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Covad explains that all xDSL signals degrade other xDSL signals, but it is the degree of degradation that is at issue. According to Covad, SWBT's proposal for indemnification would always place liability on the "non-standard" service, even in a situation in which the carrier providing the "non-standard" service used prudent deployment rules, and the carrier providing the "standard" service did not use prudent deployment rules.[59]

SWBT's position is that CLECs should be responsible for any harm caused by the use of nonstandard technologies. On April 15, 1999, SWBT introduced a revised version of its proposed contract language regarding indemnification:

> Each Party agrees that should it cause any non-standard DSL technologies described in subsections II.B.1 and II.B.2 above to be deployed or used in connection with or on SWBT facilities, that Party ("the Indemnifying Party") will assume full and sole responsibility for any damage, service interruption or other telecommunications service degradation effects and will indemnify the other Party ("the Indemnified Party") for any damages to the Indemnified Party's facilities, as well as any other claims for damages, including but not limited to direct, indirect or consequential damages made upon the Indemnified Party by any provider of telecommunications services or telecommunications user (other than any claim for damages or losses alleged by an end-user of the Indemnified Party for which the Indemnified Party shall have sole responsibility and liability), when such arises out of, or results from, the use of such non-standard DSL technologies by the Indemnifying Party. Further, the Indemnifying Party agrees that it will undertake to defend the Indemnified Party against and assume payment for all costs or judgments arising out of any such claims made against the Indemnified Party.[60]

Award

The Arbitrators note that this issue has been recently addressed by this Commission in its adoption of the T2A. T2A Attachment 25, Sections 3.4 and 3.5, contain the liability and indemnification language shown below. In DPL Issue No. 2(b), the Arbitrators distinguished between technologies that are presumed acceptable for deployment and those that are considered non-standard. The Arbitrators find that the T2A language reasonably reflects the balance of liability required for the provision of non-standard xDSL services (*i.e.*, those not defined as

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[59] DPL at 7 (May 28, 1999).

"presumed acceptable for deployment"). Therefore, the following language should be incorporated into the resulting Interconnection Agreements:

> Each Party, whether a CLEC or SWBT, agrees that should it cause any non-standard xDSL technologies to be deployed or used in connection with or on SWBT facilities, that Party ("Indemnifying Party") will pay all costs associated with any damage, service interruption or other telecommunications service degradation, or damage to the other Party's ("Indemnitee") facilities.
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> CLEC's use of any SWBT network element, or of its own equipment or facilities in conjunction with any SWBT network element, will not materially interfere with or impair service over any facilities of SWBT, its affiliated companies or connecting and concurring carriers involved in SWBT services, cause damage to SWBT's plant, impair the privacy of any communications carried over SWBT's facilities or create hazards to employees or the public. Upon reasonable written notice and after a reasonable opportunity to cure, SWBT may discontinue or refuse service if CLEC violates this provision, provided that such termination of service will be limited to CLEC's use of the element(s) causing the violation. SWBT will not disconnect the elements causing the violation if, after receipt of written notice and opportunity to cure, the CLEC demonstrates that their use of the network element is not the cause of the network harm. If SWBT does not believe the CLEC has made the sufficient showing of harm, or if CLEC contests the basis for the disconnection, either Party must first submit the matter to dispute resolution. Any claims of network harm by SWBT must be supported with specific and verifiable supporting information.
>
> Indemnification
>
> Covered Claim: Indemnifying Party will indemnify, defend and hold harmless Indemnitee from any claim for damages, including but not limited to direct, indirect or consequential damages, made against Indemnitee by any telecommunications service provider or telecommunications user (other than claims for damages or other losses made by an end-user of Indemnitee for which Indemnitee has sole responsibility and liability), arising from, the use of such non-standard xDSL technologies by the Indemnifying Party.
>
> Indemnifying Party is permitted to fully control the defense or settlement of any Covered Claim, including the selection of defense counsel. Notwithstanding the foregoing, Indemnifying Party will consult with Indemnitee on the selection of defense counsel and consider any applicable conflicts of interest. Indemnifying Party is required to assume all costs of the defense and any damages resulting from the use of any non-standard xDSL technologies in connection with or on

[60] SWBT Exhibit No. 22, SWBT Proposal with Respect to the Application of Specific Indemnity Language in SWBT's Proposed Language (April 15, 1999); DPL at 16 (May 28, 1999).

Indemnitee's facilities and Indemnitee will bear no financial or legal responsibility whatsoever arising from such claims.

Indemnitee agrees to fully cooperate with the defense of any Covered Claim. Indemnitee will provide written notice to Indemnifying Party of any covered claim at the address for notice assigned herein within ten days of receipt, and, in the case of receipt of service of process, will deliver such process to Indemnifying Party not later than ten business days prior to the date for response to the process. Indemnitee will provide to Indemnifying Party reasonable access to or copies of any relevant physical and electronic documents or records related to the deployment of non-standard xDSL technologies used by Indemnitee in the area affected by the claim, all other documents or records determined to be discoverable, and all other relevant documents or records that defense counsel may reasonably request in preparation and defense of the claim. Indemnitee will further cooperate with Indemnifying Party's investigation and defense of the claim by responding to reasonable requests to make its employees with knowledge relevant to the claim available as witnesses for preparation and participation in discovery and trial during regular weekday business hours. Indemnitee will promptly notify Indemnifying Party of any settlement communications, offers or proposals received from claimants.

Indemnitee agrees that Indemnifying Party will have no indemnity obligation, and Indemnitee will reimburse Indemnifying Party's defense costs, in any case in which Indemnifying Party's technology is determined not to be the cause of any Indemnitee liability.

Claims Not Covered: No Party hereunder agrees to indemnify or defend any other Party against claims based on gross negligence or intentional misconduct.

3. Can SWBT be permitted to limit xDSL capable loops to the provision of ADSL?

Parties' Positions

See DPL Issue No. 2.

Award

The Arbitrators agree with Petitioners that the use of xDSL loops should not be limited to the provision of ADSL service. In its *Advanced Services Order* the FCC concluded, "any loop technology that complies with existing industry standards is presumed acceptable for

deployment."[61] Further, the FCC concluded that "a LEC may not deny a carrier's request to deploy technology that is presumed acceptable for deployment, unless the LEC demonstrates to the state commission that deployment of the particular technology within the LEC network will significantly degrade the performance of other advanced services or traditional voice band services."[62] In addition, under the T2A, CLECs may provision non standard xDSL services as well, subject to certain conditions.

In its recent *UNE Remand Order*, the FCC affirmed its earlier decisions regarding the provision of loops capable of providing high speed data services.

> Unbundling basic loops, with their full capacity preserved, allows competitors to provide xDSL services. This in turn will foster investment, innovation, and competition in the local telecommunications marketplace. Without access to these loops, competitors would be at a significant disadvantage, and the incumbent LEC, rather than the marketplace, would dictate the pace of the deployment of advanced services.[63]

The FCC further clarified that the ILEC is required to provide "loops with all their capabilities intact, that is, to provide conditioned loops, *wherever* a competitor requests, even if the incumbent is not itself offering xDSL to the end-user customer on that loop" and the ILEC "cannot refuse a competitive LEC's request for conditioned loops on the grounds that they themselves are not planning to offer xDSL to that customer."[64]

The Arbitrators perceive the current level of interest in xDSL technologies to be very beneficial to customers desiring data connections using existing copper facilities. Evidence in this case points to a proliferation of technologies that appear suited to the needs of individual customers. The competitive marketplace is poised to offer these new services, and should not be stifled in any way. Appropriate industry standards discussed elsewhere in this Award can

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[61] *Advanced Services Order* at ¶ 67.

[62] *Id.* at ¶ 68.

[63] *UNE Remand Order* at ¶ 190.

[64] *Id.* at ¶ 191.

provide safeguards to protect the underlying network and other carriers' systems operating in the same cable complement or binder group. For all these reasons and the reasons stated under DPL Issue No. 2, the Arbitrators find that SWBT is not in any way permitted to limit xDSL capable loops to the provision of ADSL. *See* DPL Issue No. 2.

4(a). What is the physical makeup of a DSL capable loop that SWBT is required to provide?

4(b). Is SWBT required to provide a copper loop without interfering devices (load coils, bridge taps, and repeaters)?

Parties' Positions

Rhythms maintains that SWBT should be ordered to provide an xDSL loop that is capable of providing all xDSL technologies depending on reasonable limitations established within the contract language. (For example, requiring the CLEC to comply with national industry standards as articulated in ANSI or some other forum document.)[65] In addition, Rhythms argues that it should be allowed to change the type of xDSL technology used on the loop as its customer needs change. Further, Rhythms urges that SWBT not be allowed to place artificial limitations on the length of xDSL-capable loops. Rhythms also seeks the ability to have SWBT perform a "line and station transfer" in the event that a potential Rhythms customer is served on a loop that contains fiber optic facilities, in order to allow another copper pair, if available, to extend directly to the customer. Rhythms also argues that the loop should be provisioned to meet basic metallic and electrical characteristics such as electrical conductivity and capacitive and resistance balance. Finally, Rhythms want to be able to specify what type of conditioning or de-conditioning should be performed on the loop to allow the desired xDSL service to properly operate on the loop.[66]

Covad agrees with Rhythms' rationale, adding that their interconnection agreement with Pacific Bell, a SWBT affiliate, contains essentially the same definition of a xDSL loop Covad is

[65] ACI Exhibit 3, Direct Testimony of Rand Kennedy at 10, 16 (Feb. 19, 1999); ACI Exhibit 8, Rebuttal Testimony of Rand Kennedy at 8-9 (April 8, 1999).

[66] ACI Ex. 3, Direct Testimony of Rand Kennedy at 15 (Feb. 19, 1999); ACI Post-Hearing Brief at 16-17.

proposing in this proceeding.[67] Covad states that it can provide ADSL, SDSL or IDSL services over a "clean" copper loop. Covad explains that in order to provide IDSL over some longer loops, the loop will need to have the same kind of repeaters SWBT uses for ISDN.[68]

SWBT contends that if loops without excessive bridge tap, load coils, or repeaters are available, those loops will be offered to the requesting CLEC, consistent with spectrum management standards regarding interference.[69] Further, if loops exist with the presence of load coils, excessive bridge tap, or repeaters, SWBT will recommend the conditioning of the loop to remove those items. SWBT asserts that it is at the CLEC's sole option to order the removal of this equipment at the cost-based rates listed in SWBT's contract.[70]

Award

The Arbitrators find that SWBT must provide a "clean" copper loop upon CLEC request. The Arbitrators define "clean" in this context to mean a loop without excessive[71] bridged tap, load coils, or repeaters. Most of the xDSL technologies addressed in this proceeding depend on the use of a "clean" copper loop. SWBT utilizes "clean" copper loops for its own ADSL services, and must provide nondiscriminatory access to technically identical loops, if available, for use by CLECs. In the event that a "clean" loop is not available, the CLEC must be given the opportunity to evaluate the parameters of the xDSL service to be provided, and determine whether and what type of conditioning must be requested and performed. The Arbitrators find that all conditioning shall be performed at the request of the CLEC. In addition, the loop should be provisioned to meet basic metallic and electrical characteristics such as electrical conductivity and capacitive and resistance balance.

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[67] Covad Exhibit 2, Direct Testimony of Druv Khanna at 26 (Feb. 19, 1999).

[68] Covad Exhibit 4, Direct Testimony of Anjali Joshi at 5-6 (Feb. 19, 1999).

[69] SWBT Exhibit 7, Rebuttal Testimony of William C. Deere at 14-16 (April 8, 1999).

[70] SWBT Exhibit 8, Rebuttal Testimony of Jerry Fuess at 7-8 (April 8, 1999).

[71] ACI witness Rand Kennedy generally characterized excessive bridged tap as that in excess of 2,500 feet in length, Tr. at 1300 (June 4, 1999).

The Arbitrators' decision on these issues is consistent with the *UNE Remand Order*, which concluded that:

> ... permitting incumbents to deny access to basic loops stripped of accreted devices, *i.e.*, "conditioned" loops, would preclude the ability of competitors to offer high-speed data services. Such unencumbered copper wire is necessary for requesting carriers to provide most types of xDSL service. While some "flavors" of xDSL can be provided over loops with a limited number of impediments, as a general rule the quality of such service – particularly the speed – is significantly diminished, compared to the service provided over unencumbered wires. ... Without access to these loops, competitors would be at a significant disadvantage, and the incumbent LEC, rather than the marketplace, would dictate the pace of the deployment of advanced services.[72]

The issue of "line and station transfers" raised by Rhythms includes several sub-issues, *e.g.*, subloop unbundling, packet switching unbundling (DSLAMs), collocation of DSLAMs in RTs. When a CLEC requests an xDSL loop to serve a particular customer, and that customer resides in an area that is served by fiber via a RT, the Arbitrators believe that SWBT should not deny the request out of hand, but should look at other options to provide the service. One solution may be that there are copper pairs that can be made available through a line and station transfer as described by Rhythms. Another option may be to allow the CLEC to collocate DSLAM equipment in the remote location. This copper/fiber facilities issue is addressed under DPL Issue No. 6. However, at a minimum, the solutions that are available to SWBT's retail advanced services operations, or to its separate subsidiary, must also be made available to CLECs. In order to monitor this issue, the Arbitrators find that SWBT's denial of CLEC orders due to loop non-availability, discussed in response to DPL Issue No. 13, should also apply to denials resulting from fiber/DLC/DAML facility issues.

The Arbitrators address other concerns expressed by the Parties on these DPL issues in other parts of this Award. Rhythms' concerns regarding artificial limitations on loop length is addressed in DPL Issue No. 1. SWBT's spectrum management position is discussed further in Section III of this Award.

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[72] *UNE Remand Order* at ¶ 190 (footnotes omitted).

The Arbitrators find that the following language, adapted from T2A Attachment 25, should be included in the Parties' resulting Interconnection Agreements:

> SWBT will provide a loop capable of supporting a technology presumed acceptable for deployment or non-standard xDSL technology as defined in this [Award].
>
> SWBT shall not deny a CLEC's request to deploy any loop technology that is presumed acceptable for deployment, or one that is permitted during the twelve-month trial period, unless it has demonstrated to the Commission that the CLEC's deployment of the specific loop technology will significantly degrade the performance of other advanced services or traditional voice band services. For the purpose of this section, "significantly degrade" means to noticeably impair a service from a user's perspective.
>
> In the event the CLEC wishes to introduce a technology that has been approved by another state commission or the FCC, or successfully deployed elsewhere, the CLEC will provide documentation describing that action to SWBT and the Commission before or at the time of their request to deploy that technology in Texas. The documentation should include the date of approval or deployment, any limitations included in its deployment, and a sworn attestation that the deployment did not significantly degrade the performance of other services. The terms of this paragraph do not apply during the twelve-month trial period.

5. Can DSL loops retain repeaters at the CLEC's option?

Parties' Positions

Rhythms states that CLECs should be able to retain repeaters. Rhythms asserts that repeaters will not cause technical interference with other loops. Rhythms contends that if SWBT unnecessarily forces the removal of repeaters, the result will be unwarranted delay and expense. Rhythms views the CLEC option of retaining repeaters as a business decision relating to quality of service that is appropriate for the CLEC and the customer.[73]

Covad agrees with Rhythms' rationale, and argues that repeaters do not interfere with the provisioning of IDSL service.[74] Covad explains that the IDSL technology can provide service to customers beyond the normal ADSL distance limit of 18,000 feet. According to Covad witness Mr. Khanna, Covad has provided service to customers in California on loops in excess of 40,000

[73] ACI Exhibit 1, Direct Testimony of Eric H. Geis at 17-20, 38-39 (Feb. 19, 1999); ACI Exhibit 3, Direct Testimony of Rand Kennedy at 13-14 (Feb. 19, 1999).

[74] Covad Exhibit 4, Direct Testimony of Anjali Joshi at 5-6 (Feb. 19, 1999).

feet from the central office. Covad explains that in order to achieve those distances, repeaters must be placed on the cable pairs.[75]

SWBT asserts that it offers a 2-wire BRI-capable loop, which has digital repeaters or regenerators, as a standard product. The 2-wire BRI-capable loop would allow for provisioning IDSL. Additionally, SWBT offers language for the CLEC that allows for the ordering of an xDSL loop with repeater(s). SWBT does not contest this issue, except to note that if a loop contains repeaters, removal is at the option of CLEC, and that some repeaters may not be compatible with the CLEC's intended use.[76]

Award

The Arbitrators find that xDSL loops may retain repeaters at the discretion of the CLEC. The Arbitrators perceive no disagreement among the Parties on this issue. To the extent that a CLEC wishes to retain an existing repeater for the provision of IDSL or other technologies, it should be allowed to do so. The Arbitrators find that any conditioning of xDSL loops is at the sole discretion of the CLEC.

6. If a copper loop is not available from the customer premises to the SWBT central office, does Rhythms have the right to place appropriate equipment such as DSLAMs at the fiber/copper interface point in SWBT's network?

Parties' Positions

Rhythms posits that all carriers must have equal accessibility to the copper portion of loops, whether the copper portion ends at the MDF or a location in the field. Rhythms asserts that it must have the ability to place its xDSL equipment at the end of the copper section of the customer's loop. This will allow Rhythms to take the traffic and convert it so that it can ride the fiber DLC system back to the central office. Rhythms witness Mr. Kennedy contends that the DSLAM should be placed at the end of the copper facility, whether that is at the central office, or

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[75] Tr. at 1395-1396 (June 4, 1999).

[76] DPL at 20 (May 28, 1999).

at a remote interface. He notes that the placement of a DSLAM at remote location is technically feasible.[77]

Covad does not provide evidence on this specific issue.

SWBT notes that the Texas Collocation Tariff permits the collocation of transmission equipment in huts, CEVS (controlled environmental vaults), and Remote Terminals (RTs), where space is available. SWBT states that xDSL loops out of these RT sites may be available via the bona fide request (BFR) process, depending on the circumstances in the RT. SWBT warns that a dual-fed RT with both copper and fiber may have technical issues that would limit the deployment of xDSL from the RT. For example, SWBT continues, if two xDSL signals travel down a distribution cable, one introduced by CLEC A from a collocation site in the central office, and the second from CLEC B at the RT site, there may be crosstalk and interference issues from these adjacent services since their power levels in the distribution cable are different. Since more carriers will be able to access the loop from the central office versus the RT, xDSL sub-loops would not be available from that particular RT. SWBT argues that spectrum management becomes exponentially more complicated, since the signals must be tracked and inventoried, and the signals' point of introduction into the loop must be tracked and accounted for.[78]

Award

The Arbitrators find that delaying the deployment of remote DSLAMs would hinder competition and the deployment of advanced services. The FCC found in its *Advanced Services Order* that "a LEC may not deny a carrier's request to deploy technology that is presumed acceptable for deployment, unless the LEC demonstrates to the state commission that deployment of the particular technology within the LEC network will significantly degrade the

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[77] ACI Exhibit 1, Direct Testimony of Eric H. Geis at 19-20 (Feb. 19, 1999); ACI Exhibit 3, Direct Testimony of Rand Kennedy at 15-16 (Feb. 19, 1999).

[78] SWBT Exhibit 2, Direct Testimony of William C. Deere at 21 (Feb. 19, 1999).

performance of other advanced services or traditional voice band services."[79] SWBT has not demonstrated that deployment of DSLAMs at remote locations will significantly degrade the performance of other services. In fact, SWBT's own internal documents contain discussions relating to planning for exactly such deployment.[80] Therefore, SWBT should not be allowed to deny the Petitioners' requests to deploy DSLAMs in remote locations. The Arbitrators agree that the introduction of xDSL terminals and DSLAMs in remote terminals may present additional technical issues. However, evidence shows that SWBT's network planning team has been aware of the need to deploy remote DSLAMs.[81] *See* Confidential Attachment B, Paragraph B. Regardless of whether SWBT intends to pursue this option, the Arbitrators do not believe it is reasonable to delay CLEC deployment of remote DSLAM configurations until SWBT has determined whether it wants to have the same configuration for its own retail xDSL operation.

The Arbitrators find that in locations where SWBT has deployed (1) DLC systems and an uninterrupted copper loop is replaced with a fiber segment or shared copper in the distribution section of the loop, (2) DAML technology to derive two voice-grade POTS circuits from a single copper pair, or (3) entirely fiber optic facilities to the end user, a competitor can be effectively precluded from offering xDSL service if the following options are not made available.

In the three situations above, where spare copper facilities are available, and the facilities meet the necessary technical requirements for the provision of xDSL[82] and allow Petitioners to offer the same level of quality for advanced services, Petitioners should have the option of requesting that SWBT make copper facilities available, (*e.g.*, one way would be to perform a line and station transfer, *i.e.*, reassignment of a current service to a different working loop). Petitioners should also have the option of collocating a DSLAM in the RT at the fiber/copper

[79] *Advanced Services Order* at ¶ 68.

[80] ACI Exhibit 41(confidential), Deposition Exhibit 28. Specifically, the minutes from meetings of the Network Evolution Relevant to Data Services (NERDS) group, Jul. 21, 1998, Aug. 25, 1998, and Dec. 1, 1998.

[81] *Id.*

[82] For example, if the loop length exceeds a certain distance, the provision of a particular xDSL service may not be technically infeasible. *See UNE Remand Order* at ¶ 313.

interface point. In this situation, SWBT is required to provide unbundled access to subloops to allow Petitioners to access the copper wire portion of the loop.[83]

Further, the Arbitrators find that in the situation where Petitioners are unable to install a DSLAM at the RT or obtain spare copper loops necessary to provision an xDSL service, and SWBT has placed a DSLAM in the RT, SWBT must unbundle and provide access to its DSLAM. SWBT is relieved of this requirement to unbundle its DSLAM only if it permits Petitioners to collocate their DSLAMs in the RT on the same terms and conditions that apply to its own DSLAM.[84] To find otherwise would enable SWBT to effectively create a barrier to Petitioners' entry into the xDSL market in Texas.

The Arbitrators findings under this DPL Issue are also applicable to DPL Issue Nos. 1, 4(a) and 4(b).

The Arbitrators findings are consistent with FCC precedent. The FCC addressed this issue in its *UNE Remand Order*. First, the FCC concluded that ILECs must provide unbundled access to subloops. The FCC concluded "that lack of access to unbundled subloops at technically feasible points throughout the incumbent's loop plant will impair a competitor's ability to provide services that it seeks to offer."[85] The FCC clarified that "technically feasible points" would include (in the context of this issue) any FDI, whether the FDI is located at a cabinet, CEV, remote terminal, utility room in a multi-dwelling unit, or any other accessible terminal. The FCC further stated that:

> ... competitors seeking to offer services using xDSL technology need to access the copper wire portion of the loop. In cases where the incumbent multiplexes its copper loops at a remote terminal to transport the traffic to the central office over fiber DLC facilities, a requesting carrier's ability to offer xDSL service to

[83] This Commission has required subloop unbundling in prior arbitrations. *See UNE Remand Order* at ¶ 218.

[84] The FCC has required such unbundling in its *UNE Remand Order* at ¶ 313.

[85] *UNE Remand Order* at ¶¶ 209-211 (Loop facilities, including subloop elements, are the most time-consuming and expensive network element to duplicate on a pervasive scale, and that the cost of self-provisioning subloops can be prohibitively expensive. Self-provisioning subloops would require requesting carriers to incur significant sunk costs prior to offering services to end users. Requiring competitors to expend such sums would, at a minimum, delay entry and thus postpone the benefits of competition for consumers.).

> customers served over those facilities will be precluded, unless the competitor can gain access to the customer's copper loop before the traffic on that loop is multiplexed. Thus, we note that the remote terminal has, to a substantial degree, assumed the role and significance traditionally associated with the central office. In addition, in order to use its own facilities to provide xDSL service to a customer, a carrier must locate its DSLAM within a reasonable distance of the customer premises, usually less than 18,000 feet. In both of these situations, a requesting carrier needs access to copper wire relatively close to the subscriber in order to serve the incumbent's customer.[86]

The FCC then provides direction on the specific issue of remote DSLAMs in its discussion of loops used for packet switching.

> In locations where the incumbent has deployed digital loop carrier (DLC) systems, an uninterrupted copper loop is replaced with a fiber segment or shared copper in the distribution section of the loop. In this situation, and where no spare copper facilities are available, competitors are effectively precluded altogether from offering xDSL service if they do not have access to unbundled packet switching. ... When an incumbent has deployed DLC systems, requesting carriers must install DSLAMs at the remote terminal instead of at the central office in order to provide advanced services. We agree that, if a requesting carrier is unable to install its DSLAM at the remote terminal or obtain spare copper loops necessary to offer the same level of quality for advanced services, the incumbent LEC can effectively deny competitors entry into the packet switching market. We find that in this limited situation, requesting carriers are impaired without access to unbundled packet switching. Accordingly, incumbent LECs must provide requesting carriers with access to unbundled packet switching in situations in which the incumbent has placed its DSLAM in a remote terminal. This obligation exists as of the effective date of the rules adopted in this Order. The incumbent will be relieved of this unbundling obligation only if it permits a requesting carrier to collocate its DSLAM in the incumbent's remote terminal, on the same terms and conditions that apply to its own DSLAM. Incumbents may not unreasonably limit the deployment of alternative technologies when requesting carriers seek to collocate their own DSLAMs in the remote terminal.[87]

Finally, the Arbitrators note that because the FCC has found that packet switching is a UNE in the limited circumstances stated above, and that the DSLAM is a component of the

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[86] *UNE Remand Order* at ¶ 218 (footnotes omitted).

[87] *UNE Remand Order* at ¶ 313 (footnotes omitted).

packet switching functionality,[88] the SBC/Ameritech merger conditions relating to advanced services equipment are relevant. The merger conditions provide that, "[i]f SBC/Ameritech transfers to its separate affiliate a facility that is deemed to be a UNE under 47 U.S.C. § 251(c)(3), the [FCC's] unbundling requirements will attach with respect to that UNE as described in section 53.207 of the [FCC's] rules, 47 C.F.R. § 53.207."[89] Accordingly, the unbundling requirement with respect to DSLAMs would attach to such equipment transferred to SWBT's advanced services affiliate.

7. Is SWBT permitted to require shielded cable (versus non-shielded cable) for central office wiring when provisioning xDSL technologies?

Parties' Positions

Rhythms contends that there is no legitimate technical purpose for requiring shielded cable for central office cabling.[90] Moreover, Rhythms asserts that shield cross connects are not necessary when provisioning xDSL services.[91]

Covad contends that shielded cross connects are not necessary because crosstalk in the limited distance covered by the shielded cable is insubstantial. Covad argues that other ILECs, including SWBT affiliate Pacific Bell, do not require shielded central office cable. Covad asserts that it has never received a report of any problems related to the absence of shield cross-connects from an ILEC.[92]

In its original filing, SWBT required shielded cable (versus non-shielded cable) for central office wiring when provisioning xDSL technologies. SWBT now replies that it does not

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[88] *UNE Remand Order* at ¶ 303, 313.

[89] SBC/Ameritech Merger Order, Appendix C, *Conditions* at ¶ 3(e).

[90] ACI Exhibit 1, Direct Testimony of Eric H. Geis at 21-22 (Feb. 19, 1999); ACI Exhibit 3, Direct Testimony of Rand Kennedy at 26 (Feb. 19, 1999); ACI Exhibit 6, Rebuttal Testimony of Eric H. Geis at 27 (April 8, 1999); ACI Exhibit 8, Rebuttal Testimony of Rand Kennedy at 9-10 (April 8, 1999).

[91] *See* ACI Exhibit 5, Direct Testimony of Terry L. Murray (Feb. 19, 1999); ACI Exhibit 3, Direct Testimony of Rand Kennedy (Feb. 19, 1999); ACI Exhibit 4, Direct Testimony of Philip Kyees (Feb. 19, 1999).

require shielded cross-connect cabling in the current version of its proposed agreement, and instead leaves this as an option for the CLEC.[93]

Award

The Arbitrators do not perceive disagreement among the Parties on this issue. The Arbitrators agree with the Parties and find that SWBT can not require shielded cable for central office wiring when provisioning xDSL technologies; rather, use of a shielded cable should be at the option of the CLEC. *See* DPL Issue Nos. 28 and 32.

9. Can SWBT be permitted to install equipment at its own discretion that may interfere with the provision of xDSL services by a CLEC?

Parties' Positions

Rhythms insists that SWBT should not be entitled to install any equipment that would affect the continuity of CLECs services or would interpose SWBT between the CLEC and its customer.[94]

Covad acknowledges that SWBT no longer insists on "power guards." However, in the event that SWBT has not withdrawn this issue, Covad restates its objection to power guards. Covad maintains that SWBT should not be allowed to impose power guards on CLEC xDSL equipment. Covad contends that there is no reason to believe that a CLEC would violate any policy it agreed to and/or this Commission imposed regarding spectrum management. Covad further explains that power guards do not exist today, and SWBT should not be placed in a

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[92] Covad Exhibit 4, Direct Testimony of Anjali Joshi at 17 (Feb. 19, 1999).

[93] DPL at 22 (May 28, 1999).

[94] ACI Exhibit 1, Direct Testimony of Eric H. Geis at 28-30 (Feb. 19, 1999); ACI Exhibit 3, Direct Testimony of Rand Kennedy at 26-27 (Feb. 19, 1999); ACI Exhibit 8, Rebuttal Testimony of Rand Kennedy at 7-8 (April 8, 1999).

position of monitoring CLEC xDSL equipment. Covad believes that power guards would inevitably degrade Covad's service.[95]

SWBT states that it does not intend, nor has it requested, to install equipment that may interfere with the provision of xDSL services by a CLEC. Rather, SWBT wishes to reserve the right to use a non-intrusive device, when/if available, as a means to assure that CLEC usage is as represented for all xDSL technologies. SWBT says that it does not offer contract language on this point because there is too much uncertainty as to this matter.[96]

Award

The Arbitrators deny SWBT's request to reserve the right to use a non-intrusive device, when or if available, as a means to assure that CLEC usage is as represented for all xDSL technologies. The Arbitrators recognize that some type of testing equipment will likely be required to perform maintenance and troubleshooting on xDSL systems. However, there has been no reasonable showing that an installed device of this sort would be practical, cost-effective, or necessary.

10. Is it appropriate for SWBT to impose limitations on the transmission speeds of xDSL services?

Parties' Positions

Rhythms argues that it is not appropriate for SWBT to impose limitations on the transmission speeds of xDSL services. Rhythms states that a more important consideration is interference with services carried on adjacent loops, which can be addressed directly by national

[95] Covad Exhibit 4, Direct Testimony of Anjali Joshi at 18-19 (Feb. 19, 1999).

[96] DPL at 25 (May 28, 1999).

standards. Until such national standards are in place, Rhythms contends that SWBT should not be allowed to impose unilateral limitations on transmission speed.[97]

Covad claims that it is not appropriate for SWBT to impose limitations on the transmission speeds of xDSL services and believes that this issue mirrors DPL Issue No. 9.[98]

SWBT asserts that it will comply with the *Advanced Services Order*. SWBT requires CLECs to identify the speeds that they intend to run solely for the purpose of spectrum management, as explained in SWBT's proposed contract language.[99]

Award

The Arbitrators find it is not appropriate for SWBT to impose limitations on the transmission speeds of xDSL services. A major benefit of competition is technological innovation, as demonstrated by the advanced services at issue in this proceeding. The Arbitrators determine that no incumbent carrier should be permitted to thwart technological innovation. The Arbitrators order that SWBT must not be permitted to restrict the Petitioners' services or technologies to a level at or below those provided by SWBT. However, consistent with the *Advanced Services Order*, the Arbitrators find that SWBT may obtain information from the CLEC regarding the type of xDSL service provided on the loop for the sole purpose of maintaining an inventory of advanced services present in the cable sheath. As discussed with respect to DPL Issue No. 14(b), SWBT must keep such information confidential, not allowing it to be revealed to SWBT's retail operations, to its retail affiliate(s), or to other competitors.

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[97] ACI Exhibit 1, Direct Testimony of Eric H. Geis at 30-32 (Feb. 19, 1999); ACI Exhibit 6, Rebuttal Testimony of Eric H. Geis at 12-14 (April 8, 1999); ACI Exhibit 10, Rebuttal Testimony of Philip Kyees at 4-14 (April 8, 1999); ACI Exhibit 8, Rebuttal Testimony of Rand Kennedy at 7-8 (April 8, 1999); ACI Exhibit 21, Supplemental Direct Testimony of Rand Kennedy at 11 (May 24, 1999). [portions confidential]

[98] DPL at 27 (May 28, 1999).

[99] SWBT Exhibit 6, Rebuttal Testimony of Michael C. Auinbauh at 4-10 (April 8, 1999).

III. Spectrum Management

DPL Issue Nos. 8, 11-14

8. Should national standards be applicable to the provisioning of xDSL services for the purposes of standards for this Interconnection Agreement, or can SWBT be permitted to impose its unique standards on xDSL services via its own technical publication(s)?

Parties' Positions

Rhythms argues that national standards should define the provisioning of xDSL services.[100] To the extent that limitations are placed on the xDSL services, Rhythms contends that those limitations should be specified by national standards, without waiver or modification.[101] Rhythms asserts that SWBT's Technical Publications do not comply with national standards[102] and SWBT cannot assure that its Technical Publications will remain consistent with national standards or industry-wide practices.[103] In the event that SWBT is permitted to impose standards for xDSL through its Technical Publications, Rhythms contends that the CLECs should have the right to review the standards, propose modifications, and resolve any disputes.[104]

Rhythms specifically objects to SWBT's position that if there is no approved national standard, CLECs must comply with SWBT's Technical Publications. Rhythms asserts that SWBT's Technical Publications contain requirements that go beyond accepted national standards. Rhythms witness Mr. Kyees cites an example of SWBT's Technical Publication (TP 76730) regarding ADSL that is not consistent with the national standard (T1.413), and contains

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[100] ACI Exhibit 1, Direct Testimony of Eric H. Geis at 22 (Feb. 19, 1999).

[101] ACI Exhibit 1, Direct Testimony of Eric H. Geis at 24 (Feb. 19, 1999).

[102] ACI Exhibit 3, Direct Testimony of Rand Kennedy at 25 (Feb. 19, 1999); ACI Exhibit 4, Direct Testimony of Philip Kyees at 10 (Feb. 19, 1999).

[103] ACI Exhibit 1, Direct Testimony of Eric H. Geis at 25 (Feb. 19, 1999).

[104] ACI Exhibit 8, Rebuttal Testimony of Rand Kennedy at 2-4 (April 8, 1999); ACI Exhibit 6, Rebuttal Testimony of Eric Geis at 5-11, 25-26 (April 8, 1999); ACI Exhibit 10, Rebuttal Testimony of Philip Kyees at 4-14 (April 8, 1999).

additional requirements based on SWBT's own retail implementation of ADSL that have little relevance to spectrum management.[105]

Covad states that it will abide by national standards, such as the ANSI standards developed by the T1E1.4 committee, for the provisioning of xDSL technologies.[106] Covad rejects SWBT's spectrum management plan on the basis that it: (1) is based on unsound assumptions; (2) unnecessarily limits the number of customers that could receive xDSL services; and (3) favors SWBT's ADSL over other xDSL services offered by CLECs.[107]

SWBT agrees to conform to national standards where national standards are available. SWBT witness Mr. McDonald explains that the value of industry standards is that businesses can develop products and services with the knowledge that those products and services will work for their customers and not disrupt the network.[108] National standards, such as those developed by ANSI, provide the industry with predictability as to how equipment can be manufactured and services can be delivered.[109] In the absence of national standards, SWBT maintains that its Technical Publications would be used on an interim basis to establish the "rules of the road."[110] SWBT further asserts that its Technical Publications are based upon national standards and thus comply with such standards.[111] SWBT states that it intends to conform its spectrum management plans with those developed by national standards, or approved by the FCC or the Commission.[112] SWBT explains that its Technical Publications attempt to be consistent with standards expected to be established by national standards group such as the ANSI T1E1.4.[113] According to SWBT,

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105 ACI Exhibit 4, Direct Testimony of Phillip Kyees at 10 (Feb. 19, 1999).

106 Covad Exhibit 4, Direct Testimony of Anjali Joshi at 11 (Feb. 19, 1999).

107 Covad Exhibit 42, Supplemental Direct Testimony of Anjali Joshi at 16 (May 24, 1999).

108 SWBT Exhibit 3, Direct Testimony of Richard A. McDonald at 4 (Feb. 19, 1999).

109 *Id.* at 3.

110 SWBT Exhibit 5, Direct Testimony of Alan Samson at 4 (Feb. 19, 1999).

111 SWBT Exhibit 2, Direct Testimony of William Deere at 10 (Feb. 19, 1999), Tr. 1747 – 1761 (Apr. 15, 1999).

112 SWBT Exhibit 26, Supplemental Rebuttal Testimony of William Deere at 14 (May 18, 1999).

113 SWBT Exhibit 3, Direct Testimony of Richard A. McDonald at 10 (Feb. 19, 1999).

the Technical Publications can accelerate the availability of SWBT local loops to CLECs by establishing a method for managing the spectrum prior to the establishment of industry standards.[114]

SWBT further states that it will allow the deployment of xDSL technologies other than ADSL, regardless of whether national standards exist. Accordingly, CLECs may deploy technologies that have been successfully deployed by any carrier without significantly degrading the performance of other services, or that have been approved by any state commission or the FCC.[115]

Award

The Arbitrators conclude that national standards or industry-wide accepted standards shall govern the provisioning of xDSL services. Standards developed and adopted by standard-setting bodies like the ANSI T1E1.4, or standards that are the product of consensus in the telecommunications industry, shall constitute national standards. Standards set by standard-setting bodies like ANSI T1E1.4 are developed fairly, openly, and in a comprehensive manner to determine how the PSTN should accommodate xDSL based services. With respect to national standards, the FCC concluded in its *Advanced Services Order*:

> We believe that the industry must develop a simpler and more open approach to spectrum management. Currently, each incumbent LEC defines its own spectrum management specifications. These measures vary from provider to provider and from state to state, thereby requiring competitive LECs to conform to different specifications in each area. We find that uniform spectrum management procedures are essential to the success of advanced services deployment. [116]

The Arbitrators also note that the § 271 DSL working group may set standards for Texas.

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[114] *Id.* at 10.

[115] SWBT Exhibit 6, Rebuttal Testimony of Michael C. Auinbauh at 10 (April 8, 1999).

[116] *Advanced Services Order* at ¶ 71.

Consistent with the *Advanced Services Order*, the Arbitrators order that SWBT shall not impose its own standards for provisioning xDSL services via its own Technical Publications. The *Advanced Services Order* specifically concluded the following with respect to the application of requirements by the incumbent LEC:

> We acknowledge that clear spectral compatibility standards and spectrum management rules and practices are necessary both to foster competitive deployment of innovative technologies and to ensure the quality and reliability of the public telephone network. We find, however, that incumbent LECs should not unilaterally determine what technologies LECs, both competitive LECs and incumbent LECs, may deploy. Nor should incumbent LECs have unfettered control over spectrum management standards and practices. We are persuaded by the record that allowing incumbent LECs such authority may well stifle deployment of innovative competitive LEC technology. Various commenters argue that some incumbents are frustrating the deployment of advanced services under the guise of spectrum compatibility concerns. The better approach, we believe, is to establish competitively neutral spectral compatibility standards and spectrum management rules and practices so that all carriers know, without being subject to unilateral incumbent LEC determinations, what technologies are deployable and can design their networks and business strategies accordingly.[117]

SWBT's Technical Publications must be approved by the Commission prior to use,[118] and its Technical Publications regarding xDSL services have not yet been approved. Allowing SWBT to impose its own standards and practices would stifle the deployment of innovative CLEC technology, and dissuade new entrants from providing xDSL-based services in the state, thus delaying Texans' ability to benefit from new technologies. While SWBT argues that its Technical Publications are consistent with national standards, the record reveals that SWBT's current Technical Publications include additional criteria beyond those contained in national standards, and omit some of the parameters contained in the national standard for ADSL technology.[119]

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[117] *Advanced Services Order* at ¶ 63 (footnotes omitted).

[118] T2A, Attachment 6, Sec. 2.17.1.

[119] Tr. at 1744 – 1767 (June 5, 1999).

The Arbitrators reiterate their decision discussed in DPL Issue No. 2(b): carriers should be encouraged to develop and provide non-standard xDSL technologies through the means discussed in that portion of this Award.

11. From a parity perspective, is SWBT required to conform to the same technical standards as CLECs for competing xDSL retail services?

Parties' Positions

Rhythms asserts that it would cause discriminatory results for SWBT to be permitted to offer retail xDSL services using different underlying standards than CLECs.[120] Rhythms contends that SWBT should operate under national standards to ensure the compatibility and integrity of its nationwide network and to ensure high quality service to customers with employees or locations in many different states. Rhythms further states that SWBT's internal standards are restrictive and unnecessarily limit Rhythms' ability to offer the full range of services that it already offers to customers in SBC's other operating territories.[121] Finally, Rhythms contends that SWBT's specifications, as currently written, are not the appropriate mechanism to define technical implementation and provisioning standards, rules, or guidelines; nor do the specifications promote any of these goals.[122]

Covad agrees with Rhythms' rationale.[123]

SWBT asserts that its retail ADSL services will conform to the same national standards and Technical Publications that are used for its wholesale ADSL loops. Thus, requesting CLECs will have parity with SWBT with respect to offering xDSL services.[124] SWBT disagrees that existing nationwide standards are sufficient to address all relevant issues associated with the

[120] DPL at 30 (June 1, 1999).

[121] ACI Exhibit 1, Direct Testimony of Eric H. Geis at 22 (Feb. 19, 1999).

[122] *Id.* at 24.

[123] DPL at 30 (June 1, 1999).

[124] SWBT Post Hearing Brief at 28 (Aug. 17, 1999); DPL at 30-31 (June 1, 1999).

deployment of xDSL technologies.[125] SWBT argues that national standards alone may not be enough to manage the network.[126] SWBT acknowledges that, while its network management policies may limit the offering of some xDSL services, it will insure that the network operates at the greatest capacity possible, while meeting the public's expectation for reliability.[127]

Award

At the hearing on the merits, Parties resolved this issue conceptually by agreeing that SWBT is required to conform to the same technical standards as CLECs for competitive xDSL retail services. The unresolved issue was the contract language that would implement the agreement among Parties.[128]

The Arbitrators support Parties' resolution and find, consistent with the *Advanced Services Order*, that SWBT shall not impose its own technical standards for SWBT's retail xDSL offerings on Petitioners. The better approach is to establish competitively neutral spectral compatibility standards and spectrum management rules and practices so that all carriers know, without being subject to unilateral ILEC determinations, what technologies are deployable and can design their networks and business strategies accordingly.[129]

The *Advanced Services Order* concluded that the ILEC should not have unfettered control over spectrum management standards and practices.[130] The Arbitrators also acknowledge the possibility that allowing SWBT to employ a different standard for itself than for its competitors could frustrate fair and open deployment of advanced services, and result in disparate provisioning of xDSL loops. Therefore, the Arbitrators conclude that SWBT shall not employ internal technical standards, through Technical Publications or otherwise, for its own

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[125] SWBT Exhibit 9. Rebuttal Testimony of Richard McDonald at 6 (April 8, 1999).

[126] *Id.* at 15.

[127] SWBT Exhibit 5. Direct Testimony of Alan Samson at 5 and 6 (Feb. 19, 1999).

[128] Tr. at 57-58 (April 14, 1999).

[129] *Advanced Services Order* at ¶ 63.

[130] *Id.*

retail xDSL that would adversely affect wholesale xDSL services or xDSL providers. For example, in DPL Issue No. 12, the Arbitrators rule that SWBT may not segregate binder groups exclusively for the provisioning of ADSL services, as the practice potentially limits the number and types of xDSL services provisioned by all providers.

12(a). Is there an industry consensus that there is a technically sound basis to implement Binder Group Management Plan?

12(b). If not, should a Binder Group Management plan be imposed on CLECs in the interconnection agreement?

12(c). Should SWBT be allowed to reserve loop complements for ADSL services exclusively?

Parties' Positions

Rhythms argues that SWBT is seeking to impose its own self-generated spectrum management/binder group management (BGM) plan that has not been reviewed by a regulatory body or agreed to by any national standards forums such as ANSI, or affected CLECs.[131] Further, Rhythms witness Mr. Geis contends that SWBT and Pacific Bell are the only ILECs that are planning to implement such a plan.[132] Rhythms expresses concern that SWBT's BGM plan will give SWBT control over Rhythms' unbundled loops.[133] Rhythms witness Mr. Kyees admits that BGM has worked well for T-1 carrier systems, since the upstream and downstream signals impact each other so severely that they must be separated by other binders. However, he asserts that for other technologies, the BGM technique would be inefficient, expensive and difficult to maintain.[134]

[131] ACI Exhibit 1, Direct Testimony of Eric H. Geis at 31 (Feb. 19, 1999).

[132] *Id.*

[133] *Id.*

[134] ACI Exhibit 4, Direct Testimony of Philip Kyees at 11 - 12 (Feb. 19, 1999).

Rhythms witness Mr. Kyees introduces correspondence from Bell Atlantic that was contributed to the ANSI T1E1.4 Working Group, entitled "Binder Group Segregation is Not Feasible."[135] The Bell Atlantic analysis focuses on the lack of binder groups integrity in loop plant, and the resulting impracticality of binder group segregation. Mr. Kyees further testifies that nearly every other incumbent LEC present at the ANSI T1E1 meeting at which this paper was submitted also agreed with Bell Atlantic's findings.[136]

In response to SWBT's revised BGM proposal known as Selective Feeder Separation (SFS), Rhythms witness Mr. Kennedy contends that the SWBT SFS program contains serious flaws. First, Rhythms contends that the SFS plan is based solely on "interferer tables"[137] created by an affiliate and that contain a number of shortcomings, enumerated by Rhythms witness Mr. Kyees.[138] Rhythms asserts that one of its prime concerns is that SWBT's interferer tables are based on a single vendor's ADSL technology, and are not necessarily consistent with the technologies or vendors used by other carriers, or even later versions of the selected vendor's equipment. In addition, Rhythms objects to the assumptions inherent in the tables regarding binder group sizing. Rhythms also objects to the accuracy of SWBT's interferer tables because the computations are based on lab tests rather than field results. In addition, Rhythms asserts that the interferer tables proposed by SWBT represent a combination of loop reach values, both upstream and downstream, which does not represent real-world installations. Mr. Kyees further opposes the use of SWBT's interferer tables because they assume that the "disturbers" are co-located at the same point in the central office, which is not reflected in actual practice. Additionally, Rhythms asserts that the tables are incomplete because they do not include information about all the various types of xDSL services, and do not contain information about different combinations of "disturbers." Addressing an additional concern regarding SWBT's SFS plan, Rhythms witness Mr. Kennedy asserts that the SFS plan represents an improper

[135] *Id.* at Attachment PK-1.

[136] *Id.* at 12.

[137] SWBT Exhibit 2, Direct Testimony of William Deere at Schedules 1 - 3 (Feb. 19, 1999); ACI Exhibit 17/17A, DSL Methods and Procedures Attachment 1.

[138] ACI Exhibit 22, Supplemental Direct Testimony of Philip Kyees at 3 - 7 (May 24, 1999); *see also* ACI Post-Hearing Brief at 39-45.

attempt to reserve large numbers of pairs in advance for the exclusive use of the ADSL technology being deployed by SWBT.[139]

Rhythms urges the Commission to halt the program immediately, since it is lacking in technical foundation and could have discriminatory and detrimental effects on the deployment of competitive xDSL services. Rhythms contends that it would be inappropriate for SWBT to impose standards on a unilateral basis, since spectrum management is currently being considered by the FCC and the standards setting groups.[140] Rhythms also urges the Commission to remove any restrictions imposed by SWBT on use of pairs for xDSL services, either through designations in the LFACS and LEAD databases or by the rules in LFACS limiting deployment of xDSL services to certain pair ranges.

Covad argues that SWBT's spectrum management plan is based on unfounded theoretical and operational assumptions; intentionally and unnecessarily limits the number of customers that can receive any type of DSL service other than ADSL; and is discriminatory and anticompetitive because the plan favors SWBT's ADSL services over the xDSL services offered by CLECs.[141] Covad witness Ms. Joshi highlights several spectrum management procedures that she believes are anticompetitive, since they limit the number of non-ADSL services that may be deployed by competitors. Ms. Joshi contends that SWBT's advance reservation of ADSL-only complements before CLECs have the opportunity to deploy their services represents a discriminatory practice. In addition, Ms. Joshi asserts that SWBT's assumption that all loops in such reserved complements are the same length as the "longest theoretical loop" limits the number of non-ADSL services available, according to SWBT's interference tables. Covad argues that availability is further limited by SWBT's assumption that all loops in the ADSL-only complements are, or will be, operational. In addition, Covad argues that availability of pairs are limited, as SWBT has reserved as many cable complements as operationally possible for ADSL service deployment. Finally, Ms. Joshi contends that because of SFS, SWBT restricts

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139 ACI Exhibit 21, Supplemental Direct Testimony of Rand Kennedy at 4 - 6 (May 24, 1999).

140 *Id.* at 10.

141 Covad Exhibit 42, Supplemental Direct Testimony of Anjali Joshi at 16 (May 24, 1999).

deployment of non-ADSL services in six times as many loops as reserved for ADSL, by blocking off binder groups surrounding the reserved cable complement.[142]

SWBT states that a BGM process isolates digital services, such as T-1 and ADSL, and attempts to place all such services within discrete sections (binder groups) in the outside plant cable. SWBT contends that BGM is necessary due to digital "inteferers," which reduce the operating range of ADSL loops within an individual binder. SWBT argues that, by placing the digital inteferers in a common binder group, and separating those binders from other binders in the cable, complete binder groups containing no interferers can be created. SWBT states that it currently segregates T-1 carrier systems in the feeder plant, an integral part of the its proposed BGM plan.[143]

In rebuttal testimony SWBT witnesses Mr. McDonald and Mr. Deere clarify that SWBT intends to utilize SFS, which manages the binder group in the feeder plant only, and is only used in cases where an improvement in the interference environment can be realized.[144] SWBT states that by reducing the interference in the feeder plant, the performance of the user-to-network (upstream) channel is improved. According to SWBT witness Mr. McDonald, using SFS not only benefits T-1 and ADSL, but also reduces the exposure of other xDSL technologies from interference from T-1 and ADSL.[145]

SWBT maintains that the *Advanced Services Order* reflects a consensus on the necessity for BGM.[146] SWBT states that the industry views limited SFS for ADSL and T-1 carrier in the feeder plant as an effective method for improving network performance for xDSL based services.[147] According to SWBT, the principle underlying SFS is commonly accepted and

[142] *Id.* at 16-17.

[143] SWBT Exhibit 2, Direct Testimony of William C. Deere at 18 (Feb. 19, 1999).

[144] SWBT Exhibit 9, Rebuttal Testimony of Richard A. McDonald at 7 (Apr. 8, 1999).

[145] *Id.* at 8.

[146] *Advanced Services Order* at ¶ 61-65; SWBT Exhibit 7, Rebuttal Testimony of William C. Deere at 17-18 (Apr. 8, 1999); SWBT Exhibit 3, Direct Testimony of Richard A. McDonald at 4-10 (Feb. 19, 1999).

[147] SWBT Exhibit 9, Rebuttal testimony of Richard A. McDonald at 10 (Apr. 8, 1999).

employed by many companies.[148] Reserving binder groups for ADSL services, SWBT argues, will increase the number of binder groups available for other xDSL technologies.[149] SWBT maintains that, if ADSL is randomly assigned across binder groups, the presence of a single ADSL loop could preclude the use of another loop for a different xDSL technology, if the new xDSL technology were to cause significant degradation.[150]

Regarding the role of BGM in national standard-setting bodies, SWBT's witness Mr. Russell states that "[c]ontributions have been submitted to T1E1.4 that define BGM as a process for manipulation of all technologies throughout the loop plant. These contributions state that BGM cannot always be done, and SWBT agrees. The contributions do not propose prohibiting BGM (or subsets thereof) only that it should not be required. To take a statement that something should not be required and convert it to a statement that something should not be allowed is an incorrect extrapolation. The contributions also state that some limited forms of BGM may be possible and could offer performance improvement in some cases."[151]

Regarding industry agreement on BGM, SWBT Witness Mr. McDonald responded to the criticism in the Bell Atlantic paper by indicating that it focused on the difficulty of manipulating the relative location of the pairs and binders used for all the various xDSL services to reduce the interference throughout the loop plant.[152] According to Mr. McDonald, SWBT's plan of SFS only attempts to manage pairs and binders in the feeder plant, and therefore can be distinguished from the criticism of Bell Atlantic.[153] Further, he asserts that limited SFS for ADSL and T-1 carrier in the feeder plant is effective, and the principle underlying SFS is commonly accepted.[154]

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[148] *Id.* at 11.

[149] SWBT Exhibit 26, Supplemental Rebuttal Testimony of William Deere at 17 (May 28, 1999).

[150] *Id.*

[151] SWBT Exhibit 29, Supplemental Rebuttal Testimony of Mark Russell at 3 (May 28, 1999).

[152] SWBT Exhibit 9, Rebuttal Testimony of McDonald at 10 (April 8, 1999).

[153] *Id.*

[154] *Id.* at 10-11.

SWBT suggests the best guide for policymakers is the development of an industry-wide consensus on the management of interference.[155]

Award

The Arbitrators find that an industry consensus does not exist as to whether there is a technically sound basis to implement a BGM program for xDSL services. Although the industry has apparently been collectively addressing spectrum management issues through the ANSI T1E1 working group, no solution appears to have been found. SWBT's arguments regarding industry agreement on BGM are not persuasive, particularly in light of Petitioners' testimony and the clear lack of consensus among Parties in this proceeding on the acceptability of SWBT's proposed SFS program. However, the Arbitrators do agree with SWBT's suggestion that the best guide for policymakers is the development of an industry-wide consensus on the management of interference, and urge Parties to work toward that objective. The Arbitrators note that the § 271 DSL Working Group was created to develop spectrum management standards in Texas where no current industry standards exist.

The Arbitrators therefore order that SWBT stop using its proposed spectrum management process, SFS. The Arbitrators find that to impose SWBT's current spectrum management standards on all xDSL providers would impose a unilateral standard on Petitioners, and would not be consistent with the *Advanced Services Order*.[156] The SFS process further has the effect of discriminating against deployment of xDSL services other than ADSL, especially in relation to the availability of clean copper loops for use by xDSL providers. The Arbitrators order SWBT to remove any restrictions imposed by SWBT on use of pairs for non-ADSL xDSL services, either through designations in the LFACS and LEAD databases or by the rules in LFACS limiting deployment of non-ADSL xDSL services to certain pair ranges.

The Arbitrators note that the *Advanced Services Order* establishes certain spectrum management rules relevant to the review of this specific issue. In that Order, the FCC first finds

[155] *Id.* at 14.

[156] *Advanced Services Order* at ¶ 63.

that uniform spectrum management procedures are essential to the success of advanced services deployment. Further, the FCC concludes that the incumbent LEC must provide competitive LECs with nondiscriminatory access to the incumbent LEC's spectrum management procedures and policies. The procedures and policies that the incumbent LEC uses in determining which services can be deployed must be equally available to competitive LECs intending to provide service in an area.[157] The FCC also recognizes that there may be a limit to the number of lines delivering advanced services that can share a binder group without interfering with other customers' services.[158] The FCC recognizes that early attention to binder group management issues will guard against problems arising as advanced services reach higher penetration, and seeks further comment on managing binder groups as a part of the Notice of Proposed Rulemaking associated with the *Advanced Service Order*.[159] In order to prevent delay in the deployment of new technologies, the FCC encourages the industry to apply a "test and see" strategy, which would allow competitive LECs and incumbent LECs to cooperate in testing and deployment of new services.

The Arbitrators find that SWBT shall not reserve loop complements for ADSL services exclusively. SWBT witness Deere states, "[i]f a cable is large enough to allow controlling loop assignments without restricting the availability of xDSL loops to a CLEC, there is no harm or discrimination."[160] The Arbitrators find that the reservation of cable complements for the specific technology being utilized by SWBT's retail operations would give SWBT an unfair competitive advantage. Further, such a practice does not create availability of xDSL capable loops on a nondiscriminatory basis. While the FCC is currently seeking comment on whether to allow ILECs to segregate xDSL technologies,[161] the Arbitrators find that the particular segregation practices used by SWBT and the manner in which they have been deployed, do not manage the spectrum in a competitively neutral or efficient manner. The Arbitrators therefore

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[157] *Id.* at ¶ 72.

[158] *Id.* at 76.

[159] *Id.* at n. 185.

[160] SWBT Exhibit 26, Supplemental Rebuttal Testimony of William Deere at 17, (May 28, 1999).

[161] *Advanced Services Order* at ¶ 86.

order SWBT to release binder groups that have already been marked as "ADSL only." The Arbitrators find that SWBT cannot segregate xDSL technologies into designated binder groups without Commission review and approval. Where SWBT has already implemented BGM or reserved loop complements, SWBT must open those binder groups to all xDSL services and all xDSL providers. The Arbitrators find that this is technically sound and feasible and will not cause network harm. It should also lower competitors' costs to the extent more clean copper loops are available that do not require conditioning. Further, making the segregated pairs available for use for all xDSL services will encourage the deployment of advanced services in Texas.

13. Should SWBT be required to provide disclosure of the causes for loop non-availability associated with a BGM program?

Parties' Positions

Rhythms witness Kennedy asserts that there should not be any denial of loops based on BGM.[162] He indicates that the only reasons why Rhythms would be getting a rejection are that the service is not available because of the presence of a DLC, or there is no facility available whatsoever, not because of spectrum management.[163]

Covad argues that the *Advanced Services Order* does not allow SWBT to deny provisioning a loop unless it first justifies that denial before this Commission.[164]

SWBT states that it recognizes the need to comply with the *Advanced Services Order* with respect to denial of CLEC orders. SWBT intends to provide information to the CLEC upon denial of an order, including the specific reason for rejection, the number and type of technologies deployed on that cable, and whatever other information would be relevant. SWBT

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[162] Tr. at 1733 (June 5, 1999).

[163] *Id.*

[164] DPL at 34 (May 28, 1999).

witness Mr. Samson indicates that the reasons for denial may include a scenario in which the customer is served by fiber or DLC, or it could be that there is physically no pair available.[165]

Award

In DPL Issue No. 12, the Arbitrators determined that SWBT's proposed spectrum management process should not be used at this time. As a result, there should be no denials based on spectrum management issues. However, in the event that an order is denied for some other reason, the Arbitrators conclude that SWBT shall be required to provide full disclosure, consistent with the *Advanced Services Order*[166] and T2A Attachment 25, Section 4.2.[167] In the event SWBT rejects a request by Petitioner for provisioning of advanced services, including, but not limited to denial due to fiber, DLC, or DAML facility issues, SWBT is required to disclose to the requesting Petitioner the specific reason for the rejection within 48 hours of the request. The reason for rejection shall be filed under Public Utility Commission Project No. 21696. In no event shall the denial be based on loop length. *See* DPL Issue No. 1.

14. In the event a technically reasonable BGM process can be developed, can SWBT unilaterally impose its own interference tables or should a neutral third party be empowered to do so?

Parties' Positions

[165] Tr. at 1730-1731 (June 5, 1999).

[166] *Advanced Services Order* at ¶ 73:

> We conclude that incumbent LECs must disclose to requesting carriers information with respect to the rejection of the requesting carrier's provision of advanced services, together with the specific reason for the rejection. The incumbent LEC must also disclose to requesting carriers information with respect to the number of loops using advanced services technology within the binder and type of technology deployed on those loops. We believe that such disclosure will allow for a more open and accessible environment, foster competition, and encourage deployment of advanced services.

