end user can retain use of his existing assigned telephone number, as long as the end user remains at the same location or within the same serving wire center, when changing local service providers.

**Request #13:**

With regard to Attachment 5, Paragraph 3, the 976 and N11 tariffs provide for billing BST customers for calls to these numbers. What OSS is provided by BST to make possible a competitive offering by a resale CLEC?

**Response:**

BellSouth's Operational Support Services (OSS) are electronic interfaces used by CLECs to order services for both Resale and UNEs. OSS is an ordering interface, not a billing mechanism.

**Request#14:**

In Attachment 6, Paragraph 2.2, what are LENS, TAG, CRIS and RSAG, and what features, functions, and data fields are available through them?

**Response:**

As stated in response to Request #1, informations regarding these systems are available at: [www.interconnection.bellsouth.com](http://www.interconnection.bellsouth.com).

**Request #15:**

In Attachment 7, we understand that CATS and NICS provide for transmission, billing, and revenue settlement of certain call types among CLECs and ILECs, and we understand that they provide settlement for collect, calling card and third number intra-LATA toll calls. We have some additional questions about the message types supported. Do the systems provide settlement for the following types of calls?

- (a) A BellSouth customer places an intra-LATA call to directory assistance on another LEC's network, billed to his BellSouth calling card or BellSouth home number.

**Response:**

The DA call will have a self-descriptive text explanation and unique EMI record ID (010132).

- (b) A BellSouth customer places an intra-LATA call to his BellSouth voice mail service on another LEC's network, billed to his BellSouth calling card or home number.
- (c) A BellSouth customer places an intra-LATA call to his CLEC provided voice mail service on another LEC's network, billed to his BellSouth calling card or home number.
- (d) A BellSouth customer places an intra-LATA conference call on another LEC's network, billed to his BellSouth calling card or home number.

**Response:**

There are several EMI record IDs for conference calls (010106, 010107, 010108 & 010109) and the EMI record ID for voice mail is 010117. However, if either the voice mail service or the conference call service were alternately billed, we would format these calls on EMI record ID 010101.

- (e) All of the above, billed as non-deniable charges, with adequate text descriptions of the charges.

**Response:**

All of the above would be regular, non-deniable charges. However, the alternately billed voice mail and conference call would have a description of the service provided.

BellSouth is only able to address those calls that it records and rates. If any of these calls are recorded and/or rated by another LEC, then that LEC would determine the description and record IDs for those messages.

## LIST OF ELEMENTS FOR TELEPHONE NUMBERS STORED IN LIDB

1. Telephone Number (i.e. 404-555-9999)
2. Class of Service (Business, Residence, Coin)
3. Billed Number Screening attributes
  - Collect
    - *Verify* – allow collect calls to be billed to this number
    - *Deny* – Do not allow collect calls to be billed to this number
  - Billed to Third
    - *Verify* – allow Billed to Third calls to be billed to this number
    - *Deny* – Do not allow Billed to Third calls to be billed to this number
4. Toll Billed Exceptions – Using combinations of the attributes listed in #3 above, the following billing options can be derived.
  - *TBE-A* (Collect = (D)eny, Billed to Third = (D)eny)
  - *TBE-B* (Collect = (V)erify, Billed to Third = (D)eny)
  - *TBE-C* (Collect = Deny, Billed to Third = (V)erify)
  - *No TBE* (Collect = (V)erify, Billed to Third = (V)erify)
5. Calling Card
  - *Restricted Pin* (Restricted to bill calls only to the associated telephone number, synonymous to a collect call)
  - *Unrestricted Pin* ( No restrictions applied, can call any number and bill to the calling card)

Note: Calling Cards are not allowed on coin telephone numbers. Pins can not begin with a zero (0) or one (1). A customer can have both restricted and unrestricted pins on the same telephone number, but the Pins must be different.

Example of Residence number with no billing restrictions

Telephone Number	Class of Service	Toll Bill Exception	Calling Card
404 - 555 - 2222	Res	No TBE	

Example of Residence number with billing restrictions for Collect and Billed to Third

Telephone Number	Class of Service	Toll Bill Exception	Calling Card
404 - 555 - 4545	Res	TBE A	

Example of Residence number with Collect billing restrictions

Telephone Number	Class of Service	Toll Bill Exception	Calling Card
404 - 555 - 7777	Res	TBE - C	

Example of Residence number with Bill to Third billing restrictions

Telephone Number	Class of Service	Toll Bill Exception	Calling Card
404 - 555 - 0011	Res	TBE - B	





## Technical Issues

**REQUEST:** Please provide information regarding how customer service records are viewed through TAG or LENS, and what information is contained in these OSS functions.

**RESPONSE:** As previously discussed in Item No. 7, CLECs have access to the CRIS database to obtain Customer Service Records (CSRs) subject to CPNI rules as defined by each state's public utilities commission, the 1996 Telecom Act, and the FCC. CLEC service representatives using TAG or LENS send an inquiry to, and receive a response from, the CRIS database. Both TAG and LENS provides the CLEC with on-line view and print capabilities for the CSR.

Detailed instructions for viewing a CSR via LENS can be found in the LENS Version 6.0 User Guide on the BellSouth website (<http://www.interconnection.bellsouth.com/guides/guides.html>). An excerpt is provided below.

The screenshot shows a Netscape browser window with the following content:

Netscape  
File Edit View Go Communicator Help  
Bookmarks Netsite: [http://www.interconnection.bellsouth.com/guides/lens\\_is1b/c3\\_7.htm](http://www.interconnection.bellsouth.com/guides/lens_is1b/c3_7.htm) What's Related

CG-LENS-001  
Issue 8B-March 13, 2000  
CHAPTER 3.0 - Inquiry

### 3.7 View Customer Service Record - Including Credit History

To view Customer Service Records ("CSRs"), a copy of your Customer Record letter of authorization must be submitted to BellSouth. Your account will then be updated to add the **View Customer Record** option to the **Inquiry Menu** which will allow you access to customer records.


To access customer records, you may use either a 10 digit account number, 10 digit miscellaneous account number, a complete circuit number, or a partial circuit number.

**Note:** You may view customer records for your end users and for any BellSouth accounts which have not been restricted by the end user. To obtain information on viewing customer records for restricted BellSouth accounts, you must FAX the individual letter of authorization to the appropriate Local Carrier Service Center.

**PROCEDURE FOR VIEWING A CUSTOMER RECORD:**

**Step 1 - Main Menu:** Select Inquiry Menu.

**Step 2 - Inquiry Menu**

Inquiry Menu Screen 

Document Done



**Technical Issues**

**REQUEST:** Please provide an explanation of the relationship between TAG and LENS, and the relation between those terms and CRIS.

**RESPONSE:** TAG and LENS are the electronic interfaces for pre-ordering and ordering functionality as described in Item No. 7. CRIS is BellSouth's corporate database and billing system for non-access customers and services as described in Item No. 7.

As a CLEC makes sales to its end-user customers, the CLEC, in turn, places requests for resale services, unbundled network elements ("UNEs"), and/or Local Interconnection services on BellSouth. These Local Service Requests ("LSRs") and Access Service Requests ("ASRs") will be received by BellSouth and converted into BellSouth service orders. LSRs for resale services may be submitted electronically via LENS. LSRs for resale services and UNEs may be submitted electronically via TAG.

When the BellSouth provisioning activities are finished, a completed copy of the BellSouth service order flows into the billing system. BellSouth's billing system for resale services and certain UNEs is CRIS; i.e., BellSouth uses CRIS to generate its bills to resellers and (for certain UNEs) to facilities-based CLECs.

CLECs can use TAG and LENS as discussed in Item No. 8 to gain access to CRIS and send a query to obtain a current CSR. It should be noted that TAG and LENS is not utilized to gain access to CRIS for any billing information.



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April 3, 2000

Honorable Creighton E. Mershon,  
General Counsel - Kentucky  
BellSouth Telecommunications, Inc.  
601 W. Chestnut, Room 407  
P.O. Box 32410  
Louisville, KY. 40232

Maria Cruz  
Supervisor  
Pilgrim Telephone, Inc.  
One Kendall Square  
Suite 450  
Cambridge, MA. 02139 9171

Honorable James H. Newberry,  
Honorable Craig R. Paulus  
Attorneys for Pilgrim Telephone  
Wyatt, Tarrant & Combs  
1700 Lexington Financial Center  
250 West Main Street  
Lexington, KY. 40507 1746

RE: Case No. 1999-385

We enclose one attested copy of the Commission's Order in  
the above case.

Sincerely,

A handwritten signature in cursive script that reads "Stephanie Bell".

Stephanie Bell  
Secretary of the Commission

SB/tw  
Enclosure

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

PILGRIM TELEPHONE, INC. V. BELLSOUTH )  
TELECOMMUNICATIONS, INC. FOR A ) CASE NO. 99-385  
PETITION FOR ARBITRATION PURSUANT )  
TO SECTION 252(B) OF THE TELECOMMUNI- )  
CATIONS ACT OF 1996 )

ORDER

On March 31, 2000, Pilgrim Telephone, Inc. ("Pilgrim") filed a motion for an informal conference. Pilgrim asserts that the conference may assist in settlement efforts. The Commission, after considering the motion and being otherwise sufficiently advised, HEREBY ORDERS that an informal conference shall be scheduled for April 6, 2000, at 10:00 a.m., Eastern Daylight Time, in Conference Room 1 of the Commission's offices at 211 Sower Boulevard, Frankfort, Kentucky.

Done at Frankfort, Kentucky this, 3rd day of April, 2000.

By the Commission

ATTEST:

  
Executive Director

WYATT, TARRANT & COMBS

1700 LEXINGTON FINANCIAL CENTER  
LEXINGTON, KENTUCKY 40507-1746

606 233-2012  
FAX: 606 259-0649

RECEIVED  
MAR 31 2000  
PUBLIC SERVICE  
COMMISSION

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502 589-5235

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502 223-2104

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MEMPHIS, TN 38138-7445  
901 537-1000

WRITER'S DIRECT DIAL NUMBER

606 288-7646  
cpaulus@wyattfirm.com

March 30, 2000

Mr. Martin J. Huelsmann, Jr., Executive Director  
Public Service Commission  
211 Sower Boulevard  
P.O. Box 615  
Frankfort, Kentucky 40601

RE: Pilgrim Telephone, Inc.'s Motion for an Informal Conference

Dear Mr. Huelsmann:

Enclosed for filing in the above-captioned case are the original and ten (10) copies of Pilgrim Telephone Inc.'s Motion for an Informal Conference.

Sincerely,

WYATT, TARRANT & COMBS

  
Craig R Paulus

CRP/md  
Enclosures  
cc: Parties of Record

30174350.1

BEFORE THE  
KENTUCKY PUBLIC SERVICE COMMISSION  
CASE NO. 99-385

RECEIVED  
MAR 31 2000  
PUBLIC SERVICE  
COMMISSION

PILGRIM TELEPHONE, INC.

PETITIONER

V.

**PILGRIM'S MOTION  
FOR AN  
INFORMAL  
CONFERENCE**

BELLSOUTH TELECOMMUNICATIONS, INC.

RESPONDENT

\* \* \* \* \*

Pilgrim Telephone, Inc. ("Pilgrim"), by counsel, respectfully requests the Commission to order the parties to appear at an informal conference prior to the hearing scheduled for April 14, 2000, in the above-captioned proceeding.

**Statement in Support of the Motion**

Pilgrim believes that an informal conference may serve the Commission's purposes in addressing the issues raised in this proceeding in an efficient and productive manner. The conference may facilitate resolution of some or all of the issues currently pending before the Commission, thus preserving Commission time and resources that otherwise would be expended in connection with the arbitration process, as well as enabling the parties to proceed with their business activities without further delay or encumbrances.



Pilgrim acknowledges that the record in this proceeding suggests that there currently are few areas of agreement between Pilgrim and BellSouth Telecommunications, Inc. ("BellSouth") regarding network elements that should be made available to Pilgrim by BellSouth on an unbundled basis. Nonetheless, Pilgrim believes that it may be possible through the informal conference process to narrow these areas of disagreement. In any event, such a conference would serve the purpose of enabling the Commission staff to gain a better understanding of the nature of the current disagreements, the positions of the parties with respect to these disagreements, and possible options, alternatives, and compromise solutions that may assist in resolving outstanding issues.

An informal conference might also assist in solving another problem reflected in the written record of the proceeding. Specifically, an open and informal discussion may make it evident that BellSouth is in fact willing and able to provide certain types of data and facilities that will assist Pilgrim in offering its services in Kentucky, but that these areas of agreement between the parties have been obscured by the inability of the parties in their written pleadings to adopt a "common language" that characterizes the data and facilities that Pilgrim needs and the data and facilities that BellSouth is willing to provide. An informal conference might serve to close this communication gap and thus forge a solution to some of the issues that are currently contested.

Finally, an informal conference could cure a related difficulty that has plagued Pilgrim's efforts to arrive at an agreement with BellSouth. The unavailability of information regarding BellSouth's processes, facilities, and operations has made it difficult for Pilgrim to formulate its requests for access to BellSouth's network systems. The Federal Communications Commission

("FCC") in fact has recognized that this is a common problem confronted by new market entrants.

The FCC has explained that:

[w]e do not believe, however, that it will always be possible for new entrants to do this [*i.e.*, specify the network elements they seek] either before negotiations (or arbitrations) begin, or before they end, because new entrants will likely lack knowledge about the facilities and capabilities of a particular incumbent LEC's network. We further believe that incumbent LECs must work with new entrants to identify the elements the new entrants will need to offer a particular service in the manner the new entrants intend.<sup>1</sup>

Pilgrim believes that an informal conference would serve as an effective forum for exchanging information and for providing the parties an opportunity to work cooperatively and productively to identify the elements Pilgrim will need to offer services in Kentucky in the manner Pilgrim intends.

Before turning to the specific issues Pilgrim would like to discuss at an informal conference, Pilgrim wishes to draw the Commission's attention to the fact that one of these issues — the availability of BellSouth's billing and collection service — warrants special emphasis here.

Access to BellSouth's billing and collection service is the *sine qua non* for the provision of Pilgrim's services to casual calling customers in Kentucky. Pilgrim also recognizes that the issues that must be addressed in connection with resolving this dispute between the parties regarding

---

<sup>1</sup> Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, CC Docket No. 96-98, First Report and Order, 11 FCC Rcd 15499, 15649 (para. 297) (1996) (*Local Competition Order*), *aff'd in part and vacated in part sub nom.* Competitive Telecom. Ass'n v. Federal Comm. Comm'n, 117 F.3d 1068 (8th Cir. 1997), *aff'd in part and vacated in part sub nom.* Iowa Utils. Bd. v. Federal Comm. Comm'n, 120 F.3d 753 (8th Cir. 1997), *aff'd in part, rev'd in part, and remanded sub nom.* AT&T v. Iowa Utils. Bd., 119 S.Ct. 721 (1999), Order on Reconsideration, 11 FCC Rcd 13042 (1996), Second Order on Reconsideration, 11 FCC Rcd 19738 (1996), Third Order on Reconsideration and Further Notice of Proposed Rulemaking, 12 FCC Rcd 12460 (1997), *appeals docketed.*

billing and collection are legal in nature and therefore may not benefit from an informal conference that focuses more on technical and operational issues.

We therefore wish to stress that our request for an informal conference should not be construed as suggesting in any way a lessening of our resolve to seek and obtain relief from the Commission with regard to billing and collection. We believe that an informal conference would serve a constructive purpose with respect to many of the issues that have been discussed in the pleadings, and we certainly would embrace the opportunity at an informal conference to cooperate with BellSouth in reaching an agreement with respect to these issues as well as with respect to billing and collection. But we are not indifferent to the fact that the legal battle lines have been drawn regarding billing and collection, and we endeavor here to make it clear to the Commission that our willingness to work cooperatively with BellSouth toward a mutually acceptable culmination of this proceeding does not signal any intention to waver in our position that BellSouth is obligated to make billing and collection available to Pilgrim on an unbundled basis.

### **Specific Issues for Discussion**

The specific subjects Pilgrim wishes to discuss in this informal hearing include:

#### **Issues Relating to Billing and Collection**

- On what terms does BellSouth want Pilgrim to bill and remit revenues to BellSouth when Pilgrim customers dial BellSouth 900, 976, or n11 numbers which terminate in BellSouth territory?
- When BellSouth and Pilgrim initiate collect calls and terminate such calls for each other, how are charges calculated and remitted between the parties?

### **Issues Relating to Billing Name and Address**

- Is billing name and address information (“BNA”) contained in the customer service records, and are these customer service records accessed in operator service functions, maintenance, and ordering of new service?

### **Issues Relating to 900 Number Blocking**

- To what extent has BellSouth developed billed number screening or selective call blocking, and what are the features of these utilities?
- Is there a “Get Data” query that permits BNA or other restrictions that may be in a line information database (“LIDB”)?
- Are originating line screen (“OLNS”) or FLEX automatic number identification (“ANI”) contained in any LIDBs and how can these databases be accessed?

### **Technical Issues**

Pilgrim attempted to obtain specific technical information in conversations with BellSouth and in writing in a letter from James Newberry to Leah Cooper on August 9, 1999. BellSouth has not provided Pilgrim with the requested information, even though it has had more than eight (8) months to do so, and stated in later correspondence that a reply was forthcoming.

In the August 9 letter, and in subsequent discussions, Pilgrim asked BellSouth to provide copies of technical documents, explanations of obscure acronyms, and proper titles and descriptions of services and functions, including describing the datafields available, features, and

functions, or a reference to the exact names, ordering numbers, and vendor of these documents for each of the following systems identified in BellSouth's standard interconnection agreement:

- LENS
- TAG
- CRIS
- RSAG
- SCE/SMS
- DBAS
- EDI
- EDI-PC

These questions are clearly within the FCC language quoted above, and both Pilgrim and the Commission are entitled to responses to these questions. We have incorporated the August 9 letter by reference and attachment to this motion, and reiterate Pilgrim's desire to obtain responses to each of these questions. Certainly, after eight (8) months and with its extensive personnel and other resources, BellSouth should be able to respond fully to these questions.

Additionally, Pilgrim would like information regarding how customer service records are viewed through TAG or LENS, and what information is contained in these OSS functions.

Also, Pilgrim wishes to receive an explanation of the relationship between TAG and LENS, and the relation between those terms and CRIS.

### **Conclusion**

Pilgrim believes that the interests of both parties would be served by the ordering of an informal conference prior to the hearing scheduled in this proceeding, and we therefore respectfully request that our motion be granted.

Respectfully submitted,

James H. Newberry, Jr.  
Craig R. Paulus  
Wyatt, Tarrant & Combs  
1700 Lexington Financial Center  
250 West Main Street  
Lexington, KY 40507-1746  
(606) 233-2012

Walter E. Steimel, Jr.  
Greenberg, Traurig  
800 Connecticut Avenue, N.W.  
Suite 500  
Washington, D.C. 20006

By:   
COUNSEL FOR PETITIONER

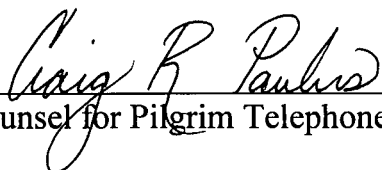
CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing was served upon the following, by U.S. mail, postage prepaid, this 30<sup>th</sup> day of March, 2000:

Creighton E. Mershon, Sr., Esq.  
601 West Chestnut Street, Room 407  
P.O. Box 32410  
Louisville, KY 40232

R. Douglas Lackey  
Bennett L. Ross  
Lisa S. Foshee  
Suite 4300, BellSouth Center  
675 West Peachtree Street, N.E.  
Atlanta, GA 30375

Fred Gerwing  
Regulatory Vice President  
BellSouth Telecommunications, Inc.  
601 West Chestnut street, Room 408  
P.O. Box 32410  
Louisville, KY 40232

  
\_\_\_\_\_  
Counsel for Pilgrim Telephone, Inc.

# YATT, TARRANT & COMBS

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MEMPHIS, TN 38119-4721  
901 537-1000

10368 WALLACE ALLEY STREET, SUITE 6  
KINGSPORT, TN 37663-3977  
423 279-1825

WRITER'S DIRECT DIAL NUMBER

JAMES H. NEWBERRY, JR.

606 288-7621

August 9, 1999

VIA FAX

Leah G. Cooper, Esq.  
Bell South Telecommunications, Inc.  
Legal Department - Suite 4300  
675 West Peachtree Street  
Atlanta, GA 30375-0001

Re: Pilgrim Telephone

Dear Ms. Cooper:

In the aftermath of our phone conversation on July 22, Stan Kugell and I have prepared a list of questions for which we would like to obtain answers. Those questions are set forth below. We have segregated them by the specific document to which they relate.

Request #1: Please provide us detailed technical documents describing the data fields available, features, and functions, or a reference to the exact names, ordering numbers and vendor of these documents, for each of the following systems as referenced in Attachments 1 and 2:

Database/Service	Interconnection Agreement Reference
LENS	Attachment 1 Paragraph 3.21
TAG	Attachment 1 Paragraph 3.21
CRIS	Attachment 1 Paragraph 3.21
RSAG	Attachment 1 Paragraph 3.21
SCE/SMS	Attachment 2 Paragraph 13.1.1
DBAS	Attachment 2 Paragraph 13.4.2.8
EDI	Attachment 2 Paragraph 17.3
EDI-PC	Attachment 2 Paragraph 17.3

EXHIBIT

A



Leah G. Cooper, Esq.  
August 9, 1999  
Page 2

Request #2: Pilgrim may wish to provide a facilities-based voice mail service to compete with BellSouth's Memory Call service. For the purposes of this request, please assume that a subscriber elects to buy dialtone from BellSouth, and that Pilgrim wants to offer that subscriber Voice Mail service in competition with BellSouth's Memory Call. Also, please assume that Pilgrim owns all the switching and equipment necessary to provide the service, except for those components of the service that, by their nature, must be provided by the dialtone provider. Please inform us if BellSouth is willing to provide Pilgrim the services necessary to perform the following functions, all of which BellSouth provides itself, and all of which are necessary for Pilgrim to provide a competitive service:

1. Abbreviated dialing codes to activate/deactivate/control voice mail service;
2. No cost transport between the subscriber's phone and voice mail equipment;
3. Message waiting indicators; and
4. Single billing for voice mail service on the same bill as the dial tone charge.

Request #3: Please provide us a copy of the document referenced in Attachment 2, Paragraph 10.6.4.1, or reference to a vendor for that document.

Request #4: Regarding DADAS service referenced in Attachment 2, Paragraph 10, where are the interface points at which BellSouth provides this service?

Request #5: Please identify the databases provided as referenced in Attachment 2, Paragraph 12.2.1.2. For each of the databases so identified, please provide us detailed technical documents describing the data fields available, features, and functions, or a reference to the exact names, ordering numbers, and vendors of these documents.

Request #6: Please provide us with a list of the customer data items with Pilgrim would have to provide in order to support each required LIDB function pursuant to Attachment 2, Paragraph 13.4.2.2.

Request #7: In Attachment 2, Exhibit A, Paragraph I.C.a., for subscribers in LIDB, CLEC appears to be required to provide BST payments for calls made by CLEC subscribers. Does BST offer a reciprocal payment for calls made by BST subscribers?

Leah G. Cooper, Esq.  
August 9, 1999  
Page 3

Request #8: In Attachment 3, Paragraph 1.5, RCF and FX subscribers are often not in the same physical location as an NPA/NXX serving wire center. How is this handled?

Request #9: Please explain the nature of the obligations set forth in Attachment 3, Paragraph 1.7. Who bills AT&T? Both parties?

Request #10: We have a series of questions relating to Attachment 3, Paragraph 8:

- (a) What happens when our customer dials a BST 976 or N11 number?
- (b) Are we billed for the premium charge, does BST do that itself, or are the calls blocked?
- (c) Does BST offer a reciprocal treatment under (b) for calls going the other direction?
- (d) If BST bills us, and we must bill our end users, how do we get rate information from BST?
- (e) How can we offer a competitive 976 or N11 service with BST?
- (f) How do we work reciprocal compensation for each other's N11 and 976 traffic, both the transport and premium portion thereof?
- (g) ESP/ISP traffic exclusion appears to reserve this portion of the market to BST. Please explain the rationale for the exclusion.
- (h) Is BST willing to make alternate reciprocal compensation arrangements for ESP/ISP traffic?

Request #11: With regard to Attachment 5, Paragraph 1, how do we gain access to 976 and N11 numbers for our customers?

Request #12: Would SPNP, as defined in Attachment 5, Paragraph 3.1, be available to Pilgrim if it attempts to win business from BST's 976 and N11 customers?

Leah G. Cooper, Esq.  
August 9, 1999  
Page 4

Request #13: With regard to Attachment 5, Paragraph 3, the 976 and N11 tariffs provide for billing BST customers for calls to these numbers. What OSS is provided by BST to make possible a competitive offering by a resale CLEC?

Request #14: In Attachment 6, Paragraph 2.2, what are LENS, TAG, CRIS and RSAG, and what features, functions, and data fields are available through them?

Request #15: In Attachment 7, we understand that CATS and NICS provide for transmission, billing and revenue settlement of certain call types among CLECs and ILECs, and we understand that they provide settlement for collect, calling card and third number intra-lata toll calls. We have some additional questions about the message types supported. Do the systems provide settlement for the following types of calls:

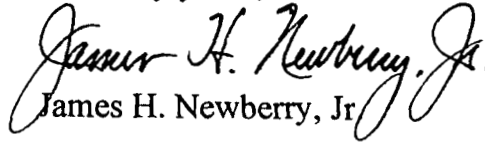
- a. A BellSouth customer places an intra-lata call to directory assistance on another LEC's network, billed to his BellSouth calling card or BellSouth home number.
- b. A BellSouth customer places an intra-lata call to his BellSouth voice mail service on another LEC's network, billed to his BellSouth calling card or home number.
- c. A BellSouth customer places an intra-lata call to his CLEC-provided voice mail service on another LEC's network, billed to his BellSouth calling card or home number.
- d. A BellSouth customer places an intra-lata conference call on another LEC's network, billed to his BellSouth calling card or home number.
- e. All of the above, billed as non-deniable charges, with adequate text descriptions of the charges.

Please provide us detailed references to the EMI record types and indicators to be used for each of these call types.

I trust that you will let me know if you have questions concerning our request. I regret my delay in forwarding these to you, but I have been extensively involved in an emergency proceeding for a client which only concluded Tuesday. In any event, I look forward to hearing from you at your earliest opportunity.

Leah G. Cooper, Esq.  
August 9, 1999  
Page 5

Sincerely yours,

  
James H. Newberry, Jr.

cc: Mr. Stan Kugell (via mail)

30147188.4

WYATT, TARRANT & COMBS

1700 LEXINGTON FINANCIAL CENTER  
LEXINGTON, KENTUCKY 40507-1746

606 233-2012  
FAX: 606 259-0649

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MAR 16 2000

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WRITER'S DIRECT DIAL NUMBER

606 288-7646  
cpaulus@wyattfirm.com

March 16, 2000

*Case No. 99-385*

Mr. Martin J. Huelsmann, Jr., Executive Director  
Public Service Commission  
730 Schenkel Lane  
P.O. Box 615  
Frankfort, Kentucky 40602

RE: Pilgrim Telephone, Inc.'s Notice of Appearance

Dear Mr. Huelsmann:

Enclosed for filing in the above-captioned case are the original and ten (10) copies of Pilgrim Telephone Inc.'s Notice of Appearance of Walter Steimel.

Sincerely,

WYATT, TARRANT & COMBS

*Craig R Paulus*

Craig R Paulus

CRP/md  
Enclosures  
cc: Parties of Record

30174350.1

RECEIVED

MAR 16 2000

PUBLIC SERVICE  
COMMISSION

BEFORE THE  
KENTUCKY PUBLIC SERVICE COMMISSION  
CASE NO. 99-385

PILGRIM TELEPHONE, INC.

PETITIONER

V.

NOTICE OF ENTRY OF APPEARANCE

BELLSOUTH TELECOMMUNICATIONS, INC.

RESPONDENT

\* \* \* \* \*

Walter E. Steimel, Jr. hereby enters his appearance as co-counsel for Petitioner, Pilgrim Telephone, Inc. Opposing counsel are requested to forward copies of all future pleadings to him at the address listed below.

Respectfully submitted,

James H. Newberry, Jr.  
Craig R. Paulus  
Wyatt, Tarrant & Combs  
1700 Lexington Financial Center  
250 West Main Street  
Lexington, KY 40507-1746  
(606) 233-2012

Walter E. Steimel, Jr.  
Greenberg, Traurig  
800 Connecticut Avenue, N.W.  
Suite 500  
Washington, D.C. 20006

By:   
COUNSEL FOR PETITIONER

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of forgoing was served upon the following, by U.S. mail, postage prepaid, this 16<sup>th</sup> day of March, 2000.

Creighton E. Mershon, Sr., Esq.  
601 West Chestnut Street, Room 407  
P.O. Box 32410  
Louisville, KY 40232  
Counsel for BellSouth Telecommunications, Inc.

R. Douglas Lackey, Esq.  
Bennett L. Ross, Esq.  
Lisa S. Foshee, Esq.  
Suite 4300, BellSouth Center  
675 West Peachtree Street, N.E.  
Atlanta, GA 30375  
Counsel for BellSouth Telecommunications, Inc.

Fred Gerwing  
Regulatory Vice President  
BellSouth Telecommunications, Inc.  
601 West Chestnut street, Room 408  
P.O. Box 32410  
Louisville, KY 40232

  
COUNSEL FOR PETITIONER



COMMONWEALTH OF KENTUCKY  
**PUBLIC SERVICE COMMISSION**  
211 SOWER BOULEVARD  
POST OFFICE BOX 615  
FRANKFORT, KY. 40602  
(502) 564-3940

March 2, 2000

Honorable Crieghton E. Mershon,  
General Counsel - Kentucky  
BellSouth Telecommunications, Inc.  
P. O. Box 320  
Louisville, KY. 40232

Maria Cruz  
Supervisor  
Pilgrim Telephone, Inc.  
One Kendall Square  
Suite 450  
Cambridge, MA. 02139 9171

Honorable James H. Newberry  
Attorney for Pilgrim Telephone  
Wyatt, Tarrant & Combs  
1700 Lexington Financial Center  
250 West Main Street  
Lexington, KY. 40507 1746

RE: Case No. 1999-385

We enclose one attested copy of the Commission's Order in  
the above case.

Sincerely,

*Stephanie J. Bell*  
Stephanie Bell  
Secretary of the Commission

SB/sa  
Enclosure



COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

THE PETITION BY PILGRIM TELEPHONE, INC.	)	
FOR ARBITRATION OF CERTAIN TERMS AND	)	
CONDITIONS WITH BELL SOUTH	)	CASE NO.
TELECOMMUNICATIONS, INC. PURSUANT	)	99-385
TO SECTION 252(B) OF THE	)	
TELECOMMUNICATIONS ACT OF 1996	)	

O R D E R

On February 24, 2000, Pilgrim Telephone, Inc. requested a continuance of the March 15, 2000 hearing, citing the absence of its attorney and other scheduling conflicts. BellSouth Telecommunications, Inc. has not objected.

The Commission, having considered the motion, HEREBY ORDERS that:

1. The public hearing shall be scheduled for April 14, 2000 beginning at 9:00 a.m. EST in Hearing Room 1 of the Commission's offices at 211 Sower Boulevard, Frankfort, Kentucky.
2. Prefiled direct testimony shall be due no later than April 6, 2000.
3. There shall be no opening statements, closing statements, or direct testimony without special leave.

Done at Frankfort, Kentucky, this 2nd day of March, 2000.

By the Commission

ATTEST:

  
Executive Director

WYATT, TARRANT & COMBS

1700 LEXINGTON FINANCIAL CENTER  
LEXINGTON, KENTUCKY 40507-1748

606 233-2012  
FAX: 606 259-0649

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MEMPHIS, TN 38138-7445  
901 537-1000

WRITER'S DIRECT DIAL NUMBER

606 288-7423

February 21, 2000

Kentucky Public Service Commission  
730 Schenkel Lane  
P.O. Box 615  
Frankfort, Kentucky 40602

Re: Pilgrim Telephone, Inc.

Dear Sir or Madam:

Enclosed for filing is an original and 14 copies of Pilgrim Telephone's Motion for a Continuance. If you have any questions regarding this filing, please do not hesitate to call me.

Thank you for your assistance in this matter.

Sincerely,

WYATT, TARRANT & COMBS



Stephanie R. Conn  
Legal Assistant

src  
Enclosures  
30175654.1

Case # 99-385

RECEIVED

FEB 24 2000

PUBLIC SERVICE  
COMMISSION

BEFORE THE  
KENTUCKY PUBLIC SERVICE COMMISSION  
CASE NO. 99-385

RECEIVED  
FEB 24 2000  
PUBLIC SERVICE  
COMMISSION  
PETITIONER

PILGRIM TELEPHONE, INC.

V.

**PILGRIM TELEPHONE'S  
MOTION FOR A CONTINUANCE**

BELLSOUTH TELECOMMUNICATIONS, INC.

RESPONDENT

\* \* \* \* \*

Pilgrim Telephone, Inc. ("Pilgrim"), through counsel, respectfully moves the Kentucky Public Service Commission (the "Commission") for continuance of the hearing scheduled for March 15, 2000, as well as the deadline for the presentation of direct testimony set for March 7, 2000. In support of this Motion, Pilgrim states as follows:

1. On February 14, 2000, the Commission entered an order granting BellSouth Telecommunications, Inc.'s Motion for Reconsideration. This order scheduled a public hearing for March 15, 2000 and ordered that the parties shall pre-file the direct testimony of their witnesses by March 8, 2000.

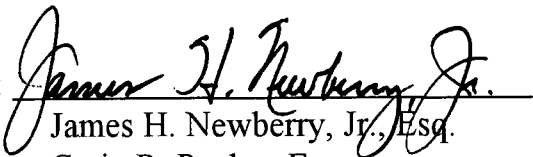
2. One of the attorneys for Pilgrim (who will subsequently be entering his appearance) is out of the country for two weeks beginning February 18, 2000. During these two weeks, he will be entirely incommunicado. His assistance is vital to the effective presentation of Pilgrim's evidence.

3. In addition, clients of the undersigned attorney have interests in multiple pieces of legislation pending before the General Assembly. As a consequence, the undersigned will be required to devote considerable time to meetings of the General Assembly during the last three weeks of March. Also, the undersigned has a trial in the Fayette Circuit Court which is presently scheduled for April 10 and 11, 2000 and which may also consume some or all of April 12, 2000.

WHEREFORE, Pilgrim respectfully requests that the deadline for the pre-filing of direct testimony be continued until after April 3, 2000 and that the date of the hearing be continued to a date other than April 10-12, 2000 so that Pilgrim may properly prepare its evidence.

Respectfully submitted,

WYATT, TARRANT & COMBS

By:   
James H. Newberry, Jr., Esq.  
Craig R. Paulus, Esq.  
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Lexington, Kentucky 40507-1746  
(606) 233-2012

Counsel for Pilgrim Telephone, Inc.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing Motion for a Continuance was served upon the following, by U.S. mail, postage prepaid, this 21<sup>st</sup> day of February, 2000:

Creighton E. Mershon, Sr., Esq.  
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Counsel for Pilgrim Telephone, Inc.



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BellSouth Telecommunications, Inc.  
601 West Chestnut Street, Room 407  
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Creighton E. Mershon, Sr.  
General Counsel - Kentucky

January 28, 2000

RECEIVED  
JAN 31 2000  
PUBLIC SERVICE  
COMMISSION

Mr. Martin J. Huelsmann, Jr.  
Executive Director  
Public Service Commission  
730 Schenkel Lane  
P. O. Box 615  
Frankfort, KY 40602

Re: The Petition by Pilgrim Telephone, Inc. for  
Arbitration of Certain Terms and Conditions With  
BellSouth Telecommunications, Inc. Pursuant to Section  
252(b) of the Telecommunications Act of 1996  
PSC 99-385

Dear Mr. Huelsmann:

Enclosed for filing in the above-captioned case are the  
original and ten (10) copies of BellSouth Telecommunications,  
Inc.'s Response.

Sincerely,

Creighton E. Mershon, Sr.

Enclosure

cc: Parties of Record

195118

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

RECEIVED  
JAN 31 2000  
PUBLIC SERVICE  
COMMISSION

In the Matter of: )  
)  
THE PETITION BY PILGRIM TELEPHONE, )  
INC. FOR ARBITRATION OF CERTAIN ) Case No.  
TERMS AND CONDITIONS WITH ) 1999-385  
BELLSOUTH TELECOMMUNICATIONS, )  
INC. PURSUANT TO SECTION 252(B) )  
OF THE TELECOMMUNICATIONS ACT )  
OF 1996 )

BELLSOUTH TELECOMMUNICATIONS, INC.'S RESPONSE

Pursuant to the Commission's Order of January 11, 2000, BellSouth Telecommunications, Inc. ("BellSouth") hereby files its Response to *Pilgrim Telephone's Response Pursuant to the Commission Order of January 11, 2000*. Pilgrim's Response constitutes important evidence in support of BellSouth's position that Pilgrim has fundamentally misconstrued the Act and the FCC's rules. The relief sought in Pilgrim's pleading has no basis in either law or fact, and should be denied. Moreover, BellSouth respectfully requests that the Commission grant BellSouth's Motion for Reconsideration.

DISCUSSION

In its Order, the Commission stated that there was some confusion as to whether Pilgrim was seeking billing and collection functionalities, or Billing and Collection Services. Pilgrim's Response is explicit that Pilgrim is seeking Billing and Collection Services from BellSouth's tariff. (Pilgrim Response, at 1) ("the tariff generally describes the service Pilgrim seeks..."). Furthermore, Pilgrim states that it is seeking additional functionalities as part of the Billing and Collection Services, including bill formatting options, customer service, and collection information. (Pilgrim Response, at 2-3).

Pilgrim's Response demonstrates a clear attempt by Pilgrim to circumvent the Telecommunications Act and the FCC Rules to obtain services as unbundled network elements ("UNEs") to which it is not entitled.

As discussed in BellSouth's Motion for Reconsideration, BellSouth's Billing and Collection Service is *not* a UNE. The Billing and Collection Service sought by Pilgrim is a service provided by BellSouth to telecommunications carriers whereby BellSouth bills its end-users on behalf of the telecommunications carrier for services purchased from the telecommunications carrier by BellSouth's end-user. The Billing and Collection Service does *not* provide to a telecommunications carrier functionalities whereby such carrier can bill its own end-users; rather, when a telecommunications carrier purchases the Billing and Collection Service, BellSouth does the billing and collection *on behalf of* the telecommunications carrier. BellSouth provides intrastate Billing and Collection Services via tariff, and interstate Billing and Collection Services via contract.

Pursuant to the Act, a "network element" is

a facility or equipment used in the provision of a telecommunications service. Such term also includes, but is not limited to, features, functions, and capabilities that are provided by means of such facility or equipment, including but not limited to subscriber numbers, databases, signaling systems, and information sufficient for billing and collection or used in the transmission, routing, or other provision of a telecommunications service.

47 C.F.R. § 51.5. Thus, network elements are either facilities or equipment used in the provision of a telecommunication service, or the features, functions and capabilities that are provided by means of such facilities or equipment. *Id.* The Billing and Collection Service provided by BellSouth is not a "facility or equipment used in the provision of a telecommunications service." A "telecommunications service" is "the offering of telecommunications for a fee directly to the public...." 47 U.S.C. § 153(46). The term



“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 sent and received.” 47 U.S.C. § 153(43). The Billing and Collection Service is neither a facility nor type of equipment that creates a transmission of information of the user’s choosing.

Moreover, the Billing and Collection Service is not a feature, function or capability provided by the facility or equipment used in the provision of a telecommunications service. Rather, it is a service separate and apart from the provision or routing of a telephone call. It is designed to bill charges on behalf of other telecommunications carriers, based on information provided by the telecommunications carriers, to BellSouth’s local end user customers to whom BellSouth issues a bill each month for local exchange service. The Billing and Collection Service is not “provided” by any of the facilities or equipment used in the provision of a telephone call, and thus is not a network element, much less an unbundled network element.

Pilgrim will seize on the clause “information sufficient for billing and collection” in the definition of “network element” to argue that the Billing and Collection Service is, in fact, a network element. Such an argument, however, is without merit because it rests on a misinterpretation of the Act. In the Act, “billing” is defined, not as the act of billing on behalf of another carrier, but rather as “the provision of appropriate usage data by one telecommunications carrier to another to facilitate customer billing with attendant acknowledgements and status reports.” 47 C.F.R. § 51.5. In other words, the definition of “billing” is exactly the opposite of what Pilgrim argues it is. The term “billing” as used in the Act involves the provision of information from one telecommunications

carrier to the other so each carrier can bill its *own* customers; Pilgrim, on the other hand, wants the Commission to construe "billing" to encompass an obligation for BellSouth to bill and collect on behalf of Pilgrim. Pilgrim's interpretation simply is incorrect.

Moreover, Pilgrim's interpretation of the Act improperly reads the words "information sufficient" for billing and collection out of the definition of "network element." According to the definition, BellSouth is obligated to provide Pilgrim (should it operate as a CLEC) *information sufficient* for Pilgrim to bill its own end-users. Under Pilgrim's interpretation that BellSouth is obligated to provide billing services to Pilgrim, however, the words "information sufficient" are superfluous. Black letter statutory construction rules provide that a statute cannot be interpreted to render words in the statute meaningless. Pilgrim's interpretation violates such rules and thus is incorrect. In sum, there is nothing in the definition of "network element" that obligates BellSouth to provide billing services to Pilgrim as a network element.

Furthermore, the Billing and Collection Service is not part of BellSouth's OSS and thus is not on the FCC's national list of UNEs. The Act obligates BellSouth to provide unbundled access to five functions of its OSS: pre-ordering; ordering; provisioning; maintenance and repair; and billing. Of these five, the Billing and Collection Service only arguably could fall in the last category, namely billing. Once again, however, the term "billing" refers to "the provision of appropriate usage data by one telecommunications carrier to another to facilitate customer billing with attendant acknowledgments and status reports." 47 C.F.R. § 51.5. Thus, BellSouth is obligated to give CLECs access to *usage data* whereby CLECs can bill their own end-users for services purchased from the CLEC. BellSouth currently provides CLECs with

nondiscriminatory access to such information through access to its OSS, and CLECs currently use such information to bill their end users. BellSouth is not obligated, however, to bill and collect from the CLEC's end-users on behalf of the CLEC. Moreover, the Billing and Collection Service is not part of BellSouth's OSS it uses for its own end users. Thus, there are not grounds upon which the Commission could conclude that Billing and Collection Services are part of BellSouth's OSS.

In addition to the legal validity of BellSouth's position, it also makes common sense. In a competitive local market, each provider will have a customer relationship with its own end-users. When a CLEC switches a former BellSouth customer to the CLEC's service, the end user becomes a customer of the CLEC, and the CLEC becomes the customer of BellSouth. At this point, BellSouth has no business relationship with the end-user, and thus is in no position to bill the end-user for services provided to the end-user by the CLEC because it will no longer be sending a monthly bill for local exchange service to that end user. This point is exactly the point Pilgrim misses – namely, that if Pilgrim intended to provide local service, the customers to whom it provided such service would be customers of *Pilgrim*, and not of BellSouth. BellSouth would have no billing relationship with the Pilgrim end-user through which it could provide Billing and Collection Services to Pilgrim. BellSouth can only provide, and the Act only requires BellSouth to provide, appropriate usage data for Pilgrim to bill its own end-users. What Pilgrim's Response makes crystal clear is that Pilgrim does not intend to provide local service to end-users in Kentucky; rather, it intends to continue to provide enhanced services for which it wants BellSouth to bill BellSouth end-users. While BellSouth can

certainly provide Billing and Collection Services to Pilgrim via tariff or contract, it is not obligated to provide such services to Pilgrim as a UNE.<sup>1</sup>

The additional "functionalities" enumerated in Pilgrim's Response emphasize the fact that Pilgrim wants BellSouth to provide Billing and Collection Service to Pilgrim, rather than usage data sufficient for Pilgrim to bill its own end-users as specified in the Act. For example, Pilgrim wants access to "formatting." (Pilgrim Response, at 2). In other words, Pilgrim wants the ability to dictate the format in which BellSouth bills *BellSouth end-users* for services provided by Pilgrim. BellSouth is entitled to bill its customers in any way it chooses, subject to regulatory requirements. If Pilgrim is not satisfied with the means by which BellSouth provides the Billing and Collection Service, Pilgrim is free to purchase billing and collection services from another provider. The Act does not, however, give Pilgrim the right to alter or control BellSouth's communications with its own customers.

Pilgrim also claims that it is entitled to "customer service, inquiry and complaint procedures." (Pilgrim Response, at 3). In other words, Pilgrim wants this Commission to order BellSouth to provide customer service representatives to handle billing disputes between BellSouth end-users and Pilgrim. While BellSouth customer service representatives currently will adjust charges on a BellSouth bill made by Pilgrim to BellSouth end-users, if such charges are not legitimate, this service is a service provided by BellSouth to *BellSouth end-users*. In a competitive local market, BellSouth is not

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<sup>1</sup> BellSouth's provision of Billing and Collection Service to Pilgrim via contract and tariff is dependent on Pilgrim paying the approximately one million dollars in past due amounts for billing services already rendered for Pilgrim by BellSouth. In fact, it appears that the only reason Pilgrim filed this Petition is because BellSouth refused to continue providing billing services to Pilgrim until Pilgrim paid amounts past due.

obligated to provide customer service representatives to interact with *CLEC end-users*. Such customer service is the responsibility of the CLEC and, in fact, will often be the means by which a CLEC can differentiate itself from the ILEC.<sup>2</sup>

Finally, Pilgrim is seeking “timely and detailed data on customer payments and failures to pay.” (Pilgrim Response, at 3). Again, this information only is necessary and would only be available to BellSouth in situations in which BellSouth does the billing and collection on a BellSouth bill on behalf of the telecommunications carrier. This information, however, is unnecessary in the competitive local world because the CLEC will be billing its own customer. Thus, the CLEC can track its own customer payments and failures to pay. BellSouth would have no means by which to track such information for CLEC end-users because it has no billing relationship with CLEC end-users.

In summary, as BellSouth has maintained and as Pilgrim’s Response confirms, all Pilgrim is seeking in this alleged “arbitration” is what it perceives to be better terms in its Billing and Collection contract with BellSouth. This proceeding is not the appropriate forum to conduct such negotiations. A Section 252 arbitration is designed to address obligations set forth in the Act. Billing and Collection Service is not a network element, and it is not part of the billing function of BellSouth’s OSS. Thus, BellSouth is not obligated to provide CLECs with Billing and Collection Service under Section 252 of the Act. As BellSouth has previously stated, if Pilgrim decides it wants to compete in the local market, BellSouth will negotiate an interconnection agreement with Pilgrim pursuant to which Pilgrim can obtain usage data for billing its own end-users through

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<sup>2</sup> In the CLEC world, BellSouth provides customer service directly to CLECs because it is the CLEC that becomes the BellSouth customer when an end-user switches service from BellSouth to CLEC. BellSouth does not, however, provide customer service to the CLEC’s end-users.

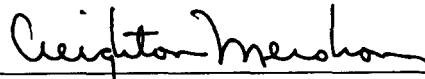
access to BellSouth's OSS. In the alternative, BellSouth offers Billing and Collection Service, which is *not* subject to the requirements of the Act, via tariff for intrastate services, and contract for interstate services. Pilgrim is not, however, entitled to receive Billing and Collection Service as a UNE. Such a proposition has no support in the Act, nor in the FCC rules, and should be soundly rejected.

CONCLUSION

BellSouth respectfully requests that the Commission deny the relief sought in Pilgrim's Response, and grant BellSouth's Motion for Reconsideration. BellSouth further requests that the Commission order that Billing and Collection Service; access to the BNA database; and access to 900/976 blocking information are not UNEs.

This 28th day of January, 2000.

BELLSOUTH TELECOMMUNICATIONS, INC.



---

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COUNSEL FOR BELLSOUTH  
TELECOMMUNICATIONS, INC.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served on the individuals on the attached Service List by mailing a copy thereof, this 28th day of January 2000.

  
\_\_\_\_\_  
Creighton E. Mershon, Sr.

SERVICE LIST - PSC 99-385

Maria Cruz, Supervisor  
Pilgrim Telephone, Inc.  
One Kendall Square, Suite 450  
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Hon. James H. Newberry  
Hon. Craig R. Paulus  
Wyatt, Tarrant & Combs  
1700 Lexington Financial Center  
250 W. Main Street  
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COMMONWEALTH OF KENTUCKY  
**PUBLIC SERVICE COMMISSION**  
211 SOWER BOULEVARD  
POST OFFICE BOX 615  
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(502) 564-3940

February 14, 2000

Honorable Crieghton E. Mershon,  
General Counsel - Kentucky  
BellSouth Telecommunications, Inc.  
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Maria Cruz  
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Honorable James H. Newberry  
Attorney for Pilgrim Telephone  
Wyatt, Tarrant & Combs  
1700 Lexington Financial Center  
Lexington, KY. 40507 1746

RE: Case No. 1999-385

We enclose one attested copy of the Commission's Order in  
the above case.

Sincerely,

A handwritten signature in black ink that reads "Stephanie Bell".

Stephanie Bell  
Secretary of the Commission

SB/sa  
Enclosure

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

THE PETITION BY PILGRIM )  
TELEPHONE, INC. FOR ARBITRATION )  
OF CERTAIN TERMS AND )  
CONDITIONS WITH BELL SOUTH )  
TELECOMMUNICATIONS, INC. ) CASE NO. 99-385  
PURSUANT TO SECTION 252(B) OF )  
THE TELECOMMUNICATIONS ACT OF )  
1996 )

O R D E R

On January 11, 2000, the Commission entered an Order finding that real time billed number and address databases, real time access to 900/976 blocking information, and the billing and collection functionalities sought by Pilgrim Telephone, Inc. ("Pilgrim") are unbundled network elements ("UNEs"). On January 25, 2000, BellSouth Telecommunications, Inc. ("BellSouth") filed a motion for reconsideration. Specifically, BellSouth has asked the Commission to reconsider the decision that real time access to billed number and address information, and real time access to 900/976 blocking data are UNEs. BellSouth asserts that factual findings, as well as legal conclusions, are required to underpin a determination as to whether the functions are UNEs.


Having considered BellSouth's motion and Pilgrim's response, the Commission finds that the motion to reconsider should be granted to enable the Commission and parties to better understand the functions requested by Pilgrim and the provision of service by BellSouth. Accordingly, IT IS HEREBY ORDERED that: 3

1. BellSouth's motion for reconsideration is granted.
2. A public hearing shall be scheduled at 9:00 a.m., Eastern Standard Time, on March 15, 2000, in Hearing Room 1 of the Commission's offices at 211 Sower Boulevard, Frankfort, Kentucky.
3. By March 8, 2000, parties shall pre-file the direct testimony of their witnesses.

Done at Frankfort, Kentucky, this 14th day of February, 2000.

By the Commission

ATTEST:

  
Executive Director

# WYATT, TARRANT & COMBS

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LEXINGTON, KENTUCKY 40507-1746

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WRITER'S DIRECT DIAL NUMBER

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February 7, 2000

Mr. Martin J. Huelsmann, Jr., Executive Director  
Public Service Commission  
730 Schenkel Lane  
P.O. Box 615  
Frankfort, Kentucky 40602

RE: Pilgrim Telephone, Inc.'s Response to BellSouth's  
Motion for Reconsideration

Dear Mr. Huelsmann:

*Case No. 99-385*

Enclosed for filing in the above-captioned case are the original and ten (10) copies of Pilgrim Telephone Inc.'s Response.

Sincerely,

WYATT, TARRANT & COMBS

*Craig R Paulus*  
Craig R Paulus

CRP/md  
Enclosures  
cc: Parties of Record

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RECEIVED  
FEB 08 2000  
PUBLIC SERVICE  
COMMISSION

BEFORE THE  
KENTUCKY PUBLIC SERVICE COMMISSION  
CASE NO. 99-385

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PUBLIC SERVICE  
COMMISSION  
PETITIONER

PILGRIM TELEPHONE, INC.

V. **PILGRIM TELEPHONE'S RESPONSE  
TO BELLSOUTH'S MOTION FOR RECONSIDERATION**

BELLSOUTH TELECOMMUNICATIONS, INC. RESPONDENT

\* \* \* \* \*

Pilgrim Telephone, Inc. ("Pilgrim"), through counsel, hereby respectfully requests that the Commission deny BellSouth Telecommunications, Inc.'s ("BellSouth" or "Respondent") Motion for Reconsideration. Pilgrim brought this arbitration pursuant to the Telecommunications Act of 1996 ("the Act") seeking access to various network elements including real-time billed name and address database ("BNA"), access to real-time 900/976 blocking information and billing and collection ("B&C") (collectively referred to as the "requested network elements" or "RNEs").

The Commission's Order issued January 11, 2000 declared that real-time billed name and address database ("BNA"), real-time access to 900/976 blocking information and the billing and collection ("B&C") functionalities sought by Pilgrim are network elements which must be unbundled under the Act, and that BellSouth must negotiate on access to these elements. Pursuant to the Order, Pilgrim responded to the Commission's query regarding whether Pilgrim sought B&C service or functionalities on January 21, 2000, stating that it sought access to B&C functionalities as a UNE. BellSouth has since filed a Motion for Reconsideration as well as a Response to Pilgrim's election of B&C functionalities. Both of these pleadings from BellSouth attempt to re-argue the issues

already decided by the Commission. Under § 252 of the Act, BellSouth had the opportunity to put before the Commission any information it wanted, within 25 days of Pilgrim's original petition. As BellSouth was fully aware, or should have been, that the Commission must resolve the issues in the Petition within nine months of Pilgrim's original notice to BellSouth. 47 U.S.C. § 252(b)(4)(C). Consequently, it should not have been surprised when the Commission met its deadline.

In its Motion for Reconsideration, BellSouth makes various ill-founded arguments to the effect that a determination of these issues was not ripe for decision. BellSouth argues that it did not have the opportunity to fairly respond to the allegations made by Pilgrim, when in fact, the record shows that BellSouth chose not to respond to Pilgrim's Motion for Determination. BellSouth also asserts that the development of a *factual* record will help determine the *legal* issues of this case. Finally, BellSouth attempts to show that it was blind-sided by the Commission's decision, and yet every pleading filed before the Commission by BellSouth in this case has dealt almost exclusively with whether or not the RNEs are UNEs. BellSouth had every opportunity to respond to the merits of this case, and they have done so.

Even if the Commission chose to reconsider its decision, BellSouth's arguments are wholly without merit. In its Motion for Reconsideration, BellSouth misrepresents the facts and the law to the Commission. The Commission's Order correctly decided that the requested network elements are UNEs. The Commission's Order with respect to Billing and Collections service is consistent with the decision of the Oregon Public Service Commission, *In the Matter of the Investigation into the Cost of Providing Telecommunications Services*, Order, UM 351, Order No. 96-188 (July 19, 1996), as well as interconnection agreements approved by several other state commissions. If BellSouth's motion is granted, it will only serve to further delay Pilgrim's entry into the market.

As discussed below, BellSouth had ample opportunity to address the issue of whether various RNEs are UNEs, and the other particulars of Pilgrim's request. BellSouth did reply to these in prior pleadings, and its filings present arguments which have been submitted in an attempt to delay these proceedings further. To the extent that BellSouth desires to advance any additional arguments it is too late under the statutory deadlines. Any party which substantially missed deadlines cannot be heard to have been denied due process. In order to take advantage of a due process complaint, BellSouth must have filed any additional information on a timely basis.

### ARGUMENT

**I. UNDER THE ACT, THE COMMISSION IS ENTITLED TO MAKE ITS DECISION BASED ON THE FACTS AND PLEADINGS PUT BEFORE IT.**

BellSouth's Motion for Reconsideration is based on a number of assertions which are completely without merit. Pilgrim will address these in turn.

**A. The Commission is obligated to make its determination within a Limited Time. BellSouth failed to respond to Pilgrim's November 12, 1999 Motion for Commission Determination and has had every opportunity to put whatever facts it deemed necessary before the Commission.**

On November 12, 1999, Pilgrim filed a motion for Commission determination in regards to the requested network elements. The Commission was specifically asked to make the determinations of the legal issues involved in the case. BellSouth chose not to respond to that Motion, and yet they argue that they have had no opportunity to respond. BellSouth had more than two months to put information before the Commission as required by 47 U.S.C. §252(b)(3), and as a consequence, their argument has no merit.

Under 47 U.S.C. § 252(b)(3), "a non-petitioning party (BellSouth) . . . may respond to the other party's (Pilgrim's) petition and **provide such additional information as it wishes within twenty-five (25) days after the State Commission receives the Petition.**" (emphasis added). BellSouth chose to file a Motion to Dismiss and an Answer. Further, "the State Commission shall resolve each issue set forth in the petition and the response, if any, by imposing appropriate conditions as required to implement Section (c) upon the parties to the agreement, and **shall conclude the resolution of any unresolved issues not later than 9 months** after the date on which the local exchange carrier received the request under this section." 47 U.S.C. §252(b)(4)(C) (emphasis added). Further, the Commission may require whatever information it deems appropriate be submitted and if such a request is ignored, the Commission "**may proceed on the basis of the best information available to it from whatever source derived.**" 47 U.S.C. §252(b)(4)(B). (emphasis added). BellSouth has had its opportunity to respond. The Commission has done its duty as required under § 252. BellSouth's Motion to Reconsider is nothing more than another attempt to argue the issues which have already been fully developed and correctly decided.

BellSouth has, in fact, responded to the issues of this case. Every pleading filed by BellSouth in this case has argued that the RNEs are not UNEs. Whether the RNEs are UNEs is a legal issue. BellSouth has vigorously argued its position and the Commission has correctly decided against that position. There is no further need - nor any reason - to rehash those arguments. It would only serve to further delay Pilgrim's attempts to do business.



**B. At No Time During the Pendency of these Proceedings has Pilgrim Owed Any Money to BellSouth. BellSouth's Assertion that It Is Willing to Negotiate with Pilgrim Is Disingenuous and Is Based on a Distortion of the Facts.**

In every pleading before this Commission, BellSouth has asserted that Pilgrim owes them "approximately \$1,000,000" and BellSouth cites this as the reason for their continued unwillingness to negotiate with Pilgrim. This assertion is untrue. Under the previous agreement between BellSouth and Pilgrim, BellSouth retained a portion of the amounts payable to Pilgrim as a reserve. BellSouth admitted that its claim was without merit, and returned Pilgrim's money in December of 1999, as shown by a Pilgrim's bank statement for December, a redacted version of which is attached as Exhibit A, and is hereby incorporated by reference.

Like BellSouth's Motion for Reconsideration, BellSouth's continued assertion that Pilgrim owes it money is nothing more than a pretext for continued delay. Pilgrim had hoped that the Commission's Order would put an end to this issue. Unfortunately it did not. As Exhibit A, shows, it was BellSouth that owed Pilgrim more than \$800,000, not the other way around. BellSouth must now acknowledge its misstatement since BellSouth reimbursed Pilgrim last December.

In fact, BellSouth's efforts to delay this proceeding are entirely consistent with its refusal to negotiate in good faith with Pilgrim in a similar proceeding in Florida. At approximately the same time that this proceeding was initiated, Pilgrim commenced a similar proceeding before the Public Service Commission in Florida. At an Issue Identification Meeting with the Commission staff on October 15, 1999, BellSouth indicated a willingness to negotiate in good faith with Pilgrim to resolve the dispute outlined in the arbitration petition. As evidence of its good faith, Pilgrim withdrew its arbitration petition in Florida on October 22, 1999. A mediation session, which was scheduled for up to five (5) days, was held on November 2, 1999 in the offices of the Florida Public

Service Commission, and a member of the Commission's staff agreed to serve as mediator of the session.

The session commenced at 10:00 a.m., and BellSouth announced its unwillingness to proceed with further negotiations shortly after lunchtime. Further, it was learned during the session that all of BellSouth's representatives had booked airline reservations to leave Tallahassee that same afternoon, making it abundantly clear that they did not plan to seriously negotiate with Pilgrim. In short, BellSouth used the "good faith negotiations" ploy to delay the entire process by which BellSouth could ultimately be forced to obey the terms of the Telecommunications Act of 1996.

Here, BellSouth's tactics are no less dilatory. By filing this Motion for Reconsideration, BellSouth is still attempting to avoid the inevitable for as long as it possibly can. The time has come to put a stop to its ongoing efforts to delay Pilgrim's entry into the market. The Motion for Reconsideration should be denied forthwith.

**C. Verified Pleadings and affidavits are not required.**

BellSouth has also complained that Pilgrim's pleadings have not been verified or accompanied by affidavits. Aside from ignoring the fact that the primary disputes put before the Commission are legal and not factual disputes, this argument also ignores the administrative regulations governing practice before the Commission. "Except when otherwise specifically provided by statute, pleadings need not be verified or accompanied by affidavit." 807 KAR 5:001(1)(4). Section 4 of that same regulation does not provide for formal hearings in arbitration proceedings such as this one. Notably, BellSouth did not verify any of its pleadings prior to the pending Motion for Reconsideration.

II. **BELLSOUTH'S ARGUMENT THAT THE RNEs ARE NOT UNEs  
IS BASED ON A NUMBER OF INCORRECT ASSERTIONS OF LAW.**

A. **BellSouth's Insistence that the Provision of Telecommunication Service Is Limited to  
Switching, Transmission and Routing of Calls Has No Basis in the Law.**

"Network Element" refers to facilities and equipment used in the provision of telecommunication service, including features, functions, and capabilities that are provided by means of such facility or equipment. 47 U.S.C. § 153(29). The United States Supreme Court has noted that the Act's definition of a network element is broad and that a network element need not "be part of the physical facilities and equipment used to provide local phone service." *Iowa Utilities Board*, 525 U.S. 366, 119 S.Ct. 366, 142 L.Ed.2 835 (1999).

As the recent Fourth Circuit case, *AT&T Communications of Virginia, Inc., v. Bell Atlantic-Virginia, Inc.*, \_\_ F.3d \_\_, 1999 W.L. 1186253 (4th Cir. 1999)(cited by Pilgrim in its Supplemental Response to BellSouth's Motion to Dismiss), points out, directory publishing qualifies network elements. Directory publishing services have nothing to do with "transmission, routing and switching," and yet, they are UNEs.

Obviously, if directory publishing services qualifies network elements, certainly billing and collection, BNA, databases and 900/976 blocking databases are network elements. Access to these elements is necessary for Pilgrim to correctly identify whether to accept traffic onto its network from BellSouth customers, and to be able to bill BellSouth customers for casual access, collect calls and other calls made by BellSouth customers on the Pilgrim network. It is impossible to argue in light of this case law that network elements are limited to those facilities used in the transmission, switching and routing of calls.

The Oregon Public Service Commission has discussed this issue and specifically decided that billing and collection functionality is a UNE. "Billing and Collection functions involve compiling information needed for customer billing, preparing the billing statement, disbursing the bill and collection the customer payments, including any collection activity required for late payment or non-payment of accounts." *In the Matter of the Investigation into the Cost of Providing Telecommunications Services*, Order, UM 351, Order No. 96-188 (July 19, 1996).

**B. Access to Tariffs Is Wholly Irrelevant in Determining Whether a Requested Network Element Is a UNE.**

The presence of a tariff is not relevant to determining the status of a feature or function as being a UNE. The definition of a network element does not contain a discussion of access to tariffs, and as Pilgrim has explained, the tariffed access is unsuitable for its needs. Under the tariff, Pilgrim is forced to accept features that it does not want and is denied features that it absolutely needs. The Act addresses the inadequacies of the tariff system by giving requesting carriers access to UNEs.

*BellAtlantic Virginia, supra*, also shows that access to tariffs is irrelevant. In that case, the incumbent local exchange carrier provided its customers with a free listing in the white pages of the company's telephone directory as a part of its local service. Other directories publishing services such as additional listings, non-listing and non-publication of numbers, were provided at additional **tariffed** rates. The Fourth Circuit ruled that these services, including the tariffed services, were network elements that must be made available at cost-based rates.

C. **Pilgrim is a Telecommunications Carrier to Whom Access to Unbundled Network Elements Must Be Given.**

The purpose of the Telecommunications Act of 1996 was to facilitate access to network elements needed by telecommunication carriers. There is no requirement that the requesting carrier be a competitive local exchange carrier ("CLEC") in order to have access to UNEs. On the contrary, the Act states that incumbent local exchange carriers ("ILECs") must provide access to any "requesting telecommunication carrier." 47 U.S.C. § 251. Under the Act, a telecommunications carrier means any provider of telecommunications service which means the provision of "telecommunications for a fee directly to the public . . . regardless of the facilities used." 47 U.S.C. § 153. Despite these clear points of law, BellSouth suggests that Pilgrim is not entitled to unbundled access since it is not currently acting as a CLEC. This argument ignores both the law stated above, and the fact that Pilgrim cannot operate as a CLEC unless BellSouth negotiates pursuant to the Commission's Order.

Pilgrim provides telecommunication service as defined by the Act. As the definition of telecommunications carrier points out, it is irrelevant that Pilgrim seeks to use BellSouth's facilities in the provision of its telecommunication service. In fact, the Act was intended to allow telecommunication carriers precisely the competition-facilitating access which Pilgrim seeks. As for the Respondent's argument that Pilgrim is not an interstate carrier, this is simply untrue.

Further, Pilgrim has a tariff to provide collect calling and other services in Kentucky. BellSouth's denial of access to UNEs thwarts Pilgrim's ability to provide these services.

**D. The List of Network Elements Which Must Be Unbundled Found in the Third Report and Order Is Not Exhaustive.**

The *Third Report and Order* specifically provides that the State Commissions are entitled to expand the Federal Communications Commission's list of UNEs. *Third Report and Order*, CC Docket No. 96-98, ¶¶ 154 *et seq.* (November 5, 1999). The Commission is not preempted by Federal law on this matter.

**E. The Content of Pilgrim's Service is irrelevant.**

Pilgrim's wide variety of telecommunications and enhanced services does not disqualify it from access to UNEs. Nor Does BellSouth's veiled suggestion that Pilgrim might misuse UNEs empower BellSouth to deny Pilgrim access to those UNEs. In the even that BellSouth fulfills its obligation to provide UNEs to Pilgrim, and in the even that BellSouth believes that any of those UNEs are being used in an improper manner, BellSouth may seek relief in an appropriate forum. BellSouth cannot deny access to its UNEs merely because it fears its competitor will do something that BellSouth does not like.

Both companies, BellSouth and Pilgrim, provide access to a wide variety of services, including interstate and intrastate communications services, telemessaging, and enhanced services. Even BellSouth provides access to adult content through its cable television and Internet offerings. The Commission should ignore BellSouth's attempts to color the record, when it is clear that Pilgrim, as a telecommunications carrier, is entitled to these UNEs.

**CONCLUSION.**

The Commission should deny BellSouth's Motion for Reconsideration. BellSouth is merely delaying Pilgrim's business. BellSouth chose to not respond to Pilgrim's Motion for Commission

Determination and cannot now complain that they were deprived of their rights. Their insistence on the continuation of these proceedings has no basis under the Act, and their arguments are without merit.

Respectfully submitted,

WYATT, TARRANT & COMBS

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Counsel for Pilgrim Telephone, Inc.

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a copy of the foregoing Response to BellSouth's Motion for Reconsideration was served upon the following by U.S. mail, postage prepaid, this \_\_\_\_\_ day of February, 2000:

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\_\_\_\_\_  
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Dec 01, 1998 - Dec 31, 1999

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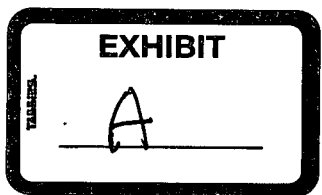
Corporate Checking

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Additions continued

205 total:

Date	Amount	Transaction description
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January 24, 2000

RECEIVED  
JAN 25 2000  
PUBLIC SERVICE  
COMMISSION

Mr. Martin J. Huelsmann, Jr.  
Executive Director  
Public Service Commission  
730 Schenkel Lane  
P. O. Box 615  
Frankfort, KY 40602

Re: The Petition by Pilgrim Telephone, Inc. for  
Arbitration of Certain Terms and Conditions With  
BellSouth Telecommunications, Inc. Pursuant to Section  
252(b) of the Telecommunications Act of 1996  
PSC 99-385

Dear Mr. Huelsmann:

Enclosed for filing in the above-captioned case are the  
original and ten (10) copies of BellSouth Telecommunications,  
Inc.'s Motion for Reconsideration of the Commission's Order.

Sincerely,



Creighton E. Mershon, Sr.

Enclosure

cc: Parties of Record

194349

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

RECEIVED  
JAN 25 2000  
PUBLIC SERVICE  
COMMISSION

In the Matter of: )  
)  
THE PETITION BY PILGRIM TELEPHONE, )  
INC. FOR ARBITRATION OF CERTAIN ) Case No.  
TERMS AND CONDITIONS WITH ) 1999-385  
BELLSOUTH TELECOMMUNICATIONS, )  
INC. PURSUANT TO SECTION 252(B) )  
OF THE TELECOMMUNICATIONS ACT )  
OF 1996 )

BELLSOUTH TELECOMMUNICATIONS, INC.'S  
MOTION FOR RECONSIDERATION OF THE COMMISSION'S ORDER

BellSouth Telecommunications, Inc. ("BellSouth") hereby respectfully requests that the Commission reconsider its Order of January 11, 2000, in the above-referenced docket to the extent that the Commission ruled that BellSouth must provide "real time access to billed number and address information and real time access to 900/976 blocking data" as unbundled network elements ("UNEs"). (Order, at 4). First, the Commission should reconsider its decision because the issue of whether access to the billed name and address database ("BNA") and access to 900/976 blocking information was not ripe for decision. Without the development of an evidentiary record, the Commission had no opportunity to consider the facts underlying the substantive issues in this case. Moreover, without a hearing, BellSouth did not have the opportunity to demonstrate to the Commission that access to BNA and access to 900/976 blocking information are not UNEs pursuant to the Act and FCC rules. Finally, BellSouth did not have the opportunity to demonstrate to the Commission that each of the functions sought by Pilgrim is available to Pilgrim today, and thus that further action by this Commission is

unnecessary. For these reasons, BellSouth requests that the Commission reconsider its Order and give BellSouth the opportunity to present its factual case.

The question as to whether certain services or elements constitute UNEs pursuant to Section 252 of the Telecommunications Act is a factual decision that can only be made after the development of a full evidentiary record. The Commission's Order appears to be based on conclusory statements offered by Pilgrim to address the Motion to Dismiss. BellSouth respectfully submits that it is entitled to a hearing on the substantive issues in the arbitration; otherwise, BellSouth will be deprived of the opportunity to develop a factual record in this arbitration.

