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OCT 15 2004
PUBLIC SERVICE COMMISSION

October 15, 2004

Hon. Beth O'Donnell
Executive Director
Public Service Commission
211 Sower Blvd.
P. O. Box 615
Frankfort, KY 40601

Re: ***In the matter of Joint Petition for Arbitration of NewSouth Communications Corp., NuVox Communications, Inc., KMC Telecom V, Inc., KMC Telecom III LLC, and Xspedius Communications, LLC on Behalf of Its Operating Subsidiaries, Xspedius Management Co. Switched Services, LLC, Xspedius Management Co. of Lexington, LLC, and Xspedius Management Co. of Louisville, LLC of an Interconnection Agreement with BellSouth Telecommunications, Inc. Pursuant to Section 252(b) of the Communications Act of 1934, as Amended, before the Public Service Commission of the Commonwealth of Kentucky, Case No. 2004-00044***

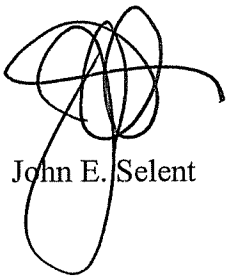
Dear Ms. O'Donnell:

Pursuant to the revised procedural order issued by the Commission on July 22, 2004, the joint petitioners, New Souith Communications Corp., NuVox Communications, Inc., KMC Telecom V, Inc., KMC Telecom III LLC, and Xspedius Communications, LLC on Behalf of Its Operating Subsidiaries, Xspedius Management Co. Switched Services, LLC, Xspedius Management Co. of Lexington, LLC, and Xspedius Management Co. of Louisville, LLC, enclose for filing in the above-styled case an original and eleven (11) copies of their revised matrix.

Thank you, and if you have any questions, please call me.

Very truly yours,

DINSMORE & SHOHL LLP



John E. Selent

JES/bmt
Enclosures

cc: Amy E. Dougherty, Esq.
John Heitmann, Esq.

CERTIFICATE OF SERVICE

It is hereby certified that the foregoing was served by mailing a copy of the same by First Class United States Mail, sufficient postage prepaid, to the following, this 15th day of October, 2004.

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KMC / NEWSOUTH / NUVOX / XSPEDIUS - BELLSOUTH ARBITRATION
JOINT PETITIONERS ISSUES/OPEN ITEMS MATRIX[1]

Kentucky Public Service Commission Docket No. 2004-00044

ITEM NO.	ISSUE #	§	UNRESOLVED ISSUE	CLEC POSITION	BELLSOUTH POSITION
			GT&Cs (MAIN)		
1	G-1	1.6	***This issue has been resolved.***		
2	G-2	1.7	*How should "End User" be defined?*	The term "End User" should be defined as "the customer of a Party".	The Parties have not discussed the definition for "End User" other than in the context of high-capacity EELs. Since the issue as stated by the CLECs and raised in the General Terms and Conditions of the Agreement has never been discussed by the Parties, the issue is not appropriate for arbitration. The term End User should be defined as it is customarily used in the industry; that is, the ultimate user of the telecommunications service.
3	G-3	10.2	***This issue has been resolved.***		
4	G-4	10.4.1	*What should be the limitation on each Party's liability in circumstances other than gross negligence or willful misconduct?*	In cases other than gross negligence and willful misconduct by the other party, or other specified exemptions as set forth in CLECs' proposed language, liability should be limited to an aggregate amount over the entire term equal to 7.5% of the aggregate fees, charges or other amounts paid or	The industry standard limitation of liability should apply, which limits the liability of the provisioning party to a credit for the actual cost of the services or functions not performed or improperly performed.

[1] KMC, NewSouth, NuVox and Xspedius are jointly arbitrating all issues raised in this arbitration proceeding.

Updated 10/15/2004

ITEM NO.	ISSUE #	§	UNRESOLVED ISSUE	CLEC POSITION	BELLSOUTH POSITION
				payable for any and all services provided or to be provided pursuant to the Agreement as of the day immediately preceding the date of assertion or filing of the applicable claim or suit. CLECs' proposal represents a hybrid between limitation of liability provisions typically found in commercial contracts between sophisticated buyers and sellers, in the absence of overwhelming market dominance by one party, and the effective elimination of liability provision proposed by BellSouth.	
5	G-5	10.4.2	***CLEC Issue Statement:*** *To the extent that a Party does not or is unable to include specific limitation of liability terms in all of its tariffs and End User contracts (past, present and future), should it be obligated to indemnify the other Party for liabilities not eliminated?* ***BellSouth Issue Statement:*** *If the CLEC does not have in its contracts with end users and/or tariffs standard industry*	NO, Petitioners cannot limit BellSouth's liability in contractual arrangements wherein BellSouth is not a party. Moreover, Petitioners will not indemnify BellSouth in any suit based on BellSouth's failure to perform its obligations under this contract or to abide by applicable law. Finally, BellSouth should not be able to dictate the terms of service between Petitioners and their customers by, among other things, holding Petitioners liable for failing to mirror BellSouth's limitation of liability and indemnification provisions in CLEC's End User tariffs and/or contracts. To the extent that a CLEC does not, or is unable to, include specific elimination-of-liability terms in all of its tariffs and End User contracts (past, present and future), and provided that the non-inclusion of such terms is commercially reasonable in the	If a CLEC elects not to limit its liability to its end users/customers in accordance with industry norms, the CLEC should bear the risk of loss arising from that business decision.

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			limitations of liability, who should bear the resulting risks?	particular circumstances, that CLEC should not be required to indemnify and reimburse BellSouth for that portion of the loss that would have been limited (as to the CLEC but not as to non-contracting parties such as BellSouth) had the CLEC included in its tariffs and contracts the elimination-of-liability terms that BellSouth was successful in including in its tariffs at the time of such loss.	
6	G-6	10.4.4	***CLEC Issue Statement:*** *Should the Agreement expressly state that liability for claims or suits for damages incurred by CLEC's (or BellSouth's) customers/End Users resulting directly and in a reasonably foreseeable manner from BellSouth's (or CLEC's) performance of obligations set forth in the Agreement are not indirect, incidental or consequential damages?* ***BellSouth Issue Statement:*** *How should indirect, incidental or consequential*	YES, such an express statement is needed because the limitation of liability terms in the Agreement should in no way be read so as to preclude damages that CLECs' customers incur as a foreseeable result BellSouth's performance of its obligations under the Agreement, including its provisioning of UNEs and other services. Damages to customers that result directly, proximately, and in a reasonably foreseeable manner from BellSouth's (or a CLEC's) performance of obligations set forth in the Agreement that were not otherwise caused by, or are the result of, a CLEC's (or BellSouth's) failure to act at all relevant times in a commercially reasonable manner in compliance with such Party's duties of mitigation with respect to such damage should be considered direct and compensable under the Agreement for simple negligence or nonperformance	What damages constitute indirect, incidental or consequential damages is a matter of state law at the time of the claim and should not be dictated by a party to an agreement.