[167] T2A Attachment 25, Section 4.2:

> SWBT shall not deny a CLEC's request to deploy any loop technology that is presumed acceptable for deployment, or one that is addressed in Section 4.3 of this Attachment, unless it has demonstrated to the Commission that the CLEC's deployment of the specific loop technology will significantly degrade the performance of other advanced services or traditional voice band

Rhythms argues that SWBT's self-generated spectrum BGM plan, which includes its own defined interference tables, has not been reviewed by a regulatory body or agreed to by any national standards forums such as ANSI, or by affected CLECs. Rhythms argues that there is no justification for allowing SWBT to implement a plan that no one has reviewed, commented upon, or approved. According to Rhythms, to the extent SWBT's proposed interference tables place limitations on Rhythms' ability to provide multiple xDSL services, Rhythms will be significantly and detrimentally limited in its provision of services in Texas.[168] Rhythms points out that the "interference tables have so many flaws that they are useless as the basis for *any* spectrum management program of the type and scope contemplated by SWBT," and argues that the tables have been based on a single manufacturer and on a specific technology.[169]

Covad argues that SWBT's BGM plan relies on several assumptions regarding the interference from loops in the same and adjacent binders that do not apply to actual loop plant conditions. According to Covad, the tables focus only on ADSL services and rely on analogous tables showing how other xDSL services are affected by the presence of T1, HDSL, IDSL, ADSL, or other xDSL services. Covad points out that the interference tables are theoretical information and necessarily assume the existence of outside plant data regarding the relative position of loops.[170]

SWBT claims that the interference tables can predict the interference due to xDSL technology.[171] SWBT asserts that, while awaiting the completion of a national standard, it is important that spectrum management using interference tables be performed. SWBT states that it is important that performance prediction be based on what can be achieved by actual equipment and that the interference tables were generated by measuring the performance of actual equipment. Further work is ongoing to make performance prediction more robust and to

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services. For the purpose of this section, "significantly degrade" means to noticeably impair a service from a user's perspective.

[168] ACI Exhibit 1, Direct Testimony of Eric H. Geis at 31 (Feb. 19, 1999).

[169] ACI Exhibit 21, Supplemental Direct Testimony of Rand Kennedy at 5 (May 24, 1999).

[170] Covad Exhibit 42, Supplemental Direct Testimony of Anjali Joshi at 4 (May 24, 1999).

[171] SWBT Exhibit 29, Supplemental Rebuttal Testimony of Mark Russell at 4 (May 28, 1999).

take into account the various aspects of the loop plant. According to SWBT, the models used in generating the interference tables are applicable for predicting performance in actual deployment.[172] SWBT indicates that an update could be generated, if deemed appropriate.[173]

Award

The Arbitrators find that a unilateral imposition of SWBT's interference tables upon Petitioners is inappropriate and may result in discrimination against competitors in the highly competitive sphere of advanced services. SWBT cannot, as required under the *Advanced Services Order,* "unilaterally set spectrum compatibility and spectrum management policies." [174] The FCC was clear in the *Advanced Services Order* that ILECs shall not impose unilateral spectrum management conditions on CLECs. [175] The Arbitrators adhere to the FCC's reasoning that, rather than unilateral ILEC-determined standards and practices on spectrum management policies, there should be a competitively neutral spectrum setting process, and note that Attachment 25 of the T2A creates a one-year § 271 Working Group to set competitively neutral standards.[176]

The Arbitrators conclude that SWBT's interference tables are not suitable for predicting performance for any type of xDSL other than possibly ADSL. Moreover, it is questionable

[172] *Id.* at 7.

[173] *Id.* at 9.

[174] *Advanced Services Order* at ¶ 79.

[175] *Id.*

[176] T2A, Attachment 25, Sec. 8.4:
In the event that a loop technology without national industry standards for spectrum management is deployed, SWBT, CLECs and the Commission shall jointly establish long-term competitively neutral spectral compatibility standards and spectrum management rules and practices so that all carriers know the rules for loop technology deployment. The standards, rules and practices shall be developed to maximize the deployment of new technologies within binder groups while minimizing interference, and shall be forward-looking and able to evolve over time to encourage innovation and deployment of advanced services. These standards are to be used until such time as national industry standards exist. CLECs that offer xDSL-based service consistent with mutually agreed-upon standards developed by the industry in conjunction with the Commission, or by the Commission in the absence of industry agreement, may order local loops based on agreed-to performance characteristics. SWBT will assign the local loop consistent with the agreed-to spectrum management standards.

whether the interference tables are even suitable for ADSL deployment.[177] Covad and Rhythms stated that they plan to implement many types of xDSL through the resulting Interconnection Agreements. However, SWBT's interference table is insufficient to properly manage the variety of xDSL Petitioners plan to deploy. The interference tables may serve as an impediment to deployment of non-ADSL technologies, and may be insufficient for ADSL applications. For all of these reasons stated, the Arbitrators conclude that SWBT shall not unilaterally impose its interference tables on Petitioners.

The Arbitrators also conclude that the *Advanced Services Order* directed carriers to use competitively neutral standards with regard to spectrum management. Thus, to the extent the Parties use spectrum management in the deployment of xDSL technologies, such management policies, procedures, and guidelines shall be developed collaboratively between Parties, consistent with this Award and the procedure established by this Commission for the § 271 DSL Working Group. Further, Parties shall adhere to national or industry-wide accepted standards for spectrum management of xDSL technology as those standards are adopted.

14(a). Should the Interconnection Agreement adopt all the requirements of the March 31, 1999 First Order in CC Docket No 98-147 regarding spectrum compatibility and management?

Parties' Positions

Rhythms contends that as long as its technology is consistent with the FCC's compatibility rules, the technology can be connected to the PSTN with reasonable confidence that the technology will not significantly degrade the performance of other advanced services, and will not impair traditional voice grade services.[178] Rhythms witness Mr. Geis highlights the FCC's stated concern that allowing ILECs to have unilateral authority over spectrum management would stifle deployment of competitive and innovative services.[179] Rhythms argues

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[177] ACI Exhibit 21, Supplemental Direct Testimony of Rand Kennedy at 5 - 6 (May 24, 1999); ACI Exhibit 22, Supplemental Direct Testimony of Philip Kyees at 3 - 9 (May 24, 1999).

[178] Post-Hearing Brief of ACI at 49-50; *Advanced Services Order* at ¶ 66.

[179] ACI Exhibit 6, Rebuttal Testimony of Eric H. Geis at 11 (April 8, 1999).

that SWBT's proposals for spectrum compatibility and management "have had precisely this chilling effect in Texas."[180]

Covad states that the *Advanced Services Order* specifically defines the obligations of SWBT and the CLECs with respect to spectrum compatibility and management. Covad proposes to adopt into the resulting Interconnection Agreements the language of the *Advanced Services Order* not already included in the Agreements.[181]

SWBT indicates that it will follow the guidelines as set forth in the *Advanced Services Order*.[182]

Award

The Arbitrators find that the spectrum compatibility and management requirements of the *Advanced Services Order* are the appropriate standards to be adopted in this Award. The *Advanced Services Order* became effective before the date of this Award, and its requirements are thus incorporated herein and should be incorporated into the resulting Interconnection Agreements.[183]

14(b). Should SWBT be required to keep CLEC deployment information confidential from any people involved in SWBT's or any affiliate's retail DSL offerings?

Parties' Positions

Rhythms witness Mr. Geis expresses concern with respect to SWBT's request that CLECs submit lists of central offices, in priority order, where the CLEC is planning to provide

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[180] *Id.* at 11 - 12.

[181] DPL at 35 (May 28, 1999).

[182] DPL at 34 (May 28, 1999); *Advanced Services Order* at ¶¶ 72 – 73.

[183] The *Advanced Services Order* was issued on March 31, 1999, after the request for arbitration was filed. The Order became effective on June 1, 1999, after the hearing on the merits commenced. However, the hearing on the merits did not conclude until June 10, 1999, after the Order became effective.

service, in order to establish their loop qualification process. Mr. Geis indicates that the priority list of central offices is highly proprietary, and should not be given to competitors.[184]

Covad asserts, and SWBT does not dispute, that SWBT's wholesale team has already provided competitively sensitive CLEC xDSL deployment information to SWBT's retail team.[185] Covad argues strongly that SWBT should not disclose sensitive information regarding the specific type of service Covad is supplying to specific customers, the amount of any particular type of services Covad is providing, or Covad's central office deployment schedule to Covad's competitors, including SWBT's own retail operations.

SWBT agrees that the confidential information it obtains from CLECs regarding xDSL deployment should not be disclosed to SWBT employees involved in retail xDSL marketing, or to employees of any SWBT affiliate that offers retail xDSL service.[186] SWBT indicates that some of its employees, primarily operations personnel, are necessarily involved in xDSL deployment at both the wholesale and retail level, but that those personnel do not market xDSL. SWBT indicates that its procedures to prevent the unauthorized transfer of competitive information to marketers are sufficient for xDSL deployment, just as they are for provision of other UNEs.[187]

Award

The Arbitrators conclude that SWBT is required to keep CLEC deployment information confidential from SWBT's retail operations, any SWBT affiliate, or any other CLEC. The disclosure of such highly sensitive information would be an anti-competitive, discriminatory and prejudicial action by SWBT against its competitors in violation of the FTA and PURA and threatens the further development of a competitive advanced services market in Texas. The

[184] ACI Exhibit 6, Rebuttal Testimony of Eric H. Geis at 20 (April 8, 1999); *See* DPL Issue No. 16.

[185] Covad Ex. 34 is an e-mail from Paula Perry of SWBT to Rusty Goodson, a member of SWBT's *Retail* Core Team. Attached to the e-mail is a table that lists, among other things, the central offices in various cities in Texas in which Covad, Rhythms, and other CLECs are already collocated or in which they seek xDSL deployment.

[186] SWBT Post-Hearing Brief at 38 (Aug. 17, 1999).

[187] *Id.* at n. 125.

Arbitrators find CLEC deployment information to be proprietary in nature, and thus find the disclosure of CLEC deployment information by SWBT to its retail operation to be grave. Therefore, the Arbitrators additionally order SWBT to take all measures to ensure that CLEC deployment information is neither intentionally nor inadvertently revealed in the future to any part of SWBT's retail operations, any affiliate, or any other CLEC without prior authorization from the affected CLEC.

IV. Provisioning

DPL Issue Nos. 15-22

15. Is SWBT required to provide real time access to OSS for loop makeup information qualification, preordering, provisioning, repair/maintenance and billing?

Parties' Positions

Rhythms maintains that it must have access to electronic, automated systems that allow rapid and efficient access to pre-ordering information about the technical make-up of a potential customer's loop, and to on-line ordering and maintenance systems.[188] Rhythms asserts that SWBT must provide real time access to all OSS functionalities at parity to what SWBT provides to itself on the retail side.[189] Rhythms argues that it must be in parity with the data access available to SWBT's retail operations, and not experience any artificial handicaps or delays imposed by SWBT.[190] Rhythms witness Ms. Gentry provides the example of an electronic ordering system in use in California whereby customers have been able to obtain loop make-up information, place the order, and receive a price quote and due date for an xDSL service in less

[188] ACI Exhibit 2, Direct Testimony of Jo Gentry at 6 (Feb. 19, 1999).

[189] ACI Exhibit 1, Direct Testimony of Eric H. Geis at 33-36 (Feb. 19, 1999); ACI Exhibit 2, Direct Testimony of Jo Gentry at 7-9 (Feb. 19, 1999); ACI Exhibit 20, Supplemental Direct Testimony of Jo Gentry at 6–7, 10-23 (May 24, 1999) (Confidential); ACI Exhibit 19, Supplemental Direct Testimony of Eric Geis at 14-19 (May 24, 1999) (Confidential); ACI Exhibit 6, Rebuttal Testimony of Eric Geis at 19-21, 23-24 (April 8, 1999); ACI Exhibit 9, Rebuttal Testimony of Mike Kersh at 4-6 (April 8, 1999); ACI Exhibit 7, Rebuttal Testimony of Jo Gentry at 3 (April 8, 1999).

[190] ACI Exhibit 1, Direct Testimony of Eric H. Geis at 35 (Feb. 19, 1999).

than 14 minutes, start to finish. Ms. Gentry points out that a manual system may cause this process to take days.[191] Rhythms asserts that an electronic ordering system should support an automatic flow-through process that enables a CLEC employee to place orders on-line.[192] If SWBT does not have real-time access available, Rhythms recommends that it should be required to develop such a system within six months.[193]

Rhythms also states that it appears that SWBT's LFACS and LEAD databases have all of the loop makeup information Rhythms needs for pre-ordering DSL-capable loops.[194]

Rhythms witness Ms. Gentry asserts "that the systems and processes SWBT intends to employ are specifically tailored for, and will strongly favor, SWBT's own chosen type of ADSL, thereby affirmatively restricting or precluding the provision of other types of DSL-based services by ACI and other CLECs."[195] Ms. Gentry cites the lack of parity between the manner in which loop qualification requests are transmitted (by mail or fax) by CLECs, compared to the e-mail access available to SWBT's retail operations.[196] Ms. Gentry also makes reference to SWBT's planned Loop Qual system for obtaining loop make-up information, noting that the enhanced CPSOS system will be available to SWBT's retail operations, including mechanized order flow-through. However, CLECs must take extra steps to process orders, even after being given access to pre-ordering functions through Verigate/ Datagate.[197]

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[191] ACI Exhibit 2, Direct Testimony of Jo Gentry at 8 (Feb. 19, 1999).

[192] ACI Exhibit 2, Direct Testimony of Jo Gentry at 15 (Feb. 19, 1999).

[193] *Id.*

[194] ACI Post-Hearing Brief (Confidential Version) at 69, citing ACI Ex. 149a, Phillips Tr. 160; McDonald Tr. 8, 9:20-22, 14; ACI Ex. 34; ACI Ex. 39.

[195] ACI Exhibit 20, Supplemental Direct Testimony of Jo Gentry at 3-4 (May 24, 1999).

[196] *Id.* at 16.

[197] *Id.* at 16-17.

Covad argues SWBT's LFACS database contains all or most of the information necessary to determine whether a loop is capable of transmitting xDSL signals.[198] To achieve true non-discriminatory access, Covad continues, CLECs must have read-only access to the same information.[199] Covad observes that, according to the deposition of SWBT employee Ms. Bird, several departments in SWBT already have read-only access to LFACS for various purposes.[200] Even if a CLEC has access to the loop makeup information, Covad asserts that SWBT still must provide a mechanized loop ordering interface to achieve flow-through parity with its own retail service offerings.

SWBT describes its process that includes pre-qualification, ordering, and loop qualification for ADSL loops.[201] SWBT witness Auinbaugh indicated that SWBT is developing a mechanized pre-qualification process to indicate whether a loop serving a particular location is capable of supporting ADSL technology.[202] The mechanized pre-qualification process generally categorizes the loops into those with a length of less than 12,000 feet, those that are between 12,000 feet and 17,500 feet, and those that are in excess of 17,500 feet, or have non-copper facilities on the loop. In subsequent testimony and cross-examination, SWBT witnesses Auinbaugh, Deere, and Phillips maintain that the pre-qualification process is entirely an option to the CLEC, as is any conditioning that may be desired.[203] Mr. Auinbaugh then describes the CLEC's loop ordering process, which includes a manual loop qualification procedure. During this procedure, the engineering group provides the loop make-up, which includes details

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[198] Covad Exhibit 43A, Supplemental Direct Testimony of Sandee Turner at 7-8 (May 24, 1999) (Confidential); ACI Exhibit 149A, Bird Deposition at 14–16; 27–29; 63–65 (May 6, 1999); ACI Exhibit 149A, D. McDonald Deposition at 33–36 (May 12, 1999).

[199] Covad Exhibit 45, Supplemental Rebuttal Testimony of Dhruv Khanna at 4-5 (May 28, 1999).

[200] Covad Exhibit 43A, Supplemental Direct Testimony of Sandee Turner at 8 (May 24, 1999) (Confidential).

[201] SWBT Exhibit 1, Direct Testimony of Michael C. Auinbaugh at 7-14 (Feb. 19, 1999); SWBT Exhibit 2, Direct Testimony of William C. Deere at 14 (Feb. 19, 1999).

[202] SWBT Exhibit 1, Direct Testimony of Michael C. Auinbauh at 8 (Feb. 19, 1999).

[203] SWBT Exhibit 1, Direct Testimony of Michael C. Auinbauh at 20 (Feb. 19, 1999); SWBT Exhibit 6, Rebuttal Testimony of Michael C. Auinbauh at 15 (April 8, 1999); SWBT Exhibit 26, Supplemental Rebuttal Testimony of William C. Deere at 8 (May 28, 1999); SWBT Exhibit 28, Supplemental Rebuttal Testimony of George R. Phillips, Jr. at 2-3 (May 28, 1999).

regarding loop length, bridged taps, load coils, repeaters, and a verification of loop and spectrum feasibility.[204]

SWBT witness Mr. Deere reiterates that SWBT does not currently have an electronic database that contains all of the loop make-up information being sought by Petitioners.[205] During cross-examination, he indicated that the two items that are usually missing from the LFACS database are indicators of actual loop length and the presence of bridged tap.[206] Mr. Deere believes that the complete loop makeup in electronic form exists for less than 21% of SWBT's central offices.[207] He further emphasizes that SWBT does not use a loop make-up database for the provision of retail ADSL services.[208] SWBT contends that the LFACS database is not the type of robust system that is capable of providing real-time access to either CLECs or SWBT's retail ADSL operations.[209]

SWBT witness Mr. Phillips indicates that since April 1, 1999, SWBT has made its SORD ordering system available for CLEC use, providing the ability to submit electronic orders for xDSL loops.[210] Mr. Phillips also describes a new database, "Loop Qual," that is being developed to provide electronic access to loop make-up information to customers on the retail side as well as the wholesale side.[211] This system contains at least five fields of information: basic qualification (red/yellow/green), wire center, taper code, loop makeup, and 26 gauge equivalent

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[204] SWBT Exhibit 1, Direct Testimony of Michael C. Auinbauh at 10-11 (Feb. 19, 1999). The Arbitrators note that Mr. Auinbauh also testified regarding flow-through requirements for orders as follows:

> Q. (Phillips) Okay. Do you think that SWBT is required to give to ACI and Covad the same level and degree of flow-through for their UNE loop orders that is present for your retail ADSL orders?
>
> A. (Auinbauh) Actually, no. Tr. at 1859 (June 5, 1999).

[205] SWBT Exhibit 26, Supplemental Rebuttal Testimony of William C. Deere at 3 (May 28, 1999).

[206] Tr. at 1825 (June 5, 1999).

[207] SWBT Exhibit 26, Supplemental Rebuttal Testimony of William C. Deere at 5 (May 28, 1999).

[208] *Id.* at 3.

[209] Tr. at 1974 (June 5, 1999).

[210] SWBT Exhibit 28, Supplemental Rebuttal Testimony of George R. Phillips, Jr. at 6 (May 28, 1999).

[211] Tr. at 1864-1865 (June 5, 1999).

length. Mr. Deere states that this information is mostly theoretical point design data.[212] This database should be accessible by CLECs through the Verigate system, and it is scheduled to be on line by December 1999.[213]

Award

The Arbitrators find that SWBT must provide Petitioners with nondiscriminatory access, whether that access is available by electronic or manual means, to its OSS functions for pre-ordering, ordering, provisioning, maintenance and repair, and billing for DSL-capable loops. This includes "the manual, computerized, and automated systems, together with associated business processes and the up-to-date data maintained in those systems."[214] Petitioners must be given nondiscriminatory access to the same OSS functions that SWBT is providing any other CLEC and/or SWBT or its advanced services affiliate. This includes any operations support systems utilized by SWBT's service representatives and/or SWBT's internal engineers and/or by SWBT's advanced services affiliate to provision its own retail xDSL service.[215]

The Arbitrators' decision is consistent with the FCC's recent findings in the *UNE Remand Order*. While not modifying the definition of OSS, the FCC clarified that "the pre-ordering function includes access to loop qualification information." Loop qualification information identifies the physical attributes of the loop plant (such as loop length, the presence of analog load coils and bridge taps, and the presence and type of Digital Loop Carrier) that enable carriers to determine whether the loop is capable of supporting xDSL and other advanced technologies. This information is needed by carriers seeking to provide advanced services over those loops through the use of packet switches and DSLAMs."[216] The FCC also elaborated on the ILEC's obligation to provide requesting carriers the same underlying information the ILEC

[212] Tr. at 1979 (June 5, 1999).

[213] Tr. at 1872-1875 (June 5, 1999) (SWBT is currently "masking" four of the data fields from use and view); 1949 (June 5, 1999).

[214] *UNE Remand Order* at ¶ 425.

[215] *Id.* at ¶¶ 427-430.

[216] *Id.* at ¶ 426.

has in any of its own databases or other internal records, and gives examples of the types of information to be provided.[217] The Arbitrators adopt the FCC's findings on the requirements associated with access to loop makeup information found in the *UNE Remand Order*.

SWBT has provided sworn testimony that it does not use a loop make-up database for the provision of retail ADSL services.[218] It is clear from evidence in this case, however, that some SWBT employees involved with retail ADSL have access to databases containing useful loop makeup information that are not available to CLECs. As an example, evidence reveals that at least one member of SWBT's ADSL Retail Core Team, the Manager of the Loop Assignment Center, Methods and Procedures, also has responsibilities with respect to the LFACS database.[219] Further, SWBT's outside plant engineers and loop assignment center personnel have access to the LFACS and LEAD databases that contain valuable loop makeup information sought by CLECs.[220] The Arbitrators are troubled by the inconsistencies regarding the relationship between SWBT's retail and wholesale operations, and find that the issue of nondiscriminatory access must be further addressed. SWBT should not be allowed to assign employees to both wholesale and retail responsibilities, nor should SWBT employees be allowed access to information that in any way may advantage its retail advanced services operations over those of its competitors. Remedies to address the Arbitrators' concerns will be included in the discussion of DPL Issue No. 16.

The Arbitrators also note that SWBT has stated that in addition to the number of central offices for which inventories had been requested by CLECs, an additional 271 central offices are

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[217] *UNE Remand Order* at ¶¶ 427-431; 47 C.F.R. §§ 51.319(g) and 51.5. *See also* SBC/Ameritech Merger Order at ¶¶ 371-374 and SBC/Ameritech Merger Order Appendix C at ¶ 20.

[218] SWBT Exhibit 26, Supplemental Rebuttal Testimony of William C. Deere at 3 (May 28, 1999).

[219] ACI Exhibit 149A, Deposition of Victoria Bird at 48-49, 130-134 (May 6, 1999).

[220] ACI Exhibit 149A, Bird Deposition at 36, 45-46, 60-62, 112-114, 177-183 (May 6, 1999); *Id.*, Goodson/Wren Deposition at 238-246 (May 6, 1999).

expected to be inventoried for SWBT's own purposes before the end of 1999.[221] All of this inventory information should be made available for use in providing loop makeup information.

In addition, in order to encourage deployment of advanced services throughout Texas, and because the LFACS and LEAD databases currently contain valuable loop makeup information accessible to SWBT personnel,[222] and because SWBT is already currently working to provide electronic processes for preordering and ordering of advanced services,[223] the Arbitrators find that SWBT must provide real time, electronic access to all systems needed for efficient provisioning of advanced services such as xDSL. SWBT's pre-qualification and loop qualification systems as currently described are *not* a reasonable substitute for pre-order access to actual loop makeup information. SWBT's current systems involve the application of SWBT's ADSL design parameters to the qualification of loops to be used for technologies that may far exceed SWBT's service offerings, and focus on theoretical loop makeup rather than actual loop makeup.[224]

The Arbitrators order SWBT to develop and deploy enhancements to its existing Datagate and EDI interfaces that will allow CLECs, as well as SWBT's retail operations or its advanced service subsidiary, to have real-time electronic access as a preordering function to the loop makeup information described in DPL Issue No. 17. SWBT shall develop and deploy these enhancements as soon as possible, but not to exceed six months from the Award in this Arbitration.[225] The interim manual process for access to loop makeup information is addressed in DPL Issue Nos. 15(a) and 19(b) below.

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[221] Tr. at 1947 (June 5, 1999).

[222] In fact, SWBT witness Mr. Deere testified that SWBT network personnel currently access and use the information in the LFACS and LEAD databases to provide loop qualification information. Tr. at 1818-1819. *See also UNE Remand Order* at ¶ 430.

[223] *See, e.g.*, Tr. at 1864-1865 (June 5, 1999); Tr. at 1872-1875 (June 5, 1999); 1949 (June 5, 1999); SBC/Ameritech Merger Order at ¶¶ 371-374 and SBC/Ameritech Merger Order Appendix C at ¶¶ 15-20.

[224] *See UNE Remand Order* at ¶ 428.

[225] *See* SBC/Ameritech Merger Order at ¶ 374 and SBC/Ameritech Merger Order Appendix C at ¶ 20.

SWBT shall also develop and deploy enhancements to its existing Datagate and EDI interfaces to allow for ordering xDSL and other advanced services as soon as possible, but not to exceed six months from the Award in this Arbitration. Such enhancements shall ensure that orders for DSL-capable loops flow through at parity with comparable UNE orders, and SWBT's retail or advanced services affiliate's DSL orders. Also, as discussed and defined in Section II of this Award, Petitioners are ordering "DSL-capable" loops. The only varieties of DSL-capable loops are 2-wire xDSL loops and 4-wire xDSL loops. Therefore, any ordering process should not require Petitioners to specify a type of xDSL to be ordered. However, for each loop, Petitioners should at the time of ordering notify SWBT as to the type of PSD mask they intend to use, and if and when a change in PSD mask is made, Petitioners should notify SWBT. Likewise, SWBT should disclose to Petitioners "information with respect to the number of loops using advanced services technology within the binder and type of technology deployed on those loops."[226] The ordering process should also encompass any conditioning requested by Petitioners, *e.g.*, at the time of ordering, Petitioners should be able to instruct SWBT as to what conditioning is requested. The Arbitrators do not believe that any additional modifications to the current electronic ordering processes for UNE loops should be necessary, beyond those required to address the PSD mask and conditioning issues.

The Arbitrators also find that SWBT shall provide "trouble reports" to Petitioners for "any function or capability of the accessed loop element" and SWBT shall "not limit such reports to voice-transmission trouble only."[227] The FCC stated in ¶ 195 of the *UNE Remand Order*:

> Thus, we conclude that, in so far as it is technically feasible, the incumbent must test and report trouble on conditioned lines, if requested by the competitor, for all of the line's features, functions, and capabilities, and may not restrict its testing to voice-transmission only.

15(a). What is the appropriate interval for SWBT's xDSL-capable loop qualification process?

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[226] *Advanced Services Order* at ¶ 73.

[227] *UNE Remand Order* at ¶ 195.

Parties' Positions

Rhythms contends that SWBT should qualify a loop for a CLEC within four hours of receiving the order for the xDSL loop.[228] According to Rhythms witness Mr. Geis, new customers of the CLEC may be required to wait over 14 days for xDSL service on an unbundled loop under SWBT's proposal, and that interval may grow to 28 days or more in areas where neither SWBT nor CLECs are currently offering the service.[229] According to Rhythms witness Mr. Kersh, Pacific Bell responds to the CLEC request with loop qualification information (using the "12k/17k/18k" pre-qualification method) within one to 72 hours of receipt of the request.[230]

Covad argues that SWBT should offer a standard interval for loop qualification of four hours, as does its affiliate Pacific Bell.[231] Covad witness Mr. Haas expresses concern that SWBT's proposed loop qualification intervals do not allow competitors the opportunity to provide xDSL services in the same amount of time as SWBT's retail organization.[232]

SWBT indicates that it is committed to provisioning for xDSL loops under the same terms and conditions as SWBT provides on its tariffed ADSL product.[233] SWBT's proposed contract language describes the loop qualification interval as follows:

> Until a mechanized system is in place for loop qualification, requests for loop qualification shall be submitted to SWBT on a manual basis. A standard loop qualification interval of 3-5 days is available for requests in markets where the process is currently in place. In other markets, a maximum standard loop qualification interval of 15 days is available until loop qualification methods, procedures, and training are established for the central office. In an effort to establish the Loop Qualification Process by central office in the priority order desired by CLEC, CLEC will provide SWBT with a prioritized list of central office locations where CLEC has appropriate associated equipment, has or has

[228] ACI Proposed Contract Language, Revised Decision Point List Matrix, Section 4.X.4. (May 28, 1999).

[229] ACI Exhibit 6, Rebuttal Testimony of Eric Geis at 19 (April 8, 1999).

[230] ACI Exhibit 9, Rebuttal Testimony of Mike Kersh at 5 (April 8, 1999).

[231] Revised DPL Matrix at 36 (May 28, 1999).

[232] Covad Exhibit 1, Direct Testimony of Charles A. Haas at 12-14 (Feb. 19, 1999).

[233] SWBT Exhibit 1, Direct Testimony of Michael C. Auinbauh at 15 (Feb. 19, 1999); SWBT Exhibit 6, Rebuttal Testimony of Michael C. Auinbauh at 17, and at Schedule 2 (April 8, 1999).

> ordered shielded cable, and intends to order access to ADSL Loops within 60 days of receipt of the list of central offices. SWBT will establish Loop Qualification Process methods, procedures, and training, for CLEC's 3 highest central office priorities and will meet with CLEC to establish a schedule for the remaining identified locations, if any. In any event, CLEC shall be entitled to the loop qualification interval of 3-5 days associated with any SWBT central office(s), which SWBT has completely inventoried for another CLEC or for SWBT's own purposes. After the initial loop qualification and installation on behalf of any CLEC in a given central office, a standard loop qualification interval of 3-5 days will be established.

During cross-examination, SWBT witness Mr. Auinbaugh agreed that in the worst case, the maximum allowable qualification and conditioning interval could reach 30 working days, or six weeks.[234] Mr. Samson indicated that in addition to the number of central offices for which inventories had been requested by CLECs, an additional 271 central offices are expected to be inventoried for SWBT's own purposes before the end of 1999, thus reducing the qualification interval.[235]

Award

The process of providing loop information to CLECs is clearly a critical step in the provision of xDSL services. The long-term goal for this interval should be measured in minutes or seconds, rather than days. SWBT's current process includes two types of loop qualification: (1) pre-qualification, which consists of the red/yellow/green zone designation based on algorithms tailored for SWBT's ADSL product; and (2) and a process containing five or more elements, including theoretical loop length. As discussed in DPL Issue Nos. 15 and 17, the Arbitrators believe SWBT must provide actual, real-time loop makeup information to CLECs rather than a pre-qualification or loop qualification process because SWBT's back office personnel have the ability to access relevant actual loop makeup information in real time through the back office databases.

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[234] Tr. at 1846 (June 5, 1999).

[235] *Id.* at 1947.

The FCC agreed with this approach in the *UNE Remand Order*, concluding that:

> access to loop qualification information must be provided to competitors within the same time intervals it is provided to the incumbent LEC's retail operations. To the extent such information is not normally provided to the incumbent LEC's retail personnel, but can be obtained by contacting incumbent back office personnel, *it must be provided to requesting carriers within the same time frame that any incumbent personnel are able to obtain such information.* It would be unreasonable, for instance, if the requesting carrier had to wait several days to receive such information from the incumbent, if the incumbent's personnel have the ability to obtain such information in several hours. In order to provide local exchange and exchange access service, a competitor needs such information quickly to be able to determine whether a particular loop will support xDSL service.[236] (emphasis added.)

Until such a real-time system is implemented, however, the Arbitrators find that SWBT's pre-qualification system should provide a response to Petitioners' queries within four hours for those central offices that have been inventoried. If a CLEC chooses to employ SWBT's manual pre-qualification system in a central office that has not been inventoried, the interval for receiving the response should be no longer than 10 business days. If a CLEC elects to have SWBT provide actual loop makeup information through a manual process, then the interval should be established as 3 business days. If SWBT can provide its retail ADSL personnel with actual loop makeup information in a shorter time frame, then the interval for a CLEC should be parity with that timeframe. At the time an electronically interfaced loop makeup system is implemented, the objective interval for obtaining loop make-up information should become a part of the body of OSS performance measures.

16. Upon request from Rhythms, is SWBT required to provide loop length and makeup data regarding specific central offices within a reasonable period of time from all central offices?

Parties' Positions

Rhythms contends that SWBT should provide loop make-up information to CLECs, but is concerned that SWBT is requiring up to 60 days to implement the loop qualification process in

[236] *UNE Remand Order* at ¶ 431.

each specific central office.[237] In addition, Rhythms disagrees with SWBT's request that CLECs submit a list of central offices, in priority order, where this process would be provided. Rhythms believes that such information is highly proprietary and should not be given to competitors.[238] Rhythms argues that Petitioners have already submitted over 100 collocation applications in Texas, and the loop inventory should be completed within the same time as the collocation request is completed.[239] According to Rhythms witness Mr. Kersh, SWBT's claim that it will take two months to perform an inventory for three offices is unreasonable, considering that it took Pacific Bell approximately three months to inventory 80 to 90 offices designated by CLECs in California.[240]

Rhythms' proposed contract language contains the following recommendation:

> 4.X.4. SWBT shall also provide to Rhythms the loop length and makeup of all loops served from Central Offices designated by Rhythms, within 60 days of submission of a request for each Central Office.

Covad does not provide evidence on this specific DPL issue. Covad reiterates its desire to receive computerized access to databases that contain loop make-up, repair, maintenance or billing information.[241]

Evidence submitted by SWBT does not address the issue of providing loop length and make-up of *all* loops in each central office designated by the CLEC. SWBT indicates that it has no obligation to supply detailed information about every loop in a central office. SWBT witness Mr. Deere asserts that loop makeup information is not contained in any single source, and that it would be very difficult and extremely expensive to compile for all central offices.[242] However,

[237] ACI Exhibit 2, Direct Testimony of Jo Gentry at 13-14 (Feb. 19, 1999); ACI Exhibit 6, Rebuttal Testimony of Eric Geis at 20–21 (April 8, 1999); ACI Exhibit 9, Rebuttal Testimony of Mike Kersh at 4–5 (April 8, 1999); ACI Exhibit 7, Rebuttal Testimony of Jo Gentry at 2–3, 5-6 (April 8, 1999).

[238] ACI Exhibit 6, Rebuttal Testimony of Eric Geis at 20 (April 8, 1999).

[239] *Id.* at 21.

[240] ACI Exhibit 9, Rebuttal Testimony of Mike Kersh at 5 (April 8, 1999).

[241] DPL at 43 (May 28, 1999).

[242] SWBT Exhibit 2, Direct Testimony of William C. Deere at 14-17 (Feb. 19, 1999), SWBT Exhibit 7, Rebuttal Testimony of William C. Deere at 11-12 (April 8, 1999).

SWBT witness Mr. Samson, testifies that SWBT expects to inventory 271 central offices for its own purposes prior to the end of 1999.[243]

SWBT presents evidence describing its loop pre-qualification plan that is being implemented in central offices in Texas, beginning with Austin, Dallas, and Houston.[244] For those central offices that have been inventoried for the purpose of loop pre-qualification, SWBT indicates that it will provide the results to CLECs in 3–5 business days. In areas that have not been inventoried, only the maximum loop qualification interval of 15 business days is available. Regarding the potential delay in conducting inventories, SWBT witness Mr. Auinbaugh testified that the 60 day interval for the office inventory could be running during the time in which the CLEC's collocation request is being provisioned.

Award

The Arbitrators view this issue as containing three major elements. The first is whether SWBT should be required to provide loop length and makeup information for individual loops as requested. The Arbitrators responded to this issue in the affirmative in DPL Issue No. 15.

The second element is whether CLECs will be required to furnish a prioritized list of areas in which they will serve, and the time interval within which SWBT is expected to inventory the central office. The Arbitrators find that CLECs should not be required to provide SWBT with a prioritized listing of central offices in which they plan to provide service. The CLECs already provide notification to SWBT when they order collocation, and SWBT should use that process as the signal to perform necessary inventories. The Arbitrators view further disclosure as unnecessary and contrary to the need for competitive confidentiality. Evidence in this proceeding shows that SWBT has already shared with its Retail ADSL Core Team members a listing of central offices in which CLECs have collocated or those in which CLECs are seeking

[243] Tr. at 1947 (June 5, 1999).

[244] SWBT Exhibit 7, Rebuttal Testimony of William C. Deere at 9 (April 8, 1999); Tr. at 1945-1948 (June 5, 1999).

deployment.[245] The Arbitrators believe such disclosure of competitive information to SWBT retail ADSL employees is inappropriate, disadvantages competitors and must stop immediately.

The third component of this issue is whether or not SWBT should be required to provide loop makeup information for all existing or vacant loops within *all* its central offices. The Arbitrators find that in those central offices in which SWBT has completed its inventory, either in response to a CLEC request or for its own retail deployment, or for its separate advanced services subsidiary deployment, SWBT must provide the requested loop makeup information for all loops in the central office within three business days. For those central offices that have not yet been inventoried, the Arbitrators agree that "blanket" requests for immediate loop makeup details should not be supported at this time, but that such central offices should be inventoried according to a schedule based on collocation requests. SWBT has agreed to inventory the central offices within 60 calendar days of a request from a CLEC, and the Arbitrators find that such an interval is reasonable, so long as it is allowed to run concurrently with the collocation request in that central office.

In the *UNE Remand Order*, the FCC found that an incumbent LECs should not be required to "catalogue, inventory, and make available to competitors loop qualification information through automated OSS even when it has no such information available to itself." In those instances where an incumbent LEC has not compiled such information for itself, the FCC does not require the incumbent to conduct a plant inventory and construct a database on behalf of requesting carriers. The FCC did find, however, that an incumbent LEC that has manual access to this sort of information for itself, or any affiliate, must also provide access to it to a requesting competitor on a non-discriminatory basis. The FCC further stated that it expects that ILECs will be updating their electronic databases for their own xDSL deployment and, to the extent their employees have access to the information in an electronic format, that same format should be made available to new entrants via an electronic interface.[246]

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[245] *See* Covad Exhibit 34; Covad Post-Hearing Brief at 59 - 61 (Aug. 17, 1999).

[246] *UNE Remand Order* at ¶ 429.

However, this issue heightens the Arbitrators' concerns regarding the equality of information transfer between SWBT's retail and wholesale operations. Evidence shows that SWBT's ADSL Retail Core Team personnel have had access to network assignment databases that could easily allow SWBT's retail operations to gain significant advantage over their competitors.[247] The Arbitrators need further assurance that competitively beneficial information is not being passed from SWBT's network provisioning operations to its retail service operations. An arms-length separation, *e.g.*, a separate advanced service subsidiary as proposed in the SBC-Ameritech merger conditions,[248] would be one solution to the Arbitrators' concerns. Until such separation is accomplished, however, the Arbitrators instruct SWBT to prepare a plan for approval by the Commission within 45 calendar days of this Award, whereby "firewalls" are constructed between SWBT's retail and wholesale organizations, the purpose of which is to restrict the flow of competitively beneficial information.

17. What data should be included in the makeup data?

Parties' Positions

Rhythms contends that it must be provided with information about the physical makeup of the xDSL loop; including loop length, wire gauge, presence and number of repeaters, load coils and bridged tap and existence of DLC systems or DAMLs.[249] Because different xDSL technologies are best suited for different loop conditions, Rhythms needs the loop makeup information in order to adapt the type of xDSL service to the available loop.[250]

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[247] ACI Exhibit 149A, Deposition of Victoria Bird at 48-49, 130-134 (May 6, 1999); ACI Exhibit 19, Supplemental Direct Testimony of Eric H. Geis at 14-15 (May 24, 1999).

[248] *In re Applications of Ameritech Corp., Transferor, And SBC Communications Inc., Transferee, For Consent to Transfer Control of Corporations Holding Commission Licenses and Lines Pursuant to Sections 214 and 310(d) of the Communications Act and Parts 5, 22, 24, 25, 63, 90, 95 and 101 of the Commission's Rules*, CC Docket No. 98-141, Memorandum Opinion And Order (rel. Oct. 8, 1999) (*SBC-Ameritech Merger Order*).

[249] ACI Exhibit 1, Direct Testimony of Eric H. Geis at 34 (Feb. 19, 1999); ACI Exhibit 2, Direct Testimony of Jo Gentry at 7–8 (Feb. 19, 1999); ACI Exhibit 7, Rebuttal Testimony of Jo Gentry at 6–7 (April 8, 1999); ACI Exhibit 20, Supplemental Direct Testimony of Jo Gentry at 6–9 (confidential) (May 24, 1999).

[250] ACI Exhibit 1, Direct Testimony of Eric H. Geis at 35 (Feb. 19, 1999).

Covad maintains that loop makeup information, at a minimum, should include the loop length, existence and length of bridged taps, existence of load coils, average wire gauge, presence and type of DLC, and ISDN readiness.[251] Covad argues that SWBT's databases have all this information.[252]

SWBT witness Mr. Phillips indicates that SWBT will soon implement a pre-qualification system, accessible through VERIGATE, that will provide the loop length stated as 26 gauge equivalent, the wire center, an indication if the pair is loaded or non-loaded, the taper code, and the red/green/yellow qualification indicator.[253] In addition, SWBT witness Mr. Auinbaugh indicates that SWBT will soon implement modifications to its LEX/EDI ordering gateway that will provide the loop length stated as 26 gauge equivalent or as actual gauge makeup, the absence or presence of load coils, the presence of bridged tap, repeaters, and or DLC.[254]

Award

The Arbitrators find that the loop makeup data should include the following: (a) the actual loop length; (b) the length by gauge; and (c) the presence of repeaters, load coils, or bridged taps; and shall include, if noted on the individual loop record, (d) the approximate location, type, and number of bridged taps, load coils, and repeaters; (e) the presence, location, type, and number of pair-gain devices, DLC, and/or DAML, and (f) the presence of disturbers in the same and/or adjacent binder groups. The Arbitrators find that SWBT should provide to the CLEC any other relevant information listed on the individual loop record but not listed above.

The Arbitrators' position is consistent with the decision of the FCC in the recent *UNE Remand Order*. With respect to this issue, the FCC found that:

> "an incumbent LEC must provide the requesting carrier with nondiscriminatory access to the same detailed information about the loop that

[251] Covad Exhibit 43, Supplemental Direct Testimony of Sandee Turner at 3 (May 24, 1999).

[252] *Id.* at 8.

[253] Tr. at 1877 (June 5, 1999).

[254] SWBT Exhibit 1, Direct Testimony of Michael C. Auinbauh at 14 (Feb. 19, 1999).

> is available to the incumbent, so that the requesting carrier can make an independent judgment about whether the loop is capable of supporting the advanced services equipment the requesting carrier intends to install. Based on these existing obligations, we conclude that, at a minimum, incumbent LECs must provide requesting carriers the same underlying information that the incumbent LEC has in any of its own databases or other internal records. For example, the incumbent LEC must provide to requesting carriers the following: (1) the composition of the loop material, including, but not limited to, fiber optics, copper; (2) the existence, location and type of any electronic or other equipment on the loop, including but not limited to, digital loop carrier or other remote concentration devices, feeder/distribution interfaces, bridge taps, load coils, pair-gain devices, disturbers in the same or adjacent binder groups; (3) the loop length, including the length and location of each type of transmission media; (4) the wire gauge(s) of the loop; and (5) the electrical parameters of the loop, which may determine the suitability of the loop for various technologies. Consistent with our nondiscriminatory access obligations, the incumbent LEC must provide loop qualification information based, for example, on an individual address or zip code of the end users in a particular wire center, NXX code, or on any other basis that the incumbent provides such information to itself."[255]

In that same decision, the FCC clarified that "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. Denying competitors access to such information, where the incumbent (or an affiliate, if one exists) is able to obtain the relevant information for itself, will impede the efficient deployment of advanced services. To permit an incumbent LEC to preclude requesting carriers from obtaining information about the underlying capabilities of the loop plant in the same manner as the incumbent LEC's personnel would be contrary to the goals of the Act to promote innovation and deployment of new technologies by multiple parties."[256]

18. Can SWBT impose a loop qualification process rather than provide information concerning loop makeup?

[255] *UNE Remand Order* at ¶ 427.

[256] *Id.* at ¶ 430.

Parties' Positions

Rhythms opposes SWBT's proposal for a loop qualification process to be used in place of the provision of loop make-up information.[257] Rhythms argues that SWBT's pre-qualification process (red/green/yellow) is based on the acceptability of a loop to SWBT's own retail ADSL services, and may not apply to the services to be provided by CLECs. Rhythms seeks to determine for itself whether a particular loop is capable of supporting xDSL service.[258] Rhythms argues that SWBT should not be permitted to substitute its judgment for that of a CLEC regarding the xDSL loop characteristics.[259]

Covad reiterates its arguments made in DPL Issue Nos. 15 and 17. Covad argues that it should have instantaneous access to the information necessary to determine whether xDSL services can be provisioned across a loop. Covad argues that SWBT should only determine whether a spare pair is available for lease to the CLEC.[260]

SWBT states that its pre-qualification process is entirely optional, and need not be utilized by a CLEC.[261] SWBT also provides "loop qualification" or "loop makeup" information on a manual basis to CLECs upon request for an xDSL loop.[262] SWBT states that it does not know the design parameters of the CLEC service or equipment; therefore, SWBT cannot make a determination of required conditioning of the CLEC service.[263]

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[257] ACI Exhibit 1, Direct Testimony of Eric H. Geis at 36 (Feb. 19, 1999); ACI Exhibit 6, Rebuttal Testimony of Eric Geis at 15-19 (Apr. 8, 1999); ACI Exhibit 7, Rebuttal Testimony of Jo Gentry at 2-5 (Apr. 8, 1999).

[258] ACI Exhibit 2, Direct Testimony of Jo Gentry at 10 (Feb. 19, 1999).

[259] *Id.*

[260] Covad Exhibit 43, Supplemental Direct Testimony of Sandee Turner at 3, 5 (May 24, 1999).

[261] SWBT Exhibit 28, Supplemental Rebuttal Testimony of George R. Phillips, Jr. at 4 (May 28, 1999).

[262] *Id.* at 3.

[263] SWBT Exhibit 26, Supplemental Rebuttal Testimony of William C. Deere at 12 (May 28, 1999).

Award

The Arbitrators find in DPL No. 15 that SWBT's pre-qualification and loop qualification systems as currently described are *not* a reasonable substitute for the provision of actual loop makeup information. To the extent that SWBT's retail operations or separate advanced services affiliate is able to access pre-qualification indicators such as the current red/green/yellow methodology, CLECs should have the same access. However, the indicators and reports obtained thus far from SWBT's pre-qualification and loop qualification programs are based on SWBT's ADSL service offering, and will be of only limited value to the Petitioners. The Arbitrators find that competitive parity can only be reached with respect to loops used to provide xDSL services if CLECs are provided with real-time access to actual loop makeup information that they can then use to provide their services to their customers.

The Arbitrators' finding is consistent with the *UNE Remand Order*. In that Order, the FCC found that :

> "an incumbent LEC should not be permitted to deny a requesting carrier access to loop qualification information for particular customers simply because the incumbent is not providing xDSL or other services from a particular end office. We also agree with commenters that an incumbent must provide access to the underlying loop information and may not filter or digest such information to provide only that information that is useful in the provision of a particular type of xDSL that the incumbent chooses to offer. For example, SBC provides ADSL service to its customers, which has a general limitation of use for loops less than 18,000 feet. In order to determine whether a particular loop is less than 18,000 feet, SBC has developed a database used by its retail representatives that indicates only whether the loop falls into a "green, yellow, or red" category. Under our nondiscrimination requirement, an incumbent LEC can not limit access to loop qualification information to such a "green, yellow, or red" indicator. Instead, the incumbent LEC must provide access to the underlying loop qualification information contained in its engineering records, plant records, and other back office systems so that requesting carriers can make their own judgments about whether those loops are suitable for the services the requesting carriers seek to offer. Otherwise, incumbent LECs would be able to discriminate against other xDSL technologies in favor of their own xDSL technology."[264]

[264] *UNE Remand Order* at ¶ 428.

19(a). Should SWBT be required to deploy a mechanized loop makeup information process for DSL capable loops?

Parties' Positions

Rhythms maintains that it must have access to electronic, automated systems pre-ordering system that allow rapid and efficient access to the technical make-up of a potential customer's loop within six months of the effective date of this arbitrated agreement.[265] Rhythms asserts that SWBT must be required to provide to CLECs access to the same mechanized loop makeup information, or any portion of loop makeup information that becomes mechanized, that SWBT provides to itself in connection with offering its own xDSL retail services.

Covad argues that SWBT maintains databases that contain all of the information necessary to determine whether a loop is capable of transmitting xDSL signals.[266] To achieve true parity, Covad contends, CLECs must have equal, instantaneous access to the same information.[267] Covad asserts that SWBT must provide mechanized access to the loop makeup information.

SWBT states its understanding that it is required to offer parity access to the OSS systems that exist for service ordering and pre-ordering. To the extent SWBT deploys new, mechanized systems that contain loop makeup information, SWBT agrees that it should, and intends to, make that system available to CLECs. SWBT's proposed modifications have been discussed in DPL Issue No. 17.

Award

As discussed in DPL Issue No. 15, the Arbitrators find that SWBT must provide real time, electronic access to all systems needed for efficient provision of advanced services such as xDSL. To the extent SWBT is technically able to access the following in its own operations,

[265] ACI Exhibit 2, Direct Testimony of Jo Gentry at 10 (Feb. 19, 1999).

[266] Covad Exhibit 43, Supplemental Direct Testimony of Sandee Turner at 8 (May 24, 1999).

[267] Covad Exhibit 45, Supplemental Rebuttal Testimony of Dhruv Khanna at 4 - 5 (May 28, 1999).

SWBT will develop and deploy mechanized and integrated OSS that will permit real-time CLEC access through an electronic gateway to a database that contains the loop makeup information. SWBT should not be allowed to delay the provision of the mechanized loop qualification process for competitors to a date uncertain. The Arbitrators require SWBT to meet the implementation schedule in Section VIII of this Award.

19(b). Until SWBT deploys the mechanized loop makeup information process, what should the process be for a manual process?

Parties' Positions

Rhythms contends that the manual request process should consist of the CLEC submitting requests for loop make-up information via facsimile and SWBT returning the information in the same manner. According to Rhythms witness Ms. Gentry, SWBT currently provides loop make-up information for its own retail operations in three to five days.[268]

Covad maintains that SWBT should be required to develop a mechanized interface for loop makeup information, and does not provide evidence on the manual process.

SWBT states that the centers that handle tariffed ADSL service requirements are required to manually type ADSL service orders.[269] SWBT witness Mr. Deere indicates that when a CLEC requests qualification for an xDSL loop, SWBT manually performs the engineering work to determine the loop makeup and provides the information to the CLEC.[270]

Award

Until a real-time loop makeup database is operational, the Arbitrators find that SWBT shall provide CLECs with manually-derived loop makeup information upon request at no charge.

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[268] ACI Exhibit 2, Direct Testimony of Jo Gentry at 11 (Feb. 19, 1999).

[269] SWBT Exhibit 6, Rebuttal Testimony of Michael C. Auinbauh at 16 (April 8, 1999).

[270] SWBT Exhibit 26, Supplemental Rebuttal Testimony of William C. Deere at 12 (May 28, 1999).

Transmittals and responses between CLECs and SWBT should be by the quickest means practical; facsimile, telephone, or e-mail. As indicated in response to DPL Issue No. 15(a), if a CLEC chooses to employ SWBT's manual pre-qualification system in a central office that has not been inventoried, the interval for CLEC receiving the response should be no longer than 10 business days. If a CLEC elects to have SWBT provide actual loop makeup information through a manual process, then the interval should be established as 3 business days.

20(a). Should the CLEC be allowed to make the business decision as to the need for loop conditioning based on information provided by SWBT?

20(b). Should SWBT be allowed to make all determinations regarding loop conditioning for CLEC needs within its sole discretion?

Parties' Positions

Rhythms reasons that only the particular CLEC knows the parameters of the services it seeks to deploy, and therefore should be able to request the specific type of conditioning required for a particular loop.[271] Rhythms argues that SWBT has the opportunity to see the total outside plant inventory for retail services, thus allowing SWBT the opportunity to find spare or alternative loop facilities that may not need conditioning.[272] Rhythms believes that SWBT should not make business judgements regarding the technical capabilities of CLECs; the CLEC will be in the best position to make decisions regarding conditioning depending on the technology to be used.[273]

Covad asserts, based on the revised contract language proposed by SWBT, that SWBT appears to conceptually agree with this point. Covad maintains, however, that the contract language proposed by SWBT is not acceptable for other reasons. Covad points out that SWBT's

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[271] ACI Exhibit 1, Direct Testimony of Eric H. Geis at 39-40 (Feb. 19, 1999); ACI Exhibit 2, Direct Testimony of Jo Gentry at 18 (Feb. 19, 1999).

[272] ACI Exhibit 2, Direct Testimony of Jo Gentry at 19 (Feb. 19, 1999).

[273] ACI Exhibit 1, Direct Testimony of Eric H. Geis at 39-40 (Feb. 19, 1999).

own retail loop qualification flows automatically into the loop provisioning interval so that SWBT does not suffer the same delays as Covad.[274]

SWBT responds that it has committed to let CLECs make their own business decisions with regard to loop conditioning, consistent with the *Advanced Services Order*.[275] However, SWBT explains that if the CLEC does not request the conditioning suggested by SWBT, then SWBT will not guarantee the service, and performance measures should not apply to that individual xDSL loop.[276] If the CLEC requests SWBT to perform the suggested conditioning, SWBT asserts that it is entitled to cost recovery for the work performed.

Award

Parties reached agreement on this issue during the arbitration proceeding.[277] The Arbitrators agree with the Parties resolution that all conditioning shall be performed at the request of the CLEC.

21. Should SWBT be permitted to limit availability to loops over 17.5k ft only on an ICB basis?

Parties' Positions

Rhythms claims that CLECs can provision viable xDSL services over loops in excess of 17,500 feet and should be permitted to do so at their own service quality risk.[278] Rhythms' witness Geis argues that all loops should be available, regardless of length. Mr. Geis also testified that over 20% of Rhythms' xDSL customers are on loops in excess of 18,000 feet in length.[279] Rhythms testifies that there are generally no differences between analog loops less

[274] Tr. at 1955 (June 5, 1999).

[275] SWBT Exhibit 6, Rebuttal Testimony of Michael C. Auinbauh at 15 (April 8, 1999).

[276] *Id.* at 18.

[277] Covad's Post Hearing Brief at 5 (Aug. 17, 1999).

[278] ACI Exhibit 1, Direct Testimony of Eric H. Geis at (Feb. 19, 1999).

[279] *Id.* at 41.

than or in excess of 17,500 feet in length.[280] Rhythms contends that it is unreasonable to require a competitor to await lengthy ICB (individual case basis) provisioning and pricing decisions from SWBT.[281]

Covad affirms that it offers xDSL services, including IDSL that are provisioned over loops longer than 17,500 feet in length. Covad argues that SWBT should fill xDSL loop orders regardless of loop length and then allow Covad to determine what services can be provided across the loop consistent with other provisions of the Interconnection Agreement.[282]

SWBT's initial proposal was to limit the availability of loops in excess of 17,500 feet in length only on an ICB basis. However, subsequent to its initial filing, SWBT revised its proposal to establish a separate price for each additional work operation required to condition a loop beyond 17,500 feet in length.[283] SWBT does not propose limiting the provision of xDSL loops over 17,500 feet in length.[284]

Award

SWBT states that it will allow CLECs to order loops over 17,500 feet in length without individual case basis (ICB) provisioning and pricing.[285] The Arbitrators find that SWBT should not be permitted to limit availability of xDSL loops in excess of 17,500 feet in length to an ICB basis. When questioned during the hearing, SWBT did not provide a cost basis for choosing 17,500 feet for a cutoff.[286] SWBT witness Deere explained that with some technologies, loops

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[280] Tr. at 1397 (June 4, 1999).

[281] ACI Exhibit 1, Direct Testimony of Eric H. Geis at 41 (Feb. 19, 1999); ACI Exhibit 6, Rebuttal Testimony of Eric Geis at 21 (April 8, 1999).

[282] Covad Exhibit 43, Supplemental Direct Testimony of Sandee Turner at 5-6 (May 24, 1999).

[283] SWBT Exhibit 6, Rebuttal Testimony of Michael C. Auinbauh at 11-12 (April 8, 1999).

[284] *Id.*

[285] SWBT Exhibit 6, Rebuttal Testimony of Michael C. Auinbauh at 11 (April 8, 1999).

[286] *Id.* at 1241.

require repeaters after reaching 18,000 feet in length; in his words, "that's why the distance was kept below that."[287] The Arbitrators note that the Parties agree that "...17.5 is not a magic cutoff where the cost characteristics become radically different...."[288] Loop rates and conditioning charges are addressed in Section VI of this Award.

22. What is the appropriate provisioning interval for 2-Wire xDSL capable loops?

Parties' Positions

Rhythms supports a 7-day provisioning interval for a 2-Wire xDSL loop, or the analogous level at parity with retail xDSL services offered by SWBT, whichever is less.[289]

Covad points out that Pacific Bell, SWBT's affiliate, agreed to provide xDSL loops to Covad within 7 days, if no conditioning is required; within 10 days if conditioning is required; and within 15 days if there are no facilities. Covad argues that SWBT should be held to the same standards. Covad maintains that longer intervals will give SWBT an unfair competitive advantage by allowing SWBT to provide actual xDSL services to its customers before the CLECs can.[290]

SWBT's proposed contract language indicates that the provisioning and installation interval for xDSL loops that do not require conditioning is 5 to 7 business days after the loop qualification process is complete. The specific contract language proposed by SWBT is as follows:

> A. The provisioning and installation interval for an ADSL, 2-Wire or 4-Wire MS Capable Loop or other DSL-Capable loops that are materially the same, as defined above, where no conditioning is requested, will be 5-7 business days after the Loop Qualification process is complete, or the provisioning and installation interval

[287] Tr. at 1243 (June 4, 1999).

[288] *Id.* at 1243, 1403.

[289] ACI Exhibit 2, Direct Testimony of Jo Gentry at 19 – 20 (Feb. 19, 1999).

[290] Covad Exhibit 1, Direct Testimony of Charles A. Haas at 10 (Feb. 19, 1999).

> applicable to SWBT's tariffed DSL-based services, whichever is less. The provisioning and installation intervals for the ADSL, 2-Wire or 4-Wire MS Capable Loops where conditioning is requested will be 15 business days for loops up to 17,500 feet, or the provisioning and installation interval applicable to SWBT's tariffed DSL-based services where conditioning is required, whichever is less. An ADSL, 2-Wire or 4-Wire MS Capable Loop in excess of 17,500 feet where conditioning is requested will have a provisioning and installation interval agreed upon by the Parties for each instance of special construction. VLS Capable Loops will be provisioned under the terms of the 2-Wire Digital Loop as described in Appendix UNE of this Agreement.
>
> B. Subsequent to the initial order for an ADSL, 2-Wire or 4-Wire MS Capable Loop or other DSL-Capable loops that are materially the same, as defined above, additional conditioning may be requested on such loop at the rates set forth below and the applicable service order charges will apply; provided, however, when requests to add or modify conditioning are received within 24 hours of the initial order for an ADSL, 2-Wire or 4-Wire MS Capable Loop, no service order charges shall be assessed, but may be due date adjusted as necessary. The provisioning interval for additional requests for conditioning pursuant to this subsection will be the same as set forth above.

SWBT maintains that this schedule is completely at parity with what SWBT is providing for its retail xDSL operations.[291]

Award

The Arbitrators find that the provisioning and installation interval for a xDSL loop, where no conditioning is requested, on orders for 1-20 loops per order or per end-user location, will be 3 - 5 business days, or the provisioning and installation interval applicable to SWBT's tariffed xDSL services, or its affiliate's, whichever is less. The provisioning and installation intervals for xDSL loops where conditioning is requested, on orders for 1-20 loops per order or per end-user customer location, will be 10 business days, or the provisioning and installation interval applicable to SWBT's tariffed xDSL services or its affiliate's xDSL services where conditioning is required, whichever is less. Orders for more than 20 loops per order or per end-user location, where no conditioning is requested, will have a provisioning and installation interval of 15 business days, or as agreed upon by the Parties. Orders for more than 20 loops per order which

[291] SWBT Exhibit 1, Direct Testimony of Michael C. Auinbauh at 15-16 (Feb. 19, 1999).

require conditioning will have a provisioning and installation interval agreed by the Parties in each instance. The Arbitrators find that the provisioning intervals are applicable to every xDSL loop regardless of the loop length.

V. Collocation [292]

DPL Issue Nos. 33-34, 36

33. Should SWBT be required to offer cageless collocation?

Parties reached agreement on this issue in the arbitration proceedings on April 15, 1999.[293]

33(a). Should SWBT be required to provide collocation at a remote terminal site?

Parties reached agreement on this issue in the arbitration proceedings on April 15, 1999.[294]

33(b). Should the interconnection agreement include new collocation provisions that reflect the requirements of the FCC's March 31, 1999 First Order in CC Docket No. 97-147?