The verified facts contained herein will demonstrate that the Commission should revisit its conclusion that access to the BNA database and access to 900/976 blocking data are UNEs. As BellSouth demonstrates below, neither of these functions constitutes a UNE under either the Act or the FCC rules. Moreover, Pilgrim, as an interexchange carrier and potentially as a local carrier, currently has access to the functions it purports to need. For these reasons, BellSouth respectfully requests that the Commission reconsider its holding that the specified items are UNEs, and give BellSouth the opportunity to revisit these issues so that the Commission can render a decision based on evidence presented by the parties.

#### **PROCEDURAL HISTORY**

On September 14, 1999, Pilgrim filed a Petition for Arbitration of an Interconnection Agreement pursuant to Section 252 of the Telecommunications Act. On October 11, 1999, BellSouth filed its Answer to the Petition and simultaneously filed a Motion to Dismiss the Petition. In its Answer, BellSouth specifically denied the

allegations that Billing and Collection Services; real-time access to billed name and address information; and access to 900/976 blocking data constituted unbundled network elements under the Telecommunications Act. Thus, the case was postured such that if the Commission denied BellSouth's motion to dismiss, the parties would arbitrate the questions of whether the functions requested by Pilgrim constituted UNEs under the Act.

On November 10, 1999, Pilgrim filed its Response to BellSouth's Motion to Dismiss. At the time Pilgrim filed its response, the only question pending before the Commission was whether Pilgrim had the appropriate legal status to file an arbitration, and whether the arbitration had been appropriately pled.<sup>1</sup> In fact, in its pleading, Pilgrim stated specifically that it "is entitled to *seek* arbitration" because the parties have a "fundamental disagreement...as to the applicability of Section 251(c)(3) to Pilgrim's request for RNEs." (Pilgrim Response, at 6)(emphasis added).

On January 10, 2000, Pilgrim submitted a Supplemental Brief In Response To Respondent's Motion To Dismiss. Once again, the purpose of Pilgrim's supplemental pleading was to demonstrate its position that the question of whether the functions sought by Pilgrim are UNEs is properly resolved in an arbitration proceeding. (Pilgrim Supp. Brief, at 2-3).

On January 11, 2000, the Commission issued its Order. In the Order, the Commission appropriately addressed each ground upon which BellSouth had moved to dismiss the petition. (Order, at 1-3). Based on the pleadings, the Commission determined that Pilgrim's petition was sufficient to entitle Pilgrim to an arbitration proceeding. Although BellSouth does not agree with the Commission's conclusion on

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<sup>1</sup> On the same date, Pilgrim filed a Motion for Commission Determination, a pleading that did nothing more than reiterate the issues for which it had allegedly petitioned for arbitration.

the motion to dismiss, BellSouth does not dispute that the decision was procedurally appropriate.

However, the Commission then went beyond the question of whether the petition should be dismissed and held, without any evidentiary record whatsoever, that access to the BNA database and to access 900/976 blocking information were UNEs that must be provided by BellSouth at cost-based rates. It is these conclusions that BellSouth raises for reconsideration by the Commission.

### DISCUSSION

**I. Due To The Factual Nature Of The Issues In This Arbitration, BellSouth Is Entitled To An Opportunity To Present Its Case To The Commission.**

Under Section 252 of the Act, either party to an interconnection agreement may petition the state commission for arbitration of unresolved issues. 47 U.S.C. § 252(b)(1). In this case, Pilgrim petitioned the Commission to resolve the question of whether certain functions constituted network elements that BellSouth was obligated to unbundle pursuant to the Act. In response to Pilgrim's filing, BellSouth moved the Commission to dismiss the Petition on various procedural grounds, including the fact that Billing and Collection Services are not the subject of an interconnection agreement nor of a Section 252 arbitration. (BellSouth Answer and Mtn. To Dismiss, at 2,4).

At this initial stage of the proceeding, the *only* question pending before the Commission was the motion to dismiss – specifically, the question of whether Pilgrim's petition was procedurally appropriate and whether the issues raised therein were substantively appropriate for an arbitration proceeding. The actual issues underlying the petition (namely, whether the functions at issue constituted UNEs) simply were *not* ripe for decision.

Pilgrim's Response to BellSouth's Motion evidences the fact that Pilgrim understood that the only question the Commission was in a position to address at this early stage of the proceeding was whether the petition should be dismissed. For example, Pilgrim requested that the Commission "proceed with the arbitration of the dispute" and "hear Pilgrim's Petition for Arbitration." (Pilgrim Response, at 21). Moreover, Pilgrim stated that it "is entitled to *seek arbitration* under Section 252 as it seeks to obtain either an agreement for UNEs or an interconnection agreement." (Pilgrim Response, at 6) (emphasis added). Nowhere in its Petition does Pilgrim ask for summary judgment on the underlying issues, and it certainly did not provide the Commission any sworn factual testimony upon which to make such a conclusion. Rather, Pilgrim simply asked the Commission to allow it to *present its case* – a request the Commission granted.

While Pilgrim does touch on the substantive question of whether the functions it seeks are UNEs, it does so specifically in response to BellSouth's allegation that Billing and Collection Services are not appropriate subjects of arbitration. (See Pilgrim Response, at 6 *et. seq.*). In neither BellSouth's Answer nor Pilgrim's Response are there any verified *facts* as to why these functions should or should not constitute UNEs; rather, each party simply set forth the issues for the subsequent hearing on the merits that both parties assumed the Commission would conduct. For example, in Pilgrim's Response, it states in conclusory fashion that the "BNA database is itself a call-related database" and "BNA information is processed by BellSouth's OSS." (Pilgrim Response, at 9).<sup>2</sup> Pilgrim, however, presents no sworn testimony or facts to support these allegations – rather, it simply presented them in summary fashion to demonstrate to the Commission that it should be entitled to arbitrate these questions. Pilgrim did not present any sworn

affidavits to support its case, nor did it file verified pleadings. In short, there is nothing in the record to support Pilgrim's allegations (and the Commission's Order) other than conclusory legal arguments filed by Pilgrim's outside counsel.

The reason that a hearing (or other opportunity to present a factual case) is so critical in this proceeding is that the issues require more than an interpretation of the Act. Rather, a decision in this case requires a factual understanding of the functions at issue. Without such an understanding of the functions Pilgrim is seeking, it would be enormously difficult, if not impossible, to apply the law correctly to such functions. BellSouth will provide the verified facts it contends are most critical to the Commission's analysis herein; BellSouth respectfully requests that the Commission reconsider its Order in light of these facts or give BellSouth the opportunity for an evidentiary hearing.

Because the facts in this case are so important, the lack of an opportunity to present its case in this matter denies BellSouth's fundamental right to due process. The Commission's action precluded BellSouth from presenting its case and the factual reasons why the functions sought by Pilgrim do not constitute UNEs. This right to hearing is a fundamental constitutional protection. By issuing its Order without giving BellSouth the opportunity to present its case, the Commission denied this protection to BellSouth.

In summary, in this Motion for Reconsideration BellSouth does not challenge the Commission's decision to deny BellSouth's Motion to Dismiss and to proceed to arbitration. BellSouth does object, however, to the Commission's decision not to conduct the arbitration and to decide these crucial issues based on unsworn, conclusory allegations in pleadings filed solely to address the motion to dismiss. BellSouth

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<sup>2</sup> As this verified pleading will demonstrate, both of these allegations are untrue.



respectfully requests that the Commission reconsider its Order on these important issues and withdraw it until such time as the parties have the opportunity to present their factual cases to the Commission.

**II. Access To The BNA Database And Access To 900/976 Blocking Information Are Not UNEs.**

Because the Commission based its decision on Pilgrim's unsupported allegations regarding the nature of the BNA database and access to 900/976 blocking information, and did not have the opportunity to review certain facts about these functions, the Commission drew a premature conclusion as to whether such functions are UNEs.

**A. Billing and Collection Services are not UNEs.**

As the Commission noted in its Order, there is some confusion as to whether Pilgrim is seeking Billing and Collection Services or billing and collection functionalities. From its negotiations with Pilgrim and Pilgrim's pleadings, BellSouth is confident that Pilgrim is *not* seeking "information sufficient for billing and collection" as provided for in the definition of network element, but rather is seeking Billing and Collection Services performed by BellSouth on behalf of Pilgrim so that Pilgrim need not bill its own end users. (Pilgrim Response, at 3) ("ILECs are the only viable source for billing and collection...the ILEC billing and collection apparatus...is a highly effective system with materially better-than-average collection rates for an assortment of reasons"). Pilgrim wants BellSouth to bill and collect from Pilgrim's customers on behalf of Pilgrim because it perceives that BellSouth would do a better job than does Pilgrim. Contrary to Pilgrim's allegations, however, ILECs are not "the only viable

source for billing and collection....” (Pilgrim Response, at 5). Many other CLECs and interexchange carriers do their own billing today.<sup>3</sup>

Information sufficient to permit Pilgrim to bill its own customers, and Billing and Collection Services performed on behalf of Pilgrim by BellSouth, are very different functions and have vastly different legal ramifications. The first, access to information sufficient to permit a local provider to bill its end-users, is covered by the Act and is provided to CLECs via access to BellSouth’s Operations Support Systems (“OSS”). BellSouth does not bill on behalf of CLECs; rather, BellSouth provides CLECs, through access to BellSouth’s OSS, with the necessary functionalities for CLECs to conduct their own billing. (See e.g. BellSouth’s Standard Interconnection Agreement, ATT-7, attached hereto as Exhibit A). The second, Billing and Collection Services performed on behalf of a third party, are not a telecommunications service and thus not a UNE. Billing and Collection Services, because they are *not* covered by the Act, should not be the subject of an interconnection agreement.

With respect to Billing and Collection Services, Pilgrim can purchase such services today as an interexchange carrier. The Billing and Collection Services BellSouth provides to telecommunications carriers are provided via Section E8 of the Kentucky Access Services Tariff for intrastate, and/or contract for interstate. The rates for such services are set forth in the tariff and/or in the parties’ billing and collection contract.

In its Order, the Commission stated that if Pilgrim is seeking Billing and Collection Services through the tariff, such services should be provided to Pilgrim at the

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<sup>3</sup> Up until March 1999, Pilgrim had a billing and collection contract with BellSouth. BellSouth, however, was forced to terminate the contract because Pilgrim owed BellSouth in excess of one million dollars.

resale discount. With a full factual record, which the Commission should give BellSouth the opportunity to develop, it would be clear that Billing and Collection Services are not subject to the resale discount for two reasons. First, billing and collection does not constitute a telecommunications service, nor is it used in the provision of a telecommunications service. 47 U.S.C. § 153(43) and (46).<sup>4</sup> Thus, by definition, Billing and Collection Services cannot be a UNE. 47 U.S.C. § 153(29) (network element “means a facility or equipment used in the provision of a telecommunications service...term also includes features, functions and capabilities that are provided by means of such facility or equipment...”). Second, billing and collection is not a retail service BellSouth provides to its end users. 47 U.S.C. § (c)(4) (ILECs have the duty to “offer for resale at wholesale rates any telecommunications service that the carrier *provides at retail to subscribers who are not telecommunications carriers.*”). Rather, intrastate billing and collection is a service provided to interexchange carriers in Kentucky via the access tariff. BellSouth does not provide billing and collection services to retail subscribers. For both of these reasons, Billing and Collection Services are not subject to resale or the resale discount.<sup>5</sup>

Regardless of whether Pilgrim seeks Billing and Collection Services, or billing and collection functionalities, this Commission need not hold, nor should it hold, that either is a UNE. Both Billing and Collection Services and billing and collection

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<sup>4</sup> “‘Telecommunications Service’ means the offering of telecommunications for a fee directly to the public....” 47 U.S.C. 153(46); “‘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.”

<sup>5</sup> In its Supplemental Brief, Pilgrim cites to *AT&T Comm. of Va., Inc. et al. v. Bell Atlantic-Virginia et al.*, 1999 U.S. App. LEXIS 32486 (4<sup>th</sup> Cir. Dec. 15, 1999), for the proposition that the requested billing and collection services constitute UNEs. (Pilgrim Supp. Response, at 2-3). Pilgrim’s reliance on this case is misplaced. The Fourth Circuit held that directory assistance listings constituted network elements that must be unbundled because “it is a feature used in providing (through the company’s facilities) telephone service.” 1999 U.S. App. LEXIS at \*28. The same cannot be said about the services sought by Pilgrim.

functionalities are available to Pilgrim today, depending on whether Pilgrim wants to be an interexchange carrier or a local provider. Intrastate Billing and Collection Services (which are not telecommunications services) are provided via tariff to interexchange carriers at the rates set forth in the tariff. Moreover, BellSouth will continue to negotiate a billing and collection contract with Pilgrim should Pilgrim wish to purchase billing and collection services from BellSouth provided Pilgrim pays the past due amounts. Moreover, billing and collection functionalities, sufficient to allow Pilgrim to bill its own end-users, are available through access to BellSouth's OSS today to local providers. Under either scenario, Billing and Collection Services are not subject to the resale discount. Thus, BellSouth respectfully requests that the Commission reconsider its Order regarding billing and collection.

**B. Access to the BNA Database is not a UNE.**

In its Order, the Commission concluded that access to the database that contains billed name and address information should be provided pursuant to Section 251(c)(3). (Order, at 3). The Commission reached this conclusion on the grounds that access to the BNA database met the definition of a network element in 47 U.S.C. § 153(29). With the benefit of a factual record on the nature of the BNA database, the Commission would not have reached this conclusion. Therefore, BellSouth requests that the Commission reconsider its decision in light of the facts presented herein, and give BellSouth the opportunity to further present its case.

The BNA database service was developed in response to the FCC's directives in CC Docket No. 91-115, *In the Matter of Policies and Rules Concerning Local Exchange*

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Each of the three services at issue in this proceeding is unrelated to the provision of a call to the end user, and thus the holding in the AT&T case is disingenuous.

*Carrier Validation and Billing Information for Joint Use Calling Cards.* The FCC defined BNA information as “the name and address provided to a local exchange company by each of its local exchange customers to which the local exchange company directs bills for its services.” 47 C.F.R. 64.1201(a)(1). The purpose for making BNA available to interexchange providers was so that “they would be able to bill and collect for their own services.” *First Notice of Proposed Rulemaking*, 6 FCC Rcd at 3509 n. 13.

The BNA database provides interexchange carriers, via tariff, assistance in billing for casual-use and calling card customers. During call processing, the interexchange carrier receives the ANI (Automatic Number Identification) (that is, the telephone number) of the dialing party. At some point after call completion, the interexchange carrier sends the ANI to BellSouth, and BellSouth returns to the interexchange carrier the BNA information for that ANI so the carrier can bill its end-user customer for the service. The BNA database is not involved in the processing or completion of the telephone call, and it is not accessed or queried by the switch or the signaling network at any point in the processing or completion of the telephone call.

In its rule regarding the provision of BNA, the FCC defined “telecommunications service provider” as “interexchange carriers, operator service providers, enhanced service providers, and any other provider of *interstate* telecommunications services.” 47 C.F.R. § 64.1201(a)(2) (emphasis added). The rule then specifically provides as follows:

No local exchange carrier providing billing name and address shall disclose billing name and address information to any party other than a telecommunications service provider or an authorized billing and collection agent of a telecommunications service provider.

47 U.S.C. § 64.1201(b). In other words, the FCC rule provides that BellSouth, as a local exchange carrier, only can provide BNA information to “interexchange carriers, operator

service providers, enhanced service providers, and any other provider of interstate telecommunications services.” 47 U.S.C. § 64.1201(a)(2)(emphasis added). The rule appears to explicitly restrict BellSouth from providing such information to local providers. Access to the BNA database cannot be a UNE because only providers of local service are entitled to UNEs. *First Report and Order*, at ¶191 (“an IXC that requests interconnection solely for the purpose of originating and terminating its *interexchange* traffic, not for the provision of telephone exchange service and exchange access to others, on an incumbent LEC’s network is not entitled to receive interconnection pursuant to section 251(c)(2)”). Thus, the Commission’s decision that BellSouth must provide access to the BNA database as a UNE is in direct conflict with the FCC rule on the provision of BNA to interexchange carriers.

Moreover, even if the Commission’s holding were not in conflict with a FCC rule, access to the BNA database currently is not a UNE because it is neither a call-related database nor access to OSS as defined in the FCC’s recent *Third Report and Order*.<sup>6</sup> Call-related databases “are databases...that are used in signaling networks for billing and collection, or the transmission, routing or other provision of a telecommunications service.” 47 C.F.R. §51.319. According to the FCC, ILECs shall provide access to their call related databases “for purposes of switch query and database response through a signaling network...” *Id.* Some examples of call-related databases are CNAM (the caller-ID database), the 911 database, and the line information database (LIDB). *Id.*

The BNA database is not a call-related database. It is a database of billing names and addresses that is maintained completely separate and apart from BellSouth’s switches

and BellSouth's signaling systems, and it plays no role in the transmission, routing or other provision of a telecommunications service. Moreover, the BNA database is not involved in the ILEC's provision of Billing and Collection Services. The BNA database is not tied to the switch or the signaling network in any way, and is not queried or accessed at any point during the provision of a telecommunications service. It does not respond to queries through a signaling network and is never even accessed through a signaling network. Moreover, it provides no information to process a call, measure a call or bill a call. In short, it is not related to the processing of a call, or billing for that call. The BNA database is an auxiliary billing function, utilized days, or even weeks, after the calls in question are completed. Thus, under the FCC's definition, the BNA database is not a call-related database.

Moreover, access to the BNA database does not constitute access to BellSouth's OSS. The five functions of OSS the ILEC must make available on an unbundled basis are "pre-ordering, ordering, provisioning, maintenance and repair, and billing functions supported by an incumbent LEC's databases and information." *Third Report and Order*, ¶ 425. The FCC is very clear in its Rule 319 that the information in BellSouth's OSS is *not* the UNE; rather, *access* to BellSouth's OSS is the UNE. 47 C.F.R. § 51.319(g) ("an incumbent LEC shall provide nondiscriminatory *access*...to operations support system on an unbundled basis...") (emphasis added). This distinction is crucial to an analysis of Pilgrim's contention. What Pilgrim wants is access to the information in the individual database, but what the Act requires is access to OSS. Thus, Pilgrim's claim has no legal support.

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<sup>6</sup> *Third Report and Order and Fourth Notice of Proposed Rulemaking*, In the Matter of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, CC Docket No. 96-98 (Released

Moreover, access to the BNA database is not part of BellSouth's OSS billing function. The purpose of access to the billing functions is to permit the CLEC to bill its end users for services provided to the end user by the CLEC using services purchased from BellSouth. In the *First Report and Order*, the FCC adopted the definition of the "billing" function of OSS set forth in the AT&T-Bell Atlantic Joint *Ex Parte*.<sup>7</sup> *First Report and Order*, ¶ 523 n. 1273. Specifically, "billing involves the provision of appropriate usage data by one LEC to another to facilitate customer billing with attendant acknowledgements and status reports. It also involves the exchange of information between LECs to process claims and adjustments." *First Report and Order*, ¶ 514 n. 1247. The FCC held that it found "no reason to modify our definition of OSS" in the *Third Report and Order*. *Third Report and Order*, ¶ 426.

BellSouth provides CLECs access to its OSS that support the billing function. Through that access, the CLEC can obtain appropriate usage data for its end-users from databases such as Optional Daily Usage File ("ODUF") and Enhanced Optional Daily Usage File ("EODUF") This usage information meets CLECs' need to have access to information necessary to bill its customers for the services provided. The billing function of OSS does not, however, encompass access to a database of billing names and addresses of *BellSouth's* end-users. The BNA database does not contain any "usage data" or any information necessary to "process claims and adjustments." Moreover, BellSouth's customer service representatives do not access the BNA database when submitting service orders for end-users. Thus, access to OSS does not encompass access to the BNA database for CLECs.

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Nov. 5, 1999) (hereinafter "Third Report and Order").



It is the CLEC's responsibility to get billing information from its end-users, and it is the CLEC's responsibility to maintain its own record of the billing name and address for its customers. Moreover, BellSouth's BNA database would not be helpful to a CLEC. When BellSouth loses a customer to a CLEC, it removes the end-user's name from the BNA database. Thus, as soon as a customer is converted from BellSouth to a CLEC, the BNA database ceases to have any information at all about that end-user customer, much less any useful information. BellSouth provides CLECs with access to its OSS through nondiscriminatory interfaces. The BNA database is not a form of access to BellSouth's OSS, and thus should not be available to CLECs under the umbrella of access to BellSouth's OSS.

Furthermore, Pilgrim's claim, in addition to having no legal merit, is unnecessary because Pilgrim can use BellSouth's currently available access to OSS to obtain customer information to compete in the local market. Specifically, BellSouth offers CLECs the Telecommunications Access Gateway ("TAG") and Local Exchange Navigation System ("LENS") electronic interfaces to access OSS. Each interface provides CLECs with nondiscriminatory access to BellSouth's OSS. Through these interfaces, Pilgrim can access the CRIS database (Customer Record Information System) and pull up any Customer Service Record ("CSR") for which it has the customer's consent. (*See generally* 47 U.S.C. § 222).<sup>8</sup> The customer service record provides CLECs with all the information necessary to switch that customer to the CLEC's service; once that customer is switched over, the CLEC can develop its own BNA database. BellSouth's current

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<sup>7</sup> Letter from Bruce Cox, Government Affairs Director to William Canton, Acting Secretary, FCC, July 3, 1996.

<sup>8</sup> In an analogous situation, access to the information in the CRIS database is not a UNE; access to BellSouth's OSS, however, which provides access to the CRIS database, is a UNE.

provision of nondiscriminatory access to OSS will provide Pilgrim with the necessary customer information (provided Pilgrim has the customer's consent to view the information) to compete in the local market.

A conclusion that access to BNA is not a UNE will not preclude Pilgrim from having access to this information should it need it for its business plan. BNA is a tariff offering available through both the interstate and intrastate access tariffs. BellSouth has told Pilgrim repeatedly that it can order this service at any time through the tariff and, in fact, Pilgrim had purchased BNA via the BellSouth tariff prior to filing this arbitration.

Finally, because the BNA database is neither a call-related database, nor access to BellSouth's OSS, the FCC did not include the BNA database on the national list of UNEs in the *Third Report and Order*. Thus, in order to add it to the list of UNEs, this Commission must undertake a "necessary and impair" analysis consistent with the Supreme Court's Order in the *Iowa Utilities* case to determine if the database meets the statutory requirements to be unbundled. *Third Report and Order*, at ¶ 153 ("we agree with commenters that section 251(d)(3) provides state commissions with the ability to establish additional unbundling obligations, *as long as the obligations comply with subsections 251(d)(3)(B) and (C)*"). Therefore, the Commission's Order should be reconsidered to permit the Commission to undertake the required factual analysis.

**C. Access to 900/976 Blocking is not a UNE.**

The Commission also ordered that BellSouth must provide access to 900/976 blocking data as a UNE. BellSouth requests that the Commission reconsider this decision based on the facts herein, or provide BellSouth the opportunity for a hearing on this issue.

The definition of a network element includes “a facility or equipment used in the provision of a telecommunications service” as well as “information sufficient for billing and collection or used in the transmission, routing, or other provision of a telecommunications service.” 47 U.S.C. § 153(29). Pursuant to this definition, BellSouth offers CLECs a 900 blocking service for resale that enables a CLEC to offer its customers the ability to block 900 calls from being placed from their lines. BellSouth, does not, however, maintain a separate, discrete system – mechanized or otherwise – which identifies BellSouth end-user accounts subject to 900/976 call blocking. The information appears *only* in individual customer service records (or by inspection of the individual lines in the central office switch). Simply put, BellSouth does not have a database that provides 900/976 blocking information to which it could provide Pilgrim access, even if it were obligated to do so.

Moreover, access to 900/976 blocking information is not a call-related database. As discussed above, call-related databases are databases used “for purposes of switch query and database response through a signaling network....” 47 C.F.R. § 51.319. Aggregate 900/976 blocking information, unlike a call-related database, does not reside in an accessible manner on the switch or in the signaling network. Rather, 900/976 calls are blocked by submitting the appropriate CREX Universal Service Order Codes via a Service Order which then causes the correct Line Class Code to be assigned to the individual line in the switch. The Line Class Code on the individual line results in routing that blocks the 900/976 calls. In other words, the 900/976 blocking service is provided on a per line basis. Thus, there is no centralized switch location that is queried to provide the blocking information. Rather, 900/976 blocking is provisioned via a line

class code on each individual line. Because there is no switch query or database response through a signaling network for this information, the information cannot constitute a call-related database.

Furthermore, access to 900/976 blocking information is available through BellSouth's OSS on an individual customer basis, and access to OSS is the UNE. 47 C.F.R. § 51.391(g). Through one of BellSouth's electronic interfaces (TAG and LENS), Pilgrim can access BellSouth's OSS, and thereby retrieve the CSR for the customer it wants to serve. With the customer's permission, Pilgrim can view the CSR and determine whether the particular customer has 900/976 blocking on their line.<sup>9</sup> An example of the CSR with the 900/976 blocking information highlighted is attached hereto as Exhibit B. Thus, Pilgrim can obtain the information it wants through the UNEs BellSouth already provides. Neither the Act nor the FCC rules, however, obligate BellSouth to provide CLECs access to the information itself as a UNE. Rather, BellSouth only is obligated to provide access to OSS, which it does in a nondiscriminatory manner.

In addition to the legal validity of BellSouth's position, it is a practical one. It would be unfair, if not impossible, for BellSouth to format the information in its databases to meet the particular needs of every CLEC with whom it does business. Rather, BellSouth provides nondiscriminatory access to OSS, and the individual CLEC can then manipulate the data available in any way it sees fit. The bottom line, however, is that through access to OSS, BellSouth already provides Pilgrim access to the information about whether or not a particular customer has 900/976 blocking in the

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<sup>9</sup> BellSouth has a box that the CLEC must check before viewing a customer service record that certifies that the CLEC has the customer's permission to view the record.

customer service records, and in fact provides access to it in the only place such information exists.<sup>10</sup> Ordering BellSouth to unbundle a database that does not exist is meaningless and unnecessary, particularly when CLECs have access to OSS and thereby have access to customer service records which contain 900/976 blocking information.

Pilgrim's desire for access to an alleged "database" of 900 blocking information appears to stem from its practice of providing pay-per-call services over lines other than 900 lines. This provisioning method violates FCC regulations, which mandate the exclusive use of the 900 service access code to furnish pay-per-call offerings, unless the pay-per-call provider has a presubscription agreement with the end-user. 47 C.F.R. § 64.1501(a)(3). Upon information and belief, Pilgrim wants access to 900/976 blocking information so when customers who have 900/976 blocking use these conventional lines to access Pilgrim's services, Pilgrim can block charges to the customers for such calls so as not to raise regulatory questions about its services via customer complaints. See Letter to Stan Kugel of Pilgrim Telephone, Inc. from Annette Drummonds, October 10, 1997 (attached hereto as Exhibit C). This use of 900/976 blocking information to circumvent FCC regulations is not appropriate and should not be sanctioned by the Commission.

Finally, because access to 900/976 blocking information is neither a call-related database nor access to OSS, the FCC did not consider whether access to 900/976 blocking information constituted a UNE in its *Third Report and Order*. Thus, to add access to 900/976 blocking information to the list of UNEs, the Commission is obligated to undertake a "necessary and impair" analysis pursuant to the Act. See *Third Report and*

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<sup>10</sup> It is also important to remember that 900/976 blocking information is customer proprietary network information, and thus cannot be disclosed without consent of the end-user. When obtained as part of the customer service record, the CLEC must certify that it has the customer's consent to view the information.

*Order*, ¶ 153. Because there was no record developed on the availability of access to 900/976 blocking information, the Commission could not have performed such any analysis, and thus did not comply with the FCC's directive.

**D. Only carriers providing local service are entitled to avail themselves of UNEs.**

In its pleadings, Pilgrim appeared to take the position that as an interexchange carrier, it is entitled to avail itself of UNEs. (Pilgrim Response, at 17) ("ILECs such as BellSouth must provide unbundled, nondiscriminatory access to all telecommunications carriers, including IXCs such as Pilgrim."). Pilgrim is not a local provider and has made no attempt to become a local provider. According to Pilgrim, it "is an interexchange carrier and enhanced service provider providing various services to customers throughout the United States." (Petition, at ¶ 1). According to information on the Internet, Pilgrim provides such services as "Adults Only – Our Nation's Little Secret," including "the Fantasy Line, Intimate Connections and the "Mens Room," and "Intimate Connections™," a service Pilgrim claims "captures business from readers who are '900/976 averse'" by using a 800 number to reach 900-type services. (*See* Exhibit D hereto).<sup>11</sup> Pilgrim does not provide local service in Kentucky, and has not indicated that it intends to do so.<sup>12</sup> Rather, Pilgrim has stated that it "intends to use its access to BellSouth's UNEs to

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Even if BellSouth had a database of 900/976 blocking information, which it does not, Pilgrim would need the customer's permission for every entry it viewed.

<sup>11</sup> The nature of the services Pilgrim provides is one of the reasons the parties have not been able to reach agreement on a billing and collection contract. BellSouth has consistently declined to bill for certain program types, including chat lines and programming of a sexually explicit nature, and this right has been upheld against legal challenge. *Carlin Comm., Inc. v. Southern Bell Tel. & Tel. Co.*, 802 F.2d 1352 (11<sup>th</sup> Cir. 1986). Moreover, BellSouth has informed Pilgrim that Pilgrim's practice of offering access to "pay-per-call" services over conventional telephone lines (i.e. 800 numbers) violates FCC regulations, which mandate the exclusive use of the 900 service access code to furnish pay-per-call offerings. *See* 47 U.S.C. § 64.1501(a)(3).

<sup>12</sup> The closest Pilgrim comes to such a statement is its representation that "Pilgrim also plans to offer intra-exchange telecommunications service." (Petition, at ¶ 2).

provide, for example, teleconferencing and telemessaging services,” (Pilgrim Response, at 15), services which are generally interstate in nature.

Pilgrim contends that despite the fact that it does not provide local service, it is a “telecommunications provider” under the Act and therefore is entitled to negotiate an interconnection agreement and purchase UNEs. The crucial point that Pilgrim ignores, however, is that UNEs are designed to facilitate the provision of *local* service; interexchange carriers, such as AT&T, MCI and Pilgrim, are not entitled to purchase UNEs to provide interexchange services. As the FCC made clear in its *First Report and Order*, “an IXC that requests interconnection solely for the purpose of originating and terminating its *interexchange* traffic, not for the provision of telephone exchange service and exchange access to others, on an incumbent LEC’s network is not entitled to receive interconnection pursuant to section 251(c)(2).”<sup>13</sup> The FCC went on to hold that “we conclude that a carrier may not obtain interconnection pursuant to section 251(c)(2) for the purpose of terminating interexchange traffic, even if that traffic was originated by a local exchange customer in a different telephone exchange of the same carrier providing the interexchange service, if it does not offer exchange access service to others.” *Id.* Thus, Pilgrim’s broad conclusion that “BellSouth must provide unbundled, nondiscriminatory access to all telecommunications carriers, including IXCs such as Pilgrim,” (Pilgrim Response, at 17), ignores one crucial limiting factor – the telecommunications carriers to whom BellSouth provides UNEs must be providing *local* service. *Id.* If Pilgrim does not provide local service, it is not entitled to purchase UNEs.

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<sup>13</sup> *First Report and Order*, In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996 and Interconnection between Local Exchange Carriers and Commercial Mobile Radio Service Providers, CC Docket Nos. 96-98 and 95-185, at ¶ 191 (Released August 8, 1996) (hereinafter “First Report and Order”).

## CONCLUSION

BellSouth respectfully requests that the Commission reconsider its Order to the extent that it provides that access to the BNA database and access to 900/976 blocking information are UNEs. At a minimum, BellSouth requests that the Commission withdraw its Order pending a hearing, or other opportunity for BellSouth to present its case. The Commission should undertake a process to develop a factual record upon which the underlying issues in the arbitration can be resolved. In addition, the conclusory, unsubstantiated allegations in Pilgrim's pleadings are not sufficient to support an analysis of the "necessary and impair" standard. Without an opportunity to present its case, BellSouth was denied its due process, and the Commission was denied the opportunity to make a decision on these important issues on a fully developed factual record.

This 24th day of January, 2000.

BELLSOUTH TELECOMMUNICATIONS, INC.



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BEFORE THE  
KENTUCKY PUBLIC SERVICE COMMISSION  
CASE NO. 99-385

RECEIVED  
JAN 21 2000  
PUBLIC SERVICE  
COMMISSION

PILGRIM TELEPHONE, INC.

PETITIONER

V. **PILGRIM TELEPHONE'S RESPONSE**  
**PURSUANT TO THE COMMISSION'S ORDER OF JANUARY 11, 2000**

BELLSOUTH TELECOMMUNICATIONS, INC.

RESPONDENT

\* \* \* \* \*

Pilgrim Telephone, Inc. ("Pilgrim"), through counsel, hereby responds to the Commission's order of January 11, 2000:

Pilgrim seeks access to BellSouth's Operational Support System ("OSS") information and related features and functions to utilize BellSouth's billing and collection service with additional functionalities to create Pilgrims' telecommunications service. A form of billing and collection service is available from BellSouth under tariff. The tariff generally describes the service Pilgrim seeks, but the tariffed service is limited and provides fewer of the functionalities than required to be provided interconnecting carriers as an unbundled network element ("UNE"). Therefore by utilizing unbundled OSS functions and features, Pilgrim seeks to utilize BellSouth's billing and collection service in a manner similar to that outlined in the tariff, but with enhanced functionality. Pilgrim seeks to have this service provided by BellSouth on rates, terms and conditions which are fair, reasonable and non-discriminatory.

The tariff appears to be limited to the billing of intrastate services, and interconnecting carriers have needs for the billing and collection of exchange access and interstate services. The tariff offering is limited to telecommunications services, which would also appear to limit the services that an interconnecting carrier might be able to bill after providing these services to a customer. One example of services not contemplated under the tariff are Internet and IP telephony services, which BellSouth bills to its customers, but which billing for interconnecting carriers is excluded under the tariff.

The tariff also contains potentially anti-competitive requirements that would not be imposed on an interconnecting carrier such as the requirement that the interconnecting carrier provide to BellSouth detailed service information and copies of marketing plans. Requiring one carrier to divulge this information to another raises serious anti-competitive concerns. The pricing in the tariff also appears to be greater than the avoided cost standard outlined by the Commission in its order. There is no pricing contained in the tariff for the additional functionalities and differences in service sought by Pilgrim.

Other functionalities that Pilgrim seeks in addition to the billing and collection service outlined by BellSouth in its tariff include the following:

1. Formatting. BellSouth gives itself access to the full range of their billing systems' capabilities for controlling the billing formats, logos, customer service numbers, separate bill pages, regulatory notices, marketing messages, and service descriptions. The same level of flexibility is not available to interconnecting carriers under the tariff offering.

2. Customer service, inquiry and complaint procedures. The tariff offering does not allow Pilgrim to negotiate with BellSouth customer service procedures for handling customer questions about bills and services, refund and forgiveness policies, blocking policies, etc.

3. Payment/Accounting data. BellSouth gets timely and detailed data on customer payments and failures to pay. The purchase of accounts receivable (PARS) process does not guarantee that to interconnecting carriers. Often, PARS provides delayed information, and does not provide detail on non-payment, late payment, collections, or bad debt write-off.

The foregoing list identifies some, but not necessarily all, of the OSS information and related functions and features which Pilgrim may need in order to utilize BellSouth's billing and collection service on an unbundled basis. Therefore, Pilgrim: (a) reserves the right to identify other needed functionalities as negotiations with BellSouth proceed, (b) requests that in light of the Commission's finding that OSS functions are UNEs, the Commission order BellSouth to enter negotiations with Pilgrim to provide the billing and collection service, real-time billing name and address data, and real-time 900/976 blocking data, as unbundled network elements.

Respectfully submitted,

WYATT, TARRANT & COMBS

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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a copy of the foregoing Notice of Election Regarding Billing and Collection was served upon the following by U.S. mail, postage prepaid, this 21<sup>st</sup> day of January, 2000:

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Craig R Paulus  
COUNSEL FOR PETITIONER

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of: )

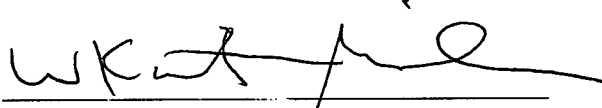
)  
THE PETITION BY PILGRIM TELEPHONE, )  
INC. FOR ARBITRATION OF CERTAIN )  
TERMS AND CONDITIONS WITH )  
BELLSOUTH TELECOMMUNICATIONS, )  
INC. PURSUANT TO SECTION 252(B) )  
OF THE TELECOMMUNICATIONS ACT )  
OF 1996 )

Case No.  
1999-385

VERIFICATION

I, Keith Milner, hereby verify that the facts contained herein dealing with the technical aspects of access to the BNA database and access to 900/976 blocking information are true and correct to the best of my knowledge.

Date: JAN 21, 2000

  
\_\_\_\_\_  
Keith Milner

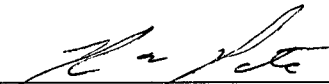
COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of: )  
)  
THE PETITION BY PILGRIM TELEPHONE, )  
INC. FOR ARBITRATION OF CERTAIN ) Case No.  
TERMS AND CONDITIONS WITH ) 1999-385  
BELLSOUTH TELECOMMUNICATIONS, )  
INC. PURSUANT TO SECTION 252(B) )  
OF THE TELECOMMUNICATIONS ACT )  
OF 1996 )

VERIFICATION

I, Ron Pate, hereby verify that the facts contained herein dealing with access to BellSouth's OSS are true and correct to the best of my knowledge.

Date: 1/21/00

  
\_\_\_\_\_  
Ron Pate

**EXHIBIT A**

**Attachment 7**

**Billing and Billing Accuracy Certification**

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**Rates.....Exhibit A**



## BILLING AND BILLING ACCURACY CERTIFICATION

### 1. Payment and Billing Arrangements

All negotiated rates, terms and conditions set forth in this Attachment pertain to billing and billing accuracy certifications.

- 1.1 Billing. BellSouth agrees to provide billing through the Carrier Access Billing System (CABS) and through the Customer Records Information System (CRIS) depending on the particular service(s) that CLEC-1 requests. BellSouth will bill and record in accordance with this Agreement those charges CLEC-1 incurs as a result of CLEC-1 purchasing from BellSouth Network Elements and Other Services as set forth in this Agreement. BellSouth will format all bills in CBOS Standard or CLUB/EDI format, depending on the type of service ordered. For those services where standards have not yet been developed, BellSouth's billing format will change as necessary when standards are finalized by the industry forum.
- 1.1.1 For any service(s) BellSouth orders from CLEC-1, CLEC-1 shall bill BellSouth in CABS format.
- 1.1.2 If either Party requests multiple billing media or additional copies of bills, the Billing Party will provide these at a reasonable cost.
- 1.2 Master Account. After receiving certification as a local exchange company from the appropriate regulatory agency, CLEC-1 will provide the appropriate BellSouth account manager the necessary documentation to enable BellSouth to establish a master account for Local Interconnection, Network Elements and Other Services, and/or resold services. Such documentation shall include the Application for Master Account, proof of authority to provide telecommunications services, an Operating Company Number ("OCN") assigned by the National Exchange Carriers Association ("NECA"), Carrier Identification Code (CIC), Group Access Code (GAC), Access Customer Name and Address (ACNA) and a tax exemption certificate, if applicable.
- 1.3 Payment Responsibility. Payment of all charges will be the responsibility of CLEC-1. CLEC-1 shall make payment to BellSouth for all services billed. BellSouth is not responsible for payments not received by CLEC-1 from CLEC-1's customer. BellSouth will not become involved in billing disputes that may arise between CLEC-1 and its customer. Payments made to BellSouth as payment on account will be credited to an accounts receivable master account and not to an end user's account.
- 1.4 Payment Due. The payment will be due by the next bill date (i.e., same date in the following month as the bill date) and is payable in immediately available funds. Payment is considered to have been made when received by BellSouth.

If the payment due date falls on a Sunday or on a Holiday which is observed on a Monday, the payment due date shall be the first non-Holiday day following such Sunday or Holiday. If the payment due date falls on a Saturday or on a Holiday which is observed on Tuesday, Wednesday, Thursday, or Friday, the payment due date shall be the last non-Holiday day preceding such Saturday or Holiday. If payment is not received by the payment due date, a late payment penalty, as set forth in Section 1.7, below, shall apply.

- 1.5 Tax Exemption. Upon proof of tax exempt certification from CLEC-1, the total amount billed to CLEC-1 will not include those taxes or fees for which the CLEC is exempt. CLEC-1 will be solely responsible for the computation, tracking, reporting and payment of all taxes and like fees associated with the services provided to the end user of CLEC-1.
- 1.6 Late Payment. If any portion of the payment is received by BellSouth after the payment due date as set forth preceding, or if any portion of the payment is received by BellSouth in funds that are not immediately available to BellSouth, then a late payment penalty shall be due to BellSouth. The late payment penalty shall be the portion of the payment not received by the payment due date times a late factor and will be applied on a per bill basis. The late factor shall be as set forth in Section A2 of the General Subscriber Services Tariff, Section B2 of the Private Line Service Tariff or Section E2 of the Intrastate Access Tariff, whichever BellSouth determines is appropriate. CLEC-1 will be charged a fee for all returned checks as set forth in Section A2 of the General Subscriber Services Tariff or in applicable state law.
- 1.7 Discontinuing Service to CLEC-1. The procedures for discontinuing service to CLEC-1 are as follows:
  - 1.7.1 BellSouth reserves the right to suspend or terminate service for nonpayment or in the event of prohibited, unlawful or improper use of BellSouth facilities or service or any other violation or noncompliance by CLEC-1 of the rules and regulations contained in BellSouth's tariffs.
  - 1.7.2 If payment of account is not received by the bill day in the month after the original bill day, BellSouth may provide written notice to CLEC-1 that additional applications for service will be refused and that any pending orders for service will not be completed if payment is not received by the fifteenth day following the date of the notice. In addition, BellSouth may, at the same time, give thirty days notice to CLEC-1 at the billing address to discontinue the provision of existing services to CLEC-1 at any time thereafter.
  - 1.7.3 In the case of such discontinuance, all billed charges, as well as applicable termination charges, shall become due.

- 1.7.4 If BellSouth does not discontinue the provision of the services involved on the date specified in the thirty days notice and CLEC-1's noncompliance continues, nothing contained herein shall preclude BellSouth's right to discontinue the provision of the services to CLEC-1 without further notice.
- 1.7.5 If payment is not received or satisfactory arrangements made for payment by the date given in the written notification, CLEC-1's services will be discontinued. Upon discontinuance of service on CLEC-1's account, service to the CLEC-1's end users will be denied. BellSouth will reestablish service at the request of the end user or CLEC-1 for BellSouth to reestablish service upon payment of the appropriate connection fee and subject to BellSouth's normal application procedures. CLEC-1 is solely responsible for notifying the end user of the proposed service disconnection. If within fifteen days after an end user's service has been denied and no arrangements to reestablish service have been made consistent with this subsection, the end user's service will be disconnected.
- 1.8 Deposit Policy. When purchasing services from BellSouth, CLEC-1 will be required to complete the BellSouth Credit Profile and provide information regarding credit worthiness. Based on the results of the credit analysis, the Company reserves the right to secure the account with a suitable form of security deposit. Such security deposit shall take the form of cash, an Irrevocable Letter of Credit (BellSouth form), Surety Bond (BellSouth form) or in its sole discretion some other form of security. Any such security deposit shall in no way release the customer from his obligation to make complete and timely payments of his bill. Such security shall be required prior to the inauguration of service. If, in the sole opinion of the Company, circumstances so warrant and/or gross monthly billing has increased beyond the level initially used to determine the level of security, the Company reserves the right to request additional security and/or file a Uniform Commercial Code (UCC1) security interest in CLEC-1's "accounts receivables and proceeds." Interest on a security deposit, if provided in cash, shall accrue and be paid in accordance with the terms in the appropriate BellSouth tariff.
- 1.9 Rates. Rates for Optional Daily Usage File (ODUF), Enhanced Optional Daily Usage File (EODUF), Access Daily Usage File (ADUF), and Centralized Message Distribution Service (CMDs) are set out in Exhibit A to this Attachment. If no rate is identified in the contract, the rate for the specific service or function will be as set forth in applicable BellSouth tariff or as negotiated by the Parties upon request by either Party.

## **2. Billing Accuracy Certification**

- 2.1 Upon request, BellSouth and CLEC-1 will agree upon a billing quality assurance program for all billing elements covered in this Agreement that will eliminate the need for post-billing reconciliation. Appropriate terms for access to any BellSouth

documents, systems, records, and procedures for the recording and billing of charges will be part of that program.

- 2.2 As part of the billing quality assurance program, BellSouth and CLEC-1 will develop standards, measurements, and performance requirements for a local billing measurements process. On a regular basis BellSouth will provide CLEC-1 with mutually agreed upon performance measurement data that substantiates the accuracy, reliability, and integrity of the billing process for local billing. In return, CLEC-1 will pay all bills received from BellSouth in full by the payment due date.
- 2.3 Local billing discrepancies will be addressed in an orderly manner via a mutually agreed upon billing exemption process.
  - 2.3.1 Each Party agrees to notify the other Party upon identifying a billing discrepancy. The Parties shall endeavor to resolve any billing discrepancy within sixty (60) calendar days of the notification date. A mutually agreed upon escalation process will be established for resolving local billing discrepancies as part of the billing quality assurance program.
  - 2.3.2 Closure of a specific billing period will occur by joint agreement of the Parties whereby the Parties agree that such billing period is closed to any further analysis and financial transactions except those resulting from regulatory mandates. Closure will take place within a mutually agreed upon time interval from the Bill Date. The month being closed represents those charges that were billed or should have been billed by the designated Bill Date.

### **3. Billing Disputes**

- 3.1 Where the Parties have not agreed upon a billing quality assurance program, billing disputes shall be handled pursuant to the terms of this section
  - 3.1.1 Each Party agrees to notify the other Party in writing upon the discovery of a billing dispute. In the event of a billing dispute, the Parties will endeavor to resolve the dispute within sixty (60) calendar days of the notification date.
- 3.2 If a Party disputes a charge and does not pay such charge by the payment due date, or if a payment or any portion of a payment is received by either Party after the payment due date, or if a payment or any portion of a payment is received in funds which are not immediately available to the other Party, then a late payment penalty shall be assessed. For bills rendered by either Party for payment, the late payment charge for both Parties shall be calculated based on the portion of the payment not received by the payment due date times the late factor as set forth in the following BellSouth tariffs: for services purchased from the General Subscribers Services Tariff for

purposes of resale and for ports and non-designed loops, Section A2 of the General Subscriber Services Tariff; for services purchased from the Private Line Tariff for purposes of resale, Section B2 of the Private Line Service Tariff; and for network elements and other services and local interconnection charges, Section E2 of the Access Service Tariff. In no event, however, shall interest be assessed by either Party on any previously assessed late payment charges. The Parties shall assess interest on previously assessed late payment charges only in a state where it has the authority pursuant to its tariffs.

**4. RAO Hosting**

- 4.1 RAO Hosting, Calling Card and Third Number Settlement System (CATS) and Non-Intercompany Settlement System (NICS) services provided to CLEC-1 by BellSouth will be in accordance with the methods and practices regularly adopted and applied by BellSouth to its own operations during the term of this Agreement, including such revisions as may be made from time to time by BellSouth.
- 4.2 CLEC-1 shall furnish all relevant information required by BellSouth for the provision of RAO Hosting, CATS and NICS.
- 4.3 Compensation amounts, if applicable, will be billed by BellSouth to CLEC-1 on a monthly basis in arrears. Amounts due from one Party to the other (excluding adjustments) are payable within thirty (30) days of receipt of the billing statement.
- 4.4 CLEC-1 must have its own unique hosted RAO code. Requests for establishment of RAO status where BellSouth is the selected Centralized Message Distribution System (CMDS) interfacing host, require written notification from CLEC-1 to the BellSouth RAO Hosting coordinator at least eight (8) weeks prior to the proposed effective date. The proposed effective date will be mutually agreed upon between the Parties with consideration given to time necessary for the completion of required Telcordia (formerly BellCore) functions. BellSouth will request the assignment of an RAO code from its connecting contractor, currently Telcordia (formerly BellCore), on behalf of CLEC-1 and will coordinate all associated conversion activities.
- 4.5 BellSouth will receive messages from CLEC-1 that are to be processed by BellSouth, another LEC or CLEC in the BellSouth region or a LEC outside the BellSouth region.
- 4.6 BellSouth will perform invoice sequence checking, standard EMI format editing, and balancing of message data with the EMI trailer record counts on all data received from CLEC-1.
- 4.7 All data received from CLEC-1 that is to be processed or billed by another LEC or CLEC within the BellSouth region will be distributed to that LEC or CLEC in

accordance with the Agreement(s) which may be in effect between BellSouth and the involved LEC or CLEC.

- 4.8 All data received from CLEC-1 that is to be placed on the CMDS network for distribution outside the BellSouth region will be handled in accordance with the agreement(s) which may be in effect between BellSouth and its connecting contractor (currently Telcordia (formerly BellCore)).
- 4.9 BellSouth will receive messages from the CMDS network that are destined to be processed by CLEC-1 and will forward them to CLEC-1 on a daily basis.
- 4.10 Transmission of message data between BellSouth and CLEC-1 will be via CONNECT:Direct.
- 4.11 All messages and related data exchanged between BellSouth and CLEC-1 will be formatted in accordance with accepted industry standards for EMI formatted records and packed between appropriate EMI header and trailer records, also in accordance with accepted industry standards.
- 4.12 CLEC-1 will ensure that the recorded message detail necessary to recreate files provided to BellSouth will be maintained for back-up purposes for a period of three (3) calendar months beyond the related message dates.
- 4.13 Should it become necessary for CLEC-1 to send data to BellSouth more than sixty (60) days past the message date(s), CLEC-1 will notify BellSouth in advance of the transmission of the data. If there will be impacts outside the BellSouth region, BellSouth will work with its connecting contractor and CLEC-1 to notify all affected Parties.
- 4.14 In the event that data to be exchanged between the two Parties should become lost or destroyed, both Parties will work together to determine the source of the problem. Once the cause of the problem has been jointly determined and the responsible Party (BellSouth or CLEC-1) identified and agreed to, the company responsible for creating the data (BellSouth or CLEC-1) will make every effort to have the affected data restored and retransmitted. If the data cannot be retrieved, the responsible Party will be liable to the other Party for any resulting lost revenue. Lost revenue may be a combination of revenues that could not be billed to the end users and associated access revenues. Both Parties will work together to estimate the revenue amount based upon historical data through a method mutually agreed upon. The resulting estimated revenue loss will be paid by the responsible Party to the other Party within three (3) calendar months of the date of problem resolution, or as mutually agreed upon by the Parties.
- 4.15 Should an error be detected by the EMI format edits performed by BellSouth on data received from CLEC-1, the entire pack containing the affected data will not be

processed by BellSouth. BellSouth will notify CLEC-1 of the error condition. CLEC-1 will correct the error(s) and will resend the entire pack to BellSouth for processing. In the event that an out-of-sequence condition occurs on subsequent packs, CLEC-1 will resend these packs to BellSouth after the pack containing the error has been successfully reprocessed by BellSouth.

4.16 In association with message distribution service, BellSouth will provide CLEC-1 with associated intercompany settlements reports (CATS and NICS) as appropriate.

4.17 In no case shall either Party be liable to the other for any direct or consequential damages incurred as a result of the obligations set out in this Agreement.

4.18 RAO Compensation

4.18.1 Rates for message distribution service provided by BellSouth for CLEC-1 are as set forth in Exhibit A to this Attachment.

4.18.2 Rates for data transmission associated with message distribution service are as set forth in Exhibit A to this Attachment .

4.18.3 Data circuits (private line or dial-up) will be required between BellSouth and CLEC-1 for the purpose of data transmission. Where a dedicated line is required, CLEC-1 will be responsible for ordering the circuit, overseeing its installation and coordinating the installation with BellSouth. CLEC-1 will also be responsible for any charges associated with this line. Equipment required on the BellSouth end to attach the line to the mainframe computer and to transmit successfully ongoing will be negotiated on a case by case basis. Where a dial-up facility is required, dial circuits will be installed in the BellSouth data center by BellSouth and the associated charges assessed to CLEC-1. Additionally, all message toll charges associated with the use of the dial circuit by CLEC-1 will be the responsibility of CLEC-1. Associated equipment on the BellSouth end, including a modem, will be negotiated on a case by case basis between the Parties.

4.18.4 All equipment, including modems and software, that is required on the CLEC-1 end for the purpose of data transmission will be the responsibility of CLEC-1.

4.19 Intercompany Settlements Messages

4.19.1 This Section addresses the settlement of revenues associated with traffic originated from or billed by CLEC-1 as a facilities based provider of local exchange telecommunications services outside the BellSouth region. Only traffic that originates in one Bell operating territory and bills in another Bell operating territory is included. Traffic that originates and bills within the same Bell operating territory will be settled on a local basis between CLEC-1 and the involved company(ies), unless that company is participating in NICS.

- 4.19.2 Both traffic that originates outside the BellSouth region by CLEC-1 and is billed within the BellSouth region, and traffic that originates within the BellSouth region and is billed outside the BellSouth region by CLEC-1, is covered by this Agreement (CATS). Also covered is traffic that either is originated by or billed by CLEC-1, involves a company other than CLEC-1, qualifies for inclusion in the CATS settlement, and is not originated or billed within the BellSouth region (NICS).
- 4.19.3 Once CLEC-1 is operating within the BellSouth territory, revenues associated with calls originated and billed within the BellSouth region will be settled via Telcordia (formerly BellCore)'s, its successor or assign, NICS system.
- 4.19.4 BellSouth will receive the monthly NICS reports from Telcordia (formerly BellCore), its successor or assign, on behalf of CLEC-1. BellSouth will distribute copies of these reports to CLEC-1 on a monthly basis.
- 4.19.5 BellSouth will receive the monthly Calling Card and Third Number Settlement System (CATS) reports from Telcordia (formerly BellCore), its successor or assign, on behalf of CLEC-1. BellSouth will distribute copies of these reports to CLEC-1 on a monthly basis.
- 4.19.6 BellSouth will collect the revenue earned by CLEC-1 from the Bell operating company in whose territory the messages are billed (CATS), less a per message billing and collection fee of five cents (\$0.05), on behalf of CLEC-1. BellSouth will remit the revenue billed by CLEC-1 to the Bell operating company in whose territory the messages originated, less a per message billing and collection fee of five cents (\$0.05), on behalf of CLEC-1. These two amounts will be netted together by BellSouth and the resulting charge or credit issued to CLEC-1 via a monthly Carrier Access Billing System (CABS) miscellaneous bill.
- 4.19.7 BellSouth will collect the revenue earned by CLEC-1 within the BellSouth territory from another CLEC also within the BellSouth territory (NICS) where the messages are billed, less a per message billing and collection fee of five cents (\$0.05), on behalf of CLEC-1. BellSouth will remit the revenue billed by CLEC-1 within the BellSouth region to the CLEC also within the BellSouth region, where the messages originated, less a per message billing and collection fee of five cents (\$0.05). These two amounts will be netted together by BellSouth and the resulting charge or credit issued to CLEC-1 via a monthly Carrier Access Billing System (CABS) miscellaneous bill.

BellSouth and CLEC-1 agree that monthly netted amounts of less than fifty dollars (\$50.00) will not be settled.



**5. Optional Daily Usage File**

5.1 Upon written request from CLEC-1, BellSouth will provide the Optional Daily Usage File (ODUF) service to CLEC-1 pursuant to the terms and conditions set forth in this section.

5.2 The CLEC-1 shall furnish all relevant information required by BellSouth for the provision of the Optional Daily Usage File.

5.3 The Optional Daily Usage Feed will contain billable messages that were carried over the BellSouth Network and processed in the BellSouth Billing System, but billed to a CLEC-1 customer.

Charges for delivery of the Optional Daily Usage File will appear on the CLEC-1s' monthly bills. The charges are as set forth in Exhibit A to this Attachment.

5.4 The Optional Daily Usage Feed will contain both rated and unrated messages. All messages will be in the standard Alliance for Telecommunications Industry Solutions (ATIS) EMI record format.

5.5 Messages that error in the billing system of the CLEC-1 will be the responsibility of the CLEC-1. If, however, the CLEC-1 should encounter significant volumes of errored messages that prevent processing by the CLEC-1 within its systems, BellSouth will work with the CLEC-1 to determine the source of the errors and the appropriate resolution.

5.6 The following specifications shall apply to the Optional Daily Usage Feed.

5.6.1 Usage To Be Transmitted

5.6.1.1 The following messages recorded by BellSouth will be transmitted to the CLEC-1:

- Message recording for per use/per activation type services (examples: Three Way Calling, Verify, Interrupt, Call Return, ETC.)
- Measured billable Local
- Directory Assistance messages
- IntraLATA Toll
- WATS & 800 Service
  
- N11
- Information Service Provider Messages
- Operator Services Messages
- Operator Services Message Attempted Calls (Network Element only)
- Credit/Cancel Records

- Usage for Voice Mail Message Service

5.6.1.2 Rated Incollets (originated in BellSouth and from other companies) can also be on Optional Daily Usage File. Rated Incollets will be intermingled with BellSouth recorded rated and unrated usage. Rated Incollets will not be packed separately.

5.6.1.3 BellSouth will perform duplicate record checks on records processed to Optional Daily Usage File. Any duplicate messages detected will be deleted and not sent to CLEC-1.

5.6.1.4 In the event that CLEC-1 detects a duplicate on Optional Daily Usage File they receive from BellSouth, CLEC-1 will drop the duplicate message (CLEC-1 will not return the duplicate to BellSouth).

5.6.2 Physical File Characteristics

5.6.2.1 The Optional Daily Usage File will be distributed to CLEC-1 via an agreed medium with CONNECT:Direct being the preferred transport method. The Daily Usage Feed will be a variable block format (2476) with an LRECL of 2472. The data on the Daily Usage Feed will be in a non-compacted EMI format (175 byte format plus modules). It will be created on a daily basis (Monday through Friday except holidays). Details such as dataset name and delivery schedule will be addressed during negotiations of the distribution medium. There will be a maximum of one dataset per workday per OCN.

5.6.2.2 Data circuits (private line or dial-up) may be required between BellSouth and CLEC-1 for the purpose of data transmission. Where a dedicated line is required, CLEC-1 will be responsible for ordering the circuit, overseeing its installation and coordinating the installation with BellSouth. CLEC-1 will also be responsible for any charges associated with this line. Equipment required on the BellSouth end to attach the line to the mainframe computer and to transmit successfully ongoing will be negotiated on a case by case basis. Where a dial-up facility is required, dial circuits will be installed in the BellSouth data center by BellSouth and the associated charges assessed to CLEC-1. Additionally, all message toll charges associated with the use of the dial circuit by CLEC-1 will be the responsibility of CLEC-1. Associated equipment on the BellSouth end, including a modem, will be negotiated on a case by case basis between the Parties. All equipment, including modems and software, that is required on CLEC-1 end for the purpose of data transmission will be the responsibility of CLEC-1.

5.6.3 Packing Specifications

5.6.3.1 A pack will contain a minimum of one message record or a maximum of 99,999 message records plus a pack header record and a pack trailer record. One transmission can contain a maximum of 99 packs and a minimum of one pack.

- 5.6.3.2 The OCN, From RAO, and Invoice Number will control the invoice sequencing. The From RAO will be used to identify to CLEC-1 which BellSouth RAO that is sending the message. BellSouth and CLEC-1 will use the invoice sequencing to control data exchange. BellSouth will be notified of sequence failures identified by CLEC-1 and resend the data as appropriate.

The data will be packed using ATIS EMI records.

5.6.4 Pack Rejection

- 5.6.4.1 CLEC-1 will notify BellSouth within one business day of rejected packs (via the mutually agreed medium). Packs could be rejected because of pack sequencing discrepancies or a critical edit failure on the Pack Header or Pack Trailer records (i.e. out-of-balance condition on grand totals, invalid data populated). Standard ATIS EMI Error Codes will be used. CLEC-1 will not be required to return the actual rejected data to BellSouth. Rejected packs will be corrected and retransmitted to CLEC-1 by BellSouth.

5.6.5 Control Data

CLEC-1 will send one confirmation record per pack that is received from BellSouth. This confirmation record will indicate CLEC-1 received the pack and the acceptance or rejection of the pack. Pack Status Code(s) will be populated using standard ATIS EMI error codes for packs that were rejected by CLEC-1 for reasons stated in the above section.

5.6.6 Testing

- 5.6.6.1 Upon request from CLEC-1, BellSouth shall send test files to CLEC-1 for the Optional Daily Usage File. The Parties agree to review and discuss the file's content and/or format. For testing of usage results, BellSouth shall request that CLEC-1 set up a production (LIVE) file. The live test may consist of CLEC-1's employees making test calls for the types of services CLEC-1 requests on the Optional Daily Usage File. These test calls are logged by CLEC-1, and the logs are provided to BellSouth. These logs will be used to verify the files. Testing will be completed within 30 calendar days from the date on which the initial test file was sent.

**6. Access Daily Usage File**

- 6.1. Upon written request from CLEC-1, BellSouth will provide the Access Daily Usage File (ADUF) service to CLEC-1 pursuant to the terms and conditions set forth in this section.

- 6.2 The CLEC-1 shall furnish all relevant information required by BellSouth for the provision of the Access Daily Usage File.
- 6.3 The Access Daily Usage Feed will contain access messages associated with a port that CLEC-1 has purchased from BellSouth
- 6.4 Charges for delivery of the Access Daily Usage File will appear on the CLEC-1s' monthly bills. The charges are as set forth in Exhibit A to this Attachment. All messages will be in the standard Alliance for Telecommunications Industry Solutions (ATIS) EMI record format.
- 6.5 Messages that error in the billing system of the CLEC-1 will be the responsibility of the CLEC-1. If, however, the CLEC-1 should encounter significant volumes of errored messages that prevent processing by the CLEC-1 within its systems, BellSouth will work with the CLEC-1 to determine the source of the errors and the appropriate resolution.
- 6.6 Usage To Be Transmitted
- 6.6.1 The following messages recorded by BellSouth will be transmitted to CLEC-1:
- Interstate and intrastate access records associated with a port.
- Undetermined jurisdiction access records associated with a port.
- 6.6.2 When CLEC-1 purchases Network Element ports from BellSouth and calls are made using these ports, BellSouth will handle the calls as follows:
- Originating from Network Element and carried by Interexchange Carrier:
- BellSouth will bill network element to CLEC and send access record to the CLEC via ADUF
- Originating from network element and carried by BellSouth (CLEC-1 is BellSouth's toll customer):
- BellSouth will bill resale toll rates to CLEC-1 and send toll record for the end user toll billing purposes via ODUF (Optional Daily Usage File). Access record will be sent to CLEC-1 via ADUF.
- Terminating on network element and carried by Interexchange Carrier:
- BellSouth will bill network element to CLEC-1 and send access record to CLEC-1.

Terminating on network element and carried by BellSouth:

BellSouth will bill network element to CLEC-1 and send access record to CLEC-1.

6.6.3 BellSouth will perform duplicate record checks on records processed to the Access Daily Usage File. Any duplicate messages detected will be dropped and not sent to CLEC-1.

6.6.4 In the event that CLEC-1 detects a duplicate on the Access Daily Usage File they receive from BellSouth, CLEC-1 will drop the duplicate message (CLEC-1 will not return the duplicate to BellSouth.)

#### 6.6.5 Physical File Characteristics

6.6.5.1 The Access Daily Usage File will be distributed to CLEC-1 via an agreed medium with CONNECT:Direct being the preferred transport method. The Daily Usage Feed will be a fixed block format (2476) with an LRECL of 2472. The data on the Daily Usage Feed will be in a non-compacted EMI format (210 byte format plus modules). It will be created on a daily basis (Monday through Friday except holidays). Details such as dataset name and delivery schedule will be addressed during negotiations of the distribution medium. There will be a maximum of one dataset per workday per OCN.

6.6.5.2 Data circuits (private line or dial-up) may be required between BellSouth and CLEC-1 for the purpose of data transmission. Where a dedicated line is required, CLEC-1 will be responsible for ordering the circuit, overseeing its installation and coordinating the installation with BellSouth. CLEC-1 will also be responsible for any charges associated with this line. Equipment required on the BellSouth end to attach the line to the mainframe computer and to transmit successfully ongoing will be negotiated on a case by case basis. Where a dial-up facility is required, dial circuits will be installed in the BellSouth data center by BellSouth and the associated charges assessed to CLEC-1. Additionally, all message toll charges associated with the use of the dial circuit by CLEC-1 will be the responsibility of CLEC-1. Associated equipment on the BellSouth end, including a modem, will be negotiated on a case by case basis between the Parties. All equipment, including modems and software, that is required on CLEC-1 end for the purpose of data transmission will be the responsibility of CLEC-1.

#### 6.6.6 Packing Specifications

6.6.6.1 A pack will contain a minimum of one message record or a maximum of 99,999 message records plus a pack header record and a pack trailer record. One transmission can contain a maximum of 99 packs and a minimum of one pack.

- 6.6.6.2 The OCN, From RAO, and Invoice Number will control the invoice sequencing. The From RAO will be used to identify to CLEC-1 which BellSouth RAO that is sending the message. BellSouth and CLEC-1 will use the invoice sequencing to control data exchange. BellSouth will be notified of sequence failures identified by CLEC-1 and resend the data as appropriate.

The data will be packed using ATIS EMI records.

6.6.7 Pack Rejection

- 6.6.7.1 CLEC-1 will notify BellSouth within one business day of rejected packs (via the mutually agreed medium). Packs could be rejected because of pack sequencing discrepancies or a critical edit failure on the Pack Header or Pack Trailer records (i.e. out-of-balance condition on grand totals, invalid data populated). Standard ATIS EMI Error Codes will be used. CLEC-1 will not be required to return the actual rejected data to BellSouth. Rejected packs will be corrected and retransmitted to CLEC-1 by BellSouth.

6.6.8 Control Data

CLEC-1 will send one confirmation record per pack that is received from BellSouth. This confirmation record will indicate CLEC-1 received the pack and the acceptance or rejection of the pack. Pack Status Code(s) will be populated using standard ATIS EMI error codes for packs that were rejected by CLEC-1 for reasons stated in the above section.

6.6.9 Testing

- 6.6.9.1 Upon request from CLEC-1, BellSouth shall send test files to CLEC-1 for the Access Daily Usage File. Testing shall consist of actual calls made from live accounts. A call log shall be supplied along with test request information. The Parties agree to review and discuss the file's content and/or format.

**7. Enhanced Optional Daily Usage File**

- 7.1 Upon written request from CLEC-1, BellSouth will provide the Enhanced Optional Daily Usage File (EODUF) service to CLEC-1 pursuant to the terms and conditions set forth in this section. EODUF will only be sent to existing ODUF subscribers who request the EODUF option.
- 7.2 The CLEC-1 shall furnish all relevant information required by BellSouth for the provision of the Enhanced Optional Daily Usage File.

7.3 The Enhanced Optional Daily Usage File (EODUF) will provide usage data for local calls originating from resold Flat Rate Business and Residential Lines.

Charges for delivery of the Enhanced Optional Daily Usage File will appear on the CLEC-1s' monthly bills. The charges are as set forth in Exhibit A to this Attachment.

7.4 All messages will be in the standard Alliance for Telecommunications Industry Solutions (ATIS) EMI record format.

7.5 Messages that error in the billing system of the CLEC-1 will be the responsibility of the CLEC-1. If, however, the CLEC-1 should encounter significant volumes of errored messages that prevent processing by the CLEC-1 within its systems, BellSouth will work with the CLEC-1 to determine the source of the errors and the appropriate resolution.

7.6 The following specifications shall apply to the Optional Daily Usage Feed.

7.6.1 Usage To Be Transmitted

7.6.1.1 The following messages recorded by BellSouth will be transmitted to the CLEC-1:

Customer usage data for flat rated local call originating from CLEC end user lines (1FB or 1FR). The EODUF record for flat rate messages will include:

Date of Call  
From Number  
To Number  
Connect Time  
Conversation Time  
Method of Recording  
From RAO  
Rate Class  
Message Type  
Billing Indicators  
Bill to Number

7.6.1.2 BellSouth will perform duplicate record checks on EODUF records processed to Optional Daily Usage File. Any duplicate messages detected will be deleted and not sent to CLEC-1.

7.6.1.3 In the event that CLEC-1 detects a duplicate on Enhanced Optional Daily Usage File they receive from BellSouth, CLEC-1 will drop the duplicate message (CLEC-1 will not return the duplicate to BellSouth).

## 7.6.2 Physical File Characteristics

- 7.6.2.1 The Enhanced Optional Daily Usage Feed will be distributed to CLEC-1 over their existing Optional Daily Usage File (ODUF) feed. The EODUF messages will be intermingled among CLEC-1's Optional Daily Usage File (ODUF) messages. The EODUF will be a variable block format (2476) with an LRECL of 2472. The data on the EODUF will be in a non-compacted EMI format (175 byte format plus modules). It will be created on a daily basis (Monday through Friday except holidays).
- 7.6.2.2 Data circuits (private line or dial-up) may be required between BellSouth and CLEC-1 for the purpose of data transmission. Where a dedicated line is required, CLEC-1 will be responsible for ordering the circuit, overseeing its installation and coordinating the installation with BellSouth. CLEC-1 will also be responsible for any charges associated with this line. Equipment required on the BellSouth end to attach the line to the mainframe computer and to transmit successfully ongoing will be negotiated on a case by case basis. Where a dial-up facility is required, dial circuits will be installed in the BellSouth data center by BellSouth and the associated charges assessed to CLEC-1. Additionally, all message toll charges associated with the use of the dial circuit by CLEC-1 will be the responsibility of CLEC-1. Associated equipment on the BellSouth end, including a modem, will be negotiated on a case by case basis between the Parties. All equipment, including modems and software, that is required on CLEC-1 end for the purpose of data transmission will be the responsibility of CLEC-1.

## 7.6.3 Packing Specifications

- 7.6.3.1 A pack will contain a minimum of one message record or a maximum of 99,999 message records plus a pack header record and a pack trailer record. One transmission can contain a maximum of 99 packs and a minimum of one pack.
- 7.6.3.2 The Operating Company Number (OCN), From Revenue Accounting Office (RAO), and Invoice Number will control the invoice sequencing. The From RAO will be used to identify to CLEC-1 which BellSouth RAO that is sending the message. BellSouth and CLEC-1 will use the invoice sequencing to control data exchange. BellSouth will be notified of sequence failures identified by CLEC-1 and resend the data as appropriate.

The data will be packed using ATIS EMI records.