ITEM NO.	ISSUE #	§	UNRESOLVED ISSUE	CLEC POSITION	BELLSOUTH POSITION
			damages be defined for purposes of the Agreement?	purposes.	
7	G-7	10.5	*What should the indemnification obligations of the parties be under this Agreement?*	The Party providing service under the Agreement should be indemnified, defended and held harmless by the Party receiving services against any claim for libel, slander or invasion of privacy arising from the content of the receiving Party's own communications. Additionally, customary provisions should be included to specify that the Party receiving services under the Agreement should be indemnified, defended and held harmless by the provider Party against any claims, loss or damage to the extent reasonably arising from: (1) the providing Party's failure to abide by Applicable Law, or (2) injuries or damages arising out of or in connection with this Agreement to the extent cased by the provider Party's negligence, gross negligence or willful misconduct.	The Party providing services should be indemnified, defended and held harmless by the Party receiving services against any claim, loss or damage arising from the receiving Party's use of the services provided under this Agreement pertaining to (1) claims for libel, slander or invasion of privacy arising from the content of the receiving Party's own communications, or (2) any claim, loss or damage claimed by the End User of the Party receiving services arising from such company's use or reliance on the providing Party's services, actions, duties, or obligations arising out of this Agreement. This indemnification obligation shall not apply the extent any claims, loss, or damage is caused by the providing Party's gross negligence or willful misconduct.
8	G-8	11.1	*What language should be included in the Agreement regarding a Party's use of the other Party's name, service marks, logo and trademarks?*	Given the complexity of and variability in intellectual property law, this nine-state Agreement should simply state that no patent, copyright, trademark or other proprietary right is licensed, granted or otherwise transferred by the Agreement and	BellSouth's position is that the CLECs' use of BellSouth's name should be limited to (1) factual references that are necessary to respond to direct inquiries from customers or potential customers regarding the source of the underlying

ITEM NO.	ISSUE #	§	UNRESOLVED ISSUE	CLEC POSITION	BELLSOUTH POSITION
				that a Party's use of the other Party's name, service mark and trademark should be in accordance with Applicable Law. The Commission should not attempt to prejudge intellectual property law issues, which at BellSouth's insistence, the Parties have agreed are best left to adjudication by courts of law (see, GTC, Sec. 11.5).	services or the identity of repair technicians; and (2) truthful and factual comparative advertising that does not imply any agency relationship, partnership, endorsement, sponsorship or affiliation with BellSouth and that uses the name solely in plain-type, non-logo format. CLECs should not otherwise be entitled to use BellSouth's name, service mark, logo or trademark.
9	G-9	13.1	***CLEC Issue Statement:*** *Should a court of law be included in the venues available for initial dispute resolution?* ***BellSouth Issue Statement:*** *Under what circumstances should a party be allowed to take a dispute concerning the interconnection agreement to a Court of law for resolution first?*	YES, either Party should be able to petition the Commission, the FCC or, if appropriate, a court of law for resolution of a dispute. No *legitimate dispute resolution venue should be foreclosed* to the Parties. The industry has experienced difficulties in achieving efficient regional dispute resolution. Moreover, there is an ongoing debate as to whether state commissions have jurisdiction to enforce agreements (CLECs do not dispute that authority) and as to whether the FCC will engage in such enforcement. There is no question that courts of law have jurisdiction to entertain such disputes (see GTC, Sec. 11.5); indeed, in certain instances, they may be better equipped to adjudicate a dispute and may provide a more efficient alternative to litigating before up to 9 different state commissions or to waiting for the FCC to decide whether it will or won't accept an enforcement role given the particular facts.	This Commission or the FCC should initially resolve disputes as to the interpretation of the Agreement or as to the proper implementation of the Agreement. A party should be entitled to seek judicial review of any ruling made by the Commission or the FCC concerning this Agreement, but should not be entitled to take such disputes to a Court of law without first exhausting its administrative remedies.

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10	G-10	17.4	***This issue has been resolved.***		
11	G-11	19, 19.1	***This issue has been resolved.***		
12	G-12	32.2	*Should the Agreement explicitly state that all existing state and federal laws, rules, regulations, and decisions apply unless otherwise specifically agreed to by the Parties?*	YES, nothing in the Agreement should be construed to limit a Party's rights or exempt a Party from obligations under Applicable Law, as defined in the Agreement, except in such cases where the Parties have explicitly agreed to a limitation or exemption. This is a basic legal tenet and is consistent with both federal and Georgia law (agreed to by the parties), and it should be explicitly stated in the Agreement in order to avoid unnecessary disputes and litigation that has plagued the Parties in the past.	This Agreement is intended to memorialize the Parties' mutual agreement with respect to their obligations under the Act and applicable FCC and Commission rules and orders. To the extent that either Party asserts that an obligation, right or other requirement not expressly memorialized in the Agreement is applicable to the Parties' by virtue of a reference to an FCC or Commission rule or order or Applicable Law in the Agreement, and such obligation, right or other requirement is disputed by the other Party, the Party asserting that such obligation, right or other requirement is applicable shall petition the Commission for resolution of the dispute and the Parties agree that any finding by the Commission that such obligation, right or other requirement exists shall be applied prospectively by the Parties upon amendment of the Agreement to include such obligation, right or other requirement and any necessary rates, terms and conditions. The Party that failed to perform such obligation, right

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					or other requirement shall be held harmless from any liability for such failure until the obligation, right or other requirement is expressly included in this Agreement by amendment hereto.
13	G-13	32.3	***This issue has been resolved.***		
14	G-14	34.2	***This issue has been resolved.***		
15	G-15	45.2	***This issue has been resolved.***		
16	G-16	45.3	***This issue has been resolved.***		
RESALE (ATTACHMENT 1)					
17	1-1	3.19	***This issue has been resolved***		
18	1-2	11.6.6	***This issue has been resolved.***		
NETWORK ELEMENTS (ATTACHMENT 2)					
19	2-1	1.1	***This issue has been resolved.***		
20	2-2	1.2	***This issue has been resolved.***		
21	2-3	1.4.2	***This issue has been resolved.***		
22	2-4	1.4.3	***This issue has been resolved.***		
23	2-5	1.5	What rates, terms, and conditions should govern the CLECs' transition of	In the event UNEs or Combinations are no longer offered pursuant to, or are not in compliance with, the terms set forth in the	At the conclusion of the Transition Period, in the absence of an effective FCC ruling that Mass Market Switching,

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			existing network elements that BellSouth is no longer obligated to provide as UNEs to other services?	Agreement, including any transition plan set forth therein, it should be BellSouth's obligation to identify the specific service arrangements that it insists be transitioned to other services pursuant to Attachment 2. If CLEC does not submit a rearrange or disconnect order within 30 days of receipt of BellSouth's post transition plan notice identifying circuits that it insists be transitioned to other services, BellSouth may disconnect such arrangements or services without further notice, provided that CLEC has not notified BellSouth of a dispute regarding the identification of specific service arrangements as being no longer offered pursuant to, or are not in compliance with, the terms set forth in the Agreement. Disconnect and other nonrecurring charges should not apply to services that are being rearranged, disconnected or re-terminated (or otherwise physically rearranged in some manner to comport with BellSouth's request for transition). *** *CLECs reserve the right to modify all position statements, but especially this one, as the CLECs have not received BellSouth's proposed redline to Attachment 2*	DS1, or equivalent, and higher capacity loops, including dark fiber loops (collectively "Enterprise Market Loops"), and DS1, or equivalent, and higher capacity dedicated transport, including dark fiber transport (collectively "High Capacity Transport") , or any subset thereof (individually or collectively referred to herein as the "Eliminated Elements") are subject to unbundling, the CLEC must transition Eliminated Elements to either Resale, tariffed services, or services offered pursuant to a separate agreement negotiated between the Parties (collectively "Comparable Services") or must disconnect such Eliminated Elements, as set forth below. <u>Eliminated Elements including Mass Market Switching Function ("Switching Eliminated Elements").</u> In the event that the CLEC has not entered into a separate agreement for the provision of Mass Market Switching or services that include Mass Market Switching, the CLEC will submit orders to either disconnect Switching Eliminated Elements or convert such Switching Eliminated Elements to Resale within thirty (30) days of the last day of the Transition Period. If the CLEC submits

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				incorporating language that forms the basis for this revised issue Based on BellSouth's representation of what its proposed language is likely to say, CLECs anticipate that they will propose alternative language that may also form the basis for this issue.	orders to transition such Switching Eliminated Elements to Resale within thirty (30) days of the last day of the Transition Period, applicable recurring and nonrecurring charges shall apply as set forth in the appropriate BellSouth tariff, subject to the appropriate discounts described in the resale attachment of the Agreement. If the CLEC fails to submit orders within thirty (30) days of the last day of the Transition Period, BellSouth shall transition such Switching Eliminated Elements to Resale, and the CLEC shall pay the applicable nonrecurring and recurring charges as set forth in the appropriate BellSouth tariff, subject to the appropriate discounts described in the resale attachment of this Agreement. In such case, the CLEC shall reimburse BellSouth for labor incurred in identifying the lines that must be converted and processing such conversions. If no equivalent Resale service exists, then BellSouth may disconnect such Switching Eliminated Elements if the CLEC does not submit such orders within thirty (30) days of the last day of the Transition Period. In all cases, until Switching Eliminated Elements have been converted to Comparable Services or disconnected,