Parties reached agreement on this issue in the arbitration proceedings on April 15, 1999.[295]

[292] The Arbitrators note that subsequent to the Parties' agreement, the Commission approved the revised physical and virtual collocation tariffs of SWBT. These revised tariffs provide the rates, terms and conditions for collocation for providers using Attachment 25 – DSL of the T2A.

[293] Tr. at 467-541 (April 15, 1999).

[294] Tr. at 467-541 (April 15, 1999).

[295] Tr. at 467-541 (April 15, 1999).

34. What is the appropriate provisioning interval for cageless collocation?

Parties reached agreement on this issue in the arbitration proceedings on April 15, 1999.[296]

36. Should SWBT be required to permit collocation of ATM cross-connect equipment?

Parties reached agreement on this issue in the arbitration proceedings on April 15, 1999.[297]

VI. Costs, Rates and Prices

DPL Issue Nos. 26-32

26. Should rates associated with xDSL capable loops be TELRIC-based?

Parties' Positions

Rhythms asserts that the prices for UNEs should be set equal to TELRIC.[298] Rhythms believes that three features of TELRIC are particularly significant in this arbitration:[299] TELRIC is "based on the use of the most efficient telecommunications technology currently available;" a TELRIC study may not consider embedded costs; and unit costs developed consistently with TELRIC must be "divided by a reasonable projection of the sum total number of units of the

[296] Tr. at 467-541 (April 15, 1999); Provisions are adopted and should be incorporated into the resulting Interconnection Agreements as contained in SWBT Exhibit 6, Rebuttal Testimony of Michael C. Auinbauh at Schedule 1 (April 8, 1999).

[297] Tr. at 467-541 (April 15, 1999); Provisions are adopted and should be incorporated into the resulting Interconnection Agreements as contained in SWBT Exhibit 6, Rebuttal Testimony of Michael C. Auinbauh at Schedule 1 (April 8, 1999).

[298] ACI Exhibit 5, Direct Testimony of Terry L. Murray at 16 (Feb. 19, 1999).

[299] ACI Post Hearing Brief at 100 (Aug. 17, 1999).

element." Rhythms argues that SWBT's cost estimates have violated each of these requirements.[300]

Covad argues that the Commission and the FCC require that SWBT set its prices according to TELRIC principles. Covad believes SWBT's proposed prices do not comply with TELRIC requirements. Covad suggests that SWBT designed its cost studies to support the prices it wants to charge new entrants, rather than deriving its prices from valid cost analysis or using the TELRIC methodology.[301]

SWBT states that all proposed rates are based on TELRIC methodology. SWBT asserts that the cost studies for xDSL loops were the subject of the Mega-Arbitration in which the Commission adopted a TELRIC methodology. SWBT's proposed rates for the xDSL loops are those ordered for UNE loops in the Mega-Arbitration.[302]

Award

The Arbitrators find that, as previously decided by the Commission in other proceedings, all rates associated with UNEs, including xDSL loops, should be TELRIC-based.[303] This finding is consistent with FCC precedent, including the *Local Competition Order*, and FCC UNE Pricing Rules 47 C.F.R. §§ 51.501-515.[304]

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[300] ACI Post Hearing Brief at 101 (Aug. 17, 1999).

[301] Covad Post Hearing Brief at 52-53 (Aug. 17, 1999); *Local Competition Order* at ¶29; Mega Arbitration Award, November 7, 1996 at 25 and December 19, 1997 at 4. The Mega Arbitration consists of Docket Nos. 16189, 16196, 16226, 16285, 16290, 16455, 17065, 17579, 17587, and 17781; ACI Exhibit 5, Direct Testimony of Terry L. Murray at 16 (Feb. 19, 1999); Tr. at 1216-1217 (June 5, 1999).

[302] SWBT Exhibit 8, Rebuttal Testimony of Jerry Fuess at 4 (April 8, 1999).

[303] Mega-Arbitration Award, Nov. 7, 1996 at 25 and Dec. 19, 1997 at 4. (The rates for UNEs on Appendix B are based on the total long run incremental cost (TELRIC)).

[304] *Local Competition Order* at 682; Mega-Arbitration Award, Nov. 7, 1996 at 25 and Dec. 19, 1997 at 4.

27. What are the appropriate TELRIC-based xDSL rates?

Parties' Positions

Rhythms argues that SWBT's proposed rates for xDSL loops are inappropriately high. Rhythms explains that SWBT's proposed rates are higher than the cost based prices, in a absolute sense and relative to the adopted costs for basic analog loops, for any comparable element either proposed by another incumbent local exchange carrier or adopted by another Commission. Rhythms explains that the range of loop rates proposed by SWBT is much larger than in other states. For example, SWBT's proposed digital loop rate is 153% higher than SWBT's proposed analog loop rate. However, Rhythms continues, other states experience increments of 0% to 40%.[305]

Rhythms is particularly concerned with SWBT's proposed rate for digital loops and argues that the incorrect price could result in a price squeeze.[306] Rhythms urges the adoption of a proxy cost for the two-wire digital xDSL loop. Rhythms suggests an interim rate of $20.16. Rhythms contends that the proxy cost should remain in effect until SWBT provides a well documented cost study for two-wire digital xDSL loops, and all affected Parties have had an opportunity to review and comment on the costs.[307]

In regard to analog loops, Rhythms argues that the proxy cost should be the Commission-approved TELRIC-based cost result for the nearest unbundled loop type. Rhythms explains that this interim price would apply until such time as Parties have litigated a specific cost study for xDSL loops.[308]

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[305] ACI Exhibit 5, Direct Testimony of Terry L. Murray at 49-52 (Feb. 19, 1999).

[306] ACI Exhibit 11, Rebuttal Testimony of Terry L. Murray at 11-14 (April 8, 1999); ACI Exhibit 11a, Rebuttal Testimony of Terry L. Murray at 11-17 (April 8, 1999).

[307] ACI Exhibit 5, Direct Testimony of Terry L. Murray at 53 (Feb. 19, 1999); ACI Post Hearing Brief at 117-119 (Aug. 17, 1999).

[308] DPL at 62 (May 28, 1999).

Covad agrees with Rhythms' reasoning.[309] Covad states that SWBT's proposed rates for xDSL loops less than 18,000 feet in length are within an acceptable range. However, Covad argues, SWBT's proposed digital xDSL loop rates are too high. Covad argues that the digital loop rate would prevent the xDSL industry from reaching the industry "price point" of approximately $40-50 per month.[310] Covad concurs with Rhythms' proposal of adopting an interim rate of $20.16 for the two-wire digital xDSL loop.[311]

SWBT proposes xDSL loop rates based on the rates approved in the Mega-Arbitration. SWBT argues that Rhythms and Covad have not contested the recurring loop rates, having stated in the DPL that "until such time as Parties have litigated a specific cost study, the Commission approved TELRIC-based cost result for the nearest unbundled loop type should be used as a proxy."[312]

Award

A cost study to support analog and digital xDSL loop rates was not provided in this proceeding. Instead, SWBT proposed xDSL loop rates that were identical to the UNE loop rates adopted in the Mega-Arbitration. The Arbitrators find that reliance on the Mega-Arbitration UNE loop rates is not appropriate, particularly for digital xDSL loops. As a result, the Arbitrators order SWBT to file a new TELRIC-based cost study for analog and digital xDSL loops. The study should be based on TELRIC principles, designed to create an efficient xDSL network, and compute de-averaged xDSL loop rates. The geographic de-averaging should be consistent with the de-averaging of loop rates in the Mega-Arbitration. The cost study should not distinguish between loop lengths; all xDSL loops should be the same rate regardless of loop length. The Arbitrators invite Rhythms and Covad to file their own cost studies. Until new cost

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[309] *Id.*

[310] Covad Exhibit 1, Direct Testimony of Charles A. Haas at 13 (Feb. 19, 1999).

[311] Covad Post Hearing Brief at 59 (Aug. 17, 1999); ACI Exhibit 5, Direct Testimony of Terry L. Murray at 50-52 (Feb. 19, 1999).

[312] SWBT Exhibit 8, Rebuttal Testimony of Jerry Fuess at 4 (April 8, 1999); SWBT Post Hearing Brief at 66 (Aug. 17, 1999).

studies are approved by the Commission, the Arbitrators find that the interim xDSL loop rates, as described below, will apply.[313]

The underlying loop facility used for xDSL services is equivalent to an analog or digital loop. With regard to analog loops, the Arbitrators find the de-averaged rates adopted for unbundled analog loops in the Mega-Arbitration are appropriate on an interim basis. The Arbitrators find the de-averaged rates to be appropriate, rather than statewide average rates for unbundled loops, because the Commission has implemented the intrastate USF mechanism.[314]

The Arbitrators do not accept the digital loop rates established in the Mega-Arbitration as interim rates for digital xDSL loop rates. It is unclear to the Arbitrators whether the digital loop rates established in the Mega-Arbitration include conditioning costs.[315] This uncertainty could result in over recovery of costs by SWBT, since separate conditioning charges apply to xDSL loops on which the CLEC has requested conditioning.[316] Because the Arbitrators cannot verify whether, and to what extent, the conditioning charges are included in the digital loop rates established by the Mega-Arbitration, the Arbitrators adopt the interim rate proposed by Rhythms and Covad for a 2-wire digital xDSL loop. The Arbitrators double the proposed interim rate for a 2-wire digital loop in order to compute the interim rate for a 4-wire digital xDSL loop.

The Arbitrators find that the appropriate interim rates for analog and digital xDSL loops are the following:

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[313] *See* Implementation Schedule in Section VIII of this Award.

[314] Section 1.5 of Appendix Pricing – UNE to Attachment 6 of the AT&T/SWBT interconnection agreement states:

> Where a statewide average appears on Appendix Pricing UNE Schedule of Prices, that price will prevail until the Commission's implementation of the intrastate USF mechanism scheduled for Spring 1998 or as specified in such other further order of the Commission. Thereafter, pricing will be by Zone where applicable (loops) and by Level, where applicable (ports) as shown on Appendix Pricing UNE - Schedule of Prices.

See Docket No. 18515, Compliance Proceeding for Implementation of the Texas High Cost Universal Service Plan, for implementation of the Texas Universal Service Fund (TUSF).

[315] Mega Arbitration Award, Appendix A, UNE Costing and Pricing DPL Issues Award Table, Issue 148 (Dec. 19, 1997).

[316] *See* DPL at 65 (May 28, 1999).

	Recurring	Nonrecurring	
		Initial	Additional
2-Wire Analog Loop			
Zone 1	$18.98	$15.03	$6.22
Zone 2	$13.65	$15.03	$6.22
Zone 3	$12.14	$15.03	$6.22
2-Wire Digital Loop			
Zone 1	$20.16	$15.03	$6.22
Zone 2	$20.16	$15.03	$6.22
Zone 3	$20.16	$15.03	$6.22
4-Wire Analog Loop			
Zone 1	$36.06	$15.03	$6.22
Zone 2	$21.52	$15.03	$6.22
Zone 3	$15.86	$15.03	$6.22
4-Wire Digital Loop			
Zone 1	$40.32	$15.03	$6.22
Zone 2	$40.32	$15.03	$6.22
Zone 3	$40.32	$15.03	$6.22

One of the conditions in the SBC/Ameritech merger is that SBC/Ameritech will develop and deploy common electronic OSS interfaces across all 13 SBC/Ameritech states to be used by any telecommunications carrier, including the merged firm's advanced services affiliates, for pre-ordering and ordering facilities used to provide advanced services.[317] The FCC found that, "until SBC/Ameritech has developed and deployed the advanced services OSS enhancements, interfaces, and business requirements described above, and the SBC/Ameritech separate advanced services affiliate uses the EDI interface for pre-ordering and ordering a substantial majority of the facilities it uses to provide advanced services, SBC/Ameritech will offer

[317] *SBC/Ameritech Merger Order* at ¶ 371.

telecommunications carriers a 25-percent discount from the recurring and nonrecurring charges for unbundled loops used in the provision of advanced services. This discount is intended to compensate other carriers for the unenhanced OSS and to provide SBC/Ameritech with an incentive to improve the systems and processes as quickly as possible."[318] The Arbitrators find that this same discount shall apply to this Award.

Until such time as permanent xDSL loop rates are approved, SWBT shall offer Petitioners xDSL loops at the interim prices above. The interim xDSL loops rates are subject to refund/surcharge upon approval of permanent xDSL loop rates, back to the date the Interconnection Agreements resulting from this Award become effective.

28(a). Is it appropriate to charge a rate for shielded cross connect that is higher than the rate for unshielded cross connect?

28(b). If so, what are the appropriate rates for xDSL Shielded Cross Connect to Collocation?

Parties' Positions

Rhythms does not anticipate utilizing shielded cross connects.[319] Rhythms asserts that shielded cross connects are not necessary when provisioning xDSL services,[320] and further argues that SWBT's proposed charge for shielded cross-connects should be rejected. Rhythms notes that SWBT's proposed rates for shielded cross connects are significantly higher than those for basic voice-grade cross connects. Rhythms contends that the higher rates represent a barrier to entry.[321] Rhythms believes that SWBT cannot charge differently for the two types of cross connects.[322] Rhythms argues that the difference in the shielded cable cost and labor involved, if

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[318] *Id.* at ¶ 372 and Appendix C at ¶ 18.

[319] Tr. at 1320-1321 (June 4, 1999).

[320] *See* ACI Exhibit 5, Direct Testimony of Terry L. Murray (Feb. 19, 1999); ACI Exhibit 3, Direct Testimony of Rand Kennedy (Feb. 19, 1999); ACI Exhibit 4, Direct Testimony of Phil Kyees (Feb. 19, 1999).

[321] ACI Exhibit 6, Rebuttal Testimony of Eric Geis at 27 (April 4, 1999).

[322] ACI Exhibit 6, Rebuttal Testimony of Eric Geis at 27 (April 4, 1999).

any, is minimal.[323] Therefore, Rhythms urges the Arbitrators to find that the costs and rates for shielded and basic voice-grade cross connects are identical.[324] Accordingly, Rhythms proposes that the appropriate rates for shielded cross connects are the rates adopted for voice-grade cross connects in the Mega-Arbitration;[325] $1.24 recurring charge, $4.72 non-recurring charge.[326]

Covad does not anticipate utilizing shielded cross connects.[327] Covad does not believe that shielded cross connects are necessary when provisioning xDSL services.[328] Covad argues that it should not be required to pay the additional cost for shielded cross connects. Instead, Covad believes that SWBT should bear all additional costs for shielded cabling.[329] In the alternative, Covad argues that SWBT's proposed rates for shielded cross connects are unreasonable and should be modified.[330]

SWBT does not require CLECs to utilize shielded cross connects.[331] However, SWBT testifies that a higher rate for shielded cross connects is appropriate in order to compensate SWBT for the additional material and labor costs involved in installing and testing the circuit. SWBT asserts that, unlike a non-shielded cross connect, a shielded cross connect requires a manual test process, must be grounded, and utilizes a dedicated shielded cable. SWBT cites these three differences when justifying its proposed higher cost for shielded cross connects.[332]

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[323] Tr. at 1417-1420 (June 4, 1999).

[324] ACI Exhibit 5, Direct Testimony of Terry L. Murray at 43-44 (Feb. 19, 1999).

[325] ACI Exhibit 5, Direct Testimony of Terry L. Murray at 43 (Feb. 19, 1999).

[326] *Id.* at 44.

[327] Tr. at 1320-1321 (June 4, 1999).

[328] Covad Exhibit 4, Direct Testimony of Anjali Joshi at 16-18 (Feb. 19, 1999).

[329] *Id.* at 18.

[330] *Id.*

[331] DPL at 64 (May 28, 1999).

[332] Tr. at 1324-1326, 1417-1420 (June 4, 1999).

SWBT provided a shielded cross connect cost study.[333] SWBT proposes rates for shielded cross connects: $0.60 recurring charge; $57.75 non-recurring charge.[334] SWBT states that its proposed rates are based on pricing principles established by the Commission in the Second Mega-Arbitration[335] and are not significantly different than non-shielded varieties.[336]

Award

The Arbitrators first note that SWBT has stated that it does not require CLECs to use shielded cross connects when provisioning xDSL services. The Arbitrators agree that SWBT cannot require CLECs to use shielded cross connects when provisioning xDSL services. However, the Arbitrators find that should a CLEC request shielded cross connects, SWBT should be compensated, using TELRIC principles, for the costs associated with provisioning shielded cross connects. The *UNE Remand Order* requires the costs for cross connects to be recovered in accordance with the FCC rules governing the costs of interconnection and unbundling.[337]

The Arbitrators find that in addition to the expenses associated with a non-shielded cross connect, the record supports the additional expenses associated with the material cost of the shielded cable and the labor associated with grounding the shielded cross connect. In order to establish rates for shielded cross connects, the Arbitrators modify the recurring and nonrecurring costs associated with non-shielded cross connects adopted in the Mega-Arbitration. The Arbitrators note that the Mega-Arbitration rates include testing of the non-shielded cross connects.[338] Therefore, the Arbitrators find that since both shielded and non-shielded cross-

[333] SWBT Exhibit 8, Rebuttal Testimony of Jerry Fuess at 4 (April 8, 1999).

[334] SWBT Exhibit 4, Direct Testimony of Barry A. Moore at Schedule 4 (Feb. 19, 1999).

[335] The Second Mega-Arbitration consists of the December 1997 Award in Docket Nos. 16189, 16196, 16226, 16285, 16290, 16455, 17065, 17579, 17587, and 17781.

[336] SWBT Exhibit 2, Direct Testimony of William C. Deere at 22 (Feb. 19, 1999). Rates for (non-shielded) cross connects were established in the Mega-Arbitration.

[337] *UNE Remand Order* at ¶ 178.

[338] The Mega-Arbitration adopted a recurring rate of $1.24 and a non-recurring rate of $4.72 for basic (non-shielded) analog and digital two wire cross connects. The Mega-Arbitration adopted a recurring rate of $2.48

connects must be tested, additional compensation for testing of shielded cross connects is not warranted beyond that already provided in the non-shielded cross connect rates established in the Mega-Arbitration.

To establish the rates for shielded cross connects, the Arbitrators incorporate the additional material costs associated with shielded cross connects into the non-shielded cross connect recurring rate. The Arbitrators find the record supports an additional expense of $35.00 per one hundred feet of 100 pair shielded cable.[339] Therefore, the Arbitrators add $0.35 per shielded 2-wire cross connect and $0.70 per shielded 4-wire cross connect to the non-shielded cross connect recurring rate. In order to calculate the nonrecurring rate for shielded cross connects the Arbitrators incorporate the additional labor expenses into the non-shielded cross connect nonrecurring rate. *See* Attachment B, Paragraph C. After the appropriate recurring and nonrecurring rates for shielded cross connects were determined, a 13.1% Common Cost Allocation Factor was applied.[340] Therefore, the Arbitrators find the following rates to adequately compensate for all costs associated with the provisioning of shielded cross connects.[341]

Shielded Cross Connects

	Recurring	Nonrecurring
2-Wire Analog Shielded Cross Connect	$1.64	$17.29
4-Wire Analog Shielded Cross Connect	$3.28	$42.13
2-Wire Digital Shielded Cross Connect	$1.64	$17.29
4-Wire Digital Shielded Cross Connect	$7.46	$51.62

and a non-recurring rate of $29.56 for basic (non-shielded) analog four wire cross connects and a recurring rate of $6.67 and a non-recurring rate of $39.05 for basic (non shielded) digital four wire cross connects. *See* Mega-Arbitration Award at Appendix B (Dec. 19, 1997).

[339] ACI Exhibit 5, Direct Testimony of Terry L. Murray at 44 (Feb. 19, 1999); ACI Exhibit 5a, Direct Testimony of Terry L. Murray at 45-46 (Feb. 19, 1999).

[340] Because the common cost allocation factor is already included in the rates for (non-shielded) cross connects, the Arbitrators *only* apply the common cost allocation factor to the additional expenses associated with shielded cross connects.

[341] *See* Appendix C for revised cost study.

29. Should SWBT be allowed to charge additional ADSL "Conditioning" charges?

Parties' Positions

Rhythms contends that SWBT should not be allowed to charge additional xDSL conditioning charges.[342] However, Rhythms argues that should the Arbitrators find that conditioning charges are appropriate, SWBT's xDSL conditioning cost studies should be modified to reflect reasonable and efficient costs for xDSL loop conditioning.[343] Rhythms argues that SWBT's study of xDSL conditioning costs is inconsistent with the TELRIC methodology[344] and the recurring cost studies that were adopted in the Mega-Arbitration. Rhythms explains that assuming, as SWBT did, a different network for purposes of calculating recurring and non-recurring costs can result in double counting of costs.[345] More specifically, Rhythms argues that SWBT proposed cost study is incorrect because it does not propose unit costs, calculates costs using inefficient practices, utilizes unsupported task times, and inappropriately bundles the costs for removing and re-installing bridged tap.[346] Rhythms provides adjusted proposed conditioning charges that correct the above concerns with SWBT's proposed cost study.[347]

Covad suggests that SWBT's proposed conditioning charges are nothing more than an anticompetitive barrier to Covad's entry into the xDSL market. Covad concurs with Rhythms

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[342] Rhythms only uses the term "conditioning charges" to simplify the discussion. However, Rhythms feels the term may be misleading as the term has traditionally been used in telecommunications to refer to situations in which equipment must be *added* to a circuit. In contrast, DSL-capable loops require that unnecessary equipment be *removed* from the circuit. *See* ACI Exhibit 5, Direct Testimony of Terry L. Murray at 19 (Feb. 19, 1999).

[343] ACI Exhibit 5, Direct Testimony of Terry L. Murray at 23-36 (Feb. 19, 1999); ACI Exhibit 5a, Direct Testimony of Terry L. Murray at 23-36 (Feb. 19, 1999).

[344] "The assumption of a network in which repeaters, bridged taps, and load coils must be removed from certain loops to make those loops DSL capable is fundamentally incompatible with the least-cost, most efficient technology assumptions of a forward looking economic cost study." *See* ACI Exhibit 5, Direct Testimony of Terry L. Murray at 20-21 (Feb. 19, 1999).

[345] ACI Exhibit 5, Direct Testimony of Terry L. Murray at 20 (Feb. 19, 1999).

[346] *Id.* at 24 - 25; ACI Exhibit 5, Direct Testimony of Terry L. Murray at 24-25 (Feb. 19, 1999).

[347] ACI Post Hearing Brief at 109 (Aug. 17, 1999); ACI Exhibit 5, Direct Testimony of Terry L. Murray at 30-32 (Feb. 19, 1999).

and argues that SWBT's proposed conditioning charges would only add to the customers' costs.[348]

SWBT argues that the need to compensate it for loop conditioning was recognized by the *Local Competition Order*.[349] Nevertheless, SWBT only proposes to charge conditioning charges on xDSL loops greater than 12,000 feet.[350] SWBT concedes that over time, load coils, repeaters, and bridged tap will be slowly migrated out of SWBT's network.[351] Therefore, most loop conditioning will not be necessary in the future. Nevertheless, SWBT explains that some loops in today's network will require conditioning in order to provision xDSL services. SWBT explains that the conditioning activities will be performed by SWBT at the direct request of a CLEC. Therefore, SWBT contends, it should be fairly compensated for the work that it would otherwise not have performed. SWBT supplies a TELRIC-based xDSL conditioning cost study that calculates SWBT's proposed conditioning charges.[352]

Award

The Arbitrators find that SWBT should be fairly compensated for the work it performs when conditioning analog and digital xDSL loops at the request of a CLEC. The Arbitrators also find that SWBT's conditioning charges should be based on forward looking cost principles.

The Arbitrators find that on a forward-looking basis, xDSL loops less than 18,000 feet in length should rarely require conditioning. The Arbitrators believe there is sufficient evidence to support the conclusion that the retention or existence of repeaters or load coils on loops that are less than 18,000 feet in length is not consistent with the TELRIC principles as applied to develop a forward-looking network design. SWBT testifies that the presence of load coils and repeaters

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[348] Covad Exhibit 1, Direct Testimony of Charles A. Haas at 14 (Feb. 19, 1999); Covad Post Hearing Brief, at 57-58 (Aug. 17, 1999).

[349] *Local Competition Order* at ¶ 382.

[350] SWBT Exhibit 8, Rebuttal Testimony of Jerry Fuess at 7-8 (April 8, 1999).

[351] *Id.* at 6.

[352] *Id.* at 4, 6.

will be relatively rare. SWBT asserts that in most cases repeaters will not be on the loop unless ISDN is being provisioned.[353] Moreover, the forward looking cost studies utilized in the Mega-Arbitration did not assume the existence of load coils or repeaters on loops less than 18,000 feet in length; instead loops in excess of 12,000 feet in length were fiber.[354] In addition, SWBT's revised resistance design rules for loop plant only place disturbers on loops at 18,000 feet in length and beyond.[355] The Arbitrators find that on a forward-looking basis, load coils or repeaters should not be present on loops less than 18,000 feet in length. The Arbitrators find that the record suggests that the existence of bridged tap may be included in a forward looking network design.[356] Therefore, the Arbitrators believe that conditioning charges for the removal of repeaters and load coils should only apply to xDSL loops at or beyond 18,000 feet in length. This is 6,000 feet greater than SWBT's proposal to only charge conditioning charges on xDSL loops greater than 12,000 feet in length.[357]

However, the Arbitrators recognize that the FCC has recently found that the incumbent, in this instance SWBT, should be able to charge for conditioning on loops at or less than 18,000 feet in length.[358] Therefore, the Arbitrators find that appropriate TELRIC-based conditioning

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[353] Tr. at 1328 (June 4, 1999).

[354] *Id.* at 1222-1225.

[355] *Id.* at 1229-1230.

[356] Tr. at 1237-1238, 1303-1305, 1328-1329 (June 4, 1999).

[357] SWBT Exhibit 8, Rebuttal Testimony of Jerry Fuess at 7-8 (April 8, 1999).

[358] *UNE Remand Order* at ¶¶ 192-194. The FCC states in paragraphs 193 and 194:

> We agree that networks built today normally should not require voice-transmission enhancing devices on loops of 18,000 feet or shorter. Nevertheless, the devices are sometimes present on such loops, and the incumbent LEC may incur costs in removing them. Thus, under our rules, the incumbent should be able to charge for conditioning such loops.
>
> We recognize, however, that the charges incumbent LECs impose to condition loops represent sunk costs to the competitive LEC, and that these costs may constitute a barrier to offering xDSL services. We also recognize that incumbent LECs may have an incentive to inflate the charge for line conditioning by including additional common and overhead costs, as well as profits. We defer to the states to ensure that the costs incumbents impose on competitors for line conditioning are in compliance with our pricing rules for nonrecurring costs.
> (Footnotes omitted.)

charges for the removal of repeaters, bridged taps, and/or load coils shall apply to loops of any length greater than 12,000 feet.

SWBT's proposed conditioning cost study only considers the costs associated with conditioning loops less than 17,500 feet in length. SWBT did not supply any cost information with respect to conditioning loops in excess of 17,500 feet in length.[359] When questioned during the hearing, SWBT did not provide a cost basis for choosing 17,500 feet for a cutoff.[360] However, the Parties agree that "...17.5 is not a magic cutoff where the cost characteristics become radically different...."[361] Rhythms asserts that there are generally no differences between loops less than or in excess of 17,500 feet in length.[362] SWBT witness Deere explained that with some technologies, loops require repeaters after reaching 18,000 feet in length; in his words, "that's why the distance was kept below that."[363]

The Arbitrators acknowledge that the Parties testified that the cost studies utilized in the Mega-Arbitration were completed according to TELRIC principles and designed to create an efficient POTS network.[364] Therefore, the designed network did not normally include load coils or repeaters on loops less than 18,000 feet in length.[365] However, this network design is contrary to the network modeled in SWBT's proposed xDSL non-recurring cost studies for conditioning, which does assume the existence of disturbers on loops less than 18,000 feet in length. The Arbitrators find that the network design inconsistencies in the recurring and non-recurring cost studies do not result in correct xDSL costs and rates and consequently render the proposed charges invalid. Therefore, the Arbitrators order SWBT to file new TELRIC-based cost studies for conditioning of analog and digital xDSL loops at or in excess of 18,000 feet in length. The

[359] Tr. at 1226 (June 4, 1999).

[360] *Id.* at 1241.

[361] *Id.* at 1243, 1403.

[362] ACI Exhibit 1, Direct Testimony of Eric H. Geis at 41 (Feb. 19, 1999).

[363] Tr. at 1243 (June 4, 1999).

[364] *Id.* at 1222.

[365] *Id.* at 1237, 1303, 1305.

Arbitrators also order SWBT to file a new TELRIC-based cost study for the removal of bridged tap, load coils, and repeaters on xDSL loops greater than 12,000 feet in length but less than 18,000 feet in length.

The Arbitrators order that both cost studies be based on the same network used to calculate xDSL loop rates,[366] incorporate the actual percentage of loops that require conditioning based on actual field experience, utilize efficient conditioning, and include a future discount. The Arbitrators find that evidence in the record suggests that over time, load coils, repeaters, and bridged tap will be migrated out of SWBT's network.[367] Therefore, most loop conditioning will not be necessary in the future. The Arbitrators also order SWBT to take into account any current plans and work in progress to rearchitect its network to push fiber deeper into the network structure, thereby reducing the likelihood that accreted devices, *e.g.*, load coils, would be present on loops. The Arbitrators order that this reduction in the likelihood of conditioning be reflected in the cost studies through a future discount. The Arbitrators also order that the modifications adopted below be addressed in the new cost studies. The Arbitrators invite Rhythms and Covad to file their own cost studies. Until new cost studies are approved by the Commission, the Arbitrators' interim conditioning rates shall apply.[368]

The Arbitrators adopt SWBT's proposed conditioning charges, with modification, on an interim basis. Specifically, the Arbitrators have removed the bridged tap re-installation from the cost of removing a bridged tap. The Arbitrators find, based upon the evidence in the record, that the CLEC should not be considered the appropriate "cost causer" for re-installing bridged taps.[369] *See* Attachment B, Paragraph D. The interim rates are based on TELRIC pricing principles. After the appropriate rate for each conditioning activity was determined, a 13.1% Common Cost Allocation Factor was applied.

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[366] *See* DPL at 62 (May 28, 1999).

[367] SWBT Exhibit 8, Rebuttal Testimony of Jerry Fuess at 6 (April 8, 1999).

[368] *See* Implementation Schedule, Section VIII of this Award.

[369] Tr. at 1347-1349 (June 4, 1999); SWBT Exhibit 8, Rebuttal Testimony of Jerry Fuess at 6 (April 8, 1999).

The Arbitrators also modify the cost studies to reflect the costs of efficient conditioning. SWBT states that it does not intend to condition more loops than the CLEC requests.[370] For example, if a CLEC requests conditioning on one loop in a binder group of 50 pairs, SWBT would dispatch a technician to condition only the single loop. However, SWBT's more efficient internal practice is to condition at least 50 loops at a time when it is necessary to dispatch a technician.[371] Therefore, the Arbitrators modify SWBT's xDSL conditioning cost study to reflect the more efficient practice of conditioning several loops, or entire binder groups, when a technician is dispatched and the cable splice is entered. Because of the smaller sized binder groups used in longer cabling, the Arbitrators find an appropriate unit size for the purpose of calculating conditioning charges for loops at or in excess of 18,000 feet in length to be 25. The Arbitrators use a unit size of 50 when calculating the charges for removing load coils, bridged taps, and/or repeaters on xDSL loops greater than 12,000 feet in length but less than 18,000 feet in length.[372]

Furthermore, the Arbitrators clarify that the additional charges for any mixed conditioning shall be the additional charge for the specific disturber unless an additional incidence of both disturbers exists on the loop. For example, when removing both bridged tap and load coils from a loop, the initial charge of $59.35 would apply. The $53.72 additional charge would only apply if the loop also necessitated the removal of additional bridged taps and additional load coils. If the loop *only* required the removal of additional bridged taps, the $18.81 additional bridged tap charge would then apply.

The Arbitrators stress that conditioning of xDSL loops shall only be performed at the request of the CLEC. The Arbitrators note for the record that SWBT could not testify that it has charged any SWBT retail ADSL customers the $900 conditioning charge listed in its federal

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[370] SWBT Exhibit 8, Rebuttal Testimony of Jerry Fuess at 7 (April 8, 1999); ACI Exhibit 171, Staff Reserved RFI Responses (SWBT responses to ACI RFI 3-24) (June 5, 1999).

[371] ACI Exhibit 5, Direct Testimony of Terry L. Murray at 25-27 (Feb. 19, 1999); ACI Exhibit 171, Staff Reserved RFI Responses (June 5, 1999).

[372] *See* Appendix D for revised cost study.

tariff.[373] This appears to constitute a barrier to CLECs' offering of xDSL services, *i.e.*, charging wholesale customers conditioning charges, while excusing retail customers. Moreover, the likelihood of SWBT applying conditioning charges to a retail customer is lower because SWBT has segregated "clean loops" for ADSL service, which is the type of xDSL service it initially intends to provision.[374] The record reflects that SWBT even considered pre-grooming loops for its own retail service, but has not pursued that option.[375]

The Arbitrators find that SWBT must make those "clean loops" available for all xDSL services and use by all xDSL providers. The Arbitrators find that opening access to the segregated binder groups to all xDSL providers for all xDSL services will help ameliorate the imbalance created by SWBT and decrease the likelihood of other xDSL providers incurring conditioning charges.[376] Therefore, when a CLEC orders an xDSL loop, SWBT must make available for use on a nondiscriminatory basis one of the segregated loops that does not need

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[373] Tr. at 1327, 1401 (June 4, 1999).

[374] Tr. at 1379, ll. 23-25-1380, ll. 1-24; 1382, ll. 8-12 (June 4, 1999):

A (Deere) Yes, it is. What we have done -- now, don't get confused between designating binding groups to be used for ADSL and preconditioning.
Q (Farroba) What's the difference?
A (Deere) Designating just says we have picked a binder group that does not have other digital services in it, and hopefully not adjacent to it, and designated it to be used for POTS and ADSL services.
Q (Farroba) Are you going to have to condition those designated fiber groups?
A (Deere) Again, as we've said before, we don't offer, on a retail basis, ADSL where the cables are loaded, and so we do not -- you know, we do not go out and remove load coils because we don't offer it where they're loaded because the POTS service isn't going to work, and we have not removed bridged taps, that I'm aware of anywhere. Again --
Q (Malone) So, Mr. Deere, you stated that Southwestern Bell has predetermined some binder groups that they will reserve for POTS and ADSL service?
A (Deere) They have designated, yes.
Q (Malone) Those are just for ADSL, not for any other flavor of DSL?
A (Deere) That is correct. We have said as part of the plan that we have put forth is that all other cable binder groups will be available for those services.
Q (Malone) Do you know how many wire centers you've already reserved binder groups in?
A (Deere) There are wire centers in the major metropolitan areas; a hundred plus. I don't have a number right off the top of my head.

See also Tr. at 1780-1785, 1793-1803 (June 5, 1999).

[375] ACI Exhibit 171, Staff Reserved RFI Responses (SWBT responses to ACI RFI 3-22, 3-23) (June 5, 1999); Tr. at 1381-1385 (June 4, 1999).

[376] *See* DPL at 30 (May 28, 1999).

conditioning. If no more clean loops are available for use, then the conditioning charges stated below apply. The Arbitrators stress that SWBT's retail and/or advanced services affiliate shall not be given preferential access to such segregated clean loops, nor shall such clean loops be reserved exclusively for ADSL services.

The Arbitrators find that the interim conditioning charges, listed below, are applicable to every xDSL loop greater than 12,000 feet in length but less than 18,000 feet in length, in which the CLEC requests the removal of bridged tap, load coils, and/or repeaters.

	Nonrecurring	
	Initial	Additional
Removal of Repeater	$10.82	$9.41
Removal of Bridged Tap and Repeater	$27.08	$24.19
Removal of Bridged Tap	$17.62	$14.79
Removal of Bridged Tap and Load Coil	$40.44	$37.62
Removal of Load Coil	$25.66	$22.83
Removal of Repeater and Load Coil	$35.06	$32.23

The Arbitrators find that the interim conditioning charges, listed below, are applicable to every xDSL loop, at or in excess of 18,000 feet in length, that requires the specific conditioning listed.

	Nonrecurring	
	Initial	Additional
Removal of Repeater	$16.25	$13.42
Removal of Bridged Tap and Repeater	$37.89	$32.23
Removal of Bridged Tap	$24.46	$18.81
Removal of Bridged Tap and Load Coil	$59.35	$53.72
Removal of Load Coil	$40.55	$34.89
Removal of Repeater and Load Coil	$53.99	$48.34

Until such time as permanent conditioning charges are approved, SWBT shall condition xDSL loops, at the request of Petitioners, at the interim charges above. The conditioning charges are subject to refund/surcharge upon approval of permanent conditioning charges, back to the date the Interconnection Agreements resulting from this Award become effective.

30. Should SWBT be allowed to charge for a Loop Qualification Process?

Parties' Positions

See DPL Issue No. 18.

Award

The Arbitrators find that SWBT cannot impose a loop qualification process rather than provide information concerning loop makeup. Therefore, finding an appropriate charge for a loop qualification process is not necessary. *See* DPL Issue No. 18.

31. Is it appropriate to charge for loop makeup information?

Parties' Positions

Rhythms states the forward-looking cost of providing loop makeup information is $0. Rhythms notes that the *Local Competition Order* requires SWBT to offer its competitors access to the information existing in its OSS and related databases using mechanisms comparable to those available to its own personnel for accessing such information.[377] Additionally, Rhythms argues that the *Advances Services Order* concludes that new entrants should have full access to specific loop technical and engineering data as to "...the number of loops using advances services technology within the binder and type of technology deployed on those loops."[378] Rhythms states that the record reflects that SWBT can and will use its access to loop information

[377] ACI Post-Hearing Brief at 112 (Aug. 17, 1999); *Local Competition Order* at § 51.313(c).

[378] ACI Post-Hearing Brief at 112 (Aug. 17, 1999); *Advanced Services Order* at ¶ 73 (footnote omitted).

to tailor a fully electronic loop qualification process for its own retail ADSL operations. Thus, Rhythms argues, pursuant to FCC requirements, SWBT is obligated to offer Rhythms electronic access to this same loop makeup information.[379]

Rhythms believes that the cost of the loop makeup information should reflect the forward-looking economic cost of providing the information to Rhythms via an electronic interface. Rhythms argues that the cost for such a process would be *de minimis* because it involves no more than a small incremental use of SWBT's processor capacity.[380]

Covad agrees with Rhythms' rationale and argues that SWBT should provide CLECs with a computerized interface with its databases that will eliminate the need for SWBT to incur any expenses in providing loop makeup information to CLECs.[381]

SWBT offers to provide CLECs loop make-up information free of charge via the pre-qualification process.[382] The free information consists of one of three indicators that will identify the loop as a copper-based facility less than 12,000 feet, a copper based facility between 12,000 and 17,500 feet, or a copper based facility in excess of 17,500 feet, or a noncopper based facility.[383] SWBT states that it will negotiate a rate along with terms and conditions for providing additional information on a manual basis.[384]

Award

The Arbitrators find that SWBT should be fairly compensated for the real time access to its OSS functionalities required by DPL Issue No. 15. Because the OSS functionalities have not

[379] ACI Post-Hearing Brief at 112 (Aug. 17, 1999).

[380] *Id.*

[381] DPL at 68-69 (May 28, 1999).

[382] SWBT Post Hearing Brief at 42 (Aug. 17, 1999).

[383] SWBT Exhibit 7, Rebuttal Testimony of William C. Deere at 9 (April 8, 1999). The pre-qualification has been referred to as "red, yellow, green."

[384] *Id.*

been created, the Arbitrators cannot adopt a cost-based rate for loop makeup information. However, during the interim, the Arbitrators find the non-recurring "dip charge" below to be appropriate. The Arbitrators find the "dip charge" to be in addition to any established service order charges applicable to Petitioners. The "dip charge" will apply on a per loop basis.

The Arbitrators order SWBT to file a cost study for the loop makeup information charge within one month after the implementation of its fully mechanized, real time, OSS functionalities as ordered in DPL Issue. No. 15. Until the Commission has approved a cost study, the Arbitrator's interim "dip charge" will apply. Until such time that a permanent loop make-up information charge is approved, SWBT shall provide Petitioners loop make-up information at the interim "dip charge" below. The interim "dip charge" is subject to refund/surcharge upon approval of a permanent loop make-up information charge back to the date the Interconnection Agreements resulting from this Award become effective.

The Arbitrators' decision is consistent with the terms of the SBC/Ameritech merger, in which the FCC found that "SBC/Ameritech is not required to eliminate extra charges for manual processing of service orders, provided that an electronic means of processing such orders is available to carriers. If, however, no electronic interface for processing orders of 30 lines or less is available to a carrier, SBC/Ameritech will eliminate any extra charge for manual processing and shall charge instead the rate for processing similar orders electronically."[385]

	Nonrecurring "Dip Charge"
Loop Makeup Information (Per Loop)	$0.10

32. If SWBT is permitted to require shielded cable for xDSL technologies, is there any additional cost associated with shielded intraoffice versus non-shielded cable?

Parties' Positions

[385] SBC/Ameritech Merger Order at ¶ 384.

See DPL Issue Nos. 7, 28(a), and 28(b).

Award

The Arbitrators find that SWBT is not permitted to require shielded cable for xDSL technologies. The Arbitrators add that all cross connect facilities, shielded or non-shielded, must be provided in a reasonable and non-discriminatory manner.[386]

35. How should cageless collocation be priced?

Parties reached agreement on this issue in the arbitration proceedings on April 15, 1999.[387]

VII. Miscellaneous

DPL Issue Nos. 23-25, 37-39

23. Should all performance measures and penalties adopted in SWBT's §271 proceeding be incorporated into the Interconnection Agreement?

Parties' Positions

Rhythms believes the inclusion of all meaningful and effective performance measures and penalties is crucial to ensuring SWBT's ongoing compliance with the terms of the interconnection agreement. Rhythms views the performance measurements and penalties adopted in the §271 proceeding as a minimum standard and requests the opportunity to negotiate additional measurements if necessary. Rhythms argues that all of the performance measurements and penalties established in the § 271 proceeding must be incorporated into the resulting Interconnection Agreements (including the measurements and penalties related to loops in excess of 17,500 feet in length and loops less than 17,500 feet in length), in those instances

[386] *UNE Remand Order* at ¶ 178.

[387] Tr. at 467-541 (April 15, 1999); Provisions are adopted and should be incorporated into the resulting Interconnection Agreements as contained in SWBT Exhibit 6, Rebuttal Testimony of Michael C. Auinbauh at Schedule 1 (April 8, 1999).

where SWBT recommends conditioning and the CLEC declines conditioning or chooses partial conditioning of the xDSL loop.[388]

Covad does not dispute this issue.

SWBT offers to provide most of the performance measures agreed to during the §271 proceeding. However, SWBT identifies two situations in which it believes certain performance measures are not appropriate. SWBT asserts that maintenance and repair measurement should not apply for loops in excess of 17,500 feet in length. SWBT also argues that performance measures should not apply to loops in which SWBT recommends conditioning and the CLEC declines the conditioning.[389]

SWBT does not offer to provide the performance penalties associated with the measurements. SWBT witness Auinbauh testified that it "has agreed to language in the negotiation process and in those draft agreements that come out of the 271 process. I believe that that language was drafted specifically excluding the penalty portion of that."[390] SWBT explains that it would be willing to apply the penalties in the context of "MFNing" into an agreement that included the penalties.[391]

Award

The Arbitrators find that all performance measures and penalties adopted in the §271 proceeding, except as discussed below, shall be incorporated into the resulting Interconnection Agreements. The performance measurement penalties should be a minimum standard. The Arbitrators encourage the Parties to negotiate additional performance measures and penalties if desired. The Arbitrators find that SWBT shall not be required to guarantee that the xDSL loop(s) ordered will perform (with regard to transmission speed) as desired by CLEC for xDSL

[388] Rhythms Post-Hearing Briefs at 132 (Aug. 17, 1999).

[389] SWBT Post-Hearing Brief at 80 - 81 (Aug. 17, 1999); SWBT Exhibit 5, Rebuttal Testimony of Michael C. Auinbauh at 17 - 18 (April 8, 1999).

[390] Tr. at 402 (April 15, 1999).

[391] *Id.* at 403.

services, but instead shall guarantee basic metallic loop parameters, including continuity and pair balance. All other performance measures and penalties applicable to the provisioning of xDSL capable loops, including those added to the § 271 agreement as a result of this Award[392], will fully apply to all xDSL loops without regard to the loop length.

24. Should ACI be permitted to incorporate into the interconnection agreement the results, agreements and decisions reached in the § 271 proceeding?

Parties' Positions

Rhythms proposes contract language that would allow either Party, upon request, to adopt and incorporate into the resulting Interconnection Agreements the results, agreements and/or decisions reached in the §271 proceeding.[393] *See* DPL Issue No. 23.

Covad does not dispute this issue.

SWBT states that it will make available to requesting CLECs any service or network element arrangement from a Commission-approved agreement, provided that the CLECs also accept all legitimately related terms and conditions. SWBT clarifies that any agreed-to actions it undertakes in connection with obtaining interLATA relief may not be available generally to all CLECs.[394]

Award

The Arbitrators find that Rhythms should be permitted to incorporate into the resulting Interconnection Agreements any results, agreements and decisions reached in the §271 proceeding that are included in the T2A, provided that Rhythms also accept any legitimately related terms and conditions. The Arbitrators find that agreements reached in the §271

[392] *See* Implementation Schedule in Section VIII of Award.

[393] ACI's Post-Hearing Brief at 133 (Aug. 17, 1999).

[394] SWBT Post-Hearing Brief at 81 (Aug. 17, 1999); SWBT Exhibit 6, Rebuttal Testimony of Michael Auinbauh at 18 (April 8, 1999).

proceeding should be available to all CLECs in order to further competition in Texas. *See* DPL Issue No. 25.

25. Should Rhythms be entitled to "pick and choose" on a piecemeal basis rates and conditions from other, already approved, interconnection contracts?

Parties' Positions

Rhythms claims that it must have the right to incorporate provisions from existing interconnection agreements into its resulting Interconnection Agreement with SWBT. Rhythms argues that the right to "pick and choose" is grounded in FTA § 252(i). Rhythms contends that the FCC's interpretation of this section in the *Local Competition First Report and Order* supports its position. The FCC stated that "a carrier may obtain access to individual elements such as unbundled loops at the same rates, terms and conditions as contained in any approved agreement."[395]

Covad does not dispute this issue.

SWBT states that it will make available to requesting CLECs any service or network element arrangement from a Commission-approved agreement, provided that CLECs also accept all legitimately related terms and conditions.[396]

Award

The Arbitrators find that Rhythms is entitled to "pick and choose" rates and conditions from other, already approved, interconnection agreements. The Arbitrators find that Rhythms may "pick and choose" individual elements and rates when it agrees to adopt the legitimately

[395] ACI's Post-Hearing Brief at 134 (Aug. 17, 1999); *Local Competition First Report and Order* at ¶ 1314.

[396] SWBT Post-Hearing Brief at 81 (Aug. 17, 1999); SWBT Exhibit 6, Rebuttal Testimony of Michael Auinbauh at 18 (April 8, 1999).

related terms and conditions. The Arbitrators direct Rhythms and SWBT to follow the interim "pick and choose" process established by the Commission in Docket No. 21100.[397]

37. Given that xDSL is a newly developing service, should SWBT be required to give to Rhythms analogous preferential rates adopted after this proceeding?

Parties' Positions

Rhythms claims that it must have the right to incorporate provisions from subsequent interconnection agreements into its agreement with SWBT. Because xDSL is a new technology, Rhythms testifies that it would be appropriate to permit Rhythms to opt into more favorable rates, terms or conditions from future contracts without the necessity to terminate its Interconnection Agreement with SWBT. Rhythms asserts that the FCC recognized the importance if this "opt-in" ability in its *Local Competition First Report and Order.* The FCC stated that "unbundled access to agreement provisions will enable smaller carriers who lack bargaining power to obtain favorable terms and conditions – including rates – negotiated by large IXCs...." Rhythms notes that the U.S. Supreme Court has affirmed this interpretation.[398]

Covad does not dispute this issue.

SWBT asserts that Rhythms may apply the FCC rules to receive "more favorable" terms as long as it takes all legitimately related terms and conditions of the "more favorable" agreement. SWBT explains that Rhythms would have three options: (1) adopt the "more favorable" agreement under the "Other Available Agreements" clause of the underlying agreement; (2) request that SWBT negotiate an amendment to Rhythms' current agreement; or (3) terminate its agreement and negotiate another agreement.[399]

Award

[397] *Application of Metro Access Networks, Inc. for Approval of Interconnection Agreements under PURA and the Telecommunications Act of 1996,* Order on Appeal of Order No. 4, Docket No. 21100 (Aug. 27, 1999).

[398] ACI's Post-Hearing Briefs at 133-134 (Aug. 17, 1999); *Local Competition First Report and Order* at ¶ 1313; *AT&T Corp. v. Iowa Utilities Board,* 119 S. Ct. at 738.

[399] SWBT Post-Hearing Brief at 82 (Aug. 17, 1999).

The Arbitrators find that SWBT is not required to automatically give Rhythms analogous preferential rates adopted after this proceeding. However, providing Rhythms accepts the legitimately related terms and conditions, the Arbitrators find that Rhythms must be able to "opt in" to other SWBT agreements. The Arbitrators require SWBT to negotiate in good faith should Rhythms request to utilize its right to "pick and choose," or any of the three options detailed above by SWBT. *See* DPL Issue No. 25.

38. Should the interconnection agreement continue to require dispute resolution before the Commission in light of the Supreme Court's recent decision in *Iowa Utilities Board v. AT&T Corp.?*

Covad and SWBT reached agreement on this issue during the arbitration proceedings.[400] The issue is not disputed by Rhythms.[401]

39. Should agreed-to commercial arbitrations alternate between SWBT's home and Covad's?

Covad and SWBT reached agreement on this issue during the arbitration proceedings.[402] The issue is not disputed by Rhythms.[403]

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[400] Tr. at 467-541 (April 15, 1999); Provisions are adopted and should be incorporated into the resulting Covad and SWBT Interconnection Agreement as contained in Covad's Post-Hearing Brief at Exhibit 2 (Aug. 17, 1999).

[401] Covad Post-Hearing Brief at 5 (Aug. 17, 1999); SWBT Post-Hearing Brief at 84 (Aug. 17, 1999); Tr. at 770 (June 2, 1999).

[402] Tr. at 467-541 (April 15, 1999); Provisions are adopted and should be incorporated into the resulting Covad and SWBT Interconnection Agreement as contained in Covad's Post-Hearing Brief at Exhibit 2 (Aug. 17, 1999).

[403] Covad Post-Hearing Brief at 5 (Aug. 17, 1999); SWBT Post-Hearing Brief at 84 (Aug. 17, 1999); Tr. at 770 (June 2, 1999).

VIII. Implementation Schedule

Pursuant to FTA §252(c)(3), the Arbitrators provide the following "schedule for implementation of the terms and conditions" of this Award and the Parties' resulting Interconnection Agreements. This schedule incorporates the deadlines for: (1) the filing and approval of Interconnection Agreements consistent with this Award; (2) the filing of a new xDSL loop cost study; (3) the filing of new cost studies for conditioning of xDSL loops; (4) the implementation of enhancements to SWBT's existing Datagate and EDI interfaces for pre-ordering (including electronic access to loop make-up information) and ordering of DSL-capable loops; (5) availability of and access to trouble reports for any function or capability of the accessed loop element; (6) the filing of a loop make-up information cost study; (7) the finalizing of performance measures for xDSL; and (8) the filing of a plan to ensure that SWBT's retail ADSL employees (and employees of any advanced services affiliate) do not have access to competitive information or other information at SWBT that creates a competitive advantage for SWBT's retail xDSL deployment. The schedule is, and should be considered, an integral part of the Award in this proceeding.

Parties file Interconnection Agreements that comply with Award	December 30, 1999
Parties file proposed performance measures for xDSL[404] (DPL Issue No. 23)	December 30, 1999
SWBT makes available access to trouble reports for any function or capability of the accessed loop element in compliance with Award (DPL Issue No. 15)	December 30, 1999
SWBT files Plan to Ensure Competitive Neutrality and Nondiscrimination in Access to Competitively Relevant Information (DPL Issue No. 16)	January 14, 2000
SWBT files new xDSL Loop Cost Study (DPL Issue No. 27)	March 1, 2000

[404] As required by Section 10.3, Attachment 25 of the T2A:

10.3 Performance measurements for xDSL will be finalized within thirty (30) days after the final Order in the xDSL Arbitration.

SWBT files new Conditioning Cost Study (DPL Issue No. 29)	March 1, 2000
SWBT implements Datagate and EDI enhancements, including electronic pre-ordering of Loop Make-up Information (DPL Issue Nos. 15 and 19a)	May 30, 2000
SWBT files Loop Make-up Information Cost Study (DPL Issue No. 31)	June 30, 2000
Deadline for Parties to: (1) file negotiated permanent rates; and/or (2) request further arbitration on rate issues	July 30, 2000

IX. Conclusion

The Arbitrators conclude that the foregoing Arbitration Award, including the attached appendices, resolves the disputed issues presented by the Parties for arbitration. The Arbitrators further find that this resolution complies with the standards set in FTA §252(c), the relevant provisions of PURA99, and P.U.C. PROC. Rs. 22.301-22.310.

SIGNED AT AUSTIN, TEXAS the ______ day of November, 1999.

FTA § 252 ARBITRATION PANEL

____
KATHERINE D. FARROBA
ARBITRATOR

____
ROWLAND L. CURRY
ARBITRATOR

<u>Commission Staff Arbitration Advisors</u>

Jennifer Kambhampati
Abigail C. Klamert
Melanie M. Malone
Elango Rajagopal

Attachment A

DPL Issue Cross Reference Sheet

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Confidential Attachment B

(One page under seal)

Confidential References in Award

Confidential Attachment C

(3 pages under seal)

Revised Shielded Cross Connect Cost Study

Confidential Attachment D

(2 pages under seal)

Revised Conditioning Cost Study for xDSL Loops greater than 12,000 feet but less than 18,000 feet in Length

Confidential Attachment E

(2 pages under seal)

Revised Conditioning Cost Study for xDSL Loops at or in Excess of 18,000 feet in Length

JAN 25 2000

BELLSOUTH TELECOMMUNICATIONS, INC.
DIRECT TESTIMONY OF ALPHONSO J. VARNER
BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION
DOCKET NO. 991838-TP
January 25, 2000

Q. PLEASE STATE YOUR NAME, YOUR POSITION WITH BELLSOUTH TELECOMMUNICATIONS, INC. ("BELLSOUTH") AND YOUR BUSINESS ADDRESS.

A. My name is Alphonso J. Varner. I am employed by BellSouth as Senior Director for State Regulatory for the nine-state BellSouth region. My business address is 675 West Peachtree Street, Atlanta, Georgia 30375.

Q. PLEASE PROVIDE A BRIEF DESCRIPTION OF YOUR BACKGROUND AND EXPERIENCE.

A. I graduated from Florida State University in 1972 with a Bachelor of Engineering Science degree in systems design engineering. I immediately joined Southern Bell in the division of revenues organization with the responsibility for preparation of all Florida investment separations studies for division of revenues and for reviewing interstate settlements.

Subsequently, I accepted an assignment in the rates and tariffs organization with responsibilities for administering selected rates and tariffs including

1 preparation of tariff filings. In January 1994, I was appointed Senior Director
2 of Pricing for the nine-state region. I was named Senior Director for
3 Regulatory Policy and Planning in August 1994, and I accepted my current
4 position as Senior Director of Regulatory in April 1997.
5
6 Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?
7
8 A. The purpose of my testimony is to present BellSouth's position on numerous
9 unresolved issues in the negotiations between BellSouth and BlueStar
10 Networks, Inc. ("BlueStar"). Specifically, I address Issues 2, 10, 11, 14 and
11 15. The remaining unresolved issues are addressed in the testimony of
12 BellSouth witnesses Keith Milner and Ron Pate.
13
14 ***Issue 2: Should BellSouth be required to:***
15 ***(a) conduct a trial of line sharing with BlueStar, and if so, when?***
16 ***(b) conduct a trial of electronic ordering and provisioning of line sharing with***
17 ***BlueStar and, if so, when?***
18
19 Q. WHAT IS BELLSOUTH'S POSITION ON THIS ISSUE?
20
21 A. BellSouth is not required to conduct a trial of line sharing or electronic
22 ordering and provisioning of line sharing with BlueStar. Although BellSouth
23 is obligated to comply with the FCC's recent order on line sharing, BellSouth
24 is not obligated to conduct a trial. BellSouth intends to follow its normal
25 business practices in determining whether, and under what conditions, a trial of

1 line sharing is appropriate. Line sharing is a recent development in the
2 telecommunications industry and, due to the complex issues surrounding
3 provisioning and maintaining shared lines, it is premature to consider a trial
4 with BlueStar, or any other ALEC, at this time. Mr. Ron Pate addresses Issue
5 2(b) regarding a possible trial of electronic ordering and provisioning of line
6 sharing.
7
8 Although the FCC recently set forth rules and guidelines for the provision of
9 line sharing between an ILEC and an ALEC, it recognized that ILECs must
10 make modifications to systems and processes in order to make line sharing
11 available. The FCC therefore indicated that ILECs should make line sharing
12 available to ALECs within 180 days of the issuance of its order, on December
13 9, 1999, which will be June 6, 2000. The implementation of line sharing
14 between BellSouth and an ALEC involves complex operational issues that
15 require a thorough understanding of the ALEC's needs, necessary systems
16 modifications and an assessment of hardware needs and selection of a
17 hardware vendor. In addition, in order for successful rollout and
18 implementation, methods and procedures must be developed and deployed to
19 field forces. These issues cannot be sidestepped or ignored because line
20 sharing involves implementing the service on a customer's existing, working
21 local service line. BellSouth fully intends to implement line sharing
22 expeditiously, while ensuring the integrity of the customer's local service and
23 the systems that support that service.
24
25 Q. DOES BELLSOUTH EXPECT TO CONDUCT SUCH A TRIAL AT SOME

1 TIME IN THE FUTURE?

2

3 A. I am only addressing BellSouth's plans with regard to Issue 2(a). Mr. Pate
4 addresses BellSouth's plans regarding electronic ordering. BellSouth is not
5 certain at this time that a trial of line sharing is even necessary. It may be
6 determined that a trial is the appropriate means to test procedures developed by
7 BellSouth to implement line sharing. Again, it is premature to make that
8 determination. If it is determined that a trial is appropriate, a further
9 determination will be made as to whether BellSouth would conduct the trial
10 with an ALEC trial partner or with a neutral third party.

11

12 ***Issue 10: What are the TELRIC-based rates for the following:***
13 ***(a) 2-wire ADSL compatible loops, both recurring and nonrecurring;***
14 ***(b) 2-wire HDSL compatible loops, both recurring and nonrecurring;***
15 ***(c) "UCL" loops, both recurring and nonrecurring;***
16 ***(d) loop conditioning for each of the loops listed above, as well as the 4-wire HDSL***
17 ***loop.***

18

19 Q. PLEASE PROVIDE A BRIEF DESCRIPTION OF THE 2-WIRE ADSL AND
20 2-WIRE HDSL COMPATIBLE LOOPS AND THE UNBUNDLED COPPER
21 LOOP ("UCL").

22

23 A. A 2-wire ADSL compatible loop is up to 18,000 feet in length with a
24 maximum of 2,500 feet of bridge tap where no single bridge tap length exceeds
25 2,000 feet. An ADSL compatible loop is designed, provisioned with a test

1 point and comes standard with order coordination and a design layout record
2 ("DLR").
3
4 A 2-wire HDSL compatible loop is up to 9,000 feet in length with a maximum
5 of 2,500 feet of bridge tap where no single bridge tap length exceeds 2,000
6 feet. An HDSL compatible loop is designed, provisioned with a test point and
7 comes standard with order coordination and a DLR.
8
9 The UCL, as requested by BlueStar, actually encompasses two separate
10 products; a copper loop up to 18,000 feet in length and a copper loop greater
11 than 18,000 feet in length. A UCL up to 18,000 feet is unencumbered by any
12 intervening equipment and may contain up to 2,500 feet of bridge tap in
13 addition to the loop itself. The UCL up to 18,000 feet is a designed circuit,
14 provisioned with a test point and comes standard with a DLR. Order
15 coordination will be offered as a chargeable option.
16
17 BlueStar has also requested a UCL greater than 18,000 feet in length.
18 BellSouth is in the process of operationalizing a long dry copper loop to meet
19 BlueStar's request, where facilities exist. The UCL greater than 18,000 feet
20 will be a designed circuit, provisioned with a test point and come standard with
21 a DLR. Order coordination will be offered as a chargeable option.
22
23 UCLs will not be held to the service level and performance expectations that
24 apply to ADSL and HDSL loop offerings. BellSouth is only obligated to
25 maintain copper continuity and provide balance relative to tip and ring on

1 UCLs.

2

3 Q. WHAT IS BELLSOUTH'S POSITION WITH RESPECT TO THE

4 APPROPRIATE PRICES FOR THE 2-WIRE ADSL AND 2-WIRE HDSL

5 COMPATIBLE LOOPS?

6

7 A. This Commission has already established recurring and nonrecurring prices for

8 two-wire ADSL and HDSL compatible loops. Prices for numerous UNEs

9 were ordered by this Commission in its December 31, 1996 Order No. PSC-

10 96-1579-FOF-TP, Docket Nos. 960833-TP, 960846-TP, and 960916-TP

11 ("December 31, 1996 Order") and subsequently in its April 29, 1998 Order No.