# Customer Records Response

START

1 14RCL RESIDENTIAL LINE INCLUDES+  
 /TN 770 998-9883/PIC 0432  
 /LPIC 5124/PCA CM, 05-12-99  
 /SED 11-17-95/ZSER 3C10000001  
 /LPCA DF, 10-06-96  
 /RATE 10.47  
 1 MBBRX MEMORYCALLØ ANSWERING SER+  
 /TN 770 998-9883  
 /MBTN 770 998-9883  
 /DINM 2-STACY W N  
 /ZSER 7410000009/SED 12-11-96  
 /RATE 2.70  
 1 AH8 TELECOMMUNICATIONS RELAY +  
 /TN 770 998-9883/CSN C0V  
 /SED 11-17-95/ZSER 4A10000003  
 /RATE 10  
 1 CREX4 CUSTOM TOLL RESTRICTION  
 /TN 770 998-9883/CSN C0V  
 /CBK B/SED 11-17-95  
 /ZSER 5110000004  
 /RATE NR  
 1 GCJRC CALL FORWARDING DON'T ANS+  
 /TN 770 998-9883  
 /ZSER 821000000B/SED 12-11-96

Done

Print Preview

Cancel

Back

File  
Copy



EXHIBIT C

BellSouth Interconnection  
Room South E4E1  
3535 Colonnade Parkway  
Birmingham, Alabama 35243

October 10, 1997

Mr. Stan Kugel  
Pilgrim Telephone, Inc.  
Building 600, Suite 450  
One Kendall Square  
Cambridge, MA 02139-9171

Dear Stan:

Attached to this memo are examples of the situations we discussed this morning on our conference call. The first example involves a BellSouth end user, Diana Kidder of Pensacola, FL, telephone number 904-477-3897. Ms. Kidder has a 900 block on her line, which was verified to be working by BellSouth. On her April 11, 1997 bill Ms. Kidder was billed by Pilgrim for ten (10) calls to "Dateline", 900-745-3453. Ms. Kidder was also billed for calls made at the exact same time (CDT) and the same length by her Preferred Interexchange Carrier. The bill presentation by Pilgrim indicates that Ms. Kidder dialed a 900 number to access the "Dateline" service. Attached are copies of Ms. Kidder's bills, along with her letter to the Florida Public Service Commission and a copy of a letter she received from Pilgrim Telephone. Please describe in more detail your "teleconference service" mentioned in your letter of reply to Ms. Kidder of April 26, 1997. Is Pilgrim saying that Ms. Kidder was teleconferenced to a 900 Number after placing the call through her PIC'ed carrier, and subsequently billed by Pilgrim for that call?

The second example is another BellSouth end user, Mr. Mark S. Hill of Bossier City, LA. Mr. Hill also has a 900 block in place on his line. On his September 20, 1997 bill, Mr. Hill was billed for six (6) 900 calls by Pilgrim dated 8/13/97. He was also billed for a collect call on 8/14/97, the day following the date of the six 900 calls. Since Mr. Hill's 900 block was verified to be working, how was he able to access a 900 number? What, if any, is the connection between the collect call placed from Pilgrim's number (617-225-1801) and the 900 calls?

These are not isolated incidents, and BellSouth can provide numerous identical examples of the above situations. However, for simplicity's sake we have only enclosed two. BellSouth feels certain that the explanation provided by Pilgrim will apply across the board. Please provide, in writing, an answer to the above questions no later than October 24, 1997. If you have any questions or require further information, please give me a call at 205-977-1063

Sincerely,



Annette Drummonds  
Regional Account Manager

EXHIBIT D

# Pilgrim Telephone

Thank you for your interest in Pilgrim Telephone.

We offer a complete range of long distance, telemessaging and teleconferencing services, calling card services, collect call services, and more.

Publishers: check out our Voice Personals adjunct program.

Please return here at a later date for more complete information about our services, instant on-line service and more.

---

## Collect Calls

To place a collect call, dial 1.800.DUCK.ATT (1.800.382.5288) from any telephone.

---

## Instant Conference Calls

Call 1.800.950.1060

Need a conference call NOW? Instant connections, nationwide service, complete privacy. It's the FASTEST AND EASIEST WAY TO MAKE A CONFERENCE CALL.

*CLIP THIS AD FOR YOUR ROLODEX*

---

## Adults Only - Our Nation's Little Secret

Call 1.800.776.7399

Choose the Fantasy Line, Intimate Connections, the Mens Room, and many others. Calls cost from \$0.50 per minute to \$2.99 per minute depending on the payment method you select.

---

## Independent Sales Organizations

Independent Sales Organizations market and sell Pilgrim's services in exchange for a commission on sales. For further information, please contact Steve Shinnick at 1.617.225.7000.

---

## Contacting Us

You may reach us at:

Pilgrim Telephone  
One Kendall Square  
Cambridge, Massachusetts 02139

USA

Customer Service 1.800.382.5500 or 1.617.621.8000  
Main Telephone 1.617.225.7000  
FAX 1.617.225.0035  
email [info@pilgrim.com](mailto:info@pilgrim.com)

---

[info@pilgrim.com](mailto:info@pilgrim.com)

Copyright © 1995 Pilgrim Telephone, Inc.



For more info... Call Steve Shinnick at  
(617) 225-7000

## *Supercharge your Voice Personals with* **Intimate Connections™** **1-888-450-TALK (1-888-450-8255)**

**Is it time to push the throttle?**

*Has your marketing program max'd out?*

---

### **Benefits**

- More ads, more calls, more minutes, more revenue for you
- Works *with* your existing personals vendor
- Hold Times of 15-20 Minutes!
- Entertains your readers while they wait for a date
- Exploits the power of 800 Marketing
- Captures business from readers who are "900/976 averse"
- Creates an additional revenue source
- No Risk, No Commitment from you

### **Easy as 1-2-3 !**

1. Sign up - no fee, no commitment.
2. Strip in an 800 number into existing Personals pages
3. Personals are promoted when prospects call the 800 number.
4. Get Checks

### **Try It, You'll Like It**

- Use the access code and telephone number you received from your Pilgrim representative.
- If you have forgotten the code, or for more info call Steve at 1-800-545-9000 today!

Other ideas to help you Build more call traffic.

---

### **About Pilgrim Telephone....**

Pilgrim is a leading IXC (Interexchange Carrier) offering traditional long distance and innovative enhanced services including pay-per-call, telemessaging, teleconferencing, calling cards, collect call services, virtual phone numbers, enhanced Privacy Services, and more.

## Collect Calls

To place a collect call, dial **1-800-DUCK-ATT** from any payphone or other telephone. Calls cost \$4.40 for the first minute and just .45 for each additional minute. There are NO SURCHARGES and NO OPERATOR SERVICE FEE.

## Instant Conference Calls

Need a conference call NOW? Call **1-800-950-1060**. Instant connections, nationwide service, complete privacy. It's the FASTEST AND EASIEST WAY TO MAKE A CONFERENCE CALL.

---

## Contacting Us

You may reach us at:

Pilgrim Telephone  
One Kendall Square  
Cambridge, Massachusetts 02139  
USA

Main Telephone +1 (617) 225-7000  
Account Representative Steve Shinnick  
Customer Service +1 (800) 382-5500  
FAX +1 (617) 225-0035  
email [steves@pilgrim.com](mailto:steves@pilgrim.com)

---

 Pilgrim Telephone, Inc.For more info... Call Steve Shinnick at  
(617) 225-7000

## Pilgrim Cooperative Marketing

---

### SuperCharge

Callers to Intimate Connections™ periodically obtain tips and advice messages. Here are some of the tips that can help Supercharge your Personals....

Your friends are here now, waiting to talk. But to meet that special someone live and in person, you should place a free Personal Ad in the newspaper — in time for next weekend.

Talk is cheap. But a personal ad is absolutely free. Place your ad in the newspaper when you're done with this call.

Lots of people want to meet you in person. But they're not here. They are in the personal ad section of the newspaper.

Summer's almost here... Shouldn't you have a free personal ad working for you in the newspaper right now?

While you're talking, why not pick up the newspaper and browse through the Personals. Someone just might jump out at you!

Hey-Cyrano... Having trouble putting it into words? Check out the personals in the newspaper for ideas on just how to say it.

Remember where you got this phone number? Don't forget to take advantage of the special offer mentioned right above the ad you saw in the newspaper !!

---

### SuperCharge

 Pilgrim Telephone, Inc.For more info... Call Steve Shinnick at  
(617) 225-7000

## *Supercharge* your Voice Personals with...

### Virtual Phone Numbers

**1-800-382-5500** (to order a *free* number)

---

#### SuperCharge

#### **What are virtual phone numbers anyway?**

A virtual phone number allows you to receive telephone calls at home without revealing your actual home phone number. Here's how it works: You call Pilgrim Telephone Customer Service and order your virtual phone number. Let's say you are assigned 700-777-1234 (all Virtual phone numbers begin with 700-777.) A caller, using a private authorization code, can call you just like making a normal Pilgrim station to station call.

#### **Why should you offer them to your readers?**

Some of your respondents, especially women, may be hesitant to disclose their home phone numbers. With Pilgrim Virtual Phone Numbers, you can remove one more objection that prevents your prospective respondents from using the Personals.

#### **How it works...**

1. The caller dials the Pilgrim access number.
2. The caller waits for the tone and then dials his/her own private authorization code.
3. The caller dials your virtual phone number: 700-777-1234. Your phone rings, but you didn't give out your real phone number.

The caller even knows how much he/she is being charged for the call: all virtual phone numbers cost 28 cents a minute. (Plus any additional toll charges to dial the access number.)

What advantages are there to using virtual phone numbers? Well, there is no cost to obtain a virtual phone number and you will not be charged to change your virtual phone number if the wrong person gets hold of it. No more harassing phone calls at 3a.m.

Call Pilgrim Telephone Customer Service today at 1-800-382-5500 to get your virtual phone number and stop all those unwanted calls!

Virtual phone numbers can only be dialed by adults who have a subscription account with Pilgrim Telephone.

---



**SuperCharge**

 Pilgrim Telephone, Inc.For more info... Call Steve Shinnick at  
(617) 225-7000

## *Supercharge* your Voice Personals with...

### SafeCall™ from Pilgrim

**1-800-733-6900** (to place a SafeCall collect)

---

#### SuperCharge

#### **What are virtual phone numbers anyway?**

With SafeCall™ from Pilgrim Telephone, you can place a collect call without revealing your actual home phone number. Here's how it works: You call a toll-free Pilgrim Telephone access number, you dial the phone number of the party that you are trying to reach, then you state your name. That's all there is to it. Your call will be connected if the answering party agrees to accept the charges.

#### **Why should you use SafeCall?**

Do you like to call people you meet in the Personals, who you do not know very well? Did you know that if you make a normal collect call the person you're calling will get your phone number on his phone bill? Not with SafeCall.

#### **How it works...**

1. The caller dials the Pilgrim access number.
2. The caller dials the number he/she wishes to reach.
3. The caller states his/her name, and waits for the connection

That's all there is to it! With Safe Call, the person you're calling will not get your phone number on his phone bill when you call collect using 1-800-733-6900 to place your call. There is no cost to place a SafeCall and the person who accepts the charges pays a low initial and per minute rate.

SafeCalls can only be placed on the Pilgrim network. No subscription or pre-authorization is required.

---

#### SuperCharge

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served on the individuals on the attached Service List by mailing a copy thereof, this 24th day of January 2000.

Creighton Mershon  
Creighton E. Mershon, Sr.

SERVICE LIST - PSC 99-385

Maria Cruz, Supervisor  
Pilgrim Telephone, Inc.  
One Kendall Square, Suite 450  
Cambridge, MA 02139-9171

Hon. James H. Newberry  
Hon. Craig R. Paulus  
Wyatt, Tarrant & Combs  
1700 Lexington Financial Center  
250 W. Main Street  
Lexington, KY 40507-1746

BEFORE THE  
KENTUCKY PUBLIC SERVICE COMMISSION  
CASE NO. 99-385

RECEIVED  
JAN 11 2000  
PUBLIC SERVICE  
COMMISSION

PILGRIM TELEPHONE, INC.

PETITIONER

V. **PETITIONER'S  
SUPPLEMENTAL BRIEF IN RESPONSE TO  
RESPONDENT'S MOTION TO DISMISS**

BELLSOUTH TELECOMMUNICATIONS, INC.

RESPONDENT

\* \* \* \* \*

Pilgrim Telephone, Inc. ("Pilgrim"), through counsel, submits the following Supplemental Brief to BellSouth Telecommunications, Inc.'s ("BellSouth") Motion to Dismiss in order to bring to the Public Service Commission's attention recent developments in the law regarding the network facilities, functions and services requested by Pilgrim that are UNEs under the Telecommunications Act of 1996 (the "Act") and the implementing rules of the FCC.

As discussed in the Petitioner's Response to Respondent's Motion to Dismiss, Pilgrim seeks to obtain three network elements from BellSouth: (1) billing and collection services ("B&C"); (2) real time access to 900/976 blocking data; and (3) real time access to billed name and address data ("BNA"), all of which are hereafter referred to as "Requested Network Elements" or "RNEs".

**RECENT CASE LAW STRONGLY REINFORCES THAT THE TERM  
"NETWORK ELEMENT" MUST BE BROADLY CONSTRUED.**

In *AT&T Communications of Virginia, Inc., the Bell Atlantic-Virginia, Inc.*, \_\_\_ F.3d \_\_\_, 1999 W.L. 1186 253 (4th Cir. 1999), the Court held that directory publishing services qualify as network elements and must be made available at based cost-based rates. Bell Atlantic, the incumbent local exchange carrier in that case, provided its customers with a free listing in the white pages of the company's telephone directory as a part of its local service. Other directory publishing services such as additional listings, non-listing, and non-publication of numbers, were provided at additional tariffed rates. The ILEC, however, disputed that this directory publishing service qualified as a "network element" which must be provided at wholesale rates. "Network element" refers to facilities and equipment used in the provision of Telecommunications service including features, functions, and capabilities that are provided by means of such facility or equipment. 47 U.S.C. §153(29). In *Bell Atlantic-Virginia*, the court noted that the United States Supreme Court has stated that the Act's definition of a network element is broad and that a network element need not be "part of the physical facilities and equipment used to provide local phone service." *Id.* at \*9, quoting *Iowa Utilities Board*, 525 U.S. 366, 119 S.Ct. 366, 142 L. Ed.2d 835 (1999).

In keeping with this broad construction of the language of the Act, the RNEs also must be considered network elements which must be unbundled. In its Motion to Dismiss, BellSouth specifically states that billing and collection is not an issue which is properly resolved in an arbitration proceeding. On the contrary, as *Bell Atlantic-Virginia* shows, if

the broad definition of network element includes directory listings, it must certainly include billing and collection, access to 900/976 databases and real-time BNA.

**THE RECENT FOURTH REPORT AND ORDER INDICATES THAT B&C IS A PART OF OPERATIONS SUPPORT SYSTEMS AND MUST BE UNBUNDLED.**

BellSouth's position that B&C is not "an issue arising under the requirements of the 1996 Act."<sup>1</sup> is now more untenable than ever. The recent *Fourth Report and Order*,<sup>2</sup> the FCC briefly expanded on the definition of Operations Support Systems ("OSS") in its discussion of unbundling of the high frequency portion of the local loop:

Incumbent LECs maintain a variety of computer databases and "back-office" systems that are used to provide service to customers. We collectively refer to these computer databases and systems as operations support systems, or OSS. These systems enable a LEC's employees to ... render bills. *Local competition Fourth Report and Order*, FCC 99-355, ¶93, fn. 213.

This plain statement to the effect that rendering bills is a part of OSS, together with the *Third Report and Order*, FCC 93-238, clearly indicates that B&C is a network element which must be unbundled.

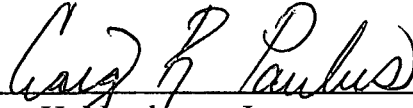
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<sup>1</sup> Answer and Motion to Dismiss of BellSouth Telecommunications, Inc., at 7.

<sup>2</sup> The Forth Report and Order is CC Docket No. 96-98 is also the Third Report and Order in CC Docket No. 98-147.

Respectfully submitted,

WYATT, TARRANT & COMBS

A handwritten signature in cursive script, reading "Craig R. Paulus", is written over a horizontal line.

James H. Newberry, Jr.

Craig R. Paulus

1700 Lexington Financial Center

250 West Main Street

Lexington, KY 40507-1746

(606) 233-2012

ATTORNEY FOR PETITIONER



**CERTIFICATE OF SERVICE**

Pursuant to Section 252(b)(3) of the Telecommunications Act of 1996, I hereby certify that a copy of this Petitioner's Supplemental Brief in Response to Respondent's Motion to Dismiss has been served by sending same via first class United States mail, postage prepaid, to the attorneys for Respondent as follows on this, the 10<sup>th</sup> day of January, 2000:

Creighton E. Mershon, Sr., Esq.  
General Counsel-Kentucky  
BellSouth Telecommunications, Inc.  
601 West Chestnut Street, Room 407  
P.O. Box 32410  
Louisville, KY 40232

and

R. Douglas Lackey, Esq.  
Bennett L. Ross, Esq.  
Lisa S. Foshee, Esq.  
BellSouth Telecommunications, Inc.  
Suite 4300, BellSouth Center  
675 West Peachtree Street, N.E.  
Atlanta, GA 30375

  
\_\_\_\_\_  
ATTORNEY FOR PETITIONER

30171218.1  
39251.81733



COMMONWEALTH OF KENTUCKY  
**PUBLIC SERVICE COMMISSION**

730 SCHENKEL LANE  
POST OFFICE BOX 615  
FRANKFORT, KY. 40602  
(502) 564-3940

CERTIFICATE OF SERVICE

RE: Case No. 1999-385  
BELLSOUTH TELECOMMUNICATIONS, INC.

I, Stephanie Bell, Secretary of the Public Service Commission, hereby certify that the enclosed attested copy of the Commission's Order in the above case was served upon the following by U.S. Mail on January 11, 2000.

Parties of Record:

Fred Gerwing  
Regulatory Vice President  
BellSouth Telecommunications, Inc.  
601 West Chestnut Street, Room 408  
P. O. Box 32410  
Louisville, KY. 40232

Maria Cruz  
Supervisor  
Pilgrim Telephone, Inc.  
One Kendall Square  
Suite 450  
Cambridge, MA. 02139 9171

Honorable James H. Newberry  
Attorney for Pilgrim Telephone  
Wyatt, Tarrant & Combs  
1700 Lexington Financial Center  
Lexington, KY. 40507 1746

*Stephanie J. Bell*

Secretary of the Commission

SB/sa  
Enclosure

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

THE PETITION BY PILGRIM TELEPHONE, INC.	)	
FOR ARBITRATION OF CERTAIN TERMS AND	)	
CONDITIONS WITH BELL SOUTH	)	CASE NO.
TELECOMMUNICATIONS, INC. PURSUANT	)	1999-385
TO SECTION 252(B) OF THE	)	
TELECOMMUNICATIONS ACT OF 1996	)	

O R D E R

Pilgrim Telephone, Inc. ("Pilgrim") has requested access to billing number and address information on a real time basis through the use of Line Information Data Base ("LIDB") and access to call blocking data on a daily basis. These items, which Pilgrim asserts are unbundled network elements ("UNE"), have been identified by Pilgrim by its letter to BellSouth Telecommunications, Inc. ("BellSouth") requesting negotiation regarding those matters. Pilgrim incorporated this letter into its petition for arbitration. Pilgrim asserts that BellSouth has denied access to these items in violation of 47 U.S.C. 251(c)3.

BellSouth filed a motion to dismiss Pilgrim's petition and also filed an answer to Pilgrim's petition. In its motion to dismiss, BellSouth asserts that Pilgrim did not properly plead the arbitration issues. BellSouth argues that Pilgrim did not specify the unresolved issues. However, Pilgrim's petition, including a letter attached and incorporated by reference, specifies the functions which Pilgrim sought from BellSouth. The petition adequately specifies the issues to be resolved in this arbitration.

BellSouth further asserts that Pilgrim has used this arbitration process as an attempt to resolve billing and collection issues which should have been the subject of a complaint proceeding. However, if BellSouth believes that Pilgrim owes it payments from a previous agreement, then BellSouth may file a complaint seeking enforcement of the agreement. Pilgrim's request to arbitrate an issue which may have been the subject of a previous agreement between the parties does not subject its petition to dismissal.

Finally, BellSouth asserts that the arbitration petition must be dismissed because Pilgrim has not yet undertaken the steps to provide local telecommunications services in Kentucky. However, Pilgrim does have tariffs on file with the Commission. Moreover, the Commission's exemptions granted pursuant to KRS 278.512 enable any telecommunications carrier to begin providing service on 30-days notice with an appropriate tariff. Thus, there is no certification process with which Pilgrim must comply. None of the arguments raised by BellSouth are adequate to foreclose a petition for arbitration by Pilgrim. Accordingly, BellSouth's motion to dismiss should be denied.

In response to BellSouth's answer, Pilgrim clarified the network elements which it sought to obtain from BellSouth as follows: (1) billing and collection services; (2) real time access to 900/976 blocking data; and (3) real time access to billed name and address data. Pilgrim has asked the Commission to arbitrate whether "billing and collection services" are network elements which must be unbundled pursuant to 47 U.S.C. 251(c)(3). Pilgrim's request for billing and collection "services" may be considered two ways. If Pilgrim seeks services that are available from BellSouth's tariff, they should be provided by BellSouth on a resale basis at the resale avoided cost

discount. However, Pilgrim's request could also be considered in terms of the provision of Operational Support System ("OSS") information and related features and functions that, when combined, can be used by Pilgrim, the requesting carrier, to provide a billing and collection service. Pilgrim must accordingly clarify its request. If Pilgrim is seeking the functionality to create its service, then BellSouth is obligated to provide the OSS functions on a nondiscriminatory basis. Such functionality would meet the definition of an unbundled network element.

Pilgrim is seeking a real time access to billed number and address information and real time access to 900/976 blocking data as network elements. These must be provided by BellSouth. As specified by the Act, a network element means a facility or equipment used in the provision of a telecommunications service and includes features, functions, and capabilities that are provided by means of such facility or equipment, including subscriber numbers, databases, signaling systems, and information sufficient for billing and collection or used in the transmission, routing, or other provision of a telecommunications service. 47 U.S.C. 3(29). Based on this definition, it appears that access to the database that contains billed name and address information and access to the blocking data are network elements, or at least features or functions of a related network element, that should be provided pursuant to Section 251(c)(3).

The Commission, having considered the petition, and BellSouth's response and motion, and having been otherwise sufficiently advised, HEREBY ORDERS that:

1. BellSouth's motion to dismiss Pilgrim's petition is denied.

2. Within 10 days of the date of this Order, Pilgrim shall notify the Commission whether it seeks billing and collection services or billing and collection functionality.

3. Within 20 days of the date of this Order, BellSouth shall respond to Pilgrim's notification of whether it seeks billing and collection services or billing and collection functionalities.

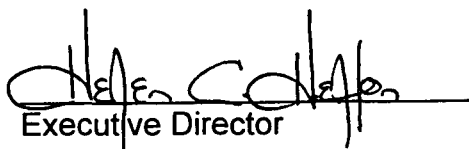
4. Real time access to billed number and address information and real time access to 900/976 blocking data are network elements that must be provided by BellSouth.

5. Within 20 days of the date of a Commission Order addressing Pilgrim's notification and BellSouth's response required herein, Pilgrim and BellSouth shall file a signed agreement complying with the Commission's determinations.

Done at Frankfort, Kentucky, this 11th day of January, 2000.

By the Commission

ATTEST:

  
Executive Director

# WYATT, TARRANT & COMBS

1700 LEXINGTON FINANCIAL CENTER  
LEXINGTON, KENTUCKY 40507-1746

606 233-2012  
FAX: 606 259-0649

CITIZENS PLAZA  
LOUISVILLE, KY 40202-2898  
502 589-5235

TAYLOR-SCOTT BUILDING  
FRANKFORT, KY 40601-1807  
502 223-2104

ELSBY BUILDING  
NEW ALBANY, IN 47150-3440  
812 945-3581

1500 NASHVILLE CITY CENTER  
NASHVILLE, TN 37219-1750  
615 244-0020

29 MUSIC SQUARE EAST  
NASHVILLE, TN 37203-4322  
615 255-6161

313 E. MAIN STREET, SUITE 1  
HENDERSONVILLE, TN 37075-2546  
615 622-8822

6075 POPLAR AVENUE, SUITE 650  
MEMPHIS, TN 38119-4721  
901 537-1000

10368 WALLACE ALLEY STREET, SUITE 6  
KINGSPORT, TN 37663-3977  
423 279-1825

WRITER'S DIRECT DIAL NUMBER

JAMES H. NEWBERRY, JR.

606 288-7621

November 10, 1999

Kentucky Public Service Commission  
730 Schenkel Lane  
Frankfort, KY 40602

Dear Sir or Madam:

Enclosed are an original Petitioner's Motion for Commission Determination and Petitioner's Response to Respondent's Motion to Dismiss and 11 copies of each, assembled with a paperclip, both of which were faxed to you today.

Please file the enclosed two pleadings, stamp one copy of each as "filed," and return it to me in the enclosed envelope, self-addressed, stamped envelope. Thank you for your assistance in this regard.

Sincerely yours,

Heidi Neuffer  
Legal Assistant

Enclosures

30160200.2

RECEIVED  
NOV 12 1999  
PUBLIC SERVICE  
COMMISSION

BEFORE THE  
KENTUCKY PUBLIC SERVICE COMMISSION  
CASE NO. 99-385

RECEIVED  
NOV 12 1999  
KENTUCKY PUBLIC SERVICE COMMISSION

PILGRIM TELEPHONE, INC.

PETITIONER

V.

**PETITIONER'S  
MOTION FOR COMMISSION  
DETERMINATION**

BELLSOUTH TELECOMMUNICATIONS, INC.

RESPONDENT

\*\*\*\*\*

Pilgrim Telephone, Inc. ("Pilgrim"), through counsel, moves this Commission for a determination of the following questions of law:

1. Are billing and collection services provided by local exchange carriers network elements which must be unbundled pursuant to Section 251(c)(3) of the Telecommunications Act of 1996?

2. Is real-time access to billed name and address information a network element which must be unbundled pursuant to Section 251(c)(3) of the Telecommunications Act of 1996?

3. Is real-time access to 900/976 blocking data a network element which must be unbundled pursuant to Section 251(c)(3) of the Telecommunications Act of 1996?

The resolution of the foregoing legal issues is central to the resolution of the issues raised in Pilgrim's Petition for Arbitration. BellSouth has made it abundantly clear that it believes the answer to each of the questions outlined above is "no." Pilgrim, on the other hand,

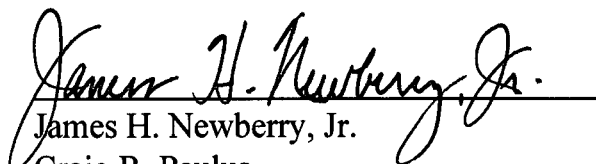


believes that the answer to each of the questions is "yes" as a result of the provisions of the Telecommunications Act of 1996 and the regulations promulgated thereunder by the Federal Communications Commission.

In support of this Motion, Pilgrim relies on the authority set forth in its Response to BellSouth's Motion to Dismiss.

Respectfully submitted,

WYATT, TARRANT & COMBS

A handwritten signature in cursive script, reading "James H. Newberry, Jr.", is written over a horizontal line.

James H. Newberry, Jr.

Craig R. Paulus

1700 Lexington Financial Center

250 West Main Street

Lexington, KY 40507-1746

(606) 233-2012

ATTORNEY FOR PETITIONER

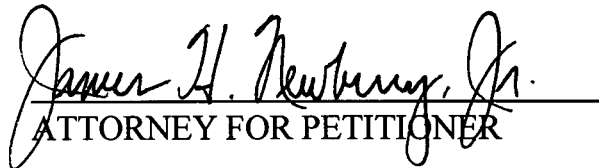
**CERTIFICATE OF SERVICE**

Pursuant to Section 252(b)(3) of the Telecommunications Act of 1996, I hereby certify that a copy of this Petitioner's Motion for Commission Determination has been served by sending same via first class United States mail, postage prepaid, to the attorneys for Respondent as follows on this, the 10<sup>th</sup> day of November, 1999:

Creighton E. Mershon, Sr., Esq.  
General Counsel-Kentucky  
BellSouth Telecommunications, Inc.  
601 West Chestnut Street, Room 407  
P.O. Box 32410  
Louisville, KY 40232

and

R. Douglas Lackey, Esq.  
Bennett L. Ross, Esq.  
Lisa S. Foshee, Esq.  
BellSouth Telecommunications, Inc.  
Suite 4300, BellSouth Center  
675 West Peachtree Street, N.E.  
Atlanta, GA 30375

  
ATTORNEY FOR PETITIONER

30166006.1  
39251.81733

RECEIVED

BEFORE THE  
KENTUCKY PUBLIC SERVICE COMMISSION  
CASE NO. 99-385

NOV 12 1999  
PUBLIC SERVICE  
COMMISSION

PILGRIM TELEPHONE, INC.

PETITIONER

V.  
**PETITIONER'S  
RESPONSE TO RESPONDENT'S  
MOTION TO DISMISS**

BELLSOUTH TELECOMMUNICATIONS, INC.

RESPONDENT

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Pilgrim Telephone, Inc. ("Pilgrim"), through counsel, submits the following Response to BellSouth Telecommunications, Inc.'s ("BellSouth") Motion to Dismiss:

**INTRODUCTION**

This matter arises as the result of an arbitration petition filed by Pilgrim pursuant to Section 252 of the Telecommunications Act of 1996 (the "Act"). Pilgrim is an interstate interexchange carrier ("IXC") and a provider of various telecommunications services, including telemessaging and teleconferencing services. As such, Pilgrim seeks to obtain three network elements from BellSouth: (1) billing and collection services ("B&C"); (2) real time access to 900/976 blocking data; and (3) real time access to billed name and address data ("BNA"), all of which collectively are hereafter referred to as "Requested Network Elements" or "RNEs".

To gain access to the RNEs, Pilgrim has pursued several alternative routes. Initially, Pilgrim attempted to reach a privately negotiated agreement with BellSouth for B&C. However, since that approach did not succeed, Pilgrim has sought to either (a) enter an

agreement with BellSouth for the RNEs which BellSouth is required to unbundle pursuant to Section 251(c)(3) of the Act, or (b) seek certification as a competitive local exchange carrier ("CLEC") so as to obtain the services through an interconnection agreement with BellSouth pursuant to Section 251(c)(2) of the Act. Formal negotiations with BellSouth under Section 252 of the Act were initiated in April, but those negotiations did not succeed. On September 15, 1999, this arbitration was commenced.

In response to Pilgrim's Petition for Arbitration, BellSouth filed an Answer and Motion to Dismiss. The Motion set forth three bases upon which BellSouth argued that Pilgrim's Petition should be dismissed: (1) the Petition was defective because issues were raised in exhibits which were incorporated by reference in the Petition and not in the Petition itself; (2) Pilgrim is improperly using the arbitration process to resolve billing and collection issues; and (3) Pilgrim is not a certified telecommunications carrier that has standing to assert claims in a Section 252 arbitration proceeding. Issues (1) and (3) are bogus issues which will be summarily addressed later. However, issue (2) is, perhaps, the gravamen of this matter, and Pilgrim will respond first to the question of whether Section 252 arbitration proceedings can be used to address billing and collection issues.

**I. SECTION 252 ARBITRATION PROCEEDINGS ARE APPROPRIATE FORUMS FOR THE RESOLUTION OF BILLING AND COLLECTION DISPUTES.**

For several years, BellSouth provided Pilgrim with B&C pursuant to a privately negotiated contract. As used in this Response, "B&C" means the process by which an incumbent local exchange carrier ("ILEC") in consideration of a negotiated fee (a) submits

invoices to its customers for various telecommunications services rendered by IXC's and other third parties, (b) collects those invoices in the process of collecting its own invoices to its customers, and (c) remits payments from its customers to the appropriate IXC or other third party.

In any business venture, the ability to bill and collect for the services which are rendered is an inherent part of doing business. Without that ability, no business can function. In the telecommunications industry, there are an enormous number of customers, most of whom pay relatively small sums of money each month for telecommunications services. Thus, the only economically feasible way for any telecommunications company to bill and collect for its services is through highly computerized processes which are used on a high volume basis. To do otherwise would be prohibitively expensive.

For better or worse, ILECs are the only viable source for billing and collection. By virtue of their business, ILECs already have a large, highly sophisticated billing apparatus to bill and collect for their local exchange service. Moreover, not only is the ILEC billing and collection apparatus large and highly sophisticated, it is a highly effective system with materially better-than-average collection rates for an assortment of reasons. As a consequence, telecommunications carriers regularly seek to access B&C functions from ILECs in order to minimize the expense of the B&C process and to minimize the cost which consumers must pay for their telecommunications services.

In many respects, B&C functions are analogous to other network elements which ILECs must provide on an unbundled basis to telecommunications carriers in accordance with Section 251(c)(3) the Act. Section 3 of the Act defines "network element" as follows:

The term "network element" means a facility or equipment used in the provision of a telecommunications service. Such term also includes features, functions, and capabilities that are provided by means of such facility or equipment, including subscriber numbers, databases, signaling systems, and information sufficient for billing and collection or used in the transmission, routing, or other provision of a telecommunications service.

Similarly, the Federal Communications Commission ("FCC") adopted regulations in 1996 which define "network element" as follows:

A network element is a facility or equipment used in the provision of a telecommunications service. Such term also includes, but is not limited to, features, functions, and capabilities that are provided by means of a such facility or equipment, including but not limited to, subscriber numbers, databases, signaling systems, and information sufficient for billing and collection or used in the transmission, routing, or other provision of a telecommunications service.

(Emphasis added.) Thus, just as telephone poles and lines are used in the provision of telecommunications services, so too is the B&C service. Without poles, lines, other equipment and facilities, and the ability to bill and collect, telecommunications services could not be provided.

BellSouth has steadfastly insisted that the B&C services sought by Pilgrim are not network elements. Notwithstanding the broad statutory and regulatory definitions of "network element," BellSouth has read 47 C.F.R. 51.319 to provide a comprehensive list of

network elements which must be unbundled. Furthermore, in light of the United States Supreme Court's decision in *AT&T Corp. v. Iowa Utilities Bd.*, 119 S.Ct. 721, BellSouth has been waiting for the FCC to issue new regulations to further define BellSouth's obligations to unbundle. On November 5, 1999, the FCC released its new regulations in which Operations Support Systems ("OSS") was defined in such a fashion that even BellSouth should have difficulty denying Pilgrim's position. The new regulations state:

Operations Support Systems: An incumbent LEC shall provide nondiscriminatory access in accordance with §51.311 and section 251(c)(3) of the Act to operations support systems on an unbundled basis to any requesting telecommunications carrier for the provision of a telecommunications service. Operations support system functions consist of pre-ordering, ordering, provisioning, maintenance and repair, and billing functions supported by an incumbent LEC's databases and information. . . .

*Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, Third Report and Order, FCC 99-238 (1999), Appendix C, p. 9. (Emphasis added.) Pilgrim believes that this new definition of OSS should alleviate any question in anyone's mind as to whether the B&C functions are network elements which must be unbundled. The requested B&C functions are unquestionably billing functions supported by BellSouth's databases and information. Since the services sought by Pilgrim are network elements under the Act and the FCC regulations, there can be little doubt of Pilgrim's statutory right under Section 251(c)(3) to gain access to the B&C functions which it seeks.

As a consequence of BellSouth's position, Pilgrim's efforts to negotiate either an agreement for access to unbundled network elements ("UNEs") or an interconnection

agreement have failed. On September 15, 1999, Pilgrim filed an arbitration petition with the Kentucky Public Service Commission and with other public service commissions throughout BellSouth's nine-state operating territory. The first of the commissions to schedule action on the arbitration petitions was Florida. At a preliminary issues identification meeting with the staff of the Florida Public Service Commission, Pilgrim proposed that the parties enter mediation pursuant to Section 252(a)(2) of the Act, and BellSouth agreed to that approach. Pilgrim withdrew its petition in Florida, but the mediation proved unsuccessful. Consequently, Pilgrim must proceed with this arbitration in order to obtain access to the UNEs to which it believes it is entitled.

Based upon its negotiations with BellSouth, it is abundantly clear to Pilgrim that there is a fundamental disagreement between the parties as to the applicability of Section 251(c)(3) to Pilgrim's request for RNEs. As set forth in greater detail below, the RNEs are network elements, and, as such, Pilgrim is entitled to seek arbitration under Section 252 as it seeks to obtain either an agreement for UNEs or an interconnection agreement.

**II. THE UNBUNDLING REQUIREMENTS OF SECTION 252 OF THE ACT MAKE IT CLEAR THAT THE REQUESTED NETWORK ELEMENTS ARE NETWORK ELEMENTS WHICH MUST BE UNBUNDLED.**

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At the heart of the dispute between the parties is BellSouth's refusal to acknowledge that the network facilities, functions, and services requested by Pilgrim are UNEs under the Act and the implementing rules of the FCC. Thus, the dispute is primarily one of federal law. It is the Kentucky Public Service Commission, however, that is entrusted with the task



of approving any agreement between the parties in furtherance of the federal policy goals of the Act. *See AT&T*, 119 S.Ct. at 733.

The FCC broadly construed the statutory definition in Section 153(29) of the Act to include the physical facilities of the ILEC's network "together with the features, functions, and capabilities associated with those facilities." *Local Competition Order*, 11 FCC Rcd at 15631. The FCC concluded the "embedded features and functions within a network element are part of the characteristics of that element and may not be removed from it." *Id.* at 15632. Accordingly, ILECs "must provide network elements along with all of their features and functions, so that new entrants may offer services that compete with those offered by incumbents as well as new services." *Id.* Thus, ILECs must furnish access to the logical features, functions, and capabilities of the software located within the physical facilities of their network. *See id.* Finally, they are obliged to give access to the information they "use to provide telecommunications services commercially." *Local Competition Order*, 11 FCC Rcd at 15633.

When it implemented § 251 of the Act, the FCC identified a "minimum list" of UNEs. *Local Competition Order*, 11 FCC Rcd at 15624. Included on the list are call-related databases, which the FCC defines as databases that are used in signaling networks for B&C or the transmission, routing, or other provision of a telecommunications service. *See* 47 C.F.R. § 51.319(e)(2)(i). Call-related databases include the Line Information Database ("LIDB") and Advanced Intelligent Network databases. *See id.* § 51.319(e)(2)(ii).

Also on the FCC's list of UNEs are operations support systems ("OSS") functions. *See id.* § 319(g). OSS refers to, collectively, the systems, databases, information, and personnel that support an ILEC's network elements or services. *See BellSouth Corp.*, 13 FCC Rcd 6245, 6257 (1998). To ensure that all carriers are able to compete fairly, the FCC has consistently emphasized that an ILEC must give its competitors nondiscriminatory access to the functions of its OSS. *See id.* The FCC recognizes that a competing carrier that lacks access to OSS equivalent to what the ILEC provides to itself, its affiliate, or its customers, "will be severely disadvantaged, if not precluded altogether, from fairly competing." *Id.* at 6258 (quoting *Local Competition Order*, 11 FCC Rcd at 15764).

The FCC now defines OSS functions as consisting of "pre-ordering, ordering, provisioning, maintenance and repair, and billing functions supported by an incumbent ILEC's databases and information." *See* 47 C.F.R. § 51.319(g). It defined billing as involving "the provision of appropriate usage data by one telecommunications carrier to another to facilitate customer billing with attendant acknowledgments and status reports." *See* 47 C.F.R. § 51.5. However, the FCC adopted that definition "as the minimum necessary for [its] requirements." *Local Competition Order*, 11 FCC Rcd at 15766 n. 1273. The agency made it clear that ILEC's must provide nondiscriminatory access to the "full range" of billing functions "enjoyed" by the ILEC. *Id.*

The FCC concluded that OSS functions fall "squarely" within the statutory definition of "network element" and must be unbundled upon request under § 253(c)(3) of the Act. *Local Competition Order*, 11 FCC Rcd at 15763. The Supreme Court agreed:

Given the breadth of this definition [of "network element"], it is impossible to credit the incumbents' argument that a "network element" must be part of the physical facilities and equipment used to provide local telephone service. . . . OSS, the incumbent's background software system, contains essential network information as well as programs to manage billing, repair ordering, and other functions. Section 153(20)'s reference to "databases . . . and information sufficient for billing and collection or used in the transmission, routing, or other provision of a telecommunications service" provides ample basis for treating this system as a "network element."<sup>1</sup>

The FCC's new regulation cited above reflects the strong language set forth in the Supreme Court's opinion. BellSouth's BNA and 900/976 blocking databases, the information they contain, and its B&C functions are network elements that must be unbundled.

**A. BNA is a Network Element Which Must Be Unbundled.**

The BNA database contains the name and address provided by each of BellSouth's local exchange customers to which BellSouth direct bills for its services. See 47 C.F.R. § 64.1201(a)(1). As such, BNA may be considered an UNE in four ways. First, BNA is billing information that clearly can be classified as among the "information sufficient for billing and collection.: 47 U.S.C. § 153(29). Second, BellSouth uses its BNA database to provide telecommunications (both telephone exchange and exchange access) services commercially. Third, the BNA database is itself a call-related database. Finally, BNA information is processed by BellSouth's OSS. See *Local Competition Order*, 11 FCC Rcd at 15763.

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<sup>1</sup> *AT&T*, 119 S.Ct. at 734.

**B. 900/976 Blocking Information is a Network Element Which Must Be Unbundled.**

900/976 blocking information is believed to reside in one or more of BellSouth's central office switch software, customer or BNA database files, and Signaling System 7 databases. It also allows BellSouth to provide 900-Type Pay per Call Service Blocking, which it offers end users under section 13.3.17 of its federal access tariff (Tariff F.C.C. No. 1). That service blocks access to services offered on the 900 service access code. The switch software and databases that contain 900/976 blocking information, including the information itself, are UNEs because they are facilities BellSouth uses to provide an exchange access service. Hence, they are used in the "provision of a telecommunications service." 47 U.S.C. § 153(29).

**C. B&C is a Network Element Which Must Be Unbundled.**

BellSouth's databases and information used for the recording and aggregation of billing data fall within the statutory definition of "network element." See 47 U.S.C. § 153(29) (the term includes "subscriber numbers, databases, signaling systems, and information sufficient for billing and collection"). Certainly, billing is among the OSS functions that the FCC identifies as an UNE. See 47 C.F.R. § 51.319(g). The FCC has recognized that new entrants must have access to the OSS that allow BellSouth to "render bills" if they are to compete effectively. *BellSouth*, 13 FCC Rcd at 6247 n. 5. Moreover, B&C services have been identified as a UNE by the Oregon Public Utilities Commission. See *Investigation into the Cost of Providing Telecommunications Services*, 171 P.U.R. 4th

193 (Or. P.U.C. 1996). That decision, as applied by the Oregon Public Utilities Commission, was upheld on appeal. *See MCI Telecomms. Corp. v. GTE Northwest, Inc.*, 41 F.Supp. 2d 1157, 1180-81 (D.Or. 1999).

Collection (receiving payments and the maintenance of accounts) is as much a part of BellSouth's billing functions as the rendering of bills (preparation and mailing of statements of amounts due). The collection of deposits and monies due from end users is a UNE inasmuch as it is a function and capability that is provided by means of BellSouth's "databases . . . and information sufficient for billing and collection." 47 U.S.C. § 153(29). Clearly, receiving payments and maintaining accounts is among the "full range" of billing functions BellSouth presently enjoys. *Local Competition Order*, 11 FCC Rcd at 15766 n. 1273.

BellSouth both renders bills and collects monies for AT&T Corp. ("AT&T") as part of a single "message processing service" offered under section E8.2.1.A of its Kentucky access services tariff. By offering its billing and collection functions as a single tariffed access service, BellSouth shows that billing and collection are appropriately combined as an OSS function. Under the Act, B&C is a UNE that cannot be separated by BellSouth, except upon request. *See* 47 C.F.R. § 51.315(b).

It should be noted that BellSouth's offering of B&C as a tariffed access service constitutes a holding out to provide B&C "indifferently to all potential users." *National Ass'n of Regulatory Util. Comm'rs v. FCC*, 533 F.2d 601, 608 (D.C. Cir. 1976). Currently, holding itself out to provide B&C on tariffed rates, terms and conditions, BellSouth has no

reasonable basis to disclaim an obligation under the Act to provide B&C to other interstate telecommunications carriers "on rates, terms and conditions that are just, reasonable, and nondiscriminatory." 47 U.S.C. § 251(c)(3). Yet, BellSouth insists on entering into "proprietary and confidential" B&C contracts, and even refuses to reveal its B&C rates and terms without a nondisclosure agreement.<sup>2</sup> The reason for the secrecy is obvious: BellSouth is willing only to provide discriminatory access to its B&C functions on rates, terms, and conditions that are discriminatory.

BellSouth provides B&C to AT&T as a common carrier service, while offering it to Pilgrim as a contract service. At the same time, Pilgrim believes BellSouth is performing B&C functions for US LEC of North Carolina L.L.C. ("US LEC") under a negotiated interconnection agreement.<sup>3</sup> At least with respect to US LEC, BellSouth effectively acknowledged that its B&C functions qualify as a UNE available to competitors under § 251(c) of the Act. Nondiscriminatory access to those functions should be made available to all requesting telecommunications carriers under publicly-available, Public Service Commission-approved agreements. *See Investigation into the Cost of Providing Telecommunications Services, supra. See also MCI Telecomms. Corp. v. GTE Northwest, Inc., supra.*

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<sup>2</sup> See Letter of Leah G. Cooper to James H. Newberry, Jr., at 1 (Oct. 29, 1999).

<sup>3</sup> See Interconnection Agreement Negotiated by BellSouth Telecommunications, Inc. and US LEC of North Carolina, L.L.C. (filed with Kentucky Public Service Commission on July 20, 1998) at pp. 9 and 21.

### **III. PILGRIM IS A TELECOMMUNICATIONS CARRIER AS DEFINED BY THE ACT.**

BellSouth argues that Pilgrim is ineligible to institute this proceeding because it is not a certificated telecommunications carrier in Kentucky. However, an analysis of the Act and the FCC's regulations belies BellSouth's position.

BellSouth must afford nondiscriminatory access to its UNEs to "any requesting telecommunications carrier for the provision of a telecommunications service." 47 U.S.C. § 251(c)(3). BellSouth declines to do so on the grounds that Pilgrim is not a "telecommunications carrier" because it is not certificated by the Public Service Commission to provide telecommunications services.<sup>4</sup> However, Pilgrim is providing interstate telecommunications services in part under its Tariff F.C.C. No. 1. As a "provider of telecommunications services," Pilgrim is a telecommunications carrier under the Act. See 47 U.S.C. § 153(44).

To deny Pilgrim its rights as a requesting telecommunication carrier because it is uncertificated would defeat the pro-competitive purposes of the Act. Congress imposed duties on ILECs under § 251(c) specifically to "facilitate market entry" by new competitors. *AT&T*, 119 S.Ct. at 726. The national requirements for UNEs were adopted by the FCC to "allow new entrants, including small entities, [to seek] to enter local markets on a national or regional scale." *Local Competition Order*, 11 FCC Rcd at 15624. To require state certification is a prerequisite to obtaining access to UNEs necessary for market entry would

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<sup>4</sup> See Answer and Motion to Dismiss of BellSouth Telecommunications, Inc., at p. 4 (Oct. 11, 1999) ("Answer and Motion to Dismiss").

inhibit Pilgrim's ability to enter the local telecommunications market. Requiring prior certification would be like placing the cart before the horse.

Furthermore, BellSouth's position may well be a violation of its good faith negotiation duties as set forth at 47 CFR 51.301(c)(4). That regulation states:

(c) If proven to the Commission, an appropriate state commission, or a court of competent jurisdiction, the following actions or practices, among others, violate the duty to negotiate in good faith:

. . . .

(4) Conditioning negotiation on a requesting telecommunications carrier first obtaining state certifications.

Although BellSouth has made an ostensible effort to negotiate with Pilgrim, its position that negotiations with Pilgrim cannot be arbitrated under Section 252 of the Act is entirely contrary to the spirit of the Act and the regulations. The FCC has said that BellSouth cannot impose a negotiating requirement that Pilgrim first obtain state certifications. BellSouth is now trying to use this proceeding to accomplish that very objective. Its breach of its duty to negotiate in good faith should be obvious on the basis of its posture in this proceeding, if for no other reason.

Pilgrim will not and cannot decide whether to seek status in Kentucky as a CLEC until it can identify the UNEs it may access and learn the rates, terms, and conditions under which BellSouth will provide such access. A determination of whether a certificate is necessary may have to wait until the completion of the arbitration process. Under these circumstances, Pilgrim should not be required to obtain state certification as a prerequisite to exercising its rights under the federal statute.



The Act provides that an ILEC must provide UNEs "for the provision of a telecommunications service." 47 U.S.C. § 251(c)(3). The statute defines "telecommunications" as 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." 47 U.S.C. § 153(43). "Telecommunications service" is defined in turn to mean the "offering of telecommunications for a fee directly to the public . . . regardless of the facilities used." *Id.* § 153(46). The services Pilgrim currently offers under its federal tariff are telecommunications services.

Pilgrim intends to use its access to BellSouth's UNEs to provide, for example, teleconferencing and telemessaging services. Viewed on an end-to-end basis, these services are provided so that (1) information of the user's choosing is transmitted between points specified by the user, and (2) there is no change in the "form and content of the information as sent and received." The information imparted by the user is transmitted in the form of a voice communication and is received in the form of a voice communication at the point specified by the user. Thus, Pilgrim's teleconferencing and telemessaging services are telecommunications under the Act. How the information is formatted or processed by Pilgrim between the point it is sent and the point it is received is irrelevant under the statutory definition. And, since they are offered "for a fee directly to the public," Pilgrim's teleconferencing and telemessaging services are telecommunications services.

The fact that Pilgrim also provides information services does not affect its status as a telecommunications carrier under the Act. The FCC has held that, "if a company provides

both telecommunications services and information services, it must be classified as a telecommunications carrier." *Local Competition Order*, 11 FCC Rcd at 15517. Moreover, telecommunications carriers that have gained access to UNEs pursuant to the § 251(c)(3) agreement "may offer information services through the same arrangement, so long as they are offering telecommunications services through the same arrangement as well." *Local Competition Order*, 11 FCC Rcd at 15990. Therefore, Pilgrim may provide information services using BellSouth's UNEs and still remain a telecommunications carrier, so long as it also employs those UNEs to provide a telecommunications service.

Pilgrim's position is supported by the Act's legislative history. The conference report on Senate Bill 652, which became the Telecommunications Act of 1996 in February of 1996, reveals that local exchange carriers indeed have a duty to interconnect with interexchange carriers ("IXCs") and information service providers ("ISPs"). The conference report reveals that the Senate Bill originally intended for Section 251(a) to not apply to interconnection arrangements between LECs and IXCs. However, the House Amendment to Section 251 restates the obligation contained in Section 201(a) of the Communications Act on all common carriers to interconnect with the facilities and equipment of other providers of telecommunications services and information services. This difference between the Senate and House versions was resolved by the Conference Agreement in favor of a general duty of interconnection including the duty to interconnect with IXCs.

Thus, the evolution of the Act shows that Congress rejected BellSouth's position, and, as a result, ILECs such as BellSouth must provide unbundled, nondiscriminatory access to all telecommunications carriers, including IXCs such as Pilgrim.

**IV. THE AVAILABILITY OF BELLSOUTH'S BNA INFORMATION PURSUANT TO TARIFF IS IRRELEVANT.**

BellSouth has indicated that real-time BNA information is available under its access service tariff.<sup>5</sup> However, the availability of BellSouth's BNA information pursuant to tariff is irrelevant. Any tariff offering of BNA information to a telecommunications carrier was effectively preempted by the Act.

The FCC treats the provision of access to BNA as a common carrier service subject to tariff regulation. *See Policies and Rules Concerning Local Exchange Carrier Validation and Billing Information for Joint Use Calling Cards*, 8 FCC Rcd 4478, 4481-82 (1993). By offering BNA access pursuant to tariff BellSouth subjected the offering to the filed-rate doctrine, under which the tariffed rates become the legal rates that must be charged to all customers alike. *See Maislin Industries, U.S. v. Primary Steel, Inc.*, 497 U.S. 116, 126 (1990). Until the tariffed rates are changed, BellSouth may not negotiate different rates for BNA access. *See id.* at 131. The same is true with respect to all the terms and conditions of the BNA access offering that are "covered" by BellSouth's tariff. *See AT&T v. Central Office Tel., Inc.*, 118 S.Ct. 1956, 1964 (1998). In those respects, the filed-rate doctrine,

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<sup>5</sup> *See Answer and Motion to Dismiss, supra* note 3, at pp. 8 and 10.

which is at the heart of tariff regulation, is wholly inconsistent with the duty to negotiate imposed by § 251(c)(1) of the Act. *See* 47 U.S.C. § 251(c)(1).

Whereas it cannot negotiate rates, terms, and conditions under the filed-rate doctrine, BellSouth must negotiate in good faith the rates, terms, and conditions under which a requesting telecommunications carrier may gain access to its UNEs, including its BNA information. Obviously, therefore, BellSouth's access tariff cannot govern access to its UNEs. If it adheres to its tariff and refuses to negotiate, BellSouth violates its duty to negotiate under the Act and the FCC's rules. *See* 47 C.F.R. § 51.301(a). Because a tariff offering of a UNE conflicts with BellSouth's obligations under § 251(c)(3), BellSouth's access tariff offering of BNA has been preempted. *See MCI*, 41 F.Supp. 2d at 1177-78.

The Act affords Pilgrim the right to negotiate with BellSouth to gain nondiscriminatory access to its UNEs. If negotiations are unsuccessful, Pilgrim has the statutory right to ask the Public Service Commission to arbitrate the matter. *See* 47 U.S.C. § 252(b)(1). BellSouth cannot deprive Pilgrim of those rights by forcing it to obtain access to BNA under tariff provisions that may not comply with the substantive standards of the Act. In short, the provision of BNA access under tariff "bypasses the Act entirely and ignores the procedures and standards that Congress has established." *MCI*, 41 F.Supp. 2d at 1178.

BellSouth also offers B&C under its access services tariff on file with the Commission. As discussed, BellSouth provides a message billing service to AT&T which includes the preparation of bills, the mailing of statements of the amounts due for AT&T's

service, and the collection of deposits and monies due from the end users. *See Access Services Tariff* § E8.2.1.A. As with BellSouth's BNA, BellSouth's access tariff offering of B&C has been preempted by the Act. However, the offering shows the feasibility of providing BellSouth's B&C functions as a UNE. If it can sell B&C as a tariffed exchange access service, BellSouth can provide its B&C functions as a UNE used in the provision of an exchange access telecommunications service. In any event, B&C (and BNA) can be considered a UNE regardless of the fact that BellSouth sells B&C as a tariffed service. *See Local Competition Order*, 11 FCC Rcd at 15632.

**V. PILGRIM'S PETITION FOR ARBITRATION IS SUFFICIENT.**

Pilgrim has attempted to negotiate with BellSouth, and as evidenced by the specific responses of BellSouth in its Answer, BellSouth is fully aware of the subject matter of its dispute with Pilgrim. BellSouth's argument flatly ignores the facts. First, every exhibit was expressly "incorporated by reference" in the Petition, and thus each exhibit became a part of the Petition. The use of incorporation by reference has long been recognized by both the federal and state courts in Kentucky. *See*, Fed.R.Civ.P.10(c) and CR 10.03. Further, the incorporation by reference has support in the case law of Kentucky. *Caslin v. General Electric Company*, 608 S.W.2d 69 (Ky. App. 1980); *Shockey v. Pelfrey*, 235 S.W.2d 1017 (Ky. 1951). On the other hand, BellSouth only offers an unreported California case in support of its position, and in that case, there is no indication that the petition incorporated the exhibits by reference as is the case in this proceeding. Instead, the Court indicated that

the only reference to the disputed issue was in attached appendices. Thus, facts before the California court are distinguishable from the facts in this proceeding.

Second, it is clear that BellSouth is aware of the nature of the dispute and the issues which Pilgrim wishes to resolve. Since the exhibits are all correspondence between BellSouth and Pilgrim. In short, BellSouth knows exactly what matters are at issue. Further, by arguing the merits of Pilgrim's Petition for Arbitration, BellSouth has waived any objections to any deficiencies within Pilgrim's Petition for Arbitration. *See MCI Telecommunications Corporation v. Illinois Bell Telephone Company*, 1999 U.S. Dist. Lexis 11418, (N.D. Ill. 1999). Under Section 252(b)(4)(A), "the state commission shall limit its consideration of any petition . . . and any responses thereto to the issues set forth in the petition and in the response. . ." (emphasis added). BellSouth's Answer discusses the issues that Pilgrim raises and therefore, under *MCI*, any deficiency in the Petition is waived. This is just another example of BellSouth attempting to avoid its duty to negotiate with Pilgrim.

BellSouth's final assertion is that Pilgrim has failed to set forth in its Petition which issues are resolved and which are not, arguing that this makes the Petition defective. Aside from being absurdly technical, this argument conveniently fails to point out that BellSouth has not allowed any issues to be resolved. Exhibit E of Pilgrim's Petition is a letter to BellSouth requesting answers to various questions regarding BellSouth's form interconnection agreement. Exhibit F to the Petition is BellSouth's reply which states, "we are unable to answer your questions at this time." BellSouth did not reply to those questions

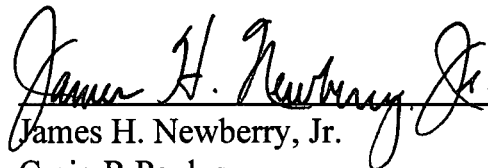
until after Pilgrim's 160 day window to file its Petition. If Pilgrim had waited for BellSouth to provide the information on the agreement, Pilgrim would have waived its rights under the Act. BellSouth is required to designate a representative with authority to make binding representations. See 47 C.F.R. § 51.301. Refusal to do so is a breach of the duty to negotiate in good faith, if a significant delay is caused. 47 C.F.R. § 51.301(c)(7). Now, BellSouth seeks to turn its failure to negotiate in good faith to its own advantage.

### CONCLUSION

For the reasons set forth herein, the Kentucky Public Service Commission should indeed hear Pilgrim's Petition for Arbitration. Pilgrim respectfully requests that the Public Service Commission deny BellSouth's Motion to Dismiss, and proceed with the arbitration of the dispute.

Respectfully submitted,

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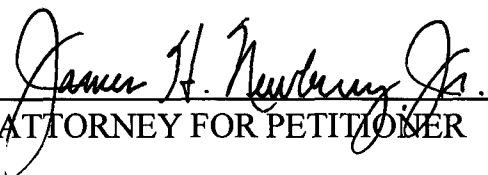
**CERTIFICATE OF SERVICE**

Pursuant to Section 252(b)(3) of the Telecommunications Act of 1996, I hereby certify that a copy of this Petitioner's Response to Respondent's Motion to Dismiss has been served by sending same via first class United States mail, postage prepaid, to the attorneys for Respondent as follows on this, the 10<sup>th</sup> day of November, 1999:

Creighton E. Mershon, Sr., Esq.  
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601 West Chestnut Street, Room 407  
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and

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\_\_\_\_\_  
ATTORNEY FOR PETITIONER

30165510.5  
39251.81733



FAX

BEFORE THE  
KENTUCKY PUBLIC SERVICE COMMISSION  
CASE NO. 99-385

PILGRIM TELEPHONE, INC.

PETITIONER

V.

PETITIONER'S  
MOTION FOR COMMISSION  
DETERMINATION

NOV 10 1999  
PUBLIC SERVICE  
COMMISSION

BELLSOUTH TELECOMMUNICATIONS, INC.

RESPONDENT

\*\*\*\*\*

Pilgrim Telephone, Inc. ("Pilgrim"), through counsel, moves this Commission for a determination of the following questions of law:

1. Are billing and collection services provided by local exchange carriers network elements which must be unbundled pursuant to Section 251(c)(3) of the Telecommunications Act of 1996?

2. Is real-time access to billed name and address information a network element which must be unbundled pursuant to Section 251(c)(3) of the Telecommunications Act of 1996?

3. Is real-time access to 900/976 blocking data a network element which must be unbundled pursuant to Section 251(c)(3) of the Telecommunications Act of 1996?

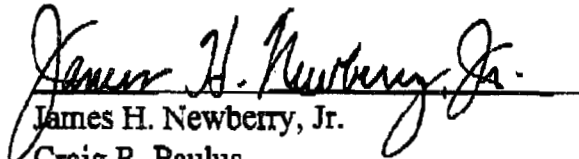
The resolution of the foregoing legal issues is central to the resolution of the issues raised in Pilgrim's Petition for Arbitration. BellSouth has made it abundantly clear that it believes the answer to each of the questions outlined above is "no." Pilgrim, on the other hand,

believes that the answer to each of the questions is "yes" as a result of the provisions of the Telecommunications Act of 1996 and the regulations promulgated thereunder by the Federal Communications Commission.

In support of this Motion, Pilgrim relies on the authority set forth in its Response to BellSouth's Motion to Dismiss.

Respectfully submitted,

WYATT, TARRANT & COMBS



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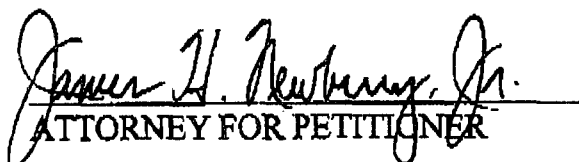
**CERTIFICATE OF SERVICE**

Pursuant to Section 252(b)(3) of the Telecommunications Act of 1996, I hereby certify that a copy of this Petitioner's Motion for Commission Determination has been served by sending same via first class United States mail, postage prepaid, to the attorneys for Respondent as follows on this, the 10<sup>th</sup> day of November, 1999:

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BEFORE THE  
KENTUCKY PUBLIC SERVICE COMMISSION  
CASE NO. 99-385

PILGRIM TELEPHONE, INC.

PETITIONER

V.  
PETITIONER'S  
RESPONSE TO RESPONDENT'S  
MOTION TO DISMISS

BELLSOUTH TELECOMMUNICATIONS, INC.

RESPONDENT

\* \* \* \* \*

Pilgrim Telephone, Inc. ("Pilgrim"), through counsel, submits the following Response to BellSouth Telecommunications, Inc.'s ("BellSouth") Motion to Dismiss:

INTRODUCTION

This matter arises as the result of an arbitration petition filed by Pilgrim pursuant to Section 252 of the Telecommunications Act of 1996 (the "Act"). Pilgrim is an interstate interexchange carrier ("IXC") and a provider of various telecommunications services, including telemessaging and teleconferencing services. As such, Pilgrim seeks to obtain three network elements from BellSouth: (1) billing and collection services ("B&C"); (2) real time access to 900/976 blocking data; and (3) real time access to billed name and address data ("BNA"), all of which collectively are hereafter referred to as "Requested Network Elements" or "RNEs".

To gain access to the RNEs, Pilgrim has pursued several alternative routes. Initially, Pilgrim attempted to reach a privately negotiated agreement with BellSouth for B&C. However, since that approach did not succeed, Pilgrim has sought to either (a) enter an

agreement with BellSouth for the RNEs which BellSouth is required to unbundle pursuant to Section 251(c)(3) of the Act, or (b) seek certification as a competitive local exchange carrier ("CLEC") so as to obtain the services through an interconnection agreement with BellSouth pursuant to Section 251(c)(2) of the Act. Formal negotiations with BellSouth under Section 252 of the Act were initiated in April, but those negotiations did not succeed. On September 15, 1999, this arbitration was commenced.

In response to Pilgrim's Petition for Arbitration, BellSouth filed an Answer and Motion to Dismiss. The Motion set forth three bases upon which BellSouth argued that Pilgrim's Petition should be dismissed: (1) the Petition was defective because issues were raised in exhibits which were incorporated by reference in the Petition and not in the Petition itself; (2) Pilgrim is improperly using the arbitration process to resolve billing and collection issues; and (3) Pilgrim is not a certified telecommunications carrier that has standing to assert claims in a Section 252 arbitration proceeding. Issues (1) and (3) are bogus issues which will be summarily addressed later. However, issue (2) is, perhaps, the gravamen of this matter, and Pilgrim will respond first to the question of whether Section 252 arbitration proceedings can be used to address billing and collection issues.

**I. SECTION 252 ARBITRATION PROCEEDINGS ARE APPROPRIATE FORUMS FOR THE RESOLUTION OF BILLING AND COLLECTION DISPUTES.**

For several years, BellSouth provided Pilgrim with B&C pursuant to a privately negotiated contract. As used in this Response, "B&C" means the process by which an incumbent local exchange carrier ("ILEC") in consideration of a negotiated fee (a) submits

invoices to its customers for various telecommunications services rendered by IXCs and other third parties, (b) collects those invoices in the process of collecting its own invoices to its customers, and (c) remits payments from its customers to the appropriate IXC or other third party.

In any business venture, the ability to bill and collect for the services which are rendered is an inherent part of doing business. Without that ability, no business can function. In the telecommunications industry, there are an enormous number of customers, most of whom pay relatively small sums of money each month for telecommunications services. Thus, the only economically feasible way for any telecommunications company to bill and collect for its services is through highly computerized processes which are used on a high volume basis. To do otherwise would be prohibitively expensive.

For better or worse, ILECs are the only viable source for billing and collection. By virtue of their business, ILECs already have a large, highly sophisticated billing apparatus to bill and collect for their local exchange service. Moreover, not only is the ILEC billing and collection apparatus large and highly sophisticated, it is a highly effective system with materially better-than-average collection rates for an assortment of reasons. As a consequence, telecommunications carriers regularly seek to access B&C functions from ILECs in order to minimize the expense of the B&C process and to minimize the cost which consumers must pay for their telecommunications services.

In many respects, B&C functions are analogous to other network elements which ILECs must provide on an unbundled basis to telecommunications carriers in accordance with Section 251(c)(3) of the Act. Section 3 of the Act defines "network element" as follows:

The term "network element" means a facility or equipment used in the provision of a telecommunications service. Such term also includes features, functions, and capabilities that are provided by means of such facility or equipment, including subscriber numbers, databases, signaling systems, and information sufficient for billing and collection or used in the transmission, routing, or other provision of a telecommunications service.

Similarly, the Federal Communications Commission ("FCC") adopted regulations in 1996 which define "network element" as follows:

A network element is a facility or equipment used in the provision of a telecommunications service. Such term also includes, but is not limited to, features, functions, and capabilities that are provided by means of a such facility or equipment, including but not limited to, subscriber numbers, databases, signaling systems, and information sufficient for billing and collection or used in the transmission, routing, or other provision of a telecommunications service.

(Emphasis added.) Thus, just as telephone poles and lines are used in the provision of telecommunications services, so too is the B&C service. Without poles, lines, other equipment and facilities, and the ability to bill and collect, telecommunications services could not be provided.

BellSouth has steadfastly insisted that the B&C services sought by Pilgrim are not network elements. Notwithstanding the broad statutory and regulatory definitions of "network element," BellSouth has read 47 C.F.R. 51.319 to provide a comprehensive list of

network elements which must be unbundled. Furthermore, in light of the United States Supreme Court's decision in *AT&T Corp. v. Iowa Utilities Bd.*, 119 S.Ct. 721, BellSouth has been waiting for the FCC to issue new regulations to further define BellSouth's obligations to unbundle. On November 5, 1999, the FCC released its new regulations in which Operations Support Systems ("OSS") was defined in such a fashion that even BellSouth should have difficulty denying Pilgrim's position. The new regulations state:

Operations Support Systems: An incumbent LEC shall provide nondiscriminatory access in accordance with §1.311 and section 251(c)(3) of the Act to operations support systems on an unbundled basis to any requesting telecommunications carrier for the provision of a telecommunications service. Operations support system functions consist of pre-ordering, ordering, provisioning, maintenance and repair, and billing functions supported by an incumbent LEC's databases and information. . . .

*Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, Third Report and Order, FCC 99-238 (1999), Appendix C, p.

9. (Emphasis added.) Pilgrim believes that this new definition of OSS should alleviate any question in anyone's mind as to whether the B&C functions are network elements which must be unbundled. The requested B&C functions are unquestionably billing functions supported by BellSouth's databases and information. Since the services sought by Pilgrim are network elements under the Act and the FCC regulations, there can be little doubt of Pilgrim's statutory right under Section 251(c)(3) to gain access to the B&C functions which it seeks.

As a consequence of BellSouth's position, Pilgrim's efforts to negotiate either an agreement for access to unbundled network elements ("UNEs") or an interconnection



agreement have failed. On September 15, 1999, Pilgrim filed an arbitration petition with the Kentucky Public Service Commission and with other public service commissions throughout BellSouth's nine-state operating territory. The first of the commissions to schedule action on the arbitration petitions was Florida. At a preliminary issues identification meeting with the staff of the Florida Public Service Commission, Pilgrim proposed that the parties enter mediation pursuant to Section 252(a)(2) of the Act, and BellSouth agreed to that approach. Pilgrim withdrew its petition in Florida, but the mediation proved unsuccessful. Consequently, Pilgrim must proceed with this arbitration in order to obtain access to the UNEs to which it believes it is entitled.

Based upon its negotiations with BellSouth, it is abundantly clear to Pilgrim that there is a fundamental disagreement between the parties as to the applicability of Section 251(c)(3) to Pilgrim's request for RNEs. As set forth in greater detail below, the RNEs are network elements, and, as such, Pilgrim is entitled to seek arbitration under Section 252 as it seeks to obtain either an agreement for UNEs or an interconnection agreement.

**II. THE UNBUNDLING REQUIREMENTS OF SECTION 252 OF THE ACT MAKE IT CLEAR THAT THE REQUESTED NETWORK ELEMENTS ARE NETWORK ELEMENTS WHICH MUST BE UNBUNDLED.**

At the heart of the dispute between the parties is BellSouth's refusal to acknowledge that the network facilities, functions, and services requested by Pilgrim are UNEs under the Act and the implementing rules of the FCC. Thus, the dispute is primarily one of federal law. It is the Kentucky Public Service Commission, however, that is entrusted with the task

of approving any agreement between the parties in furtherance of the federal policy goals of the Act. *See AT&T*, 119 S.Ct. at 733.

The FCC broadly construed the statutory definition in Section 153(29) of the Act to include the physical facilities of the ILEC's network "together with the features, functions, and capabilities associated with those facilities." *Local Competition Order*, 11 FCC Rcd at 15631. The FCC concluded the "embedded features and functions within a network element are part of the characteristics of that element and may not be removed from it." *Id.* at 15632. Accordingly, ILECs "must provide network elements along with all of their features and functions, so that new entrants may offer services that compete with those offered by incumbents as well as new services." *Id.* Thus, ILECs must furnish access to the logical features, functions, and capabilities of the software located within the physical facilities of their network. *See id.* Finally, they are obliged to give access to the information they "use to provide telecommunications services commercially." *Local Competition Order*, 11 FCC Rcd at 15633.