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					the applicable recurring and nonrecurring rates for Switching Eliminated Elements during the Transition Period shall apply as set forth in the Agreement. Applicable nonrecurring disconnect charges may apply for disconnection of service or conversion to Comparable Services. Other Eliminated Elements. Upon the end of the Transition Period, the CLEC must transition the Eliminated Elements other than Switching Eliminated Elements ("Other Eliminated Elements") to Comparable Services. Unless the Parties agree otherwise, Other Eliminated Elements shall be handled as follows. the CLEC will identify and submit orders to either disconnect Other Eliminated Elements or transition them to Comparable Services within thirty (30) days of the last day of the Transition Period. Rates, terms and conditions for Comparable Services shall apply per the applicable tariff for such Comparable Services as of the date the order is completed. Where the CLEC requests to transition a minimum of fifteen (15) circuits per state, the CLEC may submit orders via a

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

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					Period. If no Comparable Services exist, then BellSouth may disconnect such Other Eliminated Elements if the CLEC does not submit such orders within thirty (30) days of the last day of the Transition Period. In such case the CLEC shall reimburse BellSouth for labor incurred in identifying such Other Eliminated Elements and processing such orders and the CLEC shall pay the applicable disconnect charges set forth in this Agreement. Until such time as the Other Eliminated Elements are disconnected pursuant to this Agreement, such Other Eliminated Elements will be provided pursuant to the rates, terms and conditions applicable to the subject Other Eliminated Elements during the Transition Period as set forth in this Agreement. In the event that the Interim Rules are vacated by a court of competent jurisdiction, the CLEC should immediately transition Mass Market Switching, Enterprise Market Loops and High Capacity Transport as set forth above, applied from the effective date of such vacatur, without regard to the Interim Period or Transition Period.

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					In the event that any Network Element, other than those addressed above, is no longer required to be offered by BellSouth pursuant to Section 251 of the Act, the CLEC shall immediately transition such elements as set forth above, applied from the effective date of the order eliminating such obligation.
24	2-6	1.5.1	***This issue has been resolved.***		
25	2-7	1.6.1	***This issue has been resolved.***		
26	2-8	1.7	*Should BellSouth be required to commingle UNEs or Combinations with any service, network element or other offering that it is obligated to make available pursuant to Section 271 of the Act?*	YES, BellSouth should be required to "commingle" UNEs or Combinations with any service, network element, or other offering that it is obligated to make available pursuant to Section 271 of the Act.	No, consistent with the FCC's errata to the Triennial Review Order, there is no requirement to commingle UNEs or combinations with services, network elements or other offerings made available only under Section 271 of the Act.
27	2-9	1.8.3	*When multiplexing equipment is attached to a commingled circuit, should the multiplexing equipment be billed per the jurisdictional authorization (Agreement or tariff) of the lower or higher bandwidth*	When multiplexing equipment is attached to a commingled circuit, the multiplexing equipment should be billed from the same jurisdictional authorization (Agreement or tariff) as the lower bandwidth service. If the commingled circuit involves multiple segments at the same bandwidth, the multiplexing should be billed from the	When multiplexing equipment is attached to a commingled circuit, the multiplexing equipment should be billed from the same jurisdictional authorization (Agreement or tariff) as the higher bandwidth service. The central office Channel Interface should be billed from the same jurisdictional

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			service?	jurisdiction of the loop.	authorization as the lower-level jurisdiction.
28	2-10	1.9.4	***This issue has been resolved.***		
29	2-11	2.1.1	***This issue has been resolved.***		
30	2-12	2.1.1.1	***This issue has been resolved.***		
31	2-13	2.1.1.2	***This issue has been resolved.***		
32	2-14	2.1.2, 2.1.2.1, 2.1.2.2	***This issue has been resolved.***		
33	2-15	2.2.3	***This issue has been resolved.***		
34	2-16	2.3.3	***This issue has been resolved.***		
35	2-17	2.4.3, 2.4.4	***This issue has been resolved.***		
36	2-18	2.12.1	*(A) How should line conditioning be defined in the Agreement?* *(B) What should BellSouth's obligations be with respect to line conditioning?*	(A) Line Conditioning should be defined in the Agreement as set forth in FCC Rule 47 CFR 51.319 (a)(1)(iii)(A). (B) BellSouth should perform line conditioning in accordance with FCC Rule 47 C.F.R. 51.319(a)(1)(iii).	(A) Line Conditioning is defined as routine network modification that BellSouth regularly undertakes to provide xDSL services to its own customers. (B) BellSouth should perform line conditioning functions as defined in 47 C.F.R. 51.319(a)(1)(iii) to the extent the function is a routine network modification that BellSouth regularly undertakes to provide xDSL to its own

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					customers.
37	2-19	2.12.2	*Should the Agreement contain specific provisions limiting the availability of load coil removal to copper loops of 18,000 feet or less?*	NO, the agreement should not contain specific provisions limiting the availability of Line Conditioning (in this case, load coil removal) to copper loops of 18,000 feet or less in length.	Yes, current industry technical standards require the placement of load coils on copper loops greater than 18,000 feet in length to support voice service and BellSouth does not remove them for BellSouth retail end users on copper loops of over 18,000 feet in length; therefore, such a modification would not constitute a routine network modification and is not required by the FCC.
38	2-20	2.12.3, 2.12.4	*Under what rates, terms and conditions should BellSouth be required to perform Line Conditioning to remove bridged taps?*	Any copper loop being ordered by CLEC which has over 6,000 feet of combined bridged tap will be modified, upon request from CLEC, so that the loop will have a maximum of 6,000 feet of bridged tap. This modification will be performed at no additional charge to CLEC. Line conditioning orders that require the removal of other bridged tap should be performed at the rates set forth in Exhibit A of Attachment 2.	For any copper loop being ordered by CLEC which has over 6,000 feet of combined bridged tap will be modified, upon request from CLEC, so that the loop will have a maximum of 6,000 feet of bridged tap. This modification will be performed at no additional charge to CLEC. Line conditioning orders that require the removal of bridged tap that serves no network design purpose on a copper loop that will result in a combined level of bridged tap between 2,500 and 6,000 feet will be performed at the rates set forth in Exhibit A of this Attachment. CLEC may request removal of any unnecessary and non-excessive bridged tap (bridged tap between 0 and 2,500 feet which serves no network design purpose), at rates

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					pursuant to BellSouth's Special Construction Process contained in BellSouth's FCC No. 2 as mutually agreed to by the Parties. BellSouth is only required to perform line conditioning that it performs for its own xDSL customers and is not required to create a superior network for CLECs. Moreover, this issue is not appropriate for arbitration in this proceeding because it involves a request by the CLECs that is not encompassed within BellSouth's obligations pursuant to Section 251 of the Act.
39	2-21	2.12.6	***This issue has been resolved.***		
40	2-22	2.14.3.1.1	***This issue has been resolved.***		
41	2-23	2.16.2.3.2	***This issue has been resolved.***		
42	2-24	2.17.3.5	***This issue has been resolved.***		
43	2-25	2.18.1.4	*Under what circumstances should BellSouth be required to provide CLEC with Loop Makeup information on a facility used or controlled by a carrier other than BellSouth?*	BellSouth should provide CLEC Loop Makeup information on a particular loop upon request by a Petitioner. Such access should not be contingent upon receipt of an LOA from a third party carrier.	Consistent with the policy crafted by the CLECs in the Shared Loop Collaborative, in conjunction with the CCP, BellSouth should provide CLEC Loop Makeup information on a facility used or controlled by another CLEC only upon receipt of an LOA authorizing the release of that information from the CLEC using the