12 PSC-98-0604-FOF-TP, Docket Nos. 960757-TP, 960833-TP, and 960846-TP

13 ("April 29, 1998 Order").

14

15 In its December 31, 1996 Order, at page 22, this Commission determined "that

16 the appropriate cost methodology to determine the prices for unbundled

17 elements is an approximation of Total Service Long Run Incremental Cost

18 (TSLRIC)." Further, on page 32, the Commission found that "BellSouth's cost

19 studies are appropriate because they approximate TSLRIC cost studies and

20 reflect BellSouth's efficient forward-looking costs." Finally, on page 33, the

21 Commission stated that "we find it appropriate to set permanent rates based on

22 BellSouth's TSLRIC cost studies. The rates cover BellSouth's TSLRIC costs

23 and provide some contribution toward joint and common costs." In its April

24 29, 1998 Order, the Commission established prices for 2-wire ADSL and

25 HDSL compatible loops, and these prices are shown on Exhibit AJV-1

1 attached to my testimony.

2

3 Q. WHY DOES BELLSOUTH BELIEVE THAT THE PRICES FOR UNEs

4 PREVIOUSLY ORDERED BY THIS COMMISSION ARE APPROPRIATE

5 FOR BLUESTAR?

6

7 A. BellSouth's cost studies are generic in that they determine the costs to

8 BellSouth of providing UNEs to any requesting carrier. These costs do not

9 vary, whether it is AT&T or BlueStar that is requesting the element.

10 Therefore, the costs that this Commission has already used to establish prices

11 for AT&T, MCI, and other ALECs should be the same for BlueStar or for any

12 other ALEC.

13

14 Q. WHAT DOES BELLSOUTH PROPOSE AS THE PRICE FOR THE UCL?

15

16 A. BellSouth proposes interim prices subject to true-up for UCLs and for loop

17 conditioning. For the UCL up to 18,000 feet BellSouth proposes an interim

18 price based on a price that BellSouth has used with several ALECs in contract

19 negotiations. This price was developed through a TSLRIC study. See Exhibit

20 AJV-1 attached to this testimony for recurring and nonrecurring prices.

21

22 Because BellSouth has not yet operationalized the copper loop greater than

23 18,000 feet, unlike the UCL up to 18,000 feet, there is no existing price that

24 BellSouth has used in contract negotiations. BellSouth is, however, conducting

25 a study for use in Georgia that should be available shortly. BellSouth proposes

1 to supplement this testimony with the results of the Georgia study and use the
2 results as an interim price subject to true-up until a Florida specific price, to be
3 proposed in April, is adopted by the Commission.
4
5 In addition to the loops described above, BellSouth will also offer loop
6 conditioning for the removal of load coils on ADSL and HDSL compatible
7 loops and UCLs at interim prices as shown in exhibit AJV-1. Much like the
8 UCL greater than 18,000 feet, BellSouth does not currently have a price used
9 in contract negotiations for loop conditioning. Therefore, similar to the long
10 UCL, BellSouth proposes to supplement this testimony with the results of a
11 loop conditioning study currently being conducted in Georgia. Such price
12 would be interim and subject to true-up until a Florida specific price, to be
13 proposed in April, is adopted by the Commission.
14
15 Q. WHY DOES BELLSOUTH PROPOSE INTERIM PRICES SUBJECT TO
16 TRUE-UP FOR THESE ELEMENTS?
17
18 A. The Commission has set a procedural schedule in Docket No. 990649-TP that
19 requires UNE cost studies be filed on April 17, 2000. As part of that filing,
20 BellSouth will sponsor cost studies for each UNE it is required to provide,
21 including UCLs up to 18,000 feet, UCLs greater than 18,000 feet, as well as
22 loop conditioning. BellSouth believes it is appropriate to set interim prices
23 subject to true-up based on the Commission's determination of the appropriate
24 permanent prices in Docket No. 990649-TP.
25

1 *Issue 11: What is the TELRIC-based recurring and nonrecurring rate for the high*
2 *frequency portion of a shared loop?*
3
4 Q. WHAT IS BELLSOUTH'S POSITION ON THIS ISSUE?
5
6 A. BellSouth recognizes its obligation to provide line sharing according to the
7 rules recently adopted by the FCC for line sharing. However, it is premature to
8 attempt to determine a cost for the high frequency portion of the loop until
9 such time as the specifications are known, hardware has been identified and
10 system modifications have been determined. When requirements are known, a
11 cost study can be conducted to determine the appropriate cost-based price for
12 this service.
13
14 *Issue 14: BellSouth's proposed issue: What, if any, provisions should the*
15 *agreement include for liquidated damages?*
16
17 Q. WHAT IS BELLSOUTH'S POSITION ON THIS ISSUE?
18
19 A. BellSouth believes it is totally inappropriate for this Commission to impose
20 liquidated damages in an interconnection agreement because liquidated
21 damages are not a requirement of Section 251 of the Telecommunications Act
22 of 1996 (the "Act") nor are they an issue to be arbitrated under Section 252.
23 As such, on January 14, 2000 BellSouth filed its Motion to Remove Issues
24 from Arbitration with the Commission. In its motion, BellSouth noted that the
25 Commission has repeatedly ruled that imposition of liquidated damages is not

1 an appropriate issue for arbitration under Section 252 of the Act. Further, as
2 this Commission recently concluded in the MediaOne/BellSouth Arbitration
3 proceeding (Docket No. 990149-TP), it lacks the authority under state law to
4 impose liquidated damages provisions in arbitrated agreements. Therefore,
5 BlueStar is simply attempting to force BellSouth to do something the
6 Commission has already determined BellSouth is not obligated to do.
7
8 Q. WHAT DOES BELLSOUTH PLAN TO OFFER REGARDING SELF-
9 EFFECTUATING ENFORCEMENT MECHANISMS?
10
11 A. BellSouth believes that the only remedies appropriate for inclusion in an
12 interconnection agreement are those to which the parties mutually agree.
13 BellSouth is currently working with the FCC to finalize BellSouth's proposal
14 for self-effectuating enforcement measures. To-date, BellSouth has presented
15 three such proposals to the FCC. The last proposal was well received by the
16 FCC Staff. Contract language is being prepared to enable BellSouth to offer
17 that proposal to CLECs. When the proposal is finalized, BellSouth will offer it
18 to BlueStar and any other CLECs. It is vitally important that all CLECs
19 operate under the same plan. It is important to note that the FCC's primary
20 purpose in BellSouth developing an acceptable enforcement proposal is to
21 prevent "backsliding" upon BellSouth's entry into interLATA long distance.
22 For this reason, any such enforcement mechanism should appropriately be
23 applicable only upon BellSouth's ability to provide interLATA long distance.
24
25 Q. PLEASE COMMENT ON THE PLAN FILED WITH THE TENNESSEE

1 REGULATORY AUTHORITY (TRA).

2

3 A. The TRA requested BellSouth's latest proposal to the FCC dated December 3,
4 1999. BlueStar apparently wants this Commission to order BellSouth to use
5 the document filed in Tennessee, whether or not the FCC approves the
6 document. In addition, BlueStar apparently wants this Commission to order
7 this document to be effective with the new interconnection agreement, without
8 being tied to BellSouth's provision of interLATA long distance. Such a
9 request is totally inappropriate. BellSouth's enforcement mechanism proposal
10 is a voluntary proposal made by BellSouth which would take effect on a state-
11 by-state basis concurrent with approval for BellSouth to enter into long
12 distance in each state and subject to acceptance by the FCC.

13

14 BellSouth's proposal to the FCC should not be interpreted in any way as
15 BellSouth's admission that the Commission or the FCC have the authority to
16 impose self-executing penalties or liquidated damages without BellSouth's
17 agreement. BellSouth has no obligation under Section 251 of the Act to
18 include an enforcement mechanism in an interconnection agreement. The FCC
19 recognizes this point and views BellSouth's enforcement mechanism proposal
20 as a public interest item in BellSouth's pursuit of interLATA long distance and
21 not as a Section 251 requirement or a requirement of the competitive checklist.
22 In contrast, BlueStar is requesting that BellSouth be forced to pay penalties
23 and/or liquidated damages beginning immediately and without regard to any
24 action by the FCC. In other words, BlueStar argues that BellSouth should be
25 made, by this Commission, to involuntarily include a liquidated damages

1 provision in the Agreement, an action that this Commission has specifically
2 ruled that it cannot take.
3
4 *Issue 15: **What, if any, provisions should the agreement include for alternative***
5 ***dispute resolution?***
6
7 Q. WHAT IS BELLSOUTH'S POSITION ON THIS ISSUE?
8
9 A. BellSouth does not believe that an alternative dispute resolution ("ADR")
10 provision is suitable for interconnection agreements. Through experience with
11 such provisions in other agreements, BellSouth has found that commercial
12 arbitrators typically lack knowledge and understanding of complex
13 telecommunications issues and are less likely to render knowledgeable, well-
14 informed decisions. In addition, commercial arbitrators can be costly and
15 BellSouth believes they are unnecessary, because the Commission is fully
16 capable of handling disputes under current procedures.
17
18 The Act has now been effective for nearly four years. In that time several
19 complaints have come before the Commission for resolution and the
20 Commission has handled them using the expertise within the Commission
21 Staff in an expeditious manner. It is unnecessary for the Commission to now
22 establish a new process for the handling disputes. Indeed, the Commission
23 addressed this same issue in a Petition filed by the Florida Competitive
24 Carriers Association ("FCCA") in Docket No. 981834-TP. In its petition, the
25 FCCA argued that an expedited dispute resolution process should be

1 implemented via a formal rulemaking. However, in its order dated April 21,
2 1999, the Commission denied the FCCA's request stating, "We agree with
3 BellSouth that parties already have the opportunity to file petitions with
4 requests for expedited treatment." The Commission is clearly more capable of
5 handling disputes between telecommunications carriers than commercial
6 arbitrators and the Commission is also fully capable of determining whether or
7 not a dispute requires expedited treatment.

8

9 Q. HAS BLUESTAR ALTERED ITS POSITION ON THIS ISSUE?

10

11 A. Yes. Apparently, BlueStar's latest proposal is that disputes be handled through
12 the Commission's Division of Consumer Complaints. This proposal is
13 inappropriate. First, from a policy perspective, such a proposal is exactly
14 contrary to the intent of the Act. One of the primary purposes of the Act is to
15 reduce regulation to the extent possible, not to create additional regulatory
16 mechanisms to micro-manage the business relationships between new entrants
17 and incumbents. Second, the customer complaint process is not suitable for
18 disputes between telecommunications carriers. A review of the process clearly
19 reveals that the process is intended to assist consumers by having a
20 Commission Staff member guide the parties through the dispute. This process
21 is ill suited to resolve disputes between telecommunications carriers which can
22 be infinitely more complex than consumer complaints.

23

24 Third, even if such an approach were workable, it would prove so time
25 consuming that this Commission would likely have to establish and staff an

1 entire "Division of Carrier Complaints" to handle the disputes that would
2 likely be brought before the Commission. Adoption of the approach urged by
3 BlueStar would place an extreme burden on Commission resources and would
4 provide parties with a mechanism to avoid the sort of negotiations clearly
5 contemplated by the Act.
6
7 This Commission elected not to set up special procedures to resolve carrier
8 disputes in its April 21, 1999 order when it determined that existing procedures
9 are adequate for handling these disputes. BlueStar's request is simply a new
10 variation on an old, and previously rejected, theme.
11
12 Q. DOES THIS CONCLUDE YOUR TESTIMONY?
13
14 A. Yes.
15
16 DOCs # 193556
17
18
19
20
21
22
23
24
25

Florida Price List

Cost Ref. #	Rate Element	Rate: Recurring	Rate: Non-recurring Electronic	Rate: Non-recurring Manual	Source
A.0	**Unbundled Local Loop**				
A.6	*2-Wire Asymmetrical Digital Subscriber Line (ADSL) Loop*				
A.6.1	2-wire asymmetrical digital subscriber line (ADSL) loop	15.81	113.85 99.61		4/29/98 Order
A.7	*2-Wire High Bit Rate Digital Subscriber Line (HDSL) Loop*				
A.7.1	2-wire high bit rate digital subscriber line (HDSL) loop	12.12	113.85 99.61		4/29/98 Order
	Unbundled copper loop up to18,000 feet	21.98	113.85 99.61		Recurring is negotiated price. NRC is same as ADSL/HDSL
	Unbundled copper loop up to 18,000 feet – Order Coordination		18.19 18.19		Negotiated price
	Unbundled copper loop beyond 18,000 feet	To be determined	To be determined		Supplement – testimony with interim price from GA study.
	Loop Conditioning	To be determined	To be determined		Supplement testimony with interim price from GA study.

Under the non-recurring column, where there are two entries, the first entry is for the first unit installed, and the second entry is for each additional unit installed.
Shaded prices or those to be determined are interim and subject to true-up.
193785

AGREEMENT

This Agreement, which shall become effective as of the ____ day of August, 1999, is entered into by and between BlueStar Networks, Inc. ("BlueStar") a Tennessee 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.

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, BlueStar has requested that BellSouth make available the interconnection agreement in its entirety executed between BellSouth and AT&T Communications of the Southern States, Inc. dated April 28, 1997 for the state of North Carolina.

NOW, THEREFORE, in consideration of the promises and mutual covenants of this Agreement, BlueStar and BellSouth hereby agree as follows:

1. BlueStar and BellSouth shall adopt in its entirety the AT&T Interconnection Agreement in North Carolina dated April 28, 1997 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 AT&T 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:

ITEM		NO. PAGES
Adoption Papers		3
Exhibit 1		399
Title Page	1 page	
Table of Contents	3 pages	
General Terms and Conditions	65 pages	
Attachment 1	9 pages	

Attachment 2	109 pages	
Attachment 3	50 pages	
Attachment 4	8 pages	
Attachment 5	5 pages	
Attachment 6	27 pages	
Attachment 7	49 pages	
Attachment 8	6 pages	
Attachment 9	4 pages	
Attachment 10	7 pages	
Attachment 11	9 pages	
Attachment 12	3 pages	
Attachment 13	12 pages	
Attachment 14	2 pages	
Attachment 15	12 pages	
Revised Pages dated 6/11/97 filed 9/19/97	14 pages	
Amendment dated 7/14/99	4 pages	
Exhibit 2		30
TOTAL		432

2. In the event that BlueStar consists of two (2) or more separate entities as set forth in the preamble to this Agreement, all such entities shall be jointly and severally liable for the obligations of BlueStar under this Agreement.

3. The term of this Agreement shall be from the effective date as set forth above and shall expire as set forth in section 2 of the AT&T Interconnection Agreement. For the purposes of determining the expiration date of this Agreement pursuant to section 2 of the AT&T Interconnection Agreement, the effective date shall be April 28, 1997.

4. BlueStar shall accept and incorporate any amendments to the AT&T Interconnection Agreement executed as a result of any final judicial, regulatory, or legislative action.

5. Every notice, consent, approval, or other communications required or contemplated by this Agreement shall be in writing and shall be delivered in person or given by postage prepaid mail, address to:

BellSouth Telecommunications, Inc.

CLEC Account Team
9th Floor
600 North 19th Street

BSFL 01097

Birmingham, Alabama 35203

and

General Attorney - COU
Suite 4300
675 W. Peachtree St.
Atlanta, GA 30375

BlueStar Networks, Inc.
401 Church Street
24th Floor
Nashville, Tennessee 37219

or at such other address as the intended recipient previously shall have designated by written notice to the other Party. Where specifically required, notices shall be by certified or registered mail. Unless otherwise provided in this Agreement, notice by mail shall be effective on the date it is officially recorded as delivered by return receipt or equivalent, and in the absence of such record of delivery, it shall be presumed to have been delivered the fifth day, or next business day after the fifth day, after it was deposited in the mails.

6. The Parties agree that Attachment 3, Section 2 – Collocation, of the AT&T Interconnection Agreement dated April 28, 1997 is hereby deleted in its entirety and replaced with the following language attached hereto as Exhibit 2 and incorporated herein by this reference.

IN WITNESS WHEREOF, the Parties have executed this Agreement through their authorized representatives.

BellSouth Telecommunications, Inc.	BlueStar Networks, Inc.
	[signature]
Signature	Signature
Jerry Hendrix	Norton Cutler
Name	Name
	8/19/99
Date	Date

AGREEMENT

This Agreement, which shall become effective as of the ____ day of August, 1999, is entered into by and between BlueStar Networks, Inc. ("BlueStar") a Tennessee 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.

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, BlueStar has requested that BellSouth make available the interconnection agreement in its entirety executed between BellSouth and AT&T Communications of the Southern States, Inc. dated April 28, 1997 for the state of North Carolina.

NOW, THEREFORE, in consideration of the promises and mutual covenants of this Agreement, BlueStar and BellSouth hereby agree as follows:

1. BlueStar and BellSouth shall adopt in its entirety the AT&T Interconnection Agreement in North Carolina dated April 28, 1997 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 AT&T 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:

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Attachment 10	7 pages	
Attachment 11	9 pages	
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Revised Pages dated 6/11/97 filed 9/19/97	14 pages	
Amendment dated 7/14/99	4 pages	
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TOTAL		432

2. In the event that BlueStar consists of two (2) or more separate entities as set forth in the preamble to this Agreement, all such entities shall be jointly and severally liable for the obligations of BlueStar under this Agreement.

3. The term of this Agreement shall be from the effective date as set forth above and shall expire as set forth in section 2 of the AT&T Interconnection Agreement. For the purposes of determining the expiration date of this Agreement pursuant to section 2 of the AT&T Interconnection Agreement, the effective date shall be April 28, 1997.

4. BlueStar shall accept and incorporate any amendments to the AT&T Interconnection Agreement executed as a result of any final judicial, regulatory, or legislative action.

5. Every notice, consent, approval, or other communications required or contemplated by this Agreement shall be in writing and shall be delivered in person or given by postage prepaid mail, address to:

BellSouth Telecommunications, Inc.

CLEC Account Team
9th Floor
600 North 19th Street

Birmingham, Alabama 35203

and

General Attorney - COU
Suite 4300
675 W. Peachtree St.
Atlanta, GA 30375

BlueStar Networks, Inc.
401 Church Street
24th Floor
Nashville, Tennessee 37219

or at such other address as the intended recipient previously shall have designated by written notice to the other Party. Where specifically required, notices shall be by certified or registered mail. Unless otherwise provided in this Agreement, notice by mail shall be effective on the date it is officially recorded as delivered by return receipt or equivalent, and in the absence of such record of delivery, it shall be presumed to have been delivered the fifth day, or next business day after the fifth day, after it was deposited in the mails.

6. The Parties agree that Attachment 3, Section 2 – Collocation, of the AT&T Interconnection Agreement dated April 28, 1997 is hereby deleted in its entirety and replaced with the following language attached hereto as Exhibit 2 and incorporated herein by this reference.

IN WITNESS WHEREOF, the Parties have executed this Agreement through their authorized representatives.

BellSouth Telecommunications, Inc.	BlueStar Networks, Inc.
______________	Norton Cutler (signature)
Signature	Signature
Jerry Hendrix	Norton Cutler
Name	Name
______________	8/19/99
Date	Date

Exhibit 1

AGREEMENT

between

BellSouth Telecommunications, Inc.

and

AT&T Communications of the Southern States, Inc.

Effective Date: April 28, 1997

NORTH CAROLINA

BSFL 01102

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AGREEMENT

PREFACE

This Agreement, which shall become effective as of the 28th day of April, 1997, is entered into by and between AT&T Communications of the Southern States, Inc., a New York Corporation, having an office at 1200 Peachtree Street, N.E., Atlanta, Georgia 30309, on behalf of itself, its successors and assigns (individually and collectively "AT&T"), and BellSouth Telecommunications, Inc. ("BellSouth"), a Georgia corporation, on behalf of itself, its successors and assigns, having an office at 675 West Peachtree Street, Atlanta, Georgia 30375.

RECITALS

WHEREAS, The Telecommunications Act of 1996 (the "Act") was signed into law on February 8, 1996; and

WHEREAS, the Act places certain duties and obligations upon, and grants certain rights to Telecommunications Carriers; and

WHEREAS, BellSouth is an Incumbent Local Exchange Carrier; and

WHEREAS, BellSouth is willing to provide Telecommunications Services for resale, Interconnection, Unbundled Network Elements and Ancillary Functions which include, but are not limited to, access to poles, ducts, conduits and rights-of-way, and collocation of equipment at BellSouth's Premises on the terms and subject to the conditions of this Agreement; and

WHEREAS, AT&T is a Telecommunications Carrier and has requested that BellSouth negotiate an Agreement with AT&T for the provision of Interconnection, Unbundled Network Elements, and Ancillary Functions as well as Telecommunications Services for resale, pursuant to the Act and in conformance with BellSouth's duties under the Act,

NOW, THEREFORE, in consideration of the promises and the mutual covenants of this Agreement, AT&T and BellSouth hereby agree as follows:

DEFINITIONS and ACRONYMS

For purposes of this Agreement, certain terms have been defined in Attachment 11 and elsewhere in this Agreement to encompass meanings that may differ from, or be in addition to, the normal connotation of the defined word. Unless the context clearly indicates otherwise, any term defined or used

in the singular shall include the plural. The words "shall" and "will" are used interchangeably throughout this Agreement and the use of either connotes a mandatory requirement. The use of one or the other shall not mean a different degree of right or obligation for either Party. A defined word intended to convey its special meaning is capitalized when used. Other terms that are capitalized, and not defined in this Agreement, shall have the meaning in the Act. For convenience of reference, Attachment 10 provides a list of acronyms used throughout this Agreement.

GENERAL TERMS AND CONDITIONS

1. Provision of Local Service and Unbundled Network Elements

This Agreement sets forth the terms, conditions and prices under which BellSouth agrees to provide (a) Telecommunications Service that BellSouth currently provides, or may offer hereafter for resale along with the Support Functions and Service Functions set forth in this Agreement (hereinafter collectively referred to as "Local Services") and (b) certain unbundled Network Elements, or combinations of such Network Elements ("Combinations") and (c) Ancillary Functions to AT&T (Local Services, Network Elements, Combinations, and Ancillary Functions, collectively referred to as "Services and Elements"). This Agreement also sets forth the terms and conditions for the interconnection of AT&T's network to BellSouth's network and the mutual and reciprocal compensation for the transport and termination of telecommunications. BellSouth may fulfill the requirements imposed upon it by this Agreement by itself or, in the case of directory listings for white pages may cause BellSouth Advertising and Publishing Company ("BAPCO") to take such actions to fulfill BellSouth's responsibilities. This Agreement includes Parts I through IV, and their Attachments 1 - 15 and all accompanying Appendices and Exhibits. Unless otherwise provided in this Agreement, BellSouth will perform all of its obligations hereunder throughout its entire service area. The Parties further agree to comply with all provisions of the Act, including Section 271(e) (1).

BSFL 01107

1.A The Services and Elements provided pursuant to this Agreement may be connected to other Services and Elements provided by BellSouth or to any Services and Elements provided by AT&T itself or by any other vendor. AT&T may purchase unbundled Network Elements for the purpose of combining Network Elements in any manner that is technically feasible, including recreating existing BellSouth services. The purchase and combination of unbundled network elements by AT&T to produce a service offering that is included in BellSouth's retail tariffs on the Effective Date will be presumed to constitute a resold service for purposes of pricing, collection of access and subscriber line charges, use and user restrictions in retail tariffs, and joint marketing restrictions. This presumption may be overcome by a showing that AT&T is using its own substantive functionalities and capabilities, e.g., loop, switch, transport, or signaling links, in addition to the unbundled Network Elements to produce the service. Ancillary services such as operator services and vertical services are not considered substantive functionalities or capabilities for purposes of this provision.

1.1 Subject to the requirements of this Agreement, AT&T may, at any time add, relocate or modify any Services and Elements purchased hereunder. Requests for additions or other changes shall be handled pursuant to the Bona Fide Request Process provided in Attachment 14. Terminations of any Services or Elements shall be handled pursuant to Section 3.1 of the General Terms and Conditions of this Agreement.

1.2 BellSouth shall not discontinue any Network Element, Ancillary Function, or Combination provided hereunder without the prior written consent of AT&T. Such consent shall not be unreasonably withheld. BellSouth shall not discontinue any Local Service provided hereunder unless BellSouth provides AT&T prior written notice of intent to discontinue any such service. BellSouth agrees to make any such service available to AT&T for resale to AT&T's Customers who are subscribers of such services from AT&T until the date BellSouth discontinues any such service for BellSouth's customers. BellSouth also agrees to adopt a reasonable, nondiscriminatory transition schedule for BellSouth or AT&T Customers who may be purchasing any such service.

1.3 This Agreement may be amended from time to time as mutually agreed in writing between the Parties. The Parties agree that neither Party will take any action to proceed, nor shall either have any obligation to proceed on a requested change unless and until a modification to this Agreement is signed by authorized representatives of each Party.

2. Term of Agreement

2.1 When executed by authorized representatives of BellSouth and AT&T, this Agreement shall become effective as of the Effective Date stated above, and

shall expire three (3) years from the Effective Date unless terminated in accordance with the provisions of Section 3.2 of the General Terms and Conditions.

2.2 No later than one hundred and eighty (180) days prior to the expiration of this Agreement, the Parties agree to commence negotiations with regard to the terms, conditions, and prices of a follow-on agreement for the provision of Services and Elements to be effective on or before the expiration date of this Agreement ("Follow-on Agreement"). The Parties further agree that any such Follow-on Agreement shall be for a term of no less than three (3) years unless the Parties agree otherwise.

2.3 If, within one hundred and thirty-five (135) days of commencing the negotiation referenced to Section 2.2, above, the Parties are unable to satisfactorily negotiate new terms, conditions and prices, either Party may petition the Commission to establish an appropriate Follow-on Agreement pursuant to 47 U.S.C. § 252. The Parties agree that in such event they shall encourage the Commission to issue its order regarding such Follow-on Agreement no later than the expiration date of this Agreement. The Parties further agree that in the event the Commission does not issue its order by the expiration date of this Agreement, or if the Parties continue beyond the expiration date of this Agreement to negotiate without Commission intervention, the terms, conditions and prices ultimately ordered by the Commission, or negotiated by the Parties, will be effective, retroactive to the day following the expiration date of this Agreement . Until the Follow-on Agreement becomes effective, BellSouth shall provide Services and Elements pursuant to the terms, conditions and prices of this Agreement that are then in effect. Prior to filing a Petition pursuant to this Section 2.3, the Parties agree to utilize the informal dispute resolution process provided in Section 3 of Attachment 1.

3. **Termination of Agreement; Transitional Support**

3.1 AT&T may terminate any Local Service(s), Network Element(s), Combination(s), or Ancillary Function(s) provided under this Agreement upon thirty (30) days written notice to BellSouth unless a different notice period or different conditions are specified for termination of such Local Services(s), Network Element(s), or Combination(s) in this Agreement or pursuant to any applicable tariff, in which event such specific period or conditions shall apply, provided such period or condition is reasonable, nondiscriminatory and narrowly tailored. Where there is no such different notice period or different condition specified, AT&T's liability shall be limited to payment of the amounts due for any terminated Local Service(s), Network Element(s), Combination(s) or Ancillary Service provided up to and including the date of termination. Notwithstanding the foregoing, the provisions of Section 10, infra, shall still apply. Upon termination, BellSouth agrees to cooperate in an orderly and

efficient transition to AT&T or another vendor such that the level and quality of the Services and Elements is not degraded and to exercise its best efforts to effect an orderly and efficient transition. AT&T agrees that it may not terminate the entire Agreement pursuant to this section.

3.2 If a Party is in breach of a material term or condition of this Agreement ("Defaulting Party"), the other Party shall provide written notice of such breach to the Defaulting Party. The Defaulting Party shall have ten (10) business days from receipt of notice to cure the breach. If the breach is not cured, the Parties shall follow the dispute resolution procedure of Section 16 of the General Terms and Conditions and Attachment 1. If the Arbitrator determines that a breach has occurred and the Defaulting Party fails to comply with the decision of the Arbitrator within the time period provided by the Arbitrator (or a period of thirty (30) days if no time period is provided for in the Arbitrator's order), this Agreement may be terminated in whole or part by the other Party upon sixty (60) days prior written notice.

4. Good Faith Performance

In the performance of their obligations under this Agreement, the Parties shall act in good faith and consistently with the intent of the Act. Where notice, approval or similar action by a Party is permitted or required by any provision of this Agreement, (including, without limitation, the obligation of the Parties to further negotiate the resolution of new or open issues under this Agreement) such action shall not be unreasonably delayed, withheld or conditioned.

5. Option to Obtain Local Services, Network Elements and Combinations Under Other Agreements

If as a result of any proceeding or filing before any Court, State Commission, or the Federal Communications Commission, voluntary agreement or arbitration proceeding pursuant to the Act or pursuant to any applicable state law, BellSouth becomes obligated to provide Services and Elements, whether or not presently covered by this Agreement, to a third Party at rates or on terms and conditions more favorable to such third Party than the applicable provisions of this Agreement, AT&T shall have the option to substitute such more favorable rates, terms, and conditions for the relevant provisions of this Agreement which shall apply to the same States as such other Party, and such substituted rates, terms or conditions shall be deemed to have been effective under this Agreement as of the effective date thereof. BellSouth shall provide to AT&T any BellSouth agreement between BellSouth and any third Party within fifteen (15) days of the filing of such agreement with any state Commission.

6. Responsibility of Each Party

Each Party is an independent contractor, and has and hereby retains the right to exercise full control of and supervision over its own performance of its obligations under this Agreement and retains full control over the employment, direction, compensation and discharge of all employees assisting in the performance of such obligations. Each Party will be solely responsible for all matters relating to payment of such employees, including compliance with social security taxes, withholding taxes and all other regulations governing such matters. Each Party will be solely responsible for proper handling, storage, transport and disposal at its own expense of all (i) substances or materials that it or its contractors or agents bring to, create or assume control over at Work Locations or, (ii) Waste resulting therefrom or otherwise generated in connection with its or its contractors' or agents' activities at the Work Locations. Subject to the limitations on liability and except as otherwise provided in this Agreement, each Party shall be responsible for (i) its own acts and performance of all obligations imposed by Applicable Law in connection with its activities, legal status and property, real or personal and, (ii) the acts of its own affiliates, employees, agents and contractors during the performance of that Party's obligations hereunder.

7. **Governmental Compliance**

7.1 AT&T and BellSouth each shall comply at its own expense with all Applicable Law that relates to (i) its obligations under or activities in connection with this Agreement or (ii) its activities undertaken at, in connection with or relating to Work Locations. AT&T and BellSouth each agree to indemnify, defend (at the other Party's request) and save harmless the other, each of its officers, directors and employees from and against any losses, damages, claims, demands, suits, liabilities, fines, penalties and expenses (including reasonable attorneys' fees) that arise out of or result from (i) its failure or the failure of its contractors or agents to so comply or (ii) any activity, duty or status of it or its contractors or agents that triggers any legal obligation to investigate or remediate environmental contamination. BellSouth, at its own expense, will be solely responsible for obtaining from governmental authorities, building owners, other carriers, and any other persons or entities, all rights and privileges (including, but not limited to, space and power), which are necessary for BellSouth to provide the Services and Elements pursuant to this Agreement. AT&T, at its own expense, will be solely responsible for obtaining from governmental authorities, building owners, other carriers, and any other persons or entities, all rights and privileges which are AT&T's obligation as a provider of telecommunications services to its Customers pursuant to this Agreement.

7.2 BellSouth shall accept orders for Service and Elements in accordance with the Federal Communications Commission Rules or State Commission Rules.

8. **Responsibility For Environmental Contamination**

8.1 AT&T shall in no event be liable to BellSouth for any costs whatsoever resulting from the presence or Release of any Environmental Hazard or Hazardous Materials that AT&T did not introduce to the affected Work Location so long as AT&T's actions do not cause or substantially contribute to the release of any Environmental Hazard or Hazardous Materials. BellSouth shall indemnify, defend (at AT&T's request) and hold harmless AT&T, each of its officers, directors and employees from and against any losses, damages, claims, demands, suits, liabilities, fines, penalties and expenses (including reasonable attorneys' fees) that arise out of or result from (i) any Environmental Hazard or Hazardous Materials that BellSouth, its contractors or agents introduce to the Work Locations or (ii) the presence or Release of any Environmental Hazard or Hazardous Materials for which BellSouth is responsible under Applicable Law, to the extent the release of any Environmental Hazard or Hazardous Materials is not caused or substantially contributed to by AT&T's actions.

8.2 BellSouth shall in no event be liable to AT&T for any costs whatsoever resulting from the presence or Release of any Environmental Hazard or Hazardous Materials that BellSouth did not introduce to the affected Work Location, so long as BellSouth's actions do not cause or substantially contribute to the release of any Environmental Hazards or Hazardous Materials. AT&T shall indemnify, defend (at BellSouth's request) and hold harmless BellSouth, each of its officers, directors and employees from and against any losses, damages, claims, demands, suits, liabilities, fines, penalties and expenses (including reasonable attorneys' fees) that arise out of or result from (i) any Environmental Hazard or Hazardous Materials that AT&T, its contractors or agents introduce to the Work Locations or (ii) the presence or Release of any Environmental Hazard or Hazardous Materials for which AT&T is responsible under Applicable Law, to the extent the release of any Environmental Hazard or Hazardous Materials is not caused or substantially contributed to by BellSouth's actions.

9. **Regulatory Matters**

9.1 BellSouth shall be responsible for obtaining and keeping in effect all Federal Communications Commission, State Commissions, franchise authority and other regulatory approvals that may be required in connection with the performance of its obligations under this Agreement. AT&T shall be responsible for obtaining and keeping in effect all Federal Communications Commission, state regulatory Commission, franchise authority and other regulatory approvals that may be required in connection with its offering of services to AT&T Customers contemplated by this Agreement. AT&T shall reasonably cooperate with BellSouth in obtaining and maintaining any required approvals for which

BellSouth is responsible, and BellSouth shall reasonably cooperate with AT&T in obtaining and maintaining any required approvals for which AT&T is responsible.

9.2 In the event that BellSouth is required by any governmental authority to file a tariff or make another similar filing ("Filing") in order to implement this Agreement, BellSouth shall (i) consult with AT&T reasonably in advance of such Filing about the form and substance of such Filing, (ii) provide to AT&T its proposed tariff and obtain AT&T's agreement on the form and substance of such Filing, and (iii) take all steps reasonably necessary to ensure that such Filing imposes obligations upon BellSouth that are no less favorable than those provided in this Agreement and preserves for AT&T the full benefit of the rights otherwise provided in this Agreement. In no event shall BellSouth file any tariff to implement this Agreement that purports to govern Services and Elements that is inconsistent with the rates and other terms and conditions set forth in this Agreement unless such rate or other terms and conditions are more favorable than those set forth in this Agreement.

9.3 In the event that any final and nonappealable legislative, regulatory, judicial or other legal action materially affects any material terms of this Agreement, or the ability of AT&T or BellSouth to perform any material terms of this Agreement, AT&T or BellSouth may, on thirty (30) days' written notice (delivered not later than thirty (30) days following the date on which such action has become legally binding and has otherwise become final and nonappealable) require that such terms be renegotiated, and the Parties shall renegotiate in good faith such mutually acceptable new terms as may be required. In the event that such new terms are not renegotiated within ninety (90) days after such notice, the Dispute shall be referred to the Alternative Dispute Resolution procedures set forth in Attachment 1.

10. **Liability and Indemnity**

10.1 Liabilities of BellSouth - Unless expressly stated otherwise in this Agreement, the liability of BellSouth to AT&T during any contract year resulting from any and all causes shall not exceed the amounts owing by AT&T to BellSouth during the contract year in which such cause arises or accrues.

10.2 Liabilities of AT&T - Unless expressly stated otherwise in this Agreement, the liability of AT&T to BellSouth during any contract year resulting from any and all causes shall not exceed the amounts owing by AT&T to BellSouth during the contract year in which such cause arises or accrues.

10.3 Each party shall, to the greatest extent permitted by Applicable Law, include in its local switched service tariff (if it files one in a particular State) or in any State where it does not file a local service tariff, in an appropriate contract with its

customers that relates to the Services and Elements provided under this Agreement, a limitation of liability (i) that covers the other Party to the same extent the first Party covers itself and (ii) that limits the amount of damages a customer may recover to the amount charged the applicable customer for the service that gave rise to such loss.

10.4 **No Consequential Damages** - NEITHER AT&T NOR BELLSOUTH SHALL BE LIABLE TO THE OTHER PARTY FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, RELIANCE, OR SPECIAL DAMAGES SUFFERED BY SUCH OTHER PARTY (INCLUDING WITHOUT LIMITATION DAMAGES FOR HARM TO BUSINESS, LOST REVENUES, LOST SAVINGS, OR LOST PROFITS SUFFERED BY SUCH OTHER PARTIES), REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, WARRANTY, STRICT LIABILITY, OR TORT, INCLUDING WITHOUT LIMITATION NEGLIGENCE OF ANY KIND WHETHER ACTIVE OR PASSIVE, AND REGARDLESS OF WHETHER THE PARTIES KNEW OF THE POSSIBILITY THAT SUCH DAMAGES COULD RESULT. EACH PARTY HEREBY RELEASES THE OTHER PARTY AND SUCH OTHER PARTY'S SUBSIDIARIES AND AFFILIATES, AND THEIR RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES AND AGENTS FROM ANY SUCH CLAIM. NOTHING CONTAINED IN THIS SECTION 10 SHALL LIMIT BELLSOUTH'S OR AT&T'S LIABILITY TO THE OTHER FOR (i) WILLFUL OR INTENTIONAL MISCONDUCT (INCLUDING GROSS NEGLIGENCE); (ii) BODILY INJURY, DEATH OR DAMAGE TO TANGIBLE REAL OR TANGIBLE PERSONAL PROPERTY PROXIMATELY CAUSED BY BELLSOUTH'S OR AT&T'S NEGLIGENT ACT OR OMISSION OR THAT OF THEIR RESPECTIVE AGENTS, SUBCONTRACTORS OR EMPLOYEES, NOR SHALL ANYTHING CONTAINED IN THIS SECTION 10 LIMIT THE PARTIES' INDEMNIFICATION OBLIGATIONS AS SPECIFIED HEREIN.

10.5 **Obligation to Indemnify** - Each Party shall, and hereby agrees to, defend at the other's request, indemnify and hold harmless the other Party and each of its officers, directors, employees and agents (each, an "Indemnitee") against and in respect of any loss, debt, liability, damage, obligation, claim, demand, judgment or settlement of any nature or kind, known or unknown, liquidated or unliquidated, including without limitation all reasonable costs and expenses incurred (legal, accounting or otherwise) (collectively, "Damages") arising out of, resulting from or based upon any pending or threatened claim, action, proceeding or suit by any third Party (a "Claim") (i) alleging any breach of any representation, warranty or covenant made by such indemnifying Party (the "Indemnifying Party") in this Agreement, (ii) based upon injuries or damage to any person or property or the environment arising out of or in connection with this Agreement that are the result of the Indemnifying Party's actions, breach of Applicable Law, or status of its employees, agents and subcontractors, or (iii)

for actual or alleged infringement of any patent, copyright, trademark, service mark, trade name, trade dress, trade secret or any other intellectual property right, now known or later developed (referred to as "Intellectual Property Rights") to the extent that such claim or action arises from AT&T or AT&T's Customer's use of the Services and Elements provided under this Agreement.

10.6 **Obligation to Defend; Notice; Cooperation** - Whenever a Claim shall arise for indemnification under this Section 10, the relevant Indemnitee, as appropriate, shall promptly notify the Indemnifying Party and request the Indemnifying Party to defend the same. Failure to so notify the Indemnifying Party shall not relieve the Indemnifying Party of any liability that the Indemnifying Party might have, except to the extent that such failure prejudices the Indemnifying Party's ability to defend such Claim. The Indemnifying Party shall have the right to defend against such liability or assertion in which event the Indemnifying Party shall give written notice to the Indemnitee of acceptance of the defense of such Claim and the identity of counsel selected by the Indemnifying Party. Except as set forth below, such notice to the relevant Indemnitee shall give the Indemnifying Party full authority to defend, adjust, compromise or settle such Claim with respect to which such notice shall have been given, except to the extent that any compromise or settlement shall prejudice the Intellectual Property Rights of the relevant Indemnitees. The Indemnifying Party shall consult with the relevant Indemnitee prior to any compromise or settlement that would affect the Intellectual Property Rights or other rights of any Indemnitee, and the relevant Indemnitee shall have the right to refuse such compromise or settlement and, at the refusing Party's or refusing Parties' cost, to take over such defense, provided that in such event the Indemnifying Party shall not be responsible for, nor shall it be obligated to indemnify the relevant Indemnitee against, any cost or liability in excess of such refused compromise or settlement. With respect to any defense accepted by the Indemnifying Party, the relevant Indemnitee shall be entitled to participate with the Indemnifying Party in such defense if the Claim requests equitable relief or other relief that could affect the rights of the Indemnitee and also shall be entitled to employ separate counsel for such defense at such Indemnitee's expense. In the event the Indemnifying Party does not accept the defense of any indemnified Claim as provided above, the relevant Indemnitee shall have the right to employ counsel for such defense at the expense of the Indemnifying Party. Each Party agrees to cooperate and to cause its employees and agents to cooperate with the other Party in the defense of any such Claim and the relevant records of each Party shall be available to the other Party with respect to any such defense.

11. Audits and Inspections

11.1 For carrier billing purposes, the Parties have agreed pursuant to Section 12 of Attachment 6, to create a process for pre-bill certification. Until such time as that process is in place, the audit process provided in Section 11.1 shall apply.

11.1.1 Subject to BellSouth's reasonable security requirements and except as may be otherwise specifically provided in this Agreement, AT&T may audit BellSouth's books, records and other documents once in each Contract Year for the purpose of evaluating the accuracy of BellSouth's billing and invoicing. AT&T may employ other persons or firms for this purpose. Such audit shall take place at a time and place agreed on by the Parties no later than thirty (30) days after notice thereof to BellSouth.

11.1.2 BellSouth shall promptly correct any billing error that is revealed in an audit, including making refund of any overpayment by AT&T in the form of a credit on the invoice for the first full billing cycle after the Parties have agreed upon the accuracy of the audit results. Any Disputes concerning audit results shall be resolved pursuant to the Alternate Dispute Resolution procedures described in Section 16 of the General Terms and Conditions and Attachment 1.

11.1.3 BellSouth shall cooperate fully in any such audit, providing reasonable access to any and all appropriate BellSouth employees and books, records and other documents reasonably necessary to assess the accuracy of BellSouth's bills.

11.1.4 AT&T may audit BellSouth's books, records and documents more than once during any Contract Year if the previous audit found previously uncorrected net variances or errors in invoices in BellSouth's favor with an aggregate value of at least two percent (2%) of the amounts payable by AT&T for Services and Elements or Combinations provided during the period covered by the audit.

11.1.5 Audits shall be at AT&T's expense, subject to reimbursement by BellSouth in the event that an audit finds an adjustment in the charges or in any invoice paid or payable by AT&T hereunder by an amount that is, on an annualized basis, greater than two percent (2%) of the aggregate charges for the Services and Elements during the period covered by the audit.

11.1.6 Upon (i) the discovery by BellSouth of overcharges not previously reimbursed to AT&T or (ii) the resolution of disputed audits, BellSouth shall promptly reimburse AT&T the amount of any overpayment times the highest interest rate (in decimal value) which may be levied by law for commercial transactions, compounded daily for the number of days from the date of overpayment to and including the date that payment is actually made. In no event, however, shall interest be assessed on any previously assessed or accrued late payment charges.

11.2 Subject to reasonable security requirements, either Party may audit the books, records and other documents of the other for the purpose of evaluating usage pertaining to transport and termination of local traffic. Where such usage data is being transmitted through CABS, the audit shall be conducted in accordance with CABS or other applicable requirements approved by the appropriate State Commission. If data is not being transferred via CABS, either Party may request an audit for such purpose once each Contract Year. Either Party may employ other persons or firms for this purpose. Any such audit shall take place no later than thirty (30) days after notice thereof to the other Party.

11.2.1 Either Party shall promptly correct any reported usage error that is revealed in an audit, including making payment of any underpayment after the Parties have agreed upon the accuracy of the audit results. Any Disputes concerning audit results shall be resolved pursuant to the Alternate Dispute Resolution procedures described in Section 16 of the General Terms and Conditions and Attachment 1.

11.2.2 The Parties shall cooperate fully in any such audit, providing reasonable access to any and all appropriate employees and books, records and other documents reasonably necessary to assess the usage pertaining to transport and terminating of local traffic.

12. Performance Measurement

12.1 In providing Services and Elements, BellSouth will provide AT&T with the quality of service BellSouth provides itself and its end users. BellSouth agrees to measure and report to AT&T its performance as required by Attachment 12 of this Agreement.

12.2 BellSouth and AT&T agree that there may be a need to change or amend the measures required by Attachment 12 and therefore agree to review the measures as required by Attachment 12.

12.3 **DELETED**

13. DELETED

14. Force Majeure

14.1 Neither Party shall be liable for any delay or failure in performance of any part of this Agreement caused by a Force Majeure condition, including acts of the United States of America or any state, territory or political subdivision thereof, acts of God or a public enemy, fires, floods, disputes, freight embargoes, strikes, earthquakes, volcanic actions, wars, civil disturbances, or other causes

beyond the reasonable control of the Party claiming excusable delay or other failure to perform. Force Majeure shall not include acts of any Governmental Authority relating to environmental, health or safety conditions at Work Locations. If any Force Majeure condition occurs, the Party whose performance fails or is delayed because of such Force Majeure condition shall give prompt notice to the other Party, and upon cessation of such Force Majeure condition, shall give like notice and commence performance hereunder as promptly as reasonably practicable.

14.2 Notwithstanding Subsection 1, no delay or other failure to perform shall be excused pursuant to this Section 14 by the acts or omission of a Party's subcontractors, material persons, suppliers or other third persons providing products or services to such Party unless: (i) such acts or omissions are themselves the product of a Force Majeure condition, (ii) such acts or omissions do not relate to environmental, health or safety conditions at Work Locations and, (iii) unless such delay or failure and the consequences thereof are beyond the control and without the fault or negligence of the Party claiming excusable delay or other failure to perform. Notwithstanding the foregoing, this Section 14 shall not excuse failure or delays where BellSouth is required to implement Disaster Recovery plans to avoid such failures and delays in performance.

15. Certain Federal, State and Local Taxes

15.1 **Definition** For purposes of this Section 15, the terms "taxes" and "fees" shall include but not be limited to federal, state or local sales, use, excise, gross receipts or other taxes or tax-like fees of whatever nature and however designated (including tariff surcharges and any fees, charges or other payments, contractual or otherwise, for the use of public streets or rights of way, whether designated as franchise fees or otherwise) imposed on, or sought to be imposed, either of the parties and measured by the charges or payments, for the services furnished hereunder, excluding any taxes levied on income.

15.2 Taxes And Fees Imposed Directly On Either Seller Or Purchaser

15.2.1 Taxes and fees imposed on the providing Party, which are neither permitted nor required to be passed on by the providing Party to its Customer, shall be borne and paid by the providing Party.

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

15.3 **Taxes And Fees Imposed On Purchaser But Collected And Remitted By Seller**

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

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

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

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

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

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

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

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

15.4 **Taxes And Fees Imposed On Seller But Passed On To Purchaser**

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

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

15.4.3 If the purchasing Party disagrees with the providing Party's determination as to the application or basis for any such tax or fee, the Parties shall consult with respect to the imposition and billing of such tax or fee and with respect to whether to contest the imposition of such tax or fee. Notwithstanding the foregoing, the providing Party shall retain responsibility for determining whether and to what extent any such taxes or fees are applicable. The providing Party shall further retain responsibility for determining whether and how to contest the imposition of such taxes or fees, provided, however, the Parties agree to consult in good faith as to such contest and that any such contest undertaken at the request of the purchasing Party shall be at the purchasing Party's expense. In the event that such contest must be pursued in the name of the providing Party, providing Party shall permit purchasing Party to pursue the contest in the name of the providing Party and the providing Party shall have the opportunity to participate fully in the preparation of such contest.

15.4.4 If, after consultation in accordance with the preceding Section 15.4.3, the purchasing Party does not agree with the providing Party's final determination as to the application or basis of a particular tax or fee, and if the providing Party, after receipt of a written request by the purchasing Party to contest the imposition of such tax or fee with the imposing authority, fails or refuses to pursue such contest or to allow such contest by the purchasing Party, the purchasing Party may utilize the dispute resolution process outlined in Section

16 of the General Terms and Conditions of this Agreement and Attachment 1. Utilization of the dispute resolution process shall not relieve the purchasing party from liability for any tax or fee billed by the providing Party pursuant to this subsection during the pendency of such dispute resolution proceeding. In the event that the purchasing Party prevails in such dispute resolution proceeding, it shall be entitled to a refund in accordance with the final decision therein. Notwithstanding the foregoing, if at any time prior to a final decision in such dispute resolution proceeding the providing Party initiates a contest with the imposing authority with respect to any of the issues involved in such dispute resolution proceeding, the dispute resolution proceeding shall be dismissed as to such common issues and the final decision rendered in the contest with the imposing authority shall control as to such issues.

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

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

15.4.7 Notwithstanding any provision to the contrary, the purchasing Party shall protect, indemnify and hold harmless (and defend at the purchasing Party's expense) the providing Party from and against any such tax or fee, interest or penalties thereon, or other reasonable charges or payable expenses (including reasonable attorney fees) with respect thereto, which are incurred by the providing Party in connection with any claim for or contest of any such tax or fee.

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

15.5 **Mutual Cooperation**

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

agrees to indemnify and hold harmless the other Party from and against any losses, damages, claims, demands, suits, liabilities, and expenses, including reasonable attorney's fees, that arise out of its failure to perform its obligations under this Section.

16. **Alternative Dispute Resolution**

16.1 All disputes, claims or disagreements (collectively "Disputes") arising under or related to this Agreement or the breach hereof shall be resolved in accordance with the procedures set forth in Attachment 1, except: (i) disputes arising pursuant to Attachment 6, Connectivity Billing; and (ii) disputes or matters for which the Telecommunications Act of 1996 specifies a particular remedy or procedure. Disputes involving matters subject to the Connectivity Billing provisions contained in Attachment 6, shall be resolved in accordance with the Billing Disputes section of Attachment 6. In no event shall the Parties permit the pendency of a Dispute to disrupt service to any AT&T Customer contemplated by this Agreement. The foregoing notwithstanding, neither this Section nor Attachment 1 shall be construed to prevent either Party from seeking and obtaining temporary equitable remedies, including temporary restraining orders. A request by a Party to a court or a regulatory authority for interim measures or equitable relief shall not be deemed a waiver of the obligation to comply with Attachment 1.

17. **Notices**

Any notices or other communications required or permitted to be given or delivered under this Agreement shall be in hard-copy writing (unless otherwise specifically provided herein) and shall be sufficiently given if delivered personally or delivered by prepaid overnight express service to the following (unless otherwise specifically required by this Agreement to be delivered to another representative or point of contact):

If to AT&T:

Pamela A. Nelson
Vendor Management
AT&T
1200 Peachtree St., N.E.
Atlanta, GA 30309

If to BellSouth:

Randy Jenkins
Interconnection Services
Suite 410
1960 W. Exchange Place

Tucker, GA 30064

Either Party may unilaterally change its designated representative and/or address for the receipt of notices by giving seven (7) days prior written notice to the other Party in compliance with this Section. Any notice or other communication shall be deemed given when received.

18. **Confidentiality and Proprietary Information**

18.1 For the purposes of this Agreement, "Confidential Information" means confidential or proprietary technical or business Information given by the Discloser to the Recipient. All information which is disclosed by one Party to the other in connection with this Agreement shall automatically be deemed proprietary to the Discloser and subject to this Agreement, unless otherwise confirmed in writing by the Discloser. In addition, by way of example and not limitation, all orders for Services and Elements placed by AT&T pursuant to this Agreement, and information that would constitute Customer Proprietary Network pursuant to the Act and the rules and regulations of the Federal Communications Commission, and Recorded Usage Data as described in Attachment 7, whether disclosed by AT&T to BellSouth or otherwise acquired by BellSouth in the course of the performance of this Agreement, shall be deemed Confidential Information of AT&T for all purposes under this Agreement.

18.2 For a period of five (5) years from the receipt of Confidential Information from the Discloser, except as otherwise specified in this Agreement, the Recipient agrees (a) to use it only for the purpose of performing under this Agreement, (b) to hold it in confidence and disclose it to no one other than its employees having a need to know for the purpose of performing under this Agreement, and (c) to safeguard it from unauthorized use or disclosure with at least the same degree of care with which the Recipient safeguards its own Confidential Information. If the Recipient wishes to disclose the Discloser's Confidential Information to a third Party agent or consultant, the agent or consultant must have executed a written agreement of non-disclosure and non-use comparable in scope to the terms of this Section.

18.3 The Recipient may make copies of Confidential Information only as reasonably necessary to perform its obligations under this Agreement. All such copies shall bear the same copyright and proprietary rights notices as are contained on the original.

18.4 The Recipient agrees to return all Confidential Information in tangible form received from the Discloser, including any copies made by the Recipient, within thirty (30) days after a written request is delivered to the Recipient, or to destroy all such Confidential Information, except for Confidential Information

that the Recipient reasonably requires to perform its obligations under this Agreement. If either Party loses or makes an unauthorized disclosure of the other Party's Confidential Information, it shall notify such other Party immediately and use reasonable efforts to retrieve the lost or wrongfully disclosed information.

18.5 The Recipient shall have no obligation to safeguard Confidential Information: (a) which was in the possession of the Recipient free of restriction prior to its receipt from the Discloser; (b) after it becomes publicly known or available through no breach of this Agreement by the Recipient; (c) after it is rightfully acquired by the Recipient free of restrictions on its disclosure; or (d) after it is independently developed by personnel of the Recipient to whom the Discloser's Confidential Information had not been previously disclosed. In addition, either Party shall have the right to disclose Confidential Information to any mediator, arbitrator, state or federal regulatory body, the Department of Justice or any court in the conduct of any mediation, arbitration or approval of this Agreement or in any proceedings concerning the provision of interLATA services by BellSouth that are or may be required by the Act. Additionally, the Recipient may disclose Confidential Information if so required by law, a court, or governmental agency, so long as the Discloser has been notified of the requirement promptly after the Recipient becomes aware of the requirement. In all cases, the Recipient must undertake all lawful measures to avoid disclosing such information until Discloser has had reasonable time to seek and comply with a protective order that covers the Confidential Information to be disclosed.

18.6 Each Party's obligations to safeguard Confidential Information disclosed prior to expiration or termination of this Agreement shall survive such expiration or termination.

18.7 Except as otherwise expressly provided elsewhere in this Agreement, no license is hereby granted under any patent, trademark, or copyright, nor is any such license implied, solely by virtue of the disclosure of any Confidential Information.

18.8 Each Party agrees that the Discloser would be irreparably injured by a breach of this Agreement by the Recipient or its representatives and that the Discloser shall be entitled to seek equitable relief, including injunctive relief and specific performance, in the event of any breach of the provisions of this Agreement. Such remedies shall not be deemed to be the exclusive remedies for a breach of this Agreement, but shall be in addition to all other remedies available at law or in equity.

19. **Branding**

The Parties agree that the services offered by AT&T that incorporate Services and Elements made available to AT&T pursuant to this Agreement shall be branded as AT&T services. To the extent such branding requires customized routing, the Parties recognize that the North Carolina Utilities Commission determined that customized routing is not technically feasible at this time. Therefore, BellSouth need not provide branding or rebranding requiring customized routing until customized routing is implemented. The Parties agree to continue to work in the ICCF to develop a long-term industry-wide solution. The Parties agree that BellSouth shall not be required to unbrand services provided to its customers. AT&T shall provide the exclusive interface to AT&T Customers, except as AT&T shall otherwise specify. In those instances where AT&T requires BellSouth personnel or systems to interface with AT&T Customers, such personnel shall identify themselves as representing AT&T, and shall not identify themselves as representing BellSouth. Except for material provided by AT&T, all forms, business cards or other business materials furnished by BellSouth to AT&T Customers shall be subject to AT&T's prior review and approval. In no event shall BellSouth, acting on behalf of AT&T pursuant to this Agreement, provide information to AT&T local service Customers about BellSouth products or services. BellSouth agrees to provide in sufficient time for AT&T to review and provide comments, the methods and procedures, training and approaches, to be used by BellSouth to assure that BellSouth meets AT&T's branding requirement. For installation and repair services, AT&T agrees to provide BellSouth with branded material at no charge for use by BellSouth ("Leave Behind Material"). AT&T will reimburse BellSouth for the reasonable and demonstrable costs BellSouth would otherwise incur as a result of the use of the generic leave behind material. BellSouth will notify AT&T of material supply exhaust in sufficient time that material will always be available. BellSouth will not be liable for any error, mistake or omission, other than intentional acts or omissions or gross negligence, resulting from the requirements to distribute AT&T's Leave Behind Material.

20. **Directory Listings Requirements**

20.1 BellSouth shall make available to AT&T, for AT&T subscribers, non-discriminatory access to its telephone number and address directory listings ("Directory Listings"), under the below terms and conditions. In no event shall AT&T subscribers receive Directory Listings that are at less favorable rates, terms or conditions than the rates, terms or conditions that BellSouth provides its subscribers.

20.1.1 **DELETED**

20.1.2 **DELETED**

20.1.3 Subject to execution of an Agreement between AT&T and BellSouth's affiliate, BellSouth Advertising & Publishing Corporation ("BAPCO") substantially in the form set forth in Attachment 13: (1) listings shall be included in the appropriate White Pages or local alphabetical directories (including Foreign Language directories as appropriate), via the BellSouth ordering process, (basic listing shall be at no charge to AT&T or AT&T's subscribers); (2) AT&T's business subscribers' listings shall also be included in the appropriate Yellow Pages or local classified directories, via the BellSouth ordering process, at no charge to AT&T or AT&T's subscribers; (3) copies of such directories shall be delivered by BAPCO to AT&T's subscribers; (4) AT&T will sell enhanced White Pages Listings to AT&T subscribers and BellSouth shall provide the enhanced White Listings; and (5) Yellow Pages Advertising will be sold and billed to AT&T subscribers.

20.1.4 BAPCO will provide AT&T the necessary publishing information to process AT&T's subscribers directory listings requests including, but not limited to:

1. Classified Heading Information
2. Telephone Directory Coverage Areas by NPA/NXX
3. Publishing Schedules
4. Processes for Obtaining Foreign Directories
5. Information about Listing AT&T's Customer Services, including telephone numbers, in the Customer Call Guide Pages.

20.2 BellSouth will provide AT&T the proper format for submitting subscriber listings as outlined in the OLEC Handbook. BellSouth and BAPCO will accord AT&T's directory listing information the same level of confidentiality that BellSouth and BAPCO accord BellSouth's and BAPCO'S own directory listing information, and BellSouth shall limit access to AT&T's Customer proprietary, confidential directory information to those BellSouth or BAPCO employees who are involved in the preparation of listings.

20.3 BellSouth will include AT&T subscriber listings in BellSouth's directory assistance databases and BellSouth will not charge AT&T to maintain the Directory Assistance database. The Parties agree to cooperate with each other in formulating appropriate procedures regarding lead time, timeliness, format, and content of listing information.