When it implemented § 251 of the Act, the FCC identified a "minimum list" of UNEs. *Local Competition Order*, 11 FCC Rcd at 15624. Included on the list are call-related databases, which the FCC defines as databases that are used in signaling networks for B&C or the transmission, routing, or other provision of a telecommunications service. *See* 47 C.F.R. § 51.319(e)(2)(i). Call-related databases include the Line Information Database ("LIDB") and Advanced Intelligent Network databases. *See id.* § 51.319(e)(2)(ii).

Also on the FCC's list of UNEs are operations support systems ("OSS") functions. *See id.* § 319(g). OSS refers to, collectively, the systems, databases, information, and personnel that support an ILEC's network elements or services. *See BellSouth Corp.*, 13 FCC Rcd 6245, 6257 (1998). To ensure that all carriers are able to compete fairly, the FCC has consistently emphasized that an ILEC must give its competitors nondiscriminatory access to the functions of its OSS. *See id.* The FCC recognizes that a competing carrier that lacks access to OSS equivalent to what the ILEC provides to itself, its affiliate, or its customers, "will be severely disadvantaged, if not precluded altogether, from fairly competing." *Id.* at 6258 (quoting *Local Competition Order*, 11 FCC Rcd at 15764).

The FCC now defines OSS functions as consisting of "pre-ordering, ordering, provisioning, maintenance and repair, and billing functions supported by an incumbent LEC's databases and information." *See* 47 C.F.R. § 51.319(g). It defined billing as involving "the provision of appropriate usage data by one telecommunications carrier to another to facilitate customer billing with attendant acknowledgments and status reports." *See* 47 C.F.R. § 51.5. However, the FCC adopted that definition "as the minimum necessary for [its] requirements." *Local Competition Order*, 11 FCC Rcd at 15766 n. 1273. The agency made it clear that ILEC's must provide nondiscriminatory access to the "full range" of billing functions "enjoyed" by the ILEC. *Id.*

The FCC concluded that OSS functions fall "squarely" within the statutory definition of "network element" and must be unbundled upon request under § 253(c)(3) of the Act. *Local Competition Order*, 11 FCC Rcd at 15763. The Supreme Court agreed:

Given the breadth of this definition [of "network element"], it is impossible to credit the incumbents' argument that a "network element" must be part of the physical facilities and equipment used to provide local telephone service. . . . OSS, the incumbent's background software system, contains essential network information as well as programs to manage billing, repair ordering, and other functions. Section 153(20)'s reference to "databases . . . and information sufficient for billing and collection or used in the transmission, routing, or other provision of a telecommunications service" provides ample basis for treating this system as a "network element."<sup>1</sup>

The FCC's new regulation cited above reflects the strong language set forth in the Supreme Court's opinion. BellSouth's BNA and 900/976 blocking databases, the information they contain, and its B&C functions are network elements that must be unbundled.

**A. BNA is a Network Element Which Must Be Unbundled.**

The BNA database contains the name and address provided by each of BellSouth's local exchange customers to which BellSouth directly bills for its services. See 47 C.F.R. § 64.1201(a)(1). As such, BNA may be considered an UNE in four ways. First, BNA is billing information that clearly can be classified as among the "information sufficient for billing and collection": 47 U.S.C. § 153(29). Second, BellSouth uses its BNA database to provide telecommunications (both telephone exchange and exchange access) services commercially. Third, the BNA database is itself a call-related database. Finally, BNA information is processed by BellSouth's OSS. See *Local Competition Order*, 11 FCC Rcd at 15763.

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<sup>1</sup> *AT&T*, 119 S.Ct. at 734.

**B. 900/976 Blocking Information is a Network Element Which Must Be Unbundled.**

900/976 blocking information is believed to reside in one or more of BellSouth's central office switch software, customer or BNA database files, and Signaling System 7 databases. It also allows BellSouth to provide 900-Type Pay per Call Service Blocking, which it offers end users under section 13.3.17 of its federal access tariff (Tariff F.C.C. No. 1). That service blocks access to services offered on the 900 service access code. The switch software and databases that contain 900/976 blocking information, including the information itself, are UNEs because they are facilities BellSouth uses to provide an exchange access service. Hence, they are used in the "provision of a telecommunications service." 47 U.S.C. § 153(29).

**C. B&C is a Network Element Which Must Be Unbundled.**

BellSouth's databases and information used for the recording and aggregation of billing data fall within the statutory definition of "network element." See 47 U.S.C. § 153(29) (the term includes "subscriber numbers, databases, signaling systems, and information sufficient for billing and collection"). Certainly, billing is among the OSS functions that the FCC identifies as an UNE. See 47 C.F.R. § 51.319(g). The FCC has recognized that new entrants must have access to the OSS that allow BellSouth to "render bills" if they are to compete effectively. *BellSouth*, 13 FCC Rcd at 6247 n. 5. Moreover, B&C services have been identified as a UNE by the Oregon Public Utilities Commission. See *Investigation into the Cost of Providing Telecommunications Services*, 171 P.U.R. 4th

193 (Or. P.U.C. 1996). That decision, as applied by the Oregon Public Utilities Commission, was upheld on appeal. See *MCI Telecomms. Corp. v. GTE Northwest, Inc.*, 41 F.Supp. 2d 1157, 1180-81 (D.Or. 1999).

Collection (receiving payments and the maintenance of accounts) is as much a part of BellSouth's billing functions as the rendering of bills (preparation and mailing of statements of amounts due). The collection of deposits and monies due from end users is a UNE inasmuch as it is a function and capability that is provided by means of BellSouth's "databases . . . and information sufficient for billing and collection." 47 U.S.C. § 153(29). Clearly, receiving payments and maintaining accounts is among the "full range" of billing functions BellSouth presently enjoys. *Local Competition Order*, 11 FCC Rcd at 15766 n. 1273.

BellSouth both renders bills and collects monies for AT&T Corp. ("AT&T") as part of a single "message processing service" offered under section E8.2.1.A of its Kentucky access services tariff. By offering its billing and collection functions as a single tariffed access service, BellSouth shows that billing and collection are appropriately combined as an OSS function. Under the Act, B&C is a UNE that cannot be separated by BellSouth, except upon request. See 47 C.F.R. § 51.315(b).

It should be noted that BellSouth's offering of B&C as a tariffed access service constitutes a holding out to provide B&C "indifferently to all potential users." *National Ass'n of Regulatory Util. Comm'rs v. FCC*, 533 F.2d 601, 608 (D.C. Cir. 1976). Currently, holding itself out to provide B&C on tariffed rates, terms and conditions, BellSouth has no

reasonable basis to disclaim an obligation under the Act to provide B&C to other interstate telecommunications carriers "on rates, terms and conditions that are just, reasonable, and nondiscriminatory." 47 U.S.C. § 251(c)(3). Yet, BellSouth insists on entering into "proprietary and confidential" B&C contracts, and even refuses to reveal its B&C rates and terms without a nondisclosure agreement.<sup>2</sup> The reason for the secrecy is obvious: BellSouth is willing only to provide discriminatory access to its B&C functions on rates, terms, and conditions that are discriminatory.

BellSouth provides B&C to AT&T as a common carrier service, while offering it to Pilgrim as a contract service. At the same time, Pilgrim believes BellSouth is performing B&C functions for US LEC of North Carolina L.L.C. ("US LEC") under a negotiated interconnection agreement.<sup>3</sup> At least with respect to US LEC, BellSouth effectively acknowledged that its B&C functions qualify as a UNE available to competitors under § 251(c) of the Act. Nondiscriminatory access to those functions should be made available to all requesting telecommunications carriers under publicly-available, Public Service Commission-approved agreements. *See Investigation into the Cost of Providing Telecommunications Services, supra. See also MCI Telecomms. Corp. v. GTE Northwest, Inc., supra.*

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<sup>2</sup> See Letter of Leah G. Cooper to James H. Newberry, Jr., at 1 (Oct. 29, 1999).

<sup>3</sup> See Interconnection Agreement Negotiated by BellSouth Telecommunications, Inc. and US LEC of North Carolina, L.L.C. (filed with Kentucky Public Service Commission on July 20, 1998) at pp. 9 and 21.

### **III. PILGRIM IS A TELECOMMUNICATIONS CARRIER AS DEFINED BY THE ACT.**

BellSouth argues that Pilgrim is ineligible to institute this proceeding because it is not a certificated telecommunications carrier in Kentucky. However, an analysis of the Act and the FCC's regulations belies BellSouth's position.

BellSouth must afford nondiscriminatory access to its UNEs to "any requesting telecommunications carrier for the provision of a telecommunications service." 47 U.S.C. § 251(c)(3). BellSouth declines to do so on the grounds that Pilgrim is not a "telecommunications carrier" because it is not certificated by the Public Service Commission to provide telecommunications services.<sup>4</sup> However, Pilgrim is providing interstate telecommunications services in part under its Tariff F.C.C. No. 1. As a "provider of telecommunications services," Pilgrim is a telecommunications carrier under the Act. See 47 U.S.C. § 153(44).

To deny Pilgrim its rights as a requesting telecommunication carrier because it is uncertificated would defeat the pro-competitive purposes of the Act. Congress imposed duties on ILECs under § 251(c) specifically to "facilitate market entry" by new competitors. *AT&T*, 119 S.Ct. at 726. The national requirements for UNEs were adopted by the FCC to "allow new entrants, including small entities, [to seek] to enter local markets on a national or regional scale." *Local Competition Order*, 11 FCC Rcd at 15624. To require state certification is a prerequisite to obtaining access to UNEs necessary for market entry would

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<sup>4</sup> See Answer and Motion to Dismiss of BellSouth Telecommunications, Inc., at p. 4 (Oct. 11, 1999) ("Answer and Motion to Dismiss").



inhibit Pilgrim's ability to enter the local telecommunications market. Requiring prior certification would be like placing the cart before the horse.

Furthermore, BellSouth's position may well be a violation of its good faith negotiation duties as set forth at 47 CFR 51.301(c)(4). That regulation states:

(c) If proven to the Commission, an appropriate state commission, or a court of competent jurisdiction, the following actions or practices, among others, violate the duty to negotiate in good faith:

. . . .

(4) Conditioning negotiation on a requesting telecommunications carrier first obtaining state certifications.

Although BellSouth has made an ostensible effort to negotiate with Pilgrim, its position that negotiations with Pilgrim cannot be arbitrated under Section 252 of the Act is entirely contrary to the spirit of the Act and the regulations. The FCC has said that BellSouth cannot impose a negotiating requirement that Pilgrim first obtain state certifications. BellSouth is now trying to use this proceeding to accomplish that very objective. Its breach of its duty to negotiate in good faith should be obvious on the basis of its posture in this proceeding, if for no other reason.

Pilgrim will not and cannot decide whether to seek status in Kentucky as a CLEC until it can identify the UNEs it may access and learn the rates, terms, and conditions under which BellSouth will provide such access. A determination of whether a certificate is necessary may have to wait until the completion of the arbitration process. Under these circumstances, Pilgrim should not be required to obtain state certification as a prerequisite to exercising its rights under the federal statute.

The Act provides that an ILEC must provide UNEs "for the provision of a telecommunications service." 47 U.S.C. § 251(c)(3). The statute defines "telecommunications" as 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." 47 U.S.C. § 153(43). "Telecommunications service" is defined in turn to mean the "offering of telecommunications for a fee directly to the public . . . regardless of the facilities used." *Id.* § 153(46). The services Pilgrim currently offers under its federal tariff are telecommunications services.

Pilgrim intends to use its access to BellSouth's UNEs to provide, for example, teleconferencing and telemessaging services. Viewed on an end-to-end basis, these services are provided so that (1) information of the user's choosing is transmitted between points specified by the user, and (2) there is no change in the "form and content of the information as sent and received." The information imparted by the user is transmitted in the form of a voice communication and is received in the form of a voice communication at the point specified by the user. Thus, Pilgrim's teleconferencing and telemessaging services are telecommunications under the Act. How the information is formatted or processed by Pilgrim between the point it is sent and the point it is received is irrelevant under the statutory definition. And, since they are offered "for a fee directly to the public," Pilgrim's teleconferencing and telemessaging services are telecommunications services.

The fact that Pilgrim also provides information services does not affect its status as a telecommunications carrier under the Act. The FCC has held that, "if a company provides

both telecommunications services and information services, it must be classified as a telecommunications carrier." *Local Competition Order*, 11 FCC Rcd at 15517. Moreover, telecommunications carriers that have gained access to UNEs pursuant to the § 251(c)(3) agreement "may offer information services through the same arrangement, so long as they are offering telecommunications services through the same arrangement as well." *Local Competition Order*, 11 FCC Rcd at 15990. Therefore, Pilgrim may provide information services using BellSouth's UNEs and still remain a telecommunications carrier, so long as it also employs those UNEs to provide a telecommunications service.

Pilgrim's position is supported by the Act's legislative history. The conference report on Senate Bill 652, which became the Telecommunications Act of 1996 in February of 1996, reveals that local exchange carriers indeed have a duty to interconnect with interexchange carriers ("IXCs") and information service providers ("ISPs"). The conference report reveals that the Senate Bill originally intended for Section 251(a) to not apply to interconnection arrangements between LECs and IXCs. However, the House Amendment to Section 251 restates the obligation contained in Section 201(a) of the Communications Act on all common carriers to interconnect with the facilities and equipment of other providers of telecommunications services and information services. This difference between the Senate and House versions was resolved by the Conference Agreement in favor of a general duty of interconnection including the duty to interconnect with IXCs.

Thus, the evolution of the Act shows that Congress rejected BellSouth's position, and, as a result, ILECs such as BellSouth must provide unbundled, nondiscriminatory access to all telecommunications carriers, including IXCs such as Pilgrim.

#### **IV. THE AVAILABILITY OF BELLSOUTH'S BNA INFORMATION PURSUANT TO TARIFF IS IRRELEVANT.**

BellSouth has indicated that real-time BNA information is available under its access service tariff.<sup>5</sup> However, the availability of BellSouth's BNA information pursuant to tariff is irrelevant. Any tariff offering of BNA information to a telecommunications carrier was effectively preempted by the Act.

The FCC treats the provision of access to BNA as a common carrier service subject to tariff regulation. See *Policies and Rules Concerning Local Exchange Carrier Validation and Billing Information for Joint Use Calling Cards*, 8 FCC Rcd 4478, 4481-82 (1993). By offering BNA access pursuant to tariff BellSouth subjected the offering to the filed-rate doctrine, under which the tariffed rates become the legal rates that must be charged to all customers alike. See *Maislin Industries, U.S. v. Primary Steel, Inc.*, 497 U.S. 116, 126 (1990). Until the tariffed rates are changed, BellSouth may not negotiate different rates for BNA access. See *id.* at 131. The same is true with respect to all the terms and conditions of the BNA access offering that are "covered" by BellSouth's tariff. See *AT&T v. Central Office Tel., Inc.*, 118 S.Ct. 1956, 1964 (1998). In those respects, the filed-rate doctrine,

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<sup>5</sup> See Answer and Motion to Dismiss, *supra* note 3, at pp. 8 and 10.

which is at the heart of tariff regulation, is wholly inconsistent with the duty to negotiate imposed by § 251(c)(1) of the Act. *See* 47 U.S.C. § 251(c)(1).

Whereas it cannot negotiate rates, terms, and conditions under the filed-rate doctrine, BellSouth must negotiate in good faith the rates, terms, and conditions under which a requesting telecommunications carrier may gain access to its UNEs, including its BNA information. Obviously, therefore, BellSouth's access tariff cannot govern access to its UNEs. If it adheres to its tariff and refuses to negotiate, BellSouth violates its duty to negotiate under the Act and the FCC's rules. *See* 47 C.F.R. § 51.301(a). Because a tariff offering of a UNE conflicts with BellSouth's obligations under § 251(c)(3), BellSouth's access tariff offering of BNA has been preempted. *See MCI*, 41 F.Supp. 2d at 1177-78.

The Act affords Pilgrim the right to negotiate with BellSouth to gain nondiscriminatory access to its UNEs. If negotiations are unsuccessful, Pilgrim has the statutory right to ask the Public Service Commission to arbitrate the matter. *See* 47 U.S.C. § 252(b)(1). BellSouth cannot deprive Pilgrim of those rights by forcing it to obtain access to BNA under tariff provisions that may not comply with the substantive standards of the Act. In short, the provision of BNA access under tariff "bypasses the Act entirely and ignores the procedures and standards that Congress has established." *MCI*, 41 F.Supp. 2d at 1178.

BellSouth also offers B&C under its access services tariff on file with the Commission. As discussed, BellSouth provides a message billing service to AT&T which includes the preparation of bills, the mailing of statements of the amounts due for AT&T's

service, and the collection of deposits and monies due from the end users. See *Access Services Tariff* § E8.2.1.A. As with BellSouth's BNA, BellSouth's access tariff offering of B&C has been preempted by the Act. However, the offering shows the feasibility of providing BellSouth's B&C functions as a UNE. If it can sell B&C as a tariffed exchange access service, BellSouth can provide its B&C functions as a UNE used in the provision of an exchange access telecommunications service. In any event, B&C (and BNA) can be considered a UNE regardless of the fact that BellSouth sells B&C as a tariffed service. See *Local Competition Order*, 11 FCC Rcd at 15632.

V. PILGRIM'S PETITION FOR ARBITRATION IS SUFFICIENT.

Pilgrim has attempted to negotiate with BellSouth, and as evidenced by the specific responses of BellSouth in its Answer, BellSouth is fully aware of the subject matter of its dispute with Pilgrim. BellSouth's argument flatly ignores the facts. First, every exhibit was expressly "incorporated by reference" in the Petition, and thus each exhibit became a part of the Petition. The use of incorporation by reference has long been recognized by both the federal and state courts in Kentucky. See, Fed.R.Civ.P.10(c) and CR 10.03. Further, the incorporation by reference has support in the case law of Kentucky. *Caslin v. General Electric Company*, 608 S.W.2d 69 (Ky. App. 1980); *Shockey v. Pelfrey*, 235 S.W.2d 1017 (Ky. 1951). On the other hand, BellSouth only offers an unreported California case in support of its position, and in that case, there is no indication that the petition incorporated the exhibits by reference as is the case in this proceeding. Instead, the Court indicated that

the only reference to the disputed issue was in attached appendices. Thus, facts before the California court are distinguishable from the facts in this proceeding.

Second, it is clear that BellSouth is aware of the nature of the dispute and the issues which Pilgrim wishes to resolve. Since the exhibits are all correspondence between BellSouth and Pilgrim. In short, BellSouth knows exactly what matters are at issue. Further, by arguing the merits of Pilgrim's Petition for Arbitration, BellSouth has waived any objections to any deficiencies within Pilgrim's Petition for Arbitration. See *MCI Telecommunications Corporation v. Illinois Bell Telephone Company*, 1999 U.S. Dist. Lexis 11418, (N.D. Ill. 1999). Under Section 252(b)(4)(A), "the state commission shall limit its consideration of any petition . . . and any responses thereto to the issues set forth in the petition and in the response. . ." (emphasis added). BellSouth's Answer discusses the issues that Pilgrim raises and therefore, under *MCI*, any deficiency in the Petition is waived. This is just another example of BellSouth attempting to avoid its duty to negotiate with Pilgrim.

BellSouth's final assertion is that Pilgrim has failed to set forth in its Petition which issues are resolved and which are not, arguing that this makes the Petition defective. Aside from being absurdly technical, this argument conveniently fails to point out that BellSouth has not allowed any issues to be resolved. Exhibit E of Pilgrim's Petition is a letter to BellSouth requesting answers to various questions regarding BellSouth's form interconnection agreement. Exhibit F to the Petition is BellSouth's reply which states, "we are unable to answer your questions at this time." BellSouth did not reply to those questions

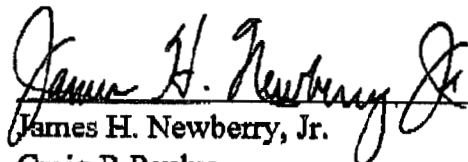
until after Pilgrim's 160 day window to file its Petition. If Pilgrim had waited for BellSouth to provide the information on the agreement, Pilgrim would have waived its rights under the Act. BellSouth is required to designate a representative with authority to make binding representations. See 47 C.F.R. § 51.301. Refusal to do so is a breach of the duty to negotiate in good faith, if a significant delay is caused. 47 C.F.R. § 51.301(c)(7). Now, BellSouth seeks to turn its failure to negotiate in good faith to its own advantage.

### CONCLUSION

For the reasons set forth herein, the Kentucky Public Service Commission should indeed hear Pilgrim's Petition for Arbitration. Pilgrim respectfully requests that the Public Service Commission deny BellSouth's Motion to Dismiss, and proceed with the arbitration of the dispute.

Respectfully submitted,

WYATT, TARRANT & COMBS



James H. Newberry, Jr.

Craig R Paulus

1700 Lexington Financial Center

250 West Main Street

Lexington, KY 40507-1746

(606) 233-2012

ATTORNEY FOR PETITIONER



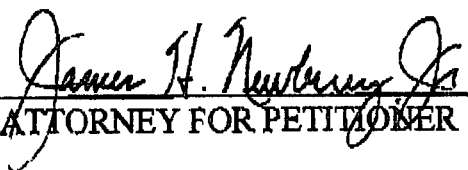
**CERTIFICATE OF SERVICE**

Pursuant to Section 252(b)(3) of the Telecommunications Act of 1996, I hereby certify that a copy of this Petitioner's Response to Respondent's Motion to Dismiss has been served by sending same via first class United States mail, postage prepaid, to the attorneys for Respondent as follows on this, the 10<sup>th</sup> day of November, 1999:

Creighton E. Mershon, Sr., Esq.  
General Counsel-Kentucky  
BellSouth Telecommunications, Inc.  
601 West Chestnut Street, Room 407  
P.O. Box 32410  
Louisville, KY 40232

and

R. Douglas Lackey, Esq.  
Bennett L. Ross, Esq.  
Lisa S. Foshee, Esq.  
BellSouth Telecommunications, Inc.  
Suite 4300, BellSouth Center  
675 West Peachtree Street, N.E.  
Atlanta, GA 30375

  
\_\_\_\_\_  
ATTORNEY FOR PETITIONER

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BEFORE THE  
KENTUCKY PUBLIC SERVICE COMMISSION  
CASE NO. 99-385

RECEIVED  
NOV - 1 1999

PUBLIC SERVICE  
COMMISSION

PILGRIM TELEPHONE, INC.

PETITIONER

V.

**PILGRIM TELEPHONE'S  
MOTION FOR LEAVE TO FILE RESPONSE**

BELLSOUTH TELECOMMUNICATIONS, INC.

RESPONDENT

\* \* \* \* \*

Pilgrim Telephone, Inc. ("Pilgrim"), through counsel, respectfully moves the Kentucky Public Service Commission for leave to file its response to the Motion to Dismiss made by BellSouth Telecommunications, Inc. ("BellSouth") on or before November 10, 1999. In support of this Motion, Pilgrim states as follows:

1. During an October 15, 1999 meeting with staff at the Florida Public Service Commission, Pilgrim and BellSouth agreed to mediate their dispute. The mediation is scheduled to be conducted on November 2, 1999 in Tallahassee, Florida, and is expected to go forward as scheduled. This mediation may resolve the differences between Pilgrim and BellSouth, and if so, this Arbitration may become unnecessary.

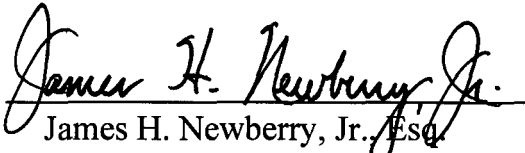
2. Even if the mediation fails to resolve the differences between that parties, the mediation will, at a minimum, serve to better focus the issues between BellSouth and Pilgrim. As a result of the improved focus, this Arbitration, should it be necessary, should proceed more expeditiously.

3. Pilgrim specifically requests that it be granted until November 10, 1999 to respond to BellSouth's Motion to Dismiss, and the additional time should not result in any prejudice to BellSouth.

WHEREFORE, Pilgrim respectfully moves the Commission for leave to file its response to BellSouth's Motion to Dismiss on or before November 10, 1999. An Order to this effect is attached for the convenience of the Commission.

Respectfully submitted,

WYATT, TARRANT & COMBS

By:  James H. Newberry, Jr., Esq.

1700 Lexington Financial Center  
250 West Main Street  
Lexington, Kentucky 40507-1746  
(606) 233-2012

Counsel for Pilgrim Telephone, Inc.

KENTUCKY PUBLIC SERVICE COMMISSION  
CASE NO. # 99-385

PILGRIM TELEPHONE, INC.

PETITIONER

V. **ORDER GRANTING PILGRIM TELEPHONE'S  
MOTION FOR LEAVE TO FILE RESPONSE**

BELLSOUTH TELECOMMUNICATIONS, INC.

RESPONDENT

\* \* \* \* \*

Pilgrim Telephone, Inc.'s Motion for Leave to File a Response is hereby granted.  
Pilgrim Telephone, Inc. shall file its reply to BellSouth Telecommunications, Inc.'s Motion  
to Dismiss on or before November 10, 1999.

So ordered, this \_\_\_\_ day of \_\_\_\_\_, 1999.

By the Commission.

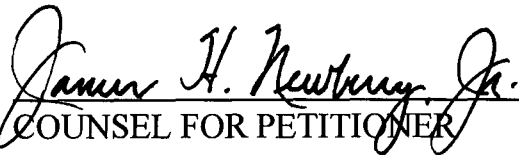
ATTEST:

\_\_\_\_\_  
Executive Director

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing Motion for Leave to File Response Motion with accompanying Order was served upon the following by U.S. mail, postage prepaid, this 29<sup>th</sup> day of October, 1999:

Creighton E. Mershon, Sr., Esq.  
601 West Chestnut Street, Room 407  
P.O. Box 32410  
Louisville, KY 40232  
COUNSEL FOR RESPONDENT

  
COUNSEL FOR PETITIONER

(FAX)  
RECEIVED  
OCT 29 1999  
PUBLIC SERVICE  
COMMISSION

BEFORE THE  
KENTUCKY PUBLIC SERVICE COMMISSION  
CASE NO. 99-385

PILGRIM TELEPHONE, INC.

PETITIONER

V.

**PILGRIM TELEPHONE'S  
MOTION FOR LEAVE TO FILE RESPONSE**

BELLSOUTH TELECOMMUNICATIONS, INC.

RESPONDENT

\*\*\*\*\*

Pilgrim Telephone, Inc. ("Pilgrim"), through counsel, respectfully moves the Kentucky Public Service Commission for leave to file its response to the Motion to Dismiss made by BellSouth Telecommunications, Inc. ("BellSouth") on or before November 10, 1999. In support of this Motion, Pilgrim states as follows:

1. During an October 15, 1999 meeting with staff at the Florida Public Service Commission, Pilgrim and BellSouth agreed to mediate their dispute. The mediation is scheduled to be conducted on November 2, 1999 in Tallahassee, Florida, and is expected to go forward as scheduled. This mediation may resolve the differences between Pilgrim and BellSouth, and if so, this Arbitration may become unnecessary.

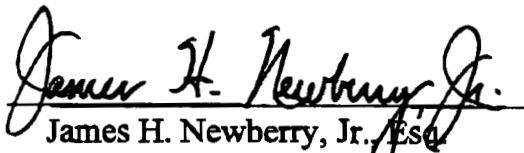
2. Even if the mediation fails to resolve the differences between that parties, the mediation will, at a minimum, serve to better focus the issues between BellSouth and Pilgrim. As a result of the improved focus, this Arbitration, should it be necessary, should proceed more expeditiously.

3. Pilgrim specifically requests that it be granted until November 10, 1999 to respond to BellSouth's Motion to Dismiss, and the additional time should not result in any prejudice to BellSouth.

WHEREFORE, Pilgrim respectfully moves the Commission for leave to file its response to BellSouth's Motion to Dismiss on or before November 10, 1999. An Order to this effect is attached for the convenience of the Commission.

Respectfully submitted,

WYATT, TARRANT & COMBS

By: 

James H. Newberry, Jr., Esq.  
1700 Lexington Financial Center  
250 West Main Street  
Lexington, Kentucky 40507-1746  
(606) 233-2012

Counsel for Pilgrim Telephone, Inc.

KENTUCKY PUBLIC SERVICE COMMISSION  
CASE NO. # 99-385

PILGRIM TELEPHONE, INC.

PETITIONER

V.

**ORDER GRANTING PILGRIM TELEPHONE'S  
MOTION FOR LEAVE TO FILE RESPONSE**

BELLSOUTH TELECOMMUNICATIONS, INC.

RESPONDENT

\*\*\*\*\*

Pilgrim Telephone, Inc.'s Motion for Leave to File a Response is hereby granted.  
Pilgrim Telephone, Inc. shall file its reply to BellSouth Telecommunications, Inc.'s Motion  
to Dismiss on or before November 10, 1999.

So ordered, this \_\_\_\_\_ day of \_\_\_\_\_, 1999.

By the Commission.

ATTEST:

\_\_\_\_\_  
Executive Director



CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing Motion for Leave to File Response Motion with accompanying Order was served upon the following by U.S. mail, postage prepaid, this 29<sup>th</sup> day of October, 1999:

Creighton E. Mershon, Sr., Esq.  
601 West Chestnut Street, Room 407  
P.O. Box 32410  
Louisville, KY 40232  
COUNSEL FOR RESPONDENT

*James H. Newberry, Jr.*  
\_\_\_\_\_  
COUNSEL FOR PETITIONER

© BELLSOUTH

BellSouth Telecommunications, Inc. 502 582-8219  
P. O. Box 32410 Fax 502 582-1573  
Louisville, Kentucky 40232 Internet  
or Creighton.E.Mershon@bridge.bellsouth.com

Creighton E. Mershon, Sr.  
General Counsel - Kentucky

BellSouth Telecommunications, Inc.  
601 West Chestnut Street, Room 407  
Louisville, Kentucky 40203

October 11, 1999

RECEIVED  
OCT 11 1999  
PUBLIC SERVICE  
COMMISSION

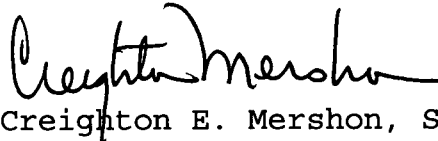
Helen C. Helton  
Executive Director  
Public Service Commission  
730 Schenkel Lane  
P. O. Box 615  
Frankfort, KY 40602

Re: Petition for Arbitration of Pilgrim Telephone, Inc.  
Pursuant to Section 252(b) of the Telecommunications  
Act of 1996  
PSC 99-385

Dear Helen:

Enclosed for filing in the above-captioned case are the  
original and ten (10) copies of Answer and Motion to Dismiss of  
BellSouth Telecommunications, Inc.

Sincerely,

  
Creighton E. Mershon, Sr.

Enclosure

cc: Parties of Record

181995

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

RECEIVED  
OCT 11 1999  
PUBLIC SERVICE  
COMMISSION

In re: )  
)  
Petition for Arbitration of Pilgrim ) Case No. 99-385  
Telephone, Inc. Pursuant to Section )  
252(b) of the Telecommunications Act )  
of 1996 )

**ANSWER AND MOTION TO DISMISS OF BELLSOUTH  
TELECOMMUNICATIONS, INC.**

BellSouth Telecommunications, Inc. ("BellSouth"), through its counsel, hereby responds to the Petition for Arbitration of Pilgrim Telephone, Inc. ("Pilgrim") as follows:

**INTRODUCTION AND MOTION TO DISMISS**

Section 251(c)(1) of the Telecommunications Act of 1996 ("1996 Act") requires incumbent local exchange companies to negotiate with telecommunications carriers the particular terms and conditions of agreements to fulfill the duties described in Sections 251(b) and 251(c)(2-6). If the parties are unable to reach agreement, the 1996 Act allows either the incumbent or the competing local exchange carrier ("CLEC") to petition a state commission for arbitration of unresolved issues.<sup>1</sup> The petition must identify the issues resulting from the negotiations that are resolved, as well as those that are unresolved.<sup>2</sup> The petitioning party must submit along with its petition "all relevant documentation concerning: (1) the unresolved issues; (2) the position of each of the parties with respect

<sup>1</sup> 47 U.S.C. § 252(b)(2).

<sup>2</sup> See generally, 47 U.S.C. §§ 252 (b)(2)(A) and 252 (b)(4).

to those issues; and (3) any other issue discussed and resolved by the parties.”<sup>3</sup> A non-petitioning party to a negotiation under this section may respond to the other party’s petition and provide such additional information as it wishes within 25 days after the state commission receives the petition.<sup>4</sup> The 1996 Act limits a state commission’s consideration of any petition (and any response thereto) to the unresolved issues set forth in the petition and in the response.<sup>5</sup>

In this case, Pilgrim’s arbitration petition should be dismissed because Pilgrim did not properly plead any issues for which it purports to seek arbitration. Section 252(b)(2)(A)(i)-(iii) of the Act expressly sets forth the duties of the petitioner (in this case Pilgrim) when filing for arbitration of an interconnection agreement. Under the 1996 Act, Pilgrim is required to state “the unresolved issues” in its petition. The reason proper pleading is so important is that the responding party needs a reasonable opportunity to respond to the Petition. (See Section 252(b)(3)). Furthermore, Section 252(b)(4)(A) of the 1996 Act provides that the Commission is required to “limit its consideration of any petition under Paragraph (1) to the issues set forth in the Petition and in the response, if any, filed under Section 252(b)(3)(A) (emphasis added).

Issues and positions contained in exhibits attached to an arbitration petition do not comply with the pleading requirement of the 1996 Act. See *MCI Telecomm. Corp. v. Pacific Bell*, 1998 U.S. Dist. LEXIS 17556, at 74 (N.D. Cal., Sept. 29, 1998). In *MCI v. Pacific Bell*, the court addressed Pacific Bell’s contention that the issue of dark fiber was not properly before the arbitration panel because MCI did not list dark fiber as an issue in

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<sup>3</sup> 47 U.S.C. § 252(b)(2).

<sup>4</sup> 47 U.S.C. § 252(b)(3).

the proceeding but rather “merely mentioned dark fiber in several appendices attached to its petition for arbitration.” *Id.* The court agreed, holding that “[s]imply listing an issue in an appendix to a petition does not sufficiently ‘set forth’ the issues for Arbitration, and accordingly the issue is not properly before the Court.” *Id.*

In the Petition, Pilgrim purports to set forth the issues to be arbitrated. Rather than identify any specific issues, however, Pilgrim simply provided the following:

17. Numerous issues remain unresolved, including:

A. The meaning of various provisions of BellSouth’s form interconnection agreement.

B. Whether Pilgrim has a statutory right under Section 251(c)(3) of the Act to access the UNEs from BellSouth.

C. Whether BellSouth has, by virtue of the actions described in Paragraph 16 and otherwise, failed to discharge its obligation to negotiate with Pilgrim in good faith as required by Section 251(c)(1) of the Act.

D. Whether BellSouth has provided the UNEs identified in Exhibit “A” on a discriminatory basis in violation of Section 251©(2)(D) of the Act.

(Petition, ¶17).

This list hardly represents the “unresolved issues” between the parties. The interpretation of unspecified provisions of the proposed interconnection agreement (Issue A) and the scope of Pilgrim’s statutory rights involve issues more properly raised in a declaratory judgment proceeding, not an arbitration. Likewise, any claim that BellSouth has failed to negotiate in good faith (which is untrue) (Issue C) should be addressed in a complaint, not an arbitration. The closest Pilgrim comes to identifying the issues in question is Issue D in which it refers the Commission to Exhibit “A” of the Petition, which is a letter from Pilgrim to BellSouth. As the court made clear in *MCI v. Pacific Bell*, however, “[s]imply listing an issue in an appendix to a petition does not sufficiently

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<sup>5</sup> 47 U.S.C. § 252(b)(4).

'set forth' the issues for Arbitration" as required under the 1996 Act. Thus, Pilgrim has failed to comply with the requirements of the Act, and the Petition should be dismissed.

Pilgrim's Petition also should be dismissed because Pilgrim improperly is attempting to use the arbitration process to resolve billing and collection issues, rather than issues arising under the requirements of Section 251 of the 1996 Act. BellSouth provided billing and collections services to Pilgrim pursuant to a Bill Processing Service Agreement until March 12, 1999. BellSouth was forced to terminate the agreement in March because Pilgrim refused to pay, and continues to refuse to pay, \$980,369.49 in back payments. As is evident from Pilgrim's pleading, and conversations with Pilgrim representatives, Pilgrim views this arbitration as a means by which it can force BellSouth to provide billing and collections services as Unbundled Network Elements (UNEs) to Pilgrim. Pilgrim's use of the 1996 Act as a negotiation strategy for billing and collections issues is improper, and should not be sanctioned by the Commission.

Finally, other state commissions have dismissed similar arbitration requests when the company seeking arbitration is not a certificated telecommunications carrier authorized to furnish telecommunications services to the public in that state. *See In re: Petition by Low Tech Designs, Inc. For Arbitration*, Docket No. 7270-U (May 16, 1997) (copy attached). For example, the North Carolina Utilities Commission ("NCUC") recently dismissed an arbitration petition filed by Pilgrim in North Carolina. After noting that Pilgrim was not certificated in North Carolina, the NCUC reasoned that

Section 252 of [1996 Act] appears essentially premised upon a telecommunications carrier seeking interconnection with an incumbent local exchange carrier. Section 3(a)(49) defines a "telecommunications carrier" as "any provider of telecommunications services...." Section 3(a)(51) in turn defines "telecommunications service" as "the offering of telecommunications for a fee directly to the public...."

(Order, Docket No. P-895, 9/22/99, at 2) (copy attached). According to the NCUC, "Since Pilgrim is not certificated and is presumably not offering telecommunications services to the public for a fee in North Carolina, it is questionable whether Pilgrim qualifies even to file a Petition for Arbitration in North Carolina since it is not under...[the] definition [of] a telecommunications carrier here." (*Id.*) In addition to statutory concerns, the NCUC also held that "there are compelling policy reasons not to process the arbitration petitions of uncertificated telecommunications companies such as Pilgrim." (*Id.*) According to the NCUC, "[s]uch arbitrations would waste both the Commission's and the parties' resources in what would amount to a sterile exercise since there would be no legitimate customers to be served." (*Id.*) The NCUC held that "the Commission will decline to entertain arbitration petitions under Section 252 wherein the Petitioner is not certificated to provide service in this State." (*Id.* at 3).<sup>6</sup>

Here, Pilgrim has an approved long distance resale tariff on file with the Kentucky Commission. However, it is not clear that Pilgrim intends to provide local telecommunications services to the public in Kentucky, particularly since BellSouth's substantive discussions with Pilgrim have all been focused on billing and collection issues. BellSouth does not bill and collect for CLECs. While Kentucky has liberal CLEC "certification" requirements, BellSouth submits that it would be poor public policy for this Commission to expend time and resources arbitrating an agreement for a company that may never even be certificated as a CLEC in Kentucky, much less provide service here. In any event, the Pilgrim petition provides the Commission with a reason to

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<sup>6</sup> The South Carolina Public Service Commission also has dismissed Pilgrim's Petition on the grounds that Pilgrim is not certificated in South Carolina. The South Carolina Commission returned the petition without issuing a written order.

revisit its CLEC certification requirements to more clearly identify those carriers that in fact intend to offer local service in Kentucky.

For these reasons and consistent with decisions of other state commissions, this Commission should dismiss Pilgrim's Petition. In the event the Commission denies BellSouth's Motion to Dismiss, BellSouth responds to the specific allegations set forth in the Petition as follows:

### **SPECIFIC RESPONSES**

BellSouth responds to each allegation in the Petition as follows:

1. BellSouth is without sufficient knowledge to either admit or deny the allegations in Paragraph 1 of the Petition, and therefore denies the allegations therein. By way of further response, BellSouth states that Pilgrim is not certificated as a local exchange provider to provide telecommunications services in any state in BellSouth's region. However, according to its website, Pilgrim provides a variety of services, including several adult services such as the "Fantasy Line," "Intimate Connections," and the "Men's room."

2. BellSouth admits the allegations in Paragraph 2 of the Petition.

3. BellSouth admits that it provided billing and collections services to Pilgrim pursuant to a Bill Processing Service Agreement. On March 12, 1999, BellSouth terminated the parties' arrangement pursuant to the terms of the Agreement because Pilgrim owed BellSouth \$980,369.49 in back payments. BellSouth denies the remaining allegations in Paragraph 3 of the Petition.

4. BellSouth denies the allegations in Paragraph 4 of the Petition. By way of further response, BellSouth states that Pilgrim requested negotiation of an



interconnection agreement on April 9, 1999, and thus negotiations between the parties only have been conducted since that time. BellSouth further responds that Pilgrim's request for negotiation makes clear that Pilgrim is attempting to use this arbitration proceeding not to obtain an interconnection agreement, but rather to resolve its billing and collection dispute with BellSouth. In its April 9, 1999 letter, Pilgrim identified three services that it contended were "denied" to it by BellSouth, all of which are billing and collections issues: (1) the ability to obtain access to real time access to billed names and address ("BNA") information; (2) the ability to use 800 numbers to provide access to various billed services; (3) access to 900 blocking information. Of these three items, BellSouth already provides, and currently is providing, Pilgrim with the BNA information out of BellSouth's access tariff. With respect to the second issue, Pilgrim expressed a desire to use 800 numbers to provide pay per call services. BellSouth has explained to Pilgrim that BellSouth will not bill 800 pay per call services. Moreover, and perhaps more importantly, BellSouth does not provide 800 numbers to CLECs; rather, such numbers are assigned by Lockheed Martin, the national numbering administrator. Thus, BellSouth has no ability to provide 800 numbers to Pilgrim. Finally, as BellSouth understands the 900 blocking issue, Pilgrim wants a list of customers who subscribe to 900 blocking so that it does not "inadvertently" bill those customers for 900 services. As with the other issues, this issue is a billing and collection matter, as opposed to an issue arising under the requirements of Section 251 of the 1996 Act. Furthermore, 900 blocking information is neither a BellSouth retail or wholesale service, nor is BellSouth obligated to provide it as such. BellSouth denies the remaining allegations in Paragraph 4 of the Petition.

5. BellSouth denies the allegations set forth in Paragraph 5 of the Petition. By way of further response, BellSouth states that these issues are billing and collections matters, not issues arising under the requirements of Section 251 of the 1996 Act. Moreover, BellSouth has repeatedly told Pilgrim that it can obtain (and in fact is obtaining) BNA from BellSouth's tariff; that BellSouth cannot provide Pilgrim with 800 numbers; and that a list of customers with 900 blocking is neither a BellSouth retail or wholesale service, nor is BellSouth obligated to provide it as such. Thus, BellSouth denies that Pilgrim is suffering any "competitive disadvantage" that has been caused by BellSouth. BellSouth denies the remaining allegations in Paragraph 5 of the Petition.

6. BellSouth admits that it received the April 9, 1999 letter, attached as Exhibit A to the Petition. BellSouth further responds that the letter speaks for itself. BellSouth denies the remaining allegations in Paragraph 6 of the Petition.

7. BellSouth admits that it received the letter attached as Exhibit A. The return receipt attached as Exhibit B speaks for itself. BellSouth denies the remaining allegations in Paragraph 7 of the Petition.

8. BellSouth admits that it sent the April 23, 1999 letter, attached as Exhibit C to the Petition. BellSouth further responds that the letter speaks for itself. BellSouth denies the remaining allegations in Paragraph 8 of the Petition.

9. BellSouth admits that it sent the April 29, 1999 letter, attached as Exhibit D to the Petition, and the attachments attached thereto. BellSouth further responds that the letter speaks for itself. BellSouth denies the remaining allegations in Paragraph 9 of the Petition.

10. BellSouth admits that it attempted to negotiate with Pilgrim in good faith regarding the terms of an interconnection agreement. BellSouth denies the remaining allegations in Paragraph 10 of the Petition.

11. BellSouth admits that the parties have discussed BellSouth's standard interconnection agreement. BellSouth denies the remaining allegations in Paragraph 11 of the Petition.

12. BellSouth admits that, in an effort to provide its customers with the best possible service, BellSouth's contract negotiators occasionally need to enlist the assistance of subject matter experts to ensure that a CLEC's needs and concerns are properly addressed. BellSouth denies that the involvement of subject matter experts is designed to "frustrate" Pilgrim or any CLEC. To the contrary, subject matter experts are essential to drafting workable and appropriate interconnection agreements. BellSouth denies the remaining allegations in Paragraph 12 of the Petition.

13. BellSouth admits that it received the August 9, 1999 letter, attached as Exhibit E to the Petition. BellSouth further responds that the letter speaks for itself. BellSouth denies the remaining allegations in Paragraph 13 of the Petition.

14. BellSouth admits that it responded to Pilgrim via e-mail on August 23, 1999. BellSouth further responds that the e-mail, attached as Exhibit F to the Petition, speaks for itself. BellSouth denies the remaining allegations in Paragraph 14 of the Petition.

15. BellSouth admits that the parties have not signed an interconnection agreement. BellSouth denies the remaining allegations in Paragraph 15 of the Petition.

16. BellSouth denies the allegations in Paragraph 16 of the Petition. By way of further response, BellSouth states that it provided a response to the questions set forth in Pilgrim's August 9, 1999 letter on September 20, 1999. Thus, BellSouth has provided Pilgrim with all requested information. BellSouth further states, as set forth above, that it has repeatedly told Pilgrim that it can obtain (and in fact is obtaining) BNA from BellSouth's tariff; that BellSouth cannot provide Pilgrim with 800 numbers; and that a list of customers with 900 blocking is neither a BellSouth retail or wholesale service, nor is BellSouth obligated to provide it as such.

17. BellSouth denies the allegations in Paragraph 17 of the Petition.


18. BellSouth denies the allegations in Paragraph 18 of the Petition.

19. BellSouth denies the allegations in Paragraph 19 of the Petition. By way of further response, BellSouth states that it currently is providing BNA information to Pilgrim pursuant to BellSouth's access tariff. Thus, at least one of the issues raised by Pilgrim in its April 9, 1999 letter is not at issue at all.

WHEREFORE, BellSouth respectfully requests that the Commission dismiss the Petition. In the alternative, BellSouth requests that the Commission deny Pilgrim the relief it is seeking and enter an order in BellSouth's favor.

This 11th day of October, 1999.

Respectfully submitted,



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(404) 335-0754

COUNSEL FOR BELLSOUTH  
TELECOMMUNICATIONS, INC.

181962

**STATE OF NORTH CAROLINA  
UTILITIES COMMISSION  
RALEIGH**

DOCKET NO. P-895

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of

Petition of Pilgrim Telephone, Inc., for Arbitration with	)	ORDER DISMISSING
BellSouth Telecommunications, Inc., Pursuant to Section	)	PETITION WITHOUT
252(b) of the Telecommunications Act of 1996	)	PREJUDICE

BY THE CHAIR: On September 15, 1999, Pilgrim Telephone, Inc. (Pilgrim), an interexchange carrier not certified in North Carolina, filed a Petition for Arbitration against BellSouth Telecommunications, Inc. (BellSouth). Pilgrim indicated that on April 9, 1999, it had requested BellSouth to provide it with access to certain specified unbundled network elements (UNE:s) pursuant to Section 252(a)(1) of the Telecommunications Act of 1996 (TA96). In its Petition, Pilgrim set out a partial list of unresolved issues.

The Chair has examined Pilgrim's Petition and has identified several deficiencies.

1. Pilgrim did not submit prefiled testimony with its Petition as required by the Commission's April 15, 1996, Order in Docket No. P-100, Sub 133.
2. Pilgrim did not file a Matrix Summary of Issues as required by the Commission's August 29, 1996, Order in Docket No. P-100, Sub 133.
3. Pilgrim failed to give notice to the Commission of its request for interconnection as required by the Commission's April 15, 1996, Order in Docket No. P-100, Sub 133.
4. Pilgrim has not adequately identified "any open issues" as required by Section 252(b)(1) or provided relevant documentation under Section 252(b)(2) of TA96.
5. Pilgrim has not complied with G.S. 84-4 requiring in-state counsel or with Rule H1-5(d).

The Chair further notes that, to the extent that Pilgrim's Petition for Arbitration included consideration of UNEs, the Commission has provided that most UNE issues are to be considered within the context of Docket No. P-100, Sub 133d. See July 14, 1999, Order Ruling on Data Requests and September 1, 1999, Order Denying Motion for Reconsideration and Providing Further Consideration in UNE Docket in Docket No. P-582, Sub 6, concerning ICG Telecom Group, Inc.'s Petition for Arbitration with BellSouth.

Lastly, the Chair notes that Pilgrim is not certificated to provide any telecommunications service in North Carolina<sup>1</sup>. Section 252 of TA96 appears essentially premised upon a telecommunications carrier seeking interconnection with an incumbent local exchange carrier". Section 3(a)(49) defines a "telecommunications carrier" as "any provider of telecommunications services...." Section 3(a)(51) in turn defines "telecommunications service" as "the offering of telecommunications for a fee directly to the public...." Since Pilgrim is not certificated and is presumably not offering telecommunications services to the public for a fee in North Carolina, it is questionable whether Pilgrim qualifies even to file a Petition for Arbitration in North Carolina since it is not under that definition a telecommunications carrier here.

Statutory construction aside, there are compelling policy reasons not to process the arbitration petitions of uncertificated telecommunications companies such as Pilgrim. Such arbitrations would waste both the Commission's and the parties' resources in what would amount to a sterile exercise since there would be no legitimate customers to be served.

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<sup>1</sup> Pilgrim identifies itself as an interexchange carrier and enhanced service provider which "also plans to offer intra-exchange telecommunications service." It has no applications pending in this State.

<sup>2</sup> Section 252 is unfortunately not a model of clarity in this regard. Section 252(a)(1) provides that "an incumbent local exchange carrier may negotiate and enter into a binding agreement with the requesting telecommunications carrier or carriers.....," while Section 252(b)(1) states that "after the date on which an incumbent local exchange carrier receives a request for negotiation under this section, the carrier or any other party to the negotiation may petition a state commission to arbitrate any open issues" (emphases added). It is logical that these provisions be read together. It is the Chair's view that the term "carrier" in Section 252(b)(1) may arguably be read, not as the local exchange carrier, but the "telecommunications carrier" in Section 252(a)(1). Since there were only two parties to the Pilgrim/BellSouth negotiations, BellSouth would be the "any other party;" and Pilgrim would thus not be qualified to file a Petition for arbitration.

Accordingly, the Chair concludes that good cause exists to dismiss Pilgrim's Petition for Arbitration without prejudice to its refiling a perfected petition at a later date within the appropriate time frame. The Chair, moreover, concludes that the Commission will decline to entertain arbitration petitions under Section 252 wherein the Petitioner is not certificated to provide service in this State. The Chief Clerk is directed to send a copy of this Order to all persons on the mailing list of Docket No. P-100, Sub 133.

IT IS, THEREFORE, SO ORDERED.

ISSUED BY ORDER OF THE COMMISSION.

This the 22nd day of September, 1999.

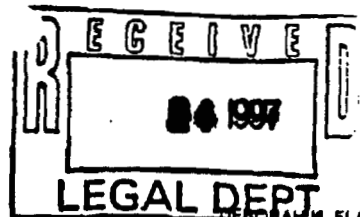
NORTH CAROLINA UTILITIES COMMISSION

*Geneva S. Thigpen*

Geneva S. Thigpen, Chief Clerk

ms06 17/99





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**Georgia Public Service Commission**

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**RECEIVED**

MAY 19 1997

Docket No. 7270-U

EXECUTIVE SECRETARY  
GPS.C.

**ORDER DISMISSING ARBITRATION**

**In Re: Petition by Low Tech Designs, Inc. for Arbitration of Rates, Terms and Conditions with BellSouth Telecommunications, Inc. Under the Telecommunications Act of 1996**

**APPEARANCES**

**On behalf of Low Tech Designs, Inc.:**  
James M. Tennant, President

**On behalf of BellSouth Telecommunications, Inc.:**  
Bennett Ross, Attorney  
Fred McCallum, Attorney

**On behalf of Consumers' Utility Counsel:**  
Ken Woods, Attorney

**BY THE COMMISSION:**

The Commission issues this Order dismissing without prejudice the arbitration petition of Low Tech Designs, Inc. ("Low Tech"). As discussed in this Order, the Commission dismisses Low Tech's petition on the basis that Low Tech is not, at least at this time, a telecommunications carrier proposing to provide telecommunications services in Georgia, and therefore is not entitled to initiate compulsory arbitration before this Commission under Section 252(b) of the Telecommunications Act of 1996 ("Act").

The parties in this docket are Low Tech Designs, Inc. and BellSouth Telecommunications, Inc. ("BellSouth"). The Consumers' Utility Counsel Division of the Governor's Office of Consumer Affairs ("Consumers' Utility Counsel," or "CUC") is a participant in this docket.

**BACKGROUND:**

Low Tech sought arbitration of rates, terms and conditions for a proposed agreement between it and BellSouth, and filed a petition before the Georgia Public Service Commission ("Commission") on January 16, 1997. Low Tech asked the Commission to conduct arbitration pursuant to Section 252(b) of the Telecommunications Act of 1996 (the "Act") (47 U.S.C. § 252(b)) to resolve issues that were the subject of negotiations which commenced by formal request on August 19, 1996. Therefore, in accordance with Section 252(b)(4)(C) of the Act, the Commission must conclude the arbitration proceeding by May 19, 1997.

The Commission issued a Procedural Order on February 5, 1997. BellSouth filed an Answer and Motion to Dismiss on February 14, 1997. As authorized and directed by the Commission in the Procedural Order, Hearing Officer Smith conducted a pre-arbitration conference on March 10, 1997, at which time several matters were discussed, including the question of whether Low Tech was a telecommunications carrier proposing a telecommunications service. Both parties submitted separate statements summarizing the pre-arbitration conference, on March 17, 1997. Hearing Officer Smith issued his First Pre-Arbitration Hearing Order on March 28, 1997, ruling among other things that the issue of whether Low Tech was a telecommunications carrier proposing a telecommunications service had not been resolved and would be among the issues to be decided by the Commission.

The parties made additional filings related to discovery, and to written testimony which was prefiled on March 28 and 31, 1997 (direct) and April 4 and 7, 1997 (rebuttal). Hearing Officer Smith issued his Second Pre-Arbitration Hearing Officer Order Denying BellSouth's Motion to Quash on April 15, 1997.

BellSouth filed its second Motion to Dismiss on April 9, 1997, formalizing its argument that Low Tech is not a telecommunications carrier proposing a telecommunications service and on that basis may not initiate compulsory arbitration under Section 252(b). Low Tech filed a response to BellSouth's motion on April 11, 1997. The Commission took oral argument from both parties at the outset of the arbitration hearing on April 17, 1997. The Commission then took the motion under advisement, and postponed the arbitration hearing to May 6, 1997 to allow the Commission first to decide the motion to dismiss. Low Tech filed supplemental comments in opposition to BellSouth's motion to dismiss, on April 24, 1997, to which BellSouth filed a supplemental response on April 29, 1997.

The two fundamental questions presented by BellSouth's motion to dismiss are:

- (1) Is Low Tech a "telecommunications carrier" entitled to seek arbitration under Section 252(b) of the federal Telecommunications Act of 1996 ("1996 Act")?
- (2) Is Low Tech seeking to offer a "telecommunications service" under the 1996 Act?

As discussed below, the Commission concludes that Low Tech has not shown that it is a "telecommunications carrier" seeking to offer a "telecommunications service." Therefore, while there may be other methods by which Low Tech can seek to offer the type of service it proposes, Low Tech may not use Section 252(b) to invoke the Commission's jurisdiction for compulsory arbitration under the 1996 Act. This is an important jurisdictional question of first impression before this Commission.<sup>1</sup>

### (1) "Telecommunications Carrier"

Low Tech acknowledged at the oral argument that it had not obtained a certificate of authority, and at that time had not submitted an application for certificate of authority to provide telecommunications service in Georgia. This is the first time that a company seeking Section 252(b) arbitration in Georgia has not previously obtained a certificate from the Commission.

The Commission will not consider an entity to be a telecommunications carrier in Georgia, unless and until it has obtained a certificate of authority. Georgia's Telecommunications and Competition Development Act of 1995 ("Georgia Act") at O.C.G.A. § 46-5-163(a) provides that a telecommunications company shall not provide telecommunications services without a certificate of authority issued by the Commission. This type of certification requirement is not preempted by the 1996 Act, which provides at Section 253(b) [47 U.S.C. 253(b)] that nothing in that section ("removal of barriers to entry") "shall affect the ability of a State to impose, on a competitively neutral basis and consistent with section 254 [universal service], requirements" such as the financial and technical capability required of competing local exchange companies ("CLECs") required by O.C.G.A. § 46-5-163(b).

Requiring that a company obtain a certificate in order to be a telecommunications carrier also furthers other reasonable, legitimate legislative objectives under the Georgia Act. Telecommunications carriers are subject to the Commission's jurisdiction, must meet applicable requirements of Georgia law including the Georgia Act, and must comply with the Commission's

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<sup>1</sup> As an important question of first impression, it merits attention even at this relatively late stage of the arbitration. Moreover, while it would have been preferable for BellSouth to raise the issue in its initial Answer and Motion to Dismiss, this issue involves subject-matter jurisdiction and thus may be raised at any time, even for the first time in an appeal. See, e.g., *Evans v. Davey*, 154 Ga. App. 269, 267 S.E.2d 875 (Ct.App. 1980) (lack of jurisdiction to be considered whenever and however it may appear); *Georgia Consumer Ctr. Inc. v. Georgia Power Co.*, 150 Ga. App. 511, 258 S.E.2d 250 (Ct.App. 1979) *Lowe v. Payne*, 130 Ga. App. 337, 203 S.E.2d 309 (Ct.App. 1973). Cf. O.C.G.A. § 50-13-13(a)(6) which provides that in contested cases, the agency shall have authority, among other things, to rule on motions to dismiss for lack of agency jurisdiction over the subject matter or parties or for any other ground. The Commission has not regarded Section 252(b) arbitrations as "contested cases" within the meaning of the Administrative Procedures Act, but the fundamental principle is the same which permits or requires dismissal for lack of subject-matter jurisdiction.

rules. The obligations of telecommunications carriers include contributing to the Universal Access Fund. The Commission cannot feasibly administer its responsibilities, determine who the telecommunications carriers are, and ensure that such carriers meet their obligations, unless there is a basic mechanism such as the certification requirement contained in O.C.G.A. § 46-5-163(a).

The duties and obligations of an incumbent local exchange company ("LEC") under Section 251 are owed to telecommunications carriers. A telecommunications carrier may initiate negotiations with an incumbent LEC, and the FCC has ruled that in order to negotiate in good faith, the incumbent LEC may not require that the requesting company have already obtained a certificate of authority. However, the FCC issued no such rule with respect to arbitrations.

BellSouth's arguments included an assertion that Low Tech must first show that it is providing a telecommunications service, even in another jurisdiction, before it qualifies as a telecommunications carrier eligible to enforce Section 251 and Section 252 requirements through compulsory arbitration. The Commission does not go so far in this ruling, however. A new entrant should not have to show that it actually provides telecommunications service somewhere, because such a rule would preclude a company that is just beginning its operations. Instead, the Commission rules that a new entrant will qualify as a telecommunications carrier before this Commission if it has obtained a certificate of authority to provide service in Georgia, whether or not it has already begun to provide telecommunications service in Georgia or elsewhere.

Low Tech filed supplemental comments citing to a Conference Report in support of its position. That Conference Report indicates that certain drafters of the 1996 Act believed that the duties under Section 251(b) are owed to telecommunications carriers or "other persons." Low Tech argued that this means any person or entity, even if it is not a telecommunications carrier, may seek to enforce the duties of another company under Section 251(b). Low Tech then extended this argument to assert that any person or entity, even if it is not a telecommunications carrier, may seek to enforce any of the duties under Section 251 and may seek arbitration under Section 252(b).

The Commission is not persuaded by Low Tech's interpretation of the Conference Report and the Act. Even if the Conference Report can be used to conclude that any person may obtain the benefit of a company's duties under Section 251(b), the Conference Report did not go on to extend this to Section 251(c). The explicit wording of Section 251(c) states that the negotiation relevant to Section 252 proceeds upon request of a telecommunications carrier. Read together, Sections 251(c) and 252 quite plainly allow the compulsory arbitration of Section 252(b) to be initiated only by a telecommunications carrier.

The Commission's jurisdiction to conduct compulsory arbitration under Section 252(b) relates to enforcing the incumbent LEC's Section 251(c) duties and obligations, which again are owed to telecommunications carriers. If instead Low Tech's arguments were accepted, then the Commission could be forced to entertain compulsory arbitration cases litigated by companies that may never obtain certificates to provide any telecommunications services in Georgia. Such a result would be

inappropriate as a matter of public policy and does not appear to be a reasonable reading of the 1996 Act's jurisdictional requirements. The Commission concludes that its jurisdiction to conduct a Section 252(b) arbitration does not extend to a petitioner that is not a telecommunications carrier.

The Commission concludes that a new entrant must first obtain a certificate of authority in order to demonstrate that it is a "telecommunications carrier" entitled to invoke the Commission's jurisdiction by initiating arbitration under the 1996 Act. An entity that lacks a certificate of authority does not qualify as a "telecommunications carrier" and thus is not entitled to initiate the compulsory arbitration under Section 252(b) of the Act.

## **(2) "Telecommunications Service"**

In order to be a "telecommunications carrier," it is also necessary to offer a "telecommunications service." However, as Low Tech described its proposal, the proposed service does not appear to be a "telecommunications service." Low Tech explained at the oral argument that it proposes a least cost routing service in which the customer places a long-distance call relying upon Low Tech to identify and select the lowest-price long-distance provider. The local exchange service would still be provided by another carrier (such as BellSouth), and the long distance service would be provided by whichever carrier Low Tech routes the call to. Low Tech might place a charge on the customer's bill for the routing service, but the customer would still be billed for local and long-distance service by the other carriers.

The Act defines "telecommunications service" as the transmission, between or among points specified by the user, of information of the user's choosing, to the public for a fee. 47 U.S.C. § 3(43), (46). It appears that Low Tech would not provide transmission. Instead, Low Tech would provide two functions. The first is informational - identifying which long-distance carrier can carry the call for the lowest price (at least, from among those carriers which have contracted with Low Tech, similar to airlines which contract with travel agents). The second is routing the call, which appears to be an enhanced service. Using the travel agent analogy, it is like the agent booking the trip on the airline, which then pays a commission to the agent. The airline - or in this case, the long-distance carrier - then performs the function of carrying or transmission.

If Low Tech's proposed service were a "telecommunications service," then Low Tech could not provide it without obtaining a certificate of authority under O.C.G.A. § 46-5-163, filing tariffs, meeting universal service funding obligations, and otherwise meeting applicable Commission requirements for telecommunications carriers.

The Commission takes administrative notice that Low Tech submitted an application for a certificate of authority to provide local exchange service in Georgia.<sup>2</sup> Therefore in the proceedings

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<sup>2</sup> By taking this administrative notice, the Commission is not ruling as to whether the application meets the Commission's requirements. Low Tech's certificate application shall be subject to the Commission's

upon Low Tech's certificate application, it will have another opportunity to show that its proposed service is a "telecommunications service."<sup>3</sup>

Based upon the factors discussed above, the Commission concludes that it should dismiss the arbitration in this docket for lack of jurisdiction. This dismissal is without prejudice, so that Low Tech is permitted to apply for a certificate of authority under O.C.G.A. § 46-5-163, and such application shall be judged on its own merits in determining whether Low Tech meets statutory requirements for a certificate, whether it proposes to offer a "telecommunications service," and whether such service is local exchange service or some other type of "telecommunications service." In addition, this dismissal without prejudice means that if Low Tech obtains a certificate of authority, then it may submit a new petition for arbitration if necessary and if all other applicable requirements under Sections 251 and 252 are met

**WHEREFORE IT IS ORDERED that:**


- A. The arbitration petition filed by Low Tech Designs, Inc. on January 16, 1997 in this docket is dismissed without prejudice.
- B. The Commission hereby adopts all statements of fact, law, and regulatory policy contained within the preceding sections of this Order as the Commission's findings of fact, conclusions of law, and decisions of regulatory policy.
- C. A motion for reconsideration, rehearing or oral argument or any other motion shall not stay the effective date of this Order, unless otherwise ordered by the Commission.
- D. Jurisdiction over these matters is expressly retained for the purpose of entering such further Order or Orders as this Commission may deem just and proper.

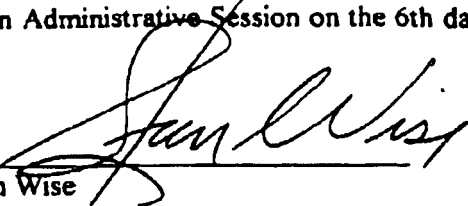
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standard review procedures.

<sup>3</sup> Low Tech might argue that the definition under Georgia law at O.C.G.A. § 46-5-162(18) is broader, which would not allow jurisdiction for federal arbitration but might permit state certification and any remedy that might be available under the Georgia Act. However, interconnection and access to unbundled services under O.C.G.A. § 46-5-164(a) is only required for requesting "certificated local exchange carriers." In addition, this decision to dismiss the arbitration petition under Section 252(b) shall not be taken to state or imply an opinion about whether Low Tech could be construed as a "telecommunications carrier" under the Georgia Act at O.C.G.A. § 46-5-162(18). Nor shall this decision be taken to state or imply an opinion as to whether Georgia law provides for Commission jurisdiction to grant Low Tech the Star Code abbreviated dialing, Advanced Intelligent Network ("AIN") unbundling, or other matters that Low Tech sought by its arbitration petition.

The above by action of the Commission in Administrative Session on the 6th day of May, 1997.

  
Terri M. Lyndall  
Executive Secretary

  
Stan Wise  
Chairman

5/16/97  
Date

5-16-97  
Date

**DISSENT**

The Commission in its majority decision has dismissed the arbitration sought by Low Tech Designs, Inc. ("Low Tech"). I believe that the Commission should instead have proceeded to hear the merits of the arbitration, and therefore I dissent.

Low Tech filed its Petition on January 16, 1997. BellSouth's initial Answer and Motion to Dismiss did not put forward the argument that Low Tech was not a telecommunications carrier, and indeed, BellSouth's Answer admitted that Low Tech is a telecommunications carrier. Not until April 9, 1997 - approximately one week prior to the scheduled hearing - did BellSouth file a Motion to Dismiss alleging that Low Tech is not a telecommunications carrier and is not providing a telecommunications service.

BellSouth argued that Low Tech must first show that it is providing a telecommunications service in some jurisdiction. Even the majority decision rejects that proposition, because it clearly discriminates against a new company that has not been able to provide service yet. BellSouth's argument would prevent a new entrant from ever entering the business.

However, the majority decision proceeded to conclude that Low Tech is not entitled to arbitration on the basis of not being a telecommunications carrier and not providing a telecommunications service. I disagree with this decision. First, after rejecting BellSouth's restrictive and discriminatory interpretation, the majority went on to find its own basis for dismissing the arbitration. Second, even BellSouth failed to raise these issues until three months after Low Tech filed its petition; this was not timely, by BellSouth. Finally, and most fundamentally, this Commission has not afforded Low Tech the same opportunity to press its case that has been afforded to all the other companies that have filed for arbitration - ACSI, AT&T, Bell Atlantic NYNEX Mobile, MCI, MFS, and Sprint. This Commission's responsibility to help foster a competitive telecommunications marketplace will be much better discharged when the Commission provides speedy resolution of complaints brought to it by all market participants.

The arbitration hearing was set to proceed on April 17, 1997, immediately after oral argument on BellSouth's motion. The Commission should have proceeded to conduct the hearing and consider Low Tech's petition on its merits. Therefore, for the foregoing reasons, I dissent from the majority's dismissal of the petition.

MAY 15, 1997  
Date

Mac Barber  
Mac Barber  
Commissioner



CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served on the individuals on the attached Service List by mailing a copy thereof, this 11th day of October 1999.



---

Creighton E. Mershon, Sr.

SERVICE LIST - PSC 99-385

Maria Cruz, Supervisor  
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Cambridge, MA 02139-9171

Hon. James H. Newberry  
Wyatt, Tarrant & Combs  
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September 20, 1999

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Regulatory Vice President  
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Maria Cruz  
Supervisor  
Pilgrim Telephone, Inc.  
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Honorable James H. Newberry  
Attorney for Petitioner  
Ayatt, Tarrant & Combs  
1700 Lexington Financial Center  
Lexington, KY. 40507 1746

RE: Case No. 99-385  
BELLSOUTH TELECOMMUNICATIONS, INC.  
(Interconnection Agreements) WITH PILGRIM TELEPHONE, INC.

This letter is to acknowledge receipt of initial application in the above case. The application was date-stamped received September 15, 1999 and has been assigned Case No. 99-385. In all future correspondence or filings in connection with this case, please reference the above case number.

If you need further assistance, please contact my staff at 502/564-3940.

Sincerely,

A handwritten signature in cursive script that reads "Stephanie Bell".

Stephanie Bell  
Secretary of the Commission

SB/jc

# WYATT, TARRANT & COMBS

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WRITER'S DIRECT DIAL NUMBER

JAMES H. NEWBERRY, JR.

606 288-7621

September 14, 1999.

VIA FEDEX

Kentucky Public Service Commission  
730 Schenkel Lane  
Frankfort, KY 40602

CASE 99-385

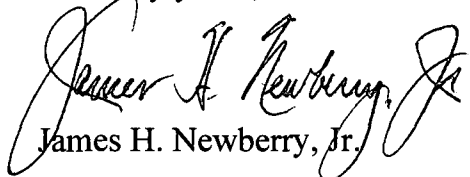
Dear Sir or Madam:

Enclosed is an original Petition for Arbitration and 11 copies. We are filing this petition on behalf of Pilgrim Telephone, Inc. pursuant to Section 252 of the Telecommunications Act of 1996.

As described in the enclosed petition, Pilgrim and BellSouth Telecommunications, Inc. have been engaged in formal negotiations concerning an interconnection agreement since April of this year. Thus far, the negotiations have failed to produce an agreement. A significant problem in the negotiations has been Pilgrim's inability to obtain access to information about the form agreement proposed by BellSouth. The petition sets for the relief which Pilgrim seeks from the Commission.

Please file the enclosed petition, stamp one copy as "filed," and return it to me in the enclosed envelope. Thank you for your assistance in this regard.

Sincerely yours,

  
James H. Newberry, Jr.

/hn  
Enclosures

cc: Stan Kugell

30160200.1



3. For many years, Pilgrim has obtained billing and collection services from BellSouth pursuant to an agreement.

4. For many years, Pilgrim has sought to obtain certain additional network elements from BellSouth without success.

5. Pilgrim's inability to obtain the requested network elements has placed Pilgrim at a competitive disadvantage.

6. On April 9, 1999, Pilgrim requested that BellSouth provide Pilgrim with access to certain specified unbundled network elements ("UNEs") in accordance with Section 252(a)(1) of the Act. A copy of Pilgrim's letter to BellSouth is attached and incorporated herein by reference as Exhibit "A".