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					facility.
44	2-26	3.6.5	***This issue has been resolved.***		
45	2-27	3.10.3	***This issue has been resolved.***		
46	2-28	3.10.4	***CLEC Issue Statement:*** *(A) May BellSouth refuse to provide DSL services to CLEC's customers absent an Commission order establishing a right for it to do so?* *(B) Should CLEC be entitled to incorporate into the Agreement, for the term of this Agreement, rates, terms and conditions that are no less favorable in any respect, than the rates terms and conditions that BellSouth has with any third party that would enable CLEC to serve a*	(A) NO, in cases where a Petitioner purchases UNEs from BellSouth, BellSouth should not be permitted to refuse to provide DSL transport or DSL services (of any kind) to the Petitioner and its End Users, unless BellSouth has been expressly permitted to do so by the Commission. (B) YES, where BellSouth provides DSL transport/services to a CLEC and its End Users, BellSouth should be required to do the same for Petitioners without charge until such time as it produces an amendment proposal and the Parties amend this Agreement to incorporate terms that are no less favorable, in any respect, than the rates, terms and conditions pursuant to which BellSouth provides such transport and services to any other entity.	This issue is not appropriate for arbitration in this proceeding because it involves a request by the CLECs that is not encompassed within BellSouth's obligations pursuant to Section 251 of the Act. Moreover, pursuant to the FCC's recent "all or nothing rule" regarding Section 251(i) and the Interim Rules, the CLECs cannot adopt any agreement that requires BellSouth to provision FastAccess over UNE-P. Further, BellSouth should not be required to provide DSL transport or DSL services over UNEs to CLEC and its End Users as BellSouth's DSLAMs are not subject to unbundling. The FCC specifically stated in paragraph 288 of the TRO that they would "not require

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			customer via a UNE loop that may also be used by BellSouth for the provision of DSL services to the same customer? ***BellSouth Issue Statement:*** *Should the CLECs be allowed to incorporate any Commission decision that required BellSouth to provide FastAccess over UNE-P?*		incumbent LECs to provide unbundled access to any electronics or other equipment used to transmit packetized information." If BellSouth elects to offer these services to CLEC, they should be pursuant to a separately negotiated commercial agreement between the parties or a tariff, and should not be subject to arbitration in this proceeding as they are not services required pursuant to Section 251 of the Act.This issue (including all subparts) is not appropriate for arbitration in this proceeding because it involves a request by the CLECs that is not encompassed within BellSouth's obligations pursuant to Section 251 of the Act.
47	2-29	4.2.2	***This issue has been resolved.***		
48	2-30	4.5.5	***This issue has been resolved.***		
49	2-31	5.2.4	***This issue has been resolved.***		
50	2-32	5.2.5.2.1, 5.2.5.2.3, 5.2.5.2.4, 5.2.5.2.4, 5.2.5.2.7	*How should the term "customer" as used in the FCC's EEL eligibility criteria rule be defined?*	The *USTA II* decision did not vacate the FCC's EEL eligibility criteria rule. The high capacity EEL eligibility criteria should be consistent with those set forth in	This issue is only appropriate for arbitration to the extent that high capacity EELs are available to CLECs and the associated service eligibility criteria apply. In the event that high

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				the FCC's rules and should use the term "customer", as used in the FCC's rules. The term "customer" should not be defined in a manner that limits Petitioners' access to EELs, as BellSouth proposes. The FCC did not limit its term "customer" to the restrictive definition of End User sought by BellSouth. Use of the term "End User" as defined by BellSouth may result in a deviation from the FCC rules to which CLECs are unwilling to agree.	capacity loops and transport are not available as UNEs pursuant to Section 251, this issue is not appropriate for arbitration. During the Transition Period mandated by the Interim Rules, the Commission should find as follows regarding this issue: The term "customer" as used in the FCC's EEL eligibility criteria should be defined as the end user of an EEL. The high capacity EEL eligibility criteria apply only to End User circuits since a loop is a component of the EEL and the FCC definition of a loop requires that it terminate to an "end-user" customer premises.
51	2-33	5.2.6, 5.2.6.1, 5.2.6.2, 5.2.6.2.1, 5.2.6.2.3	*(A)* ***This issue has been resolved.*** *(B) Should there be a notice requirement for BellSouth to conduct an audit and what should the notice include?* *(C) Who should conduct the audit and how should the audit be performed?*	The *USTA II* decision did not vacate the FCC's EEL eligibility criteria rule. (B) YES, to invoke its limited right to audit CLEC's records in order to verify compliance with the high capacity EEL service eligibility criteria, BellSouth should send a Notice of Audit to CLEC, identifying the particular circuits for which BellSouth alleges non-compliance and the cause upon which BellSouth rests its allegations. The Notice of Audit should also include all supporting documentation upon which BellSouth establishes the cause that forms the basis of BellSouth's allegations of	This issue is only appropriate for arbitration to the extent that high capacity EELs are available to CLECs and the associated service eligibility criteria apply. In the event that high capacity loops and transport are not available as UNEs pursuant to Section 251, this issue is not appropriate for arbitration. During the Transition Period mandated by the Interim Rules, the Commission should find as follows regarding this issue: (B) BellSouth will provide notice to CLECs stating the cause upon which

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				noncompliance. Such Notice of Audit should be delivered to CLEC with all supporting documentation no less than thirty (30) days prior to the date upon which BellSouth seeks to commence an audit. (C) The audit should be conducted by a third party independent auditor mutually agreed-upon by the Parties and retained and paid for by BellSouth. The audit should commence at a mutually agreeable location (or locations) no sooner than thirty (30) days after the parties have reached agreement on the auditor. In addition, the audit should be performed in accordance with the standards established by the American Institute for Certified Public Accountants (AICPA) which will require the auditor to perform an "examination engagement" and issue an opinion regarding CLEC's compliance with the high capacity EEL eligibility criteria. AICPA standards and other requirements related to determining the independence of an auditor will govern the audit of requesting carrier compliance. The concept of materiality should govern this audit; the independent auditor's report should conclude whether or the extent to which CLEC complied in all material respects with the applicable service eligibility criteria. Consistent with standard auditing practices, such audits should	BellSouth rests its allegations of noncompliance with the service eligibility criteria at least 30 calendar days prior to the date of the audit. (C) The audit shall be conducted by an independent auditor, and the auditor must perform its evaluation in accordance with the standards established by the American Institute for Certified Public Accountants (AICPA). The auditor will perform an "examination engagement" and issue an opinion regarding CLEC's compliance with the qualifying service eligibility criteria. The independent auditor's report will conclude whether CLEC has complied in all material respects with the applicable service eligibility criteria. Consistent with standard auditing practices, such audits require compliance testing designed by the independent auditor, which typically include an examination of a sample selected in accordance with the independent auditor's judgment. (B) No, a notice requirement is not required by the FCC's TRO.

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				require compliance testing designed by the independent auditor, which typically includes an examination of a sample selected in accordance with the independent auditor's judgment.	
52	2-34	5.2.6.2.3	***This issue has been resolved.***		
53	2-35	6.1.1	***This issue has been resolved.***		
54	2-36	6.1.1.1	***This issue has been resolved.***		
55	2-37	6.4.2	***This issue has been resolved.***		
56	2-38	7.2, 7.3	***This issue has been resolved.***		
57	2-39	7.4	*(A) Should the Parties be obligated to perform CNAM queries and pass such information on all calls exchanged between them, including cases that would require the party providing the information to query a third party database provider?* *(B) If so, which party should bear the cost?*	(A) YES, the Parties should be obligated to perform CNAM queries and pass such information on all calls exchanged between them, regardless of whether that would require BellSouth to query a third party database provider. (B) Each Party should bear its own costs associated with dipping CNAM providers.	This issue (including all subparts) is not appropriate for arbitration in this proceeding because it involves a request by the CLECs that is not encompassed within BellSouth's obligations pursuant to Section 251 of the Act. (A) BellSouth is only legally obligated to provide access to its CNAM database as required by the FCC. There is no legal obligation on either Party's part to query other such databases. (B) If BellSouth elects to perform this function for the CLECs, it should be pursuant to separately negotiated rates,