20.4 **DELETED**

21. **Subscriber List Information/Local Number Portability**

21.1 **DELETED**

21.2 BellSouth shall refer any requests from third parties for AT&T's Subscriber List Information to AT&T.

21.3 Local Number Portability shall be provided as set forth in Attachment 8.

21.A **Insurance Requirements**

At all times during the term of this Agreement, each Party shall maintain, at its own expense, (i) all insurance required by applicable Law including insurance and approved self insurance for statutory workers compensation coverage and (ii) commercial general liability coverage in the amount of not less than ten million dollars ($10,000,000) or a combination of commercial general liability and excess/umbrella coverage totaling ten million dollars ($10,000,000). Upon request from the other Party, each Party shall furnish the other Party with certificates of insurance which evidence the minimum levels of insurance set forth herein. Each Party may satisfy all or part of the coverage specified herein through self insurance. Each Party shall give the other Party at least thirty (30) days advance written notice of any cancellation or non-renewal of insurance required by this Section.

21.B **Costs**

Except as otherwise specified in this Agreement, the Act, or any Commission order, each Party shall be responsible for all costs and expenses that it incurs to comply with its obligations under this Agreement.

21.B.1 **DELETED**

21.C **Pre-Ordering Information**

21.C.1 BellSouth shall provide AT&T with access on a real-time basis via electronic interfaces to all services and features technically available from each switch, by switch CLLI and access to street address detail for the provisioning of a service request. This information is currently contained in BellSouth's Regional Street Address Guide ("RSAG") and Products and Services Inventory Management (P/SIMS).

21.C.2 If AT&T dials in, AT&T will obtain from BellSouth a security card featuring a unique password identification which will be changed periodically by BellSouth. A nonrecurring charge of One Hundred ($100.00) Dollars will be applied to each security card provided, including duplicates furnished to additional users or furnished as a replacement of lost or stolen cards.

21.C.3 AT&T acknowledges that (i) this information is provided for the limited purposes of facilitating the establishment of new Customer accounts and identifying services and features available in specific BellSouth central offices. AT&T agrees that it will not sell or otherwise transfer such information to any third Party for any purpose whatsoever without the prior written consent of BellSouth; (ii) BellSouth does not warrant that services provided under this Section will be uninterrupted or error free. In the event of interruptions, delays, errors or other failure of the services, BellSouth's obligation shall be limited to using reasonable efforts under the circumstances to restore the services. BellSouth shall have no obligation to retrieve or reconstruct any transmitted messages or transmission data which may be lost or damaged. AT&T is responsible for providing back-up for data deemed by BellSouth to be necessary to its operations; (iii) the services provided under this Section are provided "As Is." BellSouth makes no warranty, express or implied, with respect to the services, including but not limited to any warranty of merchantability or fitness for a particular purpose, which warranties are hereby expressly disclaimed.

21.D **Disaster Recovery**

BellSouth and AT&T agree to jointly develop and implement a detailed service restoration plan and disaster recovery plan to be in effect by December 31, 1997. A joint task team will commence development no later than November 1, 1996, for implementation throughout 1997 reaching full deployment by December 31, 1997.

Such plans shall incorporate BellSouth Emergency Contingency Plans for Residence and Business Repair Centers. The Plans shall conform to the FCC Restoration Guidelines, to the National Security Emergency Preparedness ("NSEP") procedures and adhere to the guidelines developed by the Telecommunications Service Priority ("TSP") System office within the National Communications System ("NCS") Agency.

In developing the plans, the team will address the following AT&T proposed terms: (i) provision for immediate notification to AT&T via the Electronic Interface, to be established pursuant to Section 3 of Attachment 6 of the Agreement, of the existence, location, and source of any emergency network outage affecting AT&T Customers; (ii) establishment of a single point of contact responsible for initiating and coordinating the restoration of all Local Services and Network Elements or Combinations; (iii) establishment of procedures to provide AT&T with real-time access to information relating to the status of restoration efforts and problem resolution during the restoration process; (iv) provision of an inventory and description of mobile restoration equipment by locations; (v) establishment of methods and procedures for the dispatch of mobile equipment to the restoration site; (vi) establishment of methods and

procedures for re-provisioning all Services and Elements, after initial restoration; (vii) provision for equal priority, as between AT&T Customers and BellSouth Customers, for restoration efforts, consistent with FCC Service Restoration guidelines, including, but not limited to, deployment of repair personnel and access to spare parts and components; and (viii) establishment of a mutually agreeable process for escalation of maintenance problems, including a complete, up-to-date list of responsible contacts, available twenty-four (24) hours per day, seven (7) days per week.

Such plans shall be modified and updated as necessary. For purposes of this Section, an emergency network outage is defined as 5,000 or more blocked call attempts in a ten (10) minute period in a single exchange.

In the event the Parties are unable to reach agreement on either plan, the matter shall be resolved pursuant to Section 16 and Attachment 1 of this Agreement.

22. Miscellaneous

22.1 Delegation or Assignment

BellSouth may not assign any of its rights or delegate any of its obligations under this Agreement without the prior written consent of AT&T which will not be unreasonably withheld. Notwithstanding the foregoing, BellSouth may assign its rights and benefits and delegate its duties and obligations under this Agreement without the consent of AT&T to a 100 percent owned Affiliate company of BellSouth if such Affiliate provides wireline communications, provided that the performance of any such assignee is guaranteed by the assignor. Any prohibited assignment or delegations shall be null and void.

22.2 Subcontracting

If any Party's obligation under this Agreement is performed by a subcontractor or Affiliate, the Party subcontracting the obligation nevertheless shall remain fully responsible for the performance of this Agreement in accordance with its terms, and shall be solely responsible for payments due its subcontractors or Affiliate. In entering into any contract, subcontract or other agreement for the performance of any obligation under this Agreement, the Party shall not enter into any agreement that it would not enter into if the supplier was performing services directly for said Party.

22.3 Nonexclusive Remedies

Except as otherwise expressly provided in this Agreement, each of the remedies provided under this Agreement is cumulative and is in addition to any remedies that may be available at law or in equity.

22.4 **No Third-Party Beneficiaries**

Except as may be specifically set forth in this Agreement, this Agreement does not provide and shall not be construed to provide third Parties with any remedy, claim, liability, reimbursement, cause of action, or other privilege.

22.5 **Referenced Documents**

Whenever any provision of this Agreement refers to a technical reference, technical publication, AT&T Practice, BellSouth Practice, any publication of telecommunications industry administrative or technical standards, or any other document specifically incorporated into this Agreement, it will be deemed to be a reference to the most recent version or edition (including any amendments, supplements, addenda, or successors) of such document that is in effect, and will include the most recent version or edition (including any amendments, supplements, addenda, or successors) of each document incorporated by reference in such a technical reference, technical publication, AT&T Practice, BellSouth Practice, or publication of industry standards (unless AT&T elects otherwise). Should there be an inconsistency between or among publications or standards, the Parties shall mutually agree upon which requirement shall apply. If the Parties cannot reach agreement, the matter shall be handled pursuant to Attachment 1 of this Agreement.

22.6 **Applicable Law**

The validity of this Agreement, the construction and enforcement of its terms, and the interpretation of the rights and duties of the Parties shall be governed by the laws of the State of North Carolina other than as to conflicts of laws, except insofar as federal law may control any aspect of this Agreement, in which case federal law shall govern such aspect. The Parties submit to personal jurisdiction in Atlanta, Georgia, and waive any objections to a Georgia venue.

22.7 **Publicity and Advertising**

Neither Party shall publish or use any advertising, sales promotions or other publicity materials that use the other Party's logo, trademarks or service marks without the prior written approval of the other Party.

22.8 **Amendments or Waivers**

Except as otherwise provided in this Agreement, no amendment or waiver of any provision of this Agreement, and no consent to any default under this Agreement, shall be effective unless the same is in writing and signed by an officer of the Party against whom such amendment, waiver or consent is claimed. In addition, no course of dealing or failure of a Party strictly to enforce any term, right or condition of this Agreement shall be construed as a waiver of such term, right or condition.

22.9 **Severability**

If any term, condition or provision of this Agreement is held to be invalid or unenforceable for any reason, such invalidity or unenforceability shall not invalidate the entire Agreement, unless such construction would be unreasonable. The Agreement shall be construed as if it did not contain the invalid or unenforceable provision or provisions, and the rights and obligations of each Party shall be construed and enforced accordingly; provided, however, that in the event such invalid or unenforceable provision or provisions are essential elements of this Agreement and substantially impair the rights or obligations of either Party, the Parties shall promptly negotiate a replacement provision or provisions.

22.10 **Entire Agreement**

This Agreement, which shall include the Attachments, Appendices and other documents referenced herein, constitutes the entire Agreement between the Parties concerning the subject matter hereof and supersedes any prior agreements, representations, statements, negotiations, understandings, proposals or undertakings, oral or written, with respect to the subject matter expressly set forth herein.

22.11 **Survival of Obligations**

Any liabilities or obligations of a Party for acts or omissions prior to the cancellation or termination of this Agreement, any obligation of a Party under the provisions regarding indemnification, Confidential Information, limitations on liability, and any other provisions of this Agreement which, by their terms, are contemplated to survive (or to be performed after) termination of this Agreement, shall survive cancellation or termination thereof.

22.12 **Executed in Counterparts**

This Agreement may be executed in any number of counterparts, each of which shall be deemed an original; but such counterparts shall together constitute one and the same instrument.

22.13 **Headings of No Force or Effect**

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

Part I: Local Services Resale

23. Telecommunications Services Provided for Resale

23.1 At the request of AT&T, and pursuant to the requirements of the Act, BellSouth will make available to AT&T for resale (see Section 24.3 of Part 1) any Telecommunications Service that BellSouth currently provides, or may offer hereafter. BellSouth shall also provide Support Functions and Service Functions, as set forth in Sections 27 and 28 of this Part. The Telecommunications Services, Service Functions and Support Functions provided by BellSouth to AT&T pursuant to this Agreement are collectively referred to as "Local Service."

23.2 This Part describes several services which BellSouth shall make available to AT&T for resale pursuant to this Agreement. This list of services is neither all inclusive nor exclusive. All Telecommunications Services of BellSouth which are to be offered for resale pursuant to the Act are subject to the terms herein, even though they are not specifically enumerated or described.

23.2.1 **Features and Functions Subject to Resale**

BellSouth agrees to make available for resale all features and functions available in connection with Telecommunications Services, including but not limited to the following:

- Dial tone and ring
- Capability for either dial pulse or touch tone recognition
- Capability to complete calls to any location
- Same extended local calling area
- 1+ IntraLATA toll calling
- PIC 1+ service
- CIC dialing (10 XXXX)
- Same access to vertical features and functions
- Call detail recording capability required for end user billing
- Flat and Measured Service
- International Calling
- 911, 500, 700, 800, 888, 900, 976 dialing
- Ringing
- Repeat dial capability
- Multi-line hunting
- PBX trunks and DID service

23.3 BellSouth will provide AT&T with at least the capability to provide an AT&T Customer the same experience as BellSouth provides its own Customers with respect to all Local Services. The capability provided to AT&T by BellSouth shall be in accordance with standards or other measurements that are at least

equal to the level that BellSouth provides or is required to provide by law and its own internal procedures.

24. General Terms and Conditions for Resale

24.1 Primary Local Exchange Carrier Selection

BellSouth shall apply the principles set forth in Section 64.1100 of the Federal Communications Commission Rules, 47 C.F.R. §64.1100, to the process for end-user selection of a primary local exchange carrier. BellSouth shall not require a disconnect order from the Customer, another carrier, or another entity, in order to process an AT&T order for Local Service for a Customer.

24.2 Pricing

The prices charged to AT&T for Local Service are set forth in Part IV of this Agreement.

24.3 With the exception of short-term promotions, defined as those promotions that are offered for a ninety (90) day period or less and which are not offered on a consecutive basis, BellSouth shall offer for resale at wholesale prices all telecommunications services that BellSouth provides at retail to non-telecommunications carriers, including governmental bodies and information providers. The Telecommunications Services available for resale at the wholesale discount include grandfathered or obsolete services, 911 and E911, Lifeline or Link-up contract service arrangement subject to the following:

(i) AT&T may not obtain at a wholesale rate a telecommunications service that is available at retail to a specific category of subscribers and offer said service to a different category of subscribers (e.g. resale of residential service to business customers);

(ii) LifeLine/Link-up services shall be available for resale by AT&T only to those customers who are eligible to purchase such service directly from BellSouth;

(iii) All grandfathered services are available for resale by AT&T to those customers or subscribers who already have grandfathered status; and

(iv) E911/911 services shall be available for resale by AT&T.

(v) If N11 service becomes available in North Carolina such service shall be available for resale.

Reasonable and non-discriminatory use and user restrictions contained in BellSouth's tariffs shall be applicable to the resale of BellSouth's telecommunications services, unless otherwise prohibited.

24.3.1 **Dialing Parity**

24.3.1.1 BellSouth agrees that AT&T Customers will experience the same dialing parity as BellSouth's Customers, such that, for all call types: (i) an AT&T Customer is not required to dial any greater number of digits than a BellSouth Customer; (ii) the post-dial delay (time elapsed between the last digit dialed and the first network response), call completion rate and transmission quality experienced by an AT&T Customer is at least equal in quality to that experienced by a BellSouth Customer; and (iii) the AT&T Customer may retain its local telephone number.

24.3.2 **Changes in Retail Service**

24.3.2.1 BellSouth agrees to notify AT&T electronically of any changes in the terms and conditions under which it offers Telecommunications Services to subscribers who are non-telecommunications carriers, including, but not limited to, the introduction or discontinuance of any features, functions, services or promotions, at least forty-five (45) days prior to the effective date of any such change or concurrent with BellSouth's internal notification process for such change, whichever is earlier. AT&T recognizes that certain revisions may occur between the time BellSouth notifies AT&T of a change pursuant to this Section and BellSouth's tariff filing of such change. BellSouth shall notify AT&T of such revisions consistent with BellSouth's internal notification process but AT&T accepts the consequences of such mid-stream changes as an uncertainty of doing business and, therefore, will not hold BellSouth responsible for any resulting inconvenience or cost incurred by AT&T unless caused by the intentional misconduct of BellSouth for the purposes of this section. The notification given pursuant to this Section will not be used by either party to market its offering of such changed services externally in advance of BellSouth filing of any such changes.

24.3.2.2 BellSouth agrees to notify AT&T electronically of proposed price changes at least thirty (30) days prior to the effective date of any such price change.

24.3.2.3 BellSouth agrees to use electronic mail to notify AT&T of any operational changes within at least six (6) months before such changes are proposed to become effective and within twelve months for any technological changes. If such operational or technological changes occur within the six or twelve month

notification period, BellSouth will notify AT&T of the changes concurrent with BellSouth's internal notification process for such changes.

25. **Requirements for Specific Services**

25.1 **CENTREX Requirements**

At AT&T's option, AT&T may purchase CENTREX services. Where AT&T purchases such CENTREX services, AT&T may purchase the entire set of features, any single feature, or any combination of features which BellSouth has the capability to provide. BellSouth will provide AT&T with the same service levels and features of CENTREX Service provided by BellSouth to its end users. Requests by AT&T for CENTREX Service levels and features that are different from what BellSouth provides to its end users will be handled under the Bona Fide Request Process. The CENTREX service provided for resale will meet the following requirements:

25.1.1 All features and functions of CENTREX Service, whether offered under tariff or otherwise, shall be available to AT&T for resale, without any geographic or Customer class restrictions.

25.1.2 BellSouth's CENTREX Service may be used by AT&T to provide Local Service to AT&T's end users

25.1.3 BellSouth shall provide to AT&T a list which describes all CENTREX features and functions offered by BellSouth within ten (10) days of the Effective Date, and shall provide updates to said list as required by Section 24.3.2 of Part 1.

25.1.4 **DELETED**

25.1.5 AT&T may aggregate the CENTREX local exchange and IntraLATA traffic usage of AT&T Customers to qualify for volume discounts on the basis of such aggregated usage.

25.1.6 AT&T may aggregate multiple AT&T Customers on dedicated access facilities. AT&T may require that BellSouth suppress the need for AT&T Customers to dial "9" when placing calls outside the CENTREX System. When dedicated facilities are utilized, BellSouth will provide, upon AT&T's request, station ID or ANI, as well as FGD trunking.

25.1.7 AT&T may use remote call forwarding in conjunction with CENTREX Service to provide service to AT&T Local Service Customers residing outside of the geographic territory in which BellSouth provides local exchange service. In cases where existing BellSouth Customers choose AT&T for their local service provider, and where AT&T serves these Customers via CENTREX, in order that such Customers may keep the same phone number, BellSouth shall either

move Customer's line and phone number to a CENTREX system, or use remote call forwarding to route Customer's old phone number to new CENTREX phone number. Not all features and functions will be compatible when remote call forwarding is utilized. In such cases, AT&T customers shall have the same functionality as BellSouth customers under the same circumstances.

25.1.8 **DELETED**

25.1.9 BellSouth shall make available to AT&T for resale, at no additional charge, intercom calling among all AT&T Customers who utilize resold CENTREX service where the AT&T Customers' numbers all reside in the same central office switch.

25.1.10 AT&T may utilize BellSouth's Automatic Route Selection (ARS) service features to provision and route calls from various end users to various Interexchange Carriers (IXC) Networks.

25.2 **CLASS and Custom Features Requirements**

AT&T may purchase the entire set of CLASS and Custom features and functions, or a subset of any one or any combination of such features, on a Customer-specific basis, without restriction on the minimum or maximum number of lines or features that may be purchased for any one level of service. BellSouth shall provide to AT&T a list of all such CLASS and Custom features and functions within ten (10) days of the Effective Date and shall provide updates to such list when new features and functions become available.

25.3 **Voluntary Federal and State Customer Financial Assistance Programs**

Local Services provided to low-income subscribers, pursuant to requirements established by the appropriate state regulatory body, include programs such as Voluntary Federal Customer Financial Assistance Program and Link-Up America ("Voluntary Federal Customer Financial Assistance Programs"). When a BellSouth Customer eligible for the Voluntary Federal Customer Financial Assistance Program or other similar state programs chooses to obtain Local Service from AT&T, BellSouth shall forward available information regarding such Customer's eligibility to participate in such programs to AT&T, in accordance with procedures to be mutually established by the Parties and applicable state and federal law.

25.4 **E911/911 Services**

BellSouth shall provide access to E911/911 in the same manner that it is provided to BellSouth Customers. BellSouth will enable AT&T Customers to have E911/911 call routing to the appropriate Public Safety Answering Point

(PSAP). BellSouth shall provide and validate AT&T Customer information to the PSAP. BellSouth shall use its service order process to update and maintain, on the same schedule that it uses for its end users, the AT&T Customer service information in the ALI/DMS (Automatic Location Identification/Database Management System) used to support E911/911 services.

25.4.1 **DELETED**

25.4.2 Telephone Relay Service

Where BellSouth provides to speech and hearing-impaired callers a service that enables callers to type a message into a telephone set equipped with a keypad and message screen and to have a live operator read the message to a recipient and to type message recipient's response to the speech or hearing-impaired caller ("Telephone Relay Service"), BellSouth shall make such service available to AT&T at no additional charge, for use by AT&T Customers who are speech or hearing-impaired. If BellSouth maintains a record of Customers who qualify under any applicable law for Telephone Relay Service, BellSouth shall make such data available to AT&T as it pertains to AT&T Customers.

25.5 **Contract Service Arrangements ("CSAS")**

25.5.1 CSA's entered into by BellSouth prior to April 15, 1997, shall be subject to resale; however, the resale discount shall not apply. CSA's entered into by BellSouth subsequent to April 15, 1997, shall be available for resale at the wholesale discount. The resale of the CSA is limited to the specific end-user for whom the CSA was constructed and may not be sold to the public at large.

25.5.2 If AT&T identifies a specific CSA, BellSouth shall provide AT&T a copy within ten (10) business days of AT&T's request.

25.6 **DELETED**

25.7 **DELETED**

25.8 **DELETED**

25.9 **DELETED**

25.10 **Nonrecurring Services**

25.10.1 BellSouth shall offer for resale all non-recurring services at the wholesale discount.

25.11 **Inside Wire Maintenance Service**

25.11.1 BellSouth shall provide Inside Wire Maintenance Service for resold services, but the resale discount will not apply.

25.12 Pay Phone Service

BellSouth shall offer for resale, at a minimum, the following pay phone services: Coin Line (currently sold as SmartLine[sm]), COCOT Line Coin (currently sold as Independent Payphone Provider (IPP) Line), and COCOT Line Coinless (currently sold as IPP Line Coinless). To the extent BellSouth demonstrates that it does not provide the payphone features and functionality requested by AT&T to BellSouth Customers, AT&T may request that BellSouth provide such functionality pursuant to the Bona Fide Request Process identified in Section 1.1 of the General Terms and Conditions of this Agreement.

- Billed Number Screening
- Originating line screening
- Ability to "freeze" PIC selection
- One bill per line
- Point of demarcation at the Network Interface location
- Detailed billing showing all 1+ traffic on paper, diskette or electronic format
- Wire Maintenance option
- Touchtone service
- Option for listed or non-listed numbers
- Access to 911 service
- One directory per line
- Access to ANI Information
- Line and/or station monitoring and diagnostic routines

25.12.1 In addition, BellSouth shall offer for resale, at a minimum, the following features with its resold Coin Line service:

- Access to all CO intelligence required to perform answer detection, coin collection, coin return, and disconnect.
- Answer Detection
- Option to block all 1+ calls to international destinations
- IntraLATA Call Timing
- Option of one way or two way service on line
- Coin Refund and Repair Referral Service
- Ability to block any 1+ service that cannot be rated by the coin circuits
- AT&T rate tables for local and intraLATA service
- Option of Flat Rate Service or Measured Service or both
- Protect against clip on fraud
- Protect against blue box fraud

25.12.2 BellSouth shall offer for resale, at a minimum, the following features with its COCOT Line Coin and COCOT Line Coinless services:

Ability to keep existing serving telephone numbers if cutover to AT&T Resale Line
Option of One Way or Two Way service on the line
Option of Flat Rate Service or Measured Service or both

25.12.3 BellSouth shall offer for resale, at a minimum, the following feature with its COCOT Line Coin service:

Blocking for 1+ international, 10XXXX1+ international, 101XXXX1+ international, 1+900, N11, 976
Option to block all 1-700 and 1-500 calls
Line side supervision option

25.12.4 BellSouth shall offer for resale, at a minimum, the following features with its COCOT Line Coinless service:

Blocking for 1+ international, 10XXXX1+ international, 101XXXX1+ international, 1+900, N11, 976, 7 or 10 digit local, 1+DDD

25.12.5 BellSouth shall offer for resale, at a minimum, the following features with its SemiPublic Coin service:

Ability to keep existing serving telephone numbers if cutover to AT&T
Touchtone Service
Option for listed, nonlisted, or non published numbers
Provision 911 service
Access to ANI information
Access to all CO intelligence required to perform answer supervision, coin collect, coin return and disconnect
Far end disconnect recognition
Call timing
PIC protection for all 1+local, interLATA, and intraLATA traffic
Same call restrictions as available on BellSouth phones for interLATA, international, intraLATA, and local calling
One bill per line
Detailed billing showing all 1+ traffic in paper or electronic format
Option to have enclosure installed with set
One directory per line installed
Install the station to at least BellSouth standards
Ability to block any 1+ service that cannot be rated by the coin circuits
AT&T to be the PIC for local and intraLATA calls
Option to block all 1+ international calls

Option of one way or two way service
Wire Maintenance option
AT&T rate tables for local and intraLATA service
Option to have BellSouth techs collect, count, and deposit vault contents on behalf of AT&T
Monitor vault contents for slugs and spurious non-US currency or theft and notify AT&T of discrepancies
Station or enclosure equipment should only bear the name/brand designated by AT&T on the order form
Protect against clip on fraud
Protect against red box fraud
Protect against blue box fraud
Provide option for use of "bright" station technology including debit cards
Provide revenue, maintenance, collection reports as specified by AT&T on order form on a periodic basis in paper or electronic format

25.12.6 BellSouth shall provide the following features for Coin Line, SemiPublic Coin, COCOT Line Coin, and COCOT Line Coinless services:

Blocking of inbound international calls
Point of demarcation at the set location
Special screen codes unique to AT&T and/or its Customers
Single Point of Contact for bills and orders dedicated to Public
Service outage transfers to AT&T help center
Access to AT&T Directory Assistance
Access to AT&T's Network Access Interrupt
Use AT&T branded invoice
Provide all information requested to ensure AT&T can bill for access line
Provide all information requested to ensure AT&T can bill for usage on the line
All calls originating from stations serviced by these lines should be routed to AT&T lines, except where designated

25.13 **Voice Mail Service**

25.13.1 Where available to BellSouth's end users, BellSouth shall provide the following feature capabilities to allow for voice mail services:

Station Message Desk Interface - Enhanced ("SMDI-E")
Station Message Desk Interface ("SMDI")
Message Waiting Indicator ("MWI") stutter dialtone and message waiting light feature capabilities
Call Forward on Busy/Don't Answer ("CF-B/DA")
Call Forward on Busy ("CF/B")
Call Forward Don't Answer ("CF/DA")

25.14 **Hospitality Service**

25.14.1 BellSouth shall provide all blocking, screening, and all other applicable functions available for hospitality lines.

25.15 **Blocking Service**

25.15.1 BellSouth shall provide blocking of 700, 900, and 976 services individually or in any combination upon request, including bill to third Party and collect calls, from AT&T on a line, trunk, or individual service basis at parity with what BellSouth provides its end users.

26. **DELETED**

26.1 **DELETED**

26.1.1 **DELETED**

26.1.2 **DELETED**

26.1.3 **DELETED**

26.1.4 **DELETED**

27. **Support Functions**

27.1 Routing to Directory Assistance, Operator and Repair.

27.1.1 When available to AT&T pursuant to Section 19 of the General Terms and Conditions of this Agreement, BellSouth shall provide the ability to route:

27.1.1.1 Local Directory Assistance calls (411, (NPA) 555 1212) dialed by AT&T Customers directly to the AT&T Directory Assistance Services platform. Local Operator Services calls (0+, 0-) dialed by AT&T Customers directly to the AT&T Local Operator Services Platform. Such traffic shall be routed over trunk groups between BellSouth end offices and the AT&T Local Operator Services Platform, using standard Operator Services dialing protocols of 0+ or 0-.

27.1.1.2 611 repair calls dialed by AT&T Customers directly to the AT&T repair center.

27.1.2 Until a permanent industry solution exists for routing of traffic from BellSouth's local switch to other than BellSouth platforms, BellSouth will provide such routing using line class codes. BellSouth agrees to work with AT&T on a routing resource conservation program to relieve routing resource constraints to ensure that no switch exceeds 95% capacity of line class codes. BellSouth and AT&T shall continue to work with the appropriate industry groups to

develop a long-term solution for selective routing. BellSouth may reserve for itself an appropriate and reasonable number of line class codes for its own use.

27.1.3 All direct routing capabilities described herein shall permit AT&T Customers to dial the same telephone numbers for AT&T Directory Assistance, Local Operator Service and Repair that similarly situated BellSouth Customers dial for reaching equivalent BellSouth services.

27.1.4 BellSouth, no later than fifteen (15) days after the Effective Date, shall provide to AT&T, the emergency public agency (e.g., police, fire, ambulance) telephone numbers linked to each NPA-NXX. Such data will be compiled as an electronic flat file in a mutually agreed format and transmitted via either diskette or Network Data Mover. BellSouth will transmit to AT&T, in a timely manner, all changes, alterations, modifications and updates to such data base via the same method as the initial transfer.

27.2 **Operator Services - Interim Measures**

27.2.1 Where BellSouth is the provider of Directory Assistance service, BellSouth agrees to provide AT&T Customers with the same Directory Assistance available to BellSouth Customers. If requested by AT&T, BellSouth will provide AT&T Directory Assistance Service under the AT&T brand.

27.2.1.1 AT&T recognizes that BellSouth's providing to AT&T Directory Assistance Service under AT&T's brand may require additional costs to be incurred by BellSouth. BellSouth will charge AT&T for such branded Directory Assistance capability under the wholesale rate plus the reasonable and demonstrable costs necessary to implement AT&T's branding request.

27.2.2 Additionally, BellSouth warrants that such service will provide the following minimum capabilities to AT&T's Customers:

(1) Two Customer listings and/or addresses per AT&T Customer call.

(2) Name and address to AT&T Customers upon request, except for unlisted numbers, in the same states where such information is provided to BellSouth Customers.

(3) Upon request, call completion to the requested number for local and intraLATA toll calls, where this service is available.

(4) Populate the listing database in the same manner and in the same time frame as if the Customer was a BellSouth Customer.

(5) Any information provided by a Directory Assistance Automatic Response Unit (ARU) will be repeated the same number of times for AT&T Customers as for BellSouth's Customers.

(6) Service levels will comply with applicable state regulatory requirements for:

a) number of rings to answer

b) average work time

c) disaster recovery options.

(7) Intercept service for Customers moving service will include:

a) referral to new number, either 7 or 10 digits

b) repeat of the new number twice on the referral announcement

c) repeat of the new recording twice.

27.2.3 BellSouth shall provide Operator Services to AT&T's Customers at the same level of service available to BellSouth end users.

27.2.4 **DELETED**

27.2.5 BellSouth agrees to provide AT&T Customers the same Operator Services available to BellSouth Customers, branded as required by Section 19.

27.2.6 Additionally, BellSouth warrants that such service will provide the following minimum capabilities to AT&T Customers:

(1) Instant credit on calls, as provided to BellSouth Customers.

(2) Routing of calls to AT&T when requested via existing Operator Transfer Service (OTS).

(3) Busy Line Verification/Emergency Line Interrupt (BLV/ELI) services.

(4) Emergency call handling.

(5) Notification of the length of call.

(6) Caller assistance for the disabled in the same manner as provided to BellSouth Customers.

(7) Handling of collect calls: person to person and/or station to station.

27.3 **Busy Line Verification and Emergency Line Interrupt**

Where BellSouth does not route Operator Services traffic to AT&T's platform, BellSouth shall perform Busy Line Verification and Emergency Line Interrupt for AT&T on resold BellSouth lines. Where BellSouth routes Operator Services traffic to AT&T's platform, BellSouth shall provide BLV/ELI services when requested by AT&T Operators. AT&T and BellSouth shall work together to ensure that sufficient facilities exist to support increased BLV/ELI volume due to AT&T's presence as a Local Service provider. Specifically, BellSouth will engineer its BLV/ELI facilities to accommodate the anticipated volume of BLV/ELI requests during the Busy-Hour. AT&T may, from time to time, provide its anticipated volume of BLV/ELI requests to BellSouth for planning purposes. In those instances when the BLV/ELI facilities/systems cannot satisfy forecasted volumes, BellSouth shall promptly inform AT&T, and the Parties shall work together to resolve capacity problems expediently.

27.4 **Access to the Line Information Database**

BellSouth shall use its service order process to update and maintain, on the same schedule that it uses for its end users, the AT&T Customer service information in the Line Information Database ("LIDB").

27.5 **Telephone Line Number Calling Cards**

Effective as of the date of an end-user's subscription to AT&T Service, BellSouth will terminate its existing telephone line number - based calling cards and remove any BellSouth-assigned Telephone Line Calling Card Number (including area code) ("TLN") from the LIDB. AT&T may issue a new telephone calling card to such Customer, utilizing the same TLN and enter such TLN in LIDB for calling card validation purposes via the service order process.

28. **Service Functions**

28.1 **Electronic Interface**

BellSouth shall provide real time electronic interfaces ("EI") for transferring and receiving Service Orders and Provisioning data and materials (e.g., access to Street Address Guide ("SAG") and Telephone Number Assignment database). These interfaces shall be administered through a gateway that will serve as a point of contact for the transmission of such data from AT&T to BellSouth, and from BellSouth to AT&T. The requirements and implementation of such a data transfer system shall be negotiated in good faith by the Parties as specified

below and in Attachment 15 of this Agreement. AT&T and BellSouth agree to use best efforts to provide the Electronic Communications gateway described above as soon as practicable, but in no event later than the dates specified in Attachment 15. In addition, (i) BellSouth agrees to use its best efforts to carry out its responsibilities, and (ii) AT&T agrees to use its best efforts to carry out its responsibilities. AT&T and BellSouth have agreed on interim solutions described below and in Attachment 15 to address the Pre-ordering, Ordering and Provisioning interfaces. BellSouth warrants that such interim solutions shall provide AT&T Customers with the same level of service available to BellSouth Customers.

28.1.1 **Pre-Ordering**

28.1.1.1 **DELETED**

28.1.1.2 **DELETED**

28.1.1.3 BellSouth will supply AT&T with Interval Guide Job Aids to be used to determine service installation dates. BellSouth will implement an electronic interface to its Due Date Support Application (DSAP) by December 31, 1996 but no later than April 1, 1997.

28.1.1.4 BellSouth will reserve up to 100 telephone numbers per NPA-NXX at AT&T's request, for AT&T's sole use. BellSouth will provide additional numbers at AT&T's request in order that AT&T have sufficient numbers available to meet expected needs. The telephone number reservations made in this manner are valid for AT&T's assignment for ninety (90) days from the reservation date. BellSouth will make the telephone number reservations available to AT&T via diskette by no later than August 15, 1996 and by electronic file transfer no later October 15, 1996. BellSouth agrees to implement an electronic interface to improve this process by December 31, 1996, but no later than April 1, 1997.

28.1.1.5 BellSouth Local Carrier Service Center (LCSC) will assign vanity numbers and blocks of numbers for use with complex services including, but not limited to, DID and Hunting arrangements, as requested by AT&T, and documented in Work Center Interface agreements.

28.1.1.6 BellSouth will migrate all Pre-ordering functionality to the "Pre-Ordering" Electronic Communications Gateway by December 31, 1996, but no later than April 1, 1997. This migration effort shall be accomplished as described by BellSouth in its "Phase II interactive solution" report to the Georgia Utilities Commission of July 21, 1996.

28.1.2 **Ordering**

28.1.2.1 BellSouth agrees to develop, and AT&T agrees to cooperate in the development of, a mutually acceptable Electronic Data Interchange (EDI) for ordering Local Services. The ordering process and related transactions, (i.e., order, confirmation, firm order commitments, supplements and completions) shall be via the EDI interface.

28.1.2.2 BellSouth agrees to implement the EDI interface to support processes for Local Services for residence POTS and features, business POTS and features and PBX trunks with Direct Inward Dialing by September 1, 1996. By December 15, 1996, all Local Services shall be available for ordering via EDI interface.

28.1.2.3 **DELETED**

28.2 **Work Order Processes**

28.2.1 BellSouth shall ensure that all work order processes used to provision Local Service to AT&T for resale meet the service parity requirements set forth in this part.

28.2.2 Prior to AT&T sending BellSouth the first Service Order, BellSouth and AT&T shall develop mutually agreed-upon escalation and expedite procedures to be employed at any point in the Service Ordering, Provisioning, Maintenance, Billing and Customer Usage Data transfer processes to facilitate rapid and timely resolution of disputes. These procedures will be maintained in the Work Center Interface Agreements.

28.3 **Point of Contact for the AT&T Customer**

28.3.1 Except as otherwise provided in this Agreement, AT&T shall be the single and sole point of contact for all AT&T Customers.

28.3.2 **DELETED**

28.3.3 BellSouth shall ensure that all BellSouth representatives who receive inquiries regarding AT&T services when providing services on behalf of AT&T: (i) refer such inquiries to AT&T at a telephone number provided by AT&T; (ii) do not in any way disparage or discriminate against AT&T, or its products or services; and (iii) do not provide information about BellSouth products or services.

28.4 **Single Point of Contact**

28.4.1 Each Party shall provide the other Party with a single point of contact ("SPOC") for all inquiries regarding the implementation of this Part. Each Party shall accept all inquiries from the other Party and provide timely responses.

28.4.2 BellSouth Contact numbers will be kept current in the Work Center Interface Agreements.

28.5 **Service Order**

To facilitate the ordering of new service for resale or changes to such service to an AT&T Customer ("Service Order"), BellSouth shall provide AT&T's representative with real time access (as described in Section 28.1 of this Part 1) to BellSouth Customer information to enable the AT&T representative to perform the following tasks:

28.5.1 Obtain Customer profile information via telephone. Methods and procedures for this interim interface will be defined in a Work Center Interface Agreement.

28.5.2 Obtain information on all Telecommunication Services that are available for resale, including new services via an electronic file with feature and service information in each BellSouth switch.

28.5.3 BellSouth will provide AT&T with interactive direct order entry no later than March 31, 1997. Until this capability is available, BellSouth agrees to establish the Local Carrier Service Center (LCSC) as the SPOC for order entry. Orders will be received at the LCSC via the EDI interface. BellSouth agrees to enter the Service Order promptly on receipt and provide Firm Order Confirmation (FOC) within 24 hours of receipt of a correct Local Service Request.

28.5.4 BellSouth will provide AT&T with on line access to telephone number reservations by December 31, 1996, but no later April 1, 1997. Until on line access is available via electronic interface, BellSouth agrees to provide AT&T with a ready supply of telephone numbers. The process for telephone number reservations is described in Section 28.1.1.4 of this Agreement.

28.5.5 BellSouth will provide AT&T with the capability to establish directory listings via the Service Order Process.

28.5.6 BellSouth will provide AT&T with the appropriate information and training materials (job aids) to assist AT&T work centers to determine whether a service call will be required on a service installation. These job aids are to be the same information available to BellSouth employees.

28.5.7 BellSouth will provide AT&T on line ability to schedule dispatch and installation by December 31, 1996 but no later than April 1, 1997. Until on line access is available, BellSouth agrees to provide AT&T with interval guides for BellSouth services.

28.5.8 BellSouth will provide AT&T with the ability to order local service, local intraLATA toll service, and designate the end users' choice of primary intraLATA and interLATA Interexchange Carriers on a single unified order.

28.5.9 BellSouth will suspend, terminate or restore service to an AT&T Customer at AT&T's request.

28.6 **Provisioning**

28.6.1 **DELETED**

28.6.1.1 **DELETED**

28.6.1.2 **DELETED**

28.6.1.3 **DELETED**

28.6.1.4 **DELETED**

28.6.1.5 **DELETED**

28.6.2 BellSouth shall provide AT&T with service status notices, within mutually agreed-upon intervals. Such status notices shall include the following:

28.6.2.1 Firm order confirmation, including service availability date and information regarding the need for a service dispatch for installation.

28.6.3 BellSouth will provide AT&T with on-line notice of service installation by no later than March 31, 1997. Until this capability is available, BellSouth will provide AT&T with completion information on a daily basis for all types of Service Orders. BellSouth will utilize the EDI interface to transmit that data to AT&T. If an installation requires deviation from the Service Order in any manner, or if an AT&T Customer requests a service change at the time of installation, BellSouth will call AT&T in advance of performing the installation for authorization. BellSouth will provide to AT&T at that time an estimate of additional labor hours and/or materials required for that installation. After installation is completed, BellSouth will immediately inform AT&T of actual labor hours and/or materials used.

28.6.4 BellSouth will provide AT&T with on-line information exchange for Service Order rejections, Service Order errors, installation jeopardies and missed appointments by no later than March 31, 1997, until this capability is available, BellSouth agrees to:

28.6.4.1 Use its best efforts to notify AT&T via telephone of any Service Order rejections or errors within one hour of receipt;

28.6.4.2 Confirm such telephone notices in writing via facsimile at the end of each business day; and

28.6.4.3 BellSouth shall promptly notify AT&T via telephone if an installation or service appointment is in jeopardy of being missed.

28.6.4.4 The notification process will be described further in the Work Center Interface agreement between AT&T and BellSouth.

28.6.5 **DELETED**

28.6.6 BellSouth will provide AT&T with on-line information on charges associated with necessary construction no later than March 31, 1997. Until this capability is available, BellSouth agrees that BellSouth's LCSC will promptly notify AT&T of any charges associated with necessary construction.

28.6.7 BellSouth will provide AT&T with on-line access to status information on Service Orders no later than March 31, 1997. Until this capability is available, BellSouth agrees to provide status at the following critical intervals: acknowledgment, firm order confirmation, and completion on Service Orders. In addition, BellSouth Local Carrier Service Center will provide AT&T with status, via telephone, upon request.

28.6.8 BellSouth will perform all pre-service testing on resold Local Services.

28.6.9 Where BellSouth provides installation and the AT&T Customer requests a service change at the time of installation, BellSouth shall immediately notify AT&T at the telephone number on the Service Order of that request. The BellSouth technician should notify AT&T in the presence of the AT&T Customer so that AT&T can negotiate authorization to install the requested services directly with that Customer and the technician, and revise appropriate ordering documents as necessary.

28.6.10 To ensure that AT&T's Customers have the same ordering experience as BellSouth's Customers:

28.6.10.1 BellSouth shall provide AT&T with the capability to have AT&T's Customer orders input to and accepted by BellSouth's Service Order Systems outside of normal business hours, twenty-four (24) hours a day, seven (7) days a week, the same as BellSouth's Customer orders received outside of normal business orders are input and accepted.

28.6.10.2 Such ordering and provisioning capability shall be provided via an electronic interface, except for scheduled electronic interface downtime. Downtime shall not be scheduled during normal business hours and shall occur during times where systems experience minimum usage.

28.6.10.3 Until the Electronic Interface is available, BellSouth shall provide Local Carrier Service Center (LCSC) order entry capability to AT&T to meet the requirements set forth in Section 28.6.10.1 above.

28.6.11 BellSouth shall provide training for all BellSouth employees who may communicate with AT&T Customers, during the provisioning process. Such training shall conform to Section 19 of the General Terms and Conditions of this Agreement.

28.6.12 BellSouth will provide AT&T with the capability to provide AT&T Customers the same ordering, provisioning intervals, and level of service experiences as BellSouth provides to its own Customers, in accordance with standards or other measurements that are at least equal to the level that BellSouth provides or is required to provide by law and its own internal procedures.

28.6.13 BellSouth will maintain and staff an account team to support AT&T's inquiries concerning the ordering of local complex service and designed business services for local services resale. This team will provide information regarding all services, features and functions available, know the forms and additional information required beyond the standard local service request, assist AT&T in preparation of such orders, and coordinate within BellSouth.

28.6.14 BellSouth will provide AT&T with the information AT&T will need to certify Customers as exempt from charges, or eligible for reduced charges associated with the provisioning of new services, including but not limited to handicapped individuals, and certain governmental bodies and public institutions. BellSouth, when notified that an order for new service is exempt in some fashion, will not bill AT&T.

28.6.15 BellSouth will provide the same intercept treatment and transfer of service announcements to AT&T's Customers as BellSouth provides to its own end users without any branding.

28.6.16 BellSouth will provide AT&T with appropriate notification of all area transfers with line level detail 120 days before service transfer, and will also notify AT&T within 120 days before such change of any LATA boundary changes, or within the time frame required by an approving regulatory body, if any.

28.6.17 BellSouth agrees to develop with AT&T's cooperation, mutually acceptable interface agreements between work centers regarding the exchange of information and process expectations.

28.6.18 BellSouth will suspend AT&T local Customers' service upon AT&T's request via the receipt of a Local Service Request. The service will remain suspended

until such time as AT&T submits a Local Service Request requesting BellSouth to reactivate.

28.6.19 BellSouth will provide AT&T's end users the same call blocking options available to BellSouth's own end users.

28.6.20 BellSouth will work cooperatively with AT&T in practices and procedures regarding Law Enforcement and service annoyance call handling. To the extent that circuit-specific engineering is required for resold services, BellSouth will provide the same level of engineering support as BellSouth provides for its comparable retail services.

28.6.21 BellSouth will provide information about the certification process for the provisioning of LifeLine, Link-up and other similar services.

28.6.22 BellSouth will provide a daily electronic listing of AT&T Customers who change their local carrier. The process is described as OUTPLOC (See reference in Local Account Maintenance Requirements of Attachment 7.)

28.7 **Maintenance**

Maintenance shall be provided in accordance with the requirements and standards set forth in Attachment 5. Maintenance will be provided by BellSouth in accordance with the service parity requirements set forth in this Part.

28.8 **Provision of Customer Usage Data**

BellSouth shall provide the Customer Usage Data recorded by the BellSouth. Such data shall include complete AT&T Customer usage data for Local Service, including both local and intraLATA toll service (e.g., call detail for all services, including flat-rated and usage-sensitive features), in accordance with the terms and conditions set forth in Attachment 7.

28.9 **Service/Operation Readiness Testing**

28.9.1 In addition to testing described elsewhere in this Section, BellSouth shall test the systems used to perform the following functions in a mutually agreed upon time frame prior to commencement of BellSouth's provision of Local Service, in order to establish system readiness capabilities:

28.9.1.1 All interfaces between AT&T and BellSouth work centers for Service Order, Provisioning;

28.9.1.2 Maintenance, Billing and Customer Usage Data;

28.9.1.3 The process for BellSouth to provide Customer profiles;

28.9.1.4 The installation scheduling process;

28.9.1.5 **DELETED**

28.9.1.6 Telephone number assignment;

28.9.1.7 Procedures for communications and coordination between AT&T SPOC and BellSouth SPOC;

28.9.1.8 Procedures for transmission of Customer Usage Data; and

28.9.1.9 Procedures for transmitting bills to AT&T for Local Service; and the process for wholesale billing for local service.

28.9.2 The functionalities identified above shall be tested by BellSouth in order to determine whether BellSouth performance meets the applicable service parity requirements, quality measures and other performance standards set forth in this Agreement. BellSouth shall make available sufficient technical staff to perform such testing. BellSouth technical staff shall be available to meet with AT&T as necessary to facilitate testing. BellSouth and AT&T shall mutually agree on the schedule for such testing.

28.9.3 At AT&T's reasonable request, BellSouth shall provide AT&T with service readiness test results of the testing performed pursuant to the terms of this Part.

28.9.4 During the term of this Agreement, BellSouth shall participate in cooperative testing requested by AT&T whenever both companies agree it is necessary to ensure service performance, reliability and Customer serviceability.

28.10 **Billing For Local Service**

28.10.1 BellSouth shall bill AT&T for Local Service provided by BellSouth to AT&T pursuant to the terms of this Part, and in accordance with the terms and conditions for Connectivity Billing and Recording in Attachment 6.

28.10.2 BellSouth shall recognize AT&T as the Customer of record for all Local Service and will send all notices, bills and other pertinent information directly to AT&T unless AT&T specifically requests otherwise.

PART II: UNBUNDLED NETWORK ELEMENTS

29. Introduction

This Part II sets forth the unbundled Network Elements that BellSouth agrees to offer to AT&T in accordance with its obligations under Section 251(c)(3) of the Act. The specific terms and conditions that apply to the unbundled Network Elements and the requirements for each Network Element are described below and in the Network Elements Service Description, Attachment 2. The price for each Network Element is set forth in Part IV of this Agreement. BellSouth shall offer Network Elements to AT&T as of the Effective Date.

30. Unbundled Network Elements

30.1 BellSouth shall offer Network Elements to AT&T on an unbundled basis on rates, terms and conditions that are just, reasonable, and non-discriminatory in accordance with the terms and conditions of this Agreement.

30.2 BellSouth will permit AT&T to interconnect AT&T's facilities or facilities provided by AT&T or by third Parties with each of BellSouth's unbundled Network Elements at any point designated by AT&T that is technically feasible.

30.3 BellSouth will deliver to AT&T's Served Premises any interface that is technically feasible. AT&T, at its option, may designate other interfaces through the Bona Fide Request process delineated in Attachment 14.

30.4 AT&T may use one or more Network Elements to provide any feature, function, or service option that such Network Element is capable of providing or any feature, function, or service option that is described in the technical references identified herein.

30.5 BellSouth shall offer each Network Element individually and in combination with any other Network Element or Network Elements in order to permit AT&T to provide Telecommunications Services to its Customers subject to the provisions of Section 1A of the General Terms and Conditions of this Agreement.

30.6 For each Network Element, BellSouth shall provide a demarcation point (e.g., an interconnection point at a Digital Signal Cross Connect or Light Guide Cross Connect panel or a Main Distribution Frame) and, if necessary, access to such demarcation point, which AT&T agrees is suitable. However, where BellSouth provides contiguous Network Elements to AT&T, BellSouth may provide the existing interconnections

and no demarcation point shall exist between such contiguous Network Elements.

30.7 BellSouth shall charge AT&T the rates set forth in Part IV when directly interconnecting any Network Element or Combination to any other Network Element or Combination. If BellSouth provides such service to an affiliate of BellSouth, that affiliate shall pay the same charges.

30.8 The charge assessed to AT&T to interconnect any Network Element or Combination to any other Network Element or Combination provided by BellSouth to AT&T if BellSouth does not directly interconnect the same two Network Elements or Combinations in providing any service to its own Customers or a BellSouth affiliate (e.g., the interconnection required to connect the Loop Feeder to an ALEC's collocated equipment), shall be cost based.

30.9 Attachment 2 of this Agreement describes the Network Elements that AT&T and BellSouth have identified as of the Effective Date of this Agreement. AT&T and BellSouth agree that the Network Elements identified in Attachment 2 are not exclusive. Either Party may identify additional or revised Network Elements as necessary to improve services to Customers, to improve network or service efficiencies or to accommodate changing technologies, Customer demand, or regulatory requirements. Upon BellSouth's identification of a new or revised Network Element, BellSouth shall notify AT&T of the existence of and the technical characteristics of the new or revised Network Element.

AT&T shall make it's request for a new or revised Network Element pursuant to the Bona Fide Request Process identified in Section 1.1 of the General Terms and Conditions of this Agreement. Additionally, if BellSouth provides any Network Element that is not identified in this Agreement, to itself, to its own Customers, to a BellSouth affiliate or to any other entity, BellSouth will provide the same Network Element to AT&T on rates, terms and conditions no less favorable to AT&T than those provided to itself or to any other Party. Additional descriptions and requirements for each Network Element are set forth in Attachment 2.

30.9.1 **DELETED**

30.9.2 **DELETED**

30.9.3 **DELETED**

30.9.4 **DELETED**

30.9.5 **DELETED**

30.9.6 **DELETED**

30.9.7 **DELETED**

30.9.8 **DELETED**

30.9.9 **DELETED**

30.9.10 **DELETED**

30.9.11 **DELETED**

30.10 **Standards for Network Elements**

30.10.1 BellSouth shall comply with the requirements set forth in the technical references, as well as any performance or other requirements identified in this Agreement, to the extent that they are consistent with the greater of BellSouth's actual performance or applicable industry standards. If another Bell Communications Research, Inc. ("Bellcore"), or industry standard (e.g., American National Standards Institute ("ANSI")) technical reference or a more recent version of such reference sets forth a different requirement, AT&T may request, where technically feasible, that a different standard apply by making a request for such change pursuant to the Bona Fide Request Process identified in Section 1.1 of the General Terms and Conditions of this Agreement.

30.10.2 If one or more of the requirements set forth in this Agreement are in conflict, the parties shall mutually agree on which requirement shall apply. If the parties cannot reach agreement, the Alternative Dispute Resolution Process identified in Section 16 of the General Terms and Conditions of this Agreement shall apply.

30.10.3 Each Network Element provided by BellSouth to AT&T shall be at least equal in the quality of design, performance, features, functions and other characteristics, including but not limited to levels and types of redundant equipment and facilities for power, diversity and security, that BellSouth provides in the BellSouth network to itself, BellSouth's own Customers, to a BellSouth affiliate or to any other entity for the same Network Element.

30.10.3.1 **DELETED**

30.10.3.2 BellSouth agrees to work cooperatively with AT&T to provide Network Elements that will meet AT&T's needs in providing services to its Customers.

30.10.4 Unless otherwise designated by AT&T, each Network Element and the interconnections between Network Elements provided by BellSouth to AT&T shall be made available to AT&T on a priority basis that is equal to

or better than the priorities that BellSouth provides to itself, BellSouth's own Customers, to a BellSouth affiliate or to any other entity for the same Network Element.

PART III: ANCILLARY FUNCTIONS

31. **Introduction**

This Part and Attachment 3 set forth the Ancillary Functions and requirements for each Ancillary Function that BellSouth agrees to offer to AT&T so that AT&T may provide Telecommunication Services to its Customers.

32. **BellSouth Provision of Ancillary Functions**

Part IV of this Agreement sets forth the prices for such Ancillary Functions. BellSouth will offer Ancillary Functions to AT&T on rates, terms and conditions that are just, reasonable, and non-discriminatory and in accordance with the terms and conditions of this Agreement.

32.1 The Ancillary Functions that AT&T has identified as of the Effective Date of this Agreement are Collocation, Rights Of Way (ROW), Conduits and Pole Attachments. AT&T and BellSouth agree that the Ancillary Functions identified in this Part III are not exclusive. Either Party may identify additional or revised Ancillary Functions as necessary to improve services to Customers, to improve network or service efficiencies or to accommodate changing technologies, Customer demand, or regulatory requirements. Upon BellSouth's identification of a new or revised Ancillary Function, BellSouth shall notify AT&T of the existence of and the technical characteristics of the new or revised Ancillary Function.

AT&T shall make its request for a new or revised Ancillary Function pursuant to the Bona Fide Request Process identified in Section 1.1 of the General Terms and Conditions of this Agreement.

32.2 If BellSouth provides any Ancillary Function to itself, to its own Customers, to a BellSouth affiliate or to any other entity, BellSouth will provide the same Ancillary Function to AT&T at rates, terms and conditions no less favorable to AT&T than those provided by BellSouth to itself or to any other Party. The Ancillary Functions and requirements for each Ancillary Function are set forth in Attachment 3.

33. **Standards for Ancillary Functions**

33.1 Each Ancillary Function shall meet or exceed the requirements set forth in the technical references, as well as the performance and other requirements, identified in this Agreement. If another Bell Communications Research, Inc. ("Bellcore"), or industry standard (e.g., American National Standards Institute ("ANSI")) technical reference sets forth a different requirement, AT&T may elect, where technically feasible, which standard shall apply by making a request for such change pursuant

to the Bona Fide Request Process identified in Section 1.1 of the General Terms and Conditions of this Agreement.

33.2 Except as otherwise expressly agreed to herein, each Ancillary Function provided by BellSouth to AT&T herein shall be at least equal in the quality of design, performance, features, functions and other characteristics, including, but not limited to levels and types of redundant equipment and facilities for diversity and security, that BellSouth provides in BellSouth network to itself, its own Customers, its affiliates or any other entity. This Section is not intended to limit BellSouth's ability during this Agreement to offer to AT&T nor AT&T's ability to accept Ancillary Functions with varying degrees of features, functionalities and characteristics.

33.3 **DELETED**

33.3.1 BellSouth agrees to work cooperatively with AT&T to provide Ancillary Functions that will meet AT&T's needs in providing services to its Customers.

33.4 Ancillary Functions provided by BellSouth to AT&T shall be allocated to AT&T on a basis that is at least equal to that which BellSouth provides to itself, its Customers, its affiliates or any other entity.

PART IV: PRICING

34. General Principles

All services currently provided hereunder (including resold Local Services, Network Elements, Combinations and Ancillary Functions) and all new and additional services to be provided hereunder shall be priced in accordance with all applicable provisions of the Act and the rules and orders of the Federal Communications Commission and the North Carolina Utilities Commission.

35. Local Service Resale

The rates that AT&T shall pay to BellSouth for resold Local Services shall be BellSouth's Retail Rates less the applicable discount. The following discount will apply to all Telecommunications Services available for resale in North Carolina.

Residential Service	21.50%
Business Service:	17.60%

36. Unbundled Network Elements

The interim prices that AT&T shall pay to BellSouth for Unbundled Network Elements are set forth in Table 1.

37. Compensation For Call and Transport Termination

The interim prices that AT&T and BellShouth shall pay each other for the termination of local calls are set forth in Table 1.

38. Ancillary Functions

38.1 Collocation - The interim prices that AT&T shall pay to BellSouth are set forth in Table 2.

38.2 Rights-of-Way - The interim prices that AT&T shall pay to BellSouth are set forth in Table 3.

38.3 Poles, Ducts and Conduits - The interim prices that AT&T shall pay to BellSouth are set forth in Table 3.

39. **Local Number Portability**

The interim prices for interim number portability are set forth in Table 4.

40. **Recorded Usage Data**

The interim prices for recorded usage data are set forth in Table 5.

41. **Electronic Interfaces**

All costs incurred by BellSouth to include implement operational interfaces shall be recovered from the industry. If there is disagreement between the Parties regarding cost recovery issues, an affected party may petition the North Carolina Utilities Commission to initiate a separate hearing to address the matter.

42. **True-up**

Except for the interim prices for resold Local Services, the interim prices referenced above shall be subject to true-up according to the following procedures:

1. The interim prices shall be trued-up, either up or down, based on final prices determined either by further agreement between the Parties, or by a final order (including any appeals) of the Commission which final order meets the criteria of (3) below. The Parties shall implement the true-up by comparing the actual volumes and demand for each item, together with interim prices for each item, with the final prices determined for each item. Each Party shall keep its own records upon which the true-up can be based, and any final payment from one Party to the other shall be in an amount agreed upon by the Parties based on such records. In the event of any disagreement as between the records or the Parties regarding the amount of such true-up, the Parties agree that the body having jurisdiction over the matter shall be called upon to resolve such differences, or the Parties may mutually agree to submit the matter to the Dispute Resolution process in accordance with the provisions of Section 16 of the General Terms and Conditions and Attachment 1 of the Agreement.

2. The Parties may continue to negotiate toward final prices, but in the event that no such agreement is reached within nine (9) months, either Party may petition the Commission to resolve such disputes and to determine final prices for each item. Alternatively, upon mutual agreement, the Parties may submit the matter to the Dispute Resolution Process set forth in Section 16 of the General Terms and Conditions and Attachment 1 of the Agreement, so long

as they file the resulting agreement with the Commission as a "negotiated agreement" under Section 252(e) of the Act.

3. A final order of this Commission that forms the basis of a true-up shall be the final order as to prices based on appropriate cost studies, or potentially may be a final order in any other Commission proceeding which meets the following criteria:

   (a) BellSouth and AT&T is entitled to be a full party to the proceeding;

   (b) It shall apply the provisions of the federal Telecommunications Act of 1996, including but not limited to Section 252(d)(1) (which contains pricing standards) and all then-effective implementing rules and regulations; and,

   (c) It shall include as an issue the geographic deaveraging of unbundled element prices, which deaveraged prices, if any are required by said final order, shall form the basis of any true-up.

4. AT&T shall retain its ability under Section 252(I) to obtain any interconnection, service, or network element provided under an agreement approved under Section 252 to which BellSouth is a party, upon the same terms and conditions as those provided in the agreement.