7. BellSouth received Exhibit "A" on April 11, 1999. A copy of the return receipt from the United States Postal Service is attached and incorporated herein by reference as Exhibit "B".

8. On April 23, 1999, BellSouth acknowledged receipt of Pilgrim's request. A copy of BellSouth's letter is attached and incorporated herein by reference as Exhibit "C".

9. On April 29, 1999, BellSouth transmitted various documents to Pilgrim for the purpose of initiating the negotiations required by Section 252 of the Act. A copy of the transmittal letter, without the enclosures, is attached and incorporated herein by reference as Exhibit "D".

10. Between May 1, 1999 and the date of this filing, representatives of Pilgrim and BellSouth participated in a face-to-face meeting, conducted numerous phone conferences,

and exchanged correspondence in the course of attempting to negotiate Pilgrim's access to the UNEs specified in Exhibit "A".

11. Most of the discussions have focused on the meaning of various terms of the standard form interconnection agreement provided to Pilgrim by BellSouth.

12. Efforts by Pilgrim to obtain clarification from BellSouth have been frustrated by the need for BellSouth to involve an assortment of different individuals in the negotiations to explain different aspects of the form interconnection agreement.

13. Most recently, on August 9, 1999, counsel for Pilgrim forwarded a letter containing a list of specific questions to counsel for BellSouth in an effort to address a number of unresolved issues. A copy of the August 9, 1999 letter is attached and incorporated herein by reference as Exhibit "E".

14. On August 23, 1999, BellSouth responded via e-mail and indicated that it would need additional time in which to respond to Pilgrim's inquiries. A copy of BellSouth's e-mail response is attached and incorporated herein by reference as Exhibit "F".

15. At the present, the parties efforts to clarify the meaning of the interconnection agreement have not been concluded.

16. The negotiations set forth in the preceding paragraph have not produced an agreement between the parties, in substantial part, because BellSouth has (a) intentionally obstructed and delayed the negotiations in an effort to thwart Pilgrim's ability to gain access to the requested UNEs, and (b) failed to provide information reasonably necessary to reach an agreement.

17. Numerous issues remain unresolved, including:

A. The meaning of various provisions of BellSouth's form interconnection agreement.

B. Whether Pilgrim has a statutory right under Section 251(c)(3) of the Act to access the UNEs from BellSouth.

C. Whether BellSouth has, by virtue of the actions described in Paragraph 16 and otherwise, failed to discharge its obligation to negotiate with Pilgrim in good faith as required by Section 251(c)(1) of the Act.

D. Whether BellSouth has provided the UNEs identified in Exhibit "A" on a discriminatory basis in violation of Section 251(c)(2)(D) of the Act.

18. The positions of the parties are set forth in the attached exhibits and in this Petition.

19. No other issues relevant to this Petition have been discussed or resolved by the parties.

WHEREFORE, Pilgrim respectfully demands the following:

1. That this Commission initiate an arbitration proceeding in accordance with Section 252 of the Act;

2. That the Commission, as arbitrator, enter an award in favor of Pilgrim directing that BellSouth grant Pilgrim non-discriminatory access to the UNEs; and

3. That the Commission, as arbitrator, enter an award in favor of Pilgrim for an amount equal to the attorneys' fees and expenses it incurred between April 9, 1999 and the



conclusion of this arbitration proceeding, all as a consequence of BellSouth having failed to negotiate in good faith as required by Section 252 of the Act.

Respectfully submitted,

WYATT, TARRANT & COMBS  
James H. Newberry, Jr.  
1700 Lexington Financial Center  
250 West Main Street  
Lexington, KY 40507-1746  
(606) 233-2012

By: James H. Newberry, Jr.  
ATTORNEYS FOR PETITIONER

**CERTIFICATE OF SERVICE**

Pursuant to Section 252(b)(3) of the Telecommunications Act of 1996, I hereby certify that a copy of this petition, including the supporting exhibits has been served by mailing same via overnight mail to Leah G. Cooper, Attorney for BellSouth Telecommunications, Inc. 675 West Peachtree Street, Suite 4300, Atlanta, GA 30375-0001.

This, the 14<sup>th</sup> day of September, 1999.

James H. Newberry, Jr.  
ATTORNEY FOR PETITIONER

30160233.1

# YATT, TARRANT & COMES

1700 LEXINGTON FINANCIAL CENTER  
LEXINGTON, KENTUCKY 40507-1746

606 233-2012  
FAX: 606 259-0649

CITIZENS PLAZA  
LOUISVILLE, KY 40202-2898  
502 589-5235

TAYLOR-SCOTT BUILDING  
FRANKFORT, KY 40601-1807  
502 223-2104

ELSBY BUILDING  
NEW ALBANY, IN 47150-3440  
812 945-3561

1800 NASHVILLE CITY CENTER  
NASHVILLE, TN 37219-1750  
615 244-0020

29 MUSIC SQUARE EAST  
NASHVILLE, TN 37203-4322  
615 255-6161

313 E. MAIN STREET, SUITE 1  
HENDERSONVILLE, TN 37075-2546  
615 822-8622

6075 POPLAR AVENUE, SUITE 650  
MEMPHIS, TN 38119-4721  
901 537-1000

10368 WALLACE ALLEY STREET, SUITE 6  
KINGSPORT, TN 37663-3977  
423 279-1825

WRITER'S DIRECT DIAL NUMBER  
606 288-7621

JAMES H. NEWBERRY, JR.

April 9, 1999

## VIA CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Ms. K. Regina O'Brien  
Sales Director  
BellSouth Interconnection Services  
600 North 19th Street, 10th Floor  
Birmingham, AL 35203

Re: Pilgrim Telephone, Inc.

Dear Ms. O'Brien:

Your March 10, 1999 letter to Stan Kugell has been forwarded to me for a reply. Your letter makes various ill-founded statements about Pilgrim's rights under the Telecommunications Act of 1996. I write to correct your misunderstandings and to formally request voluntary negotiations with BellSouth pursuant to Section 252(a)(1).

As I indicated in my letter of March 2, 1999, BellSouth has denied Pilgrim (1) the ability to obtain access to real time access to billed names and address ("BNA") information; (2) the ability to use 800 numbers to provide access to various billed services; and (3) access to 900 number blocking information. Particularly in light of the Supreme Court's recent decision in the Iowa Utilities Board case, we are highly confident that interexchange carriers such as Pilgrim are entitled to have "nondiscriminatory access to network elements on an unbundled basis at any technically feasible point." See Section 251(c)(3). A "network element" is defined as:

. . . a facility or equipment used in the provision of a telecommunications service. Such term also includes features, functions, and capabilities that are



Ms. K. Regina O'Brien  
April 9, 1999  
Page 2

provided by means of such facility or equipment, including subscriber numbers, databases, signaling systems, and information sufficient for billing and collection or used in the transmission, routing or other provision or a telecommunications service.

See Section 3(29). Without question, the services sought by Pilgrim constitute network elements to which Pilgrim is entitled to receive at any technically feasible point. Thus, the only unresolved issue is the extent to which these services can be unbundled in such a fashion as to make their unbundling technically feasible.

Documents which BellSouth has filed in Kentucky have demonstrated that at least some of the services requested by Pilgrim are available. Specifically, I call your attention to the following agreements, both of which have been filed with the Kentucky Public Service Commission:

1. Interconnection Agreement between DeltaCom and BellSouth Communications dated March 12, 1997 - Page 23, Paragraph D.4. reflects that BellSouth is providing DeltaCom with BNA information. Furthermore, Attachment C-6 reflects that LIDB data is made available to DeltaCom on a real time basis. This particular attachment reflects that this service has already been "unbundled" by BellSouth, so any effort to continue to deny Pilgrim access to the same services as DeltaCom is receiving will be considered to be an intentional and willful violation of Section 251(c)(3). Finally, I note that one of the attachments to the March 12, 1997 agreement is a LIDB Storage Agreement between BellSouth and DeltaCom. Page 2 of that agreement reflects that numerous billing and collection customers of BellSouth query BellSouth's LIDB to determine whether to accept various billing options from end users. Thus, BellSouth's denial of a similar service to Pilgrim is difficult to understand.
2. Interconnection Agreement between Ruddata Corporation and BellSouth Telecommunications dated August \_\_, 1998 - Paragraph 4.4 of Attachment 5 reflects that BellSouth and Ruddata were prepared to exchange data concerning call blocking on a daily basis. As a result, it is apparently technically feasible to exchange blocking data between BellSouth and its customers.

Ms. K. Regina O'Brien  
April 9, 1999  
Page 3

While there may well be other agreements filed in Kentucky or in other states which shed additional light on the issue, we believe that these two interconnection agreements are illustrative of BellSouth's ability to unbundle the network elements which Pilgrim requests.

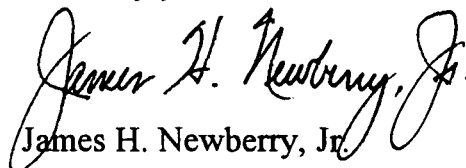
Section 251(c)(3) states, "An incumbent local exchange carrier shall provide such unbundled network elements in a manner that allows requesting carriers to combine such elements in order to provide such telecommunications service." Consequently, we believe that Pilgrim has an absolute right to have access to the services which it requests pursuant to the provisions of Sections 251 and 252 of the Telecommunications Act of 1996.

Accordingly, please accept this letter as Pilgrim's request under Section 252(a)(1) for the network elements outlined above. We are prepared to immediately commence voluntary negotiations for an interconnection agreement pursuant to Section 252(a)(1) at a location of your choosing. If you fail to negotiate with us, or in the event such negotiations appear fruitless, we will initiate compulsory arbitration in accordance with Section 252(b).

Finally, let me respond to two statements in your March 10 letter. Pilgrim was not, as you stated, attempting to "avoid payment to BellSouth." To the contrary, we were attempting to find a way to resolve what we then perceived to be legitimate business disputes. You have made it quite clear that BellSouth does not want to approach any of the alternatives outlined in my letter. Therefore, we are quite content to press our concerns through the processes outlined in Sections 251 and 252. Also, we stand by our position that the Iowa Utilities decision has a significant bearing on the relative rights of Pilgrim and BellSouth. While you were correct in your March 10 statement that Pilgrim had not requested formal negotiations, I trust that this letter alleviates your concern about any further need for such a request.

We look forward to hearing from you.

Sincerely yours,

  
James H. Newberry, Jr.

/hn

cc: Walter E. Steimel, Esq.  
Mr. Stan Kugell

30141180.1

is your RETURN ADDRESS completed on the reverse side?

**SENDER:**

- Complete items 1 and/or 2 for additional services.
- Complete items 3, 4a, and 4b.
- Print your name and address on the reverse of this form so that we can return this card to you.
- Attach this form to the front of the mailpiece, or on the back if space does not permit.
- Write "Return Receipt Requested" on the mailpiece below the article number.
- The Return Receipt will show to whom the article was delivered and the date delivered.

I also wish to receive the following services (for an extra fee):

- Addressee's Address
- Restricted Delivery

Consult postmaster for fee.

3. Article Addressed to:  
 Ms. K. Regina O'Brien  
 Sales Director  
 BellSouth Interconnection  
 Services  
 600 N. 19th St., 10th Floor  
 Birmingham, AL 35203

4a. Article Number  
 Z 226 432 923

4b. Service Type

<input type="checkbox"/> Registered	<input checked="" type="checkbox"/> Certified
<input type="checkbox"/> Express Mail	<input type="checkbox"/> Insured
<input checked="" type="checkbox"/> Return Receipt for Merchandise	<input type="checkbox"/> COD

7. Date of Delivery

5. Received By: (Print Name)

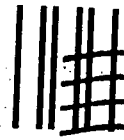
6. Signature: (Addressee or Agent)  
 X *[Signature]*

8. Addressee's Address (Only if requested and fee is paid)

PS Form 3811, December 1994 Pilgrim/BS 102595-98-B-0229 Domestic Return Receipt

Thank you for using Return Receipt Service.

UNITED STATES POSTAL SERVICE



First-Class Mail  
 Postage & Fees Paid  
 USPS  
 Permit No. G-10

• Print your name, address, and ZIP Code in this box •

**WYATT TARRANT AND COMBS**  
 1700 ...  
 Birmingham, AL 35203

Attn: Heidi-17



Leah G. Cooper  
Attorney

BellSouth Telecommunications, Inc.  
Legal Department - Suite 4300  
675 West Peachtree Street  
Atlanta, Georgia 30375-0001  
Telephone: 404-335-0764  
Fax: 404-614-4054

April 23, 1999

Mr. James, H. Newberry, Jr.  
Wyatt, Tarrant & Combs  
1700 Lexington Financial Center  
Lexington, Kentucky, 40507-1740

RE: Pilgrim Telephone Request for Interconnection

Dear Mr. Newberry:

This letter acknowledges receipt of your formal request for interconnection pursuant to Section 252 (a)(1) of the Telecommunications Act of 1996.

While I understand which "network elements" you are requesting, you must know that BellSouth is not required to unbundle these elements. Thus, your references to the various CLEC interconnection agreements in Kentucky are misplaced.

Notwithstanding the foregoing, pursuant to its requirements under the Act, BellSouth will commence negotiations with Pilgrim. A member of our Interconnection Services team will be contacting you shortly and providing the most current version of the BellSouth standard interconnection agreement.

Should you have additional questions, please feel free to give me a call.

Sincerely,



Leah G. Cooper

CC: Regina K. O'Brien



**BellSouth Interconnection Services**

675 West Peachtree Street  
Room 34S91  
Atlanta, Georgia 30375

Kelly Forrest  
(404) 927-1382  
Fax: (404) 529-7839

April 29, 1999

Mr. Stan Kugell, Vice President  
Pilgrim Telephone, Inc.  
Building 600  
Suite 150  
1 Kendall Square  
Cambridge, MA 02139

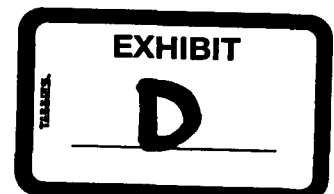
Dear Mr. Kugell:

Thank you for your interest in negotiating an interconnection agreement with BellSouth. This agreement allows for the provision of local interconnection, resale of BellSouth's telecommunication services, CLEC collocation on BellSouth's premises, and the purchase of Unbundled Network Elements.

Negotiating an Interconnection Agreement involves working with two BellSouth Interconnection Services (ICS) groups: ICS-Pricing for contract negotiations and ICS-Sales/Presale Quality Team for CLEC orientation and account representation. Both of these groups will assist you in completing regulatory requirements and in establishing a CLEC Master Account with BellSouth.

The following list details the documents contained in this introductory package with associated explanations as well as instructions for submitting those documents requiring processing. The items noted with an asterisk are required for completion and submittal during contract negotiations or the initial phase of the overall process.

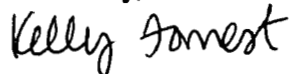
- *Example of Standard Customer Request for Negotiations\**
- *BellSouth Interconnection Services Credit Profile\**
- *Listing of Helpful Information on the BellSouth Interconnection Services Web page*
- *CLEC Training*
- *Draft of the BellSouth Advertising and Publishing Company (BAPCO) Agreement*
- *Draft of the BellSouth Standard Interconnection Agreement\**
- *New CLEC Activation Process*



To facilitate interconnection agreement negotiations, you have been assigned a BellSouth representative or negotiator to assist with any questions or issues you may have with the negotiation process and the enclosed agreements. You can expect to be contacted by your negotiator within the next few days.

Again, thank you for your request to negotiate an interconnection agreement with BellSouth Telecommunications, Inc.

Sincerely,



Kelly Forrest  
Manager, BellSouth Interconnection Services - Pricing

*Attachments*

cc: Jerry Hendrix  
cc: James Newberry



# WYATT, TARRANT & COMBS

1700 LEXINGTON FINANCIAL CENTER  
LEXINGTON, KENTUCKY 40507-1746

606 233-2012  
FAX: 606 259-0649

CITIZENS PLAZA  
LOUISVILLE, KY 40202-2898  
502 589-5235

TAYLOR-SCOTT BUILDING  
FRANKFORT, KY 40601-1807  
502 223-2104

ELSBY BUILDING  
NEW ALBANY, IN 47150-3440  
812 945-3561

1500 NASHVILLE CITY CENTER  
NASHVILLE, TN 37219-1750  
615 244-0020

29 MUSIC SQUARE EAST  
NASHVILLE, TN 37203-4322  
615 255-6161

313 E. MAIN STREET, SUITE 1  
HENDERSONVILLE, TN 37075-2546  
615 822-8822

6075 POPLAR AVENUE, SUITE 650  
MEMPHIS, TN 38119-4721  
901 537-1000

10368 WALLACE ALLEY STREET, SUITE 6  
KINGSPORT, TN 37663-3977  
423 279-1825

WRITER'S DIRECT DIAL NUMBER

JAMES H. NEWBERRY, JR.

606 288-7621

August 9, 1999

VIA FAX

Leah G. Cooper, Esq.  
Bell South Telecommunications, Inc.  
Legal Department - Suite 4300  
675 West Peachtree Street  
Atlanta, GA 30375-0001

Re: Pilgrim Telephone

Dear Ms. Cooper:

In the aftermath of our phone conversation on July 22, Stan Kugell and I have prepared a list of questions for which we would like to obtain answers. Those questions are set forth below. We have segregated them by the specific document to which they relate.

Request #1: Please provide us detailed technical documents describing the data fields available, features, and functions, or a reference to the exact names, ordering numbers and vendor of these documents, for each of the following systems as referenced in Attachments 1 and 2:

Database/Service	Interconnection Agreement Reference
LENS	Attachment 1 Paragraph 3.21
TAG	Attachment 1 Paragraph 3.21
CRIS	Attachment 1 Paragraph 3.21
RSAG	Attachment 1 Paragraph 3.21
SCE/SMS	Attachment 2 Paragraph 13.1.1
DBAS	Attachment 2 Paragraph 13.4.2.8
EDI	Attachment 2 Paragraph 17.3
EDI-PC	Attachment 2 Paragraph 17.3

EXHIBIT

E

Leah G. Cooper, Esq.  
August 9, 1999  
Page 2

Request #2: Pilgrim may wish to provide a facilities-based voice mail service to compete with BellSouth's Memory Call service. For the purposes of this request, please assume that a subscriber elects to buy dialtone from BellSouth, and that Pilgrim wants to offer that subscriber Voice Mail service in competition with BellSouth's Memory Call. Also, please assume that Pilgrim owns all the switching and equipment necessary to provide the service, except for those components of the service that, by their nature, must be provided by the dialtone provider. Please inform us if BellSouth is willing to provide Pilgrim the services necessary to perform the following functions, all of which BellSouth provides itself, and all of which are necessary for Pilgrim to provide a competitive service:

1. Abbreviated dialing codes to activate/deactivate/control voice mail service;
2. No cost transport between the subscriber's phone and voice mail equipment;
3. Message waiting indicators; and
4. Single billing for voice mail service on the same bill as the dial tone charge.

Request #3: Please provide us a copy of the document referenced in Attachment 2, Paragraph 10.6.4.1, or reference to a vendor for that document.

Request #4: Regarding DADAS service referenced in Attachment 2, Paragraph 10, where are the interface points at which BellSouth provides this service?

Request #5: Please identify the databases provided as referenced in Attachment 2, Paragraph 12.2.1.2. For each of the databases so identified, please provide us detailed technical documents describing the data fields available, features, and functions, or a reference to the exact names, ordering numbers, and vendors of these documents.

Request #6: Please provide us with a list of the customer data items with Pilgrim would have to provide in order to support each required LIDB function pursuant to Attachment 2, Paragraph 13.4.2.2.

Request #7: In Attachment 2, Exhibit A, Paragraph I.C.a., for subscribers in LIDB, CLEC appears to be required to provide BST payments for calls made by CLEC subscribers. Does BST offer a reciprocal payment for calls made by BST subscribers?

Leah G. Cooper, Esq.  
August 9, 1999  
Page 3

Request #8: In Attachment 3, Paragraph 1.5, RCF and FX subscribers are often not in the same physical location as an NPA/NXX serving wire center. How is this handled?

Request #9: Please explain the nature of the obligations set forth in Attachment 3, Paragraph 1.7. Who bills AT&T? Both parties?

Request #10: We have a series of questions relating to Attachment 3, Paragraph 8:

- (a) What happens when our customer dials a BST 976 or N11 number?
- (b) Are we billed for the premium charge, does BST do that itself, or are the calls blocked?
- (c) Does BST offer a reciprocal treatment under (b) for calls going the other direction?
- (d) If BST bills us, and we must bill our end users, how do we get rate information from BST?
- (e) How can we offer a competitive 976 or N11 service with BST?
- (f) How do we work reciprocal compensation for each other's N11 and 976 traffic, both the transport and premium portion thereof?
- (g) ESP/ISP traffic exclusion appears to reserve this portion of the market to BST. Please explain the rationale for the exclusion.
- (h) Is BST willing to make alternate reciprocal compensation arrangements for ESP/ISP traffic?

Request #11: With regard to Attachment 5, Paragraph 1, how do we gain access to 976 and N11 numbers for our customers?

Request #12: Would SPNP, as defined in Attachment 5, Paragraph 3.1, be available to Pilgrim if it attempts to win business from BST's 976 and N11 customers?

Leah G. Cooper, Esq.  
August 9, 1999  
Page 4

Request #13: With regard to Attachment 5, Paragraph 3, the 976 and N11 tariffs provide for billing BST customers for calls to these numbers. What OSS is provided by BST to make possible a competitive offering by a resale CLEC?

Request #14: In Attachment 6, Paragraph 2.2, what are LENS, TAG, CRIS and RSAG, and what features, functions, and data fields are available through them?

Request #15: In Attachment 7, we understand that CATS and NICS provide for transmission, billing and revenue settlement of certain call types among CLECs and ILECs, and we understand that they provide settlement for collect, calling card and third number intra-lata toll calls. We have some additional questions about the message types supported. Do the systems provide settlement for the following types of calls:

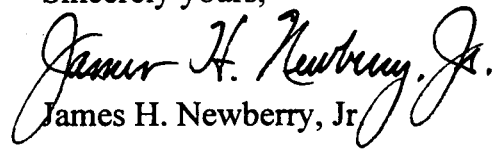
- a. A BellSouth customer places an intra-lata call to directory assistance on another LEC's network, billed to his BellSouth calling card or BellSouth home number.
- b. A BellSouth customer places an intra-lata call to his BellSouth voice mail service on another LEC's network, billed to his BellSouth calling card or home number.
- c. A BellSouth customer places an intra-lata call to his CLEC-provided voice mail service on another LEC's network, billed to his BellSouth calling card or home number.
- d. A BellSouth customer places an intra-lata conference call on another LEC's network, billed to his BellSouth calling card or home number.
- e. All of the above, billed as non-deniable charges, with adequate text descriptions of the charges.

Please provide us detailed references to the EMI record types and indicators to be used for each of these call types.

I trust that you will let me know if you have questions concerning our request. I regret my delay in forwarding these to you, but I have been extensively involved in an emergency proceeding for a client which only concluded Tuesday. In any event, I look forward to hearing from you at your earliest opportunity.

Leah G. Cooper, Esq.  
August 9, 1999  
Page 5

Sincerely yours,

  
James H. Newberry, Jr.

cc: Mr. Stan Kugell (via mail)

30147188.4

**BellSouth Interconnection Services**

675 W. Peachtree Street  
Room 34S91  
Atlanta, Georgia 30375

Susan M. Arrington  
404-927-7513  
404-529-7839 FAX

August 23, 1999

**VIA EMAIL**

Mr. James Newberry  
Wyatt, Tarrant & Combs  
250 West Main Street Suite 1700  
Lexington, KY 40507

Dear Mr. Newberry,

Due to the large volume of Pilgrim Telephone's request for information, we are unable to answer your questions at this time. BellSouth is working on your request and will notify you as soon as we are able to provide adequate information. If you have any questions in the meantime, please call me.

Sincerely,

Susan Arrington  
Manager, Interconnection Services - Pricing



**The Petition by Pilgrim Telephone, Inc. for  
Arbitration of Certain Terms and Conditions With  
BellSouth Telecommunications, Inc. Pursuant to  
Section 252(b) of the Telecommunications Act of  
1996**

**PSC 99-385**

**Testimony of BellSouth's Witnesses:**

**Cynthia K. Cox**

**Bruce Liles**

**W. Keith Milner**

**Ronald M. Pate**

**April 10, 2000**

**BellSouth Telecommunications, Inc.**  
P.O. Box 32410  
Louisville, KY 40232

or  
**BellSouth Telecommunications, Inc.**  
Room 407  
601 West Chestnut Street  
Louisville, KY 40203

Creighton.Mershon@BellSouth.com

**Creighton E. Mershon, Sr.**  
General Counsel-Kentucky

502 582-8219  
Fax 502 582-1573

April 10, 2000

**RECEIVED**

**APR 10 2000**

**PUBLIC SERVICE  
COMMISSION**

Mr. Martin J. Huelsmann, Jr.  
Executive Director  
Public Service Commission  
211 Sower Boulevard  
P. O. Box 615  
Frankfort, KY 40602

Re: The Petition by Pilgrim Telephone, Inc. for  
Arbitration of Certain Terms and Conditions With  
BellSouth Telecommunications, Inc. Pursuant to Section  
252(b) of the Telecommunications Act of 1996  
PSC 99-385

Dear Mr. Huelsmann:

Enclosed for filing in the above-captioned case are the  
original and twelve (12) copies of the testimony of BellSouth's  
witnesses: Cynthia K. Cox; Bruce Liles; W. Keith Milner; and  
Ronald M. Pate.

The Commission's March 2, 2000, order required testimony to  
be filed April 6. With the concurrence of the Commission,  
parties mutually agreed to file the testimony on April 10.

Sincerely,

*Creighton E. Mershon, Sr. by*  
Creighton E. Mershon, Sr.

*DJCh*

Enclosure

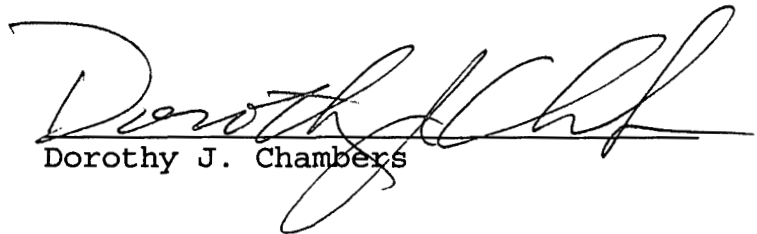
cc: Parties of Record

204812



CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served on the individuals on the attached Service List by mailing a copy thereof, this 10th day of April 2000.

  
Dorothy J. Chambers

SERVICE LIST - PSC 99-385

Maria Cruz, Supervisor  
Pilgrim Telephone, Inc.  
One Kendall Square, Suite 450  
Cambridge, MA 02139-9171

Hon. James H. Newberry  
Hon. Craig R. Paulus  
Wyatt, Tarrant & Combs  
1700 Lexington Financial Center  
250 W. Main Street  
Lexington, KY 40507-1746

Hon. Walter E. Steimel, Jr.  
Greenberg, Traurig  
800 Connecticut Avenue, N.W.  
Suite 500  
Washington, D.C. 20006

STATE OF District of Columbia

BEFORE ME, the undersigned authority, duly commissioned and qualified in and for the State aforesaid, personally came and appeared Cynthia K. Cox, Senior Director, BellSouth Telecommunications, Inc., being by me first duly sworn deposed and said that:

She is appearing as a witness before the Kentucky Public Service Commission in Case No. 99-385, Petition for Arbitration of Pilgrim Telephone, Inc. with BellSouth Telecommunications, Inc., Pursuant to the Telecommunications Act of 1996, on behalf of BellSouth Telecommunications, Inc., and if present before the Commission and duly sworn, her testimony would be set forth in the annexed testimony consisting of 10 pages and 0 exhibit(s).

Cynthia K. Cox

Cynthia K. Cox

SWORN TO AND SUBSCRIBED BEFORE ME this  
4 day of April, 2000.

Pamela R. Dennis-Thomas  
NOTARY PUBLIC

Pamela R. Dennis-Thomas  
Notary Public, District of Columbia  
My Commission Expires Aug. 14, 2000

1                                   BELLSOUTH TELECOMMUNICATIONS, INC.  
2                                   DIRECT TESTIMONY OF CYNTHIA K. COX  
3                                   BEFORE THE KENTUCKY PUBLIC SERVICE COMMISSION

4                                   APRIL 6, 1999

5                                   CASE NO. 1999-385  
6

7    Q.    PLEASE STATE YOUR NAME, YOUR POSITION WITH BELLSOUTH  
8           TELECOMMUNICATIONS, INC. ("BELLSOUTH") AND YOUR BUSINESS  
9           ADDRESS.

10  
11   A.    My name is Cynthia K. Cox. I am employed by BellSouth as Senior Director for  
12           State Regulatory for the nine-state BellSouth region. My business address is 675  
13           West Peachtree Street, Atlanta, Georgia 30375.

14  
15   Q.    PLEASE PROVIDE A BRIEF DESCRIPTION OF YOUR BACKGROUND  
16           AND EXPERIENCE.

17  
18   A.    I graduated from the University of Cincinnati in 1981 with a Bachelor of Business  
19           Administration degree in Finance. I graduated from the Georgia Institute of  
20           Technology in 1984 with a Master of Science degree in Quantitative Economics.  
21           I immediately joined Southern Bell in the Rates and Tariffs organization with the  
22           responsibility for demand analysis. In 1985 my responsibilities expanded to  
23           include administration of selected rates and tariffs including preparation of tariff  
24           filings. In 1989, I accepted an assignment in the North Carolina regulatory office  
25           where I was BellSouth's primary liaison with the North Carolina Utilities

1 Commission Staff and the Public Staff. In 1993, I accepted an assignment in the  
2 Governmental Affairs department in Washington D.C. While in this office, I  
3 worked with national organizations of state and local legislators, NARUC, the  
4 FCC and selected House delegations from the BellSouth region. In February  
5 2000, I was appointed Senior Director of State Regulatory.

6

7 Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY BEING FILED TODAY?

8

9 A. My testimony addresses the necessary and impair standard of Section 251 of the  
10 Telecommunications Act of 1996 (the "Act") that determine which network  
11 elements incumbent local exchange carriers must provide to competitive local  
12 exchange carriers. Specifically, I will address how these standards pertain to  
13 Pilgrim Telephone, Inc.'s ("Pilgrim") request for billing and collection service,  
14 real time access to the BNA (Billing Name and Address) database and real time  
15 access to 900 blocking information as unbundled network elements ("UNEs").

16

17 Q. HOW DOES THE TELECOMMUNICATIONS ACT OF 1996 DEFINE A  
18 NETWORK ELEMENT?

19

20 A. Pursuant to the Act, a "network element" is:

21

22 "a facility or equipment used in the provision of a  
23 telecommunications service. Such term also includes, but is not  
24 limited to, features, functions, and capabilities that are provided  
25 by means of such facility or equipment, including but not

1 limited to subscriber numbers, databases, signaling systems, and  
2 information sufficient for billing and collection or used in the  
3 transmission, routing, or other provision of a  
4 telecommunications service.”

5

6 Q. ARE ALL NETWORK ELEMENTS CONSIDERED UNBUNDLED  
7 NETWORK ELEMENTS (UNEs)?

8

9 A. No. Section 251(d)(2) of the Telecommunications Act of 1996 states:

10

11 “in determining what network elements should be made  
12 available for purposes of subsection(C) (3), the Commission  
13 shall consider, at a minimum, whether –

14

(A) access to such network elements as are proprietary  
in nature is necessary; and

15

16

(B) the failure to provide access to such network  
elements would impair the ability of the  
telecommunications carrier seeking access to  
provide the services that it seeks to offer.”

17

18

19

20

21 Q. HOW DOES THE FCC DEFINE THE NECESSARY AND IMPAIR  
22 STANDARD OF SECTION 251 OF THE TELECOMMUNICATIONS ACT OF  
23 1996?

24

1 A. In its Third Report and Order adopted on December 7, 1999; the FCC defines the  
2 necessary and impair standard of Section 251 as follows:

3

4 "A proprietary network element is considered "necessary"  
5 within the meaning of section 251(d)(2)(A) if, taking into  
6 consideration the availability of alternative elements outside the  
7 incumbent's network, including self-provisioning by a  
8 requesting carrier or acquiring an alternative from a third party  
9 supplier, lack of access to that element would as a practical,  
10 economic, and operational matter, preclude a requesting carrier  
11 from providing the services it seeks to offer."

12

13 "The incumbent LECs failure to provide access to a non-  
14 proprietary network element "impairs" a requesting carrier  
15 within the meaning of section 251(d)(2)(B) if, taking into  
16 consideration the availability of alternative elements outside the  
17 incumbent's network, including self-provisioning by a  
18 requesting carrier or acquiring an alternative from a third-party  
19 supplier, the lack of access to an element materially diminishes  
20 a requesting carrier's ability to provide the services it seeks to  
21 offer."

22

23 Q. ARE ANY OF THE SERVICES PILGRIM IS REQUESTING FROM  
24 BELLSOUTH CONTAINED IN THE FCC'S NATIONAL LIST OF UNEs?

25

1 A. No. The FCC does not consider billing and collection service, real time access to  
2 the BNA database or real time access to 900 blocking information to be  
3 unbundled network elements.  
4

5 Q. HAVE ANY CLECs REQUESTED THESE ITEMS AS UNES IN ANY OTHER  
6 INTERCONNECTION AGREEMENT THROUGHOUT BELLSOUTH?  
7

8 A. No.  
9

10 Q. DO STATE COMMISSIONS HAVE THE AUTHORITY TO REQUIRE  
11 INCUMBENT LECS TO UNBUNDLE ADDITIONAL ELEMENTS?  
12

13 A. Yes. However, any additional requirements must meet the "necessary and  
14 impair" standard, the requirements of Section 251 and the national policy  
15 framework of the FCC. Further, any consideration of adding a new unbundling  
16 requirement would be more appropriately addressed in a generic proceeding  
17 where all parties affected by the decision would have the opportunity to be  
18 represented. Such a decision should not be made in a two-party arbitration.  
19

20 Q. DOES BELLSOUTH AGREE THAT ACCESS TO BILLING AND  
21 COLLECTION SERVICE IS A UNE?  
22

23 A. No. As explained by Mr. Liles, the billing and collection service Pilgrim is  
24 requesting is separate and apart from the provision or routing of a telephone call.  
25 It is designed to bill charges on behalf of another telecommunications carrier,



1 based on information provide by that carrier, to BellSouth's customers to whom  
2 BellSouth issues a bill each month for local exchange service.

3

4 Q. IF ACCESS TO BILLING AND COLLECTION SERVICE WERE  
5 CONSIDERED TO BE A UNE, WHAT STANDARD WOULD APPLY?

6

7 A. Billing and Collection service is not proprietary as that term is used in the Act;  
8 therefore, the impair standard would apply.

9

10 Q. DOES BILLING AND COLLECTION SERVICE MEET THE IMPAIR  
11 STANDARD?

12

13 A. No. In a competitive local market, each provider will have a relationship with its  
14 own customers. When a competitive local exchange carrier ("CLEC") switches a  
15 former BellSouth customer to its service, the end user becomes a customer of the  
16 CLEC. At this point, BellSouth has no business relationship with the customer  
17 and is not able to bill the customer on behalf of the CLEC because BellSouth is no  
18 longer sending a bill to this customer. Therefore, BellSouth would have no  
19 billing relationship with a Pilgrim customer through which it could provide  
20 Billing & Collection service.

21

22 In addition, there are many options available to Pilgrim for billing its own  
23 customers. These include sending its own bills, purchasing a billing service from  
24 other providers or using credit card services. The availability of the numerous  
25 billing options was the impetus behind the FCC's detariffing of this service in

1 1987. Certainly, the lack of billing and collection service would not meet the  
2 impair standard.

3

4 Q. DOES BELLSOUTH AGREE THAT ACCESS TO THE BNA DATABASE IS  
5 A UNE?

6

7 A. No. As explained in the testimony of BellSouth's other witnesses, the BNA  
8 database provides interexchange carriers ("IXCs") assistance in billing for casual-  
9 use and calling card customers. After completion of a call, the IXC sends ANI to  
10 BellSouth, and BellSouth then provides the associated BNA information. There  
11 is no real time access of the BNA database by the switch or the signaling network  
12 at any point for billing, or the processing or completion of a telephone call. It is  
13 simply an after-the-fact service offered by BellSouth via tariff rates for intrastate  
14 service or via negotiated contract for interstate service to IXCs in order to  
15 facilitate IXC billing. As such, access to the BNA database does not fit the Act's  
16 nor the FCC's requirements for UNEs.

17

18 Q. IF BNA WERE CONSIDERED TO BE A UNE, WHICH STANDARD WOULD  
19 APPLY?

20

21 A. BNA is not proprietary as that term is used in the Act; therefore, the impair  
22 standard would apply.

23

24 Q. DOES BNA MEET THE IMPAIR STANDARD?

25

1 A. No. Certainly, Pilgrim, operating as a CLEC, could not be impaired by not  
2 having access to BellSouth's BNA database since Pilgrim already possesses the  
3 billing name and address of its own end user customers. The BNA database  
4 contains billing information for BellSouth's end user customers. Pilgrim,  
5 operating as a CLEC, would have no reason to bill BellSouth's end user  
6 customers. Once a CLEC is providing local service to a particular customer, that  
7 customer's billing name and address is removed from BellSouth's BNA database.

8

9 Q. DOES BELLSOUTH AGREE THAT ACCESS TO 900/976 BLOCKING IS A  
10 UNE?

11

12 A. No. As explained by Mr. Milner, real-time access to 900/976 blocking is not a  
13 UNE. 900/976 blocking is a feature of the switch that is provided with unbundled  
14 local switching. Pilgrim is not purchasing unbundled local switching.

15

16 Identification of BellSouth's end user customers that have 900/976 blocking on  
17 their lines appears only in individual customer service records (or by inspection of  
18 the individual lines in the central office switch by a skilled technician). Simply  
19 put, BellSouth does not have a database that provides 900/976 blocking  
20 information to which it could provide Pilgrim access, even if it were obligated to  
21 do so.

22

23 Q. IF ACCESS TO 900/976 BLOCKING INFORMATION WAS CONSIDERED  
24 TO BE A UNE, WHICH STANDARD WOULD APPLY?

25

1 A. 900/976 blocking information is not proprietary as that term is used in the Act;  
2 therefore, the impair standard would apply.

3

4 Q. DOES ACCESS TO 900/976 BLOCKING INFORMATION MEET THE  
5 IMPAIR STANDARD?

6

7 A. No. In its February 7, 2000 Response to BellSouth's Motion for Reconsideration,  
8 Pilgrim states at page 7 that

9

10 "Access to these elements [billing and collection, BNA,  
11 databases and 900/976 blocking databases] *is necessary for*  
12 *Pilgrim to correctly identify whether to accept traffic onto its*  
13 *network from BellSouth customers, and to be able to bill*  
14 *BellSouth customers for casual access, collect calls and other*  
15 *calls made by BellSouth customers on the Pilgrim network."*  
16 (emphasis added)

17

18 As Mr. Milner explains, if BellSouth's end user customer has 900/976 blocking  
19 on his/her line, BellSouth's customer would not be able to call Pilgrim's 900/976  
20 numbers. Since Pilgrim could not receive traffic from BellSouth's customers who  
21 have 900/976 blocking on their lines, there would be no situation where Pilgrim  
22 would need to identify whether to accept traffic onto its network from BellSouth  
23 customers. Therefore, Pilgrim cannot be impaired by not having access to  
24 900/976 blocking information.

25

1 Q. DOES THIS CONCLUDE YOUR DIRECT TESTIMONY?

2


3 A. Yes.

STATE OF ALABAMA

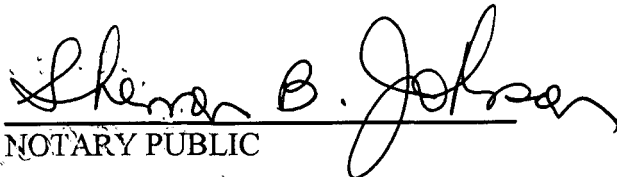
COUNTY OF JEFFERSON

BEFORE ME, the undersigned authority, duly commissioned and qualified in and for the State and County aforesaid, personally came and appeared Bruce Liles, Manager, BellSouth Telecommunications, Inc., being by me first duly sworn deposed and said that:

He is appearing as a witness before the Kentucky Public Service Commission in Case No. 99-385, Petition for Arbitration of Pilgrim Telephone, Inc. with BellSouth Telecommunications, Inc., Pursuant to the Telecommunications Act of 1996, on behalf of BellSouth Telecommunications, Inc., and if present before the Commission and duly sworn, his testimony would be set forth in the annexed testimony consisting of 9 pages and 0 exhibit(s).

  
\_\_\_\_\_  
Bruce Liles

SWORN TO AND SUBSCRIBED BEFORE ME this  
3<sup>rd</sup> day of Apr. 4, 2000.

  
\_\_\_\_\_  
NOTARY PUBLIC

NOTARY PUBLIC STATE OF ALABAMA AT LARGE.  
MY COMMISSION EXPIRES: Oct. 17, 2001.  
BONDED THRU NOTARY PUBLIC UNDERWRITERS.

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BELLSOUTH TELECOMMUNICATIONS, INC.  
DIRECT TESTIMONY OF BRUCE LILES  
BEFORE THE COMMONWEALTH OF KENTUCKY  
PUBLIC SERVICE COMMISSION

DOCKET NO. 99-385

April 6, 2000

Q. PLEASE STATE YOUR NAME, ADDRESS, AND POSITION WITH  
BELLSOUTH TELECOMMUNICATIONS, INC.

A. My name is Bruce L. Liles. I am employed by BellSouth  
Telecommunications, Inc. (hereinafter "BellSouth") as Product Manager for  
Interexchange Carrier Billing and Collection Services. My business address is  
3535 Colonnade Parkway, Birmingham, Alabama.

Q. PLEASE SUMMARIZE YOUR BACKGROUND AND EXPERIENCE.

A. I graduated from Louisiana State University in 1977 with a Bachelor of  
Science Degree in Marketing. I have been employed by BellSouth since 1977,  
primarily in the Marketing Department. During my career I have held various  
assignments of increasing responsibility in Product Management. I have been  
in my present assignment since 1989. My responsibilities include product  
development and life cycle management.

1 Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY IN THIS  
2 PROCEEDING?

3  
4 A. The purpose of my testimony is to provide the Commission with an  
5 understanding of the Billing and Collection (hereinafter "B&C") Services  
6 offered by BellSouth to third parties via contract and tariff, and how  
7 BellSouth's B&C Services differ from "information sufficient for billing and  
8 collection" as defined in the Act. I will also explain the purpose of the  
9 Settlement Reserve and provide information related to the resolution of  
10 Pilgrim's delinquent payment status under its previous B&C Services contract  
11 with BellSouth.

12  
13 Q. WHAT ARE B&C SERVICES?

14  
15 A. BellSouth provides intrastate B&C Services under Section E8 of the BellSouth  
16 Access Services Tariff (AST) and interstate B&C Services (detariffed by the  
17 FCC effective 1/1/87) under contract. B&C Services are services provided by  
18 BellSouth to telecommunications carriers whereby BellSouth bills charges  
19 incurred by BellSouth's own local subscribers (end users) from third-party  
20 telecommunications carriers on behalf of those third-party carriers. These  
21 charges are included on the BellSouth bill within the BellSouth envelope, and  
22 BellSouth collects for a single balance due from its local end users. In its most  
23 simplistic form, BellSouth bills and collects on behalf of other providers. The  
24 collection service is a very important element of the B&C Services offering.  
25 BellSouth has a large and well-trained staff that interacts with end users in its



1 collection efforts. Since collection is a relatively expensive and labor-intensive  
2 function, B&C Services customers would rather pay BellSouth to perform this  
3 task than to undertake it themselves.

4  
5 Q. ARE B&C SERVICES TELECOMMUNICATIONS SERVICES?

6  
7 A. No. "Telecommunications", as defined in the Act, means "the transmission,  
8 between or among points specified by the user, of information of the user's  
9 choosing, without change in the form or content of the information as sent and  
10 received." 47 U.S.C. 153(46). B&C Services are not telecommunications, nor  
11 are B&C Services used in the provision of telecommunications services. As I  
12 have explained, BellSouth's B&C Services are auxiliary services provided by  
13 BellSouth to third party carriers to facilitate billing and collections for those  
14 carriers.

15  
16 Q. WHAT IS "INFORMATION SUFFICIENT FOR BILLING AND  
17 COLLECTION" AS DEFINED IN THE ACT?

18  
19 A. "Information sufficient for billing and collection" as defined in the Act (47  
20 C.F.R. § 51.5) encompasses functionalities and information that allow a CLEC  
21 to bill its own end users. Specifically, an incumbent LEC is obligated to give a  
22 CLEC access to usage data as an unbundled network element ("UNE") so that  
23 the CLEC can bill its own end users for services purchased from the CLEC.  
24 There is no obligation for an ILEC to perform the CLEC's billing function on

25

1           behalf of the CLEC; to the contrary, the ILEC's obligation is to provide  
2           "information sufficient" for the CLEC to do so on its own.

3

4 Q.       HOW DOES "INFORMATION SUFFICIENT FOR BILLING AND  
5           COLLECTION" DIFFER FROM B&C SERVICES?

6

7 A.       CLEC access to information that is necessary in order to recognize and bill a  
8           CLEC end user for services purchased from that CLEC is entirely and  
9           fundamentally different from B&C Services. B&C Services are purchased by  
10          telecommunications carriers other than CLECs, and involve both billing the  
11          purchasing carrier's end users on the BellSouth bill and collecting from the  
12          purchasing carrier's end user customers on the carrier's behalf.

13

14 Q.       WHY ARE BELLSOUTH'S B&C SERVICES NOT AVAILABLE TO  
15          CLECS AS A UNE?

16

17 A.       Once an end user becomes a CLEC customer, BellSouth is no longer rendering  
18          a local service bill to that end user on which charges owed to a third-party  
19          provider can be included. Thus, BellSouth could not bill that end user on  
20          behalf of the CLEC because BellSouth is not even billing that end user on  
21          behalf of itself. Additionally, BellSouth has no end user customer knowledge  
22          to support billing. In other words, it is no longer possible for BellSouth to  
23          offer B&C Services associated with that end user to any company, whether it is  
24          a CLEC or any other type of telecommunications carrier. As a result of this

25

1 and other business-related issues, BellSouth has chosen not to perform B&C  
2 Services for any CLECs.

3

4 Q. TO WHAT TYPES OF COMPANIES IS BELLSOUTH OBLIGATED TO  
5 PROVIDE B&C SERVICES?

6

7 A. BellSouth is obligated to provide intrastate B&C Services to certified  
8 interexchange carriers, Customer Owned Coin Operated Telephone (COCOT)  
9 providers, and clearinghouse agents authorized to act as agents for these  
10 companies under AST Section E8. BellSouth is obligated to provide interstate  
11 B&C Services to interexchange telecommunications carriers on a  
12 nondiscriminatory basis under contract.

13

14 Q. FOR WHAT TYPES OF SERVICES DOES BELLSOUTH BILL ON  
15 BEHALF OF ITS B&C SERVICES CUSTOMERS, EITHER VIA TARIFF  
16 OR CONTRACT?

17

18 A. The types of services BellSouth bills on behalf of its B&C Services customers  
19 include but are not limited to:

20

21 • local, intraLATA, interstate, and international toll, and toll-related services  
22 such as monthly recurring charges associated with toll pricing plans,  
23 discounts, Directory Assistance, and Directory Assistance Call Completion  
24 (“DACC”);

25

26 • Optional Calling Plans;  
27 • Set Up Fees, Monthly Recurring Charges for Optional Calling Plans,  
28 pricing plans, and discounts, and flat-rate charges for Telecommunication-  
29 Related Services;

- 1 • Charges for a Pre-Paid Calling Card;
- 2 • 900 Pay-Per-Call Services (excluding some types; e.g., adult-type
- 3 programming or programming containing explicit or implicit reference to
- 4 sexual conduct) which have the predominant purpose of providing
- 5 information or interactive communication, and which are accessed by
- 6 dialing a 1+900 access code through which the end user immediately
- 7 reaches the Pay-Per-Call Service;
- 8 • 700 Conference Services; and
- 9 • Universal Service Fund (USF), Presubscribed Interexchange Carrier
- 10 Charge (PICC), and similar fees mandated by state and/or federal
- 11 regulatory bodies.

11 Q. HOW DOES THE B&C SERVICES PROCESS BETWEEN BELLSOUTH  
12 AND THE B&C SERVICES CUSTOMER WORK?

13 A. BellSouth and the B&C Services customer enter into a B&C Services contract  
14 that specifies services purchased, length of service, responsibilities of each  
15 party, and all other operating details. Pursuant to the contract, BellSouth then  
16 charges the customer for messages billed, bills rendered, adjustments to end  
17 user accounts, etc. As part of the process, BellSouth retains a Settlement  
18 Reserve as a security measure against losses which may be incurred after the  
19 end of a customer's contract.

20  
21  
22  
23 Q. PLEASE FURTHER EXPLAIN THE PURPOSE OF THE SETTLEMENT  
24 RESERVE IN THE B&C SERVICES CONTRACT.

25

1 A. The purpose of the Settlement Reserve in the B&C Services contract is to  
2 protect BellSouth from incurring losses caused by a telecommunications  
3 carrier's uncollectibles, post billing adjustments, and unbillables up to nine  
4 months after the end of its B&C Services contract. Since BellSouth would  
5 have previously purchased the telecommunications carrier's receivables, it  
6 would need protection against loss from the uncollectibles, post billing  
7 adjustments, and unbillables that might occur after the contract has expired.

8

9 Q. DESCRIBE THE RELATIONSHIP BETWEEN BELLSOUTH AND  
10 PILGRIM TELEPHONE.

11

12 A. Pilgrim Telephone Company, an interexchange carrier, had a B&C Services Contract  
13 with BellSouth beginning in the early 1990s. Problems began in 1994, when  
14 BellSouth required all B&C Services customers to sign a Pay-Per-Call Addendum to  
15 their contracts. The Addendum was introduced to (1) require B&C Services customers  
16 to comply with new FCC and FTC rules on Pay-Per-Call Service, and (2) respond to  
17 BellSouth end user complaints about unauthorized charges. Pilgrim reluctantly signed  
18 the addendum, but BellSouth had to expend a great deal of effort to obtain that  
19 signature.

20

21 Beginning in late 1996 and early 1997, end user complaints against Pilgrim began to  
22 increase significantly. After extensive investigation by various BellSouth groups  
23 including Regulatory, Legal, Consumer, and the BellSouth account team, BellSouth  
24 presented Pilgrim in October 1997 with evidence that Pilgrim was submitting pay-per-  
25 call services for billing that were: a) accessed by other than a 900 service code; b)

1 represented on the BellSouth bill as 900 calls to end users who had 900 blocking on  
2 their line; and c) services that were sexually explicit and adult oriented.

3  
4 From October 1997 through January 1998, Pilgrim and BellSouth exchanged  
5 numerous letters on this subject. Pilgrim admitted in writing it was using the 900  
6 format to bill for pay-per-call services that were accessed by other than the 900  
7 Service Access Code. Pilgrim consistently avoided discussion of the nature of the  
8 services provided. Pilgrim continued to maintain that BellSouth could not provide a  
9 suitable "format" for billing its services, and characterized them as legitimate  
10 "telemessaging, teleconferencing, and electronic publishing" services. They alleged  
11 that BellSouth would not bill for them because they were "competing" against services  
12 BellSouth itself provided.

13  
14 During this period, Pilgrim's contract was running on a month-to-month basis, having  
15 expired in June 1997. Pilgrim was provided a new agreement in 1997, but returned it  
16 with modifications unacceptable to BellSouth. BellSouth gave Pilgrim a 30-day notice  
17 in October 1997 to bring its services in compliance with BellSouth's pay-per-call  
18 policies and the FCC and FTC's rules. Pilgrim agreed in December 1997 to do so,  
19 under protest. Subsequently, Pilgrim's transmitted revenue decreased dramatically,  
20 while its post-billing adjustment levels remained constant. This resulted in the  
21 negative Receivables balance, and Pilgrim's default on payment of its negative  
22 Receivables balance ultimately led to the termination of its contract.

23  
24 Q. AFTER BELLSOUTH TERMINATED PILGRIM'S CONTRACT, HOW  
25 WAS THE SETTLEMENT RESERVE APPLIED?

1

2 A. At the cancellation of Pilgrim's contract, BellSouth held a Settlement Reserve  
3 for Pilgrim of approximately \$1.8 million, and Pilgrim owed BellSouth more  
4 than \$1 million. BellSouth netted the unpaid amounts from Pilgrim's  
5 Settlement Reserve, and remitted only the difference of approximately  
6 \$800,000 to Pilgrim, keeping the balance of \$1 million that Pilgrim owed to  
7 BellSouth.

8

9 Q. WAS THE SETTLEMENT RESERVE APPLIED TO PILGRIM IN THE  
10 SAME MANNER AS IT WOULD HAVE BEEN APPLIED FOR ALL  
11 OTHER B&C SERVICES CUSTOMERS?

12

13 A. Yes.

14

15 Q. DOES THIS CONCLUDE YOUR TESTIMONY?

16

17 A. Yes.

18

19

20

21

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23

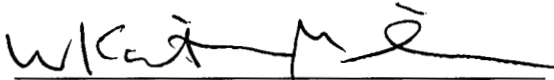
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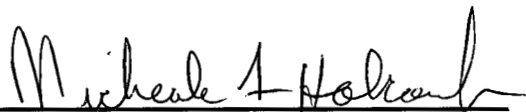
STATE OF GEORGIA  
COUNTY OF FULTON

BEFORE ME, the undersigned authority, duly commissioned and qualified in and for the State and County aforesaid, personally came and appeared W. Keith Milner, Senior Director, BellSouth Telecommunications, Inc., being by me first duly sworn deposed and said that:

He is appearing as a witness before the Kentucky Public Service Commission in Case No. 99-385, Petition for Arbitration of Pilgrim Telephone, Inc. with BellSouth Telecommunications, Inc., Pursuant to the Telecommunications Act of 1996, on behalf of BellSouth Telecommunications, Inc., and if present before the Commission and duly sworn, his testimony would be set forth in the annexed testimony consisting of 14 pages and 0 exhibit(s).

  
W. Keith Milner

SWORN TO AND SUBSCRIBED BEFORE ME this  
4<sup>th</sup> day of April, 2000.

  
NOTARY PUBLIC

**MICHEALE F. HOLCOMB**  
Notary Public, Douglas County, Georgia  
My Commission Expires November 3, 2001



1 Bellsouth Telecommunications, Inc.  
2 Direct Testimony of W. Keith Milner  
3 Before the Kentucky Public Service Commission

4 April 6, 1999

5 Case No. 1999-385  
6

7 Q. Please state your name, your business address and  
8 your position with Bellsouth Telecommunications, Inc.  
9 ("Bellsouth").  
10

11 A. My name is W. Keith Milner. My business address is 675 West Peachtree  
12 Street, Atlanta, Georgia 30375. I am Senior Director - Interconnection  
13 Services for BellSouth. I have served in my present role since February  
14 1996, and have been involved with the management of certain issues  
15 related to local interconnection, resale, and unbundling.  
16

17 Q. Please summarize your background and experience.  
18

19 A. My business career spans over 29 years and includes responsibilities in  
20 the areas of network planning, engineering, training, administration, and  
21 operations. I have held positions of responsibility with a local exchange  
22 telephone company, a long distance company, and a research and  
23 development company. I have extensive experience in all phases of  
24 telecommunications network planning, deployment, and operations  
25 (including research and development) in both the domestic and

1 international arenas.

2

3 I graduated from Fayetteville Technical Institute in Fayetteville, North  
4 Carolina, in 1970, with an Associate of Applied Science in Business  
5 Administration degree. I later graduated from Georgia State University in  
6 1992 with a Master of Business Administration degree.

7

8 Q. HAVE YOU TESTIFIED PREVIOUSLY BEFORE ANY STATE PUBLIC  
9 SERVICE COMMISSION, AND IF SO, BRIEFLY DESCRIBE THE  
10 SUBJECT OF YOUR TESTIMONY?

11

12 A. I previously have testified before the state public service commissions in  
13 Alabama, Florida, Georgia, Kentucky, Louisiana, Mississippi and South  
14 Carolina, the Tennessee Regulatory Authority, and the Utilities  
15 Commission in North Carolina on the issues of technical capabilities of the  
16 switching and facilities network regarding the introduction of new service  
17 offerings, expanded calling areas, unbundling, and network  
18 interconnection.

19

20 Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY BEING FILED  
21 TODAY?

22

23 A. In my testimony, I will address the technical aspects of certain arbitration  
24 issues in the proposed Interconnection Agreement between BellSouth and  
25 Pilgrim Telephone, Inc. ("Pilgrim"). Specifically, I will address the technical

1 network aspects of (1) access to the BNA (Billing Name and Address)  
2 database; and (2) access to 900 blocking.

3

4 Q. IS PILGRIM CERTIFICATED AS A COMPETITIVE LOCAL EXCHANGE  
5 CARRIER (CLEC) IN KENTUCKY?

6

7 A. It is my understanding that at present Pilgrim is not so certificated and is  
8 not now providing local telecommunications service in Kentucky. Pilgrim's  
9 Response To BellSouth's Motion For Reconsideration in this case dated  
10 February 7, 2000 states:

11 "Access to these elements is necessary for Pilgrim to correctly  
12 identify whether to accept traffic onto its network from BellSouth  
13 customers, and to be able to bill BellSouth customers for casual  
14 access, collect calls, and other calls made by BellSouth customers  
15 on the Pilgrim network." [Emphasis added]

16

17 It is clear that the local service provider is BellSouth rather than Pilgrim.  
18 Thus, the access Pilgrim seeks is not for its creation of local  
19 telecommunications services but instead for its interexchange services.

20

21 Q. PLEASE DESCRIBE BELLSOUTH'S BILLING NAME AND ADDRESS  
22 FOR ANI SERVICE.

23

24 A. The BellSouth Billing Name and Address for ANI Service is a tariffed  
25 service offering in both the FCC No. 1 Tariff (13.3.15) and the Kentucky

1 Access Services Tariff (E13.3.13) that provides information about a  
2 BellSouth end user consisting of:

- 3 • the billing name and address for the subscriber,
- 4 • billing telephone number,
- 5 • working telephone number,
- 6 • terminal number,
- 7 • customer type indicator, and
- 8 • customer code.

9

10 This service is available on those interexchange calls for which the  
11 Automatic Number Identification (ANI) of the calling or billed party is  
12 provided to BellSouth. These calls would include 101XXXX casually dialed  
13 calls, calling card calls, and collect and third party billed calls.

14

15 Q. IS THE BELLSOUTH BILLING NAME AND ADDRESS FOR ANI  
16 SERVICE AVAILABLE TO INTEREXCHANGE CARRIERS SUCH AS  
17 PILGRIM TELEPHONE, INC.?

18

19 A. Yes. While each tariff has a slightly different description of those who are  
20 eligible to subscribe to the BellSouth Billing Name and Address for ANI  
21 Service, they both describe the same customer body of which Pilgrim is a  
22 part.

23

24 BellSouth Tariff F.C.C. No. 1 reads as follows:

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"13.3.15 BellSouth Billing Name and Address for ANI

(A) BellSouth Billing Name and Address for ANI service provides for end user or location provider or its authorized agent billing name and address and associated information. It is available to telecommunications services providers such as an Enhanced Service Provider (ESP), Operator Service Provider (OSP), Interexchange Carrier (IC) and any other provider of interstate telecommunications services."

The FCC Kentucky Access Tariff reads as follows:

"E13.3.13 A. BellSouth Billing Name and Address for ANI Service

1. BellSouth Billing Name and Address for ANI service provides for end user billing name and address and associated information. It is available to ICs [that is, Interexchange Carriers] such as an Enhanced Service Provider (ESP), Operator Service Providers (OSP), Interexchange Carrier (IC) and any other provider of interexchange telecommunications services."

Q. WHAT IS THE PURPOSE OF THE BNA DATABASE?

A. The BNA database provides interexchange carriers (IXCs), via tariff, assistance in billing for casual-use and calling card customers.

Q. PLEASE DESCRIBE THE OPERATION OF THE BNA DATABASE.

1

2

A. During call processing, the interexchange carrier from whom the dialing party has chosen to take service receives the ANI (Automatic Number Identification) (that is, the telephone number) of the dialing party who has made the casual-use and/or calling card call. At some point after call completion, perhaps days or weeks later, the interexchange carrier sends the ANI to BellSouth, and BellSouth returns to the interexchange carrier the BNA information for that ANI so the carrier can bill the dialing party (that is, the IXC's end user) for the service. The BNA database is not involved in the processing or completion of the telephone call, and it is not accessed or queried by the switch or the signaling network at any point in the processing or completion of the telephone call. It is simply an after-the-fact service provided by BellSouth, via tariff, to IXCs to facilitate IXC billing.

15

16

Q. WHAT IS THE REGULATORY AUTHORITY UNDER WHICH ACCESS TO THE BNA DATABASE IS PROVIDED?

17

18

19

A. The regulatory authority for access to the BNA database of BellSouth is provided by the Federal Communications Commission ("FCC"). In its rule regarding the provision of BNA, the FCC defined "telecommunications service provider" as "interexchange carriers, operator service providers, enhanced service providers, and any other provider of *interstate* telecommunications services." 47 C.F.R. § 64.1201(a)(2) (emphasis added). The rule then specifically provides as follows:

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1 "No local exchange carrier providing billing name and  
2 address shall disclose billing name and address information  
3 to any party other than a telecommunications service  
4 provider or an authorized billing and collection agent of a  
5 telecommunications service provider." 47 U.S.C. §  
6 64.1201(b).

7  
8 In other words, the FCC rule provides that BellSouth, as a local  
9 exchange carrier, only can provide BNA information to  
10 "interexchange carriers, operator service providers, enhanced  
11 service providers, and any other provider of interstate  
12 telecommunications services." 47 U.S.C. 64.1201(a)(2)  
13 (emphasis added). The rule appears to explicitly restrict BellSouth  
14 from providing such information to local service providers.

15  
16 Q. CAN ACCESS TO THE BNA DATABASE BE CONSIDERED A "UNE"?

17  
18 A. No. Access to the BNA database cannot be a UNE because only  
19 providers of local service are entitled to UNEs. The FCC's *First Report*  
20 *and Order 96-325* at ¶191 states: "an IXC that requests interconnection  
21 solely for the purpose of originating and terminating its *interexchange*  
22 traffic, not for the provision of telephone exchange service and exchange  
23 access to others, on an incumbent LEC's network is not entitled to receive  
24 interconnection pursuant to section 251(c)(2)". Thus, the Kentucky Public  
25 Service Commission's decision that BellSouth must provide access to the

1 BNA database as a UNE appears to me to be in direct conflict with the  
2 FCC rule limiting the provision of BNA.

3

4 Q. DOES ACCESS TO THE BNA DATABASE MEET THE FCC'S  
5 DEFINITION OF A CALL-RELATED DATABASE?

6

7 A. No. In its recent Third Report and Order, the FCC identified the national  
8 list of UNEs. Access to the BNA database currently is not a UNE because  
9 it is not included on the FCC's list; specifically, it is neither a call-related  
10 database nor a form of access to OSS as defined in the FCC's recent  
11 Third Report and Order (CC Docket No. 96-98 released November 5,  
12 1999). The access BellSouth provides CLECs to BellSouth's OSS is  
13 discussed in the testimony of BellSouth witness Mr. Pate. Call-related  
14 databases "are databases...that are used in signaling networks for billing  
15 and collection, or the transmission, routing or other provision of a  
16 telecommunications service." 47 C.F.R. §51.319. According to the FCC,  
17 ILECs (Incumbent Local Exchange Companies) shall provide access to  
18 their call related databases "for purposes of switch query and database  
19 response through a signaling network...." *Id.* Some examples of call-  
20 related databases are 800 Service and the 911 database.

21

22 The BNA database is not a call-related database. It is a database of  
23 billing names and addresses that is maintained completely separate and  
24 apart from BellSouth's switches and BellSouth's signaling systems, and it  
25 plays no role in the transmission or routing of a telecommunications



1 service. Moreover, the BNA database is not involved in the ILEC's  
2 provision of Billing and Collection Services. The BNA database is not tied  
3 to the switch or the signaling network in any way, and is not queried or  
4 accessed at any point during the provision of a telecommunications  
5 service. It does not respond to queries through a signaling network and is  
6 never accessed through a signaling network. Moreover, it provides no  
7 information to process a call, measure a call, or bill a call. In short, it is not  
8 related to the processing of a call, or billing for that call. The BNA  
9 database is an auxiliary billing function for use by IXCs, utilized days, or  
10 even weeks, after the calls in question are completed. Thus, under the  
11 FCC's definition, the BNA database is not a call-related database.

12  
13 Q. BASED ON YOUR UNDERSTANDING OF THE BNA DATABASE,  
14 WOULD ACCESS TO BELLSOUTH'S BNA DATABASE BE HELPFUL  
15 OR NECESSARY TO A CLEC PROVIDING LOCAL SERVICE?

16  
17 A. No. A CLEC, as it develops its own local customer base, will develop its  
18 own billing names and addresses. Moreover, when a CLEC converts a  
19 BellSouth customer to the CLEC's local service, that customer's billing  
20 name and address is removed from BellSouth's BNA database.

21  
22 Q. IS THE PROVISION THAT ILECS MUST PROVIDE FOR THE  
23 PUBLICATION OF CLECS' END USERS NAMES AND NUMBERS IN  
24 THE ILECS' WHITE PAGE DIRECTORIES IN ANY WAY ANALAGOUS

1 TO PILGRIM'S REQUEST IN THIS CASE FOR ACCESS TO THE BNA  
2 DATABASE?

3

4 A. No. The two are completely unrelated. The requirement that the listings  
5 of CLECs' end users be included in the white page publications of ILECs'  
6 directories flows from the concept that information about those end users  
7 must be available to the general public in the same manner as the  
8 information about ILECs' retail customers in order for them to receive calls  
9 on an equitable basis. However, as I have discussed above, the BNA  
10 database is not involved in the origination of calls, the termination of calls,  
11 or, importantly, of providing information to callers necessary for them to  
12 complete calls. Rather, access to the BNA database is simply a method  
13 whereby interexchange carriers may obtain appropriate data to bill for  
14 casual-use and/or calling card interlata and interstate calls.

15

16 Pilgrim raised a recent case from the Fourth Circuit that it contends stands  
17 for the provision that all directory publication issues are required for the  
18 provision of UNEs. Although I am not a lawyer, it appears to me that the  
19 case is limited strictly to additional white pages listings and non-published  
20 listings. Thus, it certainly does not support any argument that the BNA  
21 database is a UNE.

22

23 Q. IS ACCESS TO 900/976 BLOCKING A UNE?

24

1 A. No. The definition of a network element includes "a facility or equipment  
2 used in the provision of a telecommunications service" as well as  
3 "information sufficient for billing and collection or used in the transmission,  
4 routing, or other provision of a telecommunications service." 47 U.S.C. §  
5 153(29). Pursuant to this definition, BellSouth offers CLECs a 900/976  
6 blocking service for resale that enables a CLEC to offer its customers the  
7 same ability to block 900/976 calls from being placed from their telephone  
8 lines as is available to BellSouth retail customers. BellSouth, does not,  
9 however, maintain a separate, discrete system – mechanized or otherwise  
10 – which identifies BellSouth end-user accounts subject to 900/976 call  
11 blocking. The information appears *only* in individual customer service  
12 records (or by inspection of the individual lines in the central office switch  
13 by a skilled technician). Simply put, BellSouth does not have a database  
14 that provides 900/976 blocking information to which it could provide  
15 Pilgrim access, even if it were obligated to do so.

16  
17 Q. DOES ACCESS TO 900/976 BLOCKING INFORMATION INVOLVE THE  
18 USE OF A CALL-RELATED DATABASE?

19  
20 A. No. Access to 900/976 blocking information is not a call-related database.  
21 As discussed above, call-related databases are databases used "for  
22 purposes of switch query and database response through a signaling  
23 network...." 47 C.F.R. § 51.319. Aggregate 900/976 blocking information,  
24 unlike a call-related database, does not reside in an accessible manner on  
25 the switch or in the signaling network. Rather, 900/976 calls are blocked

1 by submitting the appropriate CREX Universal Service Order Codes via a  
2 Service Order which then causes the correct Line Class Code to be  
3 assigned to the individual line in the switch. The Line Class Code on the  
4 individual line results in call routing that blocks the 900/976 calls. In other  
5 words, the 900/976 blocking service is provided on a per line basis. Thus,  
6 there is no centralized switch location that is queried to provide the  
7 blocking information. Because there is no switch query or database  
8 response through a signaling network for this information, the information  
9 cannot constitute a call-related database.

10  
11 Q. IF A BELLSOUTH END USER CUSTOMER HAS REQUESTED AND  
12 RECEIVED 900/976 BLOCKING, WOULD PILGRIM NEED BILLING  
13 NAME AND ADDRESS INFORMATION FOR THAT END USER  
14 CUSTOMER?

15  
16 A. I do not believe so. For example, if the BellSouth end user customer has  
17 900/976 blocking, no 900/976 calls from that end user customer would be  
18 routed to Pilgrim or to any other carrier for handling. Since no 900/976  
19 calls were delivered to Pilgrim, Pilgrim does not have any calls to bill that  
20 end user customer and thus does not need billing name and address  
21 information for that BellSouth end user customer. Also, since no 900/976  
22 call were delivered to Pilgrim from that customer, there is no need for  
23 Pilgrim to have access to a list of BellSouth end user customers with  
24 900/976 blocking for the service Pilgrim seeks to offer.

25

1 Q. IS 900/976 BLOCKING INFORMATION AVAILABLE TO CLECS?

2

3 A. Yes, but not in a call-related database. Such information is available on  
4 an individual customer basis as discussed in the testimony of BellSouth  
5 witness Mr. Pate.

6

7 Q. WHAT PRACTICAL END WOULD BE ACHIEVED BY PILGRIM WERE  
8 THE COMMISSION TO ULTIMATELY FIND THAT ACCESS TO 900/976  
9 IS A UNE?

10

11 A. Pilgrim's desire for access to an alleged "database" of 900/976 blocking  
12 information appears to stem from its practice of providing pay-per-call  
13 services over lines other than 900 lines. This provisioning method violates  
14 FCC regulations, which mandate the exclusive use of the 900 service  
15 access code to furnish pay-per-call offerings, unless the pay-per-call  
16 provider has a presubscription agreement with the end-user. 47 C.F.R. §  
17 64.1501(a)(3). BellSouth believes Pilgrim wants access to 900/976  
18 blocking information so when customers who have 900/976 blocking use  
19 these conventional lines to access Pilgrim's services, Pilgrim can block  
20 charges to the customers for such calls so as not to raise regulatory  
21 questions about its services via customer complaints. This use of 900/976  
22 blocking information to circumvent FCC regulations is not appropriate and  
23 should not be sanctioned by the Commission.