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					terms and conditions and is not appropriately raised as an issue in a Section 251 arbitration.
58	2-40	9.3.5	***This issue has been resolved.***		
59	2-41	14.1	***This issue has been resolved.***		
INTERCONNECTION (ATTACHMENT 3)					
60	3-1	3.3.4 (KMC, NSC, NVX) 3.3.3 XSP)	***This issue has been resolved.***		
61	3-2	9.6 (KMC), 9.6 (NSC), 9.6 (NVX, XSP)	***This issue has been resolved.***		
62	3-3	10.7.4 (NSC), 10.7.4 (NVX), 10.12.4 (XSP)	***This issue has been resolved.***		
63	3-4	10.10.6 (KMC), 10.8.6 (NSC), 10.8.6	*Under what terms should CLEC be obligated to reimburse BellSouth for amounts BellSouth pays to third party carriers that*	In the event that a terminating third party carrier imposes on BellSouth any charges or costs for the delivery of Transit Traffic originated by CLEC, CLEC should reimburse BellSouth for all charges paid by	In the event that a terminating third party carrier imposes on BellSouth any charges or costs for the delivery of Transit Traffic originated by CLEC, CLEC should reimburse BellSouth for

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		(NVX), 10.13.5 (XSP)	*terminate BellSouth transited/CLEC originated traffic?*	BellSouth, which BellSouth is contractually obligated to pay. BellSouth should diligently review, dispute and pay such third party invoices (or equivalent) in a manner that is at parity with its own practices for reviewing, disputing and paying such invoices (or equivalent) when no similar reimbursement provision applies.	all charges paid by BellSouth.
64	3-5	10.7.4.2 (KMC), 10.5.5.2 (NSC), 10.5.6.2 (NVX) 10.10.6 (XSP)	***This issue has been resolved.***		
65	3-6	10.10. 1 (KMC), 10.8.1 (NSC/ NVX) 10.13 (XSP)	*Should BellSouth be allowed to charge the CLEC a Tandem Intermediary Charge for the transport and termination of Local Transit Traffic and ISP-Bound Transit Traffic?*	NO, BellSouth should not be permitted to impose upon CLEC a Tandem Intermediary Charge ("TIC") for the transport and termination of Local Transit Traffic and ISP-Bound Transit Traffic. The TIC is a non-TELRIC based additive charge which exploits BellSouth's market power and is discriminatory.	Yes, BellSouth is not obligated to provide the transit function and the CLEC has the right pursuant to the Act to request direct interconnection to other carriers. Additionally, BellSouth incurs costs beyond those for which the Commission ordered rates were designed to address, such as the costs of sending records to the CLECs identifying the originating carrier. BellSouth does not charge the CLEC for these records and does not recover those costs in any other form. Moreover, this issue is not appropriate for arbitration in this proceeding because it involves a

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					request by the CLECs that is not encompassed within BellSouth's obligations pursuant to Section 251 of the Act.
66	3-7	10.1 (KMC),10 .1 (XSP)	***This issue has been resolved.***		
67	3-8	10.2, 10.3 (XSP)	***This issue has been resolved.***		
68	3-9	2.1.12 (XSP)	***This issue has been resolved.***		
69	3-10	3.2 (XSP), Ex. A (XSP)	***This issue has been resolved.***		
70	3-11	3.3.1, 3.3.2, 3.4.5, 10.10.2 (XSP)	***This issue has been resolved.***		
71	3-12	4.5 (XSP)	***This issue has been resolved.***		
72	3-13	4.6 (XSP)	***This issue has been resolved.***		
73	3-14	10.10.4, 10.10.5, 10.10.6, 10.10.7 (XSP)	***This issue has been resolved.***		
COLLOCATION (ATTACHMENT 4)					
74	4-1	3.9	***This issue has been resolved.***		

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75	4-2	5.21.1, 5.21.2	***This issue has been resolved.***		
76	4-3	8.1, 8.6	***This issue has been resolved.***		
77	4-4	8.4	***This issue has been resolved.***		
78	4-5	8.6	***This issue has been resolved.***		
79	4-6	8.11, 8.11.1, 8.11.2	***This issue has been resolved.***		
80	4-7	9.1.1	***This issue has been resolved.***		
81	4-8	9.1.2, 9.1.3	***This issue has been resolved.***		
82	4-9	9.3	***This issue has been resolved.***		
83	4-10	13.6	***This issue has been resolved.***		
ORDERING (ATTACHMENT 6)					
84	6-1	2.5.1	***This issue has been resolved.***		
85	6-2	2.5.5	***This issue has been resolved.***		
86	6-3	2.5.6.2, 2.5.6.3	*(A)* ***This issue has been resolved.*** *(B) How should disputes over alleged unauthorized access to CSR information be handled under the*	(B) If one Party disputes the other Party's assertion of non-compliance, that Party should notify the other Party in writing of the basis for its assertion of compliance. If the receiving Party fails to provide the other Party with notice that appropriate corrective measures have been taken within a	(B) The Party providing notice of such impropriety should provide notice to the offending Party that additional applications for service may be refused, that any pending orders for service may not be completed, and/or that access to ordering systems may be suspended if

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			Agreement?	reasonable time or provide the other Party with proof sufficient to persuade the other Party that it erred in asserting the non-compliance, the requesting Party should proceed pursuant to the Dispute Resolution provisions set forth in the General Terms and Conditions and the Parties should cooperatively seek expedited resolution of the dispute. "Self help", in the form of suspension of access to ordering systems and discontinuance of service, is inappropriate and coercive. Moreover, it effectively denies one Party the ability to avail itself to the Dispute Resolution process otherwise agreed to by the Parties.	such use is not corrected or ceased by the fifth (5^{th}) calendar day following the date of the notice. In addition, the alleging Party may, at the same time, provide written notice to the person(s) designated by the other Party to receive notices of noncompliance that the alleging Party may terminate the provision of access to ordering systems to the other Party and may discontinue the provisioning of existing services if such use is not corrected or ceased by the tenth (10^{th}) calendar day following the date of the initial notice. If the other Party disagrees with the alleging Party's allegations of unauthorized use, the other Party shall proceed pursuant to the dispute resolution provisions set forth in the General Terms and Conditions.
87	6-4	2.6	***This issue has been resolved.***		
88	6-5	2.6.5	*What rate should apply for Service Date Advancement (a/k/a service expedites)?*	Rates for Service Date Advancement (a/k/a service expedites) related to UNEs, interconnection or collocation should be set consistent with TELRIC pricing principles.	BellSouth is not required to provide expedited service pursuant to The Act. If BellSouth elects to offer expedite capability as an enhancement to a CLEC, BellSouth's tariffed rates for service date advancement should apply. Moreover, this issue is not appropriate for arbitration in this proceeding because it involves a request by the

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					CLECs that is not encompassed within BellSouth's obligations pursuant to Section 251 of the Act.
89	6-6	2.6.25	***This issue has been resolved.***		
90	6-7	2.6.26	***This issue has been resolved.***		
91	6-8	2.7.10.4	***This issue has been resolved.***		
92	6-9	2.9.1	***This issue has been resolved.***		
93	6-10	3.1.1	***This issue has been resolved.***		
94	6-11	3.1.2, 3.1.2.1	*(A) Should the mass migration of customer service arrangements resulting from mergers, acquisitions and asset transfers be accomplished by the submission of an electronic LSR or spreadsheet?* *(B) If so, what rates should apply?* *(C) What should be the interval for such mass migrations of services?*	(A) YES, mass migration of customer service arrangements (e.g., UNEs, Combinations, resale) should be accomplished pursuant to submission of electronic LSR or, if mutually agreed to by the Parties, by submission of a spreadsheet in a mutually agreed-upon format. Until such time as an electronic LSR process is available, a spreadsheet containing all relevant information should be used. (B) An electronic OSS charge should be assessed per service arrangement migrated. In addition, BellSouth should only charge CLEC a TELRIC-based records change charge, as set forth in Exhibit A of Attachment 2, for migrations of customers for which no physical re-termination of	This issue (including all subparts) is not appropriate for arbitration in this proceeding because it involves a request by the CLECs that is not encompassed within BellSouth's obligations pursuant to Section 251 of the Act. (A) No, each and every Merger, Acquisition and Asset Transfer is unique and requires project management and planning to ascertain the appropriate manner in which to accomplish the transfer, including how orders should be submitted. The vast array of services that may be the subject of such a transfer, under the agreement and both state and federal tariffs, necessitates that various forms of documentation may be