TABLE 1

UNBUNDLED NETWORK ELEMENTS
(all prices are interim at this time)

Network Interface Device, Per Month	$0.52 per NID
Loop Combinations, including NID, Per Month	
2 Wire Analog	$16.71 per loop
NRC	$86.50 First/ $27.80 Add'l
4 Wire Analog	$27.20
NRC	$86.50 First/ $27.80 Add'l
2 Wire ADSL/HDSL	$17.00
NRC	$280.15 First/ $243.91 Add'l
4 Wire HDSL	$27.20
NRC	$291.43 First/ $255.46 Add'l
2 Wire ISDN	$27.20
NRC	$276.96 First/ $234.99 Add'l
4 Wire DS1 Digital Grande	$151.50
NRC	$568.96 First/ $335.56 Add'l
Unbundled Loops via IDLC	To Be Negotiated
Local Switching, Per Month (Note: When AT&T buys the switch at the unbundled element rate it will receive vertical services at no additional charge, but when it buys combinations of elements to produce a BellSouth retail service, and thus comes under the resale pricing provisions, it must also pay the wholesale rate for vertical services, if those services are in the retail tariff on the effective date of the agreement. Vertical services which are not in the retail tariff but which can be provided by the switch will be available at no additional charge.)	
2 Wire Analog	$2.00 per line
NRC	$24.04 First/ $9.05 Add'l
4 Wire Analog	$3.15 per line
NRC	$24.17 First/ $9.63 Add'l
2 Wire DID	$12.68 per line
NRC	$50.00 First/ $18.00 Add'l
4 Wire DID	$120.00
NRC	$145.00 First/ $126.09 Add'l
2 Wire ISDN	$12.50
NRC	$75.81 First/ $56.91 Add'l
4 Wire ISDN	$246.00
NRC	$113.86 First/ $95.80 Add'l
Local Switching, Per MOU	$0.0040 per minute
Tandem Switching	$0.0015 per minute
Operator Systems	
Operator Call Handling-Station & Person	$1.06 per minute
Automated Call Handling	$0.09 per call
Busy Line Verification	$0.54 per call
Emergency Interrupt	$0.65 per call

Directory Assistance	
DA Access Service, per call	$0.271744
DA Transport	Rates as set forth in BellSouth's FCC 1, Sec. 9
DA Database	
per listing	$0.00072
monthly	$97.39
Direct access to DA service	
NRC, Service establishment	$1,000.00
Per Month	$5,000.00
Per query	$0.023
DA Call Completion, per attempt	$0.036
Intercept, per query	$.0077
Dedicated Transport	
DSO IOC, facility termination, per month	$38.37
DSO IOC, per mile, per month	$3.95
DSO IOC, NRC	$24.01
DS1 IOC, facility termination, per month	$90.00
DS1 IOC, per mile, per month	$23.00
DS1 IOC, NRC	$100.49
DS3 IOC, facility termination, per month	$1,200.00
DS3 IOC, per mile, per month	$175.00
DS3 IOC, NRC	$67.19
Shared/Common Transport	
Facility termination, per MOU	$0.00036
Per mile, per MOU	$0.00004
Signaling Links/ STPs	
Signaling connection link, per month	$155.00
non-recurring	$510.00
Signaling termination (port), per month	$355.00
800 Access Ten Digit Screening Service	
per 800 call, with 800 Number Delivery, per query	$0.00365
per 800 call, with 800 Number Delivery, with complex features, per query	$0.00431
per 800 call, with POTS Number Delivery, per query	$0.00383
per 800 call, with POTS Number Delivery, with complex features, per query	$0.00431
Reservation Charge per 800 Number reserved	$27.00 - First/$0.50 - Add'l
Establishment Charge per 800 number established w/800 Number Delivery	$61.00 - First/$1.50 - Add'l
Est. Charge per 800 number est. w/POTS Number Delivery	$61.00 - First/$1.50 - Add'l
Customized Area of Service Per 800 Number	$3.00 - First/$1.50 - Add'l
Multiple interLATA Carrier Routing per carrier requested, per 800 number	$3.50 - First/$2.00 - Add'l
Change Charge per request	$41.00 - First/$0.50 - Add'l
Call Handling and Destination Features per 800 number	$3.00
Line Information Database Access Service	
Common Transport, per query	$0.0003
Validation, per query	$0.03800

Nonrecurring, establishment or change	$91.00
Other SCPs/ Databases	
AIN, per query	To Be Negotiated
Mediation	To Be Negotiated
Call Transport and Termination	
Termination (end office switching)	$.004
Tandem Switching, per minute	$.0015
Transport	Network element prices for shared/ common and dedicated transport apply, as appropriate.
Loop Channelization	
Per System, Monthly	$400.00
Per System, NRC-1st	$365.92
Per System, NRC-Add'l	$ 89.04
CO Interface, per circuit	$ 1.15
CO Interface, NRC-Ist	$ 6.04
CO Interface, NRC-Add'l	$ 5.81

TABLE 2

PHYSICAL COLLOCATION

(all prices are interim at this time)

RATE ELEMENT	APPLICATION/DESCRIPTION	TYPE OF CHARGE	PRICE
Application Fee	Applies per arrangement per location	Non-recurring	$3,850.00
Space preparation fee	Applies for survey and design of space, covers shared building modification costs	Non-recurring	ICB
Space construction fee	Covers materials and construction of optional cage in 100 square foot increments	Non-recurring	$4,500.00
Cable installation fee	Applies per entrance cable	Non-recurring	$2,750.00
Floor space	Per Square foot, for Zone A and Zone B offices respectively	Monthly recurring	$7.50/6.75
Power	Per ampere based on manufacturer's specifications	Monthly recurring	$5.00 per ampere
Cable support structure	Applies per entrance cable	Monthly recurring	$13.35 per cable
POT bay	Optional Point of Termination bay 2-wire 4-wire DS1 DS3	Monthly recurring	$0.40 $1.20 $1.20 $8.00
Cross connects	Per POT Bay 2-wire analog 4-wire analog DS1 DS3	Monthly recurring and non-recurring	$.30 $11.60 - First $11.60 - Add'l $0.50 $11.60 - First $11.60 - Add'l $8.00 $155.00 - First $27.00 - Add'l $72.00 $155.00 - First $27.00 - Add'l
Security escort	First and additional half hour increments, per traffic rate in Basic time (B), Overtime (O), and Premium time (P)	As required. This is a traffic charge	$41.00/$25.00 B $48.00/$30.00 O $55.00/$35.00 P

VIRTUAL COLLOCATION

Interim Prices apply as set forth in BellSouth's Interstate Tariff, FCC 1.

TABLE 3

RIGHTS OF WAY, POLE ATTACHMENTS, CONDUIT AND DUCT OCCUPANCY

(all prices are interim at this time)

The rates charged to AT&T for rights-of-way shall be the lowest rate negotiated by BellSouth for existing or future license agreements. The rates charged to AT&T for pole attachments, conduit, and duct occupancy shall adhere to the FCC formula for pole attachments. Interim rates are as follows:

Poles	$4.20 per year
Conduit	$ .56 per ft., per year
Work by BellSouth Employees	Labor rate as developed in accordance with FCC Accounting Rules for work performed by BellSouth employees.

BSFL 01167

TABLE 4

LOCAL NUMBER PORTABILITY

(all prices are interim at this time)

Remote Call Forwarding

	Monthly Rate	Nonrecurring Charge
Per Number Ported		
- Residence / 6 paths	$1.15	-
- Business / 10 paths	$2.25	-
Each Additional Path	$0.50	-
Per Order, per end user location	-	None

LERG Reassignment/Route Index - Portability Hub

For LERG Reassignment, Route Index - Portability Hub, and Directory Number - Route Index, the Parties agree to continue to work on interim rates that shall also be subject to the true-up based on permanent rates to be established by the Commission.

BSFL 01168

TABLE 5

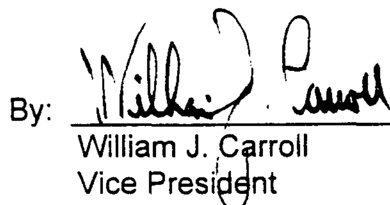
RECORDED USAGE DATA

Recording Services (only applied to unbundled operator services messages), per message	$.008
Message Distribution, per message	$.004
Data Transmission, per message	$.001

43. Execution of the Interconnection Agreement by either Party does not confirm or infer that the executing Party agrees with any decision(s) issued pursuant to the Telecommunications Act of 1996 and the consequences of those decisions on specific language in this Agreement. Neither Party waives its rights to appeal or otherwise challenge any such decision(s) and each Party reserves all of its rights to pursue any and all legal and/or equitable remedies, including appeals of any such decision(s). If such appeals or challenges result in changes in the decision(s), the Parties agree that appropriate modifications to this Agreement will be made promptly to make its terms consistent with those changed decision(s).

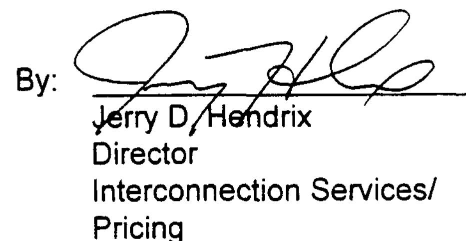
IN WITNESS WHEREOF, the Parties have executed this Agreement through their authorized representatives.

AT&T COMMUNICATIONS OF THE SOUTHERN STATES

By: 
William J. Carroll
Vice President

April 28, 1997
Date

BELLSOUTH TELECOMMUNICATIONS, INC.

By: 
Jerry D. Hendrix
Director
Interconnection Services/ Pricing

April 28, 1997
Date

DUPLICATE ORIGINAL

Attachment 1

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ALTERNATIVE DISPUTE RESOLUTION

1. Purpose

Attachment 1 provides for the expeditious, economical, and equitable resolution of disputes between BellSouth and AT&T arising under this Agreement.

2. Exclusive Remedy

2.1 Negotiation and arbitration under the procedures provided herein shall be the exclusive remedy for all disputes between BellSouth and AT&T arising under or related to this Agreement including its breach, except for: (i) disputes arising pursuant to Attachment 6, Connectivity Billing; and (ii) disputes or matters for which the Telecommunications Act of 1996 specifies a particular remedy or procedure. Except as provided herein, BellSouth and AT&T hereby renounce all recourse to litigation and agree that the award of the arbitrators shall be final and subject to no judicial review, except on one or more of those grounds specified in the Federal Arbitration Act (9 USC §§ 1 et seq.), as amended, or any successor provision thereto.

2.1.1 If, for any reason, certain claims or disputes are deemed to be non-arbitrable, the non-arbitrability of those claims or disputes shall in no way affect the arbitrability of any other claims or disputes.

2.1.2 If, for any reason, the Federal Communications Commission or any other federal or state regulatory agency exercises jurisdiction over and decides any dispute related to this Agreement or to any BellSouth tariff and, as a result, a claim is adjudicated in both an agency proceeding and an arbitration proceeding under this Attachment 1, the following provisions shall apply:

2.1.2.1 To the extent required by law, the agency ruling shall be binding upon the Parties for the limited purposes of regulation within the jurisdiction and authority of such agency.

2.1.2.2 The arbitration ruling rendered pursuant to this Attachment 1 shall be binding upon the Parties for purposes of establishing their respective contractual rights and obligations under this Agreement, and for all other purposes not expressly precluded by such agency ruling.

3. Informal Resolution of Disputes

3.1 The Parties to this Agreement shall submit any and all disputes between BellSouth and AT&T for resolution to an Inter-Company Review Board consisting of one representative from AT&T at the Director-or-above level and one representative from BellSouth at the Vice-President-or-above level (or at such lower level as each Party may designate).

3.2 The Parties may enter into a settlement of any dispute at any time.

4. Initiation of an Arbitration

Except for Disputes Affecting Service, if the Inter-Company Review Board is unable to resolve the dispute within thirty (30) days (or such longer period as agreed to in writing by the Parties) of such submission, and the Parties have not otherwise entered into a settlement of their dispute, either Party may initiate an arbitration in accordance with the CPR Institute for Dispute Resolution ("CPR") Rules for Non-Administered Arbitration and business disputes ("the CPR Rules").

If the Inter-Company Review Board provided for in Section 3 of this Attachment 1 is unable to resolve a Dispute Affecting Service within two (2) business days (or such longer period as agreed to in writing by the Parties) of such submission, and the Parties have not otherwise entered into a settlement of their dispute, either Party, may, through its representative on the Inter-Company Review Board, request arbitration of what in good faith is believed to be a Dispute Affecting Service in accordance with the requirements of Section 9 of this Attachment 1, with the consent of the other party, which consent shall not be unreasonably withheld. Any dispute not resolved in accordance with Section 9 of this Attachment 1 shall be resolved as if it were not a Dispute Affecting Service.

5. Governing Rules for Arbitration

5.1 The rules set forth below and the CPR Rules shall govern all arbitration proceedings initiated pursuant to this Attachment; however, such arbitration proceedings shall not be conducted under the auspices of the CPR Rules unless the Parties mutually agree. Where any of the rules set forth herein conflict with the rules of the CPR Rules, the rules set forth in this Attachment shall prevail.

6. **Appointment and Removal of Arbitrators for the Disputes other than the Disputes Affecting Service Process**

6.1 Each arbitration conducted pursuant to this Section shall be conducted before a panel of three Arbitrators, each of whom shall meet the qualifications set forth herein. Each Arbitrator shall be impartial, shall not have been employed by or affiliated with any of the Parties hereto or any of their respective Affiliates and shall possess substantial legal, accounting, telecommunications, business or other professional experience relevant to the issues in dispute in the arbitration as stated in the notice initiating such proceeding. The panel of arbitrators shall be selected as provided in the CPR Rules.

6.2 The Parties may, by mutual written agreement, remove an Arbitrator at any time, and shall provide prompt written notice of removal to such Arbitrator.

6.3 In the event that an Arbitrator resigns, is removed pursuant to Section 6.2 of this Attachment 1, or becomes unable to discharge his or her duties, the Parties shall, by mutual written Agreement, appoint a replacement Arbitrator within thirty (30) days after such resignation, removal, or inability, unless a different time period is mutually agreed upon in writing by the Parties. Any matters pending before the Arbitrator at the time he or she resigns, is removed, or becomes unable to discharge his or her duties, will be assigned to the replacement Arbitrator as soon as the replacement Arbitrator is appointed.

6.4 **DELETED**

7. **Duties and Powers of the Arbitrators**

The Arbitrators shall receive complaints and other permitted pleadings, oversee discovery, administer oaths and subpoena witnesses pursuant to the United States Arbitration Act, hold hearings, issue decisions, and maintain a record of proceedings. The Arbitrators shall have the power to award any remedy or relief that a court with jurisdiction over this Agreement could order or grant, including, without limitation, the awarding of damages, pre-judgment interest, specific performance of any obligation created under the Agreement, issuance of an injunction, or imposition of sanctions for abuse or frustration of the arbitration process, except that the Arbitrators may not: (i) award punitive damages; (ii) or any remedy rendered unavailable to the Parties pursuant to Section 10.3 of the General Terms and Conditions of the Agreement; or (iii) limit, expand, or otherwise modify the terms of this Agreement.

8. **Discovery and Proceedings**

8.1 BellSouth and AT&T shall attempt, in good faith, to agree on a plan for discovery. Should they fail to agree, either BellSouth or AT&T may request a joint meeting or conference call with the Arbitrators. The Arbitrators shall resolve any disputes between BellSouth and AT&T, and such resolution with respect to the scope, manner, and timing of discovery shall be final and binding.

8.2 The Parties shall facilitate the arbitration by: (i) making available to one another and to the Arbitrators, on as expedited a basis as is practicable, for examination, deposition, inspection and extraction all documents, books, records and personnel under their control if determined by the Arbitrators to be relevant to the dispute; (ii) conducting arbitration hearings to the greatest extent possible on successive days; and (iii) observing strictly the time periods established by the CPR Rules or by the Arbitrators for submission of evidence or briefs.

9. Resolution of Disputes Affecting Service

9.1 Purpose

This Section 9 describes the procedures for an expedited resolution of disputes between BellSouth and AT&T arising under this Agreement which directly affect the ability of a Party to provide uninterrupted, high quality services to its customers at the time of the dispute and which cannot be resolved using the procedures for informal resolution of disputes contained in this attachment of the Agreement.

9.2 Appointment and Removal of Arbitrator

9.2.1 A sole Arbitrator will preside over each dispute submitted for arbitration under this Section 9.

9.2.2 The Parties shall appoint three (3) Arbitrators who will serve for the term of this Agreement, unless removed pursuant to Section 9.2.3 of this Attachment 1. The appointment and the order in which Arbitrators shall preside over Disputes Affecting Service will be made by mutual agreement in writing within thirty (30) days after the Effective Date.

9.2.3 The Parties may, by mutual written agreement, remove an Arbitrator at any time, and shall provide prompt written notice of removal to such Arbitrator.

9.2.4 In the event that an Arbitrator resigns, is removed pursuant to Section 9.2.3 of this Attachment 1, or becomes unable to discharge his or her duties, the Parties shall, by mutual written Agreement, appoint a replacement Arbitrator within thirty (30) days after such resignation, removal, or inability, unless a

different time period is mutually agreed upon in writing by the Parties. Any matters pending before the Arbitrator at the time he or she resigns, is removed, or becomes unable to discharge his or her duties, will be assigned to the Arbitrator whose name appears next in the alphabet.

9.3 **Initiation of Disputes Affecting Service Process.**

9.3.1 A proceeding for arbitration under this Section 9 will be commenced by a Party ("Complaining Party") after following the process provided for in Section 4 of this Attachment 1 by filing a complaint with the Arbitrator and simultaneously providing a copy to the other Party ("Complaint").

9.3.2 Each Complaint will concern only the claims relating to an act or failure to act (or series of related acts or failures to act) of a Party which affect the Complaining Party's ability to offer a specific service (or group of related services) to its customers.

9.3.3 A Complaint may be in letter or memorandum form and must specifically describe the action or inaction of a Party in dispute and identify with particularity how the complaining Party's service to its customers is affected.

9.4 **Response to Complaint**

A response to the Complaint must be filed within five (5) business days after service of the Complaint.

9.5 **Reply to Complaint**

A reply is permitted to be filed by the Complaining Party within three (3) business days of service of the response. The reply must be limited to those matters raised in the response.

9.6 **Discovery**

The Parties shall cooperate on discovery matters as provided in Section 8 of this Attachment 1, but following expedited procedures.

9.7 **Hearing**

9.7.1 The Arbitrator will schedule a hearing on the Complaint to take place within twenty (20) business days after service of the Complaint. However, if mutually agreed to by the Parties, a hearing may be waived and the decision of the Arbitrator will be based upon the papers filed by the Parties.

9.7.2 The hearing will be limited to four (4) days, with each Party allocated no more than two (2) days, including cross examination by the other Party, to present its evidence and arguments. For extraordinary reasons, including the need for extensive cross-examination, the Arbitrator may allocate more time for the hearing.

In order to focus the issues for purposes of the hearing, to present initial views concerning the issues, and to facilitate the presentation of evidence, the Arbitrator has the discretion to conduct a telephone prehearing conference at a mutually convenient time, but in no event later than three (3) days prior to any scheduled hearing.

Each Party may introduce evidence and call witnesses it has previously identified in its witness and exhibit lists. The witness and exhibit lists must be furnished to the other Party at least three (3) days prior to commencement of the hearing. The witness list will disclose the substance of each witness' expected testimony. The exhibit list will identify by name (author and recipient), date, title and any other identifying characteristics the exhibits to be used at the arbitration. Testimony from witnesses not listed on the witness list or exhibits not listed on the exhibit list may not be presented in the hearing.

9.7.3 The Parties will make reasonable efforts to stipulate to undisputed facts prior to the date of the hearing.

9.7.4 Witnesses will testify under oath and a complete transcript of the proceeding, together with all pleadings and exhibits, shall be maintained by the Arbitrator.

9.8 **Decision**

9.8.1 The Arbitrator will issue and serve his or her decision on the Parties within five (5) business days of the close of the hearing or receipt of the hearing transcript, whichever is later.

9.8.2 The Parties agree to take the actions necessary to implement the decision of the Arbitrator immediately upon receipt of the decision.

10. **Privileges**

10.1 Although conformity to certain legal rules of evidence may not be necessary in connection arbitrations initiated pursuant to this Attachment, the Arbitrators shall, in all cases, apply the attorney-client privilege and the work product immunity.

10.2 At no time, for any purposes, may a Party introduce into evidence or inform the Arbitrators of any statement or other action of a Party in connection with

negotiations between the Parties pursuant to the Informal Resolution of Disputes provision of this Attachment 1.

11. **Location of Hearing**

Unless both Parties agree otherwise, any hearing under this Attachment 1 shall take place in Atlanta, Georgia.

12. **Decision**

The Arbitrator(s) decision and award shall be final and binding, and shall be in writing unless the Parties mutually agree to waive the requirement of a written opinion. Judgment upon the award rendered by the Arbitrator(s) may be entered in any court having jurisdiction thereof. Either Party may apply to the United States District Court for the district in which the hearing occurred for an order enforcing the decision. Except for Disputes Affecting Service, the Arbitrators shall make their decision within ninety (90) days of the initiation of proceedings pursuant to Section 4 of this Attachment, unless the Parties mutually agree otherwise.

13. **Fees**

13.1 The Arbitrator(s) fees and expenses that are directly related to a particular proceeding shall be paid by the losing Party. In cases where the Arbitrator(s) determines that neither Party has, in some material respect, completely prevailed or lost in a proceeding, the Arbitrator(s) shall, in his or her discretion, apportion expenses to reflect the relative success of each Party. Those fees and expenses not directly related to a particular proceeding shall be shared equally. In the event that the Parties settle a dispute before the Arbitrator(s) reaches a decision with respect to that dispute, the Settlement Agreement must specify how the Arbitrator(s') fees for the particular proceeding will be apportioned.

13.2 In an action to enforce or confirm a decision of the Arbitrator(s), the prevailing Party shall be entitled to its reasonable attorneys' fees, expert fees, costs, and expenses.

14. **Confidentiality**

14.1 BellSouth, AT&T, and the Arbitrator(s) will treat any arbitration proceeding, including the hearings and conferences, discovery, or other related events, as confidential, except as necessary in connection with a judicial challenge to, or

enforcement of, an award, or unless otherwise required by an order or lawful process of a court or governmental body.

14.2 In order to maintain the privacy of all arbitration conferences and hearings, the Arbitrator(s) shall have the power to require the exclusion of any person, other than a Party, counsel thereto, or other essential persons.

14.3 To the extent that any information or materials disclosed in the course of an arbitration proceeding contains proprietary or confidential information of either Party, it shall be safeguarded in accordance with Section 18 of the General Terms and Conditions of the Agreement. However, nothing in Section 18 of the General Terms and Conditions of the Agreement shall be construed to prevent either Party from disclosing the other Party's Information to the Arbitrator in connection with or in anticipation of an arbitration proceeding. In addition, the Arbitrators may issue orders to protect the confidentiality of proprietary information, trade secrets, or other sensitive information.

15. **Service of Process**

Except as provided in Section 9.3.1 of this Attachment 1, service may be made by submitting one copy of all pleadings and attachments and any other documents requiring service to each Party and one copy to the Arbitrator. Service shall be deemed made (i) upon receipt if delivered by hand; (ii) after three (3) business days if sent by first class U.S. mail; (iii) the next business day if sent by overnight courier service; or (iv) upon confirmed receipt if transmitted by facsimile. If service is by facsimile, a copy shall be sent the same day by hand delivery, first class U.S. mail, or overnight courier service.

15.1 Service by AT&T to BellSouth and by BellSouth to AT&T at the address designated for delivery of notices in this Agreement shall be deemed to be service to BellSouth or AT&T, respectfully.

DRAFT - 02/03/00

25-22.032 Customer Complaints.

1. Intent; Application and Scope.

It is the Commission's intent that disputes between regulated companies and their customers be resolved as quickly, effectively, and inexpensively as possible. This rule establishes informal customer complaint procedures that are designed to accomplish that intent. This rule applies to all companies regulated by the Commission. It provides for expedited processes for customer complaints that can be resolved quickly by the customer and the company without extensive Commission participation. It also provides a process for informal Commission resolution of complaints that cannot be resolved by the company and the customer.

(2) Any customer of a Commission regulated company may file a complaint with the Division of Consumer Affairs whenever the customer that has an unresolved dispute with the utility regarding electric, gas, telephone, water, or wastewater service may file a complaint with the Division of Consumer Affairs. The complaint may be communicated orally or in writing. The complaint ~~must~~ shall include the name of the company against which the complaint

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is made, the name of the customer of record, and the customer's service address. Upon receipt of the complaint, a staff member will determine if the customer has contacted the utility and, if the customer agrees, will put the customer in contact with the company for resolution of the complaint using the transfer-connect system described in subsection(~~2~~ 3), or by other appropriate means if the company does not subscribe to the transfer-connect system. If the customer does not agree to be put in contact with the company, for those companies subscribing to the transfer-connect system, the staff member will submit the complaint to the company for resolution in accordance with the three-day complaint resolution process set forth in subsection (~~3~~ 4). For those companies not subscribing to the transfer-connect system, the staff member will submit the complaint to the company for resolution in accordance with the provisions of subsection (~~4~~ 5).

(3) Transfer-connect system.

(a) Each company subject to regulation by the Commission may provide a transfer-connect (warm transfer) telephone number by which the Commission may directly transfer a customer to that company's customer service personnel. When the transfer is complete, any further charges for the call shall be the responsibility of the company and not the Commission or the

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customer. Each company that subscribes to the transfer connect system must provide customer service ~~representatives~~ personnel to handle transferred calls during the company's normal business hours and at a minimum from Monday through Friday, 9:00 A.M to 4:00 P.M., Eastern time, excluding all holidays observed by the company.

(4) Complaints resolved within three (3) days.

~~If c~~Companies that subscribe to the transfer-connect system ~~are able to~~ may resolve customer complaints within three days~~,~~ ~~they shall be resolved~~ in the following manner:

(a) The Commission staff member handling the complaint will forward a description of the complaint to the company for response and resolution. The three day period will begin at 5:00 p.m. on the day the information is sent to the company and end at 5:00 p.m. on the third day, excluding weekends and holidays. If the company satisfactorily resolves the complaint, the company shall notify the staff member of the resolution.

(b) The Commission will contact the customer to confirm that the complaint has been resolved. If the customer confirms that the complaint has been resolved, the complaint will not be reported in the total number of complaints shown for that company in the Commission Consumer Complaint Activity Report. However,

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the Commission will retain the information for use in enforcement proceedings, or for any other purpose necessary to perform its regulatory obligations.

(c) If the customer informs the Commission staff member that the complaint has not been resolved, the Commission will notify the company and require a full report as prescribed in subsection (~~4~~ 5).

(d) For purposes of this subsection a complaint will be considered "resolved" if the company and the customer indicate that the problem has been corrected, or the company and the customer indicate that they have agreed to a plan to correct the problem.

(5) Complaints not resolved within three days.

If the customer does not agree to contact the company directly, if the customer is not satisfied with the company's proposed resolution of the complaint, or if the company does not subscribe to the transfer-connect system, a Commission staff member will investigate the complaint and attempt to resolve the dispute in the following manner:

(a) The staff member will notify the company of the complaint and request a response. The company shall provide its response to the complaint within fifteen (15) working days. The

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response shall explain the company's actions in the disputed matter and the extent to which those actions were consistent with applicable statutes and regulations. The response shall also describe all attempts to resolve the customer's complaint.

(b) The staff member investigating the complaint may request copies of bills, billing statements, field reports, written documents, or other information in the participants' possession that may be necessary to resolve the dispute. The staff member may perform, or request the company to perform, any tests, on-site inspections, and reviews of company records necessary to aid in the resolution of the dispute.

(6) During the complaint process, a company shall not discontinue service to a customer because of any unpaid disputed bill. However, the company may require the customer to pay that part of a bill which is not in dispute. If the company and the customer cannot agree on the amount in dispute, the staff member will make a reasonable estimate to establish an interim disputed amount until the complaint is resolved. If the customer fails to pay the undisputed portion of the bill the company may discontinue the customer's service pursuant to Commission rules.

(7) The staff member will propose a resolution of the complaint based on the information provided by all participants to

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the complaint and applicable statutes and regulations. The proposed resolution may be either oral or written. Upon request, either participant shall be entitled to a written copy of the proposed resolution.

(8) Informal Conference. If a participant objects to the proposed resolution the participant may request an informal conference on the complaint.

(a) The request for an informal conference shall be in writing and filed with the Division of Consumer Affairs within 30 days after the proposed resolution is sent to the participants.

(b) When the request for an informal conference is received, the Director of the Division of Consumer Affairs will assign a Commission staff member to process the request for an informal conference. The staff member will advise the participants to complete Form X (PSC/CAF Form X), incorporated by reference herein, and return the form to the Commission within fifteen (15) days. A copy of Form X may be obtained from the Division of Consumer Affairs. At a minimum, Tthe participants shall provide the following information on the form:

1. A statement describing the facts that give rise to the complaint;

2. A statement of the issues to be resolved; and

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3. A statement of the relief requested.

The informal conference shall be limited to the complaint and the statement of facts and issues identified by the participants in the form. The Commission staff will notify the requesting participant that the request for an informal conference will be denied if the requesting participant's form is not received within the 15 days.

(c) The Director of the Division will review the statements and either appoint a staff member to conduct the informal conference, or make a recommendation to the Commission for dismissal based on a finding that the complaint states no basis upon which relief may be granted.

(d) If a conference is granted, the staff member appointed to conduct the conference shall not have participated in the investigation or proposed resolution of the complaint.

(e) After consulting with the participants, the staff member will send a written notice to the participants setting forth the unresolved issues, the procedures to be followed at the informal conference, the dates by which written materials are to be filed, and the time and place for the conference. The conference may be held by telephone conference, video teleconference, or in person, no sooner than ten days following

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the notice.

(f) At the conference, the participants shall have the opportunity to present information, orally or in writing, in support of their positions. During the conference, the staff member may encourage the parties to resolve the dispute. The Commission will be responsible for tape-recording, but not transcribing, the informal conference. A participant may arrange for transcription at his own expense.

(g) The staff member may permit any participant to file additional information, documentation, or arguments. The opposing participant shall have an opportunity to respond.

(h) If a settlement is not reached within 20 days following the informal conference or the last post-conference filing, whichever is later, the staff member shall submit a recommendation to the Commission for consideration at the next available Agenda Conference. Copies of the recommendation shall be sent to the participants.

(i) If the Director denies the request for an informal conference, the participants shall be notified in writing. Within 20 days of giving notice, the staff shall submit a recommendation for consideration at the next available Agenda Conference. Copies of the recommendation shall be sent to the participants.

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(j) The Commission will address the matter by issuing a notice of proposed agency action or by setting the matter for hearing pursuant to section 120.57, Florida Statutes.

(9) At any point during the complaint proceedings, a participant has the right to be represented by an attorney or other qualified representative. For purposes of this rule a qualified representative may be any person the party chooses, unless the Commission sets the matter for hearing. If the Commission sets the matter for hearing, the participants may be represented by an attorney or a qualified representative as prescribed in Rule 28-106.106, Florida Administrative Code, or may represent themselves. Each participant shall be responsible for his own expenses in the handling of the complaint.

(10) At any time the participants may agree to settle their dispute. If a settlement is reached, the participants or their representatives shall file with the Division of Consumer Affairs a written statement to that effect. The statement shall indicate that the settlement is binding on both participants, and that the participants waive any right to further review or action by the Commission. If the complaint has been docketed, the Division of Consumer Affairs shall submit the settlement to the Commission for approval. If the complaint has not been docketed, the Division

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will acknowledge the statement of settlement by letter to the participants.

(11) Record retention and auditing.

(a) All companies shall retain any ~~telephone~~ electronic notes or written documentation relating to each Commission complaint for ~~three~~ two years, beginning when the complaint was first received.

(b) All companies shall file with the Commission, beginning 60 days after the effective date of this rule and monthly thereafter, a report that summarizes the following information for the preceding calendar year:

1. The total number of calls handled via transfer connect, including the customer's name, a brief description of the complaint, and whether or not the complaint was resolved;

2. The number of complaints handled under the three day complaint resolution procedure;

(c) The Commission shall have access to all such records for audit purposes.

Specific Authority 350.127(2), 364.19, 364.0252, 366.05, FS.
Law Implemented 364.01, 364.0252, 364.03(1), 364.183, 364.185, 364.15, 364.19, 364.337(5), 366.03, 366.04, 366.05, 367.011, 367.111, 367.121, 120.54, 120.569, 120.57, 120.573, FS.
History--New 1-3-89, Amended 10-28-93.

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(Non Docket)

COMMISSIONERS:

STAN WISE, CHAIRMAN
DAVID N. BAKER
ROBERT B. (BOBBY) BAKER
MAC BARBER
BOB DURDEN

DEBORAH K. FLANNAGAN
EXECUTIVE DIRECTOR
TERRI M. LYNDALL
EXECUTIVE SECRETARY

Georgia Public Service Commission

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NOV 13 1997
EXECUTIVE SECRETARY
G.P.S.C.

NON-DOCKET

IN RE: Adoption of Interim Procedures for the Hearing and Resolution of Complaints Arising from Interconnection Agreements

DOCKET# 3
DOCUMENT# 10599

By the Commission:

Over the last two years, the Georgia Public Service Commission ("Commission") has reviewed and approved a number of Interconnection Agreements between BellSouth Telecommunication, Inc. and other parties. These agreements have resulted from negotiations entered into by the parties, and, when those negotiations did not produce an agreement, the parties came before this Commission seeking arbitration. Commission jurisdiction in these matters was granted by the Telecommunications Act of 1996 and the Telecommunications and Competition Development Act of 1995.

As with any contract, there is always a possibility that the parties to the agreements may disagree in the future on the interpretation of the terms and conditions of the agreement. When these kinds of events occur, the provisions for dispute resolution within each agreement govern how the parties are to resolve their disputes. The terms of some of the agreements provide that the Commission becomes the arbiter of the dispute should the parties be unable to reach a mutual resolution.

In some agreements, a specific time period is set for the Commission to resolve the dispute. Generally, the time period included in the agreements for Commission resolution is a duration of sixty days. It is apparent to the Commission that there may exist circumstances in which a resolution may be necessary in less that a sixty day time period

As an interim measure the Commission has considered adopting a procedure for facilitating the resolution of the disputes which come before the Commission. A copy of these procedures is included herewith as Appendix A. The Commission finds that these procedures are adequate for the resolution of any complaints that may come before the Commission for resolution.

These procedures will be in effect on an interim basis only. During this interim period, the Commission will enter into a rulemaking proceeding to develop and implement permanent procedural rules for the processing of complaints, particularly complaints that may need expedited resolution.

WHEREFORE, it is

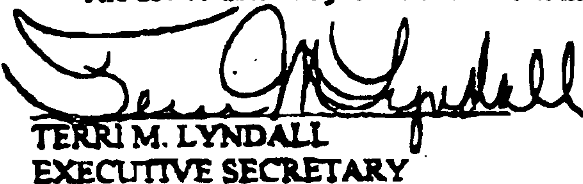
ORDERED, that the Interconnection Agreement Complaint Procedure (Attachment A, hereto) is adopted by the Commission.

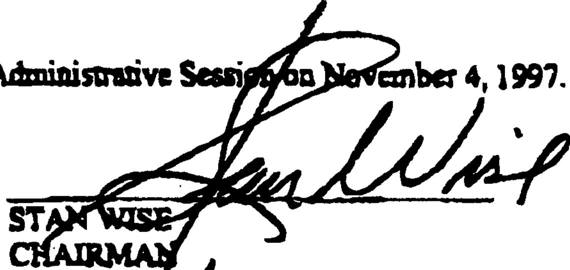
ORDERED FURTHER, that a rulemaking docket be opened for the purpose of developing and implementing a permanent procedure for processing and resolving complaints.

ORDERED FURTHER, that no 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.

ORDERED FURTHER, that jurisdiction over this matter is expressly retained for the purpose of entering such further order or orders as this Commission may deem just and proper.

The above action by the Commission in Administrative Session on November 4, 1997.





TERRI M. LYNDALL
EXECUTIVE SECRETARY

11/6/97
DATE

STAN WISE
CHAIRMAN

11-6-97
DATE

(Non Docket)

COMMISSIONERS:

STAN WISE, CHAIRMAN
DAVID N. BAKER
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NON-DOCKET

IN RE: **Adoption of Interim Procedures for the Hearing and Resolution of Complaints Arising from Interconnection Agreements**

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DOC[illegible]

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As with any contract, there is always a possibility that the parties to the agreements may disagree in the future on the interpretation of the terms and conditions of the agreement. When these kinds of events occur, the provisions for dispute resolution within each agreement govern how the parties are to resolve their disputes. The terms of some of the agreements provide that the Commission becomes the arbiter of the dispute should the parties be unable to reach a mutual resolution.

In some agreements, a specific time period is set for the Commission to resolve the dispute. Generally, the time period included in the agreements for Commission resolution is a duration of sixty days. It is apparent to the Commission that there may exist circumstances in which a resolution may be necessary in less that a sixty day time period

As an interim measure the Commission has considered adopting a procedure for facilitating the resolution of the disputes which come before the Commission. A copy of these procedures is included herewith as Appendix A. The Commission finds that these procedures are adequate for the resolution of any complaints that may come before the Commission for resolution.

These procedures will be in effect on an interim basis only. During this interim period, the Commission will enter into a rulemaking proceeding to develop and implement permanent procedural rules for the processing of complaints, particularly complaints that may need expedited resolution.

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The above action by the Commission in Administrative Session on November 4, 1997.

TERRI M. LYNDALL
EXECUTIVE SECRETARY

11/6/97
DATE

STAN WISE
CHAIRMAN

11-6-97
DATE

Attachment A

GEORGIA PUBLIC SERVICE COMMISSION
Interconnection Agreement Interim Complaint Procedure

1. Unless otherwise ordered by the Commission, the hearing of all complaints arising from Interconnection Agreements shall be before a hearing officer.

2. All complaints shall state with specificity the actions from which the complaint arises and the relief sought.

3. The Complaint shall be served (by hand with affidavit of service filed with the Executive Secretary) upon both the party against whom the complaint arises and the Consumers' Utility Counsel.

4. Upon the filing of a Complaint, the Executive Secretary shall set a date not more than five (5) business days from the date of the filing for preliminary hearing before the hearing officer.

5. The preliminary hearing shall be for the purposes of:

   a. determining whether the complaint is properly before the Commission for resolution under the terms of the agreement pursuant to the Telecommunications Act of 1996, the Telecommunications and Competition Development Act of 1995 (O.C.G.A. §§ 46-5-160, *et seq*), and/or the Rules and Orders of the Georgia Public Service Commission.

   b. determining whether intervention of any other entity, other than the Consumers' Utility counsel will be permitted,

   c. determining whether immediate relief is necessary and to determine such relief,

   d. set a schedule for additional procedures in the matter

6. Any entity desiring to become a party to the proceeding shall make such application known in writing and before the hearing officer at the preliminary hearing. Intervention shall be allowable subject to the provisions of O.C.G.A. § 46-2-59(e)

'99 DEC 20 PM 3

BLS Proposal on Voluntary Self Effectuating Enforcement Mechanisms (VSEEM III)

FCC Ex-Parte

12-03-99

Voluntary Self Enforcing Remedies
Multi-Tiered Structure

- Tier 1 Enforcement Mechanisms
  - Payments (liquidated damages) directly to the CLEC
  - Triggered by one month of significantly poor performance
- Tier 2 Enforcement Mechanisms
  - Fines paid directly to the state Commission or their designated agency
  - Triggered by significantly poor performance by quarter
- Tier 3 Enforcement Mechanisms
  - Voluntary suspension of additional marketing and sales of LD services
  - Triggered by excessive repeat failures (a "tripwire")

Voluntary Self Enforcing Remedies Background

- How BLS's plan compares
  - Less complex, fewer metrics than BA-NY or SBC-TX
  - Proportionally same $$ at risk (per access line basis)
  - BLS statistical method corrects significant flaws in BA-NY and SBC-TX plans
  - No "forgiveness" plan or offsetting credits

Voluntary Self Enforcing Remedies Individual CLECs and CLEC industry

- Tier 1 (Liquidated Damages)
  - Monthly Assessment at State Level for Individual CLEC
    - State level evaluation is consistent with test statistic
    - State level evaluation takes 'random variation' into consideration
    - State level evaluation will not mask discrimination
  - Parity gap will result in payment to the CLEC operating in negative like-to-like cells (wire center/service)
- Tier 2 (Fines Paid to State)
  - Quarterly Assessment at State Level for CLEC Aggregate
- Tier 3 (suspension of LD authority)
  - Selected sub-measures (12) at the state level.
  - Triggered by repeated failures of the same 5 or more sub-measures for a quarter.

Enforcement Mechanism
(Measurements / Tiers / Retail Analogue or Benchmark)

Process	Measures	VSEEM III						
		Resale POTS	Resale Design	UNE Loop & Port Combo	UNE Loops	IC Trunks	LNP	Other
Pre-Ordering	Percent Response Received within "X" sec							Tier-2 (B)
	OSS Interface Availability							Tier-2 (RA)
Ordering	Order Process Percent Flow-Through							Tier-2 (B)
	FOC Timeliness (Mechanized only)							Tier-1 (B)
	Average Reject Interval (Mechanized only)							Tier-1 (B)
Provisioning	Order Completion Interval (Dispatch Only)	Tier-1 and Tier-2 (RA)	Tier-1 and Tier-2 (RA)	Tier-1 and Tier-2 (RA)		Tier-1 and Tier-2 (RA)		
	Percent Installations Completed within "X" Days				Tier-1 and Tier-2 (B)			
	Percent Missed Installation Appointments	Tier-1, -2 and -3 (RA)	Tier-1, -2 and -3 (RA)	Tier-1, -2 and -3 (RA)	Tier-1, -2 and -3 (B)			
	Percent Provisioning Troubles within 4 Days of Installation	Tier-1 and Tier-2 (RA)	Tier-1 and Tier-2 (RA)	Tier-1 and Tier-2 (RA)	Tier-1 and Tier-2 (B)			
Maintenance	Customer Trouble Report Rate	Tier-1 and Tier-2 (RA)	Tier-1 and Tier-2 (RA)	Tier-1 and Tier-2 (RA)	Tier-1 and Tier-2 (B)			
	Percent Missed Repair Appointments	Tier-1, -2 and -3 (RA)	Tier-1, -2 and -3 (RA)	Tier-1, -2 and -3 (RA)	Tier-1, -2 and -3 (B)			
	Maintenance Average Duration	Tier-1 and Tier-2 (RA)	Tier-1 and Tier-2 (RA)	Tier-1 and Tier-2 (RA)	Tier-1 and Tier-2 (B)	Tier-1 and Tier-2 (RA)		
	Percent Repeat Troubles within 30 days	Tier-1 and Tier-2 (RA)	Tier-1 and Tier-2 (RA)	Tier-1 and Tier-2 (RA)	Tier-1 and Tier-2 (B)			
Billing	Billing Accuracy							Tier-2 and Tier-3 (RA)
	Billing Timeliness							Tier-2 and Tier-3 (RA)
	Usage Data Delivery Timeliness							Tier-2 (RA)
	Usage Data Delivery Accuracy							Tier-2 (RA)
Trunk Blockage	Percent Trunk Blockage					Tier-1, -2 and -3 (RA)		
LNP	Disconnect Timeliness						Tier-1 and Tier-2 (B)	
	Percent Missed Installation Appointment						Tier-1 and Tier-2 (B)	
C C Conv	Coordinated Customer Conversions				Tier-1 and Tier-2 (B)		Tier-1 and Tier-2 (B)	
Collocation	Percent Missed Collocation Due Dates							Tier-1, -2 and -3 (B)

LEGEND: RA = Retail Analogue, B = Benchmark

Voluntary Self Enforcement Remedies

TIER-3

EXCESSIVE PROCESS PERFORMANCE FAILURES

- Selected sub-measures (12) at the State Level
- Failures of the same 5 or more sub-measures for a quarter

EXAMPLE:

Process	Measures	TIER-3 FAILURE X = Miss			NOT A TIER-3 FAILURE X = Miss		
		Month 1	Month 2	Month 3	Month 1	Month 2	Month 3
Percent Missed Installation Appointments	Resale POTS	X	X	X	X		
	Resale Design	X			X	X	X
	UNE Loop & Port Combo		X				
	UNE Loops	X	X	X			
Percent Missed Repair Appointments	Resale POTS	X	X	X	X		X
	Resale Design		X	X		X	
	UNE Loop & Port Combo					X	X
	UNE Loops				X		
Billing	Billing Accuracy	X	X	X			
	Billing Timeliness				X	X	X
Trunk Blockage	Percent Trunk Blockage	X	X	X			
Collocation	Percent Missed Collocation Due Dates						

Voluntary Self Enforcement Remedy Plan

- PERFORMANCE STANDARDS
  - Parity for analogous products, processes, service
  - Benchmark where no analogues exist
- DETECT POTENTIAL DISCRIMINATION
  - Overall Test Statistic (Truncated Z) Computed to ensure Type I and Type II Errors are balanced
  - Minimizes concern around random variation while not masking discrimination
- PAYMENTS
  - Made at the cell level (Cells test similar products at the wire center level to get Like - to - Like samples - concept approved by FCC statisticians)
- ESCALATING REMEDIES
  - Magnitude of Failure - Addressed utilizing the z-value and balancing critical value. The further z deviates from the balancing critical value, the higher the penalty that is paid.
  - Repeat Failures
    - VSEEM fee schedule increases month-over-month if failures repeat

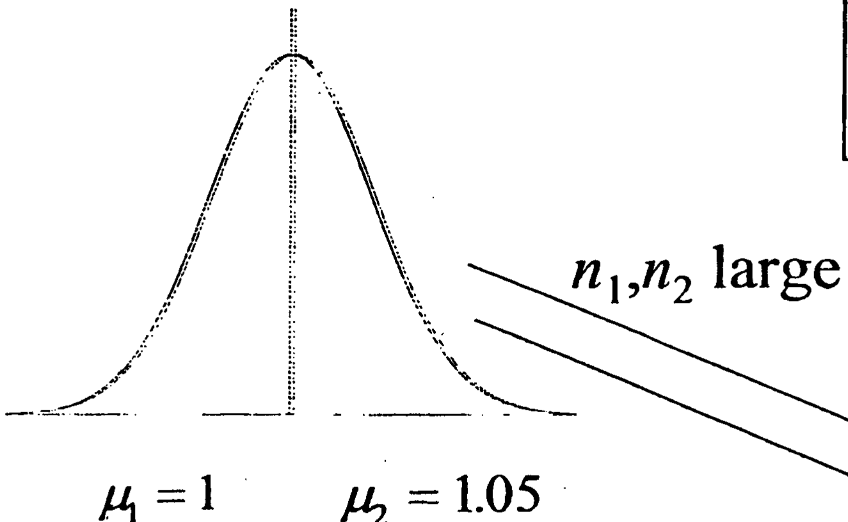
Statistical Determination of Parity

- PARITY
  - Statistical Testing required to determine parity
    - Overall Test Statistic using the Truncated-Z Test for Rates and Proportions
    - Overall statistic using the Aggregated Adjusted-Z for Means and Averages
  - Balancing Critical Value
    - Computed to ensure Type I and Type II Errors are balanced
    - Used (with z-value) to assess the Magnitude of a Failure

- OVERALL TEST STATISTICS
  - Minimizes concern around random variation while not masking discrimination

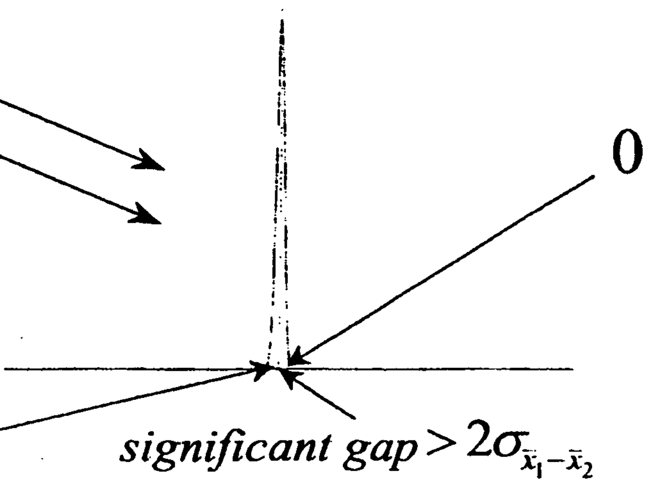
What About "Significance" ?

2 Normal Distributions



With large enough sample sizes, even tiny differences can be statistically significant.

Distribution of $\bar{x}_1 - \bar{x}_2$



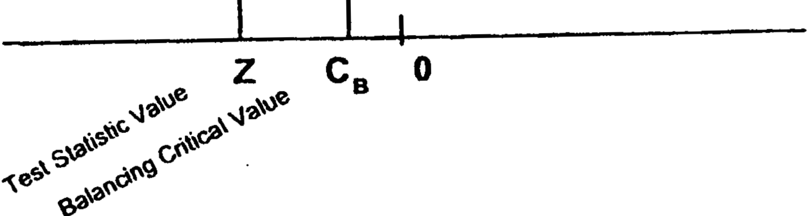
Example: Percent Missed Repair Appointments
BST = 5% and CLEC 5.05%

$\mu_{\bar{x}_1 - \bar{x}_2} = -0.05$

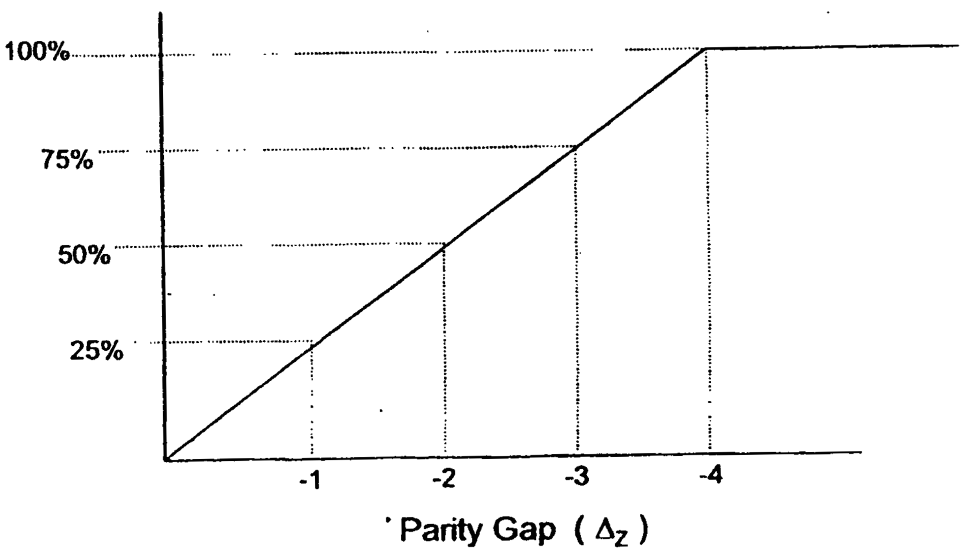
Enforcement Mechanism

Volume Payment Variables

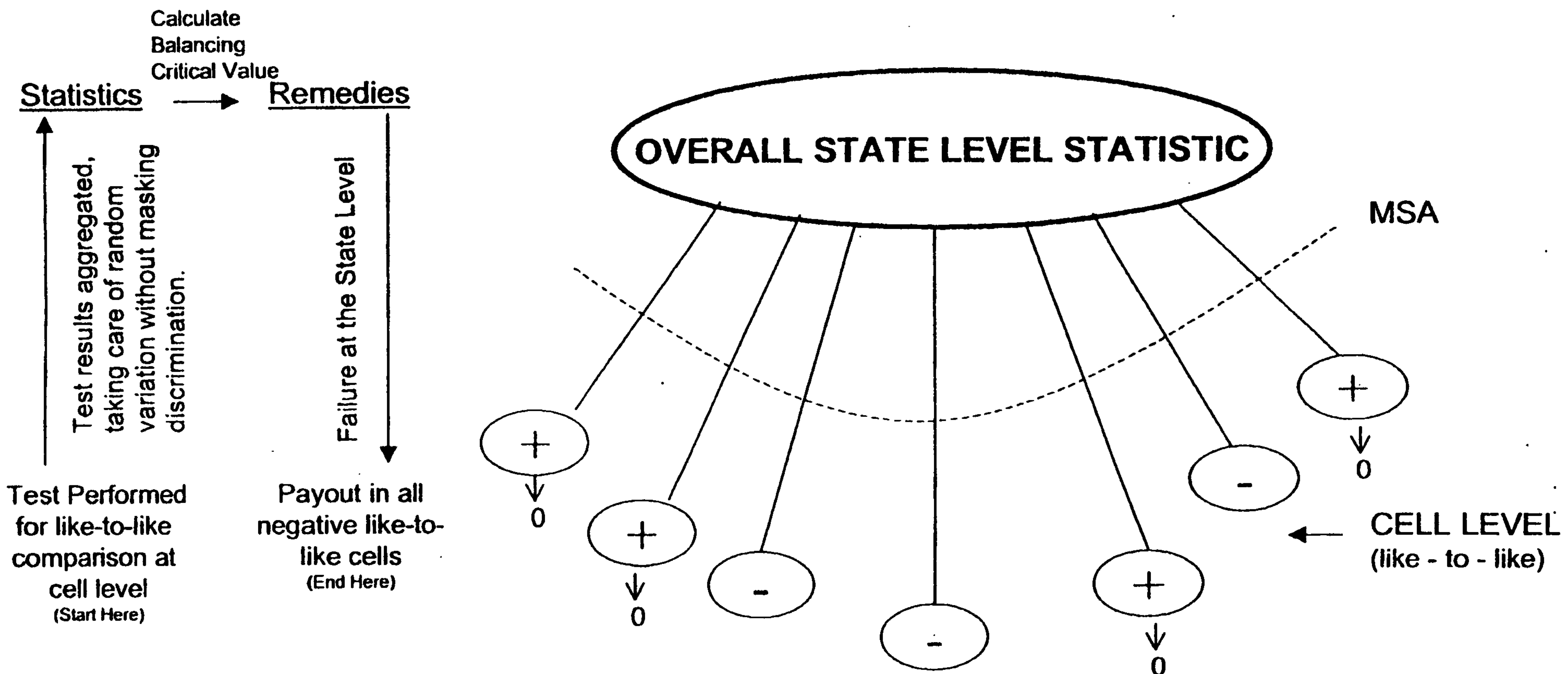
Parity Gap



Volume Proportion



Remedy Payout Diagram



Enforcement Mechanisms Proposal Fee Schedule

Tier-1

PER ITEM PER CLEC

	Month 1	Month 2	Month 3	Month 4	Month 5	Month 6
Ordering	$40	$50	$60	$70	$80	$90
Provisioning POTS	$100	$125	$175	$250	$325	$500
Provisioning UNE (incl Coordinated Customer Conversions)	$400	$450	$500	$550	$650	$800
Maintenance	$100	$125	$175	$250	$325	$500
Maintenance UNE	$400	$450	$500	$550	$650	$800
Trunk Blockage/100 calls	$150	$250	$500	$600	$700	$800
LNP	$150	$250	$500	$600	$700	$800
Collocation	$5,000	$5,000	$5,000	$5,000	$5,000	$5,000

Tier-2

PER ITEM

Pre-Ordering	$20
Ordering	$60
Provisioning POTS	$300
Provisioning UNE	$875
Maintenance POTS	$300
Maintenance UNE	$875
Billing	$1
Trunk Blockage/100 calls	$500
LNP	$500
Collocation	$15,000

Remedy State Caps (annual)

- (Tier-1 plus Tier-2 by state)

– AL	$17M	MS	$11M
– FL	$56M	NC	$23M
– GA	$36M	SC	$11M
– KY	$10M	TN	$23M
– LA	$21M		

- Regional Total $208M

Voluntary Self Enforcing Remedies Individual CLECs and CLEC industry

- Tier 1 (Liquidated Damages)
  - Monthly Assessment at State Level for Individual CLEC
    - State level evaluation is consistent with test statistic
    - State level evaluation takes 'random variation' into consideration
    - State level evaluation will not mask discrimination
  - Parity gap will result in payment to the CLEC operating in negative like-to-like cells (wire center/service)
- Tier 2 (Fines Paid to State)
  - Quarterly Assessment at State Level for CLEC Aggregate
- Tier 3 (suspension of LD authority)
  - Selected sub-measures (12) at the state level.
  - Triggered by repeated failures of the same 5 or more sub-measures for a quarter.

BELLSOUTH

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Kathleen B. Levitz
Vice President-Federal Regulatory

202 463-4113
Fax 202 463-4198

December 13, 1999

STAMP and RETURN

WRITTEN EX PARTE

RECEIVED
DEC 13 1999
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
The Portals
445 12th Street, S.W.
Washington, D.C. 20554

Re: CC Docket No. 98-121

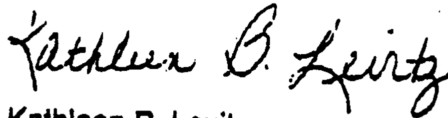
Dear Ms. Salas:

This ex parte is being filed to correct errors on the attachment used during an earlier ex parte visit for which BellSouth filed a notice with your office on December 6, 1999. The meeting itself occurred on December 3, 1999. Representing BellSouth were Sid Boren, Randy New, Bill Stacy, and Bob Blau. FCC staff attending the meeting included Lawrence Strickling, Chief of the Common Carrier Bureau, Bill Bailey, Jake Jennings, and Claire Blue.

During the meeting the participants had discussed the performance measurements, enforcement mechanisms and penalties relating to the Voluntary Self-Effectuating Enforcement mechanisms (VSEEMs III) proposal that BellSouth had initially presented to the Commission staff in a written ex parte filed on April 9, 1999. A written ex parte made on December 8, 1999 had corrected entries appearing on page 12 of the December 3 attachment. Today's ex parte makes a correction to the graph appearing in the lower right quadrant of page 10 of that attachment.

In accordance with Section 1.1206, I am filing two copies of this notice in the proceeding identified above. Please place this notice in the record of that proceeding. Thank you.

Sincerely,



Kathleen B. Levitz

Attachment

cc: Lawrence Strickling
William Bailey
Jake Jennings
Claire Blue

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FEB-29-00 17:13 FROM:MCW●RTER REEVES LAW FIRM ID:8502●5606 PAGE 1/37

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

RECEIVED-FPSC
00 FEB 18 PM 4:50
RECORDS AND REPORTING

IN RE:

Petition For Arbitration of
Bluestar Networks, Inc. With
BellSouth Telecommunications,
Inc. Pursuant To The
Telecommunications Act of 1996

DOCKET NO. 991838-TP

Filed: February 18, 2000

BLUESTAR NETWORKS, INC.'S MOTION TO STRIKE TESTIMONY AND MOTION FOR SANCTIONS

BlueStar Networks, Inc. (BlueStar) hereby files this Motion to Strike Testimony and Motion for Sanctions and states in support thereof the following:

Introduction

Bluestar moves to strike page 6, line 20 through page 12, line 5 of the Rebuttal Testimony of Mr. Alphonso J. Varner. These portions of Mr. Varner's Rebuttal Testimony present new proposals, evidence and rates that should have been raised in his Direct Testimony at the time it was filed or through amendment of that testimony. In certain parts of this Rebuttal Testimony cited above, Mr. Varner claims that an Amendment, dated January 27, 2000, to the Interconnection Agreement between BlueStar and BellSouth Telecommunications, Inc. (BellSouth), dated December 28, 1999, resolves the issues of rates for all unbundled copper loops (UCLs) and the rates for loop conditioning – Issues No. 10c and 10d.[1] In other portions of his Rebuttal Testimony, Mr. Varner also tries to change the previously proposed UCL rates based on a "newly" discovered cost study that has admittedly filed a year ago with the Commission. The Amendment, however, by its express terms, provided a definition for UCLs – Issue 1 – and only sets rates until rates are established in any proceeding, including this proceeding, before the Commission. Moreover, statements and documents

[1] BlueStar has attached a copy of this Amendment as Exhibit 1 to this Motion.

RECEIVED & FILED

used by BellSouth to induce BlueStar to execute the Amendment, and documents sent by BellSouth to BlueStar since the Amendment was executed, clearly demonstrate that BellSouth knows that the UCL and loop conditioning rate issues were not and are not resolved. Despite all of this evidence, Mr. Varner disingenuously claims that the rates issues are resolved.

Mr. Varner should also not be allowed to change his previous Direct Testimony about UCL rates. BlueStar accepted those rates in its rebuttal testimony. It will now have no opportunity to rebut Mr. Varners's "new" rates. Since BlueStar and BellSouth both have supported a recurring UCL rate of $15.81 and a nonrecurring rate of $113, the Commission does not need to have a hearing on that subject. Mr. Varner's Rebuttal Testimony and BellSouth's conduct can only be viewed as bad faith efforts to mislead the Commission or BlueStar. BlueStar, therefore, seeks costs and fees for the expense of filing this Motion and sanctions against BellSouth.

Background

1. After months of negotiations with BellSouth on the issues of loop length, BlueStar filed its Petition for Arbitration on December 7, 1999.

2. On December 28, 1999, the parties executed an Interconnection Agreement (Agreement) for the states of Florida, Georgia, Kentucky and Tennessee. While the Agreement addresses many issues of importance between the parties, it did not resolve the issues contained in BlueStar's Petition. One of the issues in the Petition was the definition of UCLs to include lengths greater than 18,000 feet.

3. At the Issue Identification Conference held on January 10, 2000, BellSouth agreed that it would provide UCLs greater than 18,000 feet. In fact, it agreed that Issue 1 – UCL definition – was resolved. The parties did not indicate that they had resolved Issues 10c or 10d – UCL and loop conditioning rates.

4. BlueStar began signing up a number of customers for its DSL services who it turned out could only be served by UCLs longer than 18,000 feet. BlueStar requested long UCLs for these customers, but BellSouth repeatedly refused to provision these orders. BellSouth insisted that BlueStar execute an amendment to the Agreement (Exhibit 1) addressing the long UCLs before it would provision these loops. BlueStar began losing customers because it could not obtain these UCLs.