24

1 Q. HOW MAY PILGRIM ACQUIRE THE SAME 900/976 BLOCKING THAT  
2 BELLSOUTH PROVIDES TO ITS RETAIL CUSTOMERS?

3

4 A. There are two ways. First, Pilgrim may acquire switching from BellSouth  
5 on an unbundled basis and thus have its customers' lines translated to  
6 block 900/976 calls. The second way is for Pilgrim to provide its own  
7 switching for its customers and install its own translations, thus providing  
8 the same 900/976 blocking.

9

10 Q. DOES THIS CONCLUDE YOUR DIRECT TESTIMONY?

11

12 A. Yes.

13

STATE OF GEORGIA

COUNTY OF FULTON

BEFORE ME, the undersigned authority, duly commissioned and qualified in and for the State and County aforesaid, personally came and appeared Ronald M. Pate, Director, BellSouth Telecommunications, Inc., being by me first duly sworn deposed and said that:

He is appearing as a witness before the Kentucky Public Service Commission in Case No. 99-385, Petition for Arbitration of Pilgrim Telephone, Inc. with BellSouth Telecommunications, Inc., Pursuant to the Telecommunications Act of 1996, on behalf of BellSouth Telecommunications, Inc., and if present before the Commission and duly sworn, his testimony would be set forth in the annexed testimony consisting of 9 pages and 2 exhibit(s).



Ronald M. Pate

SWORN TO AND SUBSCRIBED BEFORE ME this  
4<sup>th</sup> day of April, 2000.



NOTARY PUBLIC

**MICHEALE F. HOLCOMB**  
Notary Public, Douglas County, Georgia  
My Commission Expires November 3, 2001



1

BELLSOUTH TELECOMMUNICATIONS, INC.

2

DIRECT TESTIMONY OF RONALD M. PATE

3

BEFORE THE KENTUCKY PUBLIC SERVICE COMMISSION

4

DOCKET NO. 1999-385

5

APRIL 6, 2000

6

7

Q. PLEASE STATE YOUR NAME, YOUR POSITION WITH BELLSOUTH TELECOMMUNICATIONS, INC. AND YOUR BUSINESS ADDRESS.

8

9

10

A. My name is Ronald M. Pate. I am employed by BellSouth Telecommunications, Inc. ("BellSouth") as a Director, Interconnection Services. In this position, I handle certain issues related to local interconnection matters, primarily operations support systems ("OSS"). My business address is 675 West Peachtree Street, Atlanta, Georgia 30375.

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Q. PLEASE SUMMARIZE YOUR BACKGROUND AND EXPERIENCE.

18

19

A. I graduated from Georgia Institute of Technology in Atlanta, Georgia, in 1973, with a Bachelor of Science Degree. In 1984, I received a Masters of Business Administration from Georgia State University. My professional career spans over twenty-five years of general management experience in operations, logistics management, human resources, sales and marketing.

20

21

22

23





1 I joined BellSouth in 1987, and have held various positions of increasing  
2 responsibility since that time.

3

4 Q. HAVE YOU TESTIFIED PREVIOUSLY?

5

6 A. Yes. I have testified before the Public Service Commissions in Alabama,  
7 Florida, Georgia, Louisiana, South Carolina, the Tennessee Regulatory  
8 Authority and the North Carolina Utilities Commission.

9

10 Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?

11

12 A. The purpose of my testimony is to address certain arbitration matters at  
13 issue in the proposed Interconnection Agreement between BellSouth and  
14 Pilgrim Telephone, Inc. ("Pilgrim"). Specifically, I will address non-  
15 discriminatory access to BellSouth's Operations Support Systems ("OSS")  
16 as it relates to the issues of (1) billing & collection; (2) access to the  
17 Billing Name and Address ("BNA") database; and (3) access to 900/976  
18 blocking.

19

20 Q. HOW DOES THE FEDERAL COMMUNICATIONS COMMISSION ("FCC")  
21 DEFINE NON-DISCRIMINATORY ACCESS TO THE INCUMBENT  
22 LOCAL EXCHANGE CARRIERS' ("ILEC") OSS?

23

1 A. In paragraph 523 of the First Report and Order in CC Docket Nos. 96-98  
2 and 95-185 released on August 8, 1996 ("First Report and Order"), the  
3 FCC states "that an incumbent LEC must provide [Competitive Local  
4 Exchange Carriers ("CLECS")] nondiscriminatory access to their  
5 operations support systems functions for pre-ordering, ordering,  
6 provisioning, maintenance and repair, and billing available to the LEC  
7 itself".

8  
9 In paragraph 424 of its Third Report and Order and Fourth Further Notice  
10 of Proposed Rulemaking in CC Docket No. 96-98 released on November  
11 5, 1999 ("319 Order"), the FCC states that "In the Local Competition First  
12 Report and Order, the Commission defined OSS as consisting of pre-  
13 ordering, ordering, provisioning, maintenance and repair, and billing  
14 functions supported by an incumbent LEC's databases and information.  
15 OSS includes the manual, computerized, and automated systems,  
16 together with associated business processes and the up-to-date data  
17 maintained in those systems ... Specifically, the Commission identified the  
18 five functions of OSS that incumbent LECs must make available to  
19 competitors on an unbundled basis: pre-ordering, ordering, provisioning,  
20 repair and maintenance and billing." The FCC further stated in paragraph  
21 426 that "We find no reason to modify our definition of OSS."

22  
23 Q. DOES BELLSOUTH PROVIDE THE CLECS NON-DISCRIMINATORY  
24 ACCESS TO ITS OSS?

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A. Yes. BellSouth provides nondiscriminatory access to its OSS for CLECs via electronic and manual interfaces. If Pilgrim becomes a CLEC, then access to BellSouth's OSS will be provided to Pilgrim in the same manner as to other CLECs. BellSouth provides access to its OSS via the following electronic interfaces: Electronic Data Interchange ("EDI") for ordering and provisioning; Local Exchange Navigation System ("LENS") and Telecommunications Access Gateway ("TAG") for pre-ordering, ordering and provisioning; Trouble Analysis and Facilities Interface ("TAFI") for maintenance and repair; Electronic Communications Trouble Administration ("ECTA") for maintenance and repair; and for the function of billing, Access Daily Usage File ("ADUF"), Enhanced Optional Daily Usage File ("EODUF") and Optional Daily Usage File ("ODUF"). These interfaces allow the CLECs to perform functions of pre-ordering, ordering, provisioning, maintenance and repair, and billing for resale services in substantially the same time and manner as BellSouth does for itself in conformance with the FCC's requirements; and, in the case of unbundled network elements, provide a reasonable competitor with a meaningful opportunity to compete which is also in conformance with the FCC's requirements. BellSouth is not obligated to provide CLECs with any additional access to its OSS.

1 Q. DOES THE FCC REQUIRE THAT BELLSOUTH PROVIDE PILGRIM  
2 ACCESS TO BELLSOUTH'S BILLING AND COLLECTION SERVICES  
3 AND ITS BNA DATABASE AS PART OF BELLSOUTH'S OSS?  
4

5 A. No. The five functions of OSS, as defined by the FCC, that the ILEC must  
6 make available to the CLEC, namely, pre-ordering, ordering, provisioning,  
7 maintenance and repair and billing, do not include BellSouth's Billing and  
8 Collection Services nor its BNA database.  
9

10 Q. WHAT IS THE BILLING FUNCTION REFERRED TO IN THE FCC  
11 DEFINITION OF OSS?  
12

13 A. "Billing" refers to the CLECs access to information necessary for the  
14 CLEC to bill its own end users for telecommunications services provided  
15 to that end user by the CLEC. Specifically in paragraph 517 of the FCC  
16 First Report and Order, billing is defined as "information contained in, and  
17 processed by operations support systems can be classified as information  
18 sufficient for billing and collection . . ." The billing function does not refer to  
19 Billing and Collection Services provided by BellSouth on behalf of another  
20 carrier.  
21

22 Q. HAS BELLSOUTH COMPLIED WITH ITS OBLIGATION TO PROVIDE  
23 CLECS ACCESS TO BILLING FUNCTIONS?  
24

1 A. Yes. BellSouth provides CLECs the necessary billing information via the  
2 daily usage file ("DUF") products, namely, EODUF, ODUF, AODUF, to  
3 enable the CLECs to bill their end users in substantially the same time and  
4 manner as BellSouth bills its own retail end users. BellSouth is not  
5 obligated to do the billing and collection on behalf of the CLECs.

6  
7 Q. WILL BELLSOUTH PROVIDE PILGRIM NON-DISCRIMINATORY  
8 ACCESS TO ITS OSS THAT WILL ALLOW PILGRIM TO BILL ITS  
9 LOCAL SERVICE END USERS FOR SERVICES THAT PILGRIM  
10 PURCHASES FROM BELLSOUTH AND PROVIDES TO PILGRIM'S  
11 LOCAL SERVICE END USERS?

12  
13 A. Yes. As I discussed previously, BellSouth provides access to its OSS via  
14 the following DUF interfaces for the function of billing: ADUF, EODUF and  
15 ODUF. These DUF interfaces provide CLECs with the billing information  
16 necessary for the CLECs to bill their end users. Additionally, with the  
17 appropriate authorization from the end user customer, Pilgrim can access  
18 customer service records ("CSR") for its end users, as well as any  
19 BellSouth end user account, via the electronic pre-ordering interfaces:  
20 TAG and LENS. Thus, any additional information about the customer that  
21 Pilgrim feels it can not obtain from the DUF products can be obtained from  
22 the CSR. At least one piece of information the CLEC can obtain from the  
23 CSR is the customer's billing name and address.

1 Q. DO BELLSOUTH'S OSS FUNCTIONS INCLUDE ACCESS TO  
2 BELLSOUTH'S BNA DATABASE?

3

4 A. No. As previously stated, the end user's billing name and address is  
5 available to CLECs through the end user's Customer Service Record  
6 ("CSR"). BellSouth retail units do not access the BNA database during  
7 any of the OSS functions of pre-ordering, ordering, provisioning,  
8 maintenance and repair, or billing. Thus, non-discriminatory access to  
9 BellSouth's OSS does not include access to the BNA database.

10

11 Q. DO BELLSOUTH'S OSS FUNCTIONS INCLUDE ACCESS TO A  
12 DATABASE OF BELLSOUTH SUBSCRIBERS WITH 900 BLOCKING?

13

14 A. No. As explained in the testimony of BellSouth Witness Milner, 900  
15 blocking is a function of the switch translations, not a call related  
16 database. Moreover, the OSS functions of pre-ordering, ordering,  
17 provisioning, maintenance and repair, and billing do not include access to  
18 a 900 blocking database. Simply, the database to which Pilgrim seeks  
19 access does not exist for BellSouth retail units. Thus, there is no way to  
20 access such a non-existent database via BellSouth's OSS.

21

22 Q. WILL BELLSOUTH PROVIDE PILGRIM THE INFORMATION NEEDED  
23 TO DETERMINE IF ITS LOCAL SERVICE END USERS SUBSCRIBE TO  
24 900/976 BLOCKING?

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A. Yes. If Pilgrim becomes a CLEC, Pilgrim can determine if its end users subscribe to 900/976 blocking by accessing the end user's CSR via one of the electronic pre-ordering interfaces, TAG or LENS. Exhibit RMP-1 provides the Kentucky General Subscriber Services Tariff ("GSST") reference for the 900/976 blocking. Copies of the GSST are available to the CLECs via outside Tariff Advisory Services. A list of the Tariff Advisory Services contracting with BellSouth can be obtained via the Resale CLEC Activation Requirements or the Facility Based Activation Requirements located at website [http://interconnection.bellsouth.com/guides/guides\\_p.html](http://interconnection.bellsouth.com/guides/guides_p.html)

The 900/976 blocking feature is identified by the Universal Service Order Code ("USOC") CREX4 in the Service & Equipment Section ("S&E") of the end user's CSR. Exhibit RMP-2 contains an example of the CREX4 USOC as it appears in the S&E of the CSR. A list of USOCs can be obtained via the CLEC USOC Manuals located at website. [http://interconnection.bellsouth.com/guides/guides\\_p.html](http://interconnection.bellsouth.com/guides/guides_p.html)

The crucial point is that when Pilgrim receives the end user's permission to convert an end user to Pilgrim's local service, Pilgrim will have access to that end user's CSR and will immediately know whether that customer has the 900/976 blocking feature. That information in and of itself,

1           however, is not a UNE. It is simply part of the information to which  
2           BellSouth must give the CLECs access via BellSouth's OSS.

3

4    Q.    DOES THIS CONCLUDE YOUR TESTIMONY?

5

6    A.    Yes.

7

8

9



Transmittal Cover Sheet for Pate Exhibit RMP-1

This sheet transmits the  
General Subscriber Service Tariff, Section A13.20 for  
BellSouth in Kentucky

which consists of 2 pages.

GENERAL SUBSCRIBER SERVICES TARIFF

BELLSOUTH  
TELECOMMUNICATIONS, INC.  
KENTUCKY  
ISSUED: October 22, 1999  
BY: E.C. Roberts, Jr., President - KY  
Louisville, Kentucky

PSC KY. TARIFF 2A  
Fourth Revised Page 15  
Cancels Third Revised Page 15  
EFFECTIVE: November 23, 1999

**A13. MISCELLANEOUS SERVICE ARRANGEMENTS**

**A13.20 Call Screening And Restriction Services - Customized Code Restriction (CCR)**

**A13.20.1 General**

Customized Code Restriction is a service which enables customers to restrict certain types of outgoing calls from being placed over their exchange lines/trunks. This capability is provided only by means of recorded announcement restriction. It is offered with options containing various sets of codes to be restricted, and is available to basic exchange customers with individual line residence or business service or PBX trunks in either flat, message or measured rate service environments.

**A13.20.2 Regulations**

- A. Customers may subscribe to whichever option meets their needs, but only one option may be provided on a line/trunk or group of lines/trunks. Also, options of this service may not be combined with Selective Class of Call Screening in A13.12. preceding or Toll Trunks specified in A13.14. preceding. The options of this service with their respective sets of codes are listed under A13.20.2.H. following and are available at the rates specified in A13.20.3. following.
- B. CCR is furnished only from central offices equipped to provide this service and where facilities permit.
- C. When CCR is provided from central offices other than the customer's normal serving central office, Foreign Central Office or Foreign Exchange charges as specified in Tariff Section A9., whichever is appropriate, will apply to all lines/trunks equipped with this service.
- D. CCR does not provide restriction of non-chargeable calls to Company numbers, such as repair service, public emergency service numbers (911), or toll free 1+8XX calling (*including 1+8XX calling card calls*).
- E. Subscribing to CCR does not relieve customers of responsibility for calls charged to their numbers.
- F. It is the responsibility of the customer to notify all users of their service that an operator cannot be reached.
- G. The Company shall not be liable to any person for damages of any nature or kind arising out of, or resulting from, or in connection with the provision of this service, including without limitation, the inability of station users to access the operator for any purpose, or any other restricted codes specified for the options listed in A13.20.2.H. following.
- H. Residence customers who subscribe to any of the Area Plus® services may restrict 1+InterLATA calls while allowing 1+IntraLATA calls to be completed by subscribing to CCR Option #7.
- I. CCR - Options  
The codes shown for CCR options are not to be considered all inclusive. Codes may be changed and new or different codes may be added as deemed appropriate by the Company.
  1. Option #1 Restricted Codes  
Vacant Code Recording 1+, 0-, 0+, 00-, (1+/0+) 411, 976, NPA 900, IDDD 01+, IDDD 011+, 101XXXX
  2. Option #2 Restricted Codes  
Vacant Code Recording 0-, 0+, 00-, IDDD 01+, 976
  3. Option #3 Restricted Codes  
Vacant Code Recording 1+, 0-, 0+, 00-, IDDD 01+, NPA 900, 101XXXX
  4. Option #4 Restricted Codes  
Vacant Code Recording 976, NPA 900
  5. Reserved for future use.
  6. Reserved for future use.
  7. Option #7 Restricted Codes  
1+InterLATA, Vacant Code Recording 0-, 0+, 00-, (1+/0+) 411, 976, NPA 900, IDDD 01+, IDDD 011+, 101XXXX
- J. Customized Code Restrictions can be suspended as specified in A2.3.16 of this Tariff. During the period of suspension, no recurring charge applies.
- K. Customized Code Restriction will be established and provided at no charge for customers receiving Lifeline service from A3.31 of this Tariff.

GENERAL SUBSCRIBER SERVICES TARIFF

BELLSOUTH  
TELECOMMUNICATIONS, INC.  
KENTUCKY  
ISSUED: October 22, 1999  
BY: E.C. Roberts, Jr., President - KY  
Louisville, Kentucky

PSC KY. TARIFF 2A  
Ninth Revised Page 16  
Cancels Eighth Revised Page 16  
EFFECTIVE: November 23, 1999

**A13. MISCELLANEOUS SERVICE ARRANGEMENTS**

**A13.20 Call Screening And Restriction Services - Customized Code Restriction (CCR)  
(Cont'd)**

**A13.20.3 Rates And Charges**

- A. The following rates and charges apply for all CCR options and are in addition to all applicable service charges, monthly rates and nonrecurring charges for exchange lines/trunks and other services or equipment with which they may be associated. Only one option may be provided on a line/trunk or group of lines/trunks.

1. Option #1 Restricted Codes

	<b>Monthly Rate</b>	<b>USOC</b>
(a) Residence Line or PBX trunk, each	\$2.20	CREX1
(b) Business Line or PBX trunk, each	4.50	CREX1

2. Option #2 Restricted Codes

(a) Residence Line or PBX trunk, each	2.20	CREX2
(b) Business Lines or PBX trunk, each	4.50	CREX2

3. Option #3 Restricted Codes

(a) Residence Line or PBX trunk, each	2.20	CREX3
(b) Business Line or PBX trunk, each	4.50	CREX3

4. Option #4 Restricted Codes<sup>1,2</sup>

(a) Residence Line or PBX trunk, each	-	CREX4
(b) Business Line or PBX trunk, each	-	CREX4

5. Option #7 Restricted Codes<sup>3</sup>

(a) Residence Line	2.20	CREX7
--------------------	------	-------

**A13.21 Reserved For Future Use**

**A13.22 Reserved For Future Use**

**A13.23 Reserved For Future Use**

**Note 1:** On the first occurrence of adjustment due to unauthorized or mistaken 900 and/or 976 service calls blocking shall be offered to the customer at no charge. However, on the second occurrence of adjustment or customer refusal to pay the 900 and/or 976 service charges, Company initiated blocking may be imposed. The customer will be notified at the time the request for adjustment is being processed.

**Note 2:** Service charges do not apply when a customer subscribes to Option #4.

**Note 3:** Option #7 is restricted to subscribers of any Area Plus service.

Transmittal Cover Sheet for Pate Exhibit RMP-2

This sheet transmits the

BellSouth Telecommunications Access Gateway ("TAG")  
Inquiry Customer Service Record

utilizing the

BellSouth ROBOTAG Graphical User Interface ("GUI")  
to access TAG

which consists of 1 page.

RoboTAG Customer Records Response - Microsoft Internet Explorer

## Customer Records Response

S&E

START

LIST

DIR

BILL

S&E

TFC

REMARKS

END

/RATE NR  
 1 MBBRX MEMORYCALL@  
 /TN 770 998-9883/CS  
 /MBTN 770 998-9883  
 /DLNM 2-STACY W N  
 /SED 12-11-96/ZSER  
 /RATE 2.70  
 1 AH8 TELECOMMUNICATIONS RELAY +  
 /TN 770 998-9883/CSN C0X  
 /SED 11-17-95/ZSER 4A10000003  
 /RATE .10  
 1 CREX4 CUSTOM TOLL RESTRICTION  
 /TN 770 998-9883/CSN C0X  
 /CBK B/SED 11-17-95  
 /ZSER 5110000004  
 /RATE NR  
 1 GCJRC CALL FORWARDING DON'T ANS+  
 /TN 770 998-9883/CSN C4X  
 /SER 12 11 06/ZSER 0210000000

Done Internet

# WYATT, TARRANT & COMBS

1700 LEXINGTON FINANCIAL CENTER  
LEXINGTON, KENTUCKY 40507-1746

606 233-2012  
FAX: 606 259-0649

CITIZENS PLAZA  
LOUISVILLE, KY 40202-2898  
502 589-5235

TAYLOR-SCOTT BUILDING  
FRANKFORT, KY 40601-1807  
502 223-2104

ELSBY BUILDING  
NEW ALBANY, IN 47150-3440  
812 945-3561

1500 NASHVILLE CITY CENTER  
NASHVILLE, TN 37219-1750  
615 244-0020

29 MUSIC SQUARE EAST  
NASHVILLE, TN 37203-4322  
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313 E. MAIN STREET, SUITE 1  
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901 537-1000

WRITER'S DIRECT DIAL NUMBER

606 288-7646  
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Craig R Paulus

April 10, 2000

RECEIVED

APR 10 2000

PUBLIC SERVICE  
COMMISSION

Mr. Martin J. Huelsmann, Jr., Executive Director  
Kentucky Public Service Commission  
211 Sower Boulevard  
P.O. Box 615  
Frankfort, Kentucky 40602

Re: Pilgrim Telephone, Inc.

Dear Mr. Huelsmann:


Please find enclosed Pilgrim Telephone, Inc.'s Direct Testimony, Prehearing Brief to Accompany Direct Testimony and Request for Commission Notice for filing today. The original has been delivered to the night drop box. Ten (10) copies will be delivered on the morning of the 11th.

If you have any questions regarding this filing, please call me.

Thank you for your assistance in this matter.

Sincerely,

WYATT, TARRANT & COMBS

  
Craig R Paulus

CRP/src  
Enclosures  
30180456.1

RECEIVED

BEFORE THE  
KENTUCKY PUBLIC SERVICE COMMISSION  
CASE NO. 99-385

APR 10 2000  
PUBLIC SERVICE  
COMMISSION

PILGRIM TELEPHONE, INC.

PETITIONER

V.

NOTICE OF FILING

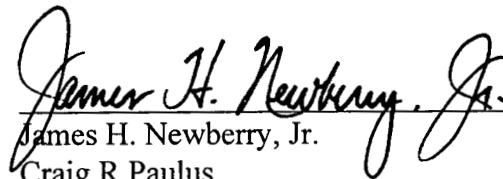
BELLSOUTH TELECOMMUNICATIONS, INC.

RESPONDENT

\* \* \* \* \*

Please take notice that Pilgrim Telephone, Inc. ("Pilgrim"), by counsel, has filed the direct testimony of Stephen Bonder, Scott Yacino and Pat Irons, copies of which are attached hereto.

Respectfully submitted,



James H. Newberry, Jr.

Craig R Paulus

Wyatt, Tarrant & Combs

1700 Lexington Financial Center

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(606) 233-2012

Walter E. Steimel, Jr.

Greenberg, Traurig

800 Connecticut Avenue, N.W.

Suite 500

Washington, D.C. 20006

Counsel for Pilgrim Telephone, Inc.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the forgoing was served upon the following, by facsimile transmission and by U.S. mail, postage prepaid, this 10th day of April, 2000.

Creighton E. Mershon, Sr., Esq.  
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Counsel for BellSouth Telecommunications, Inc.

  
Counsel for Pilgrim Telephone, Inc.



BEFORE THE  
KENTUCKY PUBLIC SERVICE COMMISSION  
CASE NO. 99-385

PILGRIM TELEPHONE, INC.

PETITIONER

V.

DIRECT TESTIMONY  
of  
STEPHEN BONDER

BELLSOUTH TELECOMMUNICATIONS, INC.

RESPONDENT

\*\*\*\*\*

Mr. Steimel

Q: Good morning. I am Walt Steimel representing Pilgrim Telephone, Inc. I would like to ask you a few questions related to Pilgrim's request for network elements and UNEs from BellSouth. Can you please state your complete name, address and title for the record?

Mr. Bonder

A: Yes. Good morning. My name is Stephen Bonder, and my address is One Kendall Square, Cambridge, Massachusetts. I am the chief financial officer of Pilgrim.

Q: What are your responsibilities as the chief financial officer?

A: I am responsible for oversight of all of the financial operations of the company, including a review of all revenue sources, expenses and profitability analyses. I approve all major expenditures before payment, and I am involved in most substantial contractual issues and negotiations. I am also involved in major business planning and strategy for Pilgrim.

Q: Are you familiar with the processes that Pilgrim uses to bill customers and collect those funds?

- A:** Yes, in my capacity as CFO I am very involved in reviewing our revenue collections methods and the realization rates of each method.
- Q:** By realization rate, what do you mean?
- A:** Realization rate is the efficiency by which a billing record for a service which we have sold is converted into collected revenue.
- Q:** Can you explain your experience with the various billing methods used?
- A:** Typically we have used billing and collection services offered by the local exchange carriers, or LECs, as they are sometimes called. Other methods that we can use are credit card and direct billing. Of these methods, the system which has been the telecommunication industry standard, LEC billing, is overwhelmingly the best method for realizing revenues.
- Q:** What is the reason for this?
- A:** Let's take collect calling for instance. Pilgrim, like many competitive carriers, provides collect calling services to anyone who requests it from Pilgrim. Pilgrim often does not have any relationship with the calling party, particularly as the call is billed to the called party. In many instances, as Pilgrim is not an ubiquitous provider of 1+ dial tone service like the Bell Operating Companies, Pilgrim also does not have a direct relationship with the called party, but rather the called party is a customer of one of the BOCs, in this instance, BellSouth. If each local exchange carrier were to begin to refuse to provide billing and collection for collect calls, the collect call market would collapse.
- Q:** Why exactly is this the case?
- A:** Collect calling is an easy method for someone, who typically does not have the money to make the call to reverse the charges to the called party. Presumably, if the calling party had a calling card, credit card or coins, on a payphone, they would use one of these payment mechanisms instead. If you require a person using a collect service to use a calling card or credit card, the service would not be a collect calling service, and the calling party would migrate to another carrier. More importantly, if carriers are permitted to refuse to bill for collect calls placed to their customers most carriers will have to cease providing collect call service to stem the resulting losses.
- Q:** Why can't you direct bill collect calls?
- A:** We could except that the cost would be prohibitive, and the necessary information is not provided on a timely or accurate basis by the LECs. The cost of billing individual collect calls has been, in our experience, greater than the revenue

derived from the calls.

In addition, direct billing requires access to an accurate database, in advance of the call. Only the local exchange carriers maintain such a database. Casual call providers like Pilgrim cannot maintain a continuously accurate database of every customer in the country.

**Q:** In numerous pleadings BellSouth has alleged that Pilgrim owes it over a million dollars. Can you discuss this issue for a moment?

**A:** Yes, of course. Pilgrim used to have an agreement with BellSouth under which BellSouth provided billing and collection services for Pilgrim's calling card and pay-per-call services. BellSouth has claimed that Pilgrim did not pay amounts owed to BellSouth in excess of a million dollars, and BellSouth has maintained in this proceeding that Pilgrim's failure to pay the owed amounts was the reason that BellSouth refused to renew its billing and collection contract with Pilgrim.

BellSouth's alleged number results from reserves it required to be held. The new contract with BellSouth contained a provision whereby BellSouth, for a period of nine months, would withhold 32% of the gross billings submitted to them by Pilgrim. This money was to build a reserve to be used to fund credits upon termination of the contract. When Pilgrim's traffic patterns changed, BellSouth continued to insist upon higher unreasonable reserves based upon former higher traffic. BellSouth's instance led to a situation where the more Pilgrim billed, the more it had to pay BellSouth monthly, leading to continuous negative net revenues.

The fact that BellSouth's reserve requirements were unreasonable is evident from the fact that, instead of Pilgrim owing money last November, BellSouth sent us a check for over \$800,000, which was money that BellSouth owed Pilgrim, under the terms of the expired contract.

**Q:** How does BellSouth's denial of billing and collection and blocking information prevent Pilgrim from providing 900 and information services in BellSouth's territory?

**A:** BellSouth is the monopoly provider of access to 900 service, and effectively prevents any competition on the access side by controlling blocking. BellSouth also controls who can offer 900 number service by limiting for whom it provides billing and collection service.

**Q:** Let's return for a moment to the focus of Pilgrim's operations and plans for the future. What role do you play in the planning of Pilgrim's operations, and how do those plans relate to the issues pending before the Commission at this time?

**A:** I am involved in the short term and long term strategic planning for Pilgrim. The issues pending before the Commission are central to whether Pilgrim will be able to service consumers in Kentucky.

**Q:** Can you tell us a little about Pilgrim's history?

**A:** Pilgrim initially began as an information and enhanced service provider in the Boston and Cambridge areas, reselling a service offered then, and now, by Bell Atlantic. While Pilgrim eventually expanded its operations nationwide, it also expanded its services offerings into traditional tariffed common carrier offerings. Pilgrim has maintained tariffs on file with the Federal Communications Commission (FCC) since as early as 1991, offering a wide variety of collect calling and teleconferencing services. Pilgrim's ability to offer 1+ dialing services had traditionally been limited by market entry and cost restrictions levied by the local exchange carriers, or LECs, and Pilgrim traditionally could only afford to supply these services in the immediate Boston/Cambridge vicinity. Due to the FCC's aggressive enforcement of prohibitions against resale restrictions, however, Pilgrim has been able to aggressively pursue the resale of interstate communications.

**Q:** What are some of Pilgrim's current plans, as they relate to this proceeding?

**A:** After the passage of the 1996 amendments to the Communications Act of 1934, which made local resale possible for smaller carriers such as Pilgrim, we decided to begin entry into the local markets. As you may be aware, Pilgrim, at the request of the Kentucky Commission, filed an application to be an intrastate carrier in Kentucky, and filed tariffs for its services. Pilgrim is registering to become an intrastate and local carrier in each state, and is pursuing interconnection agreements with carriers in each state.

One market Pilgrim may service is the information service provider market. Pilgrim may become the local exchange and intra LATA provider to information service providers, voice mail providers and other enhanced service providers. This cannot take place, however, if BellSouth will not bill its customers that call Pilgrim's customers, and will not share blocking information, leaving BellSouth as the only possible local exchange company servicing information service providers.

**Q:** Why is billing on the local LEC, or BellSouth bill, so important to competitive carriers like Pilgrim?

**A:** Customers expect all of their communications charges to appear on one bill. This

expectation probably arose from the years in which all communications services were provided by one company. The continuing value of the single bill cannot be underestimated, however, and even the LECs realize the natural advantage of single billing. I brought with me a clip of information recently published by BellSouth that touts the value of single billing and one stop shopping. I would like to quote from BellSouth's Second Quarter 1999 Report to Shareholders, emphasis added.

One-stop shopping. BellSouth's customers want it because it's convenient and saves them time and money. One-stop shopping makes a lot of sense from our shareholders' perspective, too. First, it's more efficient to market multiple products to the same customer at the same time. Second, one-stop shopping and combined billing encourage customer loyalty. For all these reasons, BellSouth expanded one-stop shopping throughout our wireless retail outlets during the second quarter. Now, in any BellSouth Mobility or BellSouth Mobility DCS store or kiosk, customers who come in to purchase or upgrade wireless service can also buy: additional telephone lines for their home; BellSouth.net® Internet service; convenience features such as Caller ID, Call Waiting Deluxe and BellSouth® MemoryCall® voice mail service; pagers and paging service; and BellSouth(sm) AmericaSat® digital TV service (where available).

BellSouth provides unified billing for its subsidiaries and for other companies competing in its territory. To deny this same service to Pilgrim creates a huge competitive disadvantage. In addition, for the customers for whom it is the local exchange provider, it is the only repository for accurate and timely blocking and billing information, and billing and collection services.

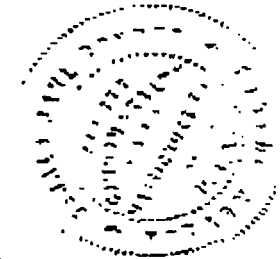
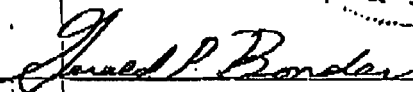
- Q: Is billing one's customers for services purchased from other carriers unusual?
- A: What we are requesting is not very unusual. We believe that each carrier should bill its end user, dial tone customers for each service it buys from competitive carriers every month. The industry has operated this way for years - it is only now when BellSouth is facing more competition that it suddenly does not want to bill for other carriers any longer. Pilgrim expects that it will have to bill local exchange and intra LATA customers for the services they purchase from other carriers, and remit those charges to those carriers.
- Q: Are Pilgrim's services competitive with BellSouth's? How does the denial of billing impact the competitive services?
- A: BellSouth provides services which are directly to Pilgrim's services across all platforms. Pilgrim and BellSouth both provide collect calling service. If BellSouth provides the service, it bills the called party on the phone bill. If the called party is in another Bell Operating Company service area, BellSouth has agreements with each of the other carriers that they will bill their customers, collect the money and remit it to BellSouth. If Pilgrim carries the call, however, and BellSouth serves the terminating customer, BellSouth is refusing to bill its

customer and remit the charges to Pilgrim.

- Q: It is my understanding that Pilgrim provides voice mail services. Are these competitive with BellSouth's voice mail services? Is there an advantage to the charges being placed on the same bill?
- A: BellSouth also provides voice mail services to its customers, billed on the end users' monthly bill. These are competitive with Pilgrim's services, except for the competitive disadvantages I have noted.
- Q: Can you tell us about Pilgrim's requests for real time customer information?
- A: Access to databases and customer call routing and verification information is not unusual, either. Pilgrim has developed an advance fraud prevention system. As part of that system, Pilgrim undertakes to ensure that when customers call to request service - whether it be full time dial tone, casual access or other services, that the requesting party is either really the listed line subscriber or another person authorized to use the service.
- Q: Information services can be provided over a variety of platforms. How can blocking information be necessary to protect Pilgrim and consumers?
- A: Pilgrim takes steps to ensure that services requested by customers are consistent with prior service availability decisions made by the customer. Pilgrim has found that customers that have requested blocking from 900/976 services generally have expressed an interest in not purchasing any premium service billable to its telephone line. Pilgrim seeks to honor these preferences, but cannot do so when BellSouth is withholding this information from Pilgrim and other competitors. Pilgrim also has more advanced blocking capability than most carriers, and can selectively block calls which may be inconsistent with a 900 number block. Unless BellSouth provides this information, however, Pilgrim cannot provide this consumer protection.
- Q: Thank you for your time.
- A: Thank you.

On this 10th day of April, 2000,  
sworn to and subscribed by:

  
Stephen Bonder

  
  
My Commission expires  
July 28, 2000

BEFORE THE  
KENTUCKY PUBLIC SERVICE COMMISSION  
CASE NO. 99-385

PILGRIM TELEPHONE, INC.

PETITIONER

DIRECT TESTIMONY  
of  
SCOTT YACINO

V.

BELLSOUTH TELECOMMUNICATIONS, INC.

RESPONDENT

\*\*\*\*\*

Mr. Steimel

Q: Good morning. My name is Walter Steimel. I am with the firm of Greenberg Traurig and I represent Pilgrim Telephone, Inc. in this proceeding. I understand that today you will be testifying as to Pilgrim's need for access to real time billing name and address, also known as BNA, and blocking information, specifically 900 and 976 blocking. To begin, can you state your full name, address and title for the record, please?

Mr. Yacino

A: Thank you. My name is Scott Yacino, and I am a Vice President of Pilgrim Telephone, Inc. My address is One Kendall Square, Cambridge, Massachusetts, 02139. My duties include design and maintenance of Pilgrim's switches and the design and maintenance of Pilgrim's fraud control and security systems. In that capacity I am responsible for ensuring that customers authorize all charges to their accounts and detecting and finding ways to prevent fraud, either on customer accounts, or of Pilgrim.

Q: What are some of the most common types of fraud that you witness and attempt to prevent?

A: We encounter many people who attempt to use our services without the intention to pay for usage. Most if not all of these people try to place responsibility for the

charges to another person via credit card, calling card or line tap fraud.

**Q:** What steps do you take to detect and prevent these types of fraud?

**A:** We monitor usage on individual accounts, and use moving averages to detect fraud on an account. During account establishment, we obtain various bits of verifiable information from a caller and compare it to publicly available databases to verify the identity and statements of callers. To detect these types of fraud, we run programs that alert us when an account uses more than a set amount in a set period of time. We also run a crosscheck. We query the system daily for information like velocity and multiple card uses from any one origination point.

**Q:** What are some of your major frustrations in this area?

**A:** Due to the fact that we do not receive real time billing name and billing address, or BNA, from some carriers such as BellSouth, it is difficult to verify whether a customer is really a person authorized to call to initiate service, change service parameters, or question a charge. As most communications commerce is performed electronically or over the telephone now, carriers such as Pilgrim must rely on third party data to ensure security of communications.

**Q:** How would you use real time BNA if it were made available?

**A:** Since we know the originating telephone number, and we ask for a card-holder's name, we could cut down significantly on the guesswork that we do. If we get a call from a local telephone number, and the name on the credit card matches the name of the person responsible for the telephone line, we can go on to a more likely source of fraud for checking. Also, to protect consumer privacy, if we still suspect that the caller is unauthorized we can call the telephone number and ask for the person listed as the responsible person for the line and make sure they are aware of the usage we see. It would place information into the hands of our people who investigate fraud that would make it easier for us to identify fraudulent calls. This would enable us to block future calls from an origination point immediately and with the consent and knowledge of the person responsible for the line.

**Q:** How would real time billing name and billing address, or BNA, be useful in preventing collect call fraud?

**A:** We bill end users for collect calls. If the responsible party for the line denies the charges, we must assume that the person calling to deny the charges is actually the responsible person. We have no way of knowing if the person we are speaking to at any given time is actually the responsible party. In addition, if a consumer wishes to use our service, we have no real way of knowing the person we are speaking to is authorized to make such requests. In fact, we never really know who that person is.



If we had BNA, we would at least know the name of the responsible person. We could, at a later date, either follow up on a subscription request with either a telephone call or a written confirmation of service activation to the responsible party at the same address that the LEC has on file. We could also cross check the address given us with the one given by a caller requesting access to our services.

Q: What are some of the consumer protections and consumer benefits that may be available with the provision of real time BNA?

A: Many times we call an originating telephone number with no idea who or what it belongs to. We can not cross check our customer data base records against the LEC's to see if there is a match or mismatch. Some customers are denied service because of this, and still other consumers are subjected to fraud for the same reason. Accurate information makes it easier for us to make determinations about the validity of the calls and the identity of the callers, which hopefully would lead to a decrease in consumer inconvenience. We do, as a matter of policy, refund or credit all questioned calls by consumers, but it would be helpful if we had access to name and address, as well as blocking data bases.

Q: How would you use 900/976 blocking information if it were available?

A: Some of our customers call 900 or 976 services and pay for those calls with credit or calling cards. They have the 900 or 976 service deactivated so that minors in the home are inhibited from making calls. The presence of a block on a line may lead us to request more information from a caller before we allow a call to go through the system. This would protect the consumer from fraud and Pilgrim from loss. The lack of access to this information reduces our ability to determine if a responsible party has tried to block certain types of access. Blocking and BNA can be helpful in that it can give us a list of transactions that need to be checked into. Blocks cause a flag, and BNA can be matched against a caller's name to determine if we have the responsible party using a credit card. BNA also provides us with the most accurate and timely information for those people who have just moved and have not yet had their credit files updated.

Q: How is information that a customer has requested 900 blocking information useful in preventing fraud and preventing persons who have access to customer lines from obtaining access to services that are probably inconsistent with a customer's blocking preferences?

A: We have had consumer complaints in the past from people who claim to have 900 or 976 blocks - yet calls came through. We have no way of knowing if there is a block on these lines, so we must assume that BellSouth is checking that data base. Given that BellSouth competes with us for some of these services it appears they may have a clear advantage to send us traffic we think is billable, only to have it incur a loss later on. If enough calls of this type were to flow through our system,

the financial ramifications could be significant.

Q: What are some of the special challenges presented in attempting to provide service to customers over the telephone and electronically – from fraud prevention and consumer protection standpoints?

A: This new age of electronic commerce is significantly different than the past for many reasons, but at least two which are significant under the present circumstances. In electronic commerce, customers are usually never met face-to-face, and customers want service when they request it – not two weeks later. We are no longer operating in an age where the customer strolls into a store front and presents identification or a credit card. Transactions now take place almost instantly over the telephone or on the Internet. Without some sort of independent billing and service order provisioning mechanism the opportunities for fraud against a company, or on consumer accounts, is tremendous.

Q: What are the competitive harms associated with BellSouth's denial of real time identification, billing name and billing address, and blocking information?

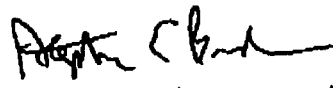
A: Customers expect to be able to call a provider of communications services and obtain nearly instant access to any service, and to have it charged to their telephone bill. Any carrier that cannot provide this type of immediate access is immediately at a severe competitive disadvantage. Customers who attempt to use our service want instant access. If there is a delay in fulfillment of the product they go elsewhere. Since BellSouth is a competitor, it appears they actually gain market share by denying basic information to us about who may be, or may not be, originating a call.

Q: Thank you for your time.

A: Thank you.

On this 10th day of April, 2000,  
sworn to and subscribed by:

  
Scott Yacino

  
my commission expires 18 Feb. 05

BEFORE THE  
KENTUCKY PUBLIC SERVICE COMMISSION  
CASE NO. 99-385

PILGRIM TELEPHONE, INC.

PETITIONER

v.

DIRECT TESTIMONY  
of  
PATRICIA IRONS

BELLSOUTH TELECOMMUNICATIONS, INC.

RESPONDENT

\*\*\*\*\*

- Q: Good morning. Please state your full name and address for the record.
- A: Thank you. My name is Patricia A. Irons. My address is 36 Lori Lane, Westbrook, Maine.
- Q: How and where are you currently employed?
- A: I am an independent contractor and work out of the address I gave you.
- Q: What is your employment background, particularly as related to incumbent local exchange carrier databases, customer service records, customer service representative screens, ordering and provisioning of service or billing and collection
- A: I have worked in the communications industry for thirty two (32) years, most of that time I worked for New England Telephone, which became a part of NYNEX. I retired from NYNEX in April 1994 and became a consultant for NYNEX January 1995. When NYNEX merged with Bell Atlantic, I became a consultant for Bell Atlantic

- Q:** What were your duties or experiences in the areas that I just mentioned?
- A:** During my years of consulting for Bell Atlantic, I was responsible for gathering data on their products for a new database to be built which would be used by all customer service computer systems instead of each system having its own database.
- Before this I was responsible for defining GUI (Graphic User Interface) windows for a new system to be used by the Service Representatives taking customer service orders.
- As an employee of NYNEX, I was involved with the definition and design of the original system used by the Business Service Representatives for customer orders.
- Q:** I would like to address the issue of BOC databases first, turning our attention to a customer's billing name and address, and the availability of this information to customer service representatives on a real time basis. To begin, what is the customer's billing name and address, and what are some of the primary uses for this information?
- A:** Customer Bill Name is the person legally responsible for all charges on the account. Bill Address is the address where the bill is mailed. This information would be used to verify the identity and authority of the person calling for any inquiries or service orders, or as a credit reference for adding other lines and services to the account.
- Q:** You state that you access billing name and address when a customer calls in for a variety of service calls. Can you provide us with some examples of these inquiries and the types of information that a customer service representative might view?
- A:** Customer inquiries could be toll call questions, missed payments, over billing, adding more lines, adding more services or changing line status restrictions such as collect call blocking, 900 number blocking, or international or toll call restrictions. The Service Representative would view billing to see if the account was overdue or scheduled for treatment. A screen would display the appropriate days for treatment and any payments made. The Service Representative would also access a screen displaying service and equipment in order to take the opportunity to sell additional features, or deny requests for features that conflict with previous requests, such as 900 number blocking.

**Q:** So in each instance that a customer calls the BOC, the customer's billing name and billing address, account status and service provisioning information would appear on the screen?

**A:** Yes, if the Billing systems were used the bill name, bill address and account status would display, perhaps on different screens. The line service and products would also display on a different screen. In the ordering system, the line service and products would display on their individual screens.

**Q:** Take blocking. What types of blocks would appear on the screen?

**A:** All blocking types would display on a screen for selection, based on whether they were available in that state.

**Q:** Once the customer has blocking, how does it appear on the customer's service records?

**A:** Whichever blocking feature the customer has ordered displays on a USOC (Universal Service Order Code) on their service record.

**Q:** Does this include 900 blocks?

**A:** Yes.

**Q:** Thank you for your time today.

On this 10th day of April, 2000,  
sworn to and subscribed by:

  
Patricia Irons

50524-6

State of Oregon  
County of Deschutes

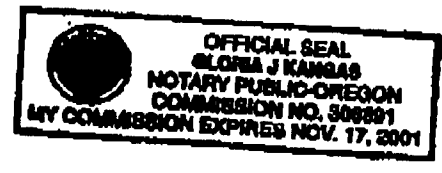
April 10, 2000

Personally appeared the above named Patricia Irons  
and acknowledged the foregoing instrument to be her voluntary act and  
deed.

WITNESS My hand and official seal.

(seal)

Gloria J. Kansas  
Notary Public for Oregon  
My Commission expires: Nov. 17, 2001



BEFORE THE  
KENTUCKY PUBLIC SERVICE COMMISSION  
CASE NO. 99-385

RECEIVED

APR 10 2000

PUBLIC SERVICE  
COMMISSION

PILGRIM TELEPHONE, INC.

PETITIONER

V.

**PETITIONER'S  
STATEMENT OF THE CASE  
AND  
LEGAL BRIEF  
TO ACCOMPANY  
PETITIONER'S DIRECT TESTIMONY**

BELLSOUTH TELECOMMUNICATIONS, INC.

RESPONDENT

April 10, 2000

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PUBLIC SERVICE  
COMMISSION

BELLSOUTH TELECOMMUNICATIONS, INC.

RESPONDENT

\* \* \* \* \*

Pilgrim Telephone, Inc. ("Pilgrim"), through counsel, submits the following Statement of the Case and Legal Brief to accompany its submission of Direct Testimony in the above captioned proceeding:

**I. INTRODUCTION**

Pilgrim is a small telecommunications carrier seeking the opportunity to expand the services it offers and the customers it serves in today's increasingly competitive telecommunications marketplace. Like many telecommunications carriers, Pilgrim cannot effectively expand its business operations without obtaining access to certain information and services that are in the exclusive control of an incumbent local exchange carrier ("LEC"). In this proceeding, Pilgrim has been requesting that the incumbent LEC, BellSouth Telecommunications, Inc. ("BellSouth"), provide it

with access to billing and collection, timely access to 900 blocking information, and timely access to billing name and address ("BNA") information.

In support of its position in this arbitration proceeding, Pilgrim submits today the written Direct Testimony of several witnesses who will testify on Pilgrim's behalf during the course of hearings scheduled by the Kentucky Public Service Commission ("Commission") in this proceeding. Pilgrim also provides a Statement of the Case summarizing the issues to be resolved in the arbitration, describing the unbundled network elements Pilgrim is requesting and the reasons that Pilgrim needs access to these network elements, and presenting an overview of the legal and policy considerations supporting Pilgrim's position. Finally, Pilgrim presents a Legal Brief that discusses in detail Pilgrim's supporting arguments for the relief it is requesting from the Commission.

As Pilgrim has argued previously in this proceeding,<sup>1</sup> the issues presented to the Commission in this proceeding are largely legal and policy issues having to do with the statutory obligations faced by BellSouth with respect to the unbundled provision of network elements. For this reason, Pilgrim attempts to give emphasis in its Statement of the Case and in its Legal Brief to a discussion of these legal and policy issues, presenting its view that the Communications Act of 1934 ("Communications Act" or "Act"), Federal Communications Commission ("FCC") decisions, Commission precedent, and sound public policy all support the grant of Pilgrim's requests in this proceeding for access to network elements.

In contrast, Pilgrim has not chosen to submit direct witness testimony that rehearses in any detail the factual differences that have emerged during the earlier stages of this proceeding. Pilgrim has attempted, through the direct testimony of its witnesses, to provide the Commission with

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<sup>1</sup> See Pilgrim Response to BellSouth Motion for Reconsideration (filed Feb. 7, 2000), at 4; Pilgrim Response to Motion to Dismiss (filed Nov. 10, 1999), at 6.

a straightforward source of information regarding the services that Pilgrim provides, its plans for offering service in Kentucky, the unbundled network elements that Pilgrim is requesting, and why it needs those elements in order to provide service.

Pilgrim is not in a position, however, to take the facts much further, largely because BellSouth (and not Pilgrim) is in possession of many of the facts that are relevant to assessing the feasibility of BellSouth's supplying Pilgrim with the network elements Pilgrim is requesting. The FCC has recognized this dilemma faced by new entrants, finding that it is not always possible for a new entrant to specify the network elements it seeks during the arbitration process because the new entrant will likely lack knowledge about the facilities and capabilities of a particular incumbent LEC's network.

This dilemma is illustrated by the confusion that has surrounded the issue of what constitutes BNA information and how this information can be accessed in BellSouth's systems. BellSouth has maintained during the earlier stages of this proceeding that BNA information resides in a separate database that is accessed by interexchange carriers pursuant to BellSouth tariffs. BellSouth has used this explanation to support its claims that BNA is not available to competitive LECs through BellSouth's Operations Support Systems ("OSS"), and that BNA information is only available pursuant to tariff well after the time that telephone calls are actually transmitted. Pilgrim has maintained that it needs timely access to BNA information, among other reasons, in order to reduce the fraudulent use of its network and to bill and collect for calls transiting its network.

In a filing made with the Commission on April 5, BellSouth (in responding to questions that had been posed by Pilgrim in preparation for a pre-hearing conference with Commission staff that was conducted on April 6), indicated for the first time that the "billing name" and the "billing

address” for BellSouth end user customers is contained in Customer Service Records. These Customer Service Records can be accessed through OSS. But BellSouth claimed that there is a distinction between billing name and billing address on the one hand, and billing name and address on the other hand, contending that this latter information is related to a database for interexchange carriers, provided via tariff, which assists in billing for casual-use and calling card customers.

This example illustrates Pilgrim’s frustration in attempting to obtain information from BellSouth and negotiate an agreement under which Pilgrim can receive unbundled network elements from BellSouth. It now appears that the “billing name” and “billing address” information that Pilgrim has been seeking all along is in fact accessible through OSS, notwithstanding BellSouth’s repeated protestations that the information must be obtained from the BNA database pursuant to BellSouth’s tariff.<sup>2</sup> The example also highlights the importance of the FCC’s finding that incumbent LECs must work with new entrants to identify the elements the new entrants will need to offer a particular service in the manner the new entrants intend.

Pilgrim is petitioning in this proceeding for the Commission to order BellSouth to meet Pilgrim’s requests because BellSouth is obligated by the Act to provide the requested services and information as part of its obligation to provide access to unbundled network elements (“UNEs”)

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<sup>2</sup> In order to avoid any continuation of this confusion, we clarify that Pilgrim uses the terms “BNA,” “billing name and address,” and “blocking information” to refer to the information about a line subscriber, indexed by telephone number, identifying the subscriber’s name, billing address, services address, and line blocking status, regardless of the database or system used to provide the information. As we discuss elsewhere in the Legal Brief, Pilgrim has learned that BNA is referred to by BellSouth as “billing name and billing address,” which appears to be the exact same information provided on a “real time” current electronic access system. “BNA” data may be provided via the Telecommunications Access Gateway (“TAG”), the Local Exchange Navigation System (“LENS”), customer service records (“CSRs”), BNA (referring to the database or facility known by that acronym), or any other database or facility capable of supporting real-time machine-to-machine queries, and should not be confused with or limited by any particular database or facility.

on a non-discriminatory basis. Without access to UNEs, Pilgrim will not have a fair opportunity to compete in the telecommunications marketplace in Kentucky.

## II. BACKGROUND

Currently, Pilgrim offers a variety of services, including interexchange service, telemessaging, teleconferencing, and various casual calling services, such as calling card services, collect calling, and pay-per-call services. In light of the vast changes to the telecommunications market, as a result of the enactment of the Telecommunications Act of 1996 ("1996 Act")<sup>3</sup> Pilgrim has been exploring opportunities to expand its service offerings and customer base. For example, Pilgrim is planning to become a competitive LEC in various markets throughout the United States, and has been adopting interconnection agreements, pursuant to Section 252(i) of the Act, that have been negotiated or arbitrated between incumbent LECs and competitive LECs.

In various States where BellSouth operates, including Kentucky, Pilgrim attempted to exercise its rights under Section 251(c)(1) of the Act to negotiate in good faith with BellSouth for various network elements that would enhance Pilgrim's ability to compete. Unfortunately, BellSouth had little interest in negotiating with Pilgrim. BellSouth instead provided Pilgrim with a standard interconnection agreement, but was unwilling to answer Pilgrim's numerous questions regarding the acronyms and terms of art contained in the agreement. Not unexpectedly, BellSouth did not provide Pilgrim with information sufficient for Pilgrim to refine its requests and then claimed it was not required to meet Pilgrim's requests.

In particular, BellSouth refused to discuss Pilgrim's request for billing and collection, arguing that billing and collection was a service provided outside of Sections 251 and 252 of the

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<sup>3</sup> Pub. L. No. 104-104, 110 Stat. 56 (1996).

Act. BellSouth argued that Pilgrim was merely trying to obtain access to the billing and collection contract that BellSouth had previously canceled. Pilgrim and BellSouth formerly had a billing and collection agreement whereby BellSouth's local end users who accessed Pilgrim's network were billed for the use of Pilgrim's services on their local telephone bill issued by BellSouth. During the course of this arbitration proceeding, BellSouth has made assertions that Pilgrim owed it approximately \$1 million. Although BellSouth determined in late 1999 that *it actually owed Pilgrim* approximately \$850,000 (instead of Pilgrim owing any amounts to BellSouth), BellSouth's attorneys continued to raise this issue in every pleading to the Commission through January 28, 2000.

Facing the deadline for compulsory arbitration under Section 252(b) of the Act, Pilgrim filed a Petition for Arbitration in several States, including Kentucky, on September 15, 1999. Pilgrim framed its Petition as a request that BellSouth provide on an unbundled basis real time access to 900 blocking information, real time access to BNA, and billing and collection. BellSouth filed its Answer and Motion to Dismiss on October 11, 1999. On January 11, 2000, the Commission issued an Order granting Pilgrim's requests for real time access to BNA and 900 blocking information. The Commission requested additional information regarding Pilgrim's request for billing and collection. BellSouth filed a Motion for Reconsideration on January 24, 2000, which was granted by the Commission in order for the Commission and the parties to better understand the functions requested by Pilgrim and the provision of service by BellSouth.

There have been no further negotiations or contacts between Pilgrim and BellSouth, except that, in response to a motion filed by Pilgrim, the Commission ordered the parties to appear at an informal conference in April 6, 2000. At this conference, representatives from BellSouth supplied much of the information Pilgrim had previously been requesting, but the parties remain unable to reach agreement on a number of issues raised in the proceeding.



### III. STATEMENT OF THE CASE

The issues in this arbitration are straightforward, and their resolution is aided by the clear text and requirements of the Communications Act, by the guidance and instruction provided by the FCC's rules and orders, and by the rules and precedents of the Commission. It may be helpful, for purposes of keeping these issues in focus, to review in this Statement the decisions and conclusions reached by the Commission in its *January 11 Order*,<sup>4</sup> to recite briefly the relief that Pilgrim is seeking in this proceeding, to explain why Pilgrim needs this relief in order to serve as a competitive carrier in Kentucky, and to summarize the legal and policy reasons that support a finding that Pilgrim should be granted the relief it is requesting.

#### A. Actions Taken by the Commission in the January 11 Order

In the *January 11 Order* the Commission reviewed Pilgrim's request for the timely provision of BNA and 900 blocking data by BellSouth, and resolved the issue by concluding that "[t]hese must be provided by BellSouth." *January 11 Order*, at 3. The Commission reviewed the pertinent provisions of the Communications Act and concluded that "[b]ased on this definition [of network element], it appears that access to the database that contains billed name and address information and access to the blocking data are network elements, or at least features or functions of a related network element, that should be provided pursuant to Section 251(c)(3)." *Id.*

The Commission also noted that Pilgrim's request for billing and collection service from BellSouth was susceptible to different interpretations, and therefore instructed Pilgrim to clarify

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<sup>4</sup> Petition by Pilgrim Telephone, Inc. for Arbitration of Certain Terms and Conditions with BellSouth Telecommunications, Inc. Pursuant to Section 252(b) of the Telecommunications Act of 1996, Case No. 1999-385, Order, adopted Jan. 11, 2000 (*January 11 Order*), *recon. pending*.

the nature of its request. *Id.*, at 2-3. Pilgrim subsequently filed the required clarification,<sup>5</sup> and the issue is now ripe for Commission action.

The Commission found its way surely and succinctly to the correct bottom line in the *January 11 Order* with respect to the issues of BNA and 900 blocking information. We present in our Legal Brief the arguments and considerations that we believe support an action by the Commission to affirm its decision in the *January 11 Order*. With respect to billing and collection, Pilgrim recognizes that the Commission has yet to rule on the merits, but we also believe that there are compelling legal and policy reasons for the Commission to decide that billing and collection qualifies as a network element under the Act and must be made available to Pilgrim by BellSouth on an unbundled basis.

**B. The Nature of the Unbundled Elements Requested by Pilgrim, and the Basis for Pilgrim's Need for These Elements**

The relief sought by Pilgrim in this arbitration is both simple and modest. Pilgrim requests that BellSouth provide timely access on an unbundled basis to the billing names and addresses of BellSouth customers. Pilgrim also requests that BellSouth furnish unbundled and timely access to 900 call blocking data relating to BellSouth customers. Finally, Pilgrim requests that the Commission conclude that billing and collection service should be made available as an unbundled network element, and that BellSouth must be required to provide billing and collection to Pilgrim on this basis.

Pilgrim needs access to BNA information in order to provide its services competitively in an efficient and cost effective manner. A portion of the services furnished by Pilgrim involves cas-

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<sup>5</sup> Pilgrim Telephone's Response Pursuant to the Commission's Order of January 11, 2000, Case No. 99-385, filed Jan. 21, 2000 (Pilgrim January 21 Response).

ual calling services, such as calling card services, 900 pay-per-call services, information services, and collect calling.<sup>6</sup> Timely access to BNA information aids Pilgrim in guarding against the fraudulent placement of calls and also assists Pilgrim in maximizing the likelihood that Pilgrim will be successful in collecting payments for transmitting these casual calls over its network. The BNA information assists Pilgrim in determining whether the casual call is being placed from a valid and operating number assigned to a subscriber who is in good standing with BellSouth.

Pilgrim needs access to 900 blocking information because, in the case of pay-per-call and other information services provided by Pilgrim, it must be in a position to honor blocking instructions that have been made by BellSouth subscribers. Without timely access to 900 blocking data maintained by BellSouth, there is no feasible way in which Pilgrim can successfully and consistently ensure that it will not transmit calls to 900 pay-per-call numbers or other information services if the BellSouth subscriber involved has requested that such calls be blocked.<sup>7</sup>

Finally, it is critically important for Pilgrim to receive unbundled access to BellSouth's billing and collection service so that such service can be used in connection with Pilgrim's handling of casual calls for BellSouth subscribers. In contrast to billing and collection functions re-

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<sup>6</sup> It is important to note that, to the extent that Pilgrim were to engage in the provision of services in Kentucky as a competitive LEC providing local exchange services to its own base of customers, Pilgrim's need for the network elements at issue in this proceeding would be minimized. For its own local exchange subscribers, Pilgrim would be in a better position to maintain its own databases for BNA and 900 blocking information, and Pilgrim also would be better able to directly bill and collect for these local services. Pilgrim, however, *does* need the requested network elements for purposes of providing local and interexchange casual calling services. As we will demonstrate in detail in the Legal Brief, competitive carriers are entitled to receive unbundled access to network elements to provide all types of telecommunications services, not just local exchange services.

<sup>7</sup> We note in this regard that BellSouth and other carriers regularly permit access to international and other information services when the customer has requested 900 number blocks. Pilgrim,

lating to Pilgrim's own local exchange subscribers, there is no practical means by which Pilgrim can effectively bill and collect for calls made or received by BellSouth subscribers on Pilgrim's network.<sup>8</sup> BellSouth, of course, through its longstanding operations as the exclusive provider of local exchange services, has constructed and maintained an extensive billing and collection apparatus. Pilgrim's access to this billing and collection resource, as an unbundled network element, is the only way in which Pilgrim can bill and collect for casual calls.

**C. Legal and Policy Reasons Supporting the Requirement That BNA, 900 Blocking Information, and Billing and Collection Must Be Provided on an Unbundled Basis**

Pilgrim believes that there are strong legal and policy reasons that should lead the Commission to conclude that BellSouth is obligated to provide Pilgrim with unbundled access to billing and collection, 900 blocking information, and BNA. These reasons are summarized in the following sections.

As a threshold matter, however, Pilgrim must contest BellSouth's claims that Pilgrim is only entitled to UNEs to the extent it is a competitive LEC offering local services. BellSouth is incorrect in these assertions. The language of Section 251(c)(3) of the Act makes clear that BellSouth must make UNEs available to any telecommunications carrier that is offering a telecommunications service. The legislative history of the Act, as well as FCC implementing regulations, also support Pilgrim's position that it is entitled to UNEs as a telecommunications carrier that is offering telecommunications services. In addition, the FCC has found that a telecommunications

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however, proposes to perform an expanded blocking capability which is not provided by these other carriers.

<sup>8</sup> This need for BellSouth's billing and collection service applies in the case of 900 calls and other information service calls made by BellSouth subscribers on Pilgrim's network, and to collect calls received by BellSouth subscribers from customers on Pilgrim's network.

carrier such as Pilgrim is also entitled to access to UNEs for the provision of information services so long as the carrier provides both telecommunications and information services.

### **1. Billing and Collection Services**

It is first important to emphasize that the Communications Act specifies, and the FCC has acknowledged, that, even though the FCC has not identified billing and collection as a UNE, State commissions have authority to establish additional unbundling requirements for network elements that have not been specifically identified by the FCC. The Commission should exercise its statutory authority in this case, first, by finding that billing and collection fits within the definition of "network element" established in the Act, and then by concluding that billing and collection must be made available on an unbundled basis.

Interpretation of the Communications Act supports the conclusion that billing and collection should be included in the definition of network element. The definition is stated as a facility or equipment used in the provision of a telecommunications service, including features, functions, and capabilities that are provided by means of the facility or equipment. Pilgrim believes that it is reasonable, on the face of this broad statutory text, to classify billing and collection service as a network element, because billing and collection constitutes a feature, function, or capability that is provided by a facility or equipment that in turn is used to provide a telecommunications service.

The Commission should conclude that facilities or equipment used to provide telecommunications services must reasonably be considered to include features, functions, or capabilities used to bill and collect for the services. Telecommunications services are defined by the Act as offerings of telecommunications for a fee. It makes sense to conclude that, in order to offer telecommunications for a fee, a carrier must have the capacity to bill and collect for the offering. Thus, the Commission should find that this fee collection capability is part of the meaning of the

term "telecommunications service," making billing and collection a feature, function, or capability that is provided by a facility or equipment used to provide the service.

In order to require that billing and collection should be made available as a network element on an unbundled basis, it must be demonstrated that Pilgrim's ability to provide the telecommunications services it wishes to offer to consumers in Kentucky would be materially impaired if BellSouth is not required to bill and collect for Pilgrim. There is ample evidence upon which to conclude, pursuant to the criteria for materiality recently established by the FCC in response to a remand decision by the Supreme Court, that Pilgrim would be significantly and adversely affected in its efforts to provide casual calling services in Kentucky if it is not given access to BellSouth's billing and collection services.

Because of the fact that Pilgrim does not have any ongoing subscribership arrangement with BellSouth customers who place casual calls on Pilgrim's network, there is no effective and cost efficient means for Pilgrim to render bills and collect fees from these casual callers, either through Pilgrim's direct billing for its services or through any attempt to rely upon third party vendors, such as credit card companies, to bill and collect on Pilgrim's behalf. Pilgrim would face significant costs if it attempted to develop and operate its own billing and collection system for its casual calling services, and would also risk the failure of recovering these costs.

Unlike regular subscribers to local exchange services, customers using casual calling services may generate only a few calls each month, making it costly to maintain a billing and collection system to generate monthly bills to these casual calling customers. In addition, industry statistics have demonstrated that the rate of uncollectibles is significantly higher for casual calling customers than it is for pre-subscribed customers. The use of third parties, such as credit card companies, to bill and collect casual calls is not a practical or cost effective option. Many casual calling cus-

tomers may not have credit cards or may not want to use them in connection with placing such calls. These are among the factors contributing to the conclusion that third party billing and collection is not a practical or cost effective alternative to billing and collection provided by BellSouth.

## **2. 900 Blocking Information**

Pilgrim and BellSouth agree that 900 blocking information is available through BellSouth's Operations Support Systems ("OSS"). The important issues for Pilgrim are whether BellSouth is willing to provide Pilgrim with access to OSS, so that Pilgrim will be in a position to utilize 900 blocking information relating to BellSouth subscribers, and whether BellSouth makes access to 900 blocking information available in a sufficiently timely manner to enable Pilgrim to comply with BellSouth subscribers' instructions that 900 calls should be blocked.

BellSouth argues that Pilgrim may be entitled to access to OSS, but that Pilgrim is not entitled to access to any specific types of information that may be available through OSS. This argument, under which BellSouth apparently seeks to justify barring access to 900 blocking information, is inconsistent with FCC rulings that have made clear the fact that the FCC's unbundling of OSS entitles requesting carriers to receive access to OSS *and* access to information available through the OSS gateways.

An incumbent LEC has failed to comply with the unbundling obligations of the Act, in Pilgrim's view, if it does not provide access in a manner that in fact enables the requesting carrier to provide the services it seeks to offer. Because Pilgrim would be materially impaired in its offering of certain types of services if it is not given timely access to 900 blocking information, the Commission should require, at a minimum, that BellSouth must provide non-discriminatory access to

900 blocking data, so that Pilgrim is able to access and utilize the information in the same way that BellSouth is able to do so in connection with its provision of transmission service.

### 3. Billing Name and Address

BellSouth has argued that BNA is not available through OSS, that FCC rulings have barred incumbent LECs from providing BNA to competitive LECs, and that Pilgrim should be satisfied with the receipt of BNA that is made available by BellSouth to interstate, interexchange carriers pursuant to tariff. None of these arguments is persuasive.

Materials recently submitted to the Commission by BellSouth confirm that information identifying the names and addresses of BellSouth subscribers is in fact available through OSS. In Pilgrim's view, this information must be made available to Pilgrim in conjunction with Pilgrim's access to OSS, and, contrary to arguments advanced by BellSouth, Pilgrim is not required to make any impairment showing under Section 251(d)(2)(B) of the Act because the FCC has already acted to unbundle all OSS functions.

In contending that it is barred from providing BNA to competitive LECs, BellSouth seeks to rely on a narrow reading of an FCC rule which states that incumbent LECs cannot provide BNA to parties other than carriers offering interstate services. The Commission should conclude that such a narrow reading cannot be consistent with the FCC's intent, in part because the rule was adopted before the 1996 Act and thus could not have sufficiently contemplated circumstances in which competitive LECs would require access to BNA, and because the FCC did make clear in its order adopting the rule that the availability of BNA *to all carriers* would ensure that competitive forces would keep the rates for LECs' billing and collection services reasonable.

Finally, BellSouth's claim that its tariffed offering of BNA should be sufficient to meet Pilgrim's needs is unavailing. Limiting Pilgrim to BellSouth's tariff as the only means of obtaining



BNA would deprive Pilgrim of its statutory entitlement to negotiate under Section 251 of the Act for the rate, terms, and conditions under which it will receive BNA as an unbundled element. Further, BellSouth does not make BNA available under its tariff in a sufficiently timely or accurate manner to avoid impairment of Pilgrim's provision of telecommunications services. In addition, the FCC has rejected suggestions made by incumbent LECs that competitive carriers are not impaired in providing service by the absence of an unbundled network element if they can obtain the element from a tariff.

#### **D. Public Interest Considerations**

In describing the network elements Pilgrim is seeking in this arbitration proceeding, in discussing the reasons that Pilgrim needs access to these elements, and in demonstrating that Pilgrim is legally entitled to the elements it is requesting, we have not lost sight of the fact that the relief Pilgrim seeks in this proceeding should also serve to further the public interest in Kentucky. We believe that requiring BellSouth to furnish the requested network elements to Pilgrim on an unbundled basis will serve these public interest objectives in several respects.

Pilgrim has a stake in protecting consumers against being billed for services they did not intend to purchase, and Pilgrim's request for timely access to 900 blocking information is based upon Pilgrim's commitment to provide this protection through the most effective means possible. Pilgrim is in the business of providing a range of telecommunications services to customers who want to use these services; Pilgrim has no interest in transmitting pay-per-call messages or information services from the telephone line of a BellSouth subscriber who has instructed that such calls should be blocked. All that Pilgrim is seeking in this proceeding is the tools necessary for these goals to be accomplished. The Commission, by requiring BellSouth to supply Pilgrim with

timely and sufficient access to 900 blocking information, will help ensure that these consumer protection objectives are realized.

Consumers will also benefit in other ways if the Commission grants Pilgrim's requests for unbundled elements. For example, timely and effective access to BNA will enable Pilgrim, among other things, to reduce the costs it incurs through the fraudulent use of its network and through its inability to bill and collect for calls made by non-subscribed casual calling customers. These reduced costs bring a direct benefit to Pilgrim's customers in the form of lower rates. This consideration has even greater force in the case of billing and collection, because Pilgrim's ability to obtain billing and collection services from BellSouth would eliminate the costs associated with Pilgrim's attempting to bill and collect directly for its casual calling services and would also be instrumental in reducing Pilgrim's uncollectibles rates for these services. These cost reductions, in turn, would bring benefits to consumers.

To take another example, many consumers prefer to receive a single telephone bill that includes all charges incurred for services used during the past month, including services provided by different telecommunications service providers. The lack of a single bill for telephone services is an inconvenience to customers. Access to BellSouth's billing and collection would solve this problem, affording consumers using the services of Pilgrim and other casual calling service providers the convenience of receiving a single, consolidated bill.

Finally, the public interest will be served by a grant of Pilgrim's requests in this arbitration because competition in Kentucky will be enhanced by such a decision. Although Federal policies and the goals of the Commission share the objective of promoting competition for all telecommunications services, this objective is severely threatened by the fact that Pilgrim and other providers

of a variety of casual calling and collect calling services cannot compete in the marketplace if they do not have access to incumbent LEC billing and collection resources.