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				circuits must be performed. Similarly, BellSouth should only charge CLEC a TELRIC-based charge, as set forth in Exhibit A of Attachment 2, for migrations of customers for which physical re-termination of circuits is required. (C) Migrations should be completed within ten (10) calendar days of an LSR or spreadsheet submission.	required. (B) The rates by necessity must be negotiated between the Parties based upon the particular services to be transferred and the work involved. (C) No finite interval can be set to cover all potential situations. While shorter intervals can be committed to and met for small, simple projects, larger and more complex projects require much longer intervals and prioritization and cooperation between the Parties.
BILLING (ATTACHMENT 7)					
95	7-1	1.1.3	*What time limits should apply to backbilling, over-billing, and under-billing issues?*	There should be an explicit, uniform limitation on a Party's ability to engage in backbilling under this Agreement. The Commission should adopt the CLEC proposed language, which would limit a Party's ability to bill for services rendered no more than ninety (90) calendar days after the bill date on which those charges ordinarily would have been billed. For purposes of ensuring that a party could reconcile backbilled amounts, the CLEC proposed language provides that billed amounts for services that are rendered more than one (1) billing period prior to the bill date should be invalid unless the billing Party identifies such billing as "backbilling"	All charges incurred under the agreement should be subject to the state's statute of limitations or applicable Commission rules. Back-billing alone should not be subject to a shorter limitations period than any other claims related to billing under the agreement.

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				on a line-item basis. Finally, the CLEC proposed language provides an exemption to the ninety (90) day limit whereby backbilling beyond ninety (90) calendar days and up to a limit of six (6) months after the date upon which the bill ordinarily would have been issued may be invoiced under the following conditions: (1) charges connected with jointly provided services whereby meet point billing guidelines require either Party to rely on records provided by a third party and such records have not been provided in a timely manner; and (2) charges incorrectly billed due to erroneous information supplied by the non-billing Party. With respect to over-billing, the Parties have negotiated and separately agreed to a 2-year limit on filing billing disputes (thus, Petitioners do not believe that BellSouth properly has inserted this as a sub-issue here). With respect to under-billing, Petitioners believe that the subissue is covered by any provisions that address backbilling.	
96	7-2	1.2.2	*(A) What charges, if any, should be imposed for records changes made by the Parties to reflect changes in corporate names or other LEC identifiers such as OCN, CC, CIC and ACNA?*	(A) A Party should be entitled to make one (1) "LEC Change" (*i.e,* corporate name change, OCN, CC, CIC, ACNA change) per state in any twelve (12) month period without charge by the other Party for updating its databases, systems and records solely to reflect such change. For any additional LEC Changes, TELRIC	This issue (including all subparts) is not appropriate for arbitration in this proceeding because it involves a request by the CLECs that is not encompassed within BellSouth's obligations pursuant to Section 251 of the Act. (A) BellSouth is permitted to recover its

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			(B) What intervals should apply to such changes?	compliant rates should be charged. (B) "LEC Changes" should be accomplished in thirty (30) calendar days and should result in no delay or suspension of ordering or provisioning of any element or service provided pursuant to this Agreement, or access to any pre-order, order, provisioning, maintenance or repair interfaces. At the request of a Party, the other Party should establish a new BAN within ten (10) calendar days.	costs and CLEC should be charged a reasonable records change charge. Requests for this type of change should be submitted to the BFR/NBR process. (B) The Interval of any such project would be determined by the BFR/NBR process based upon the complexity of the project.
97	7-3	1.4	*When should payment of charges for service be due?*	Payment of charges for services rendered should be due thirty (30) calendar days from receipt or website posting of a complete and fully readable bill or within thirty (30) calendar days from receipt or website posting of a corrected or retransmitted bill in those cases where correction or retransmission is necessary for processing.	Payment for services should be due on or before the next bill date (Payment Due Date) in immediately available funds.
98	7-4	1.6	***This issue has been resolved.***		
99	7-5	1.7.1	*What recourse should a Party have if it believes the other Party is engaging in prohibited, unlawful or improper use of its facilities or services, abuse of the facilities or noncompliance with the*	Each Party should have the right to suspend access to ordering systems for and to terminate particular services or access to facilities that are being used in an unlawful, improper or abusive manner. However, such remedial action should be limited to the services or facilities in question and such suspension or termination should not	Each Party should have the right to suspend or terminate service in the event it believes the other party is engaging in one of these practices.

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			Agreement or applicable tariffs?	be imposed unilaterally by one Party over the other's written objections to or denial of such accusations. In the event of such a dispute, "self help" should not supplant the Dispute Resolution process set forth in the Agreement.	
100	7-6	1.7.2	*Should CLEC be required to pay past due amounts in addition to those specified in BellSouth's notice of suspension or termination for nonpayment in order to avoid suspension or termination?*	NO, CLECs should not be required to calculate and pay past due amounts in addition to those specified in BellSouth's notice of suspension or termination for nonpayment in order to avoid suspension or termination. Rather, if a Petitioner receives a notice of suspension or termination from BellSouth, with a limited time to pay non-disputed past due amounts, Petitioner should be required to pay only those amount past due as of the date of the notice and as expressly and plainly indicated on the notice, in order to avoid suspension or termination.	Yes, if CLEC receives a notice of suspension or termination from BellSouth as a result of CLEC's failure to pay timely, CLEC should be required to pay all amounts that are past due as of the date of the pending suspension or termination action.
101	7-7	1.8.3	*How many months of billing should be used to determine the maximum amount of the deposit?*	The amount of a deposit should not exceed two month's estimated billing for new CLECs or one and one-half month's actual billing for existing CLECs (based on average monthly billings for the most recent six (6) month period). The one and one-half month's actual billing deposit limit for existing CLECs is reasonable given that balances can be predicted with reasonable accuracy and that significant portions of services are billed in advance.	The average of two (2) months of actual billing for existing customers or estimated billing for new customers, which is consistent with the telecommunications industry's standard and BellSouth's practice with its end users.

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102	7-8	1.8.3.1	*Should the amount of the deposit BellSouth requires from CLEC be reduced by past due amounts owed by BellSouth to CLEC?*	YES, the amount of security due from an existing CLEC should be reduced by amounts due CLEC by BellSouth aged over thirty (30) calendar days. BellSouth may request additional security in an amount equal to such reduction once BellSouth demonstrates a good payment history, as defined in the deposit provisions of Attachment 7. This provision is appropriate given that the Agreement's deposit provisions are not reciprocal and that BellSouth's payment history with CLECs is often poor.	NO, CLEC's remedy for addressing late payment by BellSouth should be suspension/termination of service or application of interest/late payment charges similar to BellSouth's remedy for addressing late payment by CLEC.
103	7-9	1.8.6	*Should BellSouth be entitled to terminate service to CLEC pursuant to the process for termination due to non-payment if CLEC refuses to remit any deposit required by BellSouth within 30 calendar days?*	NO, BellSouth should have a right to terminate services to CLEC for failure to remit a deposit requested by BellSouth only in cases where (a) CLEC agrees that such a deposit is required by the Agreement, or (b) the Commission has ordered payment of such deposit. A dispute over a requested deposit should be addressed via the Agreement's Dispute Resolution provisions and not through "self-help".	Yes, thirty (30) calendar days is a commercially reasonable time period within which CLEC should have met its fiscal responsibilities.
104	7-10	1.8.7	*What recourse should be available to either Party when the Parties are unable to agree on the need for or amount of a reasonable deposit?*	If the Parties are unable to agree on the need for or amount of a reasonable deposit, either Party should be able to file a petition for resolution of the dispute and both parties should cooperatively seek expedited resolution of such dispute.	If CLEC does not agree with the amount or need for a deposit requested by BellSouth, CLEC may file a petition with the Commission for resolution of the dispute and BellSouth would cooperatively seek expedited resolution of such dispute. BellSouth shall not terminate service during the pendency

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					of such a proceeding provided that CLEC posts a payment bond for the amount of the requested deposit during the pendency of the proceeding.
105	7-11	1.8.9	***This issue has been resolved.***		
106	7-12	1.9.1	*To whom should BellSouth be required to send the 15-day notice of suspension for additional applications for service, pending applications for service and access to BellSouth's ordering systems?*	The 15-day notice of suspension for additional applications for service, pending applications for service, and access to BellSouth's ordering systems should be sent to CLECs pursuant to the requirements of Attachment 7 and also should be sent via certified mail to the individual(s) listed in the Notices provision of the General Terms and Conditions.	The 15-day computer-generated notice stating that BellSouth may suspend access to BellSouth's ordering systems should go to the individual(s) that CLEC has identified as its Billing Contact(s), Notices, not system generated, of security deposits and suspension or termination of services shall be sent via certified mail to the individual(s) listed in the Notices provision of the General Terms and Conditions of the Agreement in addition to the CLEC's designed billing contact.
BFR/NBR (ATTACHMENT 11)					
107	11-1	1.5, 1.8.1, 1.9, 1.10	***This issue has been resolved.***		
SUPPLEMENTAL ISSUES					
107	S-1		*How should the Final FCC Unbundling Rules[2] be incorporated into the Agreement?*	Upon release of the Final FCC Unbundling Rules, the parties should endeavor to negotiate contract language that reflects an agreement to abide by those rules or to	The Agreement should automatically incorporate the FCC Final Unbundling Rules immediately upon those rules becoming effective.