5. Even though BellSouth agreed that Issue 1 was resolved, it still refused to provide any UCLs over 18,000 feet to BlueStar until BlueStar executed an amendment to confirm the terms and conditions of the loops. BlueStar requested language for an amendment. BellSouth sent language, which BlueStar revised. BlueStar made clear to BellSouth that it did not find the proposed rates for UCLs or loop conditioning acceptable. BellSouth understood this. In an email dated January 11, 2000, from Susan Arrington, BellSouth's Manager - Interconnection Services/Pricing, to Norton Cutler, BlueStar's General Counsel (Exhibit 2), Ms. Arrington described the Amendment as addressing the status of Issue 1, the UCL definition:

> **BellSouth's Proposed Contract Language (Issue 1)**
>
> Amendment proposed to BlueStar with revised UCL definition language. BlueStar to review and provide comments.

Consistent with the Issues Identification Conference, nowhere in her email does she mention Issue 10 - UCL and loop conditioning rates.

6. On January 25, 2000, Mr. Varner filed his direct testimony in this proceeding. In his testimony, he proposed rates for UCLs that were virtually identical to the rates that BlueStar's expert witness had proposed in his direct testimony of the same date. BlueStar, therefore, was under the impression that the parties had effectively resolved the UCL rate issue – Issue 10c.

7. By January 26, 2000, BlueStar still had not received a final version of the Amendment. Mr. Cutler indicated in an email to Ms. Arrington that same day that BlueStar was signing and faxing a proposed copy of the UCL Amendment, even though it lacked BlueStar's name, because BlueStar was in a desperate situation. As Mr. Cutler stated,

> It is imperative that we process this asap because BellSouth is cancelling increasing numbers of orders for length. BlueStar has been requesting a copy of the amendment with BlueStar's name for almost two weeks and patience is wearing thin. BellSouth's refusal to honor these orders without an amendment that BellSouth has refused to supply borders on bad faith. (Exhibit 3)[2]

Citing BellSouth's testimony of January 25, 2000, Mr. Cutler also noted that the "there is very little between our positions." When Mr. Cutler finally received a revised Amendment, he signed it.

8. Late in the afternoon of February 1, 2000, Mr. Phillip Carver, BellSouth's General Attorney, indicated for the first time, during a telephone call and a letter that BellSouth believed that the rate chart attached to the Amendment resolved Issues 10c and 10d in this proceeding and consequently that BellSouth would not produce the requested UCL cost study. BlueStar informed Mr. Carver that it did not consider these issues resolved. The next day, BlueStar met with BellSouth, explained its view of the Amendment, and showed BellSouth Mr. Varner's testimony proposing rates of $113. During ensuing discussions, the parties discussed a compromise rate and agreed that the rates in Amendment did not resolve the issues. Indeed, BellSouth relented and produced a UCL study. This action supported BlueStar's belief that BellSouth agreed that the UCL and loop conditioning rates were not resolved. At no time during that meeting did BellSouth claim that the Amendment was binding on these issues.

---

[2] In her response, Ms. Arrington denied that BellSouth was acting in bad faith and indicated that she would send a revised Amendment.

9. A week of discussions and proposals concerning the compromise rate followed with BellSouth ultimately refusing to agree. Again, there was no indication of BellSouth's position that the Amendment contained a binding price. To the contrary, BellSouth made clear that Issues 10c and 10d were not resolved in this proceeding in a letter from Ms. Arrington to Mr. Cutler dated February 4, 2000. As Ms. Arrington stated,

> With respect to Issue 10, please confirm for me if Issue 10a and 10b relative to the rates for ADSL and HDSL are still an issue in BlueStar'[s] arbitration. Since we did not discuss these rates in our meeting on Wednesday, February 2, BellSouth believes 10a and 10b to be resolved. If this is not correct, please let me know. I will have a proposal for BlueStar on the UCL and Loop Conditioning rates on Monday, February 7, 2000. (Exhibit 4)

In the attachment to this letter, which contained "Agreed to Language," BellSouth described Issue 1 as follows:

> The Amendment dated January 27, 2000, between BellSouth Telecommunications, Inc. and BlueStar Networks, Inc. resolves this issue.

BellSouth listed a number of other issues; it never mentioned Issue 10. BlueStar also sent BellSouth a letter dated February 2, 2000 setting forth its position on the Amendment.

10. As late as February 11, 2000, Ms. Arrington sent Mr. Cutler an email stating that the "remaining outstanding issues are: 3, 4, 10, 15 and 16[.]" (Exhibit 5) The attached proposed stipulation was even clearer:

> 1. Pursuant to the attached Amendment dated February __, 2000 between the Parties, the Parties have resolved Issues 5, 6a, 7, 9, and only in Florida, 10a and 10b.
>
> . . . .
>
> 2. All other issues not resolved by the Parties remain pending in this proceeding.

11. On February 11, 2000, BlueStar received a copy of a letter from BellSouth's General Counsel in Kentucky, which indicated that the he had filed the January 27, 2000 Amendment with the Kentucky Public Service Commission. Contrary to BellSouth's representations to BlueStar in its correspondence, BellSouth apparently is again asserting that the Amendment resolves the UCL and loop conditioning rate issues in its various arbitration proceedings with BlueStar.

Argument

I. Mr. Varner's Rebuttal Testimony Intentionally Ignores the Plain Meaning of the Amendment and Conflicts with BellSouth's Own Statements that Issues 10c and 10d Remain in this Proceeding.

12. In his direct testimony, Mr. Varner indicated that the appropriate rates for 2-wire ADSL and HDSL-compatible loops and UCLs up to 18,000 feet were those contained in Exhibit AV-1 attached to his testimony. BlueStar agrees. However, in his rebuttal testimony, Mr. Varner completely abandons these rates. Instead, he repeatedly claims that the rates for UCLs and loop conditioning – Issues 10c and 10d – are no longer at issue in the proceeding because the BellSouth and BlueStar agreed to rates in the January 27, 2000 Amendment.

13. Both BellSouth and Mr. Varner knew that these statements are entirely false. The Amendment expressly states that the "Parties agree that the prices reflected herein shall be 'trued-up' (up or down) based on final prices either determined by further agreement or by final order, including any appeals, in a proceeding involving BellSouth before the regulatory authority for the state in which the services are being performed or any other body having jurisdiction over this agreement, including the FCC." The language makes no mention of removing the UCL and loop conditioning rates issues from this proceeding. Nor does the Amendment purport to prevent this Commission from setting a different interim rate pending the outcome of the final Florida cost docket. To the contrary, the

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Amendment specifies that the rates are subject to change in any "proceeding involving BellSouth" – no limitations.

14. Mr. Varner also fails to mention (or explain away) all of the correspondence from BellSouth that clearly indicates that BellSouth does not consider Issues 10c and 10d resolved in this proceeding. As discussed above, BellSouth on at least two occasions since the Amendment was signed has stated in writing that Issues 10c and 10d are still at issue in this proceeding. In fact, other than ~~BlueStar believes~~ Mr. Carver's phone call in which he threatened not to produce the UCL cost study, BellSouth has not asserted that these issues were resolved. Of course, BellSouth nonetheless produced documents undermining even that momentary assertion. Moreover, BlueStar has never stated or even hinted that it considered Issues 10c or 10d resolved in this proceeding. Thus, despite all this evidence, Mr. Varner has the audacity to claim that these issues are resolved. BlueStar is left with only one conclusion: Either BellSouth has been misleading BlueStar with its correspondence and in its negotiations or BellSouth is misleading the Commission. In either case, BellSouth's conduct evinces bad faith.

II. <u>The Commission Should Strike All of Mr. Varner's Rebuttal Testimony that Argues for or Introduces Proposed Rates Different than Those Presented in His Direct Testimony</u>.

15. In Mr. Varner's Direct Testimony, he proposed interim rates, subject to true up, for UCLs up to 18,000 feet based on BellSouth's 2-wire ADSL and HDSL loop rates that had previously been approved by the Commission in other proceedings.[3] The rates proposed by Mr. Varner were very close to the rates proposed by BlueStar's witness, Mr. Michael Starkey, in his testimony. Consequently, through Mr. Starkey's Rebuttal Testimony, BlueStar accepted Mr. Varner's proposal.

[3] Mr. Varner did not propose any rates or provide any evidence in his Direct Testimony related to UCLs longer than 18,000 feet or loop conditioning.

16. Mr. Varner, however, has now completely changed his tune. In his Rebuttal Testimony, he revokes his early Direct Testimony concerning UCL rates and instead argues, for the first time, that the appropriate rates are either the rates contained in the Amendment discussed above or, in the alternative, rates contained in a BellSouth cost study that it had filed in two previous arbitrations before this Commission. According to Mr. Varner, BellSouth discovered that this cost study existed after he filed his Direct Testimony.

A. It Is Well-Established Law and Practice that a Party Cannot Introduce Evidence or Present a New Argument for the First Time on Reply.

17. Mr. Varner's Rebuttal Testimony on his new rate proposals should be struck from the record of this proceeding. Under normal practice and procedure, and consistent with well-established law, Mr. Varner's Rebuttal Testimony on the UCL rates should be limited to two topics: providing more evidence and arguments to support his earlier proposal and rebutting any testimony by Mr. Starkey on this topic. At least half of his Rebuttal Testimony, however, had nothing to do with either of these topics. Instead, as noted, Mr. Varner proposes two entirely new bases for setting UCL and loop conditioning rates – the January 27, 2000 Amendment and a late-discovered UCL cost study. New evidence and new proposals are not properly the subject of rebuttal testimony.

18. The Florida courts have recognized that new matters and evidence should not be raised in rebuttal testimony, unless in response to a new matter raised by the other party in a case. For example, in Driscoll v. Morris, 114 So.2d 314, 315-16 (Fl. 3rd DCA 1959), the court stated

> Generally speaking, rebuttal testimony which is offered by the plaintiff is directed to new matter brought out by evidence of the defendant and does not consist of testimony which should have properly been submitted by the plaintiff in his case-in-chief. It is not the purpose of rebuttal testimony to add additional facts to those submitted by the plaintiff in his case-in-chief unless such additional facts are required by the new matter developed by the defendant.[4]

[4] Accord Lockwood v. Baptist Regional Health Services, Inc., 541 So. 2d 731 (Fl. 1st DCA 1989).

Here, BlueStar did not raise any matter or evidence in its direct testimony that would have called for or allowed Mr. Varner to introduce either the rates in the Amendment or the rates contained in the late-discovered UCL cost study.

19. Moreover, courts prohibit raising new issues on rebuttal or in reply briefs because the other party to a proceeding would not have an adequate opportunity for written response. As a Florida appeals court noted, "without strict adherence to [Florida Rule of Appellate Procedure 9,210(d), which provides that a reply brief 'shall contain argument in response and rebuttal to argument presented in the answer brief'], the appellees are left unable to respond in writing to new issues presented by appellants, and the filing deadline imposed on the appellants for their initial brief is rendered meaningless." Snyder v. Volkswagen of America, Inc., 574, So.2d 1161, 1161-62 (Fl. 4th DCA 1991). Here, BlueStar does not have a meaningful opportunity to respond in writing to Mr. Varner's Rebuttal Testimony before the hearing. In addition, the purpose of BellSouth filing direct testimony was rendered meaningless if it can add new issues and evidence at such a late date.

B. If BellSouth Wanted To Introduce New Rate Proposals and Evidence, It Should Have Amended Mr. Varner's Direct Testimony Earlier in the Proceeding.

20. As an initial matter, BlueStar is utterly perplexed about Mr. Varner's claim that "upon filing my direct testimony, it was discovered that BellSouth had indeed filed a cost study for the UCL in the e.spire and ICI arbitration proceedings (Docket Nos. 981642-TP and 981745-TP) in February, 1999" (p. 8, lines 7-10). First, BlueStar requested this study on January 5, 2000 (Production Request No. 8). Presumably, BellSouth should have been looking for the UCL cost study since then. Second, in BellSouth's Objections to BlueStar's First Request for Production of Documents and First Set of Interrogatories, filed January 18, 2000, BellSouth objected to producing any documents responsive to Production Request No. 8 because this request "call[s] for the production of documents that are not relevant and that are proprietary." This objection was filed one week before

Mr. Varner's Direct Testimony was filed. If BellSouth did not believe a UCL cost study existed, why did it file an objection to producing it? Third, on January 25, the same day as Mr. Varner's Direct Testimony was filed in this proceeding, BellSouth filed its Responses and Objections to BlueStar's First Request for Production of Documents. In response to Production Request No. 8, BellSouth stated the following: "BellSouth objects for the reasons set forth in its objections filed January 18, 2000." By contrast, in response to other Production Requests, such as No. 17, BellSouth stated that "it has no responsive documents." If BellSouth believed that no UCL study existed on the same day as it filed Mr. Varner's Direct Testimony, should not the accurate response have been that BellSouth has "no responsive documents" rather than objecting?

21. Regardless, even if BellSouth first discovered the existence of the UCL cost study after Mr. Varner filed, it had ample opportunity to introduce the allegedly late-discovered UCL cost study, by amending his Direct Testimony, long before the filing of Mr. Varner's Rebuttal Testimony.[5] The same is true of the Amendment executed on January 27, 2000. This would have given BlueStar an opportunity to address these new rate proposals and arguments in its rebuttal testimony. BlueStar, by contrast, amended the Direct Testimony of Carty Hassett on February 7, 2000, when BlueStar discovered an error. BellSouth, however, did not follow normal procedures and instead ambushed BlueStar on rebuttal so that BlueStar would not have any meaningful opportunity to respond.

For these reasons, the Commission should strike all of Mr. Varner's Rebuttal Testimony from page 6, line 20 through page 12, line 5.

III. BellSouth Should Be Sanctioned for Its Bad Faith Conduct.

[5] It is unclear when BellSouth claims to have first discovered the UCL study. At latest, BellSouth knew of its existence on February 1 – two weeks before Mr. Varner's Rebuttal Testimony – because that is when BellSouth's attorney told BlueStar that he would not produce the study for reviewing because he believed that Issue 10c was resolved by the Amendment.

22. BellSouth's efforts to mislead the Commission or BlueStar should not be condoned by the Commission. Section 251(c)(1) imposes an obligation on the incumbent local exchange carrier to negotiate in good faith. That obligation does not end when an arbitration begins. Section 252(b)(5) states that the

> refusal of any other party to the negotiation to participate further in the negotiations, to cooperate with the State commission in carrying out its function as arbitrator, or to continue to negotiate in good faith in the presence, or with the assistance, of the State commission shall be considered a failure to negotiate in good faith.

BellSouth's bad faith conduct, specifically its filing of Mr. Varner's rebuttal testimony, has caused BlueStar to incur expenses in preparing this Motion to Strike. The Commission should order BellSouth to reimburse BlueStar for these costs. Moreover, the Commission should use its fullest authority to sanction BellSouth for its bad faith conduct. Such conduct offends both the federal statute and the Commission's rules and procedures.

WHERFORE, Mr. Varner's testimony should be stricken and sanctions imposed as noted above.

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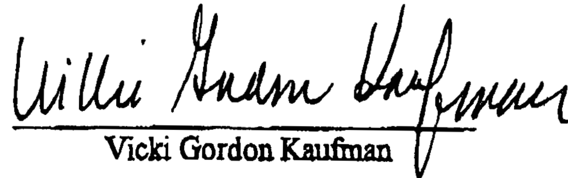
Attorneys for BlueStar Networks, Inc.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing BlueStar Networks, Inc.s' Motion to Strike Testimony and Motion for Sanctions has been furnished by (*) hand delivery or U.S. Mail this 18th day of February, 2000 to the following:

(*) Donna Clemons
Staff Attorney
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

(*)Nancy White
Phil Carver (also by fax)
c/o Nancy Sims
150 South Monroe Street, Suite 400
Tallahassee, Florida 32399-0850



Vicki Gordon Kaufman

EXHIBIT 1

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FEB-29-00 17:17 FROM:MCWHIRTER REEVES LAW FIRM ID:8502225606 PAGE 15/37

FEB 16 2000

AMENDMENT
TO THE
AGREEMENT BETWEEN
BLUESTAR NETWORKS, INC.
AND
BELLSOUTH TELECOMMUNICATIONS, INC.
DATED DECEMBER 28, 1999
(Florida, Georgia, Kentucky and Tennessee)

Pursuant to this Agreement, (the "Amendment"), Bluestar Networks, Inc. ("Bluestar"), and BellSouth Telecommunications, Inc. ("BellSouth"), hereinafter referred to individually as a "Party" and collectively as the "Parties," hereby agree to amend that certain Interconnection Agreement between the Parties dated December 28, 1999 (the "Interconnection Agreement").

WHEREAS, BellSouth and Bluestar entered into an Interconnection Agreement on December 28, 1999 and;

NOW THEREFORE, in consideration of the mutual provisions contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby covenant and agree as follows:

1. The Interconnection Agreement entered into between Bluestar and BellSouth is hereby amended to delete Sections 2.1.2, 2.1.3 – 2.1.3.7 of Attachment 2 in its entirety and replace it with new Section 2.1.2 of Attachment 2 which is attached hereto as Exhibit A.

2. This Amendment shall have an effective date of January 27, 2000.

3. All of the other provisions of the Agreement, dated December 28, 1999, shall remain in full force and effect.

4. Either or both of the Parties may submit this Amendment to the appropriate Commission for approval subject to Section 252(e) of the Federal Telecommunications Act of 1996.

IN WITNESS WHEREOF, the Parties hereto have caused this Amendment to be executed by their respective duly authorized representatives on the date indicated below.

Bluestar Networks, Inc.	BellSouth Telecommunications, Inc.
By: [signature]	By: [signature]
Name: Norton Cutler	Name: Jerry Hendrix
Title: General Counsel	Title: Senior Director
Date: 1-27-2000	Date: 1/27/00

EXHIBIT A

2.1.2 Technical Requirements

2.1.2.1 BellSouth will offer loops capable of supporting telecommunications services such as: POTS, Centrex, basic rate ISDN, analog PBX, voice grade private line, 2 and 4 wire xDSL, and digital data (up to 64 kb/s). Additional services may include digital PBXs, primary rate ISDN, Nx 64 kb/s, and DS1/DS3 and SONET private lines.

2.1.2.2 Digital Subscriber Line ("xDSL") Capable Loops. XDSL capable loops describe loops that may support various technologies and services. The "x" in xDSL is a placeholder for the various types of digital subscriber line services. An xDSL loop is a plain twisted pair copper loop. BellSouth will offer xDSL capable loops according to industry standards for CSA design loops (ADSL/HDSL) and resistance design loops (UCL). To the extent that these loops exist within the BellSouth network at a particular location, they will be provisioned without intervening devices, including but not limited to load coils, repeaters (unless so requested by Bluestar), or digital access main lines ("DAMLs"). These loops may contain bridged tap in accordance with the respective industry standards (CSA design loops may have up to 2,500 feet total (all bridged taps) and up to 2,000 feet for a single bridged tap; resistance design loops may have up to 6,000 ft). At Bluestar's request, BellSouth will provide Bluestar with xDSL loops other than those listed above, so long as Bluestar is willing to pay the loop conditioning costs needed to remove the above listed equipment and/or bridge taps from the loops. Any copper loop longer than 18kft requested by Bluestar through the loop conditioning process will be ordered, billed, and inventoried as UCLs. Loop conditioning costs will be charged in addition to the loop itself on any of the loops described in this section 2.1.2.2. Bluestar may provide any service that it chooses so long as such service is in compliance with FCC regulations and BellSouth's TR73600.

2.1.2.3 The loop will support the transmission, signaling, performance and interface requirements of the services described in 2.1.2.1 above. The foregoing sentence notwithstanding, in instances where BellSouth provides Bluestar with an xDSL loop that is over 12,000 feet in length, BellSouth will not be expected to maintain and repair the loop to the standards specified in the TR73600 and other standards referenced in this Agreement; provided, however, that for all loops (xDSL or otherwise) ordered by Bluestar, BellSouth agrees to maintain electrical continuity and to provide balance relative to tip and ring.

2.1.2.4 In instances where Bluestar requests BellSouth to provide Bluestar with an xDSL loop to a particular end-user premises and (i) there is no such facility (including without limitation spare copper) available, and (ii) there is a loop available that would meet the definition of an xDSL loop if it were conditioned consistent with the FCC's rules promulgated pursuant to the UNE Remand Order, FCC 99-238 (adopted Sept. 15, 1999) (*i.e.*, FCC Rule 51.319(a)(3)) (hereinafter "Conditioning Rules"), BellSouth shall offer such loop to Bluestar and shall offer to condition such loop consistent with the Conditioning Rules. In those cases where Bluestar requests that BellSouth remove equipment from a loop longer than 18kft, and this equipment is required to provide normal voice services, Bluestar agrees to pay a re-conditioning charge in order to bring the loop back up to its original specifications.

2.1.2.5 The Parties agree that such conditioning charges shall be interim and subject to true-up (up or down), pending the determination by the relevant Commission of conditioning charges. The Parties further agree that, if and when a Commission (in a final order not stayed) orders or otherwise adopts conditioning charges, they shall amend this Agreement to reflect said charges. If the Parties are unable to reach agreement on such an amendment, either Party may petition the appropriate Commission for relief pursuant to the dispute resolution procedures described in the General Terms and Conditions – Part A of this Agreement.

2.1.2.6 In those cases where Bluestar has requested that BellSouth remove equipment from the BellSouth loop, BellSouth will not be expected to maintain and repair the loop to the standards specified for that loop type in the TR73600 and other standards referenced in this Agreement.

2.1.2.7 In addition, Bluestar recognizes that there may be instances where a loop modified pursuant to this subsection 2.1.2.5 may be subjected to normal network configuration changes that may cause the circuit characteristics to be changed and may create an outage of the service that Bluestar has placed on the loop (e.g., a copper voice loop is modified by the removal of load coils so that Bluestar may attempt to provide xDSL service. BellSouth's records may still reflect that the loop is a voice circuit. BellSouth performs a network efficiency job and rolls the loop to a DLC. The original voice loop would not have been impacted by this move but the xDSL loop will likely not support xDSL service). If this occurs, BellSouth will work cooperatively with Bluestar to restore the circuit to its previous xDSL capable status as quickly as possible.

2.1.2.8 The following rates, as subject to true-up, will apply:

2-Wire Unbundled Copper Loop (18kft or less)	AL*	FL	GA*	KY*	LA	MS*	NC	SC*	TN**
Recurring	$15.11	$18.00	$13.05	$11.89	$21.00	$14.83	$19.00	$20.81	$18.00
Non-Recurring									
Non-Recurring 1st	$514.21	$340.00	$359.00	$713.50	$340.00	$504.82	$450.00	$600.61	$450.00
Non-Recurring Add'l	$464.58	$300.00	$325.15	$609.44	$300.00	$456.24	$390.00	$507.33	$325.00
Manual Svc Ord - 1st	$47.00	$47.00	$18.94	$47.00	$18.14	$25.52	$47.00	$25.52	
Manual Svc Ord - Adl	$21.00	$21.00	$8.42	$21.00	$8.06	$11.34	$21.00	$47.00	
Manual Svc Ord - Dis	$17.77			$17.77	$11.41	$16.06		$21.00	
Order Coordination	$16.00	$16.00	$34.22	NA	$32.77	$45.27	$16.00	$43.43	$45.00
Disconnect 1st					$72.54	$105.86			
Disconnect Addl					$39.42	$57.25			

*Same as ADSL loop rate

** ADSL rates not yet set

Loop Conditioning									
Remove Equip < 18ft									
First Install	$485	$485	$485	$485	$485	$485	$485	$485	$485
Addl Install	$25	$25	$25	$25	$25	$25	$25	$25	$25
Remove Equip > 18ft									
First Install	$775	$775	$775	$775	$775	$775	$775	$775	$775
Addl Install	$25	$25	$25	$25	$25	$25	$25	$25	$25
First Disconnect	$775	$775	$775	$775	$775	$775	$775	$775	$775
Addl Disconnect	$25	$25	$25	$25	$25	$25	$25	$25	$25
Remove Bridge Tap all									
First Install	$485	$485	$485	$485	$485	$485	$485	$485	$485
Addl Install	$20	$20	$20	$20	$20	$20	$20	$20	$20

The UCL Rates listed above may be used for UCLs longer than 18kft until we are able to perform a cost study on long UCLs (18kft).
The Loop Conditioning charges would apply in addition to the UCL NRCs.
All the rates listed above would be subject to true-up once final cost numbers are determined.

The Parties agree that the prices reflected herein shall be "trued-up" (up or down) based on final prices either determined by further agreement or by final order, including any appeals, in a proceeding involving BellSouth before the regulatory authority for the state in which the services are being performed or any other body having jurisdiction over this agreement, including the FCC. Under the "true-up" process, the price for each service shall be multiplied by the volume of that service purchased to arrive at the total interim amount paid for that service ("Total Interim Price"). The final price for that service shall be multiplied by the volume purchased to arrive at the total final amount due ("Total Final Price"). The Total Interim Price shall be compared with the Total Final Price. If the Total Final Price is more than the Total Interim Price, Bluestar shall pay the difference to BellSouth. If the Total Final Price is less than the Total Interim Price, BellSouth shall pay the difference to Bluestar. Each party shall keep its own records upon which a "true-up" can be based and any final payment from one party to the other shall be in an amount agreed upon by the Parties based on such records. In the event of any disagreement as between the records or the Parties regarding the amount of such "true-up," the Parties agree that such differences shall be resolved through arbitration.

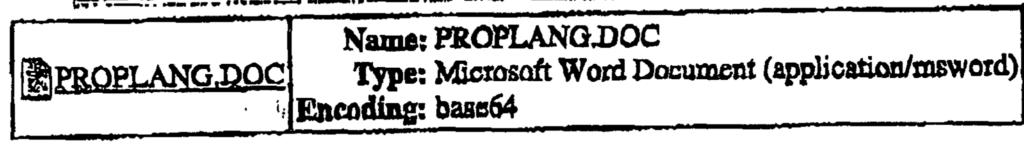
EXHIBIT 2

Subject: bellsouth's proposed language to bluestar
Date: Tue, 11 Jan 2000 06:56:52 -0600
From: Susan.M.Arrington@bridge.bellsouth.com
To: norton.cutler@bluestar.net

Norton,

I'm sorry Ive have a lot of trouble sending you this language.

Susan



PROPLANG.DOC	**Name:** PROPLANG.DOC **Type:** Microsoft Word Document (application/msword) **Encoding:** base64

BlueStar Networks, Inc.

BellSouth's Proposed Contract Language (Issue 1)

Amendment proposed to BlueStar with revised UCL definition language. BlueStar to review and provide comments.

BellSouth's Proposed Contract Language: (Issue 5)

BellSouth is currently developing and will make available to BlueStar as an interim process until the loop qualification interface is available, a process whereby xDSL loop orders that are rejected by BellSouth will be automatically converted to orders for UCLs without requiring BlueStar to resubmit the order. This interim process is expected to be available to BlueStar by the end of January 2000.

BellSouth's Proposed Contract Language: (Issue 8)

Attachment 2

2.1.7 Where facilities are available, BellSouth will install loops within a 5-7 business day interval. For orders of 14 or more loops, the installation will be handled on a project basis and the intervals will be set by the BellSouth project manager for that order. Some loops require a Service Inquiry (SI) to determine if facilities are available prior to issuing the order. **BellSouth will use best efforts to respond to the service inquiry within 3-5 business day period.** The interval for SI process is separate from the installation interval. For expedite requests by BlueStar, expedite charges will apply for intervals less than 5 days. The charges outlined in BellSouth's FCC #1 Tariff, Section 5.1.1 will apply. If BlueStar cancels an order for network elements and other services, any costs incurred by BellSouth in conjunction with the provisioning of that order will be recovered in accordance with FCC #1 Tariff, Section. 5.4.

BellSouth's Proposed Language (Issue 7)

BellSouth will provide BlueStar with access to the same loop qualification information that is available to BellSouth for its retail customers, in accordance with the FCC's UNE Remand Order within the timeframe provided for by that Order. The Order requires ILECs to provide access to this information to CLECs within 120 days after the Order is published in the Federal Registry.

EXHIBIT 3

Subject: UCL Amendment And Further Negotiations
Date: Wed, 26 Jan 2000 15:50:07 -0600
From: Norton Cutler <norton.cutler@bluestar.net>
To: BellSouth <susan.m.arrington@bridge.bellsouth.com>,
Carty Hassett <carty.hassett@bluestar.net>,
BellSouth <MichaelD.Wilburn@bridge.bellsouth.com>

I am faxing you a signed copy of the proposed UCL amendment now, but we will need to conform it to type in Bluestar's name. It is imperative that we process this asap because BellSouth is cancelling increasing numbers of orders for length. Bluestar has been requesting a copy of the amendment with Bluestar's name for almost two weeks and patience is wearing thin. BellSouth's refusal to honor these orders without an amendment that BellSouth has refused to supply borders on bad faith.

We also need to have a meeting on the remaining issues ASAP. Bluestar has requested that the Tennessee Commission conduct the mediation that it suggested. The answer to the arbitration and the testimony filed on 1/25 in Florida prove that there is very little between our positions. Refusing to meet to narrow this gap again borders on bad faith.

Bluestar is ready to resolve all the issues let's not wait any longer to try.

EXHIBIT 4

BellSouth Bel So.Abs

BellSouth Interconnection Services
675 West Peachtree Street, NW
Room 34S91
Atlanta, Georgia 30375

Susan Arrington
404-927-7513
Fax #: 404-529-7839

February 4, 2000

Mr. Norton Cutler
BlueStar Networks, Inc.
401 Church Street
24th Floor
Nashville, TN 37219

Dear Norton:

This letter will confirm the tentative agreement that we reached during our meeting on Wednesday, February 2, 2000, on the remaining arbitration issues. It is my understanding that we have resolved Issues 1, 2, 3, 4, 5, 6, 7, 8, 9, 11, 12 and 13. Issue 14 has been resolved for the state of Florida and Issue 15 is resolved for the state of Georgia.

To date, the parties have agreed to language and/or alternative solutions for Issues 1, 2, 5, 6 b,c,d and e, 7, 8 11, 12 and 13. I am working on revised language for Issues 3, 4, 6a, and 9, some of which is attached hereto.

With respect to Issue 10, please confirm for me if Issue 10a and 10b relative to the rates for ADSL and HDSL are still an issue in BlueStar" arbitration. Since we did not discuss these rates in our meeting on Wednesday, February 2, BellSouth believes 10a and 10b to be resolved. If this is not correct, please let me know. I will have a proposal for BlueStar on the UCL and Loop Conditioning rates on Monday, February 7, 2000.

Attached hereto is the agreed upon language and additional proposed language. If BlueStar agrees with the attached language, an amendment will prepared to incorporated the agreed upon language into BlueStar's agreements, once a Stipulation is filed with the appropriate regulatory authority to remove the agreed upon issues from arbitration.

The attached riser cable language is a new proposal from BellSouth. I understand that BlueStar would like to include language that allows BlueStar to connect its own cross-connect. I will confirm on Monday that this language can be included in the proposed language. I am also waiting on the riser cable rates, which I will forward to BlueStar as soon as they are available.

If you have any questions, please call me at (404) 927-7513.

Sincerely,

Susan Arrington
Manager - Interconnection Services/Pricing

Agreed to Language between BlueStar Networks, Inc. and BellSouth Telecommunications, Inc.

Issue 1: The Amendment dated January 27, 2000, between BellSouth Telecommunications, Inc. and BlueStar Networks, Inc. resolves this issue.

Issue 2: BlueStar believes this issue is being adequately addressed via the Cooperative Line Sharing negotiations between BellSouth and a group of CLECs.

Issue 3: BellSouth to proposes the following language to resolve this issue:

BellSouth shall provide BlueStar with non-discriminatory access to the loop qualification information that is available to BellSouth, so that BlueStar can make an independent judgment about whether the loop is capable of supporting the advanced services equipment that BlueStar intends to install. Loop qualification information is defined as information, such as the composition of the loop material, including but not limited to: fiber optics or copper, the existence, location and type of any electronic and other equipment on the loop, including but not limited to, digital loop carrier or other remote concentration devices, feeder/distribution interfaces, bridge taps, load coils, pair-gain devices, disturbers in the same or adjacent binder groups; the loop length, including the length and location of each type of transmission media; the wire gauge(s) of the loop; and the electrical parameters of the loop, which may determine the suitability of the loop for various technologies.

BellSouth shall make such information available to BlueStar within 120 days after the FCC's UNE Remand Order is published in the Federal Register.

Issue 4: Same as Issue 3.

Issue 5: BellSouth proposed the following language, which resolves this issue:

BellSouth is currently developing and will make available to BlueStar as an interim process until the loop qualification interface is available, a process whereby xDSL loop orders that are rejected by BellSouth will be automatically converted to orders for UCLs without requiring BlueStar to resubmit the order. This interim

process is expected to be available to BlueStar by the end of January 2000.

Issue 6a Same as Issue 3.

Issue 6b
Issue 6c
Issue 6e
Issue 6f

BellSouth's proposed timeframe by which such interface would be available was acceptable to BlueStar. Intefaces for xDSL will be available between March 2000 and May 2000.

Issue 7 BellSouth proposed the following language that resolves this issue:

2.1.7 Where facilities are available, BellSouth will install loops within a 5-7 business day interval. For orders of 14 or more loops, the installation will be handled on a project basis and the intervals will be set by the BellSouth project manager for that order. Some loops require a Service Inquiry (SI) to determine if facilities are available prior to issuing the order. **BellSouth will use best efforts to respond to the service inquiry within 3-5 business day period.** The interval for SI process is separate from the installation interval. For expedite requests by BlueStar, expedite charges will apply for intervals less than 5 days. The charges outlined in BellSouth's FCC #1 Tariff, Section 5.1.1 will apply. If BlueStar cancels an order for network elements and other services, any costs incurred by BellSouth in conjunction with the provisioning of that order will be recovered in accordance with FCC #1 Tariff, Section. 5.4.

Issue 8 The Amendment language proposed for Issue 1 resolves this issue.

Issue 9 This issue may be resolved pending BlueStar's review of BellSouth's Operational Understanding agreement.

Issue 11 BlueStar believes that this issue will be addressed via the Cooperative Line Sharing negotiations between BellSouth and a group of CLECs.

Issue 12 This issue has been resolved by the Parties. BlueStar agreed to BellSouth's language.

Issue 13 This issue has been resolved. BlueStar has accepted BellSouth's proposed Performance Measurements.

Issue 16 BellSouth proposes the following language to BlueStar:

2.6.1 Where facilities permit and subject to applicable and effective FCC rules and orders, BellSouth shall offer access to its Unbundled Sub Loop (USL), Unbundled Subloop Concentration (USLC) System and Unbundled Network Terminating Wire (UNTW) elements. BellSouth shall provide nondiscriminatory access, in accordance with 51.311 and section 251 © (3) of the Act, to the subloop, on an unbundled basis and pursuant to the following terms and conditions and the rates approved by the Commission and set forth in this Attachment. Until such time as rates for Sub Loop elements have been approved by the Commission, CLEC-1 shall pay to BellSouth interim cost-based rates established by BellSouth, such rates to be subject to true-up in accordance with Section 17.3 of this Attachment.

2.6.2 Subloop components include but are not limited to the following:

2.6.2.1 Unbundled Sub-Loop Distribution;

2.6.2.2 Unbundled Sub-Loop Concentration/Multiplexing Functionality; and

2.6.2.3 Feeder.Unbundled Network Terminating Wire; and

2.6.2.4 Unbundled Sub-Loop Feeder.

2.6.3 Unbundled Sub-Loop (distribution facilities)

2.6.3.1 Definition

2.6.3.2 Subject to applicable and effective FCC rules and ordes, the unbundled sub-loop distibution facility is dedicated transmission facility that Bellsouth provicdes from a customer's point of demarcation to a BellSouth cross-connect device. The BellSouth cross-connect device may be located within a remote terminal (RT), or a stand-alone cross-box in the field or in the equipment room of a building. There are two offerings available for Unbundled Sub-Loops (USL):

2.6.3.3 Unbundled Sub-Loop Distribution (USL-D) will include the sub-loop facility from the cross-box in the field up to and including the point of demarcation.

2.6.3.4 BellSouth will also provide sub-loop interconnection to the intrabuilding network cable (INC) (riser cable). INC is the distribution facility inside a subscriber's building or between buildings on one customer's same premises (continuous property

not separated by a public street or road). USL-INC (riser cable) will include the facility from the cross-connect device in the building equipment room up to an including the point of demarcation.

2.6.4. Requirements for Unbundled Sub-Loops Distribution Facilities

2.6.4.1 Unbundled Sub-Loop distribution facilities were originally built as part of the entire voice grade loop from the BellSouth central office to the customer network interface. Therefore, the Unbundled Sub-Loop may have load coils which are necessary for transmission of voice grade services. The Unbundled Sub-Loops will be provided in accordance with technical reference TR73600.

2.6.4.2 USL distribution facilities shall support functions associated with provisioning, maintenance and testing of the Unbundled Sub-Loop. In a scenario that involves connection at a BellSouth cross-box located in the field, CLEC-1 would be required to deliver a cable to the BellSouth remote terminal or cross-box to provide continuity to CLEC-1's feeder facilities. This cable will be connected, by a BellSouth technician, to a cross-connect panel within the BellSouth RT/cross-box. CLEC-1's cable pairs can then be connected to BellSouth's USL within the BellSouth cross-box by the BellSouth technician. In a scenario that requires connection in a building equipment room, BellSouth will install a cross connect panel on which access to the requested sub-loops will be connected. The CLEC's cable pairs can then be connected to the Unbundled Sub-Loop pairs on this cross-connect panel by the BellSouth technician.

2.6.4.3 BellSouth will provide Unbundled Sub-Loops where possible. Through the firm order Service Inquiry (SI) process, BellSouth will determine if it is feasible to place the required facilities where CLEC-1 has requested access to Unbundled Sub-Loops. If existing capacity is sufficient to meet the CLEC demand, then BellSouth will perform the set-up work as described in the next section 2.6.4.4. If any work must be done to modify existing BellSouth facilities or add new facilities (other than adding the cross-connect panel in a building equipment room as noted in 2.6.4.2) to accommodate CLEC-1's request for Unbundled Sub-Loops, BellSouth will use its Special Construction (SC) process to determine the additional costs required to provision the Unbundled Sub-Loops. CLEC-1 will then have the option of paying the one-time SC charge to modify the facilities to meet CLEC-1's request.

2.6.4.4 During the initial set-up in a BellSouth cross-connect box in the field, the BellSouth technician will perform the necessary work to

splice the CLEC's cable into the cross-connect box. For the set-up inside a building equipment room, BellSouth will perform the necessary work to install the cross-connect panel that will be used to provide access to the requested USLs. Once the set-up is complete, the CLEC requested sub-loop pairs would be provisioned through the service order process based on the submission of a LSR to the LCSC.

2.6.5 Interface Requirements

2.6.5.1 Unbundled Sub-Loop shall be equal to or better than each of the applicable interface requirements set forth in the following technical reference:

2.6.5.1.1 Telcordia (formerly BellCore) TR-NWT-000049, "Generic Requirements for Outdoor Telephone Network Interface Devices," Issued December 1,1994;

EXHIBIT 5

Michael Bressman

From: Susan.M.Arrington@bridge.bellsouth.com
Sent: Friday, February 11, 2000 1:01 PM
To: norton.cutler@bluestar.net
Cc: Stephen.Klimacek@BellSouth.COM
Subject: BellSouth's Proposed Stipulation

BellSouth's.txt

STIP.DOC

BellSouth's

Norton,

Attached is BellSouth's proposed Stipulation and Amendment. Please no
te that
with respect to Issue 5, this interim process is not yet available, bu
t is
being developed. I do not have a set date that I can commit to at thi
s time.

I believe that the attached documents propose to settle Issues 5, 6a,
7 and 9
in addition to the issues 2 and 11 that will be addressed through the
line
share negotiations and the other issues that have previously been reso
lved, 1,
6b,c,d,and e, 8, 12 and 13.

The remaining outstanding issues are: 3, 4, 10, 15 and 16 as well as
14 in all
states except Florida.

Call me if you have any questions.

Susan

DRAFT of 2/11/00

STIPULATION

THIS STIPULATION between BellSouth Telecommunications, Inc. ("BellSouth") and BlueStar Networks, Inc. ("BlueStar") is entered into and effective this ___th day of February, 2000. BellSouth and BlueStar are collectively referred to herein as the "Parties."

WHEREAS, BlueStar filed a Petition for Arbitration with BellSouth pursuant to the Telecommunications Act of 1996 ("Petition") on December 7, 1999 with the Florida Public Service Commission, the Georgia Public Service Commission, the Kentucky Public Service Commission, and the Tennessee Regulatory Authority, (collectively, the "Commissions");

WHEREAS, Issues[1] 1, 6(b,c,d, and e), 8, 12, and 13 had previously been resolved by the Parties;

WHEREAS, Issue 14 was removed from the Florida arbitration by an order of the Florida Public Service Commission's staff dated January 25, 2000, which is the subject of a Motion for Reconsideration filed February 4, 2000;

WHEREAS, BlueStar is participating in BellSouth's cooperative line sharing negotiations along with a number of other CLECs that will work in a cooperative effort to determine the rates, terms and conditions for line sharing including, conducting a line sharing trial.

WHEREAS, the Parties have continued to negotiate to resolve the issues contained in the Petition; and

WHEREAS, the Parties have reached a resolution on many of the issues.

NOW, THEREFORE, the Parties hereby agree as follows:

1. Pursuant to the attached Amendment dated February __, 2000 between the Parties, the Parties have resolved Issues 5, 6a, 7, 9, and only in Florida, 10a and 10b.

2. As a result of the cooperative line sharing negotiations, BlueStar believes that Issues 2 and 11 of the arbitration proceeding will be addressed during the cooperative negotiations and therefore agrees to remove these issues from this proceeding.

3. All other issues not resolved by the Parties remain pending in this proceeding, provided however, that with respect to Issue 14, BlueStar reserves all legal rights to seek review or appeal of the Florida Public Service Commission's Order.

---

[1] The form and numbering of the issues contained in this Stipulation correspond with the form and numbering of the "Tentative List of Issues" attached as Appendix A to the Order of the Florida Public Service Commission, Docket No. 991838-TP (January 21, 2000).

DRAFT of 2/11/00

4. Either or both of the Parties shall submit this Stipulation to the Commissions.

IN WITNESS WHEREOF, the Parties hereto have caused this Stipulation to be executed by their respective duly authorized representatives on the date indicated below.

BlueStar Networks, Inc.	BellSouth Telecommunications, Inc.
By:________________	By:________________
Name:______________	Name:______________
Title:______________	Title:______________
Date:______________	Date:______________

DRAFT of 2/11/00

**AMENDMENT TO THE
AGREEMENT BETWEEN
BLUESTAR NETWORKS, INC.
AND BELLSOUTH TELECOMMUNICATIONS, INC.
DATED DECEMBER 28, 1999
(Florida, Georgia, Kentucky and Tennessee)**

Pursuant to this Amendment, BlueStar Networks, Inc. ("BlueStar") and BellSouth Telecommunications, Inc. ("BellSouth"), hereinafter referred to individually as a "Party" or collectively as the "Parties," hereby amend that certain Interconnection Agreement between the Parties dated December 28, 1999 (the "Interconnection Agreement").

WHEREAS, the Parties entered into an Interconnection Agreement on December 28, 1999; and

WHEREAS, the Parties desire to amend that Interconnection Agreement.

NOW THEREFORE, in consideration of the mutual provisions contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby covenant and agree as follows:

1. The Interconnection Agreement entered into between the Parties is hereby amended to delete Sections 2.1.7 of Attachment 2 in its entirety and replace it with new Section 2.1.7 of Attachment 2 as follows:

2.1.7 Where facilities are available, BellSouth will install loops within a 5-7 business day interval. For orders of 14 or more loops, the installation will be handled on a project basis and the intervals will be set by the BellSouth project manager for that order. Some loops require a Service Inquiry (SI) to determine if facilities are available prior to issuing the order. BellSouth will use best efforts to respond to the service inquiry within a 3-5 business day period. The interval for SI process is separate from the installation interval. For expedite requests by BlueStar, expedite charges will apply for intervals less than 5 days. The charges outlined in BellSouth's FCC #1 Tariff, Section 5.1.1 will apply. If BlueStar cancels an order for network elements and other services, any costs incurred by BellSouth in conjunction with the provisioning of that order will be recovered in accordance with FCC #1 Tariff, Section. 5.4.

2. The Interconnection Agreement entered into between the Parties is hereby amended to delete Section ____ in its entirety and replace it with new Section ____ as follows:

DRAFT of 2/11/00

BellSouth shall provide BlueStar with non-discriminatory access to the loop qualification information that is available to BellSouth, so that BlueStar can make an independent judgment about whether the loop is capable of supporting the advanced services equipment that BlueStar intends to install. Loop qualification information is defined as information, such as the composition of the loop material, including but not limited to: fiber optics or copper, the existence, location and type of any electronic and other equipment on the loop, including but not limited to, digital loop carrier or other remote concentration devices, feeder/distribution interfaces, bridge taps, load coils, pair-gain devices, disturbers in the same or adjacent binder groups; the loop length, including the length and location of each type of transmission media; the wire gauge(s) of the loop; and the electrical parameters of the loop, which may determine the suitability of the loop for various technologies.

BellSouth shall make such information available to BlueStar in accordance with the FCC's UNE Remand Order. BellSouth is developing an electronic interface to its Facility Assignment Control System ("LFACs") with a targeted date of third quarter 2000 for implementation. Electronic access to BellSouth's Loop Qualification System (LQS) is also available.

3. The Interconnection Agreement entered into between the Parties is hereby amended to delete Section ____ in its entirety and replace it with new Section ____ as follows:

Pursuant to the Appendix A of the document entitled, "Operational Understanding between BellSouth Maintenance Centers and CLEC Maintenance Centers for Local Services", BlueStar may request escalations for repair services.

4. The Interconnection Agreement entered into between the Parties is hereby amended to include a new Section ____ as follows:

BellSouth is currently developing and will make available to BlueStar as an interim process until the loop qualification interface is available, a process whereby xDSL loop orders that are rejected by BellSouth will be automatically converted to orders for UCLs without requiring BlueStar to resubmit the order.

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

February 24, 2000

To: All parties of record

RE: Case No. 1999-498

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

Sincerely,

Stephanie Bell
Secretary of the Commission

SB/sa
Enclosure

Honorable Norton Cutler
Vice President Regulatory & General Counsel
BlueStar Networks, Inc.
L & C Tower, 24th Floor
401 Church St.
Nashville, TN 37219

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

Honorable Frank F. Chuppe
Honorable Kevin J. Hable
Counsel for BlueStar
Wyatt, Tarrant & Combs
Citizens Plaza
Louisville, KY 40202

Honorable Henry Walker
Honorable Michael B. Bressman
Counsel for BlueStar
Boult, Cummings, Conners & Berry,PLC
P.O. Box 198062
414 Union Street, Suite 1600
Nashville, TN 37219

Steve Klimacek
Susan Arrington
BellSouth Telecommunications, Inc.
4300 BellSouth Center
675 West Peachtree Street N.E.
Atlanta, GA 30375

Honorable R. Douglas Lackey
Honorable J. Phillip Carver
Counsel for BellSouth
Suite 4300, BellSouth Center
675 West Peachtree Street, N.E.
Atlanta, GA 30375

COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

THE INTERCONNECTION AGREEMENT NEGOTIATIONS BETWEEN BLUESTAR NETWORKS, INC. AND BELLSOUTH TELECOMMUNICATIONS, INC. PURSUANT TO THE TELECOMMUNICATIONS ACT OF 1996	)	CASE NO. 99-498

O R D E R

The Telecom Act of 1996 imposes strict deadlines upon this proceeding. Brevity, as well as clarity of expression and position, are of the essence. It is imperative that the Commission receive appropriate information in a timely manner. Accordingly, the following guidelines and procedural schedule shall apply to this proceeding. The purpose of this proceeding is to explore specific arbitration issues, not to engage in tangential or philosophical debate.

When the parties essentially have agreed as to a particular issue, but they have not been able to agree as to the precise language to express the agreement, the Commission will not hear argument on the issue in this proceeding. Reduction of the proposed agreement to writing is the responsibility of the parties. Each party may submit its proposed version of the contract term in its best and final offer, which shall be submitted no later than March 10, 2000.

Although the Commission is not bound by the technical rules of legal evidence, KRS 278.310, the parties hereto are hereby put on notice that cumulative, repetitive, and irrelevant evidence will not be heard in the formal hearing in this matter. Unless

special leave is granted, opening and closing statements will not be permitted. In addition, unless special leave is granted, all direct testimony shall be prefiled. All testimony at the formal hearing shall be offered pursuant to cross-examination or redirect examination provided, however, that in light of the time constraint, rebuttal testimony will be permitted.

The Commission, being sufficiently advised, HEREBY ORDERS that:

1. A formal hearing in this matter is scheduled for March 15, 2000, at 10:00 a.m., Eastern Standard Time, in Hearing Room 1 of the Commission's offices at 211 Sower Boulevard, Frankfort, Kentucky.

2. Relevant cost studies, including workpapers, and any other documents and information necessary to resolve outstanding issues shall be filed by March 1, 2000.

3. Prefiled testimony shall be filed by March 8, 2000 and hearing testimony is limited to cross-examination or redirect examination and rebuttal testimony.

4. Any party filing testimony shall file an original and 12 copies. The original and at least 3 copies of the testimony shall be filed as follows:

a. Together with cover letter listing each person presenting testimony.

b. Bound in 3-ring binders or with any other fastener which readily opens and closes to facilitate easy copying.

c. Each witness's testimony should be tabbed.

d. Every exhibit to each witness's testimony should be appropriately marked.

5. Any agreed-upon portions of the parties' contract which have not already been filed shall be filed by March 8, 2000.

6. Each party shall submit, in contract form, its best and final offer on each disputed issue no later than March 8, 2000.

Done at Frankfort, Kentucky, this 24th day of February, 2000.

By the Commission

ATTEST:

Executive Director

BELLSOUTH

BellSouth Telecommunications, Inc.
P. O. Box 32410
Louisville, Kentucky 40232
or
BellSouth Telecommunications, Inc.
601 West Chestnut Street, Room 407
Louisville, Kentucky 40203

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

Creighton E. Mershon, Sr.
General Counsel – Kentucky

RECEIVED
FEB 09 2000
PUBLIC SERVICE COMMISSION

February 8, 2000

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

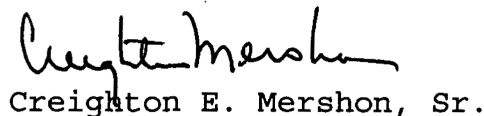
Re: Petition for Arbitration of BlueStar Networks, Inc. with BellSouth Telecommunications, Inc. pursuant to the Telecommunications Act of 1996
PSC 99-498

Dear Mr. Huelsmann:

On January 21, 2000, BellSouth Telecommunications, Inc. filed a Renegotiated Interconnection Agreement with the Commission in the above-referenced case. Attached for filing is an Amendment to the Agreement that revises UCL language to allow UCLs at lengths greater than 18kft.

Six copies of the Amendment and eight copies of the transmittal letter are filed. The two extra copies of the letter are provided for Amanda Hale and Becky Dotson.

Sincerely,



Creighton E. Mershon, Sr.

Attachment

cc: Parties of Record (letter only)

196405

BELLSOUTH

BellSouth Telecommunications, Inc.
P. O. Box 32410
Louisville, Kentucky 40232
or
BellSouth Telecommunications, Inc.
601 West Chestnut Street, Room 407
Louisville, Kentucky 40203

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

Creighton E. Mershon, Sr.
General Counsel – Kentucky

RECEIVED
FEB 09 2000
PUBLIC SERVICE COMMISSION

February 8, 2000

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

Re: Petition for Arbitration of BlueStar Networks, Inc. with BellSouth Telecommunications, Inc. pursuant to the Telecommunications Act of 1996
PSC 99-498

Dear Mr. Huelsmann:

On January 21, 2000, BellSouth Telecommunications, Inc. filed a Renegotiated Interconnection Agreement with the Commission in the above-referenced case. Attached for filing is an Amendment to the Agreement that revises UCL language to allow UCLs at lengths greater than 18kft.

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Sincerely,

Creighton E. Mershon, Sr.

Attachment

cc: Parties of Record (letter only)

196405

RECEIVED
FEB 11 2000
LEGAL DEPT. (KY.)

AMENDMENT
TO THE
AGREEMENT BETWEEN
BLUESTAR NETWORKS, INC.
AND
BELLSOUTH TELECOMMUNICATIONS, INC.
DATED DECEMBER 28, 1999
(Florida, Georgia, Kentucky and Tennessee)

Pursuant to this Agreement, (the "Amendment"), Bluestar Networks, Inc. ("Bluestar"), and BellSouth Telecommunications, Inc. ("BellSouth"), hereinafter referred to individually as a "Party" and collectively as the "Parties," hereby agree to amend that certain Interconnection Agreement between the Parties dated December 28, 1999 (the "Interconnection Agreement").

WHEREAS, BellSouth and Bluestar entered into an Interconnection Agreement on December 28, 1999 and;

NOW THEREFORE, in consideration of the mutual provisions contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby covenant and agree as follows:

1. The Interconnection Agreement entered into between Bluestar and BellSouth is hereby amended to delete Sections 2.1.2, 2.1.3 – 2.1.3.7 of Attachment 2 in its entirety and replace it with new Section 2.1.2 of Attachment 2 which is attached hereto as Exhibit A.

2. This Amendment shall have an effective date of January 27, 2000.

3. All of the other provisions of the Agreement, dated December 28, 1999, shall remain in full force and effect.

4. Either or both of the Parties may submit this Amendment to the appropriate Commission for approval subject to Section 252(e) of the Federal Telecommunications Act of 1996.

IN WITNESS WHEREOF, the Parties hereto have caused this Amendment to be executed by their respective duly authorized representatives on the date indicated below.

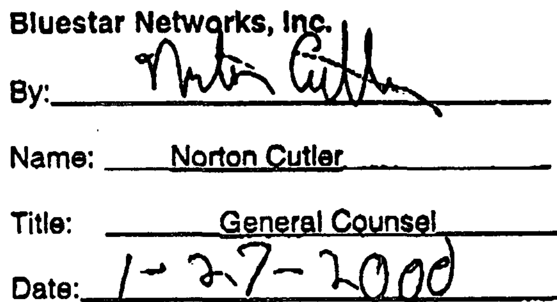
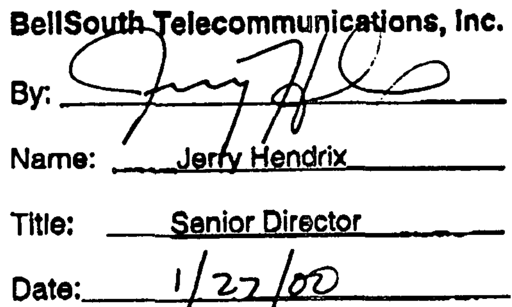
Bluestar Networks, Inc.	BellSouth Telecommunications, Inc.
By: 	By: 
Name: Norton Cutler	Name: Jerry Hendrix
Title: General Counsel	Title: Senior Director
Date: 1-27-2000	Date: 1/27/00

EXHIBIT A

2.1.2 Technical Requirements

2.1.2.1 BellSouth will offer loops capable of supporting telecommunications services such as: POTS, Centrex, basic rate ISDN, analog PBX, voice grade private line, 2 and 4 wire xDSL, and digital data (up to 64 kb/s). Additional services may include digital PBXs, primary rate ISDN, Nx 64 kb/s, and DS1/DS3 and SONET private lines.

2.1.2.2 Digital Subscriber Line ("xDSL") Capable Loops. XDSL capable loops describe loops that may support various technologies and services. The "x" in xDSL is a placeholder for the various types of digital subscriber line services. An xDSL loop is a plain twisted pair copper loop. BellSouth will offer xDSL capable loops according to industry standards for CSA design loops (ADSL/HDSL) and resistance design loops (UCL). To the extent that these loops exist within the BellSouth network at a particular location, they will be provisioned without intervening devices, including but not limited to load coils, repeaters (unless so requested by Bluestar), or digital access main lines ("DAMLs"). These loops may contain bridged tap in accordance with the respective industry standards (CSA design loops may have up to 2,500 feet total (all bridged taps) and up to 2,000 feet for a single bridged tap; resistance design loops may have up to 6,000 ft). At Bluestar's request, BellSouth will provide Bluestar with xDSL loops other than those listed above, so long as Bluestar is willing to pay the loop conditioning costs needed to remove the above listed equipment and/or bridge taps from the loops. Any copper loop longer than 18kft requested by Bluestar through the loop conditioning process will be ordered, billed, and inventoried as UCLs. Loop conditioning costs will be charged in addition to the loop itself on any of the loops described in this section 2.1.2.2, Bluestar may provide any service that it chooses so long as such service is in compliance with FCC regulations and BellSouth's TR73600.

2.1.2.3 The loop will support the transmission, signaling, performance and interface requirements of the services described in 2.1.2.1 above. The foregoing sentence notwithstanding, in instances where BellSouth provides Bluestar with an xDSL loop that is over 12,000 feet in length, BellSouth will not be expected to maintain and repair the loop to the standards specified in the TR73600 and other standards referenced in this Agreement; provided, however, that for all loops (xDSL or otherwise) ordered by Bluestar, BellSouth agrees to maintain electrical continuity and to provide balance relative to tip and ring.

2.1.2.4 In instances where Bluestar requests BellSouth to provide Bluestar with an xDSL loop to a particular end-user premises and (I) there is no such facility (including without limitation spare copper) available, and (ii) there is a loop available that would meet the definition of an xDSL loop if it were conditioned consistent with the FCC's rules promulgated pursuant to the UNE Remand Order, FCC 99-238 (adopted Sept. 15, 1999) (*i.e.*, FCC Rule 51.319(a)(3)) (hereinafter "Conditioning Rules"), BellSouth shall offer such loop to Bluestar and shall offer to condition such loop consistent with the Conditioning Rules. In those cases where Bluestar requests that BellSouth remove equipment from a loop longer than 18kft, and this equipment is required to provide normal voice services, Bluestar agrees to pay a re-conditioning charge in order to bring the loop back up to its original specifications.

2.1.2.5 The Parties agree that such conditioning charges shall be interim and subject to true-up (up or down), pending the determination by the relevant Commission of conditioning charges. The Parties further agree that, if and when a Commission (in a final order not stayed) orders or otherwise adopts conditioning charges, they shall amend this Agreement to reflect said charges. If the Parties are unable to reach agreement on such an amendment, either Party may petition the appropriate Commission for relief pursuant to the dispute resolution procedures described in the General Terms and Conditions – Part A of this Agreement.

2.1.2.6 In those cases where Bluestar has requested that BellSouth remove equipment from the BellSouth loop, BellSouth will not be expected to maintain and repair the loop to the standards specified for that loop type in the TR73600 and other standards referenced in this Agreement.

2.1.2.7 In addition, Bluestar recognizes that there may be instances where a loop modified pursuant to this subsection 2.1.2.5 may be subjected to normal network configuration changes that may cause the circuit characteristics to be changed and may create an outage of the service that Bluestar has placed on the loop (e.g., a copper voice loop is modified by the removal of load coils so that Bluestar may attempt to provide xDSL service. BellSouth's records may still reflect that the loop is a voice circuit. BellSouth performs a network efficiency job and rolls the loop to a DLC. The original voice loop would not have been impacted by this move but the xDSL loop will likely not support xDSL service). If this occurs, BellSouth will work cooperatively with Bluestar to restore the circuit to its previous xDSL capable status as quickly as possible.