Alternative means of billing and collecting for these services do not work. The only practical and effective solution is access to BellSouth's billing and collection, an apparatus that BellSouth controls not because of its successes in a competitive marketplace but because it was afforded the opportunity to fund and maintain its billing and collection systems as part of its operations as a monopoly provider of telephone services. In these circumstances, the public interest requires that BellSouth must be ordered to share this resource on a non-discriminatory basis.

#### **IV. LEGAL BRIEF**

Pilgrim examines in the following sections the principal legal issues involved in this proceeding. We will demonstrate that a reasonable interpretation of the Act supports the conclusion that billing and collection should be treated as a network element, and we will present our case that billing and collection must be unbundled pursuant to the materiality standard adopted by the FCC under Section 251(d)(2)(B) of the Act. We will discuss the legal basis for our position that BNA and 900 blocking information must be made available to Pilgrim on an unbundled basis and in a timely and sufficient manner.

We then turn to a discussion supporting our argument that the statute and FCC decisions have made it clear that a carrier is not required to be operating as a competitive LEC in order to be entitled to receive network elements on an unbundled basis. Finally, we present the reasons why a Commission decision requiring BellSouth to comply with Pilgrim's requests, by providing BNA, 900 blocking, and billing and collection services on an unbundled basis, will promote competition and benefit consumers in Kentucky.

**A. Billing and Collection Must Be Treated as a Network Element and BellSouth  
Must Be Required To Make It Available to Pilgrim on an Unbundled Basis**

Pilgrim will discuss in this section the manner in which it would use billing and collection or settlement services<sup>9</sup> provided by BellSouth in connection with Pilgrim's provision of various types of services in Kentucky. Pilgrim next will address the objections raised by BellSouth in its Reconsideration Motion to any requirement that it must furnish billing and collection services to Pilgrim. Finally, Pilgrim will demonstrate why billing and collection must be defined as a network element and made available to Pilgrim on an unbundled basis. In this latter section, Pilgrim also will address arguments raised by BellSouth regarding billing and collection in its response to Pilgrim's response to the *January 11 Order*.

**1. Pilgrim Will Use Billing and Collection Services Furnished by BellSouth  
To Provide a Variety of Services in Kentucky**

As a telecommunications service provider and information service provider, Pilgrim is capable of offering a wide range of services in Kentucky. These capabilities would include the provision of local dial tone and exchange services (via resale) to pre-subscribed customers, as well as local and intraLATA casual calling services (such as collect calling, telemessaging, voicemail,

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<sup>9</sup> Pilgrim uses the term "billing and collection services" to mean all the functions, practices, and operations employed to capture and retain calling information, to derive billing amounts based upon the calling information and other factors (such as applicable taxes), to issue bills to customers, to record payment information, and to remit amounts paid by customers to the service-providing carrier. Pilgrim has recently learned that BellSouth sometimes uses the term "settlement" to refer to a form of remitting the cost of providing service to the carrier providing the service, which accomplishes the same or similar task as the billing and collection service which Pilgrim requests. These are provisions under which carriers pay each other for the retail value of billing records exchanged, for a fee, without undertaking the obligation to issue a bill. Not surprisingly, the carrier paying for a call has every incentive to issue a bill, and usually does. For Pilgrim's purposes, the services provide equivalent value, provided that BellSouth does not impose competition-limiting policies, and that any bills issued by BellSouth meet all regulatory requirements.

teleconferencing, and 900 number services) to non-subscribed customers. Pilgrim will issue calling cards to customers who may continue to be BellSouth local exchange customers to that these customers may have access to competitive service offerings. Pilgrim also would be able to provide local information services to both pre-subscribed and non-subscribed customers, and interexchange long distance services (both intrastate and interstate). Finally, Pilgrim would have the capability to offer interexchange casual calling services (such as dial around long distance, dial around intraLATA service, collect calling, and 900 number services) to non-subscribed customers, and interexchange information services (both intraLATA and interstate).

In the case of services for which Pilgrim has pre-subscribed customers, such as local exchange services, Pilgrim requires certain network elements from BellSouth on an unbundled basis (e.g., BNA, or billing name and billing address) through BellSouth's OSS provisioning. In the case of these services to pre-subscribed local exchange customers, Pilgrim does not currently envision any need to obtain billing and collection services from BellSouth.<sup>10</sup> So long as Pilgrim is provided with accurate usage and billing information from BellSouth in the case of resold local exchange services, Pilgrim will be in a position to issue periodic bills in a cost effective manner and should be able to minimize uncollectibles problems because it will have a pre-existing and ongoing relationship with its pre-subscribed customers.

Thus, the focus of Pilgrim's request is *not* for purposes of requiring BellSouth to bill and collect for Pilgrim's pre-subscribed local exchange customers. Carriers commonly are capable of

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<sup>10</sup> Pilgrim may develop business plans for offering interexchange service, for example, that could involve use of BellSouth's billing and collection services, in the same manner that other interexchange carriers currently rely upon incumbent LEC billing and collection.

billing and collecting for local exchange customers more efficiently and in a more cost effective manner than BellSouth.

In cases in which the billed customer is not Pilgrim's pre-subscribed local exchange customer, Pilgrim does require access to BellSouth's billing and collection service in order to bill and collect for calls and services in a manner that is economically reasonable. In the case of collect calls placed by Pilgrim customers to BellSouth customers, and in the case of casual calls to 900 numbers or to information services, for example, Pilgrim may not have any pre-existing accounts for the customers who will be responsible for paying for the calls. Because Pilgrim is not already issuing monthly bills to these customers, the cost of generating a separate bill can be prohibitively expensive, especially in light of the fact that the amounts billed for calls such as collect calls generally are small. In addition, the absence of a pre-existing and ongoing subscriber relationship with customers placing casual calls or receiving collect calls increases the likelihood that Pilgrim would encounter difficulties in collecting payments from these customers. Many such customers might have little reason to recognize a single bill or occasional bills from Pilgrim, and might choose to ignore them. Even BellSouth has recognized that consumers strongly prefer one bill for all telecommunications services that are delivered via the telephone. *Cf.* BellSouth, Second Quarter 1999 Report to Shareholders, referenced at [http://cluser1.bellsouthonline.com/investor/2nsdqtr\\_1999-head\\_wireless](http://cluser1.bellsouthonline.com/investor/2nsdqtr_1999-head_wireless) accessed on Apr. 10, 2000).

If Pilgrim cannot collect charges for calls placed on its network, it would be prevented from operating as a local exchange and exchange access carrier serving information service and voicemail companies. BellSouth's refusal to provide billing and collection as either an unbundled network element or through the Non-Inter-Company Settlement System (NICS) and the Credit Card and Third Number Settlement System (CATS), which may yield the same results for Pilgrim,

would eliminate entire classes of customers and services from Pilgrim's business model, leaving BellSouth as the sole provider of collect and casual calling services, and the sole local and intra-LATA exchange carrier for information and enhanced service companies.

**2. BellSouth Has Failed To Raise Any Arguments in Its Reconsideration Motion That Support a Conclusion That BellSouth Should Not Be Required To Provide Billing and Collection to Pilgrim**

BellSouth raises several arguments in its Reconsideration Motion to support its position that it should not be required to provide any billing and collection services to Pilgrim in Kentucky. BellSouth maintains that "Pilgrim wants BellSouth to bill and collect from Pilgrim's customers on behalf of Pilgrim because it perceives that BellSouth would do a better job than does Pilgrim." BellSouth Motion for Reconsideration, at 7. As we have explained in the previous section, Pilgrim would have the capability to provide services to two classes of customers in Kentucky, those who are pre-subscribed to Pilgrim and those who are not. To the extent that BellSouth intends to suggest that Pilgrim believes BellSouth could do a better job than Pilgrim in connection with billing and collection for any local service customers pre-subscribed to Pilgrim, BellSouth is wrong. Pilgrim would be in a better position than BellSouth to issue monthly bills to local service customers who are pre-subscribed to Pilgrim and who thus have no pre-existing or ongoing subscribership arrangements with BellSouth.

In the case of BellSouth customers who are not pre-subscribed to Pilgrim but who use Pilgrim's network for casual calls, the receipt of collect calls, or other services, however, Pilgrim concedes that BellSouth has a point: Pilgrim does believe that BellSouth is better positioned than Pilgrim to bill and collect for these customers. BellSouth has constructed an extensive billing and collection infrastructure which has been designed, deployed, and maintained through the funding received from monopoly ratepayers. BellSouth is uniquely positioned to utilize this infrastructure

by adding billing detail to the monthly bills issued to its customers to bill its customers for calls for which these customers have chosen to utilize Pilgrim's network.

If Pilgrim were an incumbent LEC, dominant in its local markets, with a base of customers dwarfing the subscribership of competitive LECs, then Pilgrim would find itself less concerned about the billing and collection issues that are at the center of this arbitration proceeding. That, of course, is not that case, and it highlights what this proceeding is about: BellSouth possesses a valuable asset — the systems and facilities it uses to render monthly bills to its customers. Competitive carriers such as Pilgrim need access to this asset, and are willing to pay reasonable rates for use of the asset, because BellSouth's billing and collection infrastructure is the only means available by which competitive carriers can bill efficiently and cost effectively for certain classes of their services.

BellSouth next argues that Pilgrim's request for BellSouth to provide billing and collection should be dismissed because "[m]any other CLECs and interexchange carriers do their own billing today." BellSouth Motion for Reconsideration, at 8. This claim is of a piece with BellSouth's first argument, since it disingenuously ignores the distinction between billing and collection for pre-subscribed customers and non-subscribed or calling card customers. Many interexchange carriers (IXCs), for example, including major carriers such as AT&T and MCI Worldcom, rely upon LECs to bill and collect for dial around, collect, and calling card usage of their networks.<sup>11</sup> Pilgrim is seeking the same access to BellSouth's billing and collection systems and facilities for casual calls and collect calls on Pilgrim's network made or received by non-subscribed customers.

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<sup>11</sup> In fact, of course, some major IXCs (such as AT&T) often rely on incumbent LECs to bill the IXCs' pre-subscribed customers as well as their non-subscribed customers.



BellSouth also contends that “Billing and Collection Services performed on behalf of a third party, are not telecommunications service and thus are not a UNE. Billing and Collection Services, because they are *not* covered by the Act, should not be the subject of an interconnection agreement.” BellSouth Motion for Reconsideration, at 8 (emphasis in original). Both of these representations are without merit.

Whether billing and collection service is a telecommunications service is not relevant to the issues the Commission must decide in this proceeding. In order to rule on Pilgrim’s request that billing and collection be made available as an unbundled network element, the Commission must decide, in the first instance, whether billing and collection is a network element. Pilgrim will address this issue at greater length in a succeeding section, but it is important to note here, in response to BellSouth’s observation that billing and collection is not a telecommunications service, that the statutory definition of a network element does not require that it must be a telecommunications service.

Instead, the definition requires only that the element involved must be a facility or equipment used in the provision of a telecommunications service, or must be a feature, function, or capability of any such facility or equipment. Thus, BellSouth’s assertion would lead us down the path of an irrelevant inquiry.

BellSouth’s related assertion — that billing and collection services are not covered by the Act and therefore should not be the subject of an interconnection agreement — is simply wrong. BellSouth presumably means that billing and collection is not covered by the Act because it is not a telecommunications service. As Pilgrim will demonstrate, however, billing and collection fits within the definition of a network element and therefore *is* covered by the terms of the Act.

### **3. BellSouth’s Conduct, in Which It Provides and Receives Reciprocal**

## **Billing and Collection in Certain Interconnection Agreements, Suggests That BellSouth Views Billing and Collection as a Network Element**

In addition to the statutory construction arguments Pilgrim has presented in the previous section, it is also instructive to note that BellSouth's claim that billing and collection is not a network element cannot be squared with BellSouth's own interconnection agreements with other carriers. If BellSouth is to be held to its argument that only network elements can be the subject of an interconnection agreement, then it follows that matters contained in an interconnection agreement are recognized by the parties as network elements.

BellSouth provides billing and collection services to some carriers under interconnection agreements. Moreover, BellSouth also *receives and benefits from* billing and collection services provided to BellSouth by other carriers under interconnection agreements. In at least one interconnection agreement, BellSouth Mobility specifically agrees to bill and collect information services, 900, 976, and other traffic for GTE, and GTE agrees to do the same for BellSouth Mobility.<sup>12</sup> BellSouth, however, refuses to provide the same service to other requesting carriers, relying on the claim that such services are not network elements. In any event, basic equity dictates that any benefit *received* by BellSouth must also be *granted* by BellSouth.

#### **4. In Approving Other Interconnection Agreements Containing Billing and Collection, and Provision of Real Time Billing Name and Billing Address and Blocking Information, the Commission Has De Facto Found That These Items Are Network Elements and Proper Subjects of Interconnection Agreements**

In numerous agreements on file with the Commission, Pilgrim has found that both GTE and Cincinnati Bell have approved interconnection agreements that contain all of the elements that Pilgrim seeks from BellSouth in this proceeding. In addition, as noted above, BellSouth's own

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<sup>12</sup> See Interconnection Agreement between GTE South and BellSouth Mobility, Case No. 1997-102, Order (Ky. P.S.C. Apr. 9, 1997).

subsidiary has received an explicit subset of the billing and collection functionality that Pilgrim seeks — billing and collection of information services traffic.

As the Commission and carriers in Kentucky have already expressly adopted billing and collection, and provision of billing name, billing address, and blocking information as network elements, the Commission should confirm current practice and order BellSouth to immediately execute an agreement with Pilgrim providing these same elements.

**5. The Commission Should Exercise Its Authority To Reconfirm That Billing and Collection Is a Network Element and That It Must Be Made Available on an Unbundled Basis**

There are two pertinent questions before the Commission: Does billing and collection fit within the definition of a network element? And, if so, is there a basis for requiring that billing and collection must be made available to Pilgrim by BellSouth on an unbundled basis, in accordance with the requirements of Section 251(c)(3) of the Act? Pilgrim will demonstrate in the following sections that both these questions must be answered in the affirmative.

**a. The Plain Meaning of the Statute Leads to the Conclusion  
That Billing and Collection Must Be Treated as a Network Element**

BellSouth has failed to present to the Commission any persuasive arguments to buttress its assertion that billing and collection is not a network element. In this section, Pilgrim will first examine the deficiencies in BellSouth's arguments, and then will turn to the statutory interpretations that support a determination that billing and collection must be treated as a network element.

**(1) BellSouth Fails To Present Any Rational Basis for Its Contention  
That Billing and Collection Cannot be Defined as a Network  
Element**

In its response to Pilgrim's response to the *January 11 Order*, BellSouth prudently abandons the cursory and unavailing arguments with respect to billing and collection which it advanced in its Reconsideration Motion, and instead attempts to undertake a definitional analysis to shore up its assertion that it should not be required to provide billing and collection to Pilgrim. As Pilgrim will demonstrate in this section, however, the arguments presented by BellSouth for excluding billing and collection from the definition of a network element are without merit and should be rejected by the Commission.

The statute defines "network element" to mean:

a facility or equipment used in the provision of a telecommunications service. Such term also includes features, functions, and capabilities that are provided by means of such facility or equipment, including subscriber numbers, databases, signaling systems, and information sufficient for billing and collection or used in the transmission, routing, or other provision of a telecommunications service.<sup>13</sup>

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<sup>13</sup> Section 3(29) of the Communications Act, 47 U.S.C. § 153(29).

It is Pilgrim's view, as will be explained in this section, that an examination of whether billing and collection fits within the definition of network element must focus on the meaning and scope intended to be given to the phrase "features, functions, and capabilities," and Pilgrim will demonstrate that a reasonable interpretation of the definition yields a conclusion that the phrase accommodates the inclusion of billing and collection. Before turning to this analysis, we begin by addressing the arguments raised by BellSouth.

One of these arguments should be dismissed straight away. Specifically, BellSouth contends that "Pilgrim will seize on the clause 'information sufficient for billing and collection' in the definition of 'network element' to argue that the Billing and Collection Service is, in fact, a network element." BellSouth January 28 Response, at 3. BellSouth's presumptuous suggestion is without any foundation. BellSouth persists in this unwarranted effort to divine Pilgrim's arguments by contending that the interpretation it ascribes to Pilgrim must be rejected because it would render the phrase "information sufficient" superfluous, and by rounding out its analysis with this flourish: "Black letter statutory construction rules provide that a statute cannot be interpreted to render words in the statute meaningless. Pilgrim's interpretation violates such rules and thus is incorrect." *Id.*, at 4.

Pilgrim would now like to take back the microphone and speak for itself. Pilgrim's argument does *not* rest on the assertion that the reference to "information sufficient for billing and collection" in the definition of network element is the basis for a requirement that billing and collection service must be treated as a network element. In Pilgrim's view, the statutory phrase "information sufficient for billing and collection" provides the basis upon which incumbent LECs are required to provide information to competitive LECs and to other telecommunications service providers sufficient to enable these carriers to bill and collect for services they provide to their

pre-subscribed customers. Defining network element to include this information is the foundation for requiring that incumbent LECs must make available, through OSS and their call-related and other databases, information, such as BNA and 900 blocking, that is critical to the performance of billing and collection functions.

As we will explain in this section, it is Pilgrim's contention, however, that the definition of network element also must be construed as requiring that, *in addition to* the provision of information sufficient for billing and collection for telecommunications carriers' pre-subscribed end users, BellSouth must make billing and collection service available as a UNE so that Pilgrim can be compensated for casual calls and Pilgrim calling card calls placed on its network by BellSouth's pre-subscribed local exchange customers and for collect calls placed by Pilgrim's customers to BellSouth's subscribers. Thus, BellSouth's contentions about "black letter statutory construction" are meaningless, because Pilgrim's argument does *not* rest on the reference to "information sufficient for billing and collection" in the definition of network element.

BellSouth next contends that "the Billing and Collection Service is not part of BellSouth's OSS and thus is not on the FCC's national list of UNEs" and that "there are not grounds upon which the Commission could conclude that Billing and Collection Services are part of BellSouth's OSS." *Id.*, at 4, 5.

While Pilgrim agrees with BellSouth's contention that the listing of "billing" as one of the OSS functions that must be made available on an unbundled basis obligates BellSouth to provide usage data to enable other telecommunications carriers to carry out their own billing and collection for their pre-subscribed customers, Pilgrim disagrees with the assertion that this is the *only* requirement that flows from the statutory inclusion of billing in the list of OSS functions.

As Pilgrim noted in its response to BellSouth's motion to dismiss Pilgrim's petition for arbitration in this proceeding, the FCC has defined OSS as including "billing functions supported by an incumbent LEC's databases and information." 47 C.F.R. § 51.319(g), *quoted in* Pilgrim Response to Motion to Dismiss, at 5. As BellSouth has observed, the FCC also has defined billing as involving "the provision of appropriate usage data by one telecommunications carrier to another to facilitate customer billing with attendant acknowledgments and status reports." 47 C.F.R. § 51.5.

As Pilgrim has already demonstrated, however, the FCC intends its definition to encompass the minimum necessary for compliance with the Act, and the FCC also expects incumbent LECs to provide non-discriminatory access to a full range of billing functions. *See* Pilgrim Response to Motion to Dismiss, at 8. Moreover, the FCC has concluded that "OSS are composed of varied systems, databases and personnel that an incumbent LEC uses to commercially provision telecommunications services to its customers, resellers and the purchasers of unbundled network elements." Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, CC Docket No. 96-98, Third Report and Order and Fourth Further Notice of Proposed Rulemaking, FCC 99-238, 1999 WL 1008985, released Nov. 5, 1999 (*UNE Remand Order*), at para. 425 n.835.<sup>14</sup>

Thus, as Pilgrim has already argued, the billing and collection functions that Pilgrim is requesting from BellSouth "are unquestionably billing functions supported by BellSouth's databases and information." Pilgrim Response to Motion to Dismiss, at 5. Although the FCC in the *UNE*

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<sup>14</sup> The FCC adopted the *UNE Remand Order* in response to instructions from the Supreme Court that the FCC revisit and develop more specific standards with respect to its earlier decisions regarding the unbundling of network elements by incumbent LECs. *See* AT&T v. Iowa Utils. Bd., 525 U.S. 366 (1999) (*Iowa Utilities*).

*Remand Order* did not specifically address the issue of whether billing and collection services should be treated as functions that are available through OSS, the FCC's description of what comprises OSS, as well as its intended application of its definition of billing, are sufficiently broad to encompass billing and collection.

Moreover, State commissions have authority under the Act to "impose additional unbundling requirements, as long as the requirements [are] consistent with the 1996 Act and [FCC] regulations." *UNE Remand Order*, at para. 145 (citing Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, CC Docket No. 96-98, First Report and Order, 11 FCC Rcd 15499, 15625 (para. 244) (1996) (*Local Competition First Report and Order*)). Pilgrim believes that the Commission should exercise its authority in this case to determine that BellSouth's billing and collection services should be made available through its OSS functions.

Before turning to the last set of arguments advanced by BellSouth to support its objections regarding the availability of its billing and collection services, it may be helpful to summarize Pilgrim's position regarding BellSouth's OSS functions and the manner in which this position relates to other arguments Pilgrim is making in this proceeding. Specifically, Pilgrim contends that BNA and 900 blocking data should be made available to Pilgrim as part of BellSouth's OSS functions, and that, in addition to this billing and call processing data, BellSouth's billing and collection services should be provided to Pilgrim through OSS. Pilgrim January 21 Response, at 1.

In addition to this latter argument regarding billing and collection, Pilgrim is also presenting the Commission with an alternative analysis in this Brief under which BellSouth should be required to provide billing and collection. Specifically, Pilgrim contends that billing and collection should be construed as fitting within the definition of a network element, and should be made available on an unbundled basis to Pilgrim because Pilgrim has made a sufficient showing pursuant



to Section 251(d)(2)(B) of the Act that the failure by BellSouth to provide billing and collection on an unbundled basis would impair the ability of Pilgrim to provide the services that it seeks to offer. Pilgrim thus wishes to stress that, in our view, the Commission has open to it alternative paths to a conclusion that BellSouth must be required to make its billing and collection services available to Pilgrim.<sup>15</sup>

The final contention raised by BellSouth is that billing and collection service is not a feature, function, or capability provided by a facility or equipment used in the provision of a telecommunications service, and therefore is not a network element. "Rather, it is a service separate and apart from the provision or routing of a telephone call." BellSouth January 28 Response, at 3.

BellSouth first attempts to support this contention by maintaining that billing and collection service (as offered by BellSouth under tariff for intrastate billing and collection, and under contract for interstate billing and collection) is a service "designed to bill charges on behalf of other telecommunications carriers, based on information provided by the telecommunications carriers, to BellSouth's local end user customers to whom BellSouth issues a bill each month for local exchange service." *Id.* This argument, in Pilgrim's view, begs the question.

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<sup>15</sup> As Pilgrim noted in its response to BellSouth's motion to dismiss, the Oregon Public Utilities Commission has held that billing and collection must be made available by incumbent LECs on an unbundled basis. The Oregon Commission treated billing and collection as a building block service that must be made available for purchase separately or in combination with other network functions that customers provide themselves or buy from LECs or other telecommunications providers. See Investigation into the Cost of Providing Telecommunications Services, Order No. 96-188, UM 351, 171 P.U.R.4th 193, 1996 WL 467754 (Or. P.U.C. 1996) (*Oregon PUC Order*), *reconsidered on other grounds*, Order No. 96-283, 1996 WL 694711, *recon. denied*, Order No. 97-071, 1997 WL 164516 (Or. P.U.C. 1997), *aff'd*, MCI Telecom. Corp. v. GTE Northwest, Inc., 41 F.Supp. 2d 1157 (D.Or. 1999) (cited in Pilgrim Response to Motion to Dismiss, at 10-11).

BellSouth has structured its billing and collection service as an offering available under tariff or pursuant to contract, and, not surprisingly, would like to avoid any requirement that it be made to provide billing and collection as a UNE. BellSouth would like to avoid such a UNE requirement because it can exert more control over the manner in which it chooses to offer billing and collection if it does not have to face the negotiation and arbitration requirements that are applicable to UNEs under the statute.<sup>16</sup> By asserting that billing and collection service is not available as a UNE, BellSouth also attempts to move its billing and collection contracts beyond the jurisdiction and review of the Commission.

By informing the Commission that billing and collection is a separate service designed to bill charges on behalf of other telecommunications carriers, BellSouth is merely describing for us the status quo, which it has a vested interest in seeking to preserve. But this argument does nothing to further the analysis of whether billing and collection service must be treated as a network element under the statutory definition. Clearly, it is BellSouth's intent to control its offering of billing and collection service to the maximum extent possible, in large part because one means of protecting BellSouth's marketplace position is to restrict access to these billing and collection services. This could enable BellSouth to become the sole provider of collect, calling card, and information services in its service territories. But the Commission need not be sympathetic with regard to BellSouth's intent — the issue to be examined is whether statutory construction and *congressional* intent support a conclusion that billing and collection fits within the definition of net-

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<sup>16</sup> This control relates to (1) whether BellSouth chooses to offer billing and collection services at all; (2) to whom it offers the services; and (3) the rates, terms, and conditions under which it offers the services.

work element. BellSouth, in describing its preference for the status quo, does not even choose to undertake this examination.<sup>17</sup>

BellSouth offers one other argument to support its claim that billing and collection should not be treated as a network element. "The Billing and Collection Service is not 'provided' by any of the facilities or equipment used in the provision of a telephone call," BellSouth contends, "and thus is not a network element, much less an unbundled network element." BellSouth January 28 Response, at 3. We will discuss this issue in greater detail in the next section, but it is sufficient to note here that the United States Supreme Court has reached a contrary result, finding that a network element need not "be part of the physical facilities and equipment used to provide local phone service." *Iowa Utilities*, 525 U.S. at 367, *quoted in* Pilgrim Response to BellSouth Motion for Reconsideration, at 7.

Thus, in sum, BellSouth presents no evidence or reasoning sufficient to persuade the Commission that the Commission lacks authority to conclude, based on an interpretation of the statute, that billing and collection service fits within the definition of a network element. BellSouth in fact has chosen to steer clear of any useful analysis of the manner in which Congress has defined network elements, or how the meaning of the definition and congressional intent should be construed. Having addressed the deficiencies and irrelevancies of BellSouth's arguments, Pilgrim next turns to an examination of why the statutory definition must be construed to encompass billing and collection.

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<sup>17</sup> The U.S. Court of Appeals for the Eighth Circuit has found a "service" argument akin to the one advanced here by BellSouth to be specious, concluding that "[s]imply because these capabilities [the court was addressing vertical switching features] can be labeled as 'services' does not convince us that they were not intended to be unbundled as network elements." *Iowa Utils. Bd. v. FCC*, 120 F.3d 753, 809 (8th Cir. 1997).

**(2) Billing and Collection Is Included in the Statutory Definition  
of “Network Element”**

As Pilgrim has noted, the statute defines “network element” as a facility or equipment used in the provision of a telecommunications service, including features, functions, and capabilities that are provided by means of such facility or equipment. On the face of this statutory language it is reasonable to classify billing and collection service as a network element, since the service constitutes a feature, function, or capability that is provided by a facility or equipment that in turn is used in the provision of a telecommunications service.

Facilities or equipment used to provide a telecommunications service must reasonably be considered to include those features, functions, or capabilities that are used to bill and collect for the service. Telecommunications services are defined by the statute as offerings of telecommunications for a fee. Section 3(46) of the Communications Act, 47 U.S.C. § 153(46). In order to offer telecommunications for a fee, the telecommunications carrier must have the capacity to bill and collect for the offering. Thus, this fee collection capability is incorporated into the meaning of the term “telecommunications service,” making billing and collection a feature, function, or capability that is provided by a facility or equipment used to provide the service. *See* Pilgrim Response to Motion to Dismiss, at 4 (emphasis in original) (“Without poles, lines, other equipment and facilities, *and* the ability to bill and collect, telecommunications services could not be provided.”).

As Pilgrim mentioned in the previous section, such a reading of the definition of “network element” gains further strength from the Supreme Court’s interpretation of the statutory term.

The Supreme Court has found that:

Given the breadth of this definition [of “network element”], it is impossible to credit the incumbents’ argument that a “network element” must be part of the physical facilities and equipment used to provide local telephone service. Operator services and directory assistance, whether they involve live opera-

tors or automation, are “features, functions, and capabilities . . . provided by means of” the network equipment. OSS [operational support systems], the incumbent’s background software system, contains essential network information as well as programs to manage billing, repair ordering, and other functions.

*Iowa Utilities*, 525 U.S. at 387. The Supreme Court has thus endorsed a broad reading of the statutory term, and has specifically concluded that a network element does not need to be part of a physical facility or equipment.

Pilgrim also believes that the FCC’s interpretation of the definition of network element supports Pilgrim’s view that the term must be read to include billing and collection. The FCC has indicated:

We disagree with those incumbent LECs which argue that features that are sold directly to end users as retail services, such as vertical features, cannot be considered elements within incumbent LEC networks. If we were to conclude that any functionality sold directly to end users as a service, such as call forwarding or caller ID, cannot be defined as a network element, then incumbent LECs could provide local service to end users by selling them unbundled loops and switch elements, and thereby entirely evade the unbundling requirement in section 251(c)(3).

*Local Competition First Report and Order*, 11 FCC Rcd at 15633-34 (para. 263) (footnotes omitted). Thus, the fact that BellSouth offers billing and collection service to third parties does not force the result that billing and collection cannot be treated as an unbundled network element.

The FCC has had occasion to examine the nature of billing and collection in earlier rulings, and has concluded that “billing and collection is incidental to the transmission of wire communication . . . .”<sup>18</sup> The FCC has also held that “the billing and collection service that [a local exchange carrier] provides for AT&T are [*sic*] also closely related to the provision of [communications]

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<sup>18</sup> Policies and Rules Concerning Local Exchange Carrier Validation and Billing Information for Joint Use Credit Cards, CC Docket No. 91-115, Report and Order and Request for Supplemental Comment, 7 FCC Rcd 3528, 3533 n.50 (1992).

service, since billing and collection must occur accurately and efficiently for [a] carrier to offer its services on an economically sound basis.”<sup>19</sup> These decisions support the view that, because billing and collection service is “closely intertwined”<sup>20</sup> with the provision of communications services, it must be considered to be a feature, function, or capability that qualifies it as a network element.

Thus, both the Supreme Court and the FCC have construed the statutory definition in a manner that makes BellSouth’s reading untenable and that accommodates including billing and collection in the definition, and the FCC has construed the nature of billing and collection in previous decisions in a manner consistent with its inclusion in the definition of network element.

Moreover, as we discussed briefly in the previous section, Pilgrim contends that the specific reference to “information sufficient for billing and collection” in the definition of “network element” should not be read restrictively to exclude aspects of billing and collection other than the information necessary to bill and collect for telecommunications services. Since, as we have already shown, it is reasonable to construe billing and collection services as features, functions, and capabilities used in connection with the provision of telecommunications service, there would need to be some special reason to conclude that Congress, in noting that these features, functions, and capabilities “include” information sufficient for billing and collection, must also have intended to “exclude” billing and collection itself as a network element.

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<sup>19</sup> Public Service Commission of Maryland and Maryland People’s Counsel Application for Review of a Memorandum Opinion and Order by the Chief, Common Carrier Bureau, Denying the Public Service Commission of Maryland Petition for Declaratory Ruling Regarding Billing and Collection Services, Memorandum Opinion and Order, 4 FCC Rcd 4000, 4005 (para. 42) (1989) (internal quotations omitted), *aff’d on other grounds sub nom.* Pub. Serv. Comm’n of Md. v. FCC, 909 F.2d 1510 (D.C.Cir. 1990).

<sup>20</sup> *Id.*, at 4005 (para. 43).

Although it is difficult to construct such an interpretation, one might argue that the canon of statutory construction, “*inclusio unius est exclusio alterius*,”<sup>21</sup> in fact supports such a reading of the definition. Under this maxim, the fact that Congress specifically included a number of features, functions, and capabilities in the definition would mean that Congress intended to exclude all other features, functions, and capabilities.

In assessing this argument, it is first important to note that the canon is given little force in the administrative setting, where courts defer to an agency’s interpretation of a statute unless Congress has directly addressed the precise question at issue. *See Mobile Comm. Corp. v. FCC*, 77 F.3d 1399, 1404-05 (D.C.Cir. 1996), *cert. denied sub nom. Mobile Telecomm. Technologies v. FCC*, 519 U.S. 823 (1996). Moreover, “[i]t is universally held that this maxim is a guide to construction, not a positive command. . . . Whether the specification of one matter means the exclusion of another is a matter of legislative intent for which one must look to the statute as a whole.” *Massachusetts Trustees of E. Gas & Fuel Assoc. v. United States*, 312 F.2d 214, 220 (1st Cir. 1963) (citing *Springer v. Government of the Phil. Is.*, 277 U.S. 189 (1928)).

When looking at the Communications Act as a whole, one notices that, in cases in which Congress sought to specifically include enumerated items but also to exclude other items, it was careful to make that intention clear. For example, in defining the term “information service,” Congress provided that the term:

*means* the offering of a capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information via telecommunications, *and includes* electronic publishing, *but does not include* any use of any such capability for the management, control, or operation of a tele-

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<sup>21</sup> The inclusion of one is the exclusion of another. The maxim is sometimes given as “*expressio unius est exclusio alterius*” — the expression of one is the exclusion of others.

communications system or the management of a telecommunications service.<sup>22</sup>

Thus, Congress was careful to be specific and clear on the face of the definition that its intent was not to include capabilities for managing telecommunications systems and services in the definition of information services. Similarly, nine paragraphs later in the same section of the Act, Congress could have specifically stated that the definition of “network element” does not include billing and collection. The fact that it did not choose to do so gives additional force to the construction that Congress’s listing of certain features, functions, and capabilities in the definition was not intended to be exhaustive or exclusive.

This analysis gains analogous support from the manner in which the FCC has construed the 1996 Act. In adopting its concept of network elements, the FCC rejected the argument “that it is unnecessary for our rules to permit the identification of additional elements, beyond those specifically referenced in parts of the 1996 Act, because our rules must conform to the definition of a network element, and they must accommodate changes in technology.” *Local Competition First Report and Order*, 11 FCC Rcd at 15632 (para. 259).

**b. BellSouth Must Be Required To Make Billing and Collection Service Available on an Unbundled Basis Because Pilgrim Would Be Materially Impaired in Offering Services in Kentucky If Access to Billing and Collection Is Withheld**

Having established that the statutory definition of network element must be construed to include billing and collection, Pilgrim turns now to the issue of whether the Act requires that billing and collection must be made available on an unbundled basis to requesting telecommunications carriers.

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<sup>22</sup> Section 3(20) of the Communications Act, 47 U.S.C. § 153(20) (emphasis added).



The Act requires that “[i]n determining what network elements should be made available [on an unbundled basis], the Commission shall consider, at a minimum, whether . . . the failure to provide access to such network elements would impair the ability of the telecommunications carrier seeking access to provide the services that it seeks to offer.” Section 251(d)(2)(B) of the Act, 47 U.S.C. § 251(d)(2)(B).<sup>23</sup>

The FCC, in applying these statutory provisions, has noted that, “[f]or effective competition to develop as envisioned by Congress, competitors must have access to incumbent LEC facilities in a manner that allows them to provide the services that they seek to offer . . . .” *UNE Remand Order*, at para. 13. The FCC also observed that, “[d]espite the development of competition in some markets, incumbents still control the vast majority of the facilities that comprise the local telecommunications network, giving them advantages of economies of scale and scope not enjoyed by competitive LECs.” *Id.*

Although the FCC did not directly address in the *UNE Remand Order* the issue of whether incumbent LEC billing and collection services should be made available to requesting carriers on

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<sup>23</sup> The Act also requires that the FCC, in deciding what network elements must be made available, must consider whether “access to such network elements as are proprietary in nature is necessary . . . .” Section 251(d)(2)(A) of the Act, 47 U.S.C. § 251(d)(2)(A). Pilgrim does not consider this “necessary” standard to be relevant in the case of billing and collection because Pilgrim does not believe there is any basis for claiming that there are any proprietary aspects to incumbent LECs’ billing and collection operations. In fact, the FCC noted in the *UNE Remand Order* that commenters suggested that few, if any, network elements are entirely proprietary in nature, that other commenters have pointed out that most network equipment and services are non-proprietary because of the need for interoperability of networks, and that, therefore, the FCC expects “that the ‘necessary’ standard will be invoked only when there is a serious question of whether access to the element will infringe upon the incumbent’s intellectual property.” *UNE Remand Order*, at para. 47.

an unbundled basis,<sup>24</sup> the FCC did develop a set of criteria for applying the statutory test in Section 251(d)(2)(B) of the Act. In doing so, the FCC held that the failure to provide access to a network element would impair the ability of a requesting carrier to provide the services it seeks to offer if, taking into consideration the availability of alternative elements outside the incumbent LEC's network, including self-provisioning by a requesting carrier or acquiring an alternative from a third-party supplier, lack of access to that element *materially* diminishes a requesting carrier's ability to provide the services it seeks to offer. *Id.*, at para. 51. The FCC concluded that the materiality component, although it cannot be quantified precisely, requires that there be substantive differences between the alternative outside the incumbent LEC's network and the incumbent LEC's network element that, collectively, impair a requesting carrier's ability to provide service. *Id.* As Pilgrim will discuss in greater detail in this section, there can be no question that Pilgrim is materially and adversely affected by the denial of access to BellSouth's billing and collection service; without such access, Pilgrim is severely handicapped in its efforts to receive revenues associated with its provision of services to non-subscribed customers, particularly calls placed by BellSouth customers over Pilgrim's network.<sup>25</sup>

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<sup>24</sup> As we have noted, State commissions have the authority to impose additional unbundling requirements. *See* page 30, *supra*. The fact that the FCC has not directly addressed the issue does not preclude the Commission from requiring that billing and collection must be made available on an unbundled basis.

<sup>25</sup> The FCC cited favorably an example provided by the Illinois Commerce Commission illustrating the materiality standard by describing circumstances in which a requesting carrier would be impaired. Under this example, "self-provisioning a loop would impair a requesting carrier's ability to compete because it would incur material up-front installation costs and delays, and would have to acquire access to rights-of-way and undertake other labor-intensive activities to replicate the incumbent's loop facilities." *UNE Remand Order*, at para. 51 n.91 (citing Illinois Commerce Commission Comments, at 6-7). This example fits Pilgrim's case perfectly. If Pilgrim were required to self-provision billing and collection (or obtain billing and collection from third parties), Pilgrim's ability to compete in Kentucky would be impaired because of the expenditure

Before discussing the specific unbundling criteria developed by the FCC, it is important to note an additional aspect of the FCC's decision that is pertinent in the case of billing and collection. The FCC found that the unbundling standard that it adopted does not allow for an incumbent LEC's unbundling obligation to be eliminated based merely upon a showing that a requesting carrier has the *potential* to self-provision or acquire facilities at some indefinite time in the future. The FCC found that this would be inconsistent with the goal of the Act to encourage rapid deployment of competitive alternatives. The FCC stressed that its unbundling analysis considers instead the current facts in the marketplace. *Id.*, at para. 56 n.103. In the case of billing and collection, the economic impediments presented by any attempt to rely on non-incumbent LEC services to bill and collect for non-subscribed services are so substantial that it is difficult even to assume the potential for these alternative arrangements in the future. It goes without saying, in Pilgrim's view, that current marketplace conditions illustrate the impossibility of replicating incumbent LEC billing and collection for these services.<sup>26</sup>

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of funds necessary to attempt to replicate BellSouth's billing and collection apparatus. Pilgrim's situation is even more adverse than the case described by the Illinois Commission, because, even if such a replication were possible, Pilgrim would face high uncollectibles rates in connection with doing its own billing of BellSouth's pre-subscribed customers for collect calling, information services, dial around, and per-use services.

<sup>26</sup> In fact, the NICS and CATS systems used by incumbent LECs, in Pilgrim's view, perpetuate an internalized billing and collection system that makes it even more improbable that alternative billing mechanisms will develop in the future. CATS is used to administer Intercompany Settlements (ICS), which are defined as the revenue associated with charges billed by a company other than the company in whose service area such charges were incurred. ICS on a national level includes third number and credit card calls. Included is traffic that originates in one regional Bell Operating Company's ("RBOC") territory and bills in another RBOC's territory. NICS is the Telcordia Technologies system that calculates non-intercompany settlements amounts due from one company to another within the same RBOC region. It includes credit card, third number, and collect messages. The continuing operation of the NICS and CATS systems makes it unlikely that any

The key issue posed by the statute is whether Pilgrim will be materially impaired in the provision of any services it intends to offer if billing and collection is not made available by Bell-South on an unbundled basis. The FCC has taken the position that an incumbent LEC should not be obligated to unbundle a network element if it can be demonstrated that the requesting carrier can provide the element itself or obtain it from a third party. Thus, in order to decide whether there would be material impairment in the absence of incumbent LEC unbundling, it must be decided whether suitable alternatives exist.

The FCC, to aid in this analysis, has developed a set of criteria to determine whether sufficient alternative network elements are available. The FCC noted that it must consider the totality of the circumstances to determine whether an alternative to the incumbent LEC's network element is available in such a manner that a requesting carrier can realistically be expected to actually provide service using the alternative. The FCC also recognized that, although the factors of *cost*, *timeliness*, *quality*, and *ubiquity*<sup>27</sup> are only some of the factors that may influence a carrier's decision to enter a particular market, these factors are pertinent to an examination of whether alternative sources of network elements are reasonably available from other sources, and, thus, whether requesting carriers are able to actually provide service using the alternative element.<sup>28</sup> The FCC

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third party vendors would expend the resources necessary to replicate these billing and collection functions.

<sup>27</sup> We discuss each of these factors in turn in this section.

<sup>28</sup> The FCC also concluded that the statute gives the agency authority to consider other unbundling standards, in addition to the "necessary" and "impair" standards established in Section 251(d) of the Act. The FCC decided to consider several additional factors that "further the goals of the Act in accordance with the Supreme Court's directive." *UNE Remand Order*, at para. 103. These additional factors include the rapid introduction of competition in all markets; the promotion of facilities-based competition, investment, and innovation; certainty in the

concluded that an examination of the factors it has established provides the ability to identify, through the exercise of administrative judgment, “discernable material differences between using the incumbent’s unbundled network elements and those available from other sources that ultimately will affect a requesting carrier’s ability to provide the services it seeks to offer.” *UNE Remand Order*, at para. 66.

**(1) Any Attempt by Pilgrim To Use Alternative Methods To Bill and Collect for Non-Subscribed Calls Would Impose Prohibitive Costs**

In establishing cost as a criterion, the FCC held that it would consider both direct costs (including sunk and fixed costs) and indirect costs incurred in using an alternative element, that an “impair” standard based upon cost is more appropriate than a standard based upon profitability, and that, “[a]lthough not dispositive, the costs associated with self-provisioning or purchasing alternative elements from third-party suppliers are relevant to our determination of whether the element is a practical and economical alternative to the incumbent LEC’s unbundled network element.” *UNE Remand Order*, at para. 72.

An instructive way to assess the cost issue is to consider alternative billing and collection methods that may be available to Pilgrim, evaluate the costs they would cause, and compare this to the costs that would be associated with the provision of billing and collection by BellSouth.

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marketplace; and administrative practicality. Pilgrim has not analyzed these factors with reference to billing and collection because we believe that the case for unbundling is amply demonstrated through application of the principal factors adopted by the FCC, and because the FCC stressed that it does not require that all of the factors be met before it decides whether to require incumbent LECs to unbundle a particular network element. *Id.*, at para. 106. The agency also noted, however, that there may be circumstances in which there is significant evidence that competitors are impaired without unbundled access to a particular element, but that unbundling the element still would not further the goals of the Act. *Id.* We discuss in Section IV.D., *infra*, the manner in which unbundling of billing and collection (as well as BNA and 900 call blocking data) will further the overall goals of the Act and serve the public interest.

The problem faced by Pilgrim is both simple and daunting: How can Pilgrim successfully render a bill and accomplish the collection of fees for its services from calling parties (and called parties receiving collect calls from Pilgrim subscribers)<sup>29</sup> whose calls traverse Pilgrim's system only on an occasional basis and with whom Pilgrim has no prior or continuing carrier-customer relationship? This problem of recouping service charges from the occasional calling party leaves Pilgrim with less than optimum choices.

If Pilgrim is successful in this proceeding in gaining unbundled access to BellSouth's billing information, then Pilgrim could attempt to issue its own bills to casual calling parties (who are BellSouth subscribers) through the use of this information supplied by BellSouth. But, even if Pilgrim were able to set up a billing and collection infrastructure in a cost effective manner (which is not possible in any event), such a self-provisioned system would not solve the uncollectibles problem, nor would it solve the consumer preference problem. If Pilgrim endeavors to send its own bill to a calling party who, for example, placed one call in the past month<sup>30</sup> over Pilgrim's system, it is not unreasonable to expect a fairly high percentage of cases in which the calling party is simply not going to bother to put a check in the mail.<sup>31</sup> Further, even if one were to assume *ar-*

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<sup>29</sup> Our references to calling parties in this discussion, unless otherwise noted, are intended to include both non-subscribed customers initiating calls on Pilgrim's network, and non-subscribed customers receiving collect calls placed by Pilgrim subscribers on Pilgrim's network.

<sup>30</sup> MCI, in examining the issue of billing for non-subscribed services provided by interexchange carriers, has noted that 60 percent of the bills it sends for its "1-800-COLLECT" service are for one call. MCI, Petition for Rulemaking, Billing and Collection Services Provided by Local Exchange Carriers for Non-Subscribed Interexchange Services, filed with the FCC on May 19, 1997, at 7 (MCI Petition). See FCC, Public Notice, "MCI Telecommunications Corporation Files Petition for Rulemaking Regarding Local Exchange Company Requirements for Billing and Collection of Non-Subscribed Services," DA 97-1328, released June 25, 1997.

<sup>31</sup> See *Calling Party Pays Service Offering in the Commercial Mobile Radio Services*, WT Docket No. 97-207 (FCC CPP Proceeding), Comments of AirTouch, filed Sept. 17, 1999, at 16 (emphasis added) (footnote omitted) ("Evidence before the Commission establishes that

*guendo* that the percentage of uncollectibles would not be high, the investment that Pilgrim would need to make in constructing and maintaining a billing system to issue monthly bills in small amounts to multitudes of occasional callers could overrun the revenue stream that would be provided by these callers.<sup>32</sup> Thus, a recent economic study submitted to the FCC concluded that, “[b]ecause of the low value of the billing transaction relative to the cost of generating a stand-alone bill, only a company that currently sends a bill to a customer can economically provide the CPP [Calling Party Pays] billing services.”<sup>33</sup>

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uncollectible accounts are, *at best*, nearly 50% when separate bills are used by third parties using LEC-provided BNA, in sharp contrast to a usual uncollectibles rate of 10% for charges billed on the LEC bill.”)

<sup>32</sup> MCI has estimated that its average billed amount per service for non-subscribed services is \$6.82, while the cost of sending an invoice to a non-subscribed customer is \$3.47 per invoice. “Because of the fact that high billed amounts per invoice originate from only a small percentage of non-subscribed services customers, less than half of such invoices would be profitable.” MCI Petition, at 7. *Accord* MCI Telecommunications Corporation Petition for Rulemaking, Billing and Collection Services Provided by Local Exchange Carriers for Non-Subscribed Interexchange Services, AT&T Corp. Reply Comments, filed Aug. 14, 1997, at 2-3 (emphasis in original) (footnote omitted):

Non-subscribed services generate low monthly revenues per customer and incur relatively high rates of uncollectibles. As a result, AT&T’s [*sic*] estimates that its return on sales for these services in the *current* billing and collection environment is more than one-third lower than for pre-subscribed calling. If IXCs were required to use sources other than ILEC B&C [billing and collection] to bill for non-subscribed services, the combination of higher billing and collection costs and lower returns would cause carriers to lose money on many invoices and thus seriously jeopardize the viability of such offerings.

<sup>33</sup> *FCC CPP Proceeding*, Comments of AirTouch, filed Sept. 17, 1999, Attachment A, “Declaration of Dr. Michael L. Katz and David W. Majerus: ILEC Market Power in Billing and Collection” (Katz and Majerus Study), at 10. Calling Party Pays (“CPP”) is a service option offered by some cellular, paging, and personal communications service providers under which the party placing the call or page pays the airtime charge and any applicable charges for calls transported within the local exchange carrier’s Local Access and Transport Area. The calling party does not have a pre-subscribed arrangement with the wireless service provider. Since CPP

A second alternative for Pilgrim might be an attempt to utilize billing information provided by BellSouth in conjunction with arranging with credit card companies to generate bills to calling parties. Such an approach could solve some problems, but would also likely lead to other difficulties. Bills provided by credit card companies would free Pilgrim of the need to build and operate its own billing systems, and could also reduce uncollectibles because the charge for the Pilgrim call would be a line item on the calling party's monthly credit card bill. These aspects of an arrangement with credit card companies could thus result in reduced billing and collection costs for Pilgrim.

On the other hand, there is a fairly high percentage of prospective callers who do not have credit cards.<sup>34</sup> If call completion (and revenues to Pilgrim) are dependent on credit card use, then opting for this type of billing arrangement brings with it a built-in risk of lost traffic and lost revenues. Further, it is likely there would be some percentage of credit card holders who would terminate their effort to place calls over Pilgrim's network, in order to avoid the inconvenience or annoyance of punching in a credit card number, or because they simply prefer not to use a credit card for the transaction.

These costs associated with alternative billing and collection arrangements are in sharp contrast to the scale economies enjoyed by BellSouth. The FCC found in the *UNE Remand Order*

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involves the issue of billing and collection for service rendered to a non-subscribed customer (*i.e.*, the calling party who is responsible for paying the charge for the call), the problems of direct billing for CPP closely mirror the direct billing problems that Pilgrim is raising in this proceeding.

<sup>34</sup> In 1995, 34 percent of households in the United States did not have general use credit cards. BUREAU OF THE CENSUS, U.S. DEP'T OF COM., STATISTICAL ABSTRACT OF THE UNITED STATES 1998, Table 823.



that, as a general matter, incumbent LEC economies of scale and scope should be considered due to their ubiquitous networks:

The record demonstrates that, although facilities-based competition has developed in particular markets (primarily for large business customers in high-density areas), incumbent LECs continue to enjoy significant economies of scale and density not enjoyed by competitive LECs. Because these economies lower the incumbent's per-customer costs of providing service, vis-à-vis their competitors, we find these economies relevant to our inquiry of the extent to which costs of using alternative elements impair a requesting carrier's ability to provide the services it seeks to provide.<sup>35</sup>

There can be little doubt that BellSouth has the infrastructure in place to bill and collect for casual calls made on Pilgrim's network in an efficient and cost effective manner. A commenter in a recent FCC rulemaking proceeding, for example, has observed that "it is clear . . . that . . . the technology and most of the infrastructure . . . to facilitate cost efficient billing and collection services is . . . currently available [and that] most of these technologies and most of the referenced infrastructure presently reside in the wireline public switched telephone network . . ." *FCC CPP Proceeding*, Comments of Nortel Networks Inc., filed Sept. 17, 1999, at 4.

Further, the Katz and Majerus Study illustrates the fact that incumbent LECs are particularly well suited to provide billing and collection services for casual calling services such as CPP. The Katz and Majerus Study points out that incumbent LECs have BNA databases; they have bill-generating software in place that has the capability to calculate applicable local taxes for telecommunications services; there are minimal incremental costs associated with CPP billing; and incumbent LECs already have an extensive infrastructure in place for collecting payments from

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<sup>35</sup> *UNE Remand Order*, at para. 84 (footnote omitted).

end users. Katz and Majerus Study, at 8-9.<sup>36</sup> As Pilgrim has already observed, “[f]or better or worse, ILECs are the only viable sources for billing and collection.” Pilgrim Response to Motion to Dismiss, at 3.

Thus, in Pilgrim’s view, any attempt by Pilgrim to self-provision its billing and collection for casual calls (or to use other billing and collection alternatives) would not be able to match BellSouth’s economies of scale because Pilgrim’s average unit costs for issuing bills to non-subscribed calling parties would be prohibitively high, especially when compared to the average unit costs that BellSouth would incur in rendering these same bills. The FCC recognized these cost considerations as a general matter in the *UNE Remand Order*:

We find that significant fixed and sunk costs associated with using alternatives outside the incumbent LEC’s network contribute to a finding that lack of access to the incumbent’s unbundled network elements impairs the requesting carrier’s ability to provide the service it seeks to offer. This is particularly true for a new competitive LEC that has few customers from which it can recover these costs. Because the per-customer costs decrease as the number of subscribers served by the carrier increases, a carrier must acquire a sufficient customer base if it is to recover substantial costs associated with deploying its own facilities.<sup>37</sup>

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<sup>36</sup> The Katz and Majerus Study illustrates that billing and collection is characterized by strong economies of scale at the individual bill level. There are fixed costs associated with each individual bill that are large relative to the incremental cost of placing an additional record on a bill. Katz and Majerus Study, at 5-6. AirTouch expects that, in the future, over 80 percent of CPP bills will be for less than \$5.00 per month. *Id.*, at 5. AirTouch also estimates that it would incur costs of approximately \$1.00 to generate a single bill for a customer. (The Katz and Majerus Study indicates that this includes the costs of obtaining BNA, printing a bill, and mailing it, but the estimate does not include changes in billing software and systems to perform billing and collection, or collection and customer inquiry costs. AirTouch estimates that, if it processed 2.4 million CPP bills per year, these full costs would amount to roughly \$9.00 per bill. *Id.*, at 6 & n.4.) For comparative purposes, the Katz and Majerus Study points out that it generally costs merchants about \$3.00 to print and mail a paper bill. *Id.*, at 6.

<sup>37</sup> *UNE Remand Order*, at para. 80.

The relevant "customer base" for Pilgrim, for purposes of evaluating sunk and fixed costs and related economies of scale in connection with billing and collection for non-subscribed calls, is the volume of traffic generated by particular calling parties, because each calling party would need to generate sufficient traffic on a monthly basis to make it cost effective for Pilgrim to self-provision billing and collection for that calling party. The attainment of the requisite calling party traffic volumes is not a realistic scenario.

In this regard, the FCC also found "that the type of customers that a competitive LEC seeks to serve is relevant to our analysis of whether the cost of self-provisioning or acquiring an element from a third-party supplier impairs the ability of a requesting carrier to provide the services it seeks to offer." *UNE Remand Order*, at para. 81. The relevant "type of customer" for Pilgrim is the non-subscribed residential calling party, and the costs associated with any attempt by Pilgrim to self-provision its billing and collection or to use non-incumbent LEC parties for billing and collection would be a substantial impairment to providing the services Pilgrim intends to offer.

**(2) Application of the Remaining Criteria Prescribed by the FCC Confirms That Pilgrim's Offering of Services Would Be Materially Impaired Without Access to BellSouth's Billing and Collection Service**

The FCC also adopted additional criteria for assessing the availability of sufficient alternatives to incumbent LEC network elements. Thus, the FCC concluded that the time associated with using alternative elements is relevant to a determination of whether a requesting carrier would be impaired in its ability to provide the services it seeks to offer, and that delays caused by the unavailability of unbundled network elements that exceed six months to one year may, taken together with other factors, materially diminish the ability of requesting carriers to provide service.

*Id.*, at para. 89. Pilgrim believes that, in large measure, this criterion is inapposite in assessing Pilgrim's need for BellSouth's billing and collection service. In other words, the fact that it would not be cost effective to attempt to bill and collect for casual calls through self-provisioning or third party alternatives, and that the rate of uncollectibles would be prohibitively high under either of these approaches, makes irrelevant the issue of how long it would take to implement these approaches. In Pilgrim's view, reliance on self-provisioning or third-party billing simply *will not work*, regardless of how quickly such billing could be put in place.

The FCC also concluded that the quality of alternative network elements available to the competitive carrier is relevant to a determination of whether a requesting carrier's ability to provide service is impaired. Any material degradation in service quality associated with using an alternative element will materially diminish a competitor's ability to effectively provide service. The FCC also held that the type of service a competitor seeks to provide is relevant to the quality factor. *Id.*, at para. 96.

In the case of casual calling services provided to non-subscribed customers, the quality of self-provisioned or third-party billing and collection does not compare favorably with BellSouth billing and collection for a number of reasons that we have already discussed. The quality of "alternative network elements" is inferior to BellSouth's billing and collection apparatus because of all the demonstrable shortcomings of alternative billing as an effective means to render bills to, and collect from, non-subscribed calling parties.

In addition, the FCC concluded that it should consider the extent to which competitive carriers can serve customers ubiquitously using their own facilities or those acquired from third-party suppliers. Competitive carriers may be impaired if lack of access to an unbundled element materially restricts the number or geographic scope of the customers they can serve. If a

competitive carrier seeks to provide local telephone service throughout a State, for example, it would be impractical, if not impossible, for the carrier to replicate the incumbents' networks. *Id.*, at paras. 97-98. In Pilgrim's view, the ubiquity of its casual calling and collect calling services in Kentucky would be reduced to zero unless the Commission requires that billing and collection be made available on an unbundled basis. Pilgrim cannot offer these services unless it can bill and collect for them. Use of BellSouth's billing and collection apparatus is the only practical means by which Pilgrim can bill and collect.

In sum, Pilgrim believes that a reasonable interpretation of the Act supports a conclusion that billing and collection must be treated as a network element, that billing and collection must be unbundled based upon the "impair" standard established by the statute and the criteria prescribed by the FCC, and that BellSouth has offered no arguments that can persuade the Commission to reach the opposite result.

**B. Billing Name and Address and 900 Blocking Information Must Be Made Available to Pilgrim on an Unbundled Basis**

The Communications Act entitles Pilgrim to receive billing name and address ("BNA") and 900 blocking information on an unbundled basis. The Commission therefore should require BellSouth to take the actions necessary to comply with the Act by making this information available to Pilgrim in a timely and non-discriminatory manner.

In this section Pilgrim will present an overview of the conclusions we are requesting the Commission to reach and the actions we believe the Commission should take in order to ensure that BellSouth complies with the applicable statutory requirements. We will then turn to a more specific discussion of the BNA and 900 blocking issues. In these latter sections Pilgrim will demonstrate in greater detail the manner in which the statute and FCC decisions compel the provi-

sioning of BNA and 900 blocking data under Section 251(c)(3) of the Act, and will also address the arguments raised by BellSouth in the record.

**1. BellSouth Must Ensure Timely and Non-Discriminatory Access to BNA and 900 Blocking Information Through OSS**

It is Pilgrim's view that both BNA and 900 blocking data are accessible through BellSouth's OSS. BellSouth agrees in its pleadings that 900 blocking information is accessible through OSS,<sup>38</sup> and more recently has provided the Commission with information that the components of BNA are accessible through OSS. The Commission therefore should affirm its decisions in the *January 11 Order* by requiring that BellSouth provide Pilgrim with access to OSS, for the purpose of enabling Pilgrim to access and utilize BNA and 900 blocking information.

An important aspect of this access is that it must be provided to Pilgrim in a timely and non-discriminatory manner. A failure to provide this information in a timely manner will impair Pilgrim's ability to conduct business in Kentucky, will increase Pilgrim's costs of providing services to its customers, and will adversely affect Pilgrim's ability to meet its own consumer protection objectives and regulatory consumer protection standards and requirements. The issue of timeliness, however, should not be problematic because all that Pilgrim requests is that BellSouth make BNA and 900 blocking data accessible to Pilgrim in the same manner as it is available to BellSouth for its own use. BellSouth is obligated to provide such non-discriminatory access as one means of preventing BellSouth from seeking to unfairly maintain its market dominance. *See* Section 251(c)(3) of the Act, 47 U.S.C. § 251(c)(3).

A further reason that the timely provision of BNA and 900 blocking information should be readily achievable is that, based upon the descriptions BellSouth has provided in the record of this

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<sup>38</sup> *See* BellSouth Motion for Reconsideration, at 18-19.

proceeding, Pilgrim's access to BellSouth's electronic interfaces will provide Pilgrim with "on line" access to BNA and 900 blocking information in a sufficiently timely manner to meet Pilgrim's service provisioning needs.

BellSouth has indicated that it makes available to competitive carriers the Telecommunications Access Gateway ("TAG") and Local Exchange Navigation System ("LENS") electronic interfaces to access OSS. Through these interfaces, BellSouth explains, Pilgrim would have the ability to access the Customer Record Information System ("CRIS") database and to review individual Customer Service Records ("CSRs"). *See* BellSouth Motion for Reconsideration, at 15.

The provision of access to BellSouth's OSS should be sufficient to comply with Pilgrim's request for BNA and 900 blocking information. As we have noted, BellSouth agrees that 900 blocking information is available through OSS.<sup>39</sup>

It also now appears to be the case that BellSouth agrees that BNA can be accessed through its OSS systems. BellSouth has indicated that "[t]he billing name and the billing address for a BellSouth end user customer is contained on the Customer Service Record ('CSR') [which is accessible through OSS]. BellSouth refers to those as the 'billing name' and the 'billing address', not the 'BNA'. It appears that the 'BNA' terminology being used by Pilgrim is related to a database for interexchange carriers, provided via tariff, which assists in billing for casual-use and calling card customers." *See* Letter from Creighton Mershon, Sr., General Counsel – Kentucky, BellSouth, to Martin Huelsmann, Jr., Executive Director, Kentucky P.S.C., Item No. 3, at 1 (Apr. 5, 2000).

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<sup>39</sup> *See* note 38, *supra*, and accompanying text.

In order for access to BNA and 900 blocking information through OSS to be sufficient, however, Pilgrim must have the ability to access this information in a timely manner. The Commission therefore should require BellSouth to confirm the timeliness of access to information in OSS that can be accomplished through these interfaces. *See* Letter from James Newberry to Leah Cooper, BellSouth Telecommunications, Inc., Aug. 9, 1999, at 4.

The issue of timeliness is important to Pilgrim both in the case of BNA information and 900 blocking information. Pilgrim's issuance of calling cards illustrates the importance of timely access in the case of BNA information. BellSouth contends that one reason that competing carriers should not be provided with access to BNA as an unbundled element is that the BNA relates to BellSouth customers and is not needed by competing carriers in connection with the carriers switching customers from BellSouth. *See* BellSouth Motion for Reconsideration, at 14-15.

BellSouth's arguments, however, overlook the fact that Pilgrim needs timely access to BNA information, for example, to verify whether a customer placing a call to Pilgrim is actually authorized to initiate service, or change the terms or parameters of service received from Pilgrim. *See* Direct Testimony of Scott Yacino.

Timeliness is equally important in the case of 900 blocking. As we discuss elsewhere in this Brief, Pilgrim has no interest in routing calls to 900 pay-per-call numbers in cases in which the subscriber to the calling line has requested that calls to 900 numbers on that line should be blocked. In order for Pilgrim to accede to this instruction, in the case of casual calls originated by BellSouth customers on Pilgrim's network, Pilgrim needs timely access to 900 blocking information maintained by BellSouth.

A possible impediment to this OSS solution for the provision of BNA and 900 blocking information to Pilgrim is the fact that BellSouth has argued in this proceeding that information in



BellSouth's OSS is not the UNE; rather, access to BellSouth's OSS is the UNE. BellSouth Motion for Reconsideration, at 13. According to this argument, the further unbundling Pilgrim is suggesting would not be permissible because the information that would be the subject of the further unbundling has not been found to be a UNE in the first instance.

In Pilgrim's view, however, there is no basis for this argument because the FCC has not drawn the type of distinction advanced by BellSouth in this proceeding. The FCC has concluded that "operations support systems *and the information they contain* fall squarely within the definition of "network element" and must be unbundled upon request under section 251(c)(3) . . . ." *Local Competition First Report and Order*, 11 FCC Rcd at 15763 (para. 516) (emphasis added). The FCC went on to point out that "the information contained in, and processed by operations support systems can be classified as 'information sufficient for billing and collection or used in the transmission, routing, or other provision of a telecommunications service.'" *Id.*, at 15763 (para. 517) (footnote omitted) (quoting 47 U.S.C. § 153(29)). The FCC also concluded that "[m]uch of the information maintained by these systems is critical to the ability of other carriers to compete with incumbent LECs using unbundled network elements or resold services." *Id.*, at 15763 (para. 518).

The FCC returned to this theme in the *UNE Remand Order*, confirming its definition of OSS as including "the manual, computerized, and automated systems, together with associated business processes *and the up-to-date data* maintained in those systems." *UNE Remand Order*, at para. 425 (footnote omitted) (emphasis added). The FCC observed that "[t]he incumbents' OSS provides access to key information that is unavailable outside the incumbents' networks and is critical to the ability of other carriers to provide local exchange and exchange access service." *Id.*, at para. 433. In addition, the FCC concluded that "the incumbent LEC has access to unique in-

formation about the customer's service, and a competitor's ability to provide service is materially diminished without *access to that information*." *Id.*, at para. 435 (emphasis added).<sup>40</sup>

It thus is evident that the FCC construes the statute to require, and intends its rules to effectuate, unbundled *access to information* contained in OSS systems. The FCC's reading of the statute also squares with the Commission's interpretation. *See January 11 Order*, at 3.

Finally, Pilgrim notes that BellSouth must comply with the requirement that the access to data provided to competitive carriers through OSS is equal to the manner in which BellSouth itself is able to access information encompassed in OSS. The statute, of course, imposes upon incumbent LECs "[t]he duty to provide, to any requesting telecommunications carrier for the provision of telecommunications service, nondiscriminatory access to network elements on an unbundled basis at any technically feasible point on rates, terms, and conditions that are just, reasonable, and nondiscriminatory . . . ." 47 U.S.C. § 251(c)(3). As we have noted above,<sup>41</sup> all that Pilgrim requests is that it be provided with access on a non-discriminatory basis, so that it has the capability to access and utilize data in OSS in the same way as BellSouth. In this regard, the FCC has concluded that "providing nondiscriminatory access to these support systems functions, which would include access to the information such systems contain, is vital to creating opportunities for meaningful competition." *Local Competition First Report and Order*, 11 FCC Rcd at 15764 (para. 518).

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<sup>40</sup> In addition, in discussing access to loop qualification information, the FCC clarified that under its existing rules, "the relevant inquiry is not whether the retail arm of the incumbent has access to the underlying loop qualification information, but rather whether such information exists anywhere within the incumbent's back office and can be accessed by any of the incumbent LEC's personnel." *Id.*, at para. 430.

<sup>41</sup> *See* page 52, *supra*.

Pilgrim is confident that, if it is afforded access to information contained in BellSouth's OSS systems in the same manner as the access that BellSouth provides to itself, then the requests that Pilgrim is making in this proceeding for BNA and 900 blocking information will be sufficiently satisfied. Moreover, Pilgrim's request for non-discriminatory access is solidly grounded in the FCC's findings regarding how OSS systems must be made available by incumbent LECs. The FCC has held that, "if competing carriers are unable to perform the functions of pre-ordering, ordering, provisioning, maintenance and repair, and billing for network elements and resale services in substantially the *same time and manner* that an incumbent can for itself, competing carriers will be severely disadvantaged, if not precluded altogether, from fairly competing." *Local Competition First Report and Order*, 11 FCC Rcd at 15764 (para. 518) (emphasis added).

**2. BellSouth Has Failed To Provide Any Credible Arguments To Support Its Refusal To Make BNA Available to Pilgrim in a Timely and Sufficient Manner**

None of the arguments raised by BellSouth supports a conclusion that it should not be required to make BNA available to Pilgrim on an unbundled basis in compliance with the requirements of the Act. Some of the contentions made by BellSouth have been addressed in the previous section. We will discuss in turn BellSouth's remaining arguments in this section.

**a. BellSouth's Claim That BNA Is Not a Call-Related Database Is Not Relevant to the Issue of Whether BNA Must Be Made Available as an Unbundled Network Element**

BellSouth has maintained that "[t]he BNA database currently is not a UNE because it is [not] a call-related database . . . ." BellSouth Motion for Reconsideration, at 12. BellSouth goes on to claim that the BNA database "is a database of billing names and addresses that is maintained completely separate and apart from BellSouth's switches and BellSouth's signaling systems, and it

plays no role in the transmission, routing or other provision of a telecommunications service.” *Id.*, at 12-13.

The Commission does not need to reach the merits of BellSouth’s assertions regarding whether BNA is a call-related database because BellSouth has conceded that this information is already available as part of OSS.<sup>42</sup> Moreover, as Pilgrim has already demonstrated, the Commission has ample authority to require, and a sufficient basis to conclude, that BNA must be made available as part of BellSouth’s OSS functions. Moreover, BellSouth provides no support for its claim that BNA is not used in the “other provision of a telecommunications service.” Again, as Pilgrim has shown, there is no basis for such a contention.

**b. BellSouth Is Incorrect in Contending That FCC Rules Bar the Availability of BNA to Local Service Providers**

BellSouth argues that the FCC has limited the definition of telecommunications service providers to those who provide interstate services, and has also provided that local carriers can make BNA information available only to telecommunications service providers as so defined. BellSouth Motion for Reconsideration, at 11 (citing 47 C.F.R. §§ 64.1201(a)(2), 64.1201(b)). BellSouth concludes that “[t]he rule appears to explicitly restrict BellSouth from providing [BNA] information to local providers.” *Id.*, at 12.

There are a number of reasons why this contention is not persuasive. It would make little sense to conclude that the FCC actually intended the narrow reading of the rule propounded by BellSouth. It is more reasonable to conclude that the FCC intended to ensure the availability of BNA to carriers over which the FCC has jurisdiction, namely, carriers providing interstate services. The rule was adopted before the advent of local competition propelled by the 1996 Act, and,

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<sup>42</sup> See page 53, *supra*.

moreover, the FCC indicated in the Order adopting the rule that "BNA availability to all carriers wishing to do their own billing and collection and to third party billing agents ensures that competitive forces will keep the rates for LECs' billing and collection services reasonable."<sup>43</sup>

In any event, even if the FCC did intend the narrow application suggested by BellSouth, the FCC could not have meant to preempt the authority of State commissions to require that BNA must be made available to local service providers. As we have discussed elsewhere in this Brief, the Commission has clear authority to require further unbundling of network elements such as BNA, and the FCC's rule should not be interpreted in a manner that would impair this authority, especially in light of the fact that the FCC gave no clear or explicit indication of its intention to preempt State authority. Finally, even if any credence could be given to the notion that the FCC intended to restrict the availability of BNA to interstate service providers, and that State commissions have no authority to extend availability to local service providers, Pilgrim is in fact a provider of interstate services and should be provided unbundled access to BNA on that basis.

**c. BellSouth Is Wrong in Claiming That Access to BNA Cannot Be an Unbundled Element Because Only Local Service Providers Are Entitled to Unbundled Elements**

BellSouth has expressed the view that "[a]ccess to the BNA database cannot be a UNE because only providers of local service are entitled to UNEs." BellSouth Motion for Reconsideration, at 12. BellSouth, in support of this proposition, cites text from the *Local Competition First Report and Order* stating that an interexchange carrier that requests interconnection from an incumbent LEC solely for the purpose of originating or terminating its interexchange traffic, and not

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<sup>43</sup> Policies and Rules Concerning Local Exchange Carrier Validation and Billing Information for Joint Use Calling Cards, CC Docket No. 91-115, Second Report and Order, 8 FCC Rcd 4478, 4484 (para. 30) (1993) (emphasis added) (footnote omitted).

for the provision of local exchange service, is not entitled to receive interconnection under Section 251(c)(2) of the Act. *Id.*

The cited provision in the FCC decision, however, does not support BellSouth's proposition. The issue here is not interconnection under Section 251(c)(2) but, rather, unbundled access under Section 251(c)(3). As Pilgrim has pointed out elsewhere in this Brief,<sup>44</sup> the FCC has concluded that Section 251(c)(3) requires the provision of access to unbundled elements to allow requesting carriers to provide the full scope of telecommunications services, thus permitting unbundled elements to be used for a broader range of telecommunications services than Section 251(c)(2) allows for interconnection.

**3. BellSouth Has Established No Valid Reason Why It Is Not Required To Provide Pilgrim with 900 Blocking Data**

Although BellSouth has put forth several arguments for not providing Pilgrim with 900 blocking information, these arguments do not establish any basis for the Commission denying Pilgrim's request for access to 900 blocking information. As explained above, Pilgrim has a legitimate business need for this information, and we believe that the information is already available from BellSouth in a format that would be useful to Pilgrim as part of BellSouth's OSS. Pilgrim is mystified why BellSouth refused to reveal these facts about the availability of 900 blocking information, as part of its duty to negotiate in good faith as required by Section 251(c)(1) of the Act, without the need for Pilgrim to file an arbitration request with the Commission. Nonetheless, Pilgrim believes it is important to respond to the arguments of BellSouth regarding why it should not be required to provide Pilgrim with 900 blocking data.

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<sup>44</sup> See Section IV.C., *infra*.

BellSouth claims that Pilgrim wants 900 blocking data “so that it does not ‘inadvertently’ bill those customers for 900 services.” According to BellSouth, this issue is a billing and collection matter, as opposed to an issue arising under the requirements of Section 251. BellSouth also argues that 900 blocking information is not a retail or wholesale service, and BellSouth is not obligated to provide it as such. BellSouth November 11 Answer, at 7.

BellSouth should be indifferent to the use Pilgrim makes of UNEs, but instead it seems to call into question Pilgrim’s motives for requesting 900 blocking information. BellSouth has missed the point entirely, and Pilgrim would like to set the record straight. BellSouth implies that Pilgrim intends to provide 900 services to consumers, but not bill for the services if the customer has requested 900 blocking, because Pilgrim wants to avoid billing complaints. Pilgrim needs 900 blocking information, however, so that it can honor the wishes of consumers who do not want access to 900 telephone numbers from their telephone. Pilgrim is not in the business of providing 900 service for free; such a business would not last very long. Thus, Pilgrim is not seeking to provide 900 services to customers who do not want the services, because Pilgrim would not receive any payment for providing services to these customers. Also, Pilgrim believes that it might be subject to civil liabilities when providing access to 900 services if Pilgrim does not make a good faith effort to honor customers’ blocking requests. *See* Section 228(e)(2) of the Act.

In addition, this is not simply an issue relating to billing and collection.<sup>45</sup> Unfortunately, the 900 blocking service that BellSouth provides is not foolproof. Sometimes 900 blocking service fails. Also, there are instances where a consumer can access the Pilgrim network using a non-

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<sup>45</sup> In Section IV.A., *supra*, Pilgrim demonstrates that BellSouth must provide it with billing and collection as a UNE. Therefore, if 900 blocking information is part of billing and collection, then BellSouth must make this information available to Pilgrim as part of its billing and collection UNE.

900 number and then dial a 900 number on the Pilgrim network. In such circumstances, BellSouth's 900 blocking service does not recognize and block these 900 number calls in cases in which the customer on whose line the call originated had previously requested that 900 calls must be blocked. Pilgrim wants 900 blocking information because it wants to be able to block 900 calls for customers who have requested blocking, so that Pilgrim can avoid handling these calls and thus comply with customers' blocking instructions.

BellSouth argues that 900 blocking information is not an issue arising under the requirements of Section 251, and BellSouth is not obligated to provide it as a retail or wholesale service, but Pilgrim believes that BellSouth already makes this information available in a manner that would meet many of Pilgrim's needs. BellSouth admits that 900 blocking data is information that is accessible through OSS. BellSouth January 24 Reconsideration Motion, at 18. The FCC has found that OSS is a network element that must be unbundled by incumbent LECs. *Local Competition First Report and Order*, 11 FCC Rcd at 15763 (para. 516); *UNE Remand Order*, at para. 424. Therefore, BellSouth must make OSS available to Pilgrim on an unbundled basis, and with it Pilgrim should have access to the 900 blocking information that it needs.

Although BellSouth admits that access to 900 blocking information is available through OSS on an individual customer basis and access to OSS is a UNE, BellSouth hints that there still may be reasons why Pilgrim should not be entitled to 900 blocking information. BellSouth January 24 Reconsideration Motion, at 18. Pilgrim believes such arguments are mere smokescreens to try to divert everyone's attention from the fact that BellSouth has always had the capability of providing Pilgrim with the data it needs, but has refused to provide Pilgrim with enough information about BellSouth's databases, systems, and information sources to enable Pilgrim to refine its request. The FCC has recognized that new market entrants often have difficulties identifying the



network elements that they need and that ILECs must work with new entrants to identify these network elements. Specifically, the FCC has explained that:

[w]e do not believe, however, that it will always be possible for new entrants to do this [*i.e.*, specify the network elements they seek] either before negotiations (or arbitrations) begin, or before they end, because new entrants will likely lack knowledge about the facilities and capabilities of a particular incumbent LEC's network. We further believe that incumbent LECs must work with new entrants to identify the elements the new entrants will need to offer a particular service in the manner the new entrants intend.<sup>46</sup>

Had BellSouth worked with Pilgrim in Kentucky as the FCC required, perhaps this issue would not have been brought before the Commission at all.

With respect to BellSouth's contentions that Pilgrim may not be entitled to access to OSS, without any explanation or citation, BellSouth claims that 900 blocking information is customer proprietary network information (CPNI), and cannot be disclosed without the consent of the end user. According to BellSouth, CPNI rules would require Pilgrim to get customer approval before accessing 900 blocking data through OSS. BellSouth January 24 Reconsideration Motion, at 19 n.10.

It goes without saying, of course, that Pilgrim will comply with any applicable CPNI requirements. However, BellSouth's statements regarding CPNI rules, customer approval, and Pilgrim's obligations are misleading. In Pilgrim's view, the requirements relating to CPNI are anything but clear. Section 222 of the Act, enacted as part of the 1996 Act, establishes a new statutory framework governing carrier use and disclosure of CPNI and other customer information obtained by carriers in their provision of telecommunications services. Implementation of the Telecommunications Act of 1996, Telecommunications Carriers' Use of Customer Proprietary Network Information and other Customer Information, Implementation of the Non-Accounting

Safeguards of Sections 271 and 272 of the Communications Act of 1934, CC Docket Nos. 96-115 and 96-149, Order and Further Notice of Proposed Rulemaking, 13 FCC Rcd 8061 (1998).

The FCC received several requests from telecommunications carriers and carrier associations to clarify the requirements of Section 222. In February 1998, the FCC issued final rules implementing requirements under Section 222. In August 1999, however, the Tenth Circuit Court of Appeals vacated the FCC's Order and implementing rules. *US West v. FCC*, 182 F.3d 1224 (10th Cir. 1999). The Tenth Circuit found that the FCC's Order and rules violated carriers' First Amendment rights regarding commercial speech. In particular, the Tenth Circuit focused on the FCC's requirement that carriers obtain affirmative permission before using CPNI to market new services outside of the customer-carrier relationship. Under these circumstances, telecommunications carriers, including BellSouth and Pilgrim, must make their best efforts to comply with the requirements of Section 222, but the exact contours of a carrier's CPNI obligations are far from clear.

Pilgrim anticipates that, in the typical case in which a BellSouth subscriber wants to receive services from Pilgrim, the customer will call a Pilgrim representative, and will verbally authorize Pilgrim to access his or her BellSouth CPNI records while the customer waits on the line. Pilgrim will access the customer's records based upon this verbal authorization, and pursuant to a "blanket" letter of authorization that Pilgrim will have previously supplied to BellSouth (in which Pilgrim will have specified that it will follow the practice of obtaining verbal authorizations from BellSouth customers before accessing the customers' records through BellSouth's OSS). Pilgrim will keep a record of each verbal authorization.

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<sup>46</sup> *Local Competition First Report and Order*, 11 FCC Rcd at 15649 (para. 297).

Although, as we have noted, the Federal rules regarding CPNI obligations are far from clear, Pilgrim believes that the method of accessing a BellSouth subscriber's CPNI described in the previous paragraph is consistent with rulings made by the Commission. The Commission has approved the "blanket" authorization approach as a reasonable means of protecting customer privacy while at the same time ensuring that competitive entrants are not placed at a disadvantage. Petition by AT&T Communications of the South Central States for Arbitration of Certain Terms and Conditions of a Proposed Agreement with GTE South, Inc., Case No. 96-478, Order, at 18 (Ky. P.S.C. Feb. 14, 1997) ("When customer information is withheld from an ALEC [alternative LEC], a competitive disadvantage is created. To offer relief, the Commission has decided that an ALEC's provision of a blanket Letter of Authorization to the ILEC will be sufficient to allow the ALEC access to customer records."). The Commission has also held that requiring a signed letter of authorization for each customer is unnecessary and would constitute a barrier to competition. Petition by MCI for Arbitration of Certain Terms and Conditions of a Proposed Agreement with GTE South, Inc., Case No. 96-440, Order, at 11 (Ky. P.S.C. Dec. 23, 1996).

BellSouth also contends that Pilgrim wants access to 900 blocking so that it can circumvent FCC rules. BellSouth claims that Pilgrim follows the practice of providing pay-per-call services over lines other than 900 lines, in violation of FCC rules. As Pilgrim explains in its direct testimony, BellSouth's accusations are misplaced. *See Direct Testimony of Stephen Bonder.*

Pilgrim has made every effort to comply with Telephone Disclosure and Dispute Resolution Act (TDDRA)<sup>47</sup> requirements and related rules of the Federal Trade Commission and FCC. Pilgrim places a premium on operating its business in compliance with all the applicable statutory

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<sup>47</sup> In 1992 Congress passed the Telephone Disclosure and Dispute Resolution Act, P.L. No. 102-556, 106 Stat. 4181 (1992) (codified at 15 U.S.C. § 1507 et seq. and 47 U.S.C. § 228).

and regulatory requirements. BellSouth's statement of the facts is simply not correct. Pilgrim does not offer, and never has offered, a pay-per-call service in violation of FCC rules. BellSouth may be confused about a Pilgrim service known as "call-back dial tone service." The call-back dial tone service is a form of carrier access code dialing. It allows customers to choose a network provider for an individual call, and is comparable to dialing a 1010XXXX access code. In a call-back scenario, first the consumer dials an access number, in Pilgrim's case it was an 800 number. The customer requests service, hangs up, and waits for a return call. The carrier returns the call and provides a dial tone, and the customer dials the number he or she wishes to reach. The call is completed and the customer is connected. Call-back is used in settings where carriers want to provide dial around service in a region where they lack interconnection or physical transmission facilities. In Pilgrim's view, international competition currently is the most prominent area for call-back dial tone.

Pilgrim offered this service at one time in BellSouth's region. The service provided domestic long distance calling and 900 number calling. BellSouth's systems were not able to block such 900 calls, so Pilgrim requested that BellSouth provide 900 blocking data to enable Pilgrim to perform the blocking function. However, BellSouth refused to provide the information, and Pilgrim was forced to discontinue the service. In Pilgrim's view, this refusal by BellSouth was not beneficial either for competition or for consumers.

One final point on this issue. Pilgrim has instituted safeguards to ensure that consumers are aware of the adult nature of some of its pay-per-call services, and comply with the requirements of the TDDRA and implementing regulations. Pilgrim wants to ensure that customers af-

firmatively choose to complete 900 number calls. Pilgrim has also instituted safeguards to prevent minors from accessing adult 900 number services.<sup>48</sup>

**C. Pilgrim Does Not Need To Be a Competitive LEC in Order To Receive Unbundled Elements**

As explained above,<sup>49</sup> Pilgrim plans to offer local exchange services in the State of Kentucky. Therefore, Pilgrim will be entitled to all services, facilities, and arrangements that the Act requires incumbent LECs to make available to competitive LECs. It is important to remember, however, that certain provisions of the Act require incumbent LECs to make services, facilities, and arrangements available to all telecommunications carriers rather than only competitive LECs. In particular, Pilgrim as a telecommunications carrier is entitled to unbundled network elements (UNEs) and, contrary to BellSouth's assertions, is not required to be a competitive LEC to obtain access to UNEs.<sup>50</sup>

BellSouth has argued that only carriers providing local service are entitled to avail themselves of UNEs. Without any citation, BellSouth argues that UNEs are designed to facilitate the provision of local service,<sup>51</sup> and IXC's are not entitled to purchase UNEs to provide interexchange

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<sup>48</sup> Although BellSouth feigns concern over consumer protection, it is important to remember that BellSouth provides billing and collection services for adult service providers that operate offshore and therefore are not subject to the consumer protection requirements of the TDDRA.

<sup>49</sup> See Section IV.A.1., *supra*.

<sup>50</sup> See BellSouth Petition for Reconsideration, at 21.

<sup>51</sup> Indeed, in describing the purposes of the telephony provisions of the 1996 Act, the FCC found "the opening of one of the last monopoly bottleneck strongholds in telecommunications – the local exchange and exchange access markets – to competition is intended to pave the way for enhanced competition in *all* telecommunications markets. The opening of all telecommunications markets to all providers will blur traditional industry distinctions and bring new packages of services, lower prices and increased innovation to American consumers." *Local Competition First Report and Order*, 11 FCC Rcd at 15506 (para. 4) (emphasis in original); see also *id.*, at 15681

services. BellSouth does provide quotations from the *Local Competition First Report and Order* saying that an IXC's request for interconnection solely for the purpose of originating and terminating its interexchange traffic is not entitled to receive interconnection pursuant to Section 251(c)(2). BellSouth Motion for Reconsideration, at 21 (citing *Local Competition First Report and Order*, 11 FCC Rcd at 15598 (para. 191)).

The fundamental problem with BellSouth's line of argument is that it relies on the wrong provision of the Act. While it is true that only LECs are entitled to interconnection pursuant to Section 251(c)(2), Pilgrim has been requesting access to UNEs, pursuant to Section 251(c)(3) of the Act. As explained below, Section 251(c)(3) is not limited to competitive LECs obtaining access for the provision of exchange or exchange access service. Instead, all telecommunications carriers may request access to UNEs for the provision of any telecommunications service. In addition, a telecommunications carrier may also use the same UNEs for the provision of both information services and telecommunications services.

An analysis of a carrier's right to access UNEs, must begin with the Act. Section 251(c) of the Act identifies certain obligations of incumbent LECs that do not apply to other LECs or telecommunications carriers. Paragraph (3) of Section 251(c) contains the primary duties of incumbent LECs to provide access to UNEs. The plain language of Section 251(c)(3) requires incumbent LECs to provide UNEs to any requesting telecommunications carrier.<sup>52</sup> Specifically, Section 251(c) states:

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(para. 361) (finding that Congress intended the 1996 Act to promote competition for toll services, not only for telephone exchange and exchange access services).

<sup>52</sup> The Commission has recognized that, under Kentucky law, "[w]hen a statute is plain on its face, its language is conclusive." BellSouth Telecommunications, Inc., Case No. 96-431 1997 WL

In addition to the duties contained in subsection (b), each incumbent local exchange carrier has the following duties:

(3) UNBUNDLED ACCESS. — The duty to provide, *to any requesting telecommunications carrier for the provision of a telecommunications service*, nondiscriminatory access to network elements on an unbundled basis at any technically feasible point on rates, terms, and conditions that are just, reasonable, and nondiscriminatory in accordance with the terms and conditions of the agreement and the requirements of this section and section 252. An incumbent local exchange carrier shall provide such unbundled network elements in a manner that allows requesting carriers to combine such elements in order to provide such telecommunications service.<sup>53</sup>

In contrast, where Congress wanted to limit the duty of incumbent LECs to offer particular services only to LECs or only for the provision of telephone exchange or exchange access, then Congress used these terms explicitly. For example, Section 251(b) describes the obligations of all LECs and Section 251(c)(2) describes the duty of incumbent LECs to provide interconnection only for “the transmission and routing of telephone exchange service and exchange access.” 47 U.S.C. §§ 251(b), 251(c)(2)(A).

BellSouth’s duty to negotiate in good faith applies not only to agreements for the transmission and routing of telephone exchange service and exchange access, but to fulfill all the duties described in subsections (b) and (c) of Section 251, including the duty to provide access to UNEs. *See* Section 251(c)(1) of the Act, 47 U.S.C. § 251(c)(1). Also, Section 252 of the Act, which sets forth the procedures for arbitration of agreements by State commissions, applies not only to re-

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79287, \*2 (Ky. P.S.C. 1997) (citing *Lynch v. Commonwealth of Ky.*, 902 S.W.2d 813,814 (1995); *Lincoln County Fiscal Court v. Dept. of Public Advocacy, Ky.*, 794 S.W.2d 162, 163 (1990).

<sup>53</sup> 47 U.S.C. § 251(c) (emphasis added).

quests for interconnection, but also to requests for access to network elements pursuant to Section 251.<sup>54</sup>

Thus, under the terms of the statute, the Commission must find that Pilgrim is entitled to access UNEs to the extent that it is a telecommunications carrier providing a telecommunications service.<sup>55</sup> Under Section 3(44) of the Act, a telecommunications carrier means any provider of telecommunications service. Telecommunications service means the offering of telecommunications for a fee directly to the public. Section 3(46) of the Act, 47 U.S.C. §153(46). Telecommunications is 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 sent and received. Section 3(43) of the Act, 47 U.S.C. 153(43). To the extent that Pilgrim is offering local, interexchange, or international basic services directly to the public, then it is a telecommunications carrier. *Local Competition First Report and Order*, 11 FCC Rcd at 15517 (para. 33). As explained in Section IV.A.1., *supra*, Pilgrim provides telecommunications services to the public and intends to provide interstate and intrastate telecommunications services in Kentucky. BellSouth does not appear to contest that Pilgrim is a telecommunications carrier offering telecommunications services. The only dispute, whether Pilgrim intends to provide local exchange or exchange access services, is irrelevant in the context of Section 251(c)(3).<sup>56</sup>

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<sup>54</sup> Section 252 (c) of the Act requires a State commission, in resolving open issues by arbitration, to ensure that such resolution meets the requirements of Section 251, and to establish any rates for "interconnection, services, or network elements" according to statutory pricing standards.

<sup>55</sup> As explained below, Pilgrim may also use UNEs to provide information services, if it is also providing telecommunications services.

<sup>56</sup> It is also the case that, even under the terms of BellSouth's argument, to the extent that Pilgrim operates as a competitive LEC in Kentucky, it would be entitled to interconnection under Section 251(c)(2) and would thus be entitled to UNEs from BellSouth.



The FCC's decisions support this interpretation of the Act. The FCC has elaborated on the distinction between incumbent LECs' obligations under Section 251(c)(2) and Section 251(c)(3). According to the *Local Competition First Report and Order*, a telecommunications carrier is not required to be a competitive LEC in order to obtain UNEs.

Section 251(c)(2) requires that interconnection be provided for "the transmission and routing of telephone exchange service and exchange access." Section 251(c)(3), in contrast, requires the provision of access to unbundled elements to allow requesting carriers to provide "a telecommunications service." The term "telecommunications service" by definition includes a broader range of services than the terms "telephone exchange service and exchange access." Subsection (c)(3), therefore, allows unbundled elements to be used for a broader range of services than subsection (c)(2) allows for interconnection. If we were to conclude that "access" to unbundled elements under subsection (c)(3) could only be achieved by means of interconnection under subsection (c)(2), we would be limiting, in effect, the uses to which unbundled elements may be put, contrary to the plain language of section 251(c)(3) and standard canons of statutory construction.<sup>57</sup>

The FCC codified this interpretation in its rules for UNEs, by mirroring the language of the statute with respect to telecommunications carriers using UNEs to provide telecommunications services. Section 51.307 of the FCC's rules states:

(a) An incumbent LEC shall provide, to a requesting *telecommunications carrier* for the provision of a *telecommunications service*, nondiscriminatory access to network elements on an unbundled basis at any technically feasible point on terms and conditions that are just, reasonable, and nondiscriminatory in accordance with the terms and conditions of any agreement, the requirements of Sections 251 and 252 of the Act, and the Commission's rules.

(b) The duty to provide access to unbundled network elements pursuant to Section 251(c)(3) of the Act includes a duty to provide a connection to an unbundled network element independent of any duty to provide interconnection pursuant to this part and Section 251(c)(2) of the Act.

(c) An incumbent LEC shall provide a requesting *telecommunica-*

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<sup>57</sup> *Local Competition First Report and Order*, 11 FCC Rcd at 15636-37 (para. 270) (footnotes omitted).

*tions carrier* access to an unbundled network element, along with all of the unbundled network element's features, functions, and capabilities, in a manner that allows the requesting telecommunications carrier to provide *any telecommunications service* that can be offered by means of that network element.<sup>58</sup>

... .

The FCC rejected arguments by incumbent LECs that earlier versions of the statute in the legislative history of the 1996 Act evidences an intent of Congress to limit the scope of Section 251(c)(3) so that telecommunications carriers could not purchase access to UNEs to provide exchange access services to themselves, for the purpose of providing long distance services to consumers. Instead, the FCC found that the language of Section 251(c)(3) is not ambiguous and does not have the limited scope suggested by the incumbent LECs. Therefore, the FCC found that it was obligated to interpret Section 251(c)(3) pursuant to its plain meaning "and not by referencing earlier versions of the statute that were ultimately not adopted by Congress."<sup>59</sup> *Local Competition First Report and Order*, 11 FCC Rcd at 15680 (para. 359).

At least one other State Commission has made a similar finding that Section 251(c)(3) is not limited to competitive LECs. In 1996, the Oregon Public Utility Commission ("Oregon Commission") had an ongoing proceeding regarding the unbundling of telecommunications services offered by incumbent LECs into "network building blocks." See *Oregon PUC Order*. The Oregon

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<sup>58</sup> 47 C.F.R. § 51.307 (emphasis added).

<sup>59</sup> Although the FCC rejected the incumbent LECs' arguments as a matter of statutory construction, the FCC did use its discretion to determine that for a time-limited period, interconnecting carriers that purchase the local switch as a UNE and use that element to originate or terminate interstate traffic, should not be able to use those unbundled elements to avoid access charges in all cases. *Local Competition First Report and Order*, at 15864-69 (paras. 721-732); see also *UNE Remand Order*, at paras. 492-496 (seeking additional comment on these issues). In this instance, Pilgrim is not requesting UNEs that would allow it to avoid access charges and therefore would not fit within the FCC's limited exception.

Commission rejected a proposal by Oregon Commission staff to limit the purchase of building blocks to competitive LECs for an interim period.<sup>60</sup> The Oregon Commission found that such a limitation would be inconsistent with the Act because Section 251(c)(3) provides that network elements shall be made available to all telecommunications carriers. The Oregon Commission also expressed the view that limiting the purchase of building blocks to competitive LECs would also be incompatible with the pro-competitive policy underlying the Act.

Although the plain language of the statute makes it unnecessary to rely on the legislative history, it is important to note that the legislative history of the 1996 Act also supports the view that, pursuant to Section 251(c)(3), incumbent LECs have a duty to provide all telecommunications carriers access to network elements for the provision of telecommunications services. The House bill that was a precursor of the 1996 Act, H.R. 1555,<sup>61</sup> contained very broad provisions relating to the duty of LECs to interconnect and unbundle. Specifically, the House bill mandated interconnection between the LEC and “any other carrier or person offering (or seeking to offer) telecommunications services or information services reasonably requesting such equal access and interconnection” and required LECs to offer unbundled services, elements, features, functions, and capabilities. H.R. 1555, § 101, House Report No. 104-204, at 3, 71. On the other hand, the Senate bill which was the precursor of the 1996 Act, S. 652, required LECs with market power to, *inter alia*, provide for nondiscriminatory access on an unbundled basis to the network functions and services of the LEC’s telecommunications network. According to the Senate Report,

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<sup>60</sup> The Oregon Commission used the term “alternative exchange carriers” instead of competitive LECs, but we believe these terms have identical meanings.

<sup>61</sup> Because the Senate bill was passed by the full Senate before the House acted on its bill, the Conference Report refers to the House bill as the “House Amendment”

however, these interconnection and unbundling obligations were for the purpose of providing telephone exchange or exchange access service. Senate Report 104-230, at 19.

The Conference Report containing the final language of Section 251 of the Act, which was adopted by both the House and Senate and then signed into law, resolved these different obligations with a compromise. As explained by the FCC, the Joint Explanatory Statement of the Conference Report, which describes the House and Senate versions of the statute, states that the statute incorporates provisions from the Senate Bill and the House Amendment in connection with the interconnection model adopted in Section 251. *Local Competition First Report and Order*, 11 FCC Rcd at 15680-81 (para. 360). The FCC observed that the Conference Committee incorporated language from the House Amendment and not the Senate Bill in describing in Section 251(c)(3) the services carriers may offer using unbundled elements. *Id.* The FCC specifically found that the Joint Explanatory Statement's description of the provision in the Senate Bill does not control the interpretation of Section 251(c)(3) as enacted. *Id.* Pilgrim agrees with the FCC's analysis of the legislative history with respect to Section 251(c)(3) of the Act. Such an analysis confirms the plain language of the Act that Pilgrim, as a telecommunications carrier, has a right to request access to UNEs for the provision of any telecommunications service, not merely local exchange and exchange access services.

Not only is BellSouth wrong that Pilgrim is not entitled to access to UNEs because it is not a competitive LEC, any suggestion by BellSouth that Pilgrim is not entitled to use UNEs because it is providing information services is also misleading.<sup>62</sup> A telecommunications carrier may

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<sup>62</sup> See BellSouth Motion for Reconsideration, at 20.

use UNEs for both its telecommunications services and information services. The FCC has concluded that:

[I]f a company provides both telecommunications and information services, it must be classified as a telecommunications carrier for purposes of section 251, and is subject to the obligations under section 251(a), to the extent that it is acting as a telecommunications carrier. We also conclude that telecommunications carriers that have interconnected or gained access under sections 251(a)(1), 251(c)(2), or 251(c)(3) [UNEs], may offer information services through the same arrangement, so long as they are offering telecommunications services through the same arrangement as well.

*Local Competition First Report and Order*, 11 FCC Rcd at 15990 (para. 995). The FCC reasoned that incumbent LECs offer both telecommunications and information services over the same facilities and arrangements. Therefore, it would increase the transaction costs for a competitor to be forced to establish distinct facilities and agreements with respect to information services. By rejecting this outcome, the FCC provided competitors the opportunity to compete effectively with the incumbent by offering a full range of services to end users without having to provide some services inefficiently. *Id.* However, an enhanced service provider that is not also a telecommunications carrier by virtue of offering domestic or international telecommunications may not avail itself of the provisions of Section 251. *Id.* Pilgrim in this instance is both a telecommunications carrier and an information services provider. Pilgrim intends to use the UNEs it requests for a variety of services that it currently offers and plans to offer in the future. In other words, Pilgrim will use UNEs from BellSouth to provide local exchange and exchange access service, interexchange and other telecommunications services, and telemessaging and other information services.

**D. Requiring BellSouth To Provide Billing Information, and Billing and Collection Services, to Pilgrim as Unbundled Network Elements Will Serve the Public Interest by Promoting Competition and Benefiting Consumers in Kentucky**

A central issue for the Commission in this proceeding involves evaluating the extent to which the availability of BNA, 900 number blocking information, and billing and collection services from BellSouth will serve the public interest in the State of Kentucky.

Pilgrim believes that competition in Kentucky will be promoted by a finding in this proceeding that BellSouth must make these network elements available to requesting carriers, that consumers will benefit if Pilgrim and other requesting carriers are given the opportunity to access these network elements at reasonable rates and on reasonable terms and conditions, and that consumer protection objectives of the Commission will also be furthered by a requirement that billing information must be made accessible by BellSouth.

**1. Requiring BellSouth To Comply with Pilgrim's Unbundling Requests Will Serve To Promote Competition in Kentucky**

The hallmark of the 1996 Act is the congressional objective of establishing a pro-competitive, deregulatory national policy framework designed to accelerate the delivery of innovative technologies and services to American consumers by promoting competition in all telecommunications markets.<sup>63</sup>

The FCC has concluded that competition in local exchange markets is "desirable not only because of the benefits competition will bring to consumers of local services, but also because competition will eventually eliminate the incumbent [local exchange carriers'] control of bottle-

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<sup>63</sup> See Joint Statement of Managers, H.R. CONF. REP. NO. 104-458, 104th Cong., 2d Sess. 113 (1996).

neck facilities and thereby permit freer competition in other telecommunications services that must interconnect with the local exchange.”<sup>64</sup>

In dealing with issues relating to the network element unbundling requirements of the Act, the Commission has found that, “[i]f competitors are not able to use BellSouth’s network elements at cost to provide service, viable competition is unlikely to grow.” BellSouth Telecommunications, Inc., Case No. 96-431, Order, 1997 WL 79287, at \*1 (Ky. P.S.C. Jan. 29, 1997).

Congress and the FCC have thus articulated the importance of public policies that nurture and extend competition in all telecommunications markets, and the Commission has recognized that the availability of incumbent LECs’ network elements at reasonable rates is an important aspect of promoting these public policies.

By granting Pilgrim’s requests in this proceeding and requiring BellSouth to take sufficient steps to make billing and call processing data available and to provide billing and collection services, the Commission will be taking effective action to promote competition in the local exchange and to ensure the opportunity for competitive entry and growth in other telecommunications markets. Pilgrim believes that it is important to recognize, in weighing the public interest implications of the requests Pilgrim is making in this arbitration proceeding, that BellSouth’s billing and call processing data, and its billing and collection service, represent valuable assets that are products of BellSouth’s longstanding status as a monopoly service provider and that also are potent weap-

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<sup>64</sup> Promotion of Competitive Networks in Local Telecommunications Markets and Implementation of Local Competition Provisions in the Telecommunications Act of 1996, WT Docket No. 99-217, Notice of Proposed Rulemaking and Notice of Inquiry, CC Docket No. 96-98, Third Further Notice of Proposed Rulemaking, FCC 99-141, released July 7, 1999, at para. 2 (footnote omitted).

ons for deflecting competitive entry. To the extent that BellSouth is able to close off access to these assets, it can preserve, consolidate, and extend its market position.

Its desire to maintain its market dominance gives BellSouth an incentive to avoid any obligation to accede to the unbundling requests that Pilgrim has made in this proceeding. In the past, BellSouth has sought to avoid any obligation to provide billing and collection services by maintaining that the competitive market for billing and collection is sufficient, and by contending that, if billing and collection alternatives for non-subscribed services are more costly, then these higher costs should be borne by the service providers, instead of imposing any requirement on BellSouth that it must provide billing and collection for carriers providing non-subscribed services. *See* MCI Telecommunications Corporation Petition for Rulemaking, Billing and Collection Services Provided by Local Exchange Carriers for Non-Subscribed Interexchange Services, BellSouth Corporation Comments, filed July 25, 1997, at 2-3.

These contentions are unpersuasive. As Pilgrim illustrates in this Brief, there is no competitive market for third party billing and collection for casual calling services. There are no practical alternatives — billing and collection service controlled by BellSouth is the only game in town. This fact is demonstrated by a recent economic study<sup>65</sup> pointing to a case of a refusal by an incumbent LEC to provide billing and collection for 900 number calls:

In 1998, there was a real-world test of whether competitive alternatives to billing and collection for 900-number calls exist. US WEST announced that it would no longer bill for 900-number calls related to psychic programs and games of chance. In the 11 states where US WEST operates, AT&T now will not bill 900 numbers to psychic programs and games of chance. Despite this opportunity for direct billing and collection in US WEST territory, no one has stepped in to fill the void, and these 900 number services no longer exist in

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<sup>65</sup> Stephen E. Siwek & Gale Mosteller, "Billing and Collection for 900-Number Calls: A Competitive Analysis," Sept. 7, 1999 (Siwek and Mosteller Study).



US WEST territory. This market outcome supports the conclusion that there are not competitive alternatives to LEC billing and collection for 900-number calls.<sup>66</sup>

Pilgrim believes that it is not credible for BellSouth to maintain that viable marketplace alternatives exist for billing and collection for casual calling services. In these circumstances, Pilgrim urges the Commission to conclude that the public interest will be served and competition will be promoted by requiring that competitive carriers be given access to BellSouth's billing and collection services.

BellSouth's rejoinder that there are feasible alternatives, and casual calling service providers should bear their higher costs, is equally unavailing. As Pilgrim also demonstrates in this Brief, these costs are prohibitive, posing virtually insurmountable barriers to the offering of casual calling services in jurisdictions in which incumbent LEC billing and collection is not available. Requiring BellSouth to provide billing and collection solves this problem, and does so in a fair and reasonable manner that serves the public interest and promotes competition.

Such a requirement is fair because BellSouth would be reasonably compensated for providing the service to Pilgrim, and because requiring access to BellSouth's billing and collection acknowledges that BellSouth obtained this asset through its status as a monopoly utility. The FCC has recognized the significance of this latter point, finding that:

The incumbent LECs still enjoy cost advantages and superiority of economies of scale, scope, and ubiquity as a result of their historic, government-sanctioned monopolies. These economies are now critical competitive attributes and would belong unquestionably to the incumbent LECs if they had "earned" them by superior competitive skills. These advantages of economies, however, were obtained by the incumbents by virtue of their status as government-sanctioned and protected monopolies. We believe that

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<sup>66</sup> *Id.*, at 8.

these government-sanctioned advantages remain barriers to [other] carriers' ability to provide a range of services to a wide array of customers, and that their existence justifies placing a duty on the incumbent carriers to share their network facilities.<sup>67</sup>

Requiring BellSouth to provide billing and collection service, and to furnish effective access to its billing and call processing data, can serve as an important means of promoting competitive entry in telecommunications markets in Kentucky. Pilgrim believes that such an outcome serves the public interest and Kentucky consumers.

**2. Consumers Will Benefit, and Consumer Protection Interests Will Be Served, by Requiring That BellSouth Must Provide Billing Information, and Billing and Collection Services, on an Unbundled Basis**

In addition to the fact that consumers benefit generally from the advent and growth of competition in local exchange markets and markets for other telecommunications services and information services, consumers in Kentucky will also receive other direct benefits from the imposition of unbundling requirements in this proceeding.

The principal benefit will be reduced costs in services made available to Kentucky consumers by Pilgrim and other carriers who will be in a position to take advantage of the Commission's ruling in this proceeding regarding the availability of unbundled network elements. These cost savings will occur in at least two ways. To the extent that service providers such as Pilgrim are given ready access to BNA, this will ensure that billing can be rendered accurately and efficiently. This will reduce operational costs for these service providers. In turn, through the operation of the competitive marketplace, these cost savings will flow through to consumers.

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<sup>67</sup> *UNE Remand Order*, at para. 86.

The availability of BellSouth's billing and collection apparatus on an unbundled basis will have an even more significant impact on requesting carriers' costs. As we discuss elsewhere in this Brief, providers of casual calling services, such as Pilgrim, are not well-positioned to issue their own bills because they do not have any ongoing subscriber relationship with customers making casual calls. It would be extremely costly for casual calling service providers to attempt to replicate the billing and collection infrastructure that BellSouth already has in place for purposes of issuing bills to these casual calling customers, and these costs necessarily would be reflected in rates to consumers.

In addition, as we also discuss in greater detail elsewhere in this Brief, casual calling service providers also face the prospect of high rates of uncollectibles if they attempt to do their own billing or use third parties (such as credit card companies) to handle their billing. This problem, which has been confirmed by economic studies, results principally from the fact that consumers may be confused by the receipt of a bill (typically for a small amount) for a call they made a month or more before receiving the bill. The studies show that a significant percentage of consumers simply tend to ignore such bills. The impact of these high uncollectibles rates is to drive up the carriers' overall costs of providing service, to the detriment of consumers.

These problems will be cured by affording Pilgrim and other carriers providing casual calling services with the opportunity to access the BellSouth bill. Requiring BellSouth to furnish billing and collection services will, of course, eliminate the imposition of costs associated with self-provisioning for billing and collection. At the same time, carriers providing casual calling services will benefit from the low uncollectibles rates associated with BellSouth bills. In this way, access to BellSouth's billing and collection services on an unbundled basis will generate significant cost savings that will translate into lower rates for consumers.

Imposing a requirement that BellSouth must provide billing and collection services will also result in additional benefits for consumers. Many consumers express a preference for receiving a single phone bill that includes all charges they have incurred for services utilized during the past month, including services provided by different telecommunications service providers.<sup>68</sup> Even assuming that casual calling providers could generate separate bills in a cost-effective manner, such a proliferation of bills is an inconvenience to customers and detracts from the reasonable consumer objective of receiving a consolidated bill for their telephone services. Access to BellSouth's billing and collection would solve this problem, affording consumers using the services of Pilgrim and other casual calling service providers the convenience of receiving a single, consolidated bill.

A further benefit to consumers stems from a unique aspect of casual calling services, namely, that a consumer does not establish a business relationship and subscriber account with the service provider in advance of a call. Under such circumstances, consumers can use casual calling as an opportunity to try new services and new providers with minimal risk. In order to develop and flourish, however, competitive carriers such as Pilgrim need access to incumbent LEC databases and services which are essential to the processing of calls by customers using these telecommunications services, and for billing and collection for the services.

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<sup>68</sup> *Cf.* Application by SBC Communications Inc. for Authorization under Section 271 of the Communications Act to Provide In-Region, InterLATA Service in the State of Texas, FCC CC Docket No. 00-4, Comments of Campaign for Telecommunications Access and 33 Participating Commenters, filed Jan. 31, 2000, at 20-21 (residential customers complain about multiple bills). This commenter in the FCC's SBC Section 271 proceeding also suggested that utilization of the incumbent LEC's bill has advantages for persons with disabilities. SBC, for example, has the capability to issue monthly bills in Braille for sight-impaired customers. *Id.*, at 24. It likely would be prohibitively expensive to attempt to replicate a billing and collection system that incorporates such a sophisticated feature. Requiring unbundled billing and collection, on the other hand, would bring these benefits to consumers with disabilities.

If the access to network elements being requested by Pilgrim is imposed by the Commission, then Kentucky consumers will also benefit in another way. Access to 900 blocking information will help to protect consumers against erroneous call transmissions and the issuance of bills for services that customers responsible for bill payments did not intend to have available. The purpose of 900 call blocking is to provide telephone subscribers with the option of ensuring that calls to 900 numbers cannot be made on telephone lines assigned to the subscribers. To the extent that casual calling service providers such as Pilgrim do not have sufficient access to 900 call blocking information maintained by BellSouth for its subscribers, there is a risk that the casual calling service providers will transmit calls to 900 numbers over lines for which 900 blocking has been requested by the subscribers.

Pilgrim, of course, has no desire to bill telephone subscribers for casual calling services that the billed parties did not wish to use. Pilgrim routinely follows the practice of foregoing any bill collection in cases in which the billed party indicates that the 900 call placed on the party's phone line was not authorized. Although Pilgrim's practice is fair to consumers and guards against any collections in cases in which consumers have given notification that the billed calls were unauthorized, Pilgrim and other casual calling providers would be in a much stronger position to provide a higher level of consumer protection in Kentucky if they are given sufficient blocking information from BellSouth in a timely and efficient manner. Blocking calls complies with customers' wishes and avoids the need for customers to contest bills and seek adjustments. Although, as noted, Pilgrim follows the practice of providing such adjustments upon a customer's request, this inconvenience to customers could be avoided if Pilgrim were given the tools to block calls placed on lines with respect to which such blocking has been ordered by the consumer.

In sum, benefits and protections for consumers in Kentucky will be an important outcome resulting from a decision by the Commission to impose unbundling requirements on BellSouth in this proceeding. As Pilgrim has argued in this Brief and as Pilgrim demonstrates in the direct testimony submitted by its witnesses in this proceeding, the law requires that BellSouth make the requested network elements available on an unbundled basis because Pilgrim's ability to provide services in Kentucky otherwise would be impaired. Beyond these statutory obligations, however, Pilgrim believes that the strongest case for granting its petition and requiring unbundling is that such an action will advance the pro-consumer policies of the Commission. Kentucky consumers benefit from measures that aid in reducing the costs of telecommunications services, and Kentucky consumers are protected if sufficient systems are in place to accommodate their instructions regarding the use of their telephone lines.

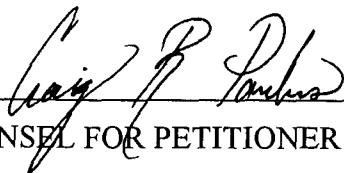
## V. CONCLUSION

For the reasons set forth herein, the Commission should require that BellSouth provide to Pilgrim billing and collection service, billing name and address information, and 900 blocking information, on an unbundled basis.

This 10th day of April, 2000.

Respectfully submitted,  
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## CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing was served upon the following, by U.S. mail, postage prepaid, this tenth day of April, 2000.

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PUBLIC SERVICE  
COMMISSION

BEFORE THE  
KENTUCKY PUBLIC SERVICE COMMISSION  
CASE NO. 99-385

PILGRIM TELEPHONE, INC.

PETITIONER

V. REQUEST FOR COMMISSION NOTICE

BELLSOUTH TELECOMMUNICATIONS, INC.

RESPONDENT

\* \* \* \* \*

Pilgrim Telephone, Inc. ("Pilgrim"), by counsel, respectfully requests that the Commission take notice of the following documents:

1. Selected pages related to billing and collection for information services from *In the matter of: Interconnection Agreement negotiated between GTE South, Incorporated and BellSouth Mobility, Inc. for the State of Kentucky*, Case No. 97-102, Order of March 9, 1998 and accompanying Interconnection Agreement (attached as Exhibit "1");

2. Selected pages regarding access to customer information from *In the matter of: Approval of the Interconnection Agreement negotiated by BellSouth Telecommunications, Inc. and New Edge Network, Inc. d/b/a New Edge Networks*, Case No. 99-457, Order of December 14, 1999 and accompanying Interconnection Agreement (attached as Exhibit "2");

3. Selected pages regarding access to customer information from *In the matter of: Approval of the Interconnection Agreement negotiated by BellSouth Telecommunications, Inc. and CPU Solutions Corp.*, Case No. 99-509, Order of February 11, 2000 and accompanying Interconnection Agreement (attached as Exhibit "3");

4. Selected pages regarding access to customer information from *In the matter of: Approval of the Interconnection Agreement negotiated by BellSouth Telecommunications, Inc. and Frontier Local Service, Inc.*, Case No. 99-126, Order of June 1, 1999 and accompanying Interconnection Agreement (attached as Exhibit "4");

Pilgrim submits that these documents contain facts not subject to reasonable dispute which are generally known or subject to accurate and ready determination by resort to the Commission's files.

Respectfully submitted,



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The undersigned hereby certifies that a copy of the forgoing was served upon the following, by U.S. mail, postage prepaid, this 12<sup>th</sup> day of April, 2000.

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Daugherty

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

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MAR 1 1998

In the Matter of:

INTERCONNECTION AGREEMENT )  
NEGOTIATED BETWEEN GTE SOUTH )  
INCORPORATED AND BELLSOUTH )  
MOBILITY INC. FOR THE STATE OF )  
KENTUCKY )

GENERAL COUNSEL  
CASE NO. 97-102

O R D E R

On February 2, 1998, GTE South Incorporated ("GTE") and BellSouth Mobility Inc. ("BellSouth Mobility") submitted to the Commission their negotiated amendment to the interconnection agreement approved April 9, 1997. This negotiated amended interconnection agreement contracts for interconnection, transport and termination of traffic, and collocation. The amended agreement was negotiated pursuant to the Telecommunications Act of 1996 ("1996 Act"), 47 U.S.C. Sections 251 and 252. Section 252(e) of the 1996 Act requires the parties to an interconnection agreement adopted by negotiation to submit the agreement for approval to the Commission.

The Commission has reviewed the amended agreement and finds that no portion of the amended agreement discriminates against a telecommunications carrier not a party to the agreement. The Commission also finds that the implementation of this amended agreement is consistent with the public interest, convenience, and necessity.

The Commission, having been otherwise sufficiently advised, HEREBY ORDERS that the negotiated amended interconnection agreement between GTE and BellSouth Mobility is approved.

EXHIBIT  
1

Done at Frankfort, Kentucky, this 9th day of March, 1998.

By the Commission

ATTEST:

  
Executive Director

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FEB 02 1998  
PUBLIC SERVICE  
COMMISSION

**INTERCONNECTION AGREEMENT**

**BETWEEN**

**RECEIVED**  
FEB 09 1998

**GTE SOUTH INCORPORATED**

**GENERAL COUNSEL**

**AND**

**BELLSOUTH MOBILITY INC.**

**FOR THE STATE OF KENTUCKY**

**CONTRACT ID** 97-102

IN WITNESS WHEREOF, each Party has executed this Agreement to be effective as of the date specified in Section 31 of Article III.

GTE South Incorporated

BCC

By Connie Nicholas

By Roy P. McAllister

Name Connie Nicholas  
Assistant Vice President

(P) Name PM McAllister

Title Wholesale Markets-Interconnection

Title VP-CORP AFFAIRS

Date 1/28/98

Date 1/13/98

APPROVED AS TO FORM BY  
LEGAL DEPARTMENT

[Signature]

with a level of performance that will provide the same grade of service as that which GTE provides to its own end users.

- 2.4 Updates to Database. GTE and BCC will work together to develop the process by which the E911 database will be updated with BCC's end user E911 information.
- 2.5 Compensation. In situations in which GTE is responsible for maintenance of the E911 database and can be compensated for maintaining BCC's information by the municipality at 911 tariffed rates for Automatic Location Identification (ALI) records, GTE will seek such compensation from the municipality. GTE will seek compensation from BCC only if and to the extent that GTE is unable to obtain such compensation from the municipality. GTE shall charge BCC a portion the cost of the shared Selective Router.
3. Information Services Traffic.
- 3.1. Routing. Each Party shall route traffic for information services (e.g. 900, 976, N11, weather lines, sports lines, etc.) that originates on its network to the appropriate information services platforms connected to the other Party's network over the Local/IntraLATA trunks.
- 3.2 Recording. The Party on whose network the information services traffic originated (the "Originating Party") shall provide the recorded call detail information to the Party to whose information platform the information services traffic terminated (the "Terminating Party").
- 3.3 Rating. The Terminating Party shall provide to the Originating Party all rating information necessary to bill the information services traffic to the Originating Party's end users pursuant to the Terminating Party's agreements with each information provider.
- 3.4 Billing and Collection. The Originating party shall bill and collect such information service charges and shall remit the amounts collected to the Terminating Party less:
- (a) a mutually agreed upon fee for providing billing and collection of the information service charges; and
  - (b) any uncollectibles reserve, which shall be calculated based on the uncollectibles reserve in the Terminating Party's billing and collection agreement with the applicable information services provider; and
  - (c) any customer adjustment provided by the Originating Party.



Contract ID: \_\_\_\_\_

3.5 Blocking. Nothing in this Agreement shall restrict either Party from offering to its end user customers the ability to block the completion of information service traffic.

4. Directory Assistance (DA) and Operator Services. At BCC's request, GTE will provide to BCC directory assistance services and/or operator services pursuant to separate contracts to be negotiated in good faith between the Parties.

IN WITNESS WHEREOF, each Party has executed this Agreement to be effective pursuant to Section 25 of Article III.

GTE

By Gary R. Osborne

Name Gary R. Osborne

Title State Director/External Affairs

Date March 3, 1997

BCC

By [Signature]

Name ANTHONY BARKSBALL

Title Asst. Secretary

Date 2/27/97

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

RECEIVED

In the Matter of:

NOV 14 1999

APPROVAL OF THE )  
INTERCONNECTION AGREEMENT )  
NEGOTIATED BY BELLSOUTH )  
TELECOMMUNICATIONS, INC. AND )  
NEW EDGE NETWORK, INC. D/B/A )  
NEW EDGE NETWORKS, PURSUANT )  
TO SECTIONS 251 AND 252 OF THE )  
TELECOMMUNICATIONS ACT OF 1996 )

GENERAL COUNSEL

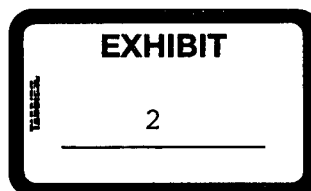
CASE NO. 99-457

O R D E R

On November 10, 1999, BellSouth Telecommunications, Inc. ("BellSouth") and New Edge Network, Inc. d/b/a New Edge Networks ("New Edge") submitted to the Commission their negotiated agreement for interconnection of their networks, the unbundling of specific network elements, and the resale of BellSouth's services. The agreement was negotiated pursuant to the Telecommunications Act of 1996 ("1996 Act"), 47 U.S.C. Sections 251 and 252. Section 252(e) of the 1996 Act requires the parties to an interconnection agreement adopted by negotiation to submit the agreement for approval to the Commission.

The Commission has reviewed the agreement and finds that no portion of the agreement discriminates against a telecommunications carrier not a party to the agreement. The Commission also finds that the implementation of this agreement is consistent with the public interest, convenience, and necessity.

New Edge must comply with all relevant Commission mandates for serving in this Commonwealth.



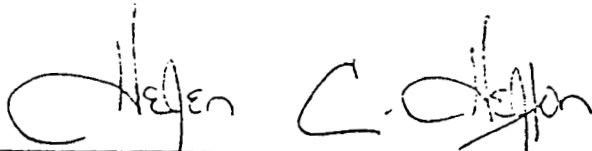
The Commission, having been otherwise sufficiently advised, HEREBY ORDERS that:

1. The negotiated agreement between BellSouth and New Edge is approved.
2. New Edge shall file a tariff for local service prior to providing local service giving 30 days' notice to the Commission and shall comply with all Commission regulations and orders as directed.

Done at Frankfort, Kentucky, this 14th day of December, 1999.

By the Commission

ATTEST:

  
Executive Director

**AGREEMENT**  
by and between  
**BellSouth Telecommunications, Inc.**  
And  
**New Edge Network, Inc. d/b/a New Edge Networks**

This Agreement is entered into by and between New Edge Network, Inc. d/b/a New Edge Networks ("New Edge Networks ") a Delaware corporation on behalf of itself, and BellSouth Telecommunications, Inc., ("BellSouth"), a Georgia corporation, having an office at 675 W. Peachtree Street, Atlanta, Georgia, 30375, on behalf of itself and its successors and assigns and shall become effective as of the date signed by both New Edge Networks and BellSouth.

**WHEREAS**, the Telecommunications Act of 1996 (the "Act") was signed into law on February 8, 1996; and

**WHEREAS**, section 252(i) of the Act requires BellSouth to make available any interconnection, service, or network element provided under an agreement approved by the appropriate state regulatory body to any other requesting telecommunications carrier upon the same terms and conditions as those provided in the agreement in its entirety; and

**WHEREAS**, New Edge Networks has requested that BellSouth make available the interconnection agreement in its entirety executed between BellSouth and DIECA Communications, Inc. d/b/a Covad Communications Company ("DIECA") dated December 1, 1998 for the state(s) of Alabama, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina and Tennessee.

**NOW, THEREFORE**, in consideration of the promises and mutual covenants of this Agreement, New Edge Networks and BellSouth hereby agree as follows:

1. New Edge Networks and BellSouth shall adopt in its entirety the DIECA Interconnection Agreement dated December 1, 1998 and any and all amendments to said agreement executed and approved by the appropriate state regulatory commission as of the date of the execution of this Agreement. The DIECA Interconnection Agreement and all amendments are attached hereto as Exhibit 1 and incorporated herein by this reference. The adoption of this agreement with amendment(s) consists of the following:

## ORDERING AND PROVISIONING

### 1. Quality of Ordering and Provisioning

1.1 BellSouth shall provide ordering and provisioning services to DIECA that are equal to the ordering and provisioning services BellSouth provides to itself or any other CLEC, where technically feasible. Detailed guidelines for ordering and provisioning are set forth in BellSouth's Local Interconnection and Facility Based Ordering Guide and Resale Ordering Guide, as appropriate, and as they are amended from time to time during this Agreement.

1.2 BellSouth will perform provisioning services during the following normal hours of operation:

Monday - Friday - 8:00AM - 5:00PM (excluding holidays)  
(Resale/UNE non coordinated, coordinated orders and order coordinated - Time Specific)

Saturday - 8:00 AM - 5:00 PM (excluding holidays)  
(Resale/UNE non coordinated orders)

All other DIECA requests for provisioning and installation services are considered outside of the normal hours of operation and may be performed subject to the application of extra-ordinary billing charges.

### 2. Access to Operational Support Systems

2.1 BellSouth shall provide DIECA access to several operations support systems. Access to these support systems is available through a variety of means, including electronic interfaces. BellSouth also provides the option of placing orders manually (e.g., via facsimile) through the Local Carrier Service Center. The operations support systems available are:

2.2 Pre-Ordering. BellSouth provides electronic access to the following pre-ordering functions: service address validation, telephone number selection, service and feature availability, due date information, and upon Commission approval of confidentiality protections, to customer record information. Access is provided through the Local Exchange Navigation System (LENS). Customer record information includes any and all customer specific information, including but not limited to, customer specific information in CRIS and RSAG. DIECA agrees not to view, copy, or otherwise obtain access to the customer record information of any customer without that customer's permission and further agrees that

DIECA will obtain access to customer record information only in strict compliance with applicable laws, rules, or regulations of the State in which the service is provided.

- 2.3 Service Ordering and Provisioning. BellSouth provides electronic options for the exchange of ordering and provisioning information. BellSouth provides an Electronic Data Interchange (EDI) arrangement for resale requests and certain unbundled network elements. As an alternative to the EDI arrangement, BellSouth also provides through LENS an ordering and provisioning capability that is integrated with the LENS pre-ordering capability.
- 2.4 Service Trouble Reporting and Repair. Service trouble reporting and repair allows DIECA to report and monitor service troubles and obtain repair services. BellSouth shall offer DIECA service trouble reporting in a non-discriminatory manner that provides DIECA the equivalent ability to report and monitor service troubles that BellSouth provides to itself. BellSouth also provides DIECA an estimated time to repair, an appointment time or a commitment time, as appropriate, on trouble reports. BellSouth provides two options for electronic trouble reporting. For exchange services, BellSouth offers DIECA access to the Trouble Analysis Facilitation Interface (TAFI). For individually designed services, BellSouth provides electronic trouble reporting through an electronic communications gateway. If the CLEC requests BellSouth to repair a trouble after normal working hours, the CLEC will be billed the appropriate overtime charges associated with this request pursuant to BellSouth's tariffs.
- 2.5 Migration of DIECA to New BellSouth Software Releases. BellSouth will issue new software releases for its electronic interfaces as needed to meet regulatory and standard requirements and to improve operations. DIECA will migrate with BellSouth to new electronic interface system releases. BellSouth will continue to support DIECA on old releases for 60 days after the date of the release. If DIECA is unable or does not want to migrate within that time frame, DIECA will have the option of paying a fee to maintain the old platform. BellSouth will issue documents to DIECA within sufficient notice to allow DIECA to make the necessary changes to their systems and operations and allow DIECA to migrate with BellSouth.
- 2.6 Rates. All costs incurred by BellSouth to develop and implement operational interfaces shall be recovered from the carriers who utilize the services. Charge for use of Operational Support Systems shall be as set forth in Attachment 11 of this agreement.
3. Miscellaneous Ordering and Provisioning Guidelines

COMMONWEALTH OF KENTUCKY

**RECEIVED**

BEFORE THE PUBLIC SERVICE COMMISSION

FEB 14 2000

In the Matter of:

GENERAL COUNSEL

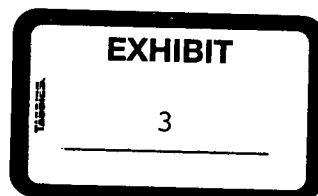
APPROVAL OF THE )  
 INTERCONNECTION AGREEMENT )  
 NEGOTIATED BY BELLSOUTH )  
 TELECOMMUNICATIONS, INC. AND ) CASE NO. 99-509  
 CPU SOLUTIONS CORP. PURSUANT )  
 TO SECTIONS 251 AND 252 OF THE )  
 TELECOMMUNICATIONS ACT OF 1996 )  
 )

O R D E R

On December 20, 1999, BellSouth Telecommunications, Inc. ("BellSouth") and CPU Solutions Corp. ("CPU") submitted to the Commission their negotiated agreement for interconnection of their networks, the unbundling of specific network elements, and the resale of BellSouth's services. The agreement was negotiated pursuant to the Telecommunications Act of 1996 ("1996 Act"), 47 U.S.C. Sections 251 and 252. Section 252(e) of the 1996 Act requires the parties to an interconnection agreement adopted by negotiation to submit the agreement for approval to the Commission.

The Commission has reviewed the agreement and finds that no portion of the agreement discriminates against a telecommunications carrier not a party to the agreement. The Commission also finds that the implementation of this agreement is consistent with the public interest, convenience, and necessity.

CPU must comply with all relevant Commission mandates for serving in this Commonwealth.



The Commission, having been otherwise sufficiently advised, HEREBY ORDERS  
that:

1. The negotiated agreement between BellSouth and CPU is approved.
2. CPU shall file a tariff for local service prior to providing local service giving 30 days' notice to the Commission and shall comply with all Commission regulations and orders as directed.

Done at Frankfort, Kentucky, this 11th day of February, 2000.

By the Commission

ATTEST:

  
Executive Director



**AGREEMENT  
BETWEEN  
BELLSOUTH TELECOMMUNICATIONS INC.  
AND  
CPU SOLUTIONS CORP.**

## AGREEMENT

**THIS AGREEMENT** is made by and between BellSouth Telecommunications, Inc., (“BellSouth”), a Georgia corporation, and CPU Solutions Corp., a Florida corporation, and shall be deemed effective as of November 1999. This Agreement may refer to either BellSouth or CPU Solutions Corp. or both as a “Party” or “Parties.”

### WITNESSETH

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, CPU Solutions Corp. is an alternative local exchange telecommunications company (“CLEC”) authorized to provide telecommunications services in the states of Alabama, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina, and Tennessee; and

WHEREAS, the Parties wish to resell BellSouth’s telecommunications services and/or interconnect their facilities, purchase network elements and other services, and exchange traffic specifically for the purposes of fulfilling their obligations pursuant to sections 251 and 252 of the Telecommunications Act of 1996 (“the Act”).

**NOW THEREFORE**, in consideration of the mutual agreements contained herein, BellSouth and CPU Solutions Corp. agree as follows:

1. **Purpose**

The Parties agree that the rates, terms and conditions contained within this Agreement, including all Attachments, comply and conform with each Parties’ obligations under sections 251 and 252 of the Act. The resale, access and interconnection obligations contained herein enable CPU Solutions Corp. to provide competing telephone exchange service to residential and business subscribers within the territory of BellSouth. The Parties agree that CPU Solutions Corp. will not be considered to have offered telecommunications services to the public in any state within BellSouth’s region until such time as it has ordered services for resale or interconnection facilities for the purposes of providing business and/or residential local exchange service to customers.

## ORDERING AND PROVISIONING

### 1. Quality of Ordering and Provisioning

All the negotiated terms and conditions set forth in this Attachment pertain to ordering and provisioning.

1.1 BellSouth shall provide ordering and provisioning services to CPU Solutions Corp. that are equal to the ordering and provisioning services BellSouth provides to itself or any other CLEC, where technically feasible. Detailed guidelines for ordering and provisioning are set forth in BellSouth's Local Interconnection and Facility Based Ordering Guide and Resale Ordering Guide, as appropriate, and as they are amended from time to time during this Agreement.

1.2 BellSouth will perform provisioning services during the following normal hours of operation:

Monday - Friday - 8:00AM - 5:00PM location time (excluding holidays)  
(Resale/Network Element non coordinated,  
coordinated orders and order coordinated - Time  
Specific)

Saturday - 8:00 AM - 5:00 PM location time (excluding holidays)  
(Resale/Network Element non coordinated orders)

Times are either Eastern or Central time based on the location of the work being performed.

All other CPU Solutions Corp. requests for provisioning and installation services are considered outside of the normal hours of operation and may be performed subject to the application of overtime billing charges.

### 2. Access to Operational Support Systems

2.1 BellSouth shall provide CPU Solutions Corp. access to several operations support systems. Access to these support systems is available through a variety of means, including electronic interfaces. BellSouth also provides the option of placing orders manually (e.g., via facsimile) through the Local Carrier Service Center. The operations support systems available are:

2.2 Pre-Ordering. BellSouth provides electronic access to the following pre-ordering functions: service address validation, telephone number selection, service and feature availability, due date information, and upon Commission approval of confidentiality protections, to customer record information. Access is provided

through the Local Exchange Navigation System (LENS) and the Telecommunications Access Gateway (TAG). Customer record information includes any and all customer specific information, including but not limited to, customer specific information in CRIS and RSAG. CPU Solutions Corp. agrees not to view, copy, or otherwise obtain access to the customer record information of any customer without that customer's permission and further agrees that CPU Solutions Corp. will obtain access to customer record information only in strict compliance with applicable laws, rules, or regulations of the State in which the service is provided.

- 2.3 Service Ordering and Provisioning. BellSouth provides electronic options for the exchange of ordering and provisioning information. BellSouth provides an Electronic Data Interchange (EDI) arrangement for resale requests and certain network elements and other services. As an alternative to the EDI arrangement, BellSouth also provides through LENS and TAG an ordering and provisioning capability that is integrated with the LENS and TAG pre-ordering capability.
- 2.4 Service Trouble Reporting and Repair. Service trouble reporting and repair allows CPU Solutions Corp. to report and monitor service troubles and obtain repair services. BellSouth shall offer CPU Solutions Corp. service trouble reporting in a non-discriminatory manner that provides CPU Solutions Corp. the equivalent ability to report and monitor service troubles that BellSouth provides to itself. BellSouth also provides CPU Solutions Corp. an estimated time to repair, an appointment time or a commitment time, as appropriate, on trouble reports. BellSouth provides two options for electronic trouble reporting. For exchange services, BellSouth offers CPU Solutions Corp. access to the Trouble Analysis Facilitation Interface (TAFI). For individually designed services, BellSouth provides electronic trouble reporting through an electronic communications gateway. If the CLEC requests BellSouth to repair a trouble after normal working hours, the CLEC will be billed the appropriate overtime charges associated with this request pursuant to BellSouth's tariffs.
- 2.5 Migration of CPU Solutions Corp. to New BellSouth Software Releases. BellSouth will issue new software releases for its electronic interfaces as needed to improve operations and meet standards and regulatory requirements. When a new release is implemented, BellSouth will continue to support both the new release (N) and the prior release (N-1). When BellSouth makes the next release (N+1), BellSouth will eliminate support for the (N-1) release and support the two newest releases (N and N+1). Thus, BellSouth will always support the two most current releases. BellSouth will issue documents to CPU Solutions Corp. with sufficient notice to allow CPU Solutions Corp. to make the necessary changes to their systems and operations to migrate to the newest release in a timely fashion.
- 2.6 Rates. All costs incurred by BellSouth to develop and implement operational interfaces shall be recovered from the carriers who utilize the services. Charge for

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JUN 03 1999

GENERAL COUNSEL

COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

APPROVAL OF THE	)	
INTERCONNECTION AGREEMENT	)	
NEGOTIATED BY BELL SOUTH	)	
TELECOMMUNICATIONS, INC. AND	)	CASE NO. 99-126
FRONTIER LOCAL SERVICE, INC.	)	
PURSUANT TO SECTIONS 251 AND	)	
252 OF THE TELECOMMUNICATIONS	)	
ACT OF 1996	)	

O R D E R

On April 1, 1999, BellSouth Telecommunications, Inc. ("BellSouth") and Frontier Local Service, Inc. ("Frontier") submitted to the Commission their negotiated agreement for interconnection of their networks, the unbundling of specific network elements, and the resale of BellSouth's services. The agreement was negotiated pursuant to the Telecommunications Act of 1996 ("1996 Act"), 47 U.S.C. Sections 251 and 252. Section 252(e) of the 1996 Act requires the parties to an interconnection agreement adopted by negotiation to submit the agreement for approval to the Commission.

The Commission has reviewed the agreement and finds that no portion of the agreement discriminates against a telecommunications carrier not a party to the agreement. The Commission also finds that the implementation of this agreement is consistent with the public interest, convenience, and necessity.

Frontier must comply with all relevant Commission mandates for serving in this Commonwealth.

EXHIBIT

4

TABLES

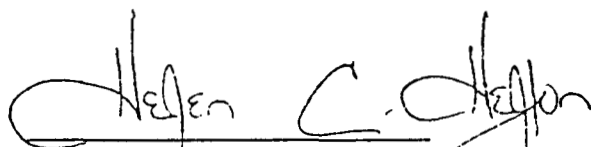
The Commission, having been otherwise sufficiently advised, HEREBY ORDERS  
that:

1. The negotiated agreement between BellSouth and Frontier is approved.
2. Frontier shall file a tariff for local service prior to providing local service giving 30 days' notice to the Commission and shall comply with all Commission regulations and orders as directed.

Done at Frankfort, Kentucky, this 1st day of June, 1999.

By the Commission

ATTEST:

  
Executive Director

## AGREEMENT

**THIS AGREEMENT** is made by and between BellSouth Telecommunications, Inc., ("BellSouth"), a Georgia corporation, and Frontier Local Services, Inc., a Michigan corporation, and shall be deemed effective as of \_\_\_\_\_. This agreement may refer to either BellSouth or Frontier Local Services, Inc. or both as a "Party" or "Parties."

### WITNESSETH

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, Frontier Local Services, Inc. is an alternative local exchange telecommunications company ("CLEC") authorized to provide telecommunications services in the states of Alabama, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina, and Tennessee; and

WHEREAS, the Parties wish to resell BellSouth's telecommunications services and/or interconnect their facilities, purchase unbundled elements, and exchange traffic specifically for the purposes of fulfilling their obligations pursuant to sections 251 and 252 of the Telecommunications Act of 1996 ("the Act").

**NOW THEREFORE**, in consideration of the mutual agreements contained herein, BellSouth and Frontier Local Service, Inc. agree as follows:

**The terms and conditions contained within this Part A & Part B were negotiated as a whole and each term and condition within this Part A & Part B is interdependent upon the other terms and conditions.**

1. Purpose

The Parties agree that the rates, terms and conditions contained within this Agreement, including all Attachments, comply and conform with each Parties' obligations under sections 251 and 252 of the Act. The resale, access and interconnection obligations contained herein enable Frontier Local Service, Inc. to provide competing telephone exchange service to residential and business subscribers within the territory of BellSouth. The Parties agree that Frontier Local Service, Inc. will not be considered to have offered telecommunications services to the public in any state within

02/26/99

## ORDERING AND PROVISIONING

### 1. Quality of Ordering and Provisioning

1.1 BellSouth shall provide ordering and provisioning services to Frontier Local Service, Inc. that are equal to the ordering and provisioning services BellSouth provides to itself or any other CLEC, where technically feasible. Detailed guidelines for ordering and provisioning are set forth in BellSouth's Local Interconnection and Facility Based Ordering Guide and Resale Ordering Guide, as appropriate, and as they are amended from time to time during this Agreement.

1.2 BellSouth will perform provisioning services during the following normal hours of operation:

Monday - Friday - 8:00AM - 5:00PM (excluding holidays)  
(Resale/UNE non coordinated, coordinated orders and order coordinated - Time Specific)

Saturday - 8:00 AM - 5:00 PM (excluding holidays)  
(Resale/UNE non coordinated orders)

All other Frontier Local Service, Inc. requests for provisioning and installation services are considered outside of the normal hours of operation and may be performed subject to the application of extraordinary billing charges.

### 2. Access to Operational Support Systems

2.1 BellSouth shall provide Frontier Local Service, Inc. access to several operations support systems. Access to these support systems is available through a variety of means, including electronic interfaces. BellSouth also provides the option of placing orders manually (e.g., via facsimile) through the Local Carrier Service Center. The operations support systems available are:

2.2 Pre-Ordering. BellSouth provides electronic access to the following pre-ordering functions: service address validation, telephone number selection, service and feature availability, due date information, and upon Commission approval of confidentiality protections, to customer record information. Access is provided through the Local Exchange Navigation System (LENS) and the Telecommunications Access Gateway (TAG). Customer record information includes any and all customer specific information, including but not limited to, customer specific information in



CRIS and RSAG. Frontier Local Service, Inc. agrees not to view, copy, or otherwise obtain access to the customer record information of any customer without that customer's permission and further agrees that Frontier Local Service, Inc. will obtain access to customer record information only in strict compliance with applicable laws, rules, or regulations of the State in which the service is provided.

2.3 Service Ordering and Provisioning. BellSouth provides electronic options for the exchange of ordering and provisioning information. BellSouth provides an Electronic Data Interchange (EDI) arrangement for resale requests and certain unbundled network elements. As an alternative to the EDI arrangement, BellSouth also provides through LENS and TAG an ordering and provisioning capability that is integrated with the LENS and TAG pre-ordering capability.

2.4 Service Trouble Reporting and Repair. Service trouble reporting and repair allows Frontier Local Service, Inc. to report and monitor service troubles and obtain repair services. BellSouth shall offer Frontier Local Service, Inc. service trouble reporting in a non-discriminatory manner that provides Frontier Local Service, Inc. the equivalent ability to report and monitor service troubles that BellSouth provides to itself. BellSouth also provides Frontier Local Service, Inc. an estimated time to repair, an appointment time or a commitment time, as appropriate, on trouble reports. BellSouth provides two options for electronic trouble reporting. For exchange services, BellSouth offers Frontier Local Service, Inc. access to the Trouble Analysis Facilitation Interface (TAFI). For individually designed services, BellSouth provides electronic trouble reporting through an electronic communications gateway. If the CLEC requests BellSouth to repair a trouble after normal working hours, the CLEC will be billed the appropriate overtime charges associated with this request pursuant to BellSouth's tariffs.

2.5 Migration of Frontier Local Service, Inc. to New BellSouth Software Releases. BellSouth will issue new software releases for its electronic interfaces as needed to improve operations and meet standards and regulatory requirements. When a new release is implemented, BellSouth will continue to support both the new release (N) and the prior release (N-1). When BellSouth makes the next release (N+1), BellSouth will eliminate support for the (N-1) release and support the two newest releases (N and N+1). Thus, BellSouth will always support the two most current releases. BellSouth will issue documents to Frontier Local Service, Inc. with sufficient notice to allow Frontier Local Service, Inc. to make the necessary changes to their systems and operations to migrate to the newest release in a timely fashion.