[2] FINAL FCC UNBUNDLING RULES - is defined as an effective order of the FCC adopted pursuant to the Notice of Proposed Rulemaking, WC Docket No. 04-313, released August 20, 2004, and effective September 13, 2004.

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				other standards, if they mutually agree to do so. Any issues which the parties are unable to resolve should be resolved through Commission arbitration. As we understand BellSouth's proposal (the CLECs have not received BellSouth's proposed redline to Attachment 2), BellSouth inappropriately seeks to upend the process established by the Act which requires good faith negotiations with respect to applicable legal requirements first and then allows for Commission arbitration of issues the parties are unable to resolve through good faith negotiations. BellSouth's "deemed amended" position also is contrary to language which the parties already have agreed will be incorporated into the general terms stating that changes in law will be addressed via amendment and that amendments will be effective (on or after signature). GTC § 17.4, Resolved Issue 10/G-10. *** *CLECs reserve the right to modify all position statements, but especially this one, as the CLECs have not received BellSouth's proposed redline to Attachment 2 incorporating language that forms the basis*	becoming effective.

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				for this issue. Based on BellSouth's representation of what its proposed language is likely to say, CLECs anticipate that they will propose alternative language that may also form the basis for this issue.	
108	S-2		***CLEC Issue Statement:*** *(A) How should any intervening FCC Order adopted in CC Docket 01-338 or WC Docket 04-313 be incorporated into the Agreement?* *(B) How should any intervening State Commission order relating to unbundling obligations, if any, be incorporated into the Agreement?* ***BellSouth Issue Statement:*** *Should the Agreement automatically incorporate any intervening order of the FCC adopted in WC Docket 04-313 or CC Docket 01-338 that is issued prior to the issuance of the Final FCC*	*(A)* Upon release of an intervening FCC Order *adopted in CC Docket 01-338 or WC Docket 04-313,* the parties should endeavor to negotiate contract language that reflects an agreement to abide by that order and any rules associated therewith or to other standards, if they mutually agree to do so. Any issues which the parties are unable to resolve should be resolved through Commission arbitration. As we understand BellSouth's proposal (the CLECs have not received BellSouth's proposed redline to Attachment 2), BellSouth inappropriately seeks to upend the process established by the Act which requires good faith negotiations with respect to applicable legal requirements first and then allows for Commission arbitration of issues the parties are unable to resolve through good faith negotiations. BellSouth's "deemed amended" position also is contrary to language which the parties already have agreed will be incorporated into the general terms stating that changes in law will be addressed via	Yes. If the FCC enters an intervening order prior to issuing the Final FCC Unbundling Rules, the requirements of the intervening order should take precedence over rates, terms, and conditions in the Agreement that are inconsistent with the rates, terms, and conditions set forth in the intervening order. In order to effectuate this, the Agreement should automatically incorporate any intervening order on the effective date of such order. Further, state commissions are preempted from making any changes to the FCC findings in FCC 04-179, except for the issuance of an order increasing rates for frozen elements, as set forth in FCC 04-179. Consequently, any state commission order (other than one increasing rates for the frozen elements) should not be incorporated into the Agreement. Because BellSouth has not had a full opportunity to review and analyze the CLECs' proposed issue, BellSouth

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			Unbundling Rules to the extent any rates, terms or requirements set forth in such an order are in conflict with, in addition to, or otherwise different from the rates, terms, and requirements set forth in the Agreement?	amendment and that amendments will be effective (on or after signature). GTC § 17.4, Resolved Issue 10/G-10. *(B)* As with any FCC Order adopted in CC Docket 01-338 or WC Docket 04-313, with respect to any intervening State Commission order relating to unbundling obligations, the parties should endeavor to negotiate contract language that reflects an agreement to abide by that order and any rules associated therewith or to other standards, if they mutually agree to do so. Any issues which the parties are unable to resolve should be resolved through Commission arbitration. *** *CLECs reserve the right to modify all position statements, but especially this one, as the CLECs have not received BellSouth's proposed redline to Attachment 2 incorporating language that forms the basis for this issue. Based on BellSouth's representation of what its proposed language is likely to say, CLECs anticipate that they will propose alternative language that may also form the basis for this issue.*	reserves the right and intends to modify its position statement to address the CLECs' competing issue statement.

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109	S-3		*If FCC 04-179 is vacated or otherwise modified by a court of competent jurisdiction, how should such order or decision be incorporated into the Agreement?*	If FCC 04-179 is vacated or otherwise modified by a court of competent jurisdiction, the parties should endeavor to negotiate contract language that reflects an agreement to abide by law left in place or that is adopted in response to that decision or to other standards, if they mutually agree to do so. Any issues which the parties are unable to resolve should be resolved through Commission arbitration. As we understand BellSouth's proposal (the CLECs have not received BellSouth's proposed redline to Attachment 2), BellSouth inappropriately seeks to upend the process established by the Act which requires good faith negotiations with respect to applicable legal requirements first and then allows for Commission arbitration of issues the parties are unable to resolve through good faith negotiations. BellSouth's "deemed amended" position also is contrary to language which the parties already have agreed will be incorporated into the general terms stating that changes in law will be addressed via amendment and that amendments will be effective (on or after signature). GTC § 17.4, Resolved Issue 10/G-10. ***	In the event a court of competent jurisdiction vacates all or part of FCC 04-179, there will be no valid impairment findings with respect to the vacated elements. Thus, the Agreement should automatically incorporate the state of the law on the date the order or decision becomes effective.

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				CLECs reserve the right to modify all position statements, but especially this one, as the CLECs have not received BellSouth's proposed redline to Attachment 2 incorporating language that forms the basis for this issue. Based on BellSouth's representation of what its proposed language is likely to say, CLECs anticipate that they will propose alternative language that may also form the basis for this issue.	
110	S-4		***CLEC Issue Statement:*** *What post Interim Period[3] transition plan should be incorporated into the Agreement?* ***BellSouth Issue Statement:*** *At the end of the Interim Period, assuming that the Transition Period set forth in FCC 04-179 is neither vacated, modified, nor superceded, should the Agreement automatically incorporate the Transition*	The "Transition Period" or plan proposed by the FCC for the six months following the Interim Period has not been adopted by the FCC, but was merely proposed. The FCC sought comment on the proposal and on transition plans in general. Upon release of the Final FCC Unbundling Rules, the parties should endeavor to negotiate contract language that reflects an agreement to abide by the transition plan adopted therein or to other standards, if they mutually agree to do so. Any issues which the parties are unable to resolve should be resolved through Commission arbitration. As we understand BellSouth's proposal (the CLECs have not received BellSouth's proposed redline to Attachment 2),	Yes. FCC 04-179 states that, in the absence of Final FCC Unbundling Rules that modify the requirements of the Transition Period, the Transition Period specified in FCC 04-179 will take effect at the end of the Interim Period. Therefore, the Agreement should automatically incorporate the FCC's Transition Period once it becomes effective. In the event the Final FCC's Unbundling Rules or an intervening order of the FCC modifies the requirements of the FCC's Transition Period, such modified requirements should take effect in accordance with BellSouth's position on Issues 1 and 2 above.