2.1.2.8 The following rates, as subject to true-up, will apply:

2-Wire Unbundled Copper Loop (18kft or less)	AL*	FL	GA*	KY*	LA	MS*	NC	SC*	TN**
Recurring	$15.11	$18.00	$13.05	$11.89	$21.00	$14.83	$19.00	$20.81	$18.00
Non-Recurring									
Non-Recurring 1st	$514.21	$340.00	$359.00	$713.50	$340.00	$504.82	$450.00	$600.61	$450.00
Non-Recurring Add'l	$464.58	$300.00	$325.15	$609.44	$300.00	$456.24	$390.00	$507.33	$325.00
Manual Svc Ord -1st	$47.00	$47.00	$18.94	$47.00	$18.14	$25.52	$47.00	$25.52	
Manual Svc Ord -Adl	$21.00	$21.00	$8.42	$21.00	$8.06	$11.34	$21.00	$47.00	
Manual Svc Ord -Dis	$17.77			$17.77	$11.41	$16.06		$21.00	
Order Coordination	$16.00	$16.00	$34.22	NA	$32.77	$45.27	$16.00	$45.43	$45.00
Disconnect 1st					$72.54	$105.86			
Disconnect Addl					$39.42	$57.25			

*Same as ADSL loop rate

** ADSL rates not yet set

Loop Conditioning									
Remove Equip < 18ft									
First Install	$485	$485	$485	$485	$485	$485	$485	$485	$485
Addl Install	$25	$25	$25	$25	$25	$25	$25	$25	$25
Remove Equip > 18ft									
First Install	$775	$775	$775	$775	$775	$775	$775	$775	$775
Addl Install	$25	$25	$25	$25	$25	$25	$25	$25	$25
First Disconnect	$775	$775	$775	$775	$775	$775	$775	$775	$775
Addl Disconnect	$25	$25	$25	$25	$25	$25	$25	$25	$25
Remove Bridge Tap all									
First Install	$485	$485	$485	$485	$485	$485	$485	$485	$485
Addl Install	$20	$20	$20	$20	$20	$20	$20	$20	$20

The UCL Rates listed above may be used for UCLs longer than 18kft until we are able to perform a cost study on long UCLs (18kft).

The Loop Conditioning charges would apply in addition to the UCL NRCs.

All the rates listed above would be subject to true-up once final cost numbers are determined.

The Parties agree that the prices reflected herein shall be "trued-up" (up or down) based on final prices either determined by further agreement or by final order, including any appeals, in a proceeding involving BellSouth before the regulatory authority for the state in which the services are being performed or any other body having jurisdiction over this agreement, including the FCC. Under the "true-up" process, the price for each service shall be multiplied by the volume of that service purchased to arrive at the total interim amount paid for that service ("Total Interim Price"). The final price for that service shall be multiplied by the volume purchased to arrive at the total final amount due ("Total Final Price"). The Total Interim Price shall be compared with the Total Final Price. If the Total Final Price is more than the Total Interim Price, Bluestar shall pay the difference to BellSouth. If the Total Final Price is less than the Total Interim Price, BellSouth shall pay the difference to Bluestar. Each party shall keep its own records upon which a "true-up" can be based and any final payment from one party to the other shall be in an amount agreed upon by the Parties based on such records. In the event of any disagreement as between the records or the Parties regarding the amount of such "true-up," the Parties agree that such differences shall be resolved through arbitration.

Agreed upon
Portions of the
contract

AMENDMENT TO THE
AGREEMENT BETWEEN
BLUESTAR NETWORKS, INC.
AND BELLSOUTH TELECOMMUNICATIONS, INC.
DATED DECEMBER 28, 1999
(Florida, Georgia, Kentucky and Tennessee)

Pursuant to this Amendment, BlueStar Networks, Inc. ("BlueStar") and BellSouth Telecommunications, Inc. ("BellSouth"), hereinafter referred to individually as a "Party" or collectively as the "Parties," hereby amend that certain Interconnection Agreement between the Parties dated December 28, 1999 (the "Interconnection Agreement").

WHEREAS, the Parties entered into an Interconnection Agreement on December 28, 1999; and

WHEREAS, the Parties desire to amend that Interconnection Agreement.

NOW THEREFORE, in consideration of the mutual provisions contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby covenant and agree as follows:

1. The Interconnection Agreement entered into between the Parties is hereby amended to delete Section 2.1.7 of Attachment 2 in its entirety and replace it with new Section 2.1.7 of Attachment 2 as follows:

2.1.7 Where facilities are available, BellSouth will install loops within the time interval listed in the Product and Service Interval Guide Issue 2-b, December 1999 posted on the BellSouth web site and incorporated herein by this reference. Some loops require a Service Inquiry (SI) to determine if facilities are available prior to issuing the order. The interval for SI process is included in the intervals listed in the guide. For expedite requests by BlueStar, expedite charges will apply for intervals less than 5 days. The charges outlined in BellSouth's FCC #1 Tariff, Section 5.1.1 will apply. If BlueStar cancels an order for network elements and other services, any costs incurred by BellSouth in conjunction with the provisioning of that order will be recovered in accordance with FCC #1 Tariff, Section. 5.4.

2. Attachment 6 of the Interconnection Agreement entered into between the Parties is hereby amended to include a new Section 2.4.1 as follows:

2.4.1 Pursuant to the Appendix A of the document entitled, "Operational Understanding between BellSouth Maintenance Centers and CLEC

Maintenance Centers for Local Services," BlueStar may request escalations for repair services for any customer.

3. The General Terms and Conditions of the Interconnection Agreement entered into between the Parties in Florida and Georgia is hereby amended to delete Section 12 of the Interconnection Agreement in its entirety and replace it with new Section 12 as follows:

12. Resolution of Disputes

The Parties agree that it is in their interest to resolve disputes arising under this contract in an expedited manner. To expedite resolution of disputes, such as access to collocations or provisioning, the Parties agree to form an Intercompany Board. Each Party will designate one person (and one alternative person in case the primary designee is unavailable) with sufficient authority to resolve disputes quickly. If a dispute arises that is not being resolved quickly in the ordinary course, a Party's designee shall contact the other Party's designee. The two will then work together to resolve the dispute within 2 business days. If the dispute cannot be resolved within the 2 business days, either Party may file a Petition or Complaint with the Commission for a resolution of the dispute.

4. Attachment 6 of the Interconnection Agreement entered into between the Parties, is hereby amended to incorporate a new Section 2.7 as follows:

BellSouth has set a target of 3Q00 as the date by which its EDI and TAG interfaces will support xDSL services.

5. Attachment 2 of the Interconnection Agreement entered into between the Parties is hereby amended to include a new Section 2.1.16 as follows:

2.1.16 BellSouth shall provide BlueStar with non-discriminatory access to the loop qualification information that is available to BellSouth, so that BlueStar can make an independent judgment about whether the loop is capable of supporting the advanced services equipment that BlueStar intends to install. Loop qualification information is defined as information, such as the composition of the loop material, including but not limited to: fiber optics or copper, the existence, location and type of any electronic and other equipment on the loop, including but not limited to, digital loop carrier or other remote concentration devices, feeder/distribution interfaces, bridge taps, load coils, pair-gain devices, disturbers in the same or adjacent binder groups; the loop length, including the length and location of each type of transmission media; the wire gauge(s) of the loop; and the electrical parameters of the loop, which may determine the suitability of the loop for various technologies.

BellSouth shall make such information available to BlueStar in accordance with the FCC's UNE Remand Order. BellSouth is developing an electronic interface to its Loop Facility Assignment Control System ("LFACS") with a targeted date of third quarter 2000 for implementation. BlueStar currently has electronic access to BellSouth's Loop Qualification System (LQS).

6. This Amendment shall have an effective date of February 28, 2000.

7. All other provisions of the Interconnection Agreement dated December 28, 1999 shall remain in full force and effect.

8. Either or both of the Parties shall submit this Amendment to the appropriate Commission for approval subject to Section 252(e) of the Federal Telecommunications Act of 1996.

IN WITNESS WHEREOF, the Parties hereto have caused this Amendment to the Interconnection Agreement be executed by their respective duly authorized representatives on the date indicated below.

BlueStar Networks, Inc.	**BellSouth Telecommunications, Inc.**
By: [signature]	By: [signature]
Name: Norton Cutler	Name: Jerry Hendrix
Title: VP Regulatory & General Counsel	Title: Senior Director
Date: 2/29/00	Date: 2/28/00

STIPULATION

THIS STIPULATION between BellSouth Telecommunications, Inc. ("BellSouth") and BlueStar Networks, Inc. ("BlueStar") is entered into and effective this 28th day of February, 2000. BellSouth and BlueStar are collectively referred to herein as the "Parties."

WHEREAS, BlueStar filed a Petition for Arbitration with BellSouth pursuant to the Telecommunications Act of 1996 ("Petition") on December 7, 1999 with the Florida Public Service Commission, the Georgia Public Service Commission, the Kentucky Public Service Commission, and the Tennessee Regulatory Authority, (collectively, the "Commissions");

WHEREAS, Issues[1] 1, 8, 12, and 13 had previously been resolved by the Parties;

WHEREAS, Issue 14 was removed from the Florida arbitration by an order of the Florida Public Service Commission's staff dated January 25, 2000, which is the subject of a Motion for Reconsideration filed February 4, 2000;

WHEREAS, BlueStar is participating in BellSouth's cooperative line sharing negotiations along with a number of other CLECs that will work in a cooperative effort to determine the rates, terms and conditions for line sharing including, conducting a line sharing trial;

WHEREAS, the Parties have continued to negotiate to resolve the issues contained in the Petition; and

WHEREAS, the Parties have reached a resolution on many of the issues.

NOW, THEREFORE, the Parties hereby agree as follows:

1. The Parties have resolved Issues 3, 4, 6a-e, 7 and 9 for all four states; Issue 15 only in Florida and Georgia; and Issue 10a and 10b only in Florida. An Amendment reflecting the resolution of Issues 3, 4, 6a-e, 7, 9 and 15, is attached.

2. As a result of the cooperative line sharing negotiations, BlueStar and BellSouth believe that Issues 2 and 11 of the arbitration proceeding will be addressed during the cooperative negotiations and therefore agree to remove these issues from this proceeding.

3. All other issues not resolved by the Parties remain pending in this proceeding; provided, however, that with respect to Issue 14, BlueStar reserves all legal rights to seek review or appeal of the Florida Public Service Commission's Order.

4. Either or both of the Parties shall submit this Stipulation to the Commissions.

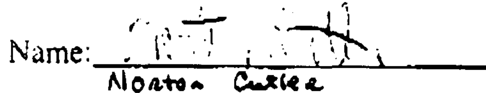
---

[1] The form and numbering of the issues contained in this Stipulation correspond with the form and numbering of the "Tentative List of Issues" attached as Appendix A to the Order of the Florida Public Service Commission, Docket No. 991838-TP (January 21, 2000). This Order reflects the prior resolution of Issues 1, 8, 12 and 13.

IN WITNESS WHEREOF, the Parties hereto have caused this Stipulation to be executed by their respective duly authorized representatives on the date indicated below.

BlueStar Networks, Inc.

By: ______________________



Name: Norton Cutler

Title: VP Regulatory & General Counsel

Date: 2.29.00

BellSouth Telecommunications, Inc.

By: ______________________

Name: Jerry Hendrix

Title: Senior Director

Date: 2/28/00

BellSouth Telecommunications, Inc.
P. O. Box 32410
Louisville, Kentucky 40232
or
BellSouth Telecommunications, Inc.
601 West Chestnut Street, Room 407
Louisville, Kentucky 40203

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

Creighton E. Mershon, Sr.
General Counsel – Kentucky

January 3, 2000

RECEIVED
JAN 0 3 2000
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 BlueStar Networks, Inc. with BellSouth Telecommunications, Inc. Pursuant to the Telecommunications Act of 1996
PSC 99-498

Dear Helen:

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

Sincerely,

Creighton E. Mershon, Sr.

Enclosure

cc: Parties of Record

191476

RECEIVED
JAN 0 3 2000
PUBLIC SERVICE COMMISSION

COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

In Re:	)	
	)	
Petition for Arbitration of BlueStar Networks, Inc. with BellSouth Telecommunications, Inc. Pursuant To the Telecommunications Act of 1996	)	Case No. 99-498 Filed: January 3, 2000

BELLSOUTH TELECOMMUNICATIONS, INC.'S RESPONSE TO BLUESTAR NETWORKS, INC.'S PETITION FOR ARBITRATION

Pursuant to 47 U.S.C. § 252(b)(3) of the Telecommunications Act of 1996, ("the Act") BellSouth Telecommunications, Inc. ("BellSouth") responds to the Petition for Arbitration ("Petition") filed by BlueStar Networks, Inc. ("BlueStar"), and states:

I. INTRODUCTION

1. Sections 251 and 252 of the Act encourage negotiations between parties to reach voluntary local interconnection agreements. Section 251(c)(1) of the 1996 Act requires incumbent local exchange companies to negotiate the particular terms and conditions of agreements to fulfill the duties described in Sections 251(b) and 251(c)(2-6).

2. Since passage of the 1996 Act on February 8, 1996, BellSouth has successfully conducted negotiations with numerous competitive local exchange carriers ("CLECs"), and the Kentucky Public Service Commission ("Commission") has approved numerous agreements between BellSouth and CLECs. The nature and extent of these

agreements vary, depending upon the individual needs of the companies, but the conclusion is inescapable. BellSouth has a record of embracing competition and reaching agreement to interconnect on fair and reasonable terms.

3. The 1996 Act allows a party to petition a state commission for arbitration of unresolved issues.[1] The petition must identify the issues resulting from the negotiations that are resolved, as well as those that are unresolved.[2] 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 to those issues; and (3) any other issue discussed and resolved by the parties."[3] 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.[4] The 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.[5]

II. SPECIFIC RESPONSES

4. Because BlueStar has not stated the allegations of its Petition in numbered paragraphs, it is difficult for BellSouth to address the contentions of BlueStar by admitting or denying the allegations of the Petition in the manner that would typically be utilized. Therefore, BellSouth will attempt herein to admit or deny the allegations of the

[1] 47 U.S.C. § 252(b)(2).
[2] *See generally*, 47 U.S.C. §§ 252(b)(2)(A) and 252 (b)(4).
[3] 47 U.S.C. § 252(b)(2).
[4] 47 U.S.C. § 252(b)(3).
[5] 47 U.S.C. § 252(b)(4).

Petition on a section by section basis. In any instance in which BellSouth does not respond to a specific factual allegation of BlueStar, that allegation is hereby denied.

STATEMENT OF FACTS

5. BellSouth is without knowledge of BlueStar's allegations as to its address, the areas in which it does business and the nature of its business.

6. BellSouth admits that it is an incumbent local exchange carrier as that term is defined in the Act. BellSouth denies that it is a monopoly provider of local exchange services.

7. BellSouth admits that the factual rendition set forth in Section B of BlueStar's petition is generally accurate. However, BellSouth notes that the agreement between BellSouth and BlueStar that expired December 31, 1999 does not apply in BellSouth's entire region, but rather in eight of the nine states in its region.

8. BellSouth admits that the document attached to the Petition as Exhibit A appears to be as described by BlueStar. BellSouth admits that the document attached to the Petition as Exhibit B purports to be a matrix of the parties' positions on unresolved issues. BellSouth denies that Exhibit B accurately and completely sets forth BellSouth's positions on the issues.

JURISDICTION

9. BellSouth admits that this Commission has jurisdiction to arbitrate this matter pursuant to the Act. BellSouth also admits the allegations that the "window for requesting arbitration" opened on November 12, 1999 and closed on December 7, 1999.

DESIGNATED CONTACTS

10. BellSouth is without knowledge of the designated contacts identified as representing BlueStar. BellSouth admits that the negotiators for BellSouth are as alleged in the Petition.

ISSUES FOR ARBITRATION

11. In the main, this section of BlueStar's Petition does not set forth specific factual allegations, but rather a statement of each issue along with BlueStar's position and what BlueStar claims to be BellSouth's position. BellSouth will respond by stating each issue as framed by BlueStar (although, in some instances, the issues are not framed in the most appropriate manner), and by stating its position on each issue. In some instances, BellSouth's statement of position is fairly consistent with BlueStar's description of BellSouth's position. In other instances, the difference between BlueStar's rendition of BellSouth's position and BellSouth's actual position is pronounced. As to any factual allegations in this portion of the Petition that BellSouth does not specifically respond to, these allegations are denied.

Issue 1: How should an unbundled copper loop ("UCL") be defined?

12. UCL is defined as a dry copper loop of up to 18,000 feet, which may have up to 6,000 feet of bridge tap and has resistance of 1300 ohms or less. This definition is consistent with industry standards for "resistance design" (RD) loops. To change this definition would compromise the integrity of BellSouth's network and create problems in maintaining and repairing these loops to industry standards. However, BellSouth believes that the real issue is not the definition of UCL, but rather BlueStar's desire to

obtain loops that do not meet this definition. BellSouth is willing to provide copper loops longer than 18,000 feet, but can only ensure that these loops have electrical continuity and balance between tip and ring. BellSouth is in the process of operationalizing a "long" dry copper loop. In addition, BellSouth will offer optional line conditioning for the removal of load coils. This new loop type is expected to be available in early 2000.

Issue 2: Should BellSouth be required to conduct a trial of line sharing and electronic ordering and provisioning of line sharing now?

13. No. BlueStar's request for an immediate trial of line sharing electronic ordering and provisioning implies that these capabilities are presently available and that BellSouth is simply withholding them from BlueStar. To the contrary, BellSouth does not yet have a line sharing unbundled network element nor the associated electronic ordering and provisioning capabilities with which to conduct a meaningful trial. In order to develop these elements, BellSouth must analyze the CLEC's specific needs, make modifications to systems, make vendor selections for required hardware (especially the splitter devices), and develop methods and procedures. BellSouth will do so consistent with the time frames set forth by the FCC for implementing line sharing.

14. It is possible that a technical trial will be an appropriate means to test the equipment and procedures developed by BellSouth. However, BellSouth does not know whether such a test is needed, or whether any such test can best be performed with a specific CLEC as a trial partner or, alternatively, with a neutral third-party as a trial partner. Moreover, even if it were appropriate to conduct a line sharing trial with a particular CLEC, it is not necessary or practical to conduct a trial with every CLEC. For

these reasons, it would be premature for BellSouth to commit to a line sharing trial with any particular CLEC at this time. Further, based on the information available to BellSouth, it appears that BlueStar would be a poor choice of trial partner since it currently does not have in place the electronic interfaces that are required. Thus, BlueStar has demanded an immediate test even though it apparently lacks the current capacity to participate in such a test.

Issue 3: Should BellSouth be required to provide design layout records ("DLRs") or its equivalent on rejected orders or, in the alternative, be required to provide BlueStar with the DLR or its equivalent on the best available loop at that premise?

15. It is not possible to provide a DLR on rejected loops because the DLR does not exist until the appropriate design work is performed during the provisioning cycle. In the ordering process, a CLEC requests a particular type of loop through the service inquiry process, and that request is accepted or rejected based upon established criteria. If the requested facility is available, the Local Service Request ("LSR") is sent to the LCSC that issues a Firm Order Commitment ("FOC") to the CLEC, and the provisioning process begins. At the conclusion of the provisioning process, a DLR is created. Thus, if a request is rejected, the provisioning process (of which the DLR is a product) never begins. However, BellSouth does provide detailed information during the service inquiry process as to why a loop is rejected. This information would include remarks such as "customer is out of range," "location is served by fiber only" or "load

coils are present." This will provide the CLEC with information that it can use to determine what, if any, actions can be taken to condition the loop for its xDSL service.

16. BellSouth can not agree to choose on behalf of BlueStar the "best available loop" when the type of loop that has been requested is unavailable. Choosing the "best" loop requires a judgment that can only be made by BlueStar based on information that is solely at its disposal. It is simply not practical for BlueStar to delegate this business decision to BellSouth. Further, even if BellSouth could perform this function, it should only do so if BlueStar compensates BellSouth for undertaking this labor.

Issue 4: When should BellSouth provide the DLR to BlueStar?

17. The DLR is not available until after the Firm Order Commitment ("FOC") is sent to the CLEC. The FOC tells the CLEC that an accurate order has been submitted to the appropriate BellSouth work centers in order to provision the loop on the due date. One of the BellSouth work centers (Circuit Provisioning Group) creates the DLR and sends it to the CLEC prior to the due date. However, once a mechanized interface to the loop makeup information is available, the CLEC can get most of the DLR information prior to even issuing the order.

Issue 5: Should BellSouth be required to implement a process whereby xDSL loop orders that are rejected are automatically converted to orders for UCLs without requiring BlueStar to resubmit the order?

18. BellSouth is developing this capability as an interim process until the loop qualification interface is developed. The interim process is expected to be available by the end of January 2000.

Issue 6: Should BellSouth be required to disclose the reasons a loop is unavailable?

19. As stated above in response to Issue 3, BellSouth provides detailed information during the service inquiry process as to why a loop is rejected. This information will tell the CLEC what, if any, actions can be taken to condition the loop for xDSL service.

20. BlueStar is mistaken in its contention that BellSouth is prohibited by any FCC order from denying the provisioning of a loop unless BellSouth "first justifies that denial before the Commission." The situation at issue occurs when a CLEC request for a loop is denied because ILEC facilities are not available. No FCC order requires prior State Commission approval prior to denial in this circumstance.

Issue 7: When should BellSouth be required to provide real time access to OSS for loop makeup information qualification, preordering, provisioning, repair/maintenance and billing?

21. The FCC's UNE Remand Order states that the pre-ordering function includes access to loop qualification information. This requirement is effective 120 days after publication in the Federal Register. Specifically, an incumbent LEC must provide to the requesting carrier the same information that is available to the incumbent.

BellSouth will comply with the requirements of the FCC's UNE Remand Order within the timeframe provided by the Order. During negotiations, it was unclear what specific pre-ordering functions BlueStar wishes to obtain. It is likewise unclear from BlueStar's statement of its position whether it is now demanding pre-ordering functions that are not required by the FCC Order. If so, BellSouth declines to provide functions that are beyond with the requirements of the FCC Order.

Issue 8: Should the interconnection agreement include a time interval for BellSouth provisioning of xDSL loops and UCLs?

22. The interconnection agreement should not include a specific time interval for the provision of xDSL loops and UCLs. A service inquiry (which is required on both BellSouth's retail orders and UNEs of this complexity) is necessary to determine whether network facilities are available to provide the desired service. BellSouth has committed that it will exert its best efforts to respond to the service inquiry within the 3-5 business day period. However, the complexity of individual requests varies widely, and therefore some inquiries may require a longer period of time to be evaluated by BellSouth's field forces and/or engineers. Given this, BellSouth can not guarantee that the service inquiry will be completed within the target interval in every instance.

Issue 9: Can xDSL loops retain repeaters at the ALEC's option?

23. This issue is not ripe for arbitration because BlueStar did not raise the issue at any time during its negotiations with BellSouth. Moreover, the issue as framed by BlueStar makes no sense. xDSL loops are not equipped with repeaters. Thus,

BlueStar appears to contend that these loops should "retain" equipment that does not exist on these loops.

Issue 10: Should the interconnection agreement include expedited procedures for repairs?

24. No. The Act requires that BlueStar be provided nondiscriminatory repair services. BlueStar's demand for expedited repair services goes beyond the requirements of the Act, and is, therefore, not a proper subject for arbitration.

25. Nevertheless, BellSouth is always willing to discuss (outside of the context of negotiations pursuant to the Act) any reasonable proposal for enhanced customer service, including the development of expedited procedures for repair. However, BellSouth is concerned that expediting the repair service to one CLEC's customer ahead of another CLEC's customer or a BellSouth retail customer raises difficult issues that would have to be resolved. In any event, if an expedited process required additional work beyond that normally involved in the repair process, the service contract for this expedited service should include the costs of that additional work. BellSouth anticipates that these costs would be substantial.

Issue 11: What are the TELRIC-based recurring and nonrecurring rates for xDSL loops and for a UCL?

26. BellSouth's proposed rates are cost based. BlueStar's allegations that BellSouth's cost studies include unnecessary activities are unfounded. Cost studies have not been previously filed for certain types of loops that BellSouth will be offering in the

future based upon FCC orders. Appropriate cost studies will be developed for these elements as well.

Issue 12: What is the TELRIC-based recurring and nonrecurring rate for the high frequency portion of a shared loop?

27. Subsequent to the filing of BlueStar's Arbitration Petition, the FCC released its line sharing Order. BellSouth will propose a rate for line sharing that is consistent with this Order.

Issue 13: In lieu of reciprocal compensation, should the parties be required to adopt bill and keep for transport and termination of local, intraLATA and interLATA voice traffic?

28. No. Non-local traffic, such as intraLATA toll traffic and interLATA traffic (including traffic bound for Internet Service Providers), is not subject to the reciprocal compensation obligations contained in Section 251 of the Act. Therefore, compensation for such traffic is not an appropriate issue for a Section 252 arbitration. Reciprocal compensation applies only when local traffic is terminated on either party's network (regardless of the type of switch deployed). One of the Act's basic interconnection rules is contained in 47 U.S.C. § 251(b)(5). That provision requires all local exchange carriers "to establish reciprocal compensation arrangements for the transport and termination of telecommunications." Section 251(b)(5)'s reciprocal compensation duty arises, however, only in the case of local calls. In fact, in its August 1996 Local Interconnection Order (CC Docket No. 96-98), paragraph 1034, the FCC

made it clear that reciprocal compensation rules do not apply to interstate or interLATA traffic such as interexchange traffic.

29. As to local traffic, the FCC has promulgated rules that provide the circumstances under which a bill-and-keep arrangement is appropriate as a form of reciprocal compensation (47 CFR §§ 51.701 – 51.717). Specifically, § 51.713 provides that a state commission may only impose bill-and-keep arrangements "if the state commission determines that the amount of local telecommunications traffic from one network to the other is roughly balanced with the amount of local telecommunications traffic flowing in the opposite direction, and is expected to remain so, and no showing has been made pursuant to § 51.711(b)." Based on the information available to it, BellSouth believes that the requirements of § 51.713 cannot be met, and, therefore, bill-and-keep cannot be ordered. BellSouth proposes that each party compensate the other for interconnection of local traffic at elemental UNE rates.

Issue 14: Should the interconnection agreement include the liquidated damages provision and performance measures recently adopted by the Public Utility Commission of Texas?

30. No. BellSouth has developed a set of performance measurements and associated systems over the last several years to demonstrate the non-discriminatory provision of service to CLECs. Adopting the Texas measurements would require replacing the BellSouth measurements at considerable effort and expense with no apparent benefit. BellSouth has voluntarily offered the performance measurements that it has developed to BlueStar during negotiations. BellSouth does not believe that the

Act contemplates the imposition of alternative performance measurements or enforcement mechanisms to which an incumbent does not agree. Moreover, this Commission has previously declined to order "penalties" of the sort requested by BlueStar. Nevertheless, BellSouth is developing a set of enforcement mechanisms jointly with the FCC and will make these available upon acceptance by the FCC.

Issue 15: Should the interconnection agreement include a dispute resolution provision that would create a permanent arbitrator agreed on by the parties and serving under the auspices of the American Arbitration Association ("AAA")?

31. No. BellSouth opposes the designation of a permanent arbitrator to serve under the auspices of the American Arbitration Association. Although BellSouth has included Alternative Dispute Resolution ("ADR") provisions in prior Interconnection Agreements, these provisions have proven unworkable. Specifically, the use of a commercial arbitrator to resolve possible future disputes is costly, unnecessary, and less likely to lead to a well-informed decision. A commercial arbitrator without experience in telecommunications cannot have the expertise to resolve complex issues that arise in the context of Interconnection Agreements. Moreover, an approved Arbitrated Agreement necessarily reflects policy decisions made by the Commission that approves the Agreement. A commercial arbitrator cannot resolve future disputes under the Agreement without impinging upon the Commission's power to make policy decisions in light of the particular public interest concerns that pertain in the state.

32. BellSouth submits that if this Commission is inclined to adopt a form of ADR, then the best way to do so would be to provide for an abbreviated, expedited proceeding before the Commission. The Commission has both the technical expertise and the knowledge of the relevant policy concerns necessary to resolve any disputes that may arise, qualities that a commercial arbitrator would almost certainly lack.

Issue 16: Should the interconnection agreement include a provision concerning access to riser cable in buildings that would allow BlueStar to use its digital subscriber line access multiplexer (DSLAM) as the demarcation point in the building and would allow BlueStar to cross-connect directly to the riser cable network interface device (NID)?

33. No. BellSouth believes that BlueStar should not be allowed to use its DSLAM as the demarcation point in buildings nor be allowed to cross-connect directly to BellSouth's riser cable and NID. Demarcation points, wherever they are located, establish where one service provider's network ends (and thus its responsibilities for provisioning, maintenance, and repair) and another service provider's network begins. BellSouth believes some mutually accessible device such as a connector block is a far more appropriate demarcation device than a DSLAM.

34. Because BellSouth's network terminating wire and riser cable constitute sub-loop elements, BlueStar should obtain access to network terminating wire and riser cable in the same manner as it obtains access to any other network element—by placing an order with BellSouth and paying a just and reasonable price for the element.

TIMING AND PROCESS

STANDARD OF REVIEW

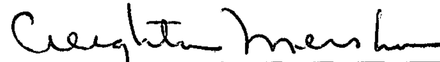
CONCLUSION

In response to Sections F through H of the Petition, BellSouth states that these sections do not contain factual allegations to which a response is required. To the extent that they are intended to do so, however, BellSouth denies these allegations.

WHEREFORE, BellSouth respectfully requests that the Commission approve the various positions of BellSouth set forth herein and order that these positions be included in an Arbitrated Agreement between the parties.

Respectfully submitted this 3rd day of January, 2000.

BELLSOUTH TELECOMMUNICATIONS, INC.



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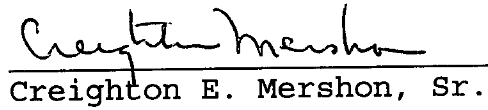
Atlanta, GA 30375
(404) 335-0710

COUNSEL FOR BELLSOUTH
TELECOMMUNICATIONS, INC.

191260

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 3rd day of January 2000.



Creighton E. Mershon, Sr.

SERVICE LIST - PSC 99-498

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Honorable Frank F. Chuppe
Honorable Kevin J. Hable
Counsel for BlueStar
Wyatt, Tarrant & Combs
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Honorable Henry Walker
Honorable Michael B. Bressman
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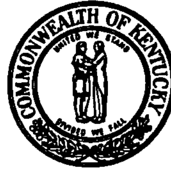

COMMONWEALTH OF KENTUCKY
PUBLIC SERVICE COMMISSION
730 SCHENKEL LANE
POST OFFICE BOX 615
FRANKFORT, KY. 40602
(502) 564-3940

December 15, 1999

To: All parties of record

RE: Case No. 1999-498
BLUESTAR NETWORKS, INC.
(Interconnection Agreements) ARBITRATION WITH BELLSOUTH

This letter is to acknowledge receipt of initial application in the above case. The application was date-stamped received December 7, 1999 and has been assigned Case No. 1999-498. 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,

Stephanie Bell
Secretary of the Commission

SB/sh

cc: Parties in case # 98-587

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RECEIVED
DEC 07 1999
PUBLIC SERVICE COMMISSION

COMMONWEALTH OF KENTUCKY
BEFORE THE
PUBLIC SERVICE COMMISSION

In Re:	)	
	)	
Petition for Arbitration of BlueStar Networks, Inc. with BellSouth Telecommunications, Inc. Pursuant to the Telecommunications Act of 1996	)	**Case No.** 99-498

PETITION FOR ARBITRATION OF BLUESTAR NETWORKS, INC.

RECEIVED
DEC 07 1999
PUBLIC SERVICE COMMISSION

A. INTRODUCTION

BlueStar Networks, Inc. ("BlueStar"), by its undersigned attorneys, pursuant to Section 252(b) of the Communications Act of 1934, as amended by the Telecommunications Act of 1996 (the "Act"),[1] hereby petitions the Commonwealth of Kentucky Public Service Commission (the "Commission") to arbitrate certain unresolved issues in the interconnection negotiations between BlueStar and BellSouth Telecommunications, Inc. ("BellSouth").

BlueStar requests that the Commission invoke its authority to conduct an evidentiary hearing concerning all remaining unresolved issues and that BlueStar be granted the right to conduct discovery on BellSouth's positions in advance of such hearing.[2] In support of this Petition, and in accordance with Section 252(b) of the Act, BlueStar states as follows:

B. STATEMENT OF FACTS

BlueStar is a Tennessee corporation, having its principal place of business at the L&C Tower, 401 Church Street, 24th Floor, Nashville, Tennessee 37219. BlueStar is currently

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[1] See 47 U.S.C. § 252(b).

[2] BlueStar requests that a schedule be established for the filing of testimony, exhibits, discovery requests, and responses thereto.

authorized to provide competitive local exchange services in all states in the BellSouth region – Alabama, Florida, Georgia, Louisiana, Kentucky, Mississippi, North Carolina, South Carolina, and Tennessee – and in a number of other states around the country. BlueStar has been certified by the Commission to provide competitive local exchange service in Kentucky.

BlueStar is primarily a provider of telecommunications services using digital subscriber line ("DSL") technology. DSL is reliable, cost-effective, high bandwidth technology that provides dedicated services and allows for the high-speed transfer of data over existing copper telephone lines. DSL also allows an end user to use a telephone line for multiple purposes – data transfers, phone calls, faxes, etc. – at the same time. DSL services can be provided at varying speeds and can be scaled to serve a customer's particular needs.

BellSouth is an "incumbent local exchange carrier" ("ILEC") as defined by the Act at 47 U.S.C. § 251(h). Within its operating territory, BellSouth is a monopoly provider of local exchange services.

On June 30, 1999, BlueStar opted into the interconnection agreement between e.spire Communications and BellSouth and negotiated three amendments. This region-wide agreement and the amendments will expire on December 31, 1999.

Pursuant to the existing agreement and Section 251 of the Act, BlueStar and BellSouth opened negotiations for the renewal of the existing contract on July 1, 1999. BlueStar and BellSouth have held numerous meetings and conference calls to discuss the rates, terms and conditions, and other issues of the interconnection agreement. As a result of these negotiations, the parties have agreed on numerous issues. BlueStar is committed to resolving as many of the

remaining unresolved issues as possible and will notify the Commission of any agreement reached after the filing of this Petition.

Attached as Exhibit A, which is incorporated herein by reference, is a letter dated November 12, 1999 from BellSouth to BlueStar confirming that the arbitration window for these interconnection negotiations opened on November 12, 1999 and closes on December 7, 1999.

Attached as Exhibit B, which is incorporated herein by reference, is a matrix summarizing the issues that BlueStar believes remain unresolved between the parties and the position of the parties as to those unresolved issues.

C. JURISDICTION

Pursuant to Section 252(b) of the Act, a party to a negotiation for interconnection, services or network elements may petition the state commission for arbitration of any unresolved issues when negotiations fail. Section 252(b) allows either party to the negotiation to file a petition requesting such arbitration during the period between the 135th day and the 160th day, inclusive, after the date the incumbent local exchange carrier ("ILEC") received the request for negotiation.

As noted in attached Exhibit A, BlueStar and BellSouth have agreed that the window for requesting arbitration opened on November 12, 1999 and closes December 7, 1999. Accordingly, BlueStar is filing this Petition within the time period established by Section 252(b) of the Act.

D. DESIGNATED CONTACTS

Communications regarding this Petition should be directed to:

Henry Walker
Michael B. Bressman
BOULT, CUMMINGS, CONNERS & BERRY, PLC
P.O. Box 198062
414 Union Street, Suite 1600
Nashville, Tennessee 37219
615-252-2363 (telephone)
615-252-6363 (facsimile)

BellSouth's negotiators for this matter have been:

Steve Klimacek
Susan Arrington
BELLSOUTH TELECOMMUNICATIONS, INC.
675 West Peachtree Street
Room 34P70
Atlanta, Georgia 30375

BlueStar's negotiator for this matter has been:

Norton Cutler
Vice President Regulatory & General Counsel
BLUESTAR NETWORKS, INC.
L & C Tower, 24th Floor
401 Church St.
Nashville, Tennessee 37219

E. ISSUES FOR ARBITRATION

The issues listed below are the unresolved matters between BlueStar and BellSouth. BellSouth and BlueStar have agreed in principle on a number of issues during the negotiations but do not yet have contract language. These issues are not included in the Petition but are reflected in the matrix for this reason. However, if the parties are ultimately unable to reach agreement on contract language to address these issues, BlueStar reserves the right to arbitrate theses issues.

In addition, BlueStar expressly reserves the right to address any issues not discussed herein that are put forth by the Commission, BellSouth or any other party.

GENERAL ISSUES

Issue 1: How should an unbundled copper loop ("UCL") be defined?

BlueStar's Position:

BlueStar believes that a 2-wire UCL should be defined as follows: A 2-wire unbundled copper loop (UCL) for purposes of this section, is a loop that supports the transmission of Digital Subscriber Line (DSL) technologies. The loop is a dedicated transmission facility between a distribution frame, or its equivalent, in a BellSouth central office and the network interface device at the customer premises. A copper loop used for such purposes will meet basic electrical standards such as metallic conductivity and capacitive and resistive balance, and will not include load coils or bridge tap in excess of 2,500 feet in length. The loop may contain repeaters at the CLEC's option. The loop cannot be "categorized" based on loop length and limitations cannot be placed on the length of UCLs. A portion of a UCL may be provisioned using fiber optic facilities and necessary electronics to provide service in certain situations.

BellSouth Position:

BellSouth is unwilling to adopt a definition of the UCL that is broad enough to meet BlueStar's needs. Specifically, BellSouth is unwilling to provide loops over 18 kilofeet or to limit bridge tap to 2,500 feet.

Issue 2: Should BellSouth be required to conduct a trial of line sharing and electronic ordering and provisioning of line sharing now?

BlueStar's Position:

Yes. BellSouth should be required to conduct a trial of line sharing and of operations support system ("OSS") ordering and provisioning of line sharing without delay. The FCC has ordered line sharing.

BellSouth's Position:

No. BellSouth will not negotiate any line sharing issues until after the FCC's line sharing order is released.

ORDERING ISSUES

Issue 3: Should BellSouth be required to provide design layout records ("DLRs") or its equivalent on rejected orders or, in the alternative, be required to provide BlueStar with the DLR or its equivalent on the best available loop at that premise?

BlueStar's Position:

Yes. For those UCL orders that BellSouth rejects, it should provide BlueStar the DLR or the data that was used to determine/reject BlueStar's order. In the alternative, BellSouth should provide BlueStar with the DLR, or its equivalent, of the best available loop at that premise. BlueStar needs this data to determine whether to seek conditioning of the loop or to take other measures to be able to provide xDSL service over the loop.

BellSouth's Position:

The DLR is not available until the loop is actually identified and provisioned to be delivered to the CLECs collocation space. It would impose an undue burden on BellSouth to meet BlueStar's request.

Issue 4: When should BellSouth provide the DLR to BlueStar?

BlueStar's Position:

BlueStar believes that BellSouth should provide the DLR or its equivalent simultaneously with the firm delivery date, if not sooner.

BellSouth's Position:

BellSouth is unwilling to provide DLRs with UCLs in the time frame requested by BlueStar..

Issue 5: Should BellSouth be required to implement a process whereby xDSL loop orders that are rejected are automatically converted to orders for UCLs without requiring BlueStar to resubmit the order?

BlueStar's Position:

Yes. This process should be made available immediately.

BellSouth's Position:

BellSouth states that this type of a process is not available today. It has not committed to a date by which such a system will be available.

Issue 6: Should BellSouth be required to disclose the reasons a loop is unavailable?

BlueStar's Position:

Yes. BlueStar believes that BellSouth is required to disclose the reasons a loop is unavailable. BlueStar believes that the *Advanced Services Order* does not allow BellSouth to deny provisioning a loop unless it first justifies that denial before the Commission.

BellSouth's Position:

No. BellSouth refuses to provide this information because it claims that providing this information is burdensome.

Issue 7: When should BellSouth be required to provide real time access to OSS for loop makeup information qualification, preordering, provisioning, repair/maintenance and billing?

BlueStar's Position:

BlueStar believes that BellSouth should be required to provide a complete operational loop makeup database by July 1, 2000.

BellSouth's Position:

BellSouth refuses to provide a date for access to a database which includes the length of bridge taps and all the data needed to analyze loops.

PROVISIONING ISSUES

Issue 8: Should the interconnection agreement include a time interval for BellSouth provisioning of xDSL loops and UCLs?

BlueStar's Position:

Yes. BellSouth requires a service inquiry process before BellSouth provisions an xDSL loop or a UCL. BlueStar believes there should be a 3-5 day limit on this service inquiry process.

BellSouth's Position:

No. BellSouth is unwilling to commit to this interval and considers it only a goal.

Issue 9: Can xDSL loops retain repeaters at the CLEC's option?

BlueStar's Position:

Yes. BlueStar states that CLECs should be able to retain repeaters. BlueStar asserts that repeaters will not cause technical interference with other loops. BlueStar contends that if BellSouth unnecessarily forces the removal of repeaters, the result will be unwarranted delay and expense. BlueStar views the CLEC option of retaining repeaters as a business decision relating to quality of service that is appropriate for the CLEC and the customer.

BellSouth's Position:

BlueStar is uncertain as to BellSouth's position.

Issue 10: Should the interconnection agreement include expedited procedures for repairs?

BlueStar's Position:

Yes. BellSouth should provide an option for expedited repair orders to have an end user's service repaired as soon as possible rather than have to wait for the standard repair interval in all circumstances.

BellSouth's Position:

No. BellSouth does not offer expedited procedures for repairs.

PRICING ISSUES

Issue 11: What are the TELRIC-based recurring and nonrecurring rates for xDSL loops and for a UCL?

BlueStar's Position:

BellSouth's proposed rates are not cost-based and include numerous activities which would not be required with a mechanized OSS and loop make-up data base. BellSouth uses a mechanized database for itself and does not include any of the manual activities, thus creating a price squeeze.

BellSouth's Position

BellSouth contends that its rates are cost based.

Issue 12: What is the TELRIC-based recurring and nonrecurring rate for the high frequency portion of a shared loop?

BlueStar's Position:

BellSouth has filed a cost study at the FCC which ascribes little or no cost to the high frequency portion of the loop and the installation of its line-shared ADSL. BlueStar believes the Commission should set an interim rate for the high frequency portion of a shared loop consistent with the costs included in its FCC cost study.

BellSouth's Position:

BellSouth refuses to negotiate a rate until after the FCC releases its line sharing order.

BILLING ISSUE

Issue 13: In lieu of reciprocal compensation, should the parties be required to adopt bill and keep for transport and termination of local, intraLATA and interLATA voice traffic?

BlueStar's Position:

Yes. BlueStar believes that the interconnection agreement should provide for bill and keep of all local, intraLATA and interLATA voice traffic that passes through an ATM switch, as long as traffic is within 10% of balance. The party claiming that traffic is out of balance will have the burden of proof.

BellSouth's Position:

No. BellSouth has requested that each party pay reciprocal compensation for all local interconnected traffic, except for ISP traffic, and wants access charges for all interLATA traffic.

PERFORMANCE MEASURES/LIQUIDATED DAMAGES ISSUE

Issue 14: Should the interconnection agreement include the liquidated damages provisions and performance measures recently adopted by the Public Utility Commission of Texas?

BlueStar's Position:

Yes. To incent BellSouth to provide high quality service to BlueStar and allow BlueStar to compete with BellSouth, the interconnection agreement should contain performance standards and liquidated damages provisions that compensate BlueStar for BellSouth's failures to perform. BlueStar believes that the appropriate performance standards and liquidated damages provisions should be those recently adopted by the Public Utility Commission of Texas.

BellSouth's Position:

No. BellSouth has offered its service quality measurements but is unwilling to agree to liquidated damages for failure to meet performance benchmarks. BellSouth has suggested that the interconnection agreement should contain a waiver of all consequential damages between the parties and that the total remedy for any failure on either party's part would be the price paid for any service during the period when it did not work.

DISPUTE RESOLUTION ISSUE

Issue 15: Should the interconnection agreement include a dispute resolution provision that would create a permanent arbitrator agreed on by the parties and serving under the auspices of the American Arbitration Association ("AAA")?

BlueStar's Position:

Yes. There are many possible failures to perform for which no damages can provide an adequate remedy and no injunction issued several months after the failure can rectify the situation either. For these types of breaches, BlueStar proposes the creation of an alternative dispute resolution system which can respond more rapidly than the Commission or a court and save the Commission the time and expense of involvement in the inevitable day to day disputes between BellSouth and BlueStar. BlueStar proposes a dispute resolution clause which would create a permanent arbitrator agreed on by the parties and serving under the auspices of the AAA. The Act contemplates ADR to resolve issues.

BellSouth's Position:

No. BellSouth opposes ADR.

Issue 16: Should the interconnection agreement include a provision concerning access to riser cable in buildings that would allow BlueStar to use its digital subscriber line access multiplexer ("DSLAM") as the demarcation point in the building and would allow BlueStar to cross-connect directly to the riser cable network interface device ("NID")?

BlueStar's Position:

Yes. BlueStar believes that its DSLAM should serve as the demarcation point for its access to the building. BlueStar should not have to install a separate NID between the DSLAM and the riser cable NID because it is not necessary for the operations or security of the network. In addition, BlueStar should be allowed to cross-connect directly to the riser cable NID without incurring the $300 nonrecurring charge currently imposed by BellSouth.

BellSouth's Position:

No. BellSouth would not allow BlueStar's DSLAM to serve as the demarcation point for BlueStar's access to the building. BellSouth insists that BlueStar install a separate NID. Moreover, BellSouth insists on performing the cross-connect to the riser cable NID itself and imposing a $300 nonrecurring charge on BlueStar.

F. TIMING AND PROCESS

Section 252(b)(4)(c) of the Act requires that the Commission render a decision in this proceeding not later than nine months after BellSouth received BlueStar's request for negotiations. BlueStar requests that the Commission convene a status conference as soon as possible to establish a procedural schedule for the submission of testimony and discovery requests and the conduct of the evidentiary hearing in this matter.

G. STANDARD OF REVIEW

Sections 251 and 252 of the Act and the rules and regulations adopted by the Federal Communications Commission (the "FCC") in the Local Competition Order establish the standards by which this arbitration must be resolved. See 47 U.S.C. §§ 251, 252; Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, CC Docket No.96-98, First Report and Order, 11 FCC Rcd 13042 (1996) ("Local Competition Order"). Section 252(c) of the Act requires a state commission resolving open issues through arbitration to:

(1) ensure that such resolution and conditions meet the requirements of Section 251, including the regulations prescribed by the [FCC] pursuant to Section 251; [and]

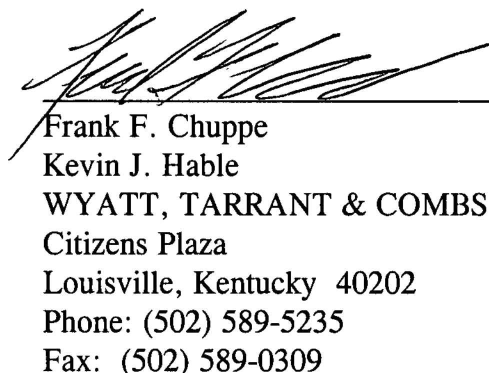
(2) establish any rates for interconnection, services, or network elements according to subsection (d) [of Section 252].

The Commission must make an affirmative determination that the rates, terms, and conditions that it prescribes in this arbitration proceeding for interconnection are consistent with the requirements of Sections 251(b)-(c) and Section 252(c)-(d) of the Act.

H. CONCLUSION

For the foregoing reasons, BlueStar respectfully requests that the Commission arbitrate this matter in accordance with the Act; upon hearing this matter and receiving evidence regarding the issues contained in this Petition, require incorporation of BlueStar's position on each disputed issue into a successor interconnection agreement to be executed between BlueStar and BellSouth; and for such other relief as is just and proper.

Respectfully submitted this 7th day of December, 1999.



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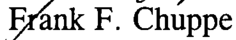
615-244-2582 (telephone)
615-252-2380 (facsimile)

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served **via hand delivery** this 7th day of December, 1999, upon Creighton E. Mershon, General Counsel, BellSouth Telecommunications, Inc., 601 W. Chestnut Street, P.O. Box 32410, Louisville, Kentucky 40232.



Frank F. Chuppe

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@ **BELLSOUTH**

BellSouth Interconnection Services
675 West Peachtree Street
Room 34P70
Atlanta, Georgia 30375

Susan M. Arrington
(404) 927-7513
Fax: (404) 529-7839

November 12, 1999

Mr. Norton Cutler
BlueStar Networks, Inc.
401 Church Street
24th Floor
Nashville, TN 37219

Dear Norton:

This letter is in response to your November 1, 1999 letter following up on the status of our negotiations for a new agreement between BellSouth and BlueStar. My records indicate that the arbitration window for the negotiation period between BellSouth and BlueStar will open on November 12, 1999 and will remain open for a twenty-five day period, thus closing on December 7, 1999. Please let me know if your records indicate otherwise.

As we continue to move forward in our negotiations, I believe that we have reached agreement and/or interim solutions on some of the issues listed in your November 1, 1999 letter.

Item No. 5 in your letter requested access to riser cable. As we have discussed during our negotiation meetings, BellSouth is currently working to make this available in all nine states. Once it becomes available, BellSouth is willing to amend BlueStar's contract to include the rates, terms and conditions for allowing BlueStar access to riser cable. However, in the meantime, BellSouth is willing to offer BlueStar access to riser cable in the state of Tennessee on interim rates, terms and conditions that are outlined in the attached amendment. Please review the proposed amendment and provide me with your comments. If you agree with this language, please sign two original copies and return both to me for execution on behalf of BellSouth. BellSouth would also ask that BlueStar provide a list of all of the existing riser cable that it has in place today so that we can correct our records.

Item No. 6 addresses electronic bonding capabilities for ordering XDSL compatible loops and UCLs. BellSouth will offer electronic ordering capabilities for DS1 and DS3 as part of its OSS'99 which is scheduled to be released in mid December 1999. I am

EXHIBIT A

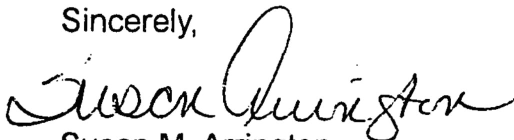
still gathering information on BellSouth's future plans for electronic ordering capabilities for other services.

The other part of Issue 6 in your letter deals with access to a loop make up database that is not tied to telephone numbers. At this time, BellSouth offers access to its Loop Qualification Database. However, this database is based on telephone numbers. Scott Christian will be providing you the details on how BlueStar can access this database.

Item No. 9 on your list with respect to performance measures has been resolved subject to BlueStar's review of Attachment 9 of the BellSouth standard interconnection agreement.

Please let me know if you disagree with the status on any of the above listed issues. During our last conference call we had mentioned trying to schedule another meeting to review the outstanding issues. Please call me at your earliest convenience to finalize the date and time for this meeting. I can be reached at (404) 927-7513.

Sincerely,



Susan M. Arrington
Manager - Interconnection Services/Pricing

Enclosures

AMENDMENT TO
AGREEMENT BETWEEN
BELLSOUTH TELECOMMUNICATIONS, INC.
AND BLUESTAR NETWORKS, INC.
DATED JUNE 30, 1999

Pursuant to this Agreement (the "Amendment"), BlueStar Networks, Inc. ("BlueStar") and BellSouth Telecommunications, Inc. ("BellSouth") hereinafter referred to collectively as the "Parties" hereby agree to amend that certain Agreement ("the Agreement") between BellSouth and BlueStar dated June 30, 1999.

NOW THEREFORE, in consideration of the mutual provisions contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, BlueStar and BellSouth hereby covenant and agree as follows:

1. As of the effective date of this Amendment, BellSouth will provide, and BlueStar will accept and pay for Unbundled Sub-Loop Riser (USL-R) cable in the state of Tennessee at the following rates, terms and conditions:

1. **Unbundled Sub-loop Riser (USL-R)**

1.1 **Definition**

1.2 BellSouth will provide BlueStar Unbundled Sub-Loop Riser (USL-R). USL-R is the riser cable portion of BellSouth's loop distribution facility that extends from BellSouth's point -of-entry into a building (e.g., equipment closet, terminal room, etc.) to the NID on a particular floor or office space in multiunit premises. The Riser Cable is located on BellSouth's side of the demarcation point in multiunit premises, which shall be established consistent with the rules of the FCC promulgated in Docket 88-57. Unbundled Sub-Loops will be provisioned as 2-wire or 4-wire circuits and will include a NID.

1.3 To obtain access to the USL-R, established as BellSouth's pursuant to Section 1.2 herein, the BellSouth technician will install a cross-connect panel and place cross-connects from the panel to the USL-R requested by BlueStar. The BellSouth technician will label the panel so that BlueStar can identify which terminal they should connect their feeder facilities to on the BellSouth panel. BlueStar will place a cross-connect panel (or similar facilities) in the equipment room of the customer premises (where BellSouth's outside loop distribution facility connects to BellSouth's riser cable facilities) for the purpose of providing an interface point for BlueStar's feeder facilities. Bluestar will then connect to the BellSouth provided cross-connect panel that has been labeled by BellSouth for BlueStar's use in accessing the USL-Rs.

1.4 The Unbundled Sub-Loop may be cooper twisted pair, coax cable, or single or multi-mode fiber optic cable. A combination that includes two or more of these media is also possible. If BlueStar requires a copper twisted pair Unbundled Sub-Loop in instances where the Unbundled Sub-Loop for services that BellSouth offers is other than a copper facility, BellSouth will provide that media if those facilities exist.

1.5 **Requirements for All Unbundled Sub-Loops**

1.5.1 Unbundled Sub-Loop shall be capable of carrying all signaling messages or tones needed to provide telecommunications services.

1.5.2 Unbundled Sub-Loop shall support functions associated with provisioning, maintenance and testing of Unbundled Sub-Loop itself, as well as provide necessary access to provisioning, maintenance and testing functions for Network Elements to which it is associated.

1.5.3 Unbundled Sub-Loop shall be equal to or better than all of the applicable requirements set forth in the following technical references:

1.5.4 Bellcore TR-TSY-000057, "Functional Criteria for Digital Loop Carrier Systems:" and

1.5.5 Bellcore TR-NWT-000393, "Generic Requirements for ISDN Basic Access Digital Subscriber Lines."

1.6 **Interface Requirements**

1.6.1 Unbundled Sub-Loop shall be equal to or better than each of the applicable interface requirements set forth in the following technical references:

1.6.2 Bellcore TR-NWT-000049, "Generic Requirements for Outdoor Telephone Network Interface Devices, " issued December 1, 1994;

1.6.3 Bellcore TR-NWT-000057, "Functional Criteria for Digital Loop Carrier Systems," issued January 2, 1993;

1.6.4 Bellcore TR-NWT-000393, "Generic Requirements for ISDN Basic Access Digital Subscriber Lines."

1.6.5 Bellcore TR-NWT-000253, SONET Transport Systems: Common Criteria (A Module of TSGR, FR-NWT-000440), Issue 2, December 1991).

2. The interim rates for the Unbundled Sub-Loop Riser Cable are set forth below:

UNBUNDLED RISER CABLE – USL-R (Tennessee Only)	
Recurring, per month, per 2-wire pair	$2.06
Nonrecurring – First	$390.17
Nonrecurring – Additional, each	$293.26

3. All of the other provisions of the Agreement dated June 30, 1999 shall remain in full force and effect.

4. Either or both of the Parties is authorized to submit this Amendment to the appropriate state Commissions for approval subject to Section 252(e) of the Federal Telecommunications Act of 1996.

IN WITNESS WHEREOF, the Parties hereto have caused this Amendment to be executed by their respective duly authorized representatives on the date indicated below.

BellSouth Telecommunications, Inc.

By: ______________________

Name: Jerry D. Hendrix

Title: Senior Director

Date: ______________________

BlueStar Networks, Inc.

By: ______________________

Name: Norton Culter

Title: Vice President Regulatory and General Counsel

Date: ______________________

BlueStar/BellSouth Arbitration Issues

Arbitration Issue	BlueStar's Position	BellSouth's Position
1. Definition of the unbundled copper loop (UCL).	The definition of UCL should include loops greater than 18 kilofeet with no load coils or bridge taps in excess of 2500 feet. BlueStar will pay the TELRIC cost of removing load coils on loops greater than 18 kilofeet.	BellSouth is unwilling to include loops greater than 18 kilofeet in the UCL definition.
2. Trial of line sharing, and of electronic ordering and provisioning of line shared loops.	The FCC requires line sharing. BellSouth should be required to provide a trial of line sharing, and the electronic ordering and provisioning of line sharing without delay.	BellSouth will not conduct a trial of line sharing and the supportive OSS until the FCC's line sharing order is issued.
3. Receipt of design layout record (DLR) on rejected orders.	For those UCL orders that BellSouth rejects due to either the loop length or testing, BellSouth should provide BlueStar a copy of the DLR or other data that was used to determine/reject BlueStar's order. In the alternative, BellSouth should provide BlueStar with the DLR of the best available loop at that premise.	The DLR is not available until the loop is actually identified and provisioned to be delivered to the CLEC's collocation space. BellSouth contends that it would impose an undue burden to determine the next best available loop or other reasons to reject the order.
4. Timely receipt of DLR.	The DLR should be sent to BlueStar simultaneously with the firm delivery date if not sooner.	BellSouth is unwilling to provide DLRs in the time frame required by BlueStar.
5. Conversion of rejected xDSL orders to UCL orders.	BellSouth should implement a process whereby xDSL orders that are rejected will be automatically converted to UCLs and worked as such without requiring BlueStar to resubmit the order.	BellSouth is unwilling to commit to a date by which this system will be available.
6. Disclosure of the reasons a loop is unavailable.	BellSouth is required to disclose such information.	BellSouth's position is that providing this information is too burdensome.
7. Electronic Access to Loop Makeup Database.	This is a requirement of the FCC's UNE Remand Order, and BlueStar understands that BellSouth is working to make electronic access to such a	BellSouth has agreed to make its current telephone number-oriented loop makeup database available now. BellSouth will make this

EXHIBIT B

Arbitration Issue	BlueStar's Position	BellSouth's Position
	database available. BellSouth should be willing to commit to a date by which all the features necessary to evaluate a loop will be available in an electronic form.	database available for searching without telephone numbers by 3/1/00 and its LFACs database available by 7/1/00. However, BellSouth is unwilling to commit to a date by which all these features will be available.
8. Provisioning Intervals.	BellSouth requires a service inquiry prior to provisioning an xDSL or UCL loop. BlueStar believes there should be a 3-5 day limit on this process.	BellSouth is unwilling to commit to this interval and considers it only a goal.
9. BlueStar option to retain repeaters on xDSL loops.	BlueStar should have the option to retain repeaters on xDSL loops. This will not cause technical interference with other loops. The unnecessary removal of such repeaters will result in unwarranted expenses and delays. BlueStar should have this ability so it can make business decisions based upon the needs of the customer.	BellSouth's position is unknown.
10. Expedited procedures for repairs.	BellSouth should provide an option for expedited repair orders to have its end user's service repaired as soon as possible in lieu of the standard repair interval.	BellSouth does not offer expedited procedures for repairs.
11. Price for xDSL & UCL loops.	BlueStar believes that BellSouth's recurring and non-recurring rates for an advanced services loop do not comply with the FCC's TELRIC pricing rules.	BellSouth believes its rates are cost based.
12. Price of the high frequency portion of a shared loop.	BellSouth has filed a cost study that ascribes little or no recurring or nonrecurring cost to the high frequency portion of the loop. The Commission should set an interim rate consistent with the cost study.	BellSouth refuses to negotiate a rate until after the FCC line sharing order is releases.
13. Bill and keep.	BlueStar believes the agreement should provide for bill and keep of all local,	BellSouth requests that each party pay reciprocal compensation for all local

Arbitration Issue	BlueStar's Position	BellSouth's Position
	intraLATA and interLATA voice traffic which passes through an ATM switch, as long as such traffic is within 10% of balance (bill and keep)	interconnected traffic, except for ISP traffic, and wants access charges for all interLATA traffic.
14. Performance Measurements and Liquidated damages	Liquidated damages should be available on all performance measurements where BellSouth does not meet the standard performance interval. The performance measurements and enforcement mechanisms recently adopted by the Texas Commission should be adopted by this Commission.	BellSouth has offered its service quality measurements but is unwilling to agree to liquidated damages for failure to meet performance benchmarks.
15. Alternative dispute resolution (ADR).	Disputes arising under the agreement should be handled in private arbitration proceedings on an expedited basis with each party retaining its right to appeal the arbitration decision to the appropriate commission.	BellSouth opposes ADR.
16. Riser cable access.	BlueStar should be allowed to use its DSLAM as the demarcation point for its access to the building. BlueStar should not be required to install a separate NID between its DSLAM and the riser cable NID. BlueStar also should be allowed to cross-connect directly to the riser cable NID without incurring BellSouth's $300 nonrecurring charge.	BellSouth will not allow BlueStar's DSLAM to serve as the demarcation point for BlueStar's building access. BellSouth insists that BlueStar install a separate NID and that BellSouth itself performs the cross-connect to the riser cable NID for a $300 nonrecurring cost.

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