[3] INTERIM PERIOD – as set forth in ¶29 of the FCC 04-179, is defined as the period that ends on the earlier of (1) March 12, 2005 or (2) the effective date of the final unbundling rules adopted by the FCC pursuant to the Notice of Proposed Rulemaking described in the FCC 04-179

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			Period set forth in the Interim Order?	BellSouth inappropriately seeks to upend the process established by the Act which requires good faith negotiations with respect to applicable legal requirements first and then allows for Commission arbitration of issues the parties are unable to resolve through good faith negotiations. BellSouth's "deemed amended" position also is contrary to language which the parties already have agreed will be incorporated into the general terms stating that changes in law will be addressed via amendment and that amendments will be effective (on or after signature). GTC § 17.4, Resolved Issue 10/G-10. *** *CLECs reserve the right to modify all position statements, but especially this one, as the CLECs have not received BellSouth's proposed redline to Attachment 2 incorporating language that forms the basis for this issue. Based on BellSouth's representation of what its proposed language is likely to say, CLECs anticipate that they will propose alternative language that may also form the basis for this issue.*	Because BellSouth has not had a full opportunity to review and analyze the CLECs' proposed issue, BellSouth reserves the right and intends to modify its position statement to address the CLECs' competing issue statement.

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111	S-5		*(A) What rates, terms and conditions relating to switching, enterprise market loops and dedicated transport were "frozen" by FCC 04-179?* *(B) How should these rates, terms and conditions be incorporated into the Agreement?*	*(A)* Rates, terms and conditions relating to switching, enterprise market loops and dedicated transport from each CLEC's interconnection agreement that was in effect as of June 15, 2004 were "frozen" by FCC 04-179. *(B)* Those frozen rates, terms and conditions should be incorporated into the Agreement as they appeared in each CLEC's interconnection agreement that was in effect as of June 15, 2004. *** *CLECs reserve the right to modify all position statements, but especially this one, as the CLECs have not received BellSouth's proposed redline to Attachment 2 incorporating language that forms the basis for this issue. Based on BellSouth's representation of what its proposed language is likely to say, CLECs anticipate that they will propose alternative language that may also form the basis for this issue.*	The rates, terms and conditions for the following defined elements were frozen: **Switching** -- Mass Market Switching and all elements that must be made available when switching is made available. Mass Market Switching is unbundled access to local switching except when the CLEC: (1) serves an End User with four (4) or more voice-grade (DSO) equivalents or lines served by the ILEC in Density Zone 1 of the top 50 MSAs; or (2) serves an End User with a DS1 or higher capacity service or UNE Loop. **Enterprise Market Loops** -- those transmission facilities between a distribution frame (or its equivalent) in the ILEC's central office and the loop demarcation point at an end user customer premises at a DS1 or higher level capacity, including dark fiber loops. **Dedicated Transport** -- the transmission facilities connecting ILEC switches and wire centers in a LATA. at a DS1 or higher level capacity, including dark fiber transport.

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112	S-6		***CLEC Issue Statement:*** *(A) Is BellSouth obligated to provide unbundled access to DS1 loops, DS3 loops and dark fiber loops?* *(B) If so, under what rates, terms and conditions?* ***BellSouth Issue Statement:*** *Did USTA II vacate the FCC's unbundling requirement, if any, relating to high-capacity loops and dark fiber?*	*(A)* YES. *USTA II* did not vacate the FCC's rules which require BellSouth to make available DS1, DS3 and dark fiber loop UNEs. *USTA II* also did not eliminate Section 251, CLEC impairment, Section 271 or this Commission's authority under federal or state law to require BellSouth to provide unbundled access to DS1, DS3 and dark fiber loops. *(B)* BellSouth is obligated to provide access to DS1, DS3 and dark fiber loop UNEs at TELRIC compliant rates approved by this Commission. DS1, DS3 and dark fiber loops unbundled on other than a Section 251 statutory basis should be made available at TELRIC compliant rates approved by this Commission until such time as it is determined that another pricing standard applies and the Commission approves rates pursuant to that standard. *** *CLECs reserve the right to modify all position statements, but especially this one, as the CLECs have not received BellSouth's proposed redline to Attachment 2 incorporating language that forms the basis for this issue. Based on BellSouth's representation of what its proposed language is likely to say, CLECs anticipate*	Yes. While not mentioned specifically by name, the rationale and logic of *USTA II* clearly indicates that the D.C. Circuit intended to vacate any FCC requirement that obligated ILECs to provide high capacity loops and dark fiber. *USTA II*'s vacatur of the FCC's prior unbundling rules applied to all high capacity (DSI or above) transmission facilities, which includes high capacity loops, high capacity transport and dark fiber. Because BellSouth has not had a full opportunity to review and analyze the CLECs' proposed issue, BellSouth reserves the right and intends to modify its position statement to address the CLECs' competing issue statement.

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				that they will propose alternative language that may also form the basis for this issue.	
113	S-7		***CLEC Issue Statement:*** *(A) Is BellSouth obligated to provide unbundled access to DS1 dedicated transport, DS3 dedicated transport and dark fiber transport?* *(B) If so, under what rates, terms and conditions?* ***BellSouth Issue Statement:*** *BellSouth does not have an issue statement and disagrees with the issue presented by the CLECs.*	*(A)* YES. *USTA II* did not eliminate Section 251, CLEC impairment, Section 271 or this Commission's authority under federal or state law to require BellSouth to provide unbundled access to DS1, DS3 and dark fiber transport. *(B)* Pursuant to Section 251, BellSouth is obligated to provide access to DS1, DS3 and dark fiber transport UNEs at TELRIC compliant rates approved by this Commission. DS1, DS3 and dark fiber loops unbundled on other than a Section 251 statutory basis should be made available at TELRIC compliant rates approved by this Commission until such time as it is determined that another pricing standard applies and the Commission approves rates pursuant to that standard. *** *CLECs reserve the right to modify all position statements, but especially this one, as the CLECs have not received BellSouth's proposed redline to Attachment 2*	This issue is inappropriate for arbitration because it exceeds the scope of the parties' agreement regarding what could raised as a supplemental issue. Further, because BellSouth has not had a full opportunity to review and analyze the CLECs' proposed issue, BellSouth reserves the right and intends to modify its position statement to address the CLECs' competing issue statement.

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				incorporating language that forms the basis for this issue Based on BellSouth's representation of what its proposed language is likely to say, CLECs anticipate that they will propose alternative language that may also form the basis for this issue.	
114	S-8		***CLEC Issue Statement:*** *(A) Is BellSouth obligated to provide unbundled access to other network elements, including, but not limited to switching and loop elements that BellSouth is not required to unbundle pursuant to FCC Rule 319?* *(B) If so, under what rates, terms and conditions?* ***BellSouth Issue Statement:*** *BellSouth does not have an issue statement and disagrees with the issue presented by the CLECs.*	*(A)* YES. *USTA II* did not eliminate Section 251, CLEC impairment, Section 271 or this Commission's authority under federal or state law to require BellSouth to provide unbundled access to other network elements, including, but not limited to circuit and packet switching and fiber or hybrid loop elements that BellSouth is not required to unbundle pursuant to FCC Rule 319. *(B)* Unbundled access to other network elements, including, but not limited to circuit and packet switching and fiber or hybrid loop elements that BellSouth is not required to unbundle pursuant to FCC Rule 319 should be made available at TELRIC compliant rates approved by this Commission until such time as it is determined that another pricing standard applies and the Commission approves rates pursuant to that standard. *** *CLECs reserve the right to modify all*	This issue is inappropriate for arbitration because it exceeds the scope of the parties' agreement regarding what could raised as a supplemental issue. Further, because BellSouth has not had a full opportunity to review and analyze the CLECs' proposed issue, BellSouth reserves the right and intends to modify its position statement to address the CLECs' competing issue statement.

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				position statements, but especially this one, as the CLECs have not received BellSouth's proposed redline to Attachment 2 incorporating language that forms the basis for this issue. Based on BellSouth's representation of what its proposed language is likely to say, CLECs anticipate that they will propose alternative language that may also form the basis for this issue